New Horizons for a State Bill of Rights

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be made "judicially enforceable" by express authorization of enforce-
ment by public or private action.

Nor is there any apparent reason why the constitutional proscrip-
tion should be confined to private discrimination. Other rights which
all constitutions guarantee against the state—and particularly rights
of belief, speech and association—are as vulnerable to infringement
by "private governments" and as deserving of protection from such
infringement.

So I commend also to state constitutional conventions the task of
attempting to preserve our individual freedoms not merely against
those governments we elect but also against those governments we do
not elect.

II. NEW HORIZONS FOR A STATE BILL
OF RIGHTS*

Arval A. Morris**

A frequent recurrence to fundamental principles is essential to
the security of individual right and the perpetuity of free gov-
ernment.

—WASH. CONST. art. I, § 32.

A Bill of Rights is a basic part of each American constitution, in
part summarizing the past experiences of a people and serving as a
continuous reminder to their government of the rights which the people
deem fundamental to their liberty and welfare. Currently there are
additional reasons for incorporating a Bill of Rights into a state con-
stitution. Some people¹ want a state Bill of Rights in order to slow

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13-14, 1968).

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[hereinafter cited as Countryman], quoting Hart, The Bill of Rights: Safeguard of
down what they see as unwarranted expansion of federal power, and
to revitalize state government. They demand that state government
end its default in protecting fundamental rights, thus eliminating the
need for federal protection of fundamental rights and reducing the
scope of federal power. On the other hand, other persons, such as
Professor Countryman, see a continuing need for a state Bill of Rights
because (1) states can improve on existing federal interpretations of
federal constitutional guarantees, assuring their adequacy and opera-
tional effectiveness for the future; (2) states can include certain fun-
damental rights in their constitutions which are now found in the
federal Constitution but which do not apply to states; and finally
(3) states can add additional guarantees, necessary for the future,
but not now found in the federal Constitution.

A new Constitution containing a clearly and precisely formulated
Bill of Rights should be drafted for the State of Washington. I sug-
gest that a short, simple and broad declaration can, and should, be
drafted for each guarantee, and fitted into a streamlined state Con-
stitution. For example, a section covering free expression could be
worded as follows:

No state or municipal legislature, nor any official, agent, or
representative of government shall undertake any action, or
pass any law, depriving or abridging freedom of speech, press,
publishing, association, peaceful picketing, or the right of
the people peaceably to assemble, or the right of the people
to make peaceful use of public property otherwise open to the
public for public use, or the right of the people to petition
the government for a redress of grievances.

I have intentionally phrased this provision to eliminate references
to religion which, in Washington, requires special consideration and
a special constitutional provision. Washington’s religious guarantees,

2. Id. at 456.
3. I agree with these views, but feel they omit another significant reason for sup-
porting a state Bill of Rights. The United States Supreme Court began protecting
fundamental rights from state interference by default. Furthermore, even though state
judges are obliged to apply the United States Constitution to state cases (because of
the supremacy clause, art. VI, § 2), they are too frequently reluctant to do so. Possibly
nothing short of changing the type of man selected for the state judiciary will correct
the hesitation to protect individual liberties, but there is hope that a clear precise state
Bill of Rights would assist state judges in protecting fundamental freedoms.
assuring greater religious freedom than those of the United States Constitution, should be collected and reformulated directly and simply in a separate constitutional provision.\(^4\)

I see no reason why guarantees applying to criminal procedure and other areas could not be streamlined and formulated like the guarantee of free expression. They should be set forth in simple terms and drafted to cover the substantive areas necessary for protection during the next one hundred years.

Professor Countryman made reference to the desirability of state constitutions containing a provision eliminating ineffective, obnoxious and demeaning oaths.\(^5\) He is clearly correct on this point, and a provision could be added to a state Bill of Rights stating:

No state or municipal legislature, nor any official agent, or representative of government shall require of any person, public or private, under any circumstances, any oath other than that set forth in this constitution.

Then, of course, there should be set forth a provision requiring an oath which apparently could read as: “All officials, employees, agents and representatives of government shall be bound by oath or affirmation to support this constitution and the Constitution of the United States and to obey the constitutional laws of this state, and Nation; no religious test shall ever be required as a qualification to any office or public trust under the State of Washington.” My suggested language is almost identical with the language of the Constitution of the United States, art. VI, § 3.

NEW CONSTITUTIONAL RIGHTS NEEDED FOR A LIVABLE FUTURE

Washington’s existing constitution was adopted in 1889, and is nearly eighty years old. If this experience is predictive, a new state

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4. The guarantees are found in WASH. CONST. art. I, § 11, art. XXVI, § 1 and amend 4. I have two reasons for advocating separation of the religious guarantees: (1) they have served the state well in the past and have demonstrated that they are right for the State of Washington and (2) this is an emotional area and if one were to modify and reduce Washington’s existing guarantees of religious liberty, risks of subsequent failure at the polls would be substantially increased.

5. Countryman, supra note 1, at 458.
Constitution should be designed for the next eighty to hundred years. I ask you: What will the State of Washington be like in 2068? Consider what it was like in 1889.

In 1889, Washington was a frontier state. The population of the United States in 1890 was only 63 million; today it is over 200 million, and by the year 1990, America's population is expected to rise to 300 million. Washington's 1890 population was a mere 360,000; in 1965 it stood at three million and is growing rapidly. The people who formulated Washington's existing Constitution did not foresee our modern population explosion and crowded cities. They lived in a world without automobiles, radios, television or airplanes. Railroads had just come to the Northwest, and Washington's economy was based on exploitation of natural resources. The people were hardy and imbued with a populist spirit that reflected a general suspicion and distrust of government, perhaps because so many private businessmen had commercial interests in political decision-making and sought to use government for their own ends.

What will the next hundred years bring? While no one knows for sure, some trends are clear, and a new state Constitution should deal with them.

I. RACE

We know that we not only have a population explosion, but also, that our population is redistributing itself. Non-white population is increasing more rapidly than white, and by 1985 non-whites should number 13 to 14 percent of total American population instead of the current 11 to 12 percent. After 1985 the rate of natural increase of the non-white population may be somewhat in excess of two percent whereas the white rate will

9. HISTORICAL STATISTICS, supra note 6, at 12 (1961).
10. STATISTICAL ABSTRACT, supra note 8, at 12 (1967).
be about 1\textsuperscript{\textfrac{3}{4}} percent. Should that rate differential persist, around one-fourth of the nation’s population would be non-white by 2085. Most Northern non-whites live in our central cities which are rapidly becoming all black, as whites flee to the suburbs. By 1980, seven or more of our large cities will be predominantly non-white (mainly black) and perhaps thirty more will be over one-third non-white. It has been predicted that if this population redistribution trend continues, by year 2000 only Houston and Los Angeles, of our Nation’s ten largest cities, will be predominantly white.\textsuperscript{12}

Washington and Washington’s cities are not immune from these forces. In 1940, the number of black people in the State of Washington stood at 7,424, but twenty years later, in 1960, there were 48,738 blacks in Washington; and today, it is believed there are 40,000 blacks in Seattle alone.\textsuperscript{13} But, blacks are not the only minority group in Washington. Until 1960, American Indians and persons of Japanese ancestry constituted the dominant minority grouping. In 1960, Washington had 52,801 persons who were both non-white and not black. With the exception of American Indians who live in rural areas, the remaining members of minority groups—well over 90 percent—live within the inner cores of Washington’s cities. Seattle, Spokane and Tacoma have racial ghettos, and they share in our national trends. Conditions in the ghettos of these cities are worsening and are creating an explosive mixture that in other cities has produced race riots. Clearly, we must eliminate the evils of racial discrimination in employment, housing, education, public accommodations and elsewhere, if we are to survive as a unified society. Any new state constitution must contain clear and strong provisions designed to eliminate all aspects of racial discrimination from our State.

II. PRIVACY\textsuperscript{14}

Threats to privacy increased in the first half of the twentieth century, but today, have grown beyond imagination. These threats


\textsuperscript{13} For complete statistics on racial population of Washington and its distribution see, C. SCHMID, C. NOEBE & A. MITCHELL, NON-WHITE RACES: STATE OF WASHINGTON (1968).

\textsuperscript{14} I am indebted to Laurence B. Finegold, Esq. of Seattle, Washington for much of the information contained in this section.
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can be divided into three basic categories:16 (1) physical surveillance consisting of the observation of a person or his records without his knowledge, either through listening or watching devices; (2) data surveillance consisting of the collection, storing and exchange of information through computers and other data processes; (3) psychological surveillance consisting of the use of mental tests, drugs or polygraphs to obtain information from persons.

Physical surveillance techniques are undergoing constant refinement. State and federal law has not kept pace, resulting in constantly increasing threats to privacy. Miniaturization and compactness brought on by the development of the transistor and printed circuit16 have vastly aided electronic surveillance.

A suspect no longer need be "shadowed." Radio transmitters the size of a quarter can accomplish the task. By eliminating the antenna, radio transmitters can be put into a man's glasses, his watch, or his coat, on his car or in his brief case. Today, pills are manufactured that will transmit signals after they have been swallowed, and radioactive dyes are similarly available.17 Objects can be inspected by one-way mirrors, solid walls that are actually mirrors, closed circuit TV, and long-range cameras.18 The clandestine eavesdropper may easily obtain most of these items by mail order.19

The latest development in physical surveillance is an electronic device "capable of tracking the wearer's location, transmitting information about his activities, communicating with him, and perhaps modifying his behavior..."20 The next major development is predicted to be an electronic device that can hover 100 to 1,000 feet

15. This information is from an extensive article on privacy by Westin, Science, Privacy and Freedom: Issues and Proposals for the 1970's, 66 COLUM. L. REV. 1003 (1966) [hereinafter cited as Westin].
18. See Westin, supra note 15. Westin has completed a four-year study on privacy including a great deal of work in the area of types of surveillance devices. See A. WESTIN, PRIVACY AND FREEDOM (1967).
19. A. WESTIN, in his book PRIVACY AND FREEDOM (1967), has found numerous stores and shops and mail order businesses thriving by selling those devices.
20. This gadget has been developed by a Harvard professor and is in experimental use by its developer, Dr. Schwitzgebel. 80 HARV. L. REV. 403 (1966).
above ground and keep an entire neighborhood under sight and sound surveillance. 21

Data surveillance represents an even greater threat to privacy than physical surveillance. Data gathering ability, as well as processing, storing, and retrieving is common to our scientific era. 22 The vast need for information has led to developments in data sharing and pooling of information in numerous economic and political areas.

Predictions for the next decade indicate the growth of central, computerized data banks containing enormous amounts of personal information, such as birth and marriage records, school records, passport data, credit ratings, job experience, military records, medical and psychiatric reports, income and social security returns, etc. 23 Miniaturization and computerization have currently developed to the point where all the books of the Library of Congress can be computerized and placed in six four-drawer filing cabinets. 24 A new laser-recording process makes it possible to put on a single roll of plastic computer tape, 4,800 feet long, and to store for swift recall, twenty pages of typed information about every man, woman and child in the United States. 25

A national data center to pool information for all federal agencies and state governments has been proposed. 26 The dangers of such a system are obvious. A neighbor's subjective evaluation and opinions come out of the computer as fact; the computer may tend to be the sole source relied upon; access will be available at the flip of a switch; and someone may, by flipping another switch, add or delete data as he sees fit. 27

22. Witness the computerization of nearly all individual tax returns in 1960.
24. See Westin, supra note 15.
27. For excellent commentary on this problem see Miller, Personal Privacy in the Computer Age: The Challenge of a New Technology in an Information Oriented Society, 67 MICH. L. REV. 1091 (1969). See also, Karst, "The Files:" Legal Controls Over the Accuracy and Accessibility of Stored Personal Data, 31 LAW & CONTEMP. PROB. 343-44 (1966) [hereinafter cited as Karst].
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Much of the information currently being gathered is willingly given, while the rest is compiled surreptitiously or by putting together various records to gain a more "complete picture." Access to a great deal of this information can be obtained by nearly anyone. Private investigators can often obtain "private" records with relative ease.\(^2\)

Psychological surveillance extracts information from an individual which, frequently, he does not wish to reveal or which he does not know he is revealing. Polygraphs,\(^2\)\(^9\) although not recognized as admissible in courts, have been increasingly used by private industry. Companies, today, use this technique in their attempts to eliminate security risks,\(^3\) criminals, and "undesirables." Police have used it to detect bigotry, dishonesty, and loyalty.\(^3\)\(^1\) Many state and municipal administrators use modern surveillance and eavesdropping techniques, although not as extensively as private industry.

Given these developments and the breadth and depth of the information\(^3\)\(^2\) acquired, it is clear that the next 100 years will witness even greater threats to privacy. It is equally clear that a citizen's right to privacy is fundamental and that any new Bill of Rights should contain a provision protecting every citizen's right to privacy.

III. DISPLACEMENT AND RELOCATION RIGHTS

If we consider our likely social and economic history for the next fifty to one hundred years, we can see one necessary and inevitable change. America must rebuild her cities. This means that people must be moved around, usually against their wills. Each year federal and state governments, through urban renewal and other programs, displace many people from their homes, and this is only the beginning. Before 1965, direct federal programs displaced 2,350 families per

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\(^2\) Karst, supra note 27, at 360-61.

\(^2\) The polygraph measures body responses in order to see if the subject is answering questions truthfully. Trained operators claim to be able to distinguish the lying person from the truthful.

\(^3\) News Release, supra note 21. Of 208 corporations which responded, 47% of them use personality tests.

\(^3\) Westin, supra note 15, at 1015.

year, while federally aided programs, usually administered by states, displaced 70,570 families per year. An estimate for the immediate future indicates that the yearly displacements of families will rise to 4,880 and 106,200 respectively. Another report shows that in one hundred cities having a population of 100,000 or more, 36,979 families were uprooted in 1963 by federal, state and local governments. The efforts to rebuild America's cities, including Washington's cities, are intended, in part, to improve the overall housing situation. But, we must face the fact that severe hardships are frequently forced onto people who must move.

Many times displaced persons are not relocated adequately, and we can expect this condition to become aggravated, especially in light of our chronic housing shortage. Moreover, the poor and non-whites are most commonly displaced. They experience the greatest difficulty in relocating. The poor are usually confronted with large increases in rent, and black people besides being poorer than whites, suffer the further obstacle of racial discrimination practiced by real estate dealers, apartment owners and lending institutions. Many displaced persons move from substandard housing to housing that is only one step above that which they left. The result frequently is that their new housing is doomed for redevelopment purposes, and they are soon displaced again. Increasingly, poor and black people will go through this process in the next 50 to 100 years with devastating psychological results. Friendships are broken and relatives parted. Inevitably, pervasive loneliness sets in, and a fragmented personal identity and social life become their fate. One of the chief consequences of the severe hardships forced onto displaced persons is that elderly displacees die much younger than their non-displaced contemporaries.

33. This entire area is reviewed in Government Displacement and Relocation Rights in a Proposed State Bill of Rights, 1 Columbia Survey of Human Rights Law 143-54 (1968) [hereinafter cited as Government Displacement].

34. Id. at 143, note 1. It should be noted that of the 130,271 families displaced by urban renewal programs through Sept. 30, 1963, at least 81,686 of the families were non-white (not all families reported their color). Advisory Commission on Intergovernmental Relations, Relocation: Unequal Treatment of People and Businesses Displaced by Governments, (Report A-26, 1965) 25, Table 3.

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Currently, government contends it gives fair compensation for encroachments on private property. But, the fact is that the compensation actually paid to displacees is insufficient to compensate them for harm done. Inflation works its way into values, and legal remedies are inadequate because those that are available are geared in accordance with the governmental act in question and not according to the nature of the harm inflicted. Thus, to remedy this inequity, the following provision has been proposed for a state Bill of Rights:

No person shall be displaced by governmental action from his dwelling without provision for immediate, satisfactory relocation and full compensation for all losses and expenses incurred.

IV. PUBLIC BENEFITS, FAIRNESS, AND OPENNESS

Each person reasonably can expect a guaranteed annual income in the not very distant future. This development in public welfare will be followed by many more, as our national economy becomes more automated and computerized. I am on safe grounds when I predict that our welfare programs will expand markedly in the next one hundred years. For the individual citizen the most significant aspect of welfare programs is the fact that government plays a dominant, and sometimes a domineering, role in his day to day existence. The types of federal and state government largess already distributed ranges from welfare payments to defense contracts, and is growing constantly. More and more, government will come to supply directly, or will indirectly control the supply, of medical care, housing, licensed jobs, insurance direct income, and perhaps, licenses to drive automobiles upon crowded streets during certain hours. Many of the functions of the welfare state necessarily will be performed by state government. Government controls will operate largely through the mechanism of eligibility requirements. The individual Washington citizen who receives benefits will lack control over the benefits he receives. As the welfare process grows, individual citizens will become more and more dependent upon government because increasingly it

will be the source of their wealth. Thus, possibilities for severe hardship arise from the opportunities for governmental abuse in the distribution of largess. Decisions must be made about eligibility, continuation and termination of benefits, and these decisions will become more and more important. Thus, it seems wise to include a constitutional provision on this point dealing with the due process aspects of public benefits. It turns out that the proposed provision is highly similar to the “due process of law” provision already contained in Washington’s existing constitution:

No official agent or representative of government shall deny any person public benefits without due process of law, nor deprive any person of life, liberty, property, or public benefits without due process of law.

I believe Washington will need a constitutional provision like the one suggested in order to protect her citizens from administrative abuses during the next 50 to 100 years.

The concepts of fairness and openness are closely allied with due process of law. However, there remain areas where government dealings with its citizens are neither fair nor open. Thus, I would propose a provision in a state Bill of Rights declaring that estoppel operates


39. Free men are those who have and use the power to manage their affairs in accordance with their own judgement; they determine for themselves whether their needs are being met. That must be the direction in which power is accountable in a free society. But the basis upon which welfare benefits are distributed is directly contrary to these assumptions: Need is judged not by the recipient of the grant, but by its dispenser; moreover, the grant varies with the dispenser’s judgment of the existence, size, and character of the need and also the character of the recipient. The means test or charity principle upon which welfare assistance is based, thus violates and is utterly incompatible with the right to privacy because the latter is centrally concerned with the freedom to be an individual, . . . while the means test renders impossible “the direction of one’s affairs, the whole basic principle of self-management.” Bendich, Privacy, Poverty, and the Constitution, 54 CALIF. L. REV. 407, 427 (1966), quoting tenBroek and Wilson, Public Assistance and Social Insurance—A Normative Evaluation, 1 U.C.L.A.L. REV. 237, 264 (1954).

40. This entire area is reviewed in Due Process and Public Benefits, 1 COLUMBIA SURVEY OF HUMAN RIGHTS LAW 123-42 (1968).

41. A distinction is set up between the concept of deprivation, i.e., depriving a citizen of something, meaning to take away something a person already has, such as life, liberty, property or public benefits, and the concept of denial, i.e., denying a citizen something in the first instance, meaning a refusal to give him something to which he is entitled.
against government and its agents exactly as it operates between private parties. Also, as far as practical, legislative committee sessions should be open to the public and even where openness is impractical, a public record of the way each legislator votes in committee should be available.

V. EDUCATION

In the immediate future, education will become America's number one industry. By education, I specifically mean to include university and college education. Machines will work and people, who are lucky enough to have jobs in an automated society, will think. A person's opportunities are already directly limited by his education. More and more our major industries, e.g., Boeing, are becoming dependent upon people having well educated minds. Industry recruiting on university campuses has never been more intensive. Education is a subject of such clear importance that Washington's Constitution already provides for free, public education up through the common school.\(^42\) I believe the time has come for Washington to assure equal opportunities to education beyond the common schools, by the not too costly elimination of tuition and a few other expenses. I propose the following provision:

The state shall provide for the maintenance and support of a system of free education from kindergarten through university, of excellent quality, where all students who are residents of the state may be educated to their fullest potential free from all charges.

CONCLUSION

It is scarcely possible to exaggerate the importance of the role to be played by the state Bill of Rights during the next 100 years. A new Bill of Rights should not catalogue every possible protection society may offer its members. That is the function of statutory law. A Bill of Rights should set forth those fundamental propositions that

\(^{42}\) Wash. Const. art. IX, §§ 1-4, and art. XXVI, § 4.
regulate the basic relationships of a state to its citizens, or citizen to
citizen. To be truly fundamental and meaningful any new Bill of
Rights must aim for two goals: (1) preserve that enduring heritage
of the past that has served us well, and (2) anticipate the fundamental
trends of the future and safeguard human dignity and liberty for that
era.

SUGGESTED BILL OF RIGHTS

For

THE STATE OF WASHINGTON

Arval A. Morris

Art. I. Political Power. All political power is inherent in the people,
and governments derive their just powers from the consent of the gov-
erned, and are established to protect and maintain individual rights.

Art. II. Rights Reserved. The enumeration in this Constitution of
certain rights shall not be construed to deny others retained by the
people.

Art. III. Right To Vote And Administration Of Elections. Every
citizen of the age of twenty-one years who shall have been a resident
of the state for three months next preceding an election shall be entitled
to vote in secret in that election for all officers elected by, and upon
all questions submitted to the people of the election district in which
he resides; but the legislature may reduce the minimum voting age to
no less than eighteen years, disqualify from voting persons convicted
of a felony or determined to be mentally incompetent, prescribe mini-
imum periods of local residence for non-state-wide elections not exceed-
ing two months next preceding an election, and reduce the residence
requirements in the case of presidential elections. There shall be no
property, or literacy qualification for voting for any public office or
on any question. Statutes shall define residence for voting purposes,
and provide for the registration of voters, absentee voting, the nomina-
tion of candidates, and the administration of voting.

Art. IV. Freedom Of Elections. All elections shall be free and equal,
and no power, civil or military, shall at any time interfere to prevent
the free exercise of the right of suffrage.
Art. V. *Supreme Law Of The Land.* The Constitution of the United States, and the laws of the United States made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of land; and the judges and all other officers of government of this state shall be bound thereby, anything to the contrary notwithstanding.

Art. VI. *Limitation On Military Power.* The military shall be in strict subordination to the civil power.

Art. VII. *Religious Freedom.* Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: *Provided, however,* That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional and mental institutions as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

Art. VIII. *Freedom Of Expression.* No state or municipal legislature, nor any official agent, or representative of government shall undertake any action, or pass any law, depriving or abridging freedom of speech, press, publication, association, peaceful picketing, or the right of the people peaceably to assemble, or the right of the people to make peaceful use of public property otherwise open to the public for public use, or the right of the people to petition the government for a redress of grievances.

Art. IX. *Oath Or Affirmation.* No state or municipal legislature, nor any official agent, or representative of government shall require of any person, public or private, under any circumstances, any oath or affirmation as a condition of employment or as a qualification to any office or public trust under this Constitution or the laws of the State of Washington other than that oath or affirmation set forth and required by this constitution.

Art. X. *Required Oath Or Affirmation.* All officials, employees, agents and representatives of government, at the discretion of the
legislature, shall be bound by the following oath or affirmation: "I (swear) (affirm) that I will obey this constitution and the Constitution of the United States and that I will obey the laws of this state and Nation that have been passed in pursuance of the Constitution of the State of Washington and the Constitution of the United States of America."

Art. XI. Oaths—Mode Of Administering. The mode of administering an oath or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

Art. XII. Unreasonable Invasions Of Privacy And Searches And Seizures, And Interception Of Communications. The right of the people of their privacy and to be secure in their privacy, and in their persons, communications, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, method of search, and the persons or things to be seized. Eavesdropping by electronic, mechanical or other devices shall not be allowed. Evidence obtained in violation of this section shall not be admissible against a defendant in a criminal trial.

Art. XIII. Administration Of Justice. Justice in all cases shall be administered openly and without unnecessary delay.

Art. XIV. Trial By Jury. Trial by jury in all civil cases in which it has heretofore been guaranteed by the constitution, and in all criminal cases, including cases of criminal contempt, shall be preserved; but statutes may provide for waiver by the defendant in a criminal case or by both parties in a civil case, and that a jury may be composed of six or twelve persons in a civil case and that in such event a verdict may be rendered by not less than five-sixths of the jury in a civil case. All verdicts in criminal cases can be rendered only by a unanimous jury.

Art. XV. Habeas Corpus. Habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety absolutely requires it.

Art. XVI. Bail; Detention Of Witnesses; Fines; Punishments, And Double Jeopardy. Excessive bail shall not be allowed nor excessive fines imposed, nor shall witnesses be detained except for their own protection, nor shall cruel and unusual punishments be inflicted, nor shall any person be twice put in jeopardy for the same offense.

Art. XVII. Bail, When Authorized. All persons charged with crime
shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great.

Art. XVIII. **Prosecution By Information.** Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law.

Art. XIX. **Rights Of The Accused.** In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury, to be informed of the nature and cause of the accusation, to have a copy thereof, to appear, testify and defend in person, or by counsel, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, to have the assistance of counsel for his defense, and to the assignment of counsel to represent him at every stage of the proceedings and to the assignment of the services of any other persons necessary to aid him, as determined by the court, and the right to appeal in all cases. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

Art. XX. **Self-Incrimination; Duty Of Public Officials.** No person shall be compelled to give testimony which might tend to incriminate him, but when questions of fact, but not authorizing or allowing questions of opinion or belief, are put to a public officer concerning his official conduct in office or performance of his official duties he shall acquire no immunity from prosecution by virtue of his appearance or testimony; and if he refuses to answer factual questions that are strictly restricted to his official actions or to the performance of his official duties, then he shall forfeit his office and be ineligible for public office for a period of three years.

Art. XXI. **Imprisonment For Debt.** There shall be no imprisonment for debt, except in cases of absconding debtors.

Art. XXII. **Bill Of Attainder; Ex Post Facto Law, Etc.** No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

Art. XXIII. **Grand Jury.** No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall so order.

Art. XXIV. **Treason.** Treason against the state shall consist only in levying war against the state, or adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

Art. XXV. **Due Process; Public Benefits.** No official agent or repre-
sentative of government shall deny any person public benefits without due process of law, nor deprive any person of life, liberty, property or public benefits without due process of law.

Art. XXVI. Displacement And Relocation Rights. No person shall be displaced by governmental action from his dwelling without provision for immediate, satisfactory relocation and full compensation for all losses and expenses incurred.

Art. XXVII. State Responsibility To Protect Social And Economic Rights. The State of Washington through its legislature and other divisions of government shall foster the health and welfare of its citizens, through a partnership of public agencies and voluntary organizations wherever practicable, by providing: care for the helpless, the needy, and the sick; protection against physical and mental illness; conditions encouraging maximum realization of the individual's independence; freedom from discrimination, unemployment, and the anxieties of old age; personal safety; and decent housing, recreation facilities and aesthetic surroundings.

Art. XXVIII. Discrimination In Civil Rights. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state. All divisions of state government shall take affirmative action to eliminate discrimination wherever it may exist.

Art. XXIX. Hereditary Privileges Abolished. No hereditary emoluments, privileges, or powers, shall be granted or conferred in this state.

Art. XXX. Special Privileges and Immunities Prohibited. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Art. XXXI. Irrevocable Privilege, Franchise Or Immunity Prohibited. No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.

Art. XXXII. Labor Not A Commodity; Right To Bargain. Labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed. Employees shall have the right to organize and to bargain collectively through representatives of their own choosing.

Art. XXXIII. Eminent Domain. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the land of others for agri-
cultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public: Provided, that the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use.

Art. XXXIV. Education. The state through its legislature and other divisions of government shall provide for the maintenance and support of a system of free education from kindergarten through college, of excellent quality, where all the people of the state capable of such education may be educated to their fullest potential free of all charges. Neither the state nor any subdivision shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denominations or in which any denominational tenet or doctrine is taught.

Art. XXXV. Conservation. All divisions of state government shall preserve the forests, waters, wetlands, wildlife and beauty of the state. Except as approved by referendum submitted to the people by act of the legislature, the lands of the state constituting the forest preserves shall be kept forever wild and in a natural condition.

Art. XXXVI. Recall Of Elective Officers. Every elective public officer in the state of Washington except judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof, hereinafter provided, the percentages required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election, is filed with the officer with whom a petition for nomination, or certificate for nomination, to such office
must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided.

The legislature shall pass the necessary laws to carry out the provisions of this article, and to facilitate its operation and effect without delay: Provided, That the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of lawmaking nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be, state officers, other than judges, senators and representatives, city officers of cities of the first class, school district boards in cities of the first class; county officers of counties of the first, second and third classes, twenty-five percent. Officers of all other political subdivisions, cities, towns, townships, precincts and school districts not herein mentioned, and state senators and representatives, thirty-five percent.

Art. XXXVII. Public Legislative and Committee Sessions. The Legislature of the State of Washington, and each of its committees or body of persons or person to whom some trust or charge is committed, shall conduct all business in open and public session, and make a record thereof available to the public, except that upon a vote of three-fourths of those members eligible to vote, the Legislature or any of its committees or groups may conduct business in executive session; however in such event, a record shall be kept of the executive session and made available to the public at the end of the meeting, such record shall contain all motions, resolutions or other proposals recorded by name of maker, and also shall show the names of those persons present and whether and for what position each person voted, or whether he abstained.

Art. XXXVIII. Fundamental Principles. A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

Art. XXXIX. Enforcement Of Constitution. The provisions of this Constitution are mandatory. A violation of any provision of this Constitution including the making of unconstitutional expenditures, may be restrained by the courts of this state at the suit of the people or of any citizen, and the courts shall have jurisdiction regardless whether the lawsuit is instituted in accordance with a manner provided by statute, common law or any other requirement.

Suggested Provision Sources

| Art. I. | WASH. CONST.—art. I § 1 |
| Art. II. | WASH. CONST.—art. I § 30 |
| Art. III | WASH. CONST.—amend. 5 and PROP. N.Y. CONST. |
| Art. IV. | WASH. CONST.—art. I § 19 |
State Bill of Rights

Art. V. WASH. CONST.—art. I § 2 and U.S. CONST.—art. VI § 2
Art. VI WASH. CONST.—art. I § 18
Art. VII WASH. CONST.—amend. 34
Art. VIII WASH. CONST.—art. I §§ 4, 5 and U.S. CONST.—amend. 1
Art. IX U.S. CONST.—art. VI § 3
Art. X U.S. CONST.—art. VI § 3
Art. XI WASH. CONST.—art. I § 6
Art. XII WASH. CONST.—art. I § 7 and PROP. N.Y. CONST.
Art. XIII WASH. CONST.—art. I § 10
Art. XIV WASH. CONST.—art. I § 21 and PROP. N.Y. CONST.
Art. XV WASH. CONST.—art. I § 13
Art. XVI WASH. CONST.—art. I §§ 9, 14 and PROP. N.Y. CONST.
Art. XVII WASH. CONST.—art. I § 20
Art. XVIII WASH. CONST.—art. I § 25
Art. XIX WASH. CONST.—amend. 10
Art. XX WASH. CONST.—art. I §§ 9 and PROP. N.Y. CONST.
Art. XXI WASH. CONST.—art. I § 17
Art. XXII WASH. CONST.—art. I § 23
Art. XXIII WASH. CONST.—art. I § 26
Art. XXIV WASH. CONST.—art. I § 27
Art. XXV WASH. CONST.—art. I § 3 and Proposed State Bill of Rights, 1
    COLUM. SURVEY OF HUMAN RIGHTS 123-42 (1968)
Art. XXVI Proposed State Bill of Rights, 1 COLUM. SURVEY OF HUMAN
    RIGHTS 143-154 (1968)
Art. XXVII PROP. N.Y. CONST.
Art. XXVIII PROP. N.Y. CONST.
Art. XXIX WASH. CONST.—art. I § 29
Art. XXX WASH. CONST.—art. I § 12
Art. XXXI WASH. CONST.—art. I § 8
Art. XXXII PROP. N.Y. CONST.
Art. XXXIII WASH. CONST.—amend. 9
Art. XXXIV PROP. N.Y. CONST.
Art. XXXV PROP. N.Y. CONST.
Art. XXXVI WASH. CONST.—amend. 8
Art. XXXVII (New Proposal)
Art. XXXVIII WASH. CONST.—art. I § 32
Art. XXXIX WASH. CONST.—art. I § 29 and PROP. N.Y. CONST.

A BIBLIOGRAPHICAL NOTE

Despite the prevailing lack of public interest in state constitutional
law, there are a few notable toilers' works that will prove helpful to
the newcomer to the field.

Organizations active in the field include the following:
National Municipal League
47 East 68th Street
New York, New York 10021

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NATIONAL CIVIC REVIEW (published monthly except August).
STATE LEGISLATURES PROGRESS REPORTER (published "at intervals" since 1965).
The Council of State Governments
36 West 44th Street
New York, New York
Book of the States (biennial).
Citizens' Conference on State Legislatures
910 Pennsylvania Avenue
Kansas City, Missouri 64105
U.S. Advisory Commission on Intergovernmental Relations
State Constitutional and Statutory Restrictions upon the
Materials prepared for, and the records of, previous constitutional conventions are useful sources of information. Particularly helpful should be the studies prepared for the following states: Alaska, California, Maryland, Michigan, Missouri, New Jersey, New York and Rhode Island. These materials may be found by consulting the bibliography by B. Halevy, State Constitutional Revision (National Municipal League 1963 and M. Fink Supp. 1966).

In addition, the 1967 New York Temporary Commission on the Constitutional Convention issued reports in January, 1967. The first report discusses the issues which the Convention faces, and the second makes recommendations relating to the organization of the Convention.

Other references, on a highly selective basis, include the following:

C. Adrian, Governing Our Fifty States and Their Communities (2d ed. 1967).

Columbia University Legislative Drafting Research Fund, Index Digest of State Constitutions (2d ed. 1959).


W. Graves, American Intergovernmental Relations (1964).


P. Kauper, Religion and the Constitution (1964).
P. Kurland, Religion and the Law of Church and State and the Supreme Court (1962).
New York State Constitutional Revision Commission, Staff Report on Housing and Urban Renewal (1959).