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# The Principles and Traditions Underlying State Constitutions\*

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Over the years, considerable attention has been given to the political theory of the United States Constitution and its implications for American government and politics. Studies of the document itself, the Constitutional Convention of 1787, *The Federalist Papers*, Supreme Court interpretations, and executive and legislative actions of constitutional import abound, as well they should. State constitutions, however, have been studied almost exclusively from a reformist perspective—to recommend the elimination of presumed deficiencies. Relatively little attention has been given to the underlying political theories and philosophic assumptions of the fifty state constitutions and their colonial predecessors.

Even when students of American government, as well as reformers, have examined state constitutions from the perspectives of history, institutional organization, interest accommodation, and the inclusion or exclusion of specific provisions, they have generally bypassed the important functions of state constitutions as (1) overall frames of government for polities which are, in most cases, larger and better developed than most of the world's nations; (2) practical public expressions of political theory and the purposes of government; and (3) reflections of public conceptions of the proper roles of government and politics. The tendency has been to assume either that the philosophic assumptions of the state constitutions are the same as those of the United States Constitution or that state constitutions are wordy patchworks of compromises having little, if any, rhyme or reason. Neither assumption is accurate, and even those constitutions which can be said to be a bundle of compromises reflect the political struggle between representatives of competing conceptions of government within particular states. Moreover, compromise itself reflects a larger theory of politics based upon bargaining and negotiation as opposed, for example, to command or armed conflict.

This slighting of state constitutional theory is ironic because the framers of the federal Constitution were influenced by their experiences with their respective state constitutions and the preexisting conceptions of constitu-

\* I am indebted to John Kincaid for his work in delineating the directions for the study of state constitutional design.

tional government in the original states. Between 1776 and 1798, the first fourteen states (including Vermont) framed and ratified some twenty-five constitutions. Yet only recently has the classic Massachusetts Constitution of 1780, which is still in force with 106 amendments, been studied for the purpose of understanding its political theory.<sup>1</sup> This constitution is one of the most explicitly philosophic of all the state constitutions and had a significant impact on the framing of the U.S. Constitution as well as the constitutions of a number of other states settled by pioneers from Massachusetts and other heirs of the Puritan tradition.

More recently, Donald S. Lutz has examined the underlying political theories of all the early state constitutions of 1776-1798.<sup>2</sup> The results show some significant similarities as well as differences among these constitutions, and between them as a group and the United States Constitution. Generally, for example, these early state constitutions were more communitarian in orientation than the federal Constitution and placed more emphasis on direct, continuing consent of popular majorities. The debates over the framing and ratification of these constitutions also show that political theory is not the exclusive domain of an intellectual elite in America. Instead, the "common people" can be found to have made important and informed contributions even if not always expressed in the formal language of philosophy.<sup>3</sup>

This reflects the close connection between theory and practice that might be expected of a republican polity. Ideas which did not have operational implications were simply not acceptable to American thinkers and doers. Thus, American political thought is generally best expressed in practical ways through, for example, Supreme Court decisions, state papers (e.g., Hamilton, Gallatin, Lincoln), polemics such as *The Federalist Papers*, and constitutions.

### THREE CONSTITUTIONAL TRADITIONS

While all the constitutions of the United States share a certain common foundation and set of overall philosophic assumptions, there are also important differences and variations on basic themes derived, in part, from competing conceptions of constitutionalism in the founding era and the federal right of constitutional choice. In the first place, by 1787, three general conceptions of constitutionalism had emerged in the new nation.<sup>4</sup>

<sup>1</sup> Ronald M. Peters. *The Massachusetts Constitution of 1780: A Social Compact* (Amherst: University of Massachusetts Press, 1978).

<sup>2</sup> Donald S. Lutz. "The Theory of Consent in the Early State Constitutions," *Publius* 9, no. 2 (Spring 1979): 11-42; and idem, *Popular Consent and Popular Control: Whig Political Theory in the Early State Constitutions* (Baton Rouge: Louisiana State University Press, 1980).

<sup>3</sup> Oscar Handlin and Mary Handlin, eds., *The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780* (Cambridge, Mass.: Belknap Press, 1966).

<sup>4</sup> Daniel J. Elazar, ed., *Republicanism, Representation and Consent: Views of the Founding Era* (New Brunswick, N.J.: Transaction Books, 1979).

One was based on older, *Whig* republican forms brought to American shores by the first British and northwest European colonists and further developed in the intervening four or five generations. The Whig tradition emphasized a communitarian polity and the importance of republican virtue. Individualism was tempered and legislatures as representatives of the community could intervene and regulate behavior in ways which would now be regarded as infringements of individual rights. At the same time, the Whig tradition placed great emphasis on direct, active, continuous, and well-nigh complete popular control over the legislature and government in general, through such devices as small electoral districts, short tenures of office, many elective offices, sharp separations of power, and procedures approaching constituent instruction of elected representatives.

In facing the task of framing a national constitution, however, a new republican or *federalist* conception of constitutionalism emerged primarily through the work of James Madison.<sup>5</sup> While the federalist idea agreed with the Whig tradition that all powers of government be derived from the people, Madison added the pregnant phrase, "either directly or indirectly." This reflected the federalist effort to cope with the problems of establishing an extended and diverse democratic republic compounded of constituent polities—particularly the problem of majority tyranny. The federalist conception of republican remedies for republican diseases placed greater emphasis on balancing individual and group interests and refining the interests and opinions of the people through such devices as large electoral districts, indirect senatorial elections, longer tenures of office, limited numbers of elective offices and a system of separated but shared powers. The federalist view also saw commerce as a partial way of solving the problem of republican virtue in a large republic.

At the same time, as the federalist conception was emerging, Alexander Hamilton developed yet another approach, which may be termed the *managerial* conception. While it, too, shared the view that governmental powers be derived from the people, Hamilton emphasized the idea of virtual rather than actual representation.<sup>6</sup> This view of representation is also reflected in Hamilton's preference for lawyers as legislators. The managerial view conceptualized politics as a matter of executive leadership and rational administration within a hierarchical system. Accordingly, it emphasized more centralized national power under a strong president. Principles of commerce, moreover, were central to this conception of constitutionalism, since the polity was designed to support and strengthen the commercial classes.

While the United States Constitution became the repository of the federalist view, many of the state constitutions retained much of the ear-

<sup>5</sup> Martin Diamond, "Democracy and *The Federalist*: A Reconsideration of the Framers' Intent," *American Political Science Review* 53, no. 1 (March 1959):52-68.

<sup>6</sup> This was precisely the British view of representation rejected by the Americans in their struggle against taxation without representation.

lier Whig conception as illustrated by such constitutional features as frequent elections to fill many offices. The managerial view, which was substantially repudiated with the election of Thomas Jefferson to the presidency, remained an undercurrent in American constitutionalism. In the late nineteenth century it reemerged as a potent force in the public administration school, developed, in part, by Woodrow Wilson and refashioned, in part, by ideas imported from Germany.<sup>7</sup> The managerial tradition in the states emphasized "streamlined" state government headed by a strong governor leading an integrated executive branch whose department heads he appointed and whose civil service was organized hierarchically and selected by merit only. Legislatures were treated more as impediments than anything else; although properly appointed, so the theory went, they would faithfully do the governor's bidding. Much of the struggle over state and local government reform in this century has reflected clashes between managerialism in the Hamiltonian style, usually referred to as governmental modernization, and the persistence of earlier theories of republicanism embodied in the constitutions of many of the American states.

The patterns of state constitutionalism, however, have been further compounded by the federal right of constitutional choice. Each state is free to adopt its own republican constitution. As a result, the geographic, ethnic, religious, socioeconomic, cultural, and historic diversity of the states has meant that each has assembled a constitutional package based on its own conceptions and interpretations of Americans' common republican assumptions as filtered through their Whiggish, federalist, and managerial variations, plus the particular and, at times, peculiar conceptions of government prevalent in each state. Some have done it succinctly as in the 6,600 words of the Vermont Constitution of 1793 which is still in effect with only fifty-two amendments. Others have gone to great lengths as in the 583,000 words of Georgia's ninth constitution adopted in 1976. Thus, while the American constitutions have had common roots and a common trunk since 1776, they have branched out in different directions in order to meet the particular needs and wants of each state's interested citizens.

There are a number of other significant differences between the U.S. Constitution (and the government created by it) and the state constitutions (and the governments created by them). The federal Constitution is one of limited, delegated powers. As such, it reflects what the American people sought to accomplish as well as to avoid through union, and what they could agree upon as the principal tasks of the general government, particularly nationwide defense and commerce. But it does not reflect all

<sup>7</sup> Woodrow Wilson, "The Study of Administration," *Political Science Quarterly* 2, no. 1 (June 1887); Vincent Ostrom, "Can Federalism Make a Difference?" *Publius* 3, no. 2 (Fall 1973):197-237; and Daniel J. Elazar, "Federalism vs. Decentralization: The Drift from Authenticity," *Publius* 6, no. 4 (Fall 1976):9-19.

of what the American people wanted to accomplish *in general* through government because, beyond the federal Constitution and its bundle of powers designed to serve the states and people in common, other rights and governmental matters were left to the people as citizens of the states.<sup>8</sup> Thus all powers not delegated to the United States are reserved to the states or to the people. As plenary governments, the states automatically possess all powers not specifically denied them by the U.S. Constitution or their citizens.

State constitutions are potentially far more comprehensive and often have been—for better and worse. Consequently, a state constitution must be explicit about limiting and defining the scope of governmental powers, especially on behalf of individual liberty. Each state constitution has a Bill of Rights—often called a Declaration of Rights—which usually appears at the beginning of the document. It has been noted that these declarations enumerate more rights in more detail than the U.S. Bill of Rights. What has been overlooked is why. Most immediately, their place at the beginning of the constitution is intended to announce that the protection of rights is the first task of government, indeed, its *raison d'être*. In many cases, however, these represent a restatement of the political compact or covenant through which the state is called into existence by its people. The Massachusetts Constitution is a case in point.

The body politic is formed by a voluntary association of individuals. It is a social compact by which the whole people covenants with each citizen and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a Constitution of Government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them, that every man may, at all times, find his security in them.

This difference is one of the principal manifestations of the differences in underlying theory between the federal and state constitutions.

The clear spelling out of the powers and limits of government is generally expressed in state constitutions through:

- an explicit declaration of rights (almost invariably broader than the first ten amendments to the U.S. Constitution)
- a thorough delineation of the structures, powers, and procedures of the three branches of government (in some cases, including the precise apportionment of the legislature, provisions setting the salaries of elected officials, and specific limits on legislative sessions)
- detailed provisions limiting and directing the power of the state and its subdivisions to tax, borrow, and spend

<sup>8</sup> In this respect, the U.S. Constitution also differs from many other constitutions which are designed to be truly national in the sense of being plenary, supreme, and comprehensive in all respects.

- provisions defining the state's obligations and powers in various functional areas such as education, highways, banking, corporations, business regulation, and elections
- specific provisions governing the disposition and exploitation of the state's lands and natural resources
- delineation of the powers of the state to create local governments and explicit denial of its power to alter them, once created, without local consent.

In addition, these constitutions often include precise descriptions of the state's boundaries. Most state constitutions also have unique provisions reflecting local circumstances. Among them are tax exemptions for aspects of farming in agricultural states; regulation of feudal land tenure in New York (which inherited certain problems in this regard from the days of the Dutch); a provision that English be taught in all schools in Nebraska (where at one time some immigrant groups eliminated English as the language of instruction); a prohibition of outlawry in Texas; the right to fish in California; and the right to sell door-to-door in Minnesota (a Populist measure designed to enable farmers to eliminate the middlemen). More recent innovations include "right-to-work" provisions which outlaw the closed or union shop in some states; guarantees of the right to bargain collectively in others; and provisions barring racial and sexual discrimination in a growing number.

The state constitutions establish constitutional polities made up of formally subordinate civil communities (counties, cities, townships, boroughs, etc.) having varying degrees of home rule. While the U.S. Supreme Court has made a point of specifying the *unitary* character of the states as polities, many, if not most, states are constitutionally *unions* of their counties or towns under their own constitutional theories and were so held to be by their jurists until the twentieth century.<sup>9</sup> In contrast to a unitary state, a union provides for the maintenance of the integrity of the constituent units through their participation in the state government and local home rule. In the American states, constitutional home rule is frequently used as a device to maintain the states as unions. This is another aspect of state constitutionalism which also deserves exploration, particularly in light of the U.S. Supreme Court reapportionment decisions of the 1960s, which directly, if unthinkingly, assaulted the very foundations of this aspect of state constitutionalism.

While the federal government has expanded its powers into spheres unanticipated in earlier generations, the states continue to perform a myriad of direct, day-to-day functions ranging from alcoholic beverage

<sup>9</sup> Daniel J. Elazar, "State-Local Relations: Reviving Old Theory for New Practice," in *Partnership Within the States: Local Self-Government in the Federal System*, ed. Stephanie Cole (Urbana, IL and Philadelphia: Institute of Government and Public Affairs, and Center for the Study of Federalism, 1976.)

regulation and alimony arrangements to pothole repair and zoning regulation by plenary right (usually referred to as their police powers)—all of which affect and reflect the health, safety, welfare and morals of their citizens. The states also administer most of the federal programs that affect their citizens. Thus, the states remain significant determinants of the quality of life of the American people. The way in which each state frames and allocates powers through its constitution reflects certain conceptions of government and understandings of the two faces of politics—power and justice. That is, state constitutions are important determinants of who gets what, when and how in America because they are conceptual and, at times, very specific statements of who should get what, when and how.

The detailed specificity of state constitutions affects the way they shape each state's governmental system and patterns of political behavior. Unlike the open-endedness and ambiguity of many portions of the U.S. Constitution, which allow for considerable interpretative development through judicial, legislative, and executive action—especially Supreme Court action—state organs, including state supreme courts, generally hew closely to the letter of their constitutions because they must. One result of this is that state attorneys general play a special role in state constitutional interpretation since they are generally required to give advisory opinions on the constitutionality of the actions of state government departments which depart in any way from established routine. Another consequence of this is that formal change of the constitutional document occurs more frequently through constitutional amendment whether initiated by the legislature, special constitutional commissions, constitutional conventions, or direct action by the voters, and, in a number of states, the periodic writing of new constitutions. As a result, state constitutions have come to reflect quite explicitly the changing conceptions of government which have developed over the course of American history, particularly under the pressure of successive waves of reform.

State constitutional development and interpretation are also affected by the political cultures of each state.<sup>10</sup> This is most readily evident in the differences between the North and South and the character of their constitutional developments. While, as a whole, the United States shares a certain common political culture, there appear to be three major political subcultures in the country—individualistic, moralistic, and traditionalistic—rooted in the particular constellation of ethnic and religious groups and socioeconomic conditions which make up each state.<sup>11</sup>

<sup>10</sup> Daniel J. Elazar, *American Federalism: A View from the States*, 2nd ed. (New York: Thomas Y. Crowell, 1972); and Samuel C. Patterson, "The Political Cultures of the American States," in *Public Opinion and Public Policy*, ed. Norman R. Luttbeg (Homewood: Dorsey Press, 1968), pp. 275-292.

<sup>11</sup> Elazar, *American Federalism*.



Differences in political cultures give each state constitution its own character while similarities of political culture among various states also give their constitutions certain common threads achieved, in part, through borrowings of ideas back and forth.

Finally, while the national Constitution is only subordinate to the people of the United States, the state constitutions are subordinate to the national Constitution in substantial ways, as well as to the peoples of the states. This sets certain parameters on state constitution making within which each state has to work out its own constitutional arrangements. In addition, most of the states have other documents with constitutional status. The original thirteen had colonial charters which may still have constitutional relevance in fixing land titles and boundaries, while the states carved out of the public domain are to some extent constitutionally bound by the congressional enabling acts that preceded their admission to the Union.

### SIX CONSTITUTIONAL PATTERNS

There appear to be six constitutional patterns among the American states. These patterns are rooted in the original constitutional conceptions of the founding era plus differences among the types and goals of pioneers who first settled the Northern, Middle, and Southern colonies of the New World. Subsequent migrations carried the constitutional ideas of these sections westward and, in some cases, resulted in significant changes as settlers mixed, confronted new environments and sets of governmental problems, and framed their constitutions at different times, thereby incorporating conceptions of government prevalent at the times of their writing.

#### *The Commonwealth Pattern*

The commonwealth pattern derives largely from the constitutions of the states of greater New England. They are basically philosophic documents designed first and foremost to set a direction for civil society and to express and institutionalize a theory of republican government. Based on seventeenth and eighteenth-century Puritan and Whiggish ideas about constitution making, this pattern is the oldest in America. It emphasizes the constitution as a covenant establishing a civil society and setting forth its frame of government. These constitutions, as brief or briefer than the federal document, concentrate on setting forth the philosophic basis for popular government, guaranteeing the fundamental rights of the individual and delineating the elements of the state's government in a few broad strokes. Frames of government in the classic American sense, they have shown greater longevity and, at least in the case of Massachusetts, greater longevity than the U.S. Constitution.

Except for Vermont, none of the New England states has had more than two constitutions in its history, and Vermont has had only three, the last being adopted in 1793. Their fundamental documents have not been treated lightly. Like the federal Constitution, they have not been altered to reflect every new constitutional fad, but have remained general documents reasonably adaptable to different times and needs.

Eight states outside of New England whose political character was formed by New Englanders have followed the commonwealth pattern. All are still operating under their original constitutions. Although the youngest among them—those admitted as states in the latter half of the nineteenth century—have somewhat longer constitutions than their sisters formed earlier, as a rule they are also relatively short. Their greater length is accounted for in the somewhat more detailed restrictions placed on the institutions of state government and in the granting of constitutional status to state educational and welfare institutions.

Minnesota's constitution is a good example of this variation of the commonwealth pattern.<sup>12</sup> Adopted in 1858 when Minnesota attained statehood, it is about 40 percent longer than that of Massachusetts, but still ranks among the shorter constitutions. The additional material in the Minnesota constitution consists of more explicit delineations of the powers and duties of state officers and clear provisions for schools, taxes, banking, highways, and legislative apportionment.

### *The Commercial Republic Pattern*

A second pattern has prevailed in the Middle states (the northern states just south of New England and the states to the west of them which they have influenced, including most of the very large ones). These states have built their constitutions upon a series of compromises required by the conflict of ethnic and commercial interests and ideals created by the flow of various streams of migrants into their territories, and the early development of commercial cities.

The pattern in each is much the same. As each stream of migrants has been able to demand a government modeled after the one its people knew "back home" or a fundamental law that would protect its socioeconomic interests, the state's constitution has been replaced or revised accordingly. Most of the states in this category have had three to six constitutions apiece. These constitutions tend to be longer than those written in the commonwealth mold, primarily because the compromises written into them have had to be made explicit and presented in detail to soften potential conflicts between rival elements that have sharply divergent views of what is politically right and proper.

<sup>12</sup> Daniel J. Elazar, *Cities of the Prairie: The Metropolitan Frontier and American Politics* (New York: Basic Books, 1970).

Illinois is an example of this tradition.<sup>13</sup> Illinois was organized as a state by southern settlers in 1818. They endowed the state with a brief document which then reflected the South's approach to constitution making. Then, in the 1830s, large numbers of New Englanders began to arrive in the state. As they consolidated their settlements, they wanted to adapt the Illinois government to their own needs. To do so, they needed to change the state constitution, particularly in regard to local government, public education, and public welfare. In the 1840s, they successfully bargained with their fellow citizens from Southern and Middle state backgrounds to reach a compromise embodied in the Constitution of 1848.

This compromise was seriously strained by the Civil War which almost rent Illinois as it did the Union. In order to settle outstanding differences and restore harmony, the state adopted a new constitution in 1870 which maintained the compromise of 1848, but restructured the institutions which embodied that compromise to allow for minority representation in each part of the state. Between 1870 and 1970, none of the several attempts to adopt a new constitution succeeded, precisely because leaders of the state's important interests were afraid to upset the balance of forces established by the compromise. New interests were accommodated by constitutional amendments, initially granting home rule to Chicago in 1904, and a spate of modernizing amendments in the late 1950s. The cleavages of the Civil War era had sufficiently diminished by the late 1960s to enable a new constitutional convention to shape a document that is considered to be one of the most advanced in the country.

### *The Southern Contractual Pattern*

The Southern states developed a third pattern of constitution making, one which began with a general penchant for changing constitutions and was enhanced by the need to do so because of the disruption of constitutional continuity caused by the Civil War. Except for North Carolina and Tennessee, none of the eleven states of the former Confederacy has had less than five constitutions, most of which embodied the constitutional changes of secession, reconstruction, and the restoration of white supremacy. Alabama, for example, adopted a constitution upon its admission to the Union in 1819, a revised document when it seceded from the Union in 1861, and still another when it sought to be restored to full rights in 1865. Then it adopted two constitutions during Reconstruction (1868 and 1875) and finally a constitution ratifying white supremacy in 1901. Yet the Civil War is not solely responsible for the South's relatively casual attitude toward its fundamental charters. Of the five Southern states that did not secede, only West Virginia has had less than four constitutions.

Constitutions of the Southern contractual pattern are unique in other and related ways. They are the only group to formally acknowledge the

<sup>13</sup> Ibid.

supremacy of the U.S. Constitution (a product of Reconstruction). At the same time, most of them contain (and retain) many provisions—particularly regarding elections, civil rights, and legislative apportionment—which have been invalidated by U.S. Supreme Court decisions. In general, the Southern contractual pattern has looked upon state constitutions as instruments designed to perpetuate a particular social system based on slavery or racial segregation. As political instruments, Southern state constitutions are designed to diffuse the formal allocation of authority among many offices in order to accommodate the swings between oligarchy and factionalism characteristic of Southern state politics. Perhaps because of the fluctuating balance of factions in many of the Southern states, their citizens have also been more tempted to write into their constitutions materials normally included in ordinary legislation.

Texas is a prime example of this pattern. The Lone Star State's first constitution, adopted in 1836, established the Republic of Texas. Then, in 1845, Texas adopted a new constitution to join the Union, another to join the Confederacy in 1861, a fourth to rejoin the Union in 1866, a fifth in 1869 to satisfy radical Republican Reconstructionists, and a sixth in 1876 to restore white supremacy and Democratic control and to limit state government, in part, by fragmenting power and establishing many independently elected offices. Indeed, the constitution includes an explicit statement of the principle of limited government. The Texas constitution is long, somewhat unwieldy, not highly venerated, and contains 233 amendments. Efforts to substantially revise the constitution failed at the polls in 1975.

### *The Civil Code Pattern*

Louisiana is the one state that operates within a constitutional pattern of its own. Because of its original French background, its constitutions have been more like the basic civil codes of European countries—long, detailed, and not particularly revered. The Pelican State has had eleven different constitutions since 1812. Its tenth constitution, adopted in 1921, contained some 256,500 words, over six times as many as the average state document. As of 1965, it has been amended 439 times. The Louisiana constitutional tradition provides, in effect, a continuing referendum on all basic governmental decisions in the state and its localities. In 1974, however, 36 percent of the registered voters turned out to adopt (by 58 percent) a more modernized constitution containing only 29,704 words.

### *The Frame of Government Pattern*

The fifth pattern is to be found exclusively among the less populated states of the Far West. In these states, the constitutions are frames of

government first and foremost. They explicitly reflect the republican and democratic principles dominant in the nation in the late nineteenth century when their first constitutions were written, and then go on to specify the structure of state government and the distribution of powers within it in the style of the times. Their constitutions tend to be business-like documents of moderate length that reflect the relative homogeneity of the states themselves. Indeed, among those states, only Oklahoma has a population of over two million and it has the longest constitution of the group, reflecting, in part, its Southern antecedents.

Montana is a good example of this frame of government pattern. Admitted as a state in 1889, its original constitution reflected the frame of government approach when it was at its height. In 1972, the state adopted a constitution after what experts in the field consider to be a model process of constitution writing and ratification. While the new constitution incorporates many of the recommendations of constitutional reformers, it also appears to remain faithful to the frame of government pattern, adapting it to late twentieth century ideas.

The constitutional tradition of the Treasure State has tended to emphasize limited government except on certain matters of economic development. After World War II, Montana emerged from almost a century of well-nigh colonial status under the control of the Anaconda Company and, later, Montana Power. In part, the new constitution of 1972, which replaced the state's original document of 1889, symbolized the new independence of the state and the assertion of power by the general citizenry.

### *The Managerial Pattern*

Alaska and Hawaii, the two newest states, reflect a sixth constitutional pattern, one developed in the last half of the twentieth century. Their constitutions come closest to fitting the model designed by today's constitutional reformers. This reform model emphasizes conciseness, broad grants of powers to the state executive branch, and relatively few structural restrictions on the legislature. Their constitutions also feature articles dealing with local government, natural resource conservation, and social legislation. In all of this, they reflect the Hamiltonian managerial model, albeit without being aware of it. While, as a model, it is as old as the republic itself, only in the twentieth century has it entered the mainstream of American constitutional development and only in the newest states could it serve as the basis for their constitutional foundations.

Alaska's constitution of 1956 must serve the nation's last land frontier and to some extent preserve it at a time when it is experiencing great pressures of modern economic development. Since statehood, its constitution has been amended fourteen times, in part to correct some of the excesses of the managerial approach.

## DIRECTIONS

Constitutional design is the way in which connections are made between political ideas, political culture, and institutional development for the most practical purposes. In order to understand constitutional design in the states and to enhance Americans' constitution-making capabilities, much needs to be done to properly examine and articulate the explicit and implicit political theories and philosophic assumptions of the American state constitutions as manifested by the three constitutional traditions, as they have found expression in these six different patterns.

The object of such efforts should be to reconstruct the inner logic of the state constitutions so as to understand their basic theoretical conceptions of government, its proper role in society, and the very purposes of the constitutions. In this respect, each constitution must be treated as a package made up of diverse elements, including compromises, which together shape a fundamental role for government in the state. In some cases, these ideas are expressed more or less explicitly in the constitution: in most, however, they are implicit because most Americans are not readily given to abstract theoretical or ideological statements about government. Instead, state constitutions appear to reflect a "logic-in-use" which needs to be "reconstructed."<sup>14</sup> This logic is based on certain familiar and common understandings of government held by Americans, but is worked out or put to use according to the particular goals and conceptions of each state's constitution makers. In turn, this logic revolves around a number of value concepts, such as consent, representative government, and rights, which cannot be defined precisely but whose use in each state constitution results in a certain definition or understanding of the concept.<sup>15</sup>

For example, the concept of the separation of powers appears in every state constitution. Yet very few state constitution makers or citizens would be able to define the concept in the abstract or develop a theoretical justification for it. The concept is used because it is part of the common constitutional coin of the realm, so to speak. Its role in governance is relatively clearcut. In terms of the political theory of each constitution, however, we must explore its logic-in-use.

To understand the theoretical assumptions of each constitution it will be necessary to look at each provision and concept in five ways: (1) by itself as stated in the constitution, (2) in relation to the other provisions of the constitution, (3) in relation to earlier constitutions or founding documents, (4) in comparison with similar provisions in other state constitutions, and (5) in relation to its actual interpretative use.

<sup>14</sup> Abraham Kaplan. *The Conduct of Inquiry* (San Francisco: Chandler, 1964).

<sup>15</sup> Max Kadushin. *Organic Thinking* (New York: Jewish Theological Seminary of America, 1938).

In developing the theory of each constitution, the following themes and concepts are particularly important.

*Covenantalism.* Throughout American history the concepts of covenant, compact, contract, and constitution have been closely related, though each has a different shade of meaning.<sup>16</sup> The Massachusetts Constitution, for example, declares itself to be “a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people.” Covenantal-compactual constitutions tend to rest upon some prior consensus or communal understanding of political life in which government is seen as a positive instrument for the betterment of the commonwealth. Other constitutions, however, appear to be framed in a more contractual vein in which explicit terms must be mandated in order to permit the various competing and individualistic forces to live together within the state. In some cases, the contract involves a broad spectrum of the state’s citizenry; in others it amounts to a contract among the elites for the purpose of maintaining the privileges of certain groups of people at the expense of others.

*Fundamentality.* Some constitutions are treated as basic, fundamental laws of the land while others are more like extraordinary statutory codes. Related to this is the length of the constitution, its character of detail, and the specificity of those details.

*Conception of government.* Does the constitution see government as a positive, energetic force in the life of the state or as a “necessary evil” to be limited and hemmed in as much as possible?

*Purpose of government.* Is the purpose of government to forward and advance certain common statewide goals, to mediate among contending groups otherwise free to pursue their self-interests, or to maintain some status quo? Is government designed to serve the common citizenry directly or indirectly, or is it aimed primarily toward certain groups of people?

*Scope of government.* What is the range of governmental action provided for in the constitution and, in particular, what policy fields and mechanisms receive the most attention?

*Consent and representation.* How and in what ways does the constitution provide for the consent of the people and the representation of different interests in state government? To what extent does the constitution rely on simple majority rule, extraordinary majority rule, or dispersed majorities?

<sup>16</sup> Daniel J. Elazar and John Kincaid, “Covenant and Polity,” *New Conversations* 4, no. 2 (Fall 1979):4-8.

*Separation of powers.* How are powers allocated among the branches of state government and the constituent units of each branch and in what detail? Is power pulverized in the process or well-coordinated and orchestrated into a cohesive system? This will necessarily involve an examination of the specific powers and duties of each branch and the limits on each.

*Federalization.* In turn, how are powers allocated between the state and local governments? To what degree does the constitution mandate a unitary government or a more federal arrangement among local governments?

*Rights.* What are the fundamental rights of the people according to the constitution and what do these rights add up to as a package?

*Federal parameters.* Finally, how does the state constitution regard and cope with the limitations imposed by the United States Constitution?