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Fantasia

Time: Some date in the not too distant future;

Place: A state capitol during a meeting of the State Constitutional Revision Commission.***

Chairman: "Mr. Witness, what changes, if any, should be made in our Bill of Rights?"

Witness: "It should be repealed."

Chairman: "But Mr. Witness, basic individual rights are protected there. We have always had a state Bill of Rights."

Witness: "Let's not confuse utility or necessity with history or sentimentality.[1] State Bills of Rights are obsolete. The United States Supreme Court has incorporated most of the first eight amendments to the United States Constitution into the Fourteenth Amendment and made them applicable to the states. Thus, the basic rights of speech, press, religion, self-incrimination, counsel, etc., are protected by the national constitution and the United States Supreme Court. The state Bills of Rights have been superseded. No one pays any attention to them anymore; lawyers don't even cite them in their briefs now. A state constitution should be streamlined. The Bill of Rights has to go!"

The persuasiveness of these remarks had its effect. A constitutional amendment in the form of repealer was submitted to the electorate and passed by a narrow margin, although it seems that most voters did not understand the difference between the national and state Bills of Rights

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1. Ernst Freund in *Standards of American Legislation* states:

> This does not mean that there is not sufficient sentimental attachment to the bills of rights to muster ample support in their defense if they should be seriously attacked. The sentimental attachment also has a very real political value; for the belief in the ideals of liberty is one of the chief elements in the stability of American institutions, and creates a fundamental political contentment under governmental imperfections which is hardly rivaled in countries where a technically more perfect government is provided by less popular authority.

E. FREUND, STANDARDS OF AMERICAN LEGISLATION 114 (1917).

and believed they were overturning many of the recent decisions of the United States Supreme Court.

INTRODUCTION

The work of the United States Supreme Court during the past fifteen years in the areas of conflict between the states and individuals has raised serious questions about the future role and responsibility of the states with regard to individual rights. While it is "in" today to formulate questions in terms of morbidity (Is Religion Dead?), this seems to result too often in self-fulfilling prophesies. If the subject is not dead already, questions framed in this style can help to kill it. Thus, the thesis of this paper is that states in the past have played an important, although far from ideal, role in the protection of individual rights and must be prepared to play an even more important role in the future.

This paper will examine state protection of individual rights in four parts: 1) federalism and individual rights; 2) a comparison of state and national Bills of Rights provisions; 3) evaluation of illustrative rights and their treatment on national and state levels; and 4) recent state activity in the Bill of Rights area.

FEDERALISM AND INDIVIDUAL RIGHTS

Federalism has come a long way since September 12, 1787 when at a meeting of the Federal Convention, and in response to an inquiry about the need to protect the right of trial by jury, Roger Sherman of Connecticut said: "The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient."[2] Starting with the school desegregation cases in 1954 there has been an unparalleled concern by the Supreme Court with problems involving state and local protection or violation of individual rights. Since that time decisions in the area of free speech and association, religion, criminal justice and civil rights have characterized the work of the Court. More important than the results of those cases is the method of reaching those results. Most often, the Court has simply "incorporated" a relevant section of the first eight amendments

2. 2 M. FARRAND, U.S. CONSTITUTIONAL CONVENTION, 1787 558 (Rev. ed. 1966). Sherman made this point in the context of a discussion of the need for a provision on jury trials. He believed that national protection of rights was necessary only where they were not adequately protected by the states.

In the same work, James Wilson explains:

> Thus, Sir, it appears from the example of the other states, as well as from principle, that a bill of rights is neither essential nor a necessary instrument in framing a system of government since liberty may exist and be as well secured without it. But it was not only unnecessary, but on this occasion it was found impracticable—for who will be bold enough to undertake to enumerate all the rights of the people?

3 M. FARRAND 143-44.

to the United States Constitution into the Fourteenth Amendment,[3] thus imposing limitations upon the states which had heretofore been applicable only to the national government. The growing list of limitations on state activity through the application of the Fourteenth Amendment has raised the question of the need and utility of separate state Bills of Rights. In a sense we have come full circle since 1787, when some men questioned the need for a Federal Bill of Rights.[4]

This Supreme Court activity, has been part of an overall reallocation of power and responsibility from the states to the national government and more recently to the self-ruled megalopolis.[5] Even though state power has also increased measurably during this period, this increase seems negligible when compared to the growth of national and urban power. The second part of the twentieth century may question not only specific aspects of state responsibility and power, but the very utility of states at all.

Whatever future the states have as viable governmental entities, state and/or local responsibility for protecting individual rights need not be substantially undermined by the two factors cited most for the decline of the states: limited finances and obsolete government structures.[6] Much of the work in protecting individual rights requires negation rather than assertion of power, and consists primarily in judicial restraints on the exercise of government power. Furthermore,

> the lesson of the Supreme Court "revolution" is that the nation is no longer dependent upon ineffective or recalcitrant states for the achievement of national policy. The states enjoy rights and powers, both through Constitutional provision and through practice, which permit them to play as important a role in the governance of America as they may wish to play.[7]

Two novel factors seem to be furthering the deemphasis of state responsibility in the individual rights area; one is a matter of public

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3. *E.g.*, Mapp v. Ohio, 367 U.S. 643 (1961) (exclusion of evidence obtained in violation of Fourth Amendment rights); Gideon v. Wainwright, 372 U.S. 335 (1962) (right to appointed counsel in felony trials); Douglas v. California, 372 U.S. 353 (1963) (right to appointed counsel on appeal); Malloy v. Hogan, 378 U.S. 1 (1964) and Murphy v. Waterfront Commissioners, 378 U.S. 52 (1964) (privilege against self-incrimination); Pointer v. Texas, 380 U.S. 400 (1965) (right to confront witnesses). Speech had come in under Gitlow v. New York, 268 U.S. 652 (1925) and religion at least from Cantwell v. Connecticut, 310 U.S. 296, 303 (1940).

4. *See* note 2 *supra* and accompanying text.

5. "Through both presidential and, perhaps more important, Supreme Court leadership, therefore, the current trend reinforces the secular tendency toward increasing emphasis on national action." R. MARTIN, THE CITIES AND THE FEDERAL SYSTEM 27 (1965). *See also id.* at 28, 192.

6. *Id.* at 37, 46.

7. *Id.* at 28.

relations and the other is the current trend in law school pedagogy. Simply stated, the United States Supreme Court has captured the fancy of the mass media, hence the public at large.[8] And while feeling about the Court runs the gamut, there is no denying that its decisions are news. For example, when Indiana passes a statute providing for counsel in probation revocation proceedings,[9] it goes virtually unnoticed. Yet, when the Supreme Court reaches the same result[10] six months later, it is national as well as local news.[11] The Supreme Court tends to get "credit" and "blame" for its decisions substantially exceeding the impact of those decision on the law of some or many states. The personnel of the Supreme Court are better known personalities than most local state supreme court justices (even in their own bailiwicks) and it is a safe bet that within any given state more people could name at least one justice of the United States Supreme Court more readily than they could name a local state supreme court justice.

The second subject, the current trend in law school pedagogy, because it touches upon teaching techniques and tools, is by definition a sensitive area. In the past fifteen years, paralleling the Supreme Court activities in the "rights" areas, law school teaching materials and scholarly legal research have emphasized these activities virtually to the exclusion of state cases and statutes, except where they serve as negative examples. Case books on constitutional law, criminal procedure and even local government contain little or no state materials relating to state protection of individual rights. This lack of state research and source materials has already been referred to by other authors in at least two law journal articles.[12] Of course there are some justifiable reasons for this narrowing of attention. Supreme Court decisions are universally applicable, may in some instances be better reasoned and researched, and are easily accessible. Yet, without being aware of it, these

8. On national network television there have been several special programs relating directly or indirectly to the Court and its work. Most recently a one-hour "special" in prime time featured Justice Black. Periodicals, too, have devoted more space in recent years to "Law," with one recently adding a regular section which quite often discusses the personalities and decisions of the Supreme Court. In the same vein, the *New York Times* covers the decisions of the Court with its own special reporter as well as any non-legal publication.

9. IND. ANN. STAT. § 9-2211 (Supp. 1968).

10. Mempha v. Rhay, 389 U.S. 128 (1967).

11. The decision to extend the right to counsel to probation revocation proceedings represents more of a technical development than one which would be of general interest to the public. Nevertheless, it still was well reported to the public at large. *See generally*, New York Times, Nov. 14, 1967, at 26, Col.3. This article, covering one column, in listing the states which had already extended the right, omitted Indiana.

12. Mazor, *Notes on a Bill of Rights in a State Constitution*, UTAH L. REV. 326, 327-28 (1966); Paulsen, *State Constitutions, State Courts and First Amendment Rights*, 4 VAND. L. REV. 620 (1950).

materials are "conditioning"[13] and stimulating students to think only in terms of the national Bill of Rights, the United States Supreme Court and federal legislation as the sources of power and responsibility for protecting individual rights. References to state activity is generally negative, with statutes being struck down and courts reversed. Law students inevitably become lawyers and as such eventually absorb some state materials, but it would be nothing short of miraculous if federal precedents did not invariably serve as the basic point of departure in their practice.

All of the above is even more remarkable when one realizes that the United States Supreme Court has been more or less a "Johnny-Come-Lately" in protecting individual rights.[14] However, in giving some credit to the states, no criticism of the Supreme Court is intended. The recent decisions by the Court have pointed up and attacked abuses of individual rights which were not protected by a few or many, as the case may be, state courts. This, however, does not mean that individual rights are now completely protected, nor that future Courts will be as aggressive about such rights has the Warren Court. The Court has unquestionably entered the area, and, in the future, can be expected to play *some* role in safeguarding individual rights. This paper suggests that in the long run, it will be better to construe Supreme Court decisions involving conflicts between individuals and states as providing for all states only a floor or minimum level of protection.[15] There is a danger, if the Court's decisions come to be regarded as ultimates or if the Court is viewed as having "occupied the areas," that all states will surrender what initiative they have in the "rights" area and will be discouraged from going further in protecting those rights than the Court has gone.

Furthermore, in pointing with approval to some state activity in the

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13. The word "conditioning" is not used here in its technical, psychological sense.

14. Pye, *The Warren Court and Criminal Procedure*, 67 MICH. L. REV. 249 (1968). Pye, in describing pre-Warren Courts, says,

> In general, the Court concerned itself primarily with federal criminal cases; review of state criminal judgments was limited to a small group of cases each year, the most important of which frequently involved the admission of confessions or the question whether a defendant had been seriously disadvantaged by denial of counsel. In every year but one, the number of federal criminal cases greatly exceeded the number of cases reviewed from state courts, and this situation was not reversed until 1961.

Id. at 255.

15. MARTIN, *supra* note 5, at 39. In discussing "cooperative federalism," Martin states:

> [T]he practice, of cooperation has combined national standards with state and local responsibility for administration. This has had the effect of placing a floor under performance without destroying local responsibility for what have been, in impact at least, local problems.

Id.

individual rights area, there is a tendency to misconstrue such approval as overall satisfaction. Nothing could be further from the truth. But it is equally misleading to dismiss all of the states as irresponsible or irrelevant merely because *all* or *most* states have not been aggressive in protecting every right. Some states have good records on certain issues in which they have preceded or gone further[16] than the Supreme Court. This in itself ought to be recognized as both significant and desirable. It is in this latter respect, because of a lack of uniformity, that state activity in the individual rights area has largely been overlooked and underestimated.

The Common Law of Constitutional Law

In the past fifteen or so years we seem to have lost sight of the fact that most Bill of Rights provisions, national and state, were creatures or idealizations of, and sometimes reactions to, common law principles.[17] The development of individual rights under Bills of Rights has been a cooperative, common law-like effort by federal and state courts. Early writers on constitutional law, when discussing such problems as free speech or religion or self-incrimination or counsel, freely mixed federal

16. *See* notes 142-241 *infra* and accompanying text.

17. Pound, *The Development of Constitutional Guarantees of Liberty*, 20 NOTRE DAME LAWYER 183-229, 347-96 (1945). Dean Pound, in Part III, states:

> Five ideas were assumed by American lawyers of the time of the Revolution, and by our lawyers of the nineteenth century, as involved in government according to law in contrast to absolute monarchy. They were: (1) The idea of a fundamental law, the "law of the land," to which all official and governmental action was bound to conform, which law was to be applied by the courts in the course of orderly litigation according to the common law, and could be invoked against officials by any one aggrieved. (2) The idea of immemorial rights of Englishmen, secured by the law of the land, and of the common law in which they were recognized as the birthright of Englishmen and so of Americans. Coke's Second Institute speaks of the law of the land as the "best inheritance that the subject hath" and is full of old law-French maxims expressing that idea. (3) The idea of authoritative declarations of these rights in charters and bills of rights. Indeed, there was a precedent for a written constitution, such as all Americans believed in after independence, in the Instrument of Government adopted under the Commonwealth in 1653. It contained a few declarations of fundamental rights and provided "that all laws, statutes, ordinances, and clauses in any law statute and ordinance, to the contrary of the aforesaid liberty shall be esteemed null and void." (4) The idea of an independent judiciary, as set forth in the English Bill of Rights of 1688, to administer the fundamental law, and of lawmaking by a body distinct from the executive. (5) The idea of courts refusing to apply statutes in contravention of the fundamental law; an idea made familiar not only by the seventeenth-century cases which the lawyers found in the Abridgments, or Digests of reported decisions, and reports, but also by appeals to the Privy Council in which statutes were held to conflict with colonial charters or to run counter to provisions in charters for legislation in accordance with or not repugnant to the common law.

Id. at 353-54.

and state cases.[18] Early federal and state courts were not in the least reluctant to refer to the common law history of certain rights,[19] nor to cite English cases as support.[20] While incorporation of common law concepts into Bills of Rights may have idealized various rights, the conclusion is inescapable that more than anything these Bills of Rights represented a common law legacy.[21] In some cases of course, Bills of Rights surpassed the common law and even rejected it. But the common law, either by incorporation, modification or rejection, was the principal point of departure. Every schoolboy knows that the colonists complained of not being afforded the basic rights of Englishmen.

This common law identification with constitutional rights, while it may take away some of their wonder, provides the best historical basis for an expanding view of individual rights.[22] Some of the early as well as contemporary federal and state cases illustrate that expansion of rights occurred, in part, because judges were and are willing to be persuaded by the decisions in sister jurisdictions, even when construing and applying constitutional principles. For example, *Johnson v. Zerbst*[23] established the right to appointed counsel for indigent defendants in federal prosecutions. That case relies primarily on *Patton v. United States*[24] and quotes significant language from it. However, a reading of *Patton* reveals that the statement quoted in *Zerbst* appears in *Patton* as a

18. Cooley, CONSTITUTIONAL LIMITATIONS chs. X-XIII (5th ed. 1883). In that book, English precedent and federal and state cases are presented in conglomerate form to support the distinguished author's analysis of individual rights.

19. *See generally,* Boyd v. United States, 116 U.S. 616 (1886); People *ex rel.* Brown v. Bd. of Supervisors, 3 How. Prac. (N.Y.) (Sup. Ct. 1885).

20. *Id.*

21. Pound, *supra* note 17.

22. Pound, referring to Magna Carta, states:

> In characteristic English fashion it put them concretely in the form of a body for specific provisions for present ills, not a body of general declaration in universal terms. Herein, perhaps, is the secret of its enduring vitality. Like the Constitution of the United States it is a great legal document. Like the Constitution it lent itself to development by lawyer's technique. * * * When recent historians, affecting to overthrow the lawyer's conception, tell us that its framer meant no more than to remedy this or that exact grievance of a time and place and class by a particular legal provision framed to the exigencies of that grievance, they tell us no more than that the method of the Great Charter is the method of English law in all ages. The frame of mind in which it was drawn was nothing less than the frame of mind of the common-law lawyer . . . .

Pound, *supra* note 17, at 198-99.

23. Consistently with the wise policy of the Sixth Amendment and other parts of our fundamental charter, this Court has pointed to "the humane policy of the modern criminal law . . ." which now provides that a defendant, "if he be poor, . . . may have counsel furnished him by the state . . . not infrequently . . . more able than the attorney for the state."

304 U.S. 458, 463 (1938).

24. 281 U.S. 276, 308 (1930).

quotation from *Hack v. State,*[25] a case decided by the Supreme Court of Wisconsin. The states by and large were well ahead of the Supreme Court on right to counsel at the time of *Zerbst,* and it is not surprising then to find state constitutional standards being accepted on the federal level. It was equally appropriate for the Supreme Court in *Gideon v. Wainwright*[26] to use the *Zerbst* rationale as part of its decision requiring the few laggard states to come into line. What is important is not "which came first—federal or state rule" but the interplay between the two and the real role of state decisions as an important part of the basis for *Gideon.*

In search and seizure a different process of acceptance occurred. In *Weeks v. United States,*[27] the first case given clear credit for applying the exclusionary rule to unreasonable searches and seizures, the Supreme Court cited as authority two earlier federal cases,[28] which in turn rely primarily on English cases for support. The first Indiana case[29] to apply the exclusionary rule adopts the *Weeks* rationale not because it was bound to do so, but because it was persuaded that the development in *Weeks* represented a better and more correct application of law.

Use of Statutes

Another factor often overlooked in constitutional law is the use of statutes to implement individual rights. Several writers have referred to the lack of state cases in particular areas involving individual rights and have concluded that this might represent either a lack of protection or a lack of concern on the state level.[30] Undoubtedly this is true on some occasions,[31] but at times the converse is true.[32] A state, because it has greater freedom to do so, may use legislation, rather than judicial decisions, to implement or expand constitutional rights.

Activity on the federal level does not provide an analogy, since the national government has no general police power and has always had to rely on the commerce, tax and appropriations powers as indirect police power sources. Thus, there was such doubt over various provisions of the Congressional Civil Rights Act of 1866 that the Fourteenth Amendment was passed to dispel these doubts.[33] Remember too, the first Civil Rights

25. 141 Wis. 346, 351-52, 124 N.W. 492, 494 (1910).
26. *See* note 3 *supra* and accompanying text.
27. 232 U.S. 383 (1914).
28. Boyd v. United States, 116 U.S. 616 (1886) and Bram v. United States, 168 U.S. 532 (1897).
29. Callender v. State, 193 Ind. 191, 138 N.E. 817 (1922).
30. Mazor, *supra* note 12; Paulsen, *supra* note 12.
31. This is particularly true with First Amendment rights. Paulsen, *supra* note 12, at 642; Twomley, *The Indiana Bill of Rights,* 20 IND. L.J. 211, 222-24 (1944).
32. *See* notes 142-252 *infra* and accompanying text.
33. Gussman, *The Unhappy History of Civil Rights Legislation,* 50 MICH. L. REV. 1323 (1952).

cases invalidated portions of the Civil Rights Act applicable to private individuals on the ground that this was beyond the power of Congress.[34] The public accommodations section of a more recent Civil Rights Act passed its constitutional test by reliance on the commerce power.[35]

On the other hand, the states, as possessors of general police powers, have not, by and large, been so limited. The previously cited[36] reference to counsel in probation revocation proceedings illustrates a difference in methods to accomplish the same objective; Indiana secured the right by legislation while the Supreme Court did it by litigation. With no general police power vested in Congress, it comes as no surprise to find "national constitutional law" embodied almost exclusively in United States Supreme Court decisions. By contrast, the states, with broader legislative authority, might be expected to rely more on legislation. Legislation as a source or means for safeguarding individual rights has been used extensively by Parliament and, at least in terms of legislative power, the states more nearly resemble Parliament than Congress.[37] Additionally, because they emanate from the direct representatives of the people, statutes may represent a more basic commitment to rights which they embody or implement.

Disregarding this common law history, cooperative development and legislation tend to minimize state activity in the "rights" area. Focusing almost exclusively on the Federal Bill of Rights and the decisions of the Supreme Court cannot help but result in, from the state view, frustration,

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34. 109 U.S. 3 (1883).

35. Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964); Katzenbach v. McClung, 379 U.S. 294 (1964).

36. *See* notes 9-11 *supra* and accompanying text.

37. The primary source of constitutional law are statutes and decided cases. Legislation is an obvious source and while some statutes are of great importance, the statute books contain nothing like a code of Constitutional law but most of the great landmarks—for example, Magna Carta, *the Bill of Rights*, the Act of Settlement, the Parliament Act, 1911, and the Statute of Westminister 1931—are there.

RIDGES, CONSTITUTIONAL LAW 6 (DeForrest ed. 1950) (emphasis added).

Yet all these liberties, in England, are admittedly at the mercy of a party majority in parliament. * * * Englishmen may well feel that, in spite of the American Constitution, there is less liberty in the United States than in England. * * * The guarantee of these rights in parliament, lies in the procedure of the House of Commons—its conventions and standing orders.

GOUGH, FUNDAMENTAL LAWS IN ENGLISH CONSTITUTIONAL HISTORY 211 (1955). *Cf.* Mazor, *supra* note 12, at 348.

For some reason though, in this country, statutes have come to be viewed as something apart from constitutional law, whereas in the English tradition they sometimes represent its best examples. Statutes may be no less permanent than cases (as statutes are repealed, cases are overruled), and in a sense, because they emanate from the direct representatives of the people, may represent a more basic commitment to rights which they embody or implement. *E.g.*, Bill of Rights, 1688 1 W. & M. sess. 2, c. 2; Kamisar, *The Right to Counsel and the Fourteenth Amendment*, 30 U. CHI. L. REV. 1, 14-16 (1962) (provision relating to right of counsel).

feelings of irrelevancy and, occasionally, the diminishment of rights.[38] Burke Marshall, who was formerly in charge of the Civil Rights Division, Department of Justice, made the following statement in *Federalism and Civil Rights*:

> This has led in the past three years to the greatest single source of frustration with and misunderstanding of the federal government, particularly among young people. They cannot understand federal inactions in the face of what they consider, often quite correctly, as official wholesale local interference with the exercise of federal Constitutional rights. Apparently their schools and universities have not taught them much about the working of the federal system. In their eyes the matter is simple. Local authorities are depriving certain people of their federal Constitutional rights, often in the presence of federal officials from the Justice Department. Persons doing this should be protected.[39]

Marshall was illustrating another point in regard to civil rights, but the statement illustrates the general shift in focus, growing demands upon national authorities, and the national government's inability on many occasions to satisfy those demands. These feelings of frustration easily escalate to generalizations about all states and overstatements as to state unresponsiveness.

Recently during the work of an Indiana legislative subcommittee charged with the responsibility for reviewing the state Bill of Rights as part of a constitutional revision study, several distinguished and experienced persons suggested conforming the state provisions to the Federal Bill of Rights. The Model State Constitution[40] published by the National Municipal League substantially takes the same approach. While some convenience might result from such conformity, it also might foster a limited, non-innovative or even abdicating attitude on the part of the states. Conformity implicitly limits individual rights to those enumerated in the Federal Bill of Rights and tends to place exclusive reliance on the United States Supreme Court in developing the full breadth of all rights. The states need only play follow the leader and go no further than the Supreme Court has gone. An example from New York illustrates one danger in this approach. The New York Constitution prohibited

38. *See* notes 142-241 *infra* and accompanying text.
39. B. MARSHALL, FEDERALISM AND CIVIL RIGHTS 49 (1964).
40. NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION 1-3 (Sixth ed. 1963).

direct and indirect financial aid to denominational schools,[41] and this provision was generally regarded as going beyond the restrictions in the First Amendment to the United States Constitution.[42] Consequently, New York Courts in applying the New York Constitution rejected the "child welfare" doctrine and declared unconstitutional both the transportation[43] and supply of books[44] to parochial school students. These cases preceded the Supreme Court cases of *Cochran v. Board of Education*[45] and *Everson v. Board of Education*[46] which held that the "child welfare" doctrine did not violate the First Amendment. Subsequently, the New York Constitution was amended to permit transporation of parochial school students.[47] Most recently, a majority of the New York Court of Appeals upheld the lending of books to parochial school students.[48] In reaching this conclusion, the court of appeals overruled the prior New York cases which rejected the "child welfare" doctrine and cited as authority the *Everson* case and another Supreme Court decision, *Zorach v. Caluson,*[49] both of which were First-Fourteenth Amendment cases. Thus, what had been recognized as a provision going beyond the First Amendment in separating church and state was limited to conform to the First Amendment.

Comparison of State and National Bills of Rights Provisions

Two different views of the adequacy of state Bills of Rights were expounded when the need for a Federal Bill of Rights was being considered. Sherman's view, previously referred to,[50] was essentially that the major responsibility for safeguarding individual rights lay in the states, and that relevant state provisions were in most respects adequate. Madison, however, took the opposite view:

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41. N.Y. Const. art. 9, § 4 (1894):
Neither the State nor any subdivision thereof, 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 for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denomination, tenet or doctrine is taught.

42. 10 N.Y. Temporary State Commission on Constitutional Convention, Individual Freedoms 18 (1967).

43. Judd v. Bd. of Educ., 278 N.Y. 200, 15 N.E.2d 576 (1938).

44. Smith v. Donohue, 202 App. Div. 656, 195 N.Y.S. 715 (3d Dept. 1922).

45. 281 U.S. 370 (1928).

46. 330 U.S. 1 (1947).

47. N.Y. Const. art. 9, § 4 (renumbered art. 11, § 4 and amended in 1938 to allow busing of all children).

48. Board of Educ. v. Allen, 20 N.Y.S.2d 109, 228 N.E.2d 791 (Ct. App. 1967).

49. 343 U.S. 306 (1952).

50. *See* note 2 *supra* and accompanying text.

> [S]ome states have no Bills of Rights [four states had none], there are others provided with very defective ones, and there are others whose Bill of Rights are not only defective, but absolutely improper; instead of securing some in the full extent which republican principles would require, they limit them too much to agree with the common ideas of liberty.[51]

Judge Dumbauld[52] tells us that in 1879 seven states had Bills of Rights provisions; four states, while they had no Bills of Rights per se, did have in their constitutions provisions of the type usually found in Bills of Rights; and two states still operating under their colonial charters had no constitutions at all.

Madison was the principal draftsman of the Federal Bill of Rights[53] and it seems evident that he drew upon existing provisions in various state constitutions, especially that of his own state, Virginia. In 1879, five states had provisions asserting the freedom and inalienable rights of men[54] and eight states affirmed the people as the source of governmental power,[55] with seven states reserving the right in the people to change their form of government.[56] Seven states had provisions relating to frequent and free elections[57] and eight prohibited taxation without consent.[58]

Many of the states had provisions relating to the rights of criminal defendants. For example, eight provided for the accused to be informed as to the nature of the charge against him, to be confronted by witnesses against him, to have compulsory process for witnesses, the privilege

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51. 1 ANNALS OF CONG. 439 (1879), cited in Brennan, *The Bill of Rights and the States*, 36 N.Y.U.L. REV. 761, 763 (1961).

52. Dumbauld, *State Precedents For the Bill of Rights*, 7 J. PUB. L. 323, 325 (1958). Delaware, Maryland, Massachusetts, New Hampshire, North Carolina, Pennsylvania and Virginia had Bills of Rights. Vermont also enacted a Bill of Rights, but it was not yet a state. New Jersey, Georgia, New York and South Carolina had constitutional protections. Connecticut and Rhode Island had no constitutions.

53. *Id.* at 323; *see also* BRANT, THE BILL OF RIGHTS (1965).

54. Massachusetts, New Hampshire, Pennsylvania, Vermont, Virginia. Footnotes 54 through 71 in this paper are derived from Dumbauld, *supra* note 52, at 343-44 which, in an Appendix, lists the various topics covered in the existing state Bills of Rights.

55. Delaware, Maryland, Massachusetts, New Hampshire, North Carolina, Pennsylvania, Vermont, Virginia.

56. Delaware, Maryland, Massachusetts, New Hampshire, Pennsylvania, Vermont, Virginia.

57. Frequent: Delaware, Maryland, Massachusetts, North Carolina, Pennsylvania, Vermont, Virginia. Free: Maryland, Massachusetts, New Hampshire, North Carolina, Pennsylvania, Vermont, Virginia.

58. Delaware, Maryland, Massachusetts, New Hampshire, North Carolina, Pennsylvania, Vermont, Virginia.

against self-incrimination and a prohibition against general warrants.[59] Five required a speedy trial,[60] seven by a jury of the vicinage[61] and six the right to counsel.[62] Seven states provided that proceedings were to be conducted according to "the law of the land."[63] Freedom of the press was secured in eight states as was the free exercise of religion.[64] There were also prohibitions in five states against ex post facto laws,[65] and in four states prohibitions against quartering of troops.[66] The right to bear arms was secured in four states,[67] the right of assembly and petition in seven[68] and freedom of debate in four.[69] There were also a series of miscellaneous protections which existed in but a few states, such as prohibitions against double jeopardy,[70] compensation for taking of property,[71] etc.

Presently, with almost four times the original thirteen states, every state has a constitution and every state has a Bill of Rights.[72] These Bills of Rights, while strikingly similar particulalry in substance, are not completely uniform either in the specific rights included, or in the language used to define the various rights.

Most of the states include provisions expressing the philosophy which prevailed during the movement for independence and nationhood. In language drawing heavily on the Declaration of Independence, these provisions acknowledge the inalienable rights of all men[73] and the inherent right of political power[74] in the people, with many states reserving the right in the people to alter, modify or revoke their form of government.[75]

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59. *Id.*
60. Delaware, Maryland, Pennsylvania, Vermont, Virginia.
61. Delaware, Maryland, Massachusetts, New Hampshire, Pennsylvania, Vermont, Virginia.
62. Delaware, Maryland, Massachusetts, New Hampshire, Pennsylvania, Vermont.
63. Maryland, Massachusetts, New Hampshire, North Carolina, Pennsylvania, Vermont, Virginia.
64. Delaware, Maryland, Massachusetts, New Hampshire, North Carolina, Pennsylvania, Vermont, Virginia.
65. Delaware, Maryland, Massachusetts, New Hampshire, North Carolina.
66. Delaware, Maryland, Massachusetts, New Hampshire.
67. Massachusetts, New Hampshire, Pennsylvania, Vermont.
68. Delaware, Maryland, Massachusetts, New Hampshire, North Carolina, Pennsylvania, Vermont.
69. Maryland, Massachusetts, New Hampshire, Vermont.
70. New Hampshire.
71. Massachusetts, Vermont.
72. At the Conclusion of this paper an Appendix contains a chart of all of the state Bills of Rights provisions and identifies each provision by the appropriate Article and section number. Footnotes 72 through 141 were derived from the Appendix. All of the state constitutions may be found in Legislative Drafting Research Fund, Columbia University, *Constitutions of the United States—National and State* (1962).
73. Every state has such a provision except Arizona, Connecticut, Georgia, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New York, Oregon, Rhode Island, South Carolina, Tennessee, Texas and Washington.
74. Every state has such a provision except Delaware, New York and Wyoming.
75. *E.g.*, Arkansas, Connecticut, Idaho, Tennessee, Texas.

Only Louisiana[76] and Wyoming,[77] however, capture the essence of a Bill of Rights in a society characterized by representative government: "Absolute and arbitrary power over the lives, liberty and property of free men exists no where in a republic, not even in the largest majority."[78]

Every state provides for the protection of some or all of the rights usually referred to as First Amendment rights. All states, with varying degrees of generality or specificity, guarantee the free exercise of religion and freedom of the press. However twelve states[79] have no language which could reasonably be construed as prohibiting the establishment of religion; and four states[80] omit any specific reference to free speech. It is characteristic of most state Bills of Rights to provide substantially more detail on religious freedom and non-establishment than is found in the First Amendment. Some states[81] provide that religious views shall not be a basis for denial of civil or political rights. About half of the states[82] prohibit the expenditure of public funds for various religious purposes. With respect to provisions on religion, it is sometimes difficult to determine the exact reach of the provisions. Some states merely say that the legislature shall establish "no religious test." But whether this includes office, employment, witness, etc., cannot be immediately ascertained from the provision itself. Also, while some states specifically state that no public money is to be expended for religious purposes, others merely provide that no person shall be required to "support" any religion; and some say that no one shall be taxed for any religion. As to the "tax" language, one might argue that since this is the primary source of state funds, it means the same as no appropriation of funds for religious purposes. Those provisions merely referring to "support," however, are too difficult to interpret from the face of the document itself. Many of these considerations are not really relevant because even the relatively clear "no appropriation" language has been construed to allow some financial assistance to parochial school students.[83] The rights to assemble

76. LA. CONST. art. 1, § 1.
77. WYO. CONST. art. 1, § 7.
78. LA. CONST. art. 1, § 1; WYO. CONST. art. 1, § 7.
79. Connecticut, Georgia, Maryland, Michigan, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, Vermont, Virginia.
80. Delaware, New Hampshire, North Carolina, Rhode Island.
81. Alabama, Arkansas, Colorado, Idaho, Illinois, Kansas, Kentucky, Michigan, Montana, New Jersey, New Mexico, New York, Oklahoma, Rhode Island, South Dakota, Vermont, Virginia, West Virginia.
82. Alabama, Arizona, Florida, Georgia, Hawaii, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, New Jersey, Oklahoma, Oregon, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming.
83. *E.g.*, Indiana—State *ex rel.* Johnson v. Boyd, 217 Ind. 348, 28 N.E.2d 256 (1941); Louisiana—Bordon v. Louisiana State Bd. of Educ., 168 La. 1005, 123 So. 655

and petition are invariably present with just four[84] and three exceptions,[85] respectively. Almost every state Bill of Rights protects speech[86] as well as press. However, a provision imposing responsibility for publications is present in all but seven states.[87] West Virginia also provides that the rights of free speech and press shall in no way limit the legislature's power to restrain obscenity.[88]

The Second[89] and Third Amendments[90] are also well represented in the states, with many states further providing for no standing army[91] in peacetime and the subordination of the military to civil authorities.[92] In some states the right to bear arms is specifically qualified to exempt carrying concealed weapons[93] or by allowing the legislature a free hand in regulating the possession of weapons.[94]

The Fourth Amendment search and seizure and warrant provisions are present in some degree in every state, although in two states[95] the language does not expressly prohibit unreasonable search and seizures; and the language in some states is weaker than the federal provision.[96] Two states have rejected the traditional formulations and have more general provisions to the effect that: "No person shall be disturbed in his private affairs or his home invaded without authority of law."[97] New York has a provision which specifically protects telephone and telegraph communications against unreasonable interceptions.[98]

(1909); Cochran v. Louisiana State Board of Ed., 281 U.S. 370 (1930); Mississippi—Chance v. Mississippi St. Textbook Bd., 190 Miss. 453, 200 So. 706 (1940).

84. Maryland, Minnesota, New Mexico, Virginia.

85. Minnesota, New Mexico, Virginia.

86. All of the states except Delaware, New Hampshire, Rhode Island and North Carolina protect speech.

87. Hawaii, Massachusetts, Mississippi, New Hampshire, South Carolina, Vermont, West Virginia.

88. W. VA. CONST. art. III, § 7.

89. The following states have no provision comparable to that in the Second Amendment guaranteeing the right to bear arms: California, Delaware, Illinois, Iowa, Maryland, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Virginia, West Virginia, Wisconsin.

90. The following states have no provision comparable to that in the Third Amendment restricting the power to quarter troops: Florida, Idaho, Minnesota, Mississippi, New York, Vermont, Virginia and Wisconsin.

91. The following states prohibit a standing army in peacetime: Alabama, Arizona, Arkansas, California, Delaware, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Nevada, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, Washington, West Virginia, Wisconsin.

92. Every state has a provision subordinating the military to the civil authorities except New York.

93. *E.g.*, Louisiana, North Carolina, Montana, New Mexico.

94. *E.g.*, Oklahoma, Florida, Georgia, Idaho.

95. North Carolina, Virginia.

96. *E.g.*, Maryland, Michigan, North Carolina, Virginia.

97. Arizona, Washington.

98. N.Y. CONST. art. 9, § 12.

With the exception of the requirement of indictment by grand jury, all of the Fifth Amendment rights are well represented, with some exceptions in each one of these rights. Only twenty-five states provide in their Bills of Rights for indictment by grand jury,[99] and in nine[100] of those, the provision requires less than the federal in that it authorizes the legislature to dispense with the requirement or limits the offenses to which the requirement is applicable. Five states[101] have no express provision for double jeopardy, and two[102] do not mention self-incrimination. Six[103] omit reference to due process or "law of the land" and five[104] have no express requirement to make compensation for property taken.

Almost all Sixth Amendment rights are also present in most of the states. Speedy and public trial is omitted in five states[105] and five[106] more do not require both. Seven states[107] do not provide for trial by impartial jury with three[108] omitting impartiality; seventeen[109] have no requirement for trial in the district or county, while only three[110] do not compel informing the accused of the charges, or giving him the right to confront the witnesses[111] or the right to compulsory process.[112] Finally, every state but one includes representation by counsel.[113]

All but two states[114] expressly provide for trial by jury in common law actions, as directed by the Seventh Amendment; but many states have modified the unanimous verdict requirement. The Eighth Amendment's prohibitions on excessive bail and fines, and cruel and unusual punishment, are present except for two states[115] which omit reference to

99. Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kentucky, Maine, Mississippi, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, West Virginia, Wyoming.

100. Colorado, Illinois, Mississippi, Nebraska, New York, North Carolina, North Dakota, Ohio, Wyoming.

101. Connecticut, Maryland, Massachusetts, North Carolina, Vermont.

102. Iowa, New Jersey.

103. Indiana, Kansas, Maryland, New Jersey, North Dakota, Oregon.

104. Kansas, Maryland, Michigan, New Hampshire, North Carolina.

105. Massachusetts, Nevada, New Hampshire, New York, North Carolina.

106. Maryland, Mississippi, Virginia, West Virginia, Wyoming.

107. California, Connecticut, Idaho, Nevada, New Hampshire, New York, North Dakota.

108. Massachusetts, North Carolina, West Virginia.

109. Alaska, California, Connecticut, Delaware, Georgia, Idaho, Indiana, Louisiana, Massachusetts, Nevada, New Jersey, New York, North Carolina, North Dakota, Rhode Island, South Carolina, Texas.

110. Idaho, Nevada, North Dakota.

111. Idaho, Nevada, North Dakota.

112. Nevada, New York, North Carolina.

113. Virginia.

114. Georgia, Kentucky.

115. Illinois, Vermont. Also, Illinois has no provision with respect to excessive bail and fines.

cruel and unusual punishment. Reservation of rights in the people as in the Ninth Amendment is omitted in seventeen states.[116] Only twenty states[117] have an "equal protection" provision, and in six[118] of those it is substantially weaker than the language of the Fourteenth Amendment.

State Bills of Rights include a number of subjects not covered in the Federal Bill of Rights. Some of these are merely matters covered elsewhere in the Federal Constitution. Thus, all but seven[119] states prohibit *ex post facto* laws and all but twelve[120] prohibit impairment of the obligation of contracts. Eighteen states[121] do not prohibit bills of attainder, while twenty-two do not prohibit corruption of blood.[122] Only two states[123] fail to place restrictions on suspension of the writ of habeas corpus, and only nineteen[124] expressly limit the power to suspend laws. Eleven states[125] provide for a power of revocation in the legislature to prevent impairments of state sovereignty.

Several provisions which appear in state Bills of Rights but not the federal are significant or at least potentially significant. In all but nine states[126] persons are entitled to the right to bail except in capital cases. Only ten states[127] fail to prohibit imprisonment for debt. Thirty-nine states[128] guarantee access to the courts and a legal remedy to all persons

116. Connecticut, Delaware, Illinois, Indiana, Kentucky, Massachusetts, Missouri, New Hampshire, New York, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Vermont, West Virginia, Wisconsin.

117. Alaska, Arizona, Arkansas, California, Connecticut, Georgia, Indiana, Iowa, Maine, Massachusetts, Michigan, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Washington.

118. California, Indiana, Iowa, North Dakota, South Dakota, Washington.

119. Connecticut, Delaware, Hawaii, Kansas, New York, Ohio, Vermont.

120. Connecticut, Delaware, Hawaii, Kansas, Maryland, Massachusetts, New Hampshire, NewYork, North Carolina, Ohio, Oregon, Vermont.

121. Alabama, Delaware, Hawaii, Illinois, Indiana, Kansas, Louisiana, Mississippi, New Hampshire, New York, North Carolina, Ohio, Oregon, Rhode Island, South Dakota, Tennessee, Vermont, Wyoming.

122. California, Connecticut, Florida, Hawaii, Idaho, Iowa, Louisiana, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Rhode Island, South Dakota, Utah, Vermont, Virginia, Wyoming.

123. Maryland, Massachusetts.

124. Alabama, Arkansas, Delaware, Hawaii, Indiana, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Vermont, Virginia.

125. Alabama, Arizona, Hawaii, Idaho, Kansas, Kentucky, Mississippi, Missouri, Montana, North Dakota, South Dakota.

126. Georgia, Hawaii, Maryland, Massachusetts, New Hampshire, New York, North Carolina, Virginia, West Virginia.

127. Connecticut, Delaware, Louisiana, Maine, Maryland, Massachusetts, New Hampshire, New York, Virginia, West Virginia.

128. Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, Wisconsin, Wyoming.

who have been injured or wronged. Thirty-six states[129] expressly provide that truth shall be a defense to criminal libel, and some of these make the defense equally applicable to civil actions. Six states[130] articulate a policy of reformation in penal administration, although by and large these provisions have had no observable impact on the penal laws of those states. One state[131] specifically prohibits corporal punishment. Furthermore, several states[132] specifically provide for a right of appeal and a few[133] proscribe the unreasonable detention of witnesses.

There are provisions which guarantee the free exercise of suffrage,[134] outlaw sex discrimination in juries[135] and provide for a right to public education.[136] Several states[137] protect the "right to work" and others[138] the right of workers to organize into unions. A few states[139] provide that there shall be no property qualification for public office and some[140] guarantee property rights in resident aliens. Some states prohibit the limitation of damages for death or injury.[141]

There are still other provisions, and the list could be longer; yet, those enumerated represent a fair cross-section of state Bills of Rights provisions. Of course, the enumeration of rights in a Bill of Rights does not in and of itself compel that the right will be protected in accordance with the plain meaning of the language; nor even that it will be protected at all. Nevertheless, for judges and legislators who want to apply or implement them, they are there to be so used.

Illustrative Rights on National and State Levels

In 1950, before the incorporation of most of the first eight amendments into the Fourteenth, Paulsen pointed out an important yet neglected source of materials on constitutional rights:

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129. Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, Wyoming.

130. Alaska, Indiana, Montana, New Hampshire, Oregon, Wyoming.

131. South Carolina (Georgia also prohibits whipping).

132. Arizona, Michigan, Nebraska, Utah.

133. Arkansas, California, Colorado, Florida, Michigan, Nevada, North Dakota, South Carolina, Wyoming, Montana.

134. Arizona, Colorado, Idaho, Missouri, Nebraska, New Hampshire, Oklahoma, Pennsylvania, South Dakota, Washington.

135. California, Hawaii, North Carolina, Washington.

136. North Carolina, Wyoming.

137. Florida, Missouri, North Dakota, South Dakota, Wyoming.

138. Missouri, New York.

139. Colorado, Idaho, Minnesota, North Carolina, Rhode Island, Utah.

140. Alabama, Arkansas, Colorado, Montana, New Mexico, Oregon, South Dakota, Wisconsin, Wyoming.

141. Arizona, New York, Ohio.

> State Court decisions and state constitutional materials are too frequently ignored by both commentator and counsel when civil liberties questions arise. State constitutions furnish extensive and sometimes unique materials which can help in the protection of human liberties and state courts provide the forums in which a very great number of civil liberties cases are decided.

And further:

> State courts still may interpret their state constitutions to protect civil liberties more widely than the Federal Constitution requires.[142]

Subsequently, Mazor,[143] in one of the most provocative articles on state Bills of Rights, while he points out with force that the most significant factor about civil liberties and civil rights in the states is our ignorance of the subject, nevertheless also alludes to utility and advantage in state protection of rights above and beyond federal action.

Following the suggestions of these two authors, three areas of individual rights will be briefly discussed here: 1) rights of criminal defendants to counsel, along with some comments on search and seizure; 2) first amendment rights; and 3) equality and discrimination.

Right to Counsel

The subject of counsel in criminal cases has been well plowed in legal literature. Usually those discussions point to the Sixth Amendment, *Johnson v. Zerbst,*[144] Rule 44 of the Federal Rules of Criminal Procedure and now *Gideon v. Wainwright.*[145] Few think it significant to point to Article 1, section 13 of the Indiana Constitution, or *Webb v. Baird,*[146] *Myers v. State,*[147] *Batchelor v. State,*[148] *Speight v. State,*[149] Indiana Annotated Statutes, section 2-211[150] and 9-501(3)[151] or similar authority in

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142. Paulsen, *supra* note 12, at 620-21.
143. Mazor, *supra* note 12.
144. 304 U.S. 458 (1938). Gellhorn states:
> In 1938, in the case of *Johnson v. Zerbst* the Court concluded that a defendant must either have the assistance of counsel or must understandably waive his right to such assistance. This means that a defendant who cannot afford to pay a fee may nevertheless insist that the Court appoint a lawyer to represent him. *** Progress has been less clear in most of the state courts.

GELLHORN, AMERICAN RIGHTS 21-23 (1961). *Cf.* BEANEY, RIGHT TO COUNSEL IN AMERICAN COURT (1955).
145. 372 U.S. 335 (1962).
146. 6 Ind. 13 (1854).
147. 115 Ind. 554, 18 N.E. 42 (1888).
148. 189 Ind. 69, 125 N.E. 773 (1920).
149. 239 Ind. 157, 155 N.E.2d 752 (1959).
150. IND. ANN. STAT. § 2-211 provides:
> Any poor person not having sufficient means to prosecute or defend an action may apply to the Court in which the action is intended to be brought or is

other states[152] which not only parallel but precede the federal cases.

Mazor, distinguishing constitutional authority and precedent from the mere salutory practice of appointing counsel, complains that:

> It is difficult to locate a state court decision before *Gideon* holding that provision of counsel to the indigent was constitutionally required. . . .[153]

But Kamisar's statement is more to the point when he said on the eve of *Gideon*:

> To sum up, in only a handful of jurisdictions—and even then, not in all parts of those states—does the *Betts* rule hold sway, unmitigated by more liberal practice. When we take into account not only the rules and laws "on the books" in thirty-nine states (including the Maryland and New Hampshire provisions which entitle indigents to counsel in many, although not all felony cases) but also the almost invariable practice in five other states (Delaware, Maine, Pennsylvania, Rhode Island and Vermont) the "judgment" of the states is overwhelming in favor of extending the right to counsel for indigents beyond the narrow circumstances covered by the *Betts* rule.[154]

The real significance, though, is not that almost all states provided counsel, at least at the trial stage, to indigent felony defendants prior to *Gideon*, nor that this virtual unanimity provided strong support for the Court's decision to bring the few laggard states into line. The real touchstone to the state's contribution to "the right to counsel" lies in the fact that:

> [W]hen in 1938 the Court held that the right of an accused "to have the assistance of counsel for his defense" provided by

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pending, for leave to prosecute or defend as a poor person. The Court, if satisfied that such person has not sufficient means to prosecute or defend the action, shall admit the applicant to prosecute or defend as a poor person, and shall assign him an attorney to defend or prosecute the cause, and all other officers requisite for the prosecution or defense, who shall do their duty therein without taking any fee or reward therefor from such poor person.

151. IND. ANN. STAT. § 9-3501(3) authorizes the appointment, compensation and qualifications for public defenders.

152. *E.g.*, cases cited in People v. Witenski, 15 N.Y.2d 392, 207 N.E.2d 358 (Ct. App. 1965) and AM. DIGEST, *Criminal Law* § 1500 at 2239 (century ed.), which provides: "The criminal courts of record have the power to, and should, appoint counsel for persons charged with crime who are too poor to provide counsel for themselves."

153. Mazor, *supra* note 12, at 346. He does acknowledge that counsel was provided to indigent defendants in most states long before *Gideon*.

154. Kamisar, *supra* note 38, at 20.

> the Sixth Amendment included the right of indigents to be furnished counsel, thirty states already afforded counsel as of right to all indigent felony defendants.[155]

It was the states' approach to the accuseds' rights which supplied the strongest support for the Supreme Court's rationale in *Patton v. United States,* which in turn, provided the major authority for the decision in *Johnson v. Zerbst.*[156]

Justice Black dissenting in *Betts v. Brady*[157] and Justice Douglas dissenting in *McNeal v. Culver*[158] relied heavily on the prevailing state law requiring appointment of counsel in state prosecutions. Neither Justice seemed particularly concerned that in most jurisdictions the right was secured by statute, judicial decision or practice. The fact that these statutes and many of the cases, particularly the earlier ones, do not make a fetish of the "constitutional" label in no way detracts from the clear implication that the opportunity to be represented by counsel was considered a basic ingredient of a fair trial.

The Indiana Supreme Court in 1854 briefly described its thoughts on counsel:

> It is not to be thought of, in a civilized community for a moment that any citizen put in jeopardy of life or liberty, should be debarred of counsel because he was too poor to employ such aid. No court could be respected, or respect itself, to sit and hear such a trial. The defense of the poor, in such cases, is a duty resting somewhere, which will be conceded as essential to the accused, to the court, and to the public.[159]

Sixty-five years later that court, citing Article 1, section 13 of the Indiana Constitution, set aside a conviction because:

> The judge of the court told him that he had a right to have a lawyer, but he did not ask him if he desired to have one. The court did not inquire as to what means appellant possessed by which he could employ a lawyer, and did not inform him that it was the duty of the court to appoint a lawyer to appear for him in case he possessed no means to employ one.[160]

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155. *Id.* at 16.
156. *See* notes 27-29 *supra* and accompanying text.
157. 316 U.S. 455, 477-80 (1942); *see also* Beaney, *supra* note 144, at 80-99.
158. 365 U.S. 109, 119-22 (1961).
159. Webb v. Baird, 6 Ind. 13 (1854).
160. Batchelor v. State, 189 Ind. 69, 125 N.E. 773, 776 (1920). While this was a capital case, the right has not been so restricted. Hoy v. State, 225 Ind. 428, 75 N.E.2d 915 (1947) (robbery); Petro v. State, 204 Ind. 401, 184 N.E. 710 (1931) (rape); Myers v. State, 115 Ind. 554, 18 N.E. 42 (1888). Note, *Right to Counsel in Indiana,* 26 IND. L.J. 235-48 (1950).

In an 1885 opinion, by Judge Vann in New York, the right to counsel was described as follows:

> While the territory now embraced by the State of New York was a colony of Great Britian it was part of the common law that counsel should be assigned by the court for the defense of poor persons charged with crime (4 Black Com. 355; 1 Chitty Cr. Law 407, 413). Upon the organization of our State, the common law, with certain exceptions not material to be now considered, was, by the Constitution then adopted, made a part of the law of the land (Cons. State of N.Y., art. 1, sec. 7).[161]

One of the most interesting aspects of the states' role in the counsel area stems from an incident in the *Gideon* case. Anthony Lewis, in *Gideon's Trumpet*, describes how in response to a request submitted by the Florida Attorney General asking the states to support his position that *Betts v. Brady* should be affirmed, twenty-three states not only rejected the offer, but in a separate amicus brief asked the Court to overrule the case.[162] Only two states supported the Florida position.[163] Two other states took no position on the request, for while they agreed that the Supreme Court was invading the area of state criminal procedure, these states had for some substantial period of time provided counsel for indigents.[164]

The record of the states is more equivocal on other aspects of the counsel problem. For example, the crush of states providing for the appointment of counsel in felony cases is not nearly so overwhelming in misdemeanor cases; although in some states the right of indigent misdemeanant defendants has been established.[165] In *People v. Witenski*, a decision holding that indigent misdemeanants are entitled not only to appointed counsel, but the right to be told that counsel will be appointed, the New York Court of Appeals went through an unusually detailed history to make the point that this decision reflected New York's long standing policy on providing counsel.

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161. People *ex rel.* Brown v. Bd. of Supervisors, 3 How. Prac. (N.Y.) 1, (Sup. Ct. 1885).

162. LEWIS, GIDEON'S TRUMPET 38-160 (1966).

163. *Id.*

164. *Id.* at 145.

165. *E.g.*, Speight v. State, 239 Ind. 157, 155 N.E.2d 752 (1959); Bolkovac v. State, 229 Ind. 294, 98 N.E.2d 250 (1951); People v. Witenski, 15 N.Y.2d 392, 207 N.E.2d 358 (Ct. App. 1965); PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE; TASK FORCE REPORT, THE COURTS 53 n.113 (1967); ABA REPORT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, PROVIDING DEFENSE SERVICES 38 (tent. draft 1967).

> In our discussions of New York statutes and of modern constitutional constructions by the United States Supreme Court we must not forget that in our State the right to counsel was announced and insisted upon in much older case law.[166]

After citing and discussing several of these "ancients," the court concludes that "the later-enacted statutes are mere codifications of the common law and constitutional principles. . . ."[167] The court concludes that there were no indications (in fact the contrary seems to be true) that this fundamental policy on counsel was intended to be limited to major crimes or prosecution by indictment.

The court of appeals was most unjustly rewarded for its painstaking history and detail when its efforts were subsequently described as: "The Court, citing *Gideon*, ruled that defendants should have been informed, etc."[168]

In regard to right to counsel, pre and post trial and in probation revocation or parole hearings, the record of the states is indeed spotty and unimpressive.[169] Although New York courts had developed right to counsel prior to trial up to one step short[170] of *Miranda v. Arizona*,[171] other states, even when they recognized a right to counsel upon arrest, had not made the same progress.[172] Nevertheless, the states are still moving to a more amplified right of counsel. For example, Indiana in 1967 statutorily granted the right to counsel in probation revocation proceedings,[173] and in 1968 New York, by judicial decision, granted the right in parole revocation proceedings.[174] This spotty record, however, does not compare unfavorably with the state of the law in federal courts.[175]

The application of the exlusionary rule to unreasonable search and seizure represents a contrasting history to the problem of counsel. For all practical purposes, *Weeks v. United States*[176] was the first decision of

166. People v. Witenski, 15 N.Y.S.2d 392, 394, 207 N.E.2d 358, 367 (Ct. App. 1965).
167. *Id.*
168. 7 N.Y. TEMPORARY STATE COMMISSION ON THE CONSTITUTIONAL CONVENTION, INDIVIDUAL LIBERTIES 166 (1967).
169. *Symposium—Right to Counsel*, 45 MINN. L. REV. 693-896 (1961); Beaney, *supra* note 144; ABA PROJECTS, *supra* note 165; Note, *Right to Counsel in Indiana*, *supra* note 160; Note, *Indigent's Right to Counsel on Appeal*, 11 W. RES. L. REV. 649 (1960).
170. *Compare*, People v. Sanchez, 15 N.Y.2d 387, 207 N.E.2d 356 (1965) (and cases cited therein) *with* People v. Gunner, 15 N.Y.2d 226, 205 N.E.2d 852 (1965).
171. 384 U.S. 436 (1966).
172. *Compare*, Suter v. State, 227 Ind. 648, 88 N.E.2d 386 (1949) *with* Marshall v. State, 227 Ind. 1, 83 N.E.2d 763 (1948).
173. IND. ANN. STAT. § 9-211 (Supp. 1968).
174. People *ex rel.* Coombs v. La Vallee, 29 App. Div. 2d 128, 186 N.Y.S.2d 600 (4th Dept. 1968).
175. *Symposium—Right to Counsel*, *supra* note 169.
176. 232 U.S. 383 (1914).

substantial authority in a common law country to apply the exclusionary rule to evidence obtained by an unreasonable search and seizure. Prior to *Weeks,* the leading English case, *Entick v. Carrington,*[177] provided only a collateral remedy. There was no real federal precedent for *Weeks* because two federal cases upon which *Weeks* relied, while they did exclude evidence, were based primarily on considerations of self-incrimination.[178]

To say that no state had adopted the exclusionary rule prior to *Weeks* does not in any way derogate from the states' concern for individual rights, since, except for the self-incrimination cases, there were no federal cases either. *Weeks* was a precedent shattering case; neither federal nor state courts which had followed the common law approach until then had anything else to rely on.

One might speculate on what reception *Weeks* would have had in the states without a mighty assist from Prohibition and its enforcement tactics by federal and state agents. Justice Frankfurter, in an appendix to the majority opinion in *Wolf v. Colorado*[179] listed sixteen states as having followed the holding in *Weeks* and thirty-one as having rejected it. In those sixteen following *Weeks* virtually all of the cases accepting the rule involved seizures of intoxicating liquors.[180] But that notwithstanding, sixteen states willingly interpreted their state constitutions as requiring the same result in *Weeks* without any federal compulsion to do so. A reading of the leading cases in those states indicates much the same approach to any other common law issue where one jurisdiction has evolved a novel and persuasive approach to a universal problem.

The states which followed *Weeks* did so simply because they believed that their state constitutional provisions on search and seizure and the Fourth Amendment were substantially the same and had evolved from the same common law history. Thus, these courts for the first time were confronted with a choice of two competing lines of authority: the traditional common law view which had been followed in many of the states, and the new federal view.

Flum v. State, cited by Justice Frankfurter as the leading Indiana case adopting *Weeks*, characterizes the federal rule as follows:

> Although the rule . . . has been declared by courts and a text writer to be revolutionary and against all rules of evidence theretofore pertaining to the subject, the rule . . . has since

177. 19 How. St. Tr. 1029 (1765).
178. *See* cases cited note 28 *supra.*
179. 338 U.S. 25 (1949).
180. Wyoming is not really an exception because a previous case which adopted *Weeks*, State v. Peterson, 27 Wyo. 185, 194 P. 342 (1920), was a Prohibition case.

> been followed by the United States courts and the majority of the state courts.[181]

Seventeen months before *Flum*, the Indiana Supreme Court followed *Weeks* in a most unspectacular way. That court in *Callender v. State*, without much elaboration and no history, simply stated:

> If the property was secured by search and seizure under the pretext of a search warrant, which was invalid for any reason, then the property so seized could not be used as evidence against the appellant and its admission over his objections was prejudicial error.[182]

Some states followed the federal rule out of reluctance to oppose decisions "of a tribunal whose decisions are entitled to such consideration as those of the Supreme Court of our land."[183] But most of the states went into reasonably detailed discussions of the two competing rules. Some followed the federal rule because it was new and seemed to be finding acceptance in the states.[184] Others went further and explored the competing policies behind the two rules. The Supreme Court of Oklahoma viewed the implications of the common law rule as

> not good law, nor even good morals, and is a practice not calculated to inspire that respect for courts and court procedure which rightfully appertains to them. If the doctrine that the end justifies the means can be defended in any case, as in ward politics, shady business transactions, or summary punishments inflicted by self-constituted guardians of the conduct and morals of others, it certainly should not be extended to apply to courts and agents of the courts, whose primary function is to enforce impartially all the laws without condoning or encouraging the violation of any.[185]

It viewed the federal rule as

> not based alone on the Constitutional right of an accused to be immune from being forced to testify against himself in a criminal case. It rests in part on the principle that the courts and their agencies shall not actively participate in procuring evidence illegally, and by a rule of evidence make nugatory the rights conferred by the Constitution.[186]

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181. 193 Ind. 585, 141 N.E. 353, 355 (1923).
182. 193 Ind. 91, 138 N.E. 817, 818 (1923).
183. State v. Gooder, 57 S.D. 619, 234 N.W. 610, 612 (1930).
184. Youman v. Commonwealth, 189 Ky. 152, 224 S.W. 860 (1920).
185. Gore v. State, 24 Okla. Crim. 394, 218 P. 545, 547 (1923).
186. *Id.* at 550.

A few of the states recognized that they were not bound by the federal authorities but regarded those decisions as persuasive.[187] The Florida Supreme Court, for example, stated that:

> Whatever other state courts may do, the Supreme Court of Florida will guard and protect the constitutional rights, privileges and immunities of the people, as sacredly as the federal courts.[188]

It is undeniably correct that the Supreme Court has been the leader in the search and seizure area, in contrast with the history of right to counsel. Still these pre-*Mapp* federal and state cases represent more of a common law evolution than anything else. The records of some states in certain areas of criminal defendants' rights are particularly good when compared to the federal and should not be overlooked in evaluating the states. In other words the thirty states that appointed counsel prior to *Johnson v. Zerbst* and the sixteen who followed *Weeks* before *Mapp* and *Wolf* ought to be regarded as positive and impressive state achievements in protecting the rights of criminal defendants.

First Amendment Rights

Even though Paulsen specifically cites the importance of state decisions and state constitutional provisions, his analysis of state protection of First Amendment rights leads him to conclude that the efforts of the states "is disappointing."[189] State decisions, he points out, only occasionally are concerned with speech, press, assembly and religion, and even less frequently do they go beyond the requirements of the United States Supreme Court.[190] Perhaps one of the most accurate observations was made more than fifty years ago:

> Indifference is, indeed, the dominating attitude toward guarantees of individual right; there is much greater interest in cutting them down where they are inconvenient obstacles in the enforcement of popular policies . . . than in preserving them unimpaired.[191]

The one thing which can be clearly said about state decisions in the First Amendment area is that, while they may tend to support the exercise of the police power, there seems to have been unanimity only on the issue of non-unanimity.

187. Tucker v. State, 128 Miss. 211, 90 So. 845 (1922); Gore v. State, 24 Okla. Crim. 394 218 P. 545 (1923); State v. Owens, 302 Mo. 348, 259 S.W. 100 (1924).
188. Atz v. Andrews, 84 Fla. 43, 94 So. 329, 332 (1922).
189. Paulsen, *supra* note 12, at 642.
190. *Id.*
191. Freund, *supra* note 1, at 182.

A survey of the state constitutions, a reasonably comprehensive collection of state materials, reveals conflicts among the states on most issues concerning religion.[192] On the question of busing parochial students at public expense, for example, the authors find that "the state courts are divided as to the constitutionality of such practice under their state constitutions."[193] The issue of public supplying of textbooks is similarly unresolved; tuition grants to parochial schools seem tabu, but not where these are part of veterans' benefits; direct grants seem unconstitutional; released time constitutional; shared time unconstitutional in some states though not in others.[194] And so the cases continue going off in many different directions. The same might be said of the speech and assembly cases in the states.

One difficulty in reviewing the state cases is that often they have no constitutional label. For example, in 1940 the Supreme Court of Louisiana exempted Jehovah Witnesses selling the "Watchtower" from a state statute which required every "peddler" and "hawker" to pay license fees. Without fanfare or constitutional discussion that court simply stated that:

> In view of the nature of these transactions we are of the opinion that the legislature did not intend to require those engaged in disseminating the doctrines and principles of any religious sect, either by the distribution, or sale, of books or pamphlets pertaining to such, to pay a peddler's license, or to classify them as peddlers.[195]

In *Matter of Frazee,* decided in 1886, the Supreme Court of Michigan invalidated a Grand Rapids parade permit requirement because a permit could be granted or not at the "uncontrolled and arbitrary will" of the Common Council or Mayor.[196] Like *Cantwell v. Connecticut,*[197] subsequently decided by the United States Supreme Court, the Michigan court held that standards for determining the grant or denial of an application must be provided. In language more contemporary than 19th century the Court said:

> These processions for political, religious, and social demonstrations are resorted to for the express purpose of keeping up

192. ANTINEAU, CARROLL & BURKE, RELIGION UNDER THE STATE CONSTITUTIONS (1965).
193. *Id.* at 32.
194. *Id.* at 24, 29-31, 40-41, 42-45, 47-50.
195. State *ex rel.* Semansky v. Stark, 196 La. 307, 199 So. 129 (1940).
196. 63 Mich. 396, 403, 30 N.W. 72, 74 (1886).
197. 310 U.S. 296 (1940).

> unity of feeling and enthusiasm, and frequently to produce some effect on the public mind by the spectacle of unions and numbers.[198]

Yet, like many of the older cases, no reference to a constitution, state or federal, is made, nor is there any development of a theory of constitutional right, at least not in the contemporary sense.

More recent state cases (post-incorporation), however, discuss the issues in constitutional terms. But, except where there are explicit and novel provisions in their own state constitutions, they seem to prefer to rely on the United States Constitution and Supreme Court decisions. Thus in *Commonwealth v. Akmakjian,* a case which Judge Magruder declined to resolve in the federal court, reserving it instead to the state courts,[199] the Massachusetts Supreme Court struck down a municipal ordinance which inhibited Jehovah Witensses from selling the "Watchtower."[200] The state court decision was based on a previous Massachusetts case,[201] which in turn relied almost exclusively on United States Supreme Court cases, even though there were adequate state precedents available. In a more surprising approach, the California Supreme Court, in exempting from criminal prosecution Indians using peyote in ceremonial rights, relied exclusively on the First Amendment to the United States Constitution and relied almost exclusively on United States Supreme Court precedents.[202] It is true that statutes in New Mexico and Montana and a judicial decision in Arizona reached the same result, but these were mentioned only in passing. The California court was not troubled by the Supreme Court's decisions on polygamy,[203] Sunday closing,[204] vaccination,[205] child labor,[206] etc.

From a strict result-oriented view there should be no difference whether the state construes its own constitutional provision alone, or with the federal, or whether it relies solely on federal provisions and precedent. However, even from the result-oriented view there are occasional disadvantages. In nine cases, decided between *Everson* and 1964, adjudicating the constitutionality of busing, six of the seven states which

198. 63 Mich. 396, 404, 30 N.W. 72, 75 (1886).
199. Hannah v. City of Heverhill, 120 F.2d 87, *cert. denied,* 314 U.S. 641 (1941); discussed in FREUND, ON LAW AND JUSTICE 237 (1968).
200. 316 Mass. 97, 55 N.E.2d 6 (1944).
201. Commonwealth v. Richardson, 313 Mass. 632, 48 N.E.2d 678 (1963).
202. People v. Woody, 61 Cal. App. 2d 716, 394 P.2d 813 (1964).
203. Reynolds v. United States, 98 U.S. 145 (1878). *But see* Justice Murphy's dissenting opinion in Cleveland v. United States, 329 U.S. 14, 25 (1946), which indicates that the Court's view of "free exercise" is in some respects unduly limited.
204. Braunfield v. Braun, 366 U.S. 599 (1961). Justices Brennan and Stewart, in dissenting opinions, point out the limited view which the Court has of "free exercises." *Id.* at 611 and 616 respectively.
205. Jacobson v. Massachusetts, 197 U.S. 11 (1904).
206. Prince v. Massachusetts, 371 U.S. 158 (1943).

ruled against busing had strong state constitutional provisions barring state money for sectarian use.[207] The seventh state had a weaker provision yet one which was still stronger and clearer against such financial assistance than the two states which held that busing was not unconstitutional.[208] Recently, however, the New York Court of Appeals, with admittedly more restrictive state constitutional provisions than are contained in the First Amendment, reversed its previous rejection of the "child benefit" theory and "amended" the New York Constitution to bring it into line with the Federal Constitution and Supreme Court authorities.[209] This decision might reveal the beginning of a reversal of a trend in which stricter state constitional provisions and cases will be abandoned in favor of more permissive federal precedents.[210]

One of the advantages of citing both the state and federal constitutions is that it leaves state judges some room to maneuver if subsequent Supreme Court decisions fall short of their predicted mark. The Supreme Court dismissed a writ of certiorari as improvidently granted in a case challenging the denial of the use of a public school building to hold a meeting where the building had been so used by other organizations in the past.[211] The writ was dismissed because "petitioner has failed to allege in his pleading . . . that other organizations of a similar character . . . have been allowed to use the Yonkers schools."[212] Compare that decision with Justice Traynor's majority opinion in *Danskin v. San Diego Unified School District,* in which a similar complaint resulted in striking down a section of a California law which excluded groups advocating the overthrow of the United States by force and

207. Board of Educ. v. Antone, 384 P.2d 911 (Okla. 1963) (no public money for church); Reynolds v. Nusbaum, 17 Wis. 2d 148, 115 N.W.2d 761 (1962) (no money for religious societies); Matthews v. Quinton, 362 P.2d 932 (Alaska 1961) (no money for sectarian schools); McVey v. Hawkins, 364 Mo. 44, 258 S.W.2d 927 (1953) (money only for free schools); Zellers v. Huff, 55 N.M. 501, 236 P.2d 949 (1951) (no school funds for sectarian schools); Visser v. Noosack Valley School Dist., 33 Wash. 2d 699, 207 P.2d 198 (1949) (no money shall be appropriated for religious instruction). *See also* La Noue, *The Child Benefit Theory Revisited,* 13 J. PUB. LAW 76, 81-87 (1964).

208. Silver Lake School Dist. v. Parker, 238 Iowa 984, 29 N.W.2d 214 (1947) (case held no compulsion to pay taxes for place of worship. This case, while striking down the provision for busing, did so on non-constitutional grounds). Two cases with the weakest provisions upheld busing. Snyder v. Town of Newtown, 147 Conn. 374, 161 A.2d 770 (1961) (no person required to support any church); Squires v. City of Augusta, 151 Me. 151, 153 A.2d 80 (1959) (no preference of one sect over another).

209. Board of Educ. v. Allen, 20 N.Y.2d 109, 228 N.E.2d 791 (1967); *see* notes 41-49 *supra* and accompanying text.

210. *E.g.,* in 1967, Wisconsin, whose courts strictly construed the state's more restrictive provisions [*see* Reynolds v. Nusbaum, 17 Wis. 2d 148, 115 N.W.2d 761 (1962)] amended its constitution to specifically allow busing. WISC. CONST. art. 1, § 3.

211. Ellis v. Dixon, 349 U.S. 458 (1955).

212. *Id.* at 460.

violence.[213] The state decision, however, was based exclusively on First and Fourteenth Amendment guarantees and preceded the above Supreme Court decision. While the subsequent Supreme Court decision is not, strictly speaking, inconsistent with *Danskin*, it does represent a different attitude toward the problem and would be expected to inhibit, rather than further, individual rights. Reliance by a state court on its own constitution permits it to go further than the Supreme Court, should it desire, without any embarrassment.

Equality—Discrimination

Writing in 1952, Gussman sets the stage for some brief comments on the states' role in achieving equality and outlawing discrimination. He said:

> The enforcement by federal legislation of constitutional rights of individuals is a story written largely in terms of confusion, distortion and frustration. Seldom, if ever, have the power and purposes of legislation been rendered so impotent. Indeed, this story constitutes one of the saddest chapters in the historic struggle to effectuate the American ideal of freedom and equality for all.[214]

It is in this context then that the Supreme Court's decisions such as *Brown v. Board of Education*[215] become provocative and understandably important. It explains too, in part, why, at least until recent years, there have been few federal laws against discrimination or encouraging equality. One must remember also, that it was not until *Bolling v. Sharpe*,[216] decided at the same time as *Brown*, that segregated schools in the District of Columbia were invalidated. Further, it was the United States Supreme Court which earlier had invalidated on commerce grounds a Louisiana reconstruction statute outlawing discrimination on public conveyances.[217] And, regardless of its origination, it was the Court which immortalized into devastating precedent the "separate but equal doctrine."[218]

In contrast with Congress, the states have relied almost exclusively on statutes or administrative action in combatting discrimination. Cor-

213. 28 Cal. App. 2d 536, 171 P.2d 885 (1946). *See also* A.C.L.U. v. Bd. of Ed. of Los Angeles, 55 Cal. App. 2d 167, 359 P.2d 45, *cert. denied*, 368 U.S. 819 (1961).
214. Gussman, *The Unhappy History of Civil Rights Legislation*, 50 MICH. L. REV. 1323 (1951).
215. 347 U.S. 483 (1954).
216. 347 U.S. 497 (1954).
217. Hall v. De Cuir, 95 U.S. 485 (1878).
218. Plessy v. Ferguson, 163 U.S. 537 (1896).

respondingly, there has been comparatively little litigation on the subject in the states. Some states had responded more quickly through legislation than the Court. For example, *Roberts v. City of Boston*[219] has the dubious credit of being one of the first and oft-cited enunciations of the "separate but equal doctrine." However six years after that case was decided, Senator Charles Sumner, who unsuccessfully represented the plaintiff, succeeded in getting a statute passed which prohibited public school segregation in Massachusetts.[220]

On the eve of *Brown v. Board of Education*, while Congress and the Court adhered to "separate but equal" schools, twenty-nine states had rejected that approach, seventeen by statute or case law and twelve by prior abolition or practice.[221] While this still left twenty-two jurisdictions which required or permitted it, twenty-nine states had a record better than the national government.[222]

In many states there is a substantial amount of legislation designed to prevent discrimination, sometimes setting up administrative agencies to implement the states' policies. As a matter of fact, the chief device in states on the equality issue seems to be legislation rather than case law. A study completed in 1952 found "more than 200 state laws and constutional provisions . . . which prohibit discrimination of various types on the basis of race, religion, color or national origin."[223] In view of the almost unlimited scope of legislative power which states have, compared with the delegated powers of Congress, it is understandable why there has been resort to the legislative device. A statute can be comprehensive in scope while judicial decisions, particularly in the equality area, tend to split hairs.[224] Statutes may deter violations,[225] especially if there are

219. 59 Mass. (5 Cush.) 198 (1849).

220. Leflar & Davis, *Segregation in the Public Schools*, 67 HARV. L. REV. 377, 383-84 (1953).

221. *Id.* at 378-79.

222. *Id.*

223. BERGER, EQUALITY BY STATUTE 108 (1952). *See also* MURRAY, STATES' LAWS ON RACE AND COLOR (1950) (contains the texts of state Constitutions, statutes and ordinances on discrimination).

224. *E.g.*, McGovney, *Racial Residential Segregation*, 33 CALIF. L. REV. 5, 8-11 (1945). The author describes early cases in California and Michigan which held that racial restrictive covenants against sale or lease were invalid, but as to use or occupancy were valid. *See also* Annot. 3 A.L.R.2d 466, 489-92 (1949).

225. This assertion, like any statement on the deterrent effect of law, is difficult to establish. However the following statements by Berger support it:

> Law is an effective means for reducing discrimination or overt antiminority conduct of the extremely prejudiced. We have seen that the personality studies have found such persons to be conformists of a certain kind, respective of power, scorning the weak but toadying to the strong. One of the few constants in their behavior is submission to the symbols of power. Law, when it is backed by the full panoply of the state has strong support in at least some sections of the community, is just such a symbol. Even if law did nothing but

substantial penalties attached and evidence of a willingness to enforce them. On the other hand, statutes too may be productive of hair-splitting litigation.[226] But the most serious criticism of statutes is that they may sit on the books unimplemented and unenforced. The equality area, perhaps more than any other, is subject to this criticism. Thirty years ago an article on legislative attempts to eliminate discrimination summarized the experience to that date:

> The enforcement of civil rights laws leaves much to be desired. Few members of racial and religious minorities know of the existence of civil rights laws and most of those who do are unwilling to undergo the humility of pressing their claims, especially in hostile communities. Moreover, discrimination is not easy to prove. . . . This whole situation is aggravated by the attitude of some courts limiting the application of the acts on dubious grounds. Consequently, civil rights acts are widely disregarded.[227]

Still, even with these limitations, legislative efforts continue apace. An article published early in 1966 stated that more state anti-discrimination laws were passed by the states in 1964 and 1965 than in any other biennium:

> 31 states enacted 67 new laws pertaining to discriminating practices affecting employment, education, housing, public accommodations and other areas, as compared with the previous record of 26 states adopting 49 new laws in the years 1962-63.[228]

In the same article, a summary of existing state laws revealed that twenty-nine states and the District of Columbia had fair employment laws "enforceable by administrative procedures"; seven states had laws expressly prohibiting discrimination in education; seventeen states and the District of Columbia "prohibited discrimination in a substantial portion of the

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reduce discrimination by such persons, it would be accomplishing something of value in a multi-group democracy. But there is evidence that anti-bias laws can also influence the conditions under which our attitudes are developed and maintained. * * *

While there are many laws that have little or no observable effect, a law that is incorporated into a vast regulative network tends to be obeyed.

BERGER, *supra* note 223, at 185, 187.

226. Note, *Legislative Attempts to Eliminate Racial and Religious Discrimination*, 39 COLUM. L. REV. 986, 998-99 n.73 (1939); Colley & McGhee, *The California and Washington Fair Housing Cases*, 2 LAW IN TRANS. Q. 79 (1962).

227. Note, *Legislative Attempts to Eliminate Racial and Religious Discrimination*, *supra* note 226, at 1002.

228. Robison & Flicker, *Summary of 1964 and 1965 State Anti-Discrimination Laws*, 3 LAW IN TRANS. Q. 95 (1966).

general housing market"; and thirty-five states and the District of Columbia prohibited discrimination in places of public accommodation.[229]

The wealth of legislation in the states has continued to date. The legislatures' section of the final issue of the *Race Relations Law Reporter* reveals a continuation of the trend to create state or local civil rights agencies in states and cities which had none,[230] and to extend the powers of such agencies where they have existed for some time.[231] Furthermore, some states and cities are now grappling with problems which they had avoided in the past, such as housing[232] and educational materials fairly and accurately depicting Negroes.[233] State and local agencies charged with administering anti-discrimination legislation have continued enforcement of these measures.[234]

The scope of these state statutes can be illustrated by regarding New York as an example, although it should be pointed out that New York is not typical since it has been a leader in this area. New York adopted its present constitutional equality-nondiscrimination provision in 1938.[235] Since then the Legislature has adopted a variety of measures designed to combat discrimination. The Report of the Temporary State Commission on the Constitutional Convention lists these measures as follows:

Thus the Legislature has prohibited discrimination on account of race, creed, color or national origin:

—In the enjoyment of civil rights.
—In places of public accommodation resort, or amusement.
—In employment both private and public.
—In housing accommodations (except in one or two family houses where the owner resides).
—In public housing.
—In publicly assisted housing accommodations.
—In private housing financing.
—In the sale, rental or lease of commercial space.

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229. *Id.* at 96-99.

230. 12 RACE REL. L. REP. (Winter 1967) cites the establishment of "Rights Commissions" in New Orleans, La. (*Id.* at 2203), Austin, Tex. (*Id.* at 2205) and St. Paul, Minn. (*Id.* at 2213). In 1964 Gov. Romney of Michigan described the Civil Right Commission of the State under its new Constitution:

> A bi-partisan civil rights commission, unique to any one state constitution, is established as the machinery by which the protection of laws relating to individual rights may be gained.

37 STATE GOVT. 2, 4 (1964).

231. 12 RACE REL. L. REP. 2196-2203, 2207 (Pa. and Conn. respectively).

232. *Id.* at 2219 (Elgin, Ill.), 2222 (Topeka, Kan.), 2225 (Louisville, Ky.).

233. *Id.* at 2208 (N.J.).

234. *Id.* at 2275-94. *See also* BERGER, *supra* note 223, at 109-69.

235. 10 N.Y. TEMPORARY COMMISSION ON THE CONSTITUTIONAL CONVENTION, INDIVIDUAL FREEDOMS 55 (1967).

—In the admission of applicants to educational institutions.
—In its use of facilities of educational corporations or associations which are open to the public, non-sectarian and exempt from taxation.
—In its selection of juries.
—In its examination or admission to practice of attorneys.
—In the price charged for admission to facilities open to the public.
—In the sale or delivery, of alcholic beverages.
—In the use of accommodations furnished by cemetery associations.
—By labor organizations, employers, employment agencies or joint labor-management committees controlling apprentice training programs.
—By industries involved in defense contracts.
—By public utilities.
—By contractors, subcontractors or agents or employees engaged in contracts of public works.
—By insurance companies.
—By real estate brokers, salesmen or agents or employees thereof, in the rental, sale, etc. of housing accommodations, land or commercial space.

The Legislature has also prohibited:

—Inquiries concerning the religion of persons seeking employment in the public schools.
—The wrongful refusal of admission to, or eviction from places of public entertainment and amusement.
—Discriminatory deprivation of employment provided by government funds for relief purposes.[236]

However, an overview of the problem reveals, just as in the previous areas of defendants' rights and First Amendment rights, that the record of the states is spotty and inconsistent. Some states preceded federal activity in particular areas as to both recognition of rights and their enforcement. Other states which have credible records on recognition of rights are lacking in enforcement. And finally some states have virtually no recognition or enforcement records.

If the states must be evaluated as a whole, the record is unimpressive. On the other hand, if the efforts of some states[237] in prohibiting segregated

236. *Id.* at 57-58.
237. Leflar & Davis, *supra* note 220.

schools before *Brown v. Board of Education,* of prohibiting enforcement of restrictive covenants[238] before *Shelly v. Kramer,*[239] as stepping in to fill the gap in public accommodations when the first Civil Rights Act was declared unconstitutional,[240] in prohibiting discrimination in employment or housing, and of establishing and financing administrative agencies to enforce non-discrimination laws,[241] are evaluated on their own merits, then the achievements of the states are more substantial and impressive.

RECENT STATE ACTIVITY[242]

Review of recently adopted and recently proposed state constitutions shows that at least some changes have been suggested in Bills of Rights provisions. By and large these proposed "Rights" are collections of something old, something new and something borrowed. Most recent constitutions and constitutional studies retain much of the substance, and even language, of provisions which typify almost all existing Bills of Rights. While there are some obvious efforts at streamlining, provisions on quartering of soldiers and treason against the state still appear. Terms such as "*ex post facto,*" "excessive bail" and "equal protection," which are really shorthand descriptions of formal legal concepts, are also retained.[243]

There is some borrowing from other constitutions. Typically Fourteenth Amendment "due process" and "equal protection" language is lifted.[244]

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238. *See* note 224 *supra* and accompanying text. Some of the states had invalidated restrictions over ownership.

239. 334 U.S. 1 (1948).

240. *Legislative Attempts to Eliminate Racial and Religious Discrimination, supra* note 226, at 997.

241. *See* note 234 *supra* and accompanying text.

242. The states which have recently undergone constitutional revision studies have published materials which are extremely valuable as research tools. Often these contain materials which deal almost exclusively with the state concerned; *e.g., Arkansas Constitutional Revision Study Committee,* Revising the *Arkansas Constitution* (1968); *Maryland Constitutional Convention Commission, Report of the Constitutional Convention Commission* (1967). Sometimes comparative materials are included in some degree; *e.g.,* see the series of materials published by the N.Y. Temporary State Commission on Constitutional Convention (1967), and those published by the Michigan Constitutional Conventional Commission under the title of *Michigan Constitutional Convention Studies* (1961). However, the most recent publication, *Legal Reference Bureau, Hawaii Constitutional Convention Studies; Article I, Bill of Rights* (1968), is one of the best, both in content and organization, and was relied on substantially in this part of the paper.

Other materials include, Rankin, *The Bill of Rights,* included as ch. IX of Graves, *State Constitutional Revisions* (1960) and Rankin, *State Constitution's Bill of Rights* (1960) published by the National Municipal League. *See also* 5 HARV. J. LEGIS. (March 1968).

243. *E.g.,* ALASKA CONST. art. 1, §§ 10, 20; MICH. CONST. art. 1, §§ 8, 20.

244. ALASKA CONST. art. 1, § 3; HAWAII CONST. art. 1, § 4; MICH. CONST. art. 1, § 2.

In the realm of "new" provisions, contemporary problems as in the first Bills of Rights dominate the proposals. The two most prominent involve wiretapping and discrimination. The Federal Bill of Rights, while it may have provided excellent protection of privacy in the nineteenth century seems woefully deficient, without a great deal of stretching, to cope with the technological advances and attitudinal changes of the twentieth century. Thus, in both the ill-fated New York and Maryland proposed constitutions which were defeated, Fourth Amendment-like protection was afforded to oral communications.[245] Neither state would have abolished the practices, but instead subjected them to judicial control. Yet these efforts do not by any means exhaust the subject. The collection of data in memory banks and the sex revolution pose unlimited problems in privacy. To what extent may the state prescribe, proscribe and police sexual activity between consenting adults? *Griswold v. Connecticut,*[246] while it raises the problem, offers no sure-fire solution. As a matter of fact, it is precisely the *Griswold* case which emphasizes the problem. Almost all of the Justices had a different rationale to support their point of view. Is this privacy a "penumbra" of other rights; is it, at long last, a justification for the Ninth Amendment, or does it have a constitutional basis at all? Justice Black, who has persistently articulated his incorporation theory, could not fit the facts into any one or more of the existing Bill of Rights provisions.

It is in problems like privacy that state provisions and state judges might provide reasonable approaches. This then raises for the state a question of technique. Should state constitutions include general protection for the privacy concept, or is it preferable to take specific and important problems like wiretapping and provide for them separately? Without advancing any suggestion, it is in just this kind of situation that states can be most useful. It is quite appalling to some people to think of the states as laboratories[247] in the area of individual rights. Yet general protections of privacy may be so broad as to be relegated to the "nice-sentiment" class of constitutional provisions and serve no real utility. On the other hand, specific provisions for specific problems might make for an intolerably long Bill of Rights which would undoubtedly still have significant gaps. Two states now have provisions which, instead of following the traditional search and seizure language, are much broader

245. MD. PROPOSED CONST. art. 1, § 105; N.Y. PROPOSED CONST. art. 1, § 4(b); New York has this provision in its present Constitution, art. 1, § 12.

246. 381 U.S. 479 (1965).

247. Paulsen, *supra* note 12, at 642.

privacy measures.[248] It will be interesting to compare the applications of such provisions with the ad hoc type of protection.

Discrimination is the second area reflecting new or at least newer proposals. The impact of discrimination-related problems is most apparent on the local and state levels. De facto segregation, decentralization of school control and segregated housing patterns are all pressing hard on the states and cities today. This then raises the question of whether state constitutions, when they attempt to handle the problem, ought to be only negative in effect. Is it sufficient to prohibit discrimination? Is there some state responsibility for attacking not only discrimination but the effects of discrimination? If so, should there be anything in state constitutions to reflect this responsibility and goal? Should "equality" provisions in state constitutions be self-executing? These are but a few of the questions which are raised with respect to possible state constitutional provisions on equality.[249]

The recent state constitutions are unspectacular and rather uninspiring in this regard. Most new drafts have recommended that the equal protection language of the Fourteenth Amendment be adopted.[250] Some like Alaska[251] and, more so Michigan,[252] have embellished upon that language in providing for no discrimination based on race, religion, color or national origin. The New York proposal was more comprehensive and went further than the others. Article I, section 3a of the proposed constitution provided:

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248. ARIZ. CONST. art. 2, § 8: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." *See also* WASH. CONST. art. 1, § 7 (identical provision). Compare this broadly stated protection with efforts to cope with particular problems such as wiretapping. *See* note 245 *supra* and accompanying text.

249. There are two points of view on whether a Bill of Rights should specifically include statements of "ideals." The first Bills of Rights obviously thought this proper; however, more recent trends appear to the contrary. RANKIN, THE BILL OF RIGHTS 160-61 (included in Graves, *supra* note 242). *See also* note 225 *supra* and accompanying text.

250. *E.g.*, MD. CONSTITUTIONAL CONVENTION COMMISSION, REPORT OF THE CONSTITUTIONAL CONVENTION COMMISSION 103-04 (1967).

251. No person is to be denied the enjoyment of any civil or political right because of race, color, creed, or national origin. The legislature shall implement this section.

ALASKA CONST. art. 1, § 3.

. . . nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.

HAWAII CONST. art. 1, § 4.

252. No person shall be denied equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

MICH. CONST. art. 1, § 2. *See also id.* at art. 5, §29.

> [N]o person shall because of race, color, creed, religion, national origin, age, sex or physical or mental handicap, be subjected to any discrimination in his civil rights by the states or any subdivision, agency or instrumentality thereof, or by any person, corporation, or unincorporated association public or private. The legislature shall provide that no public money shall be given or loaned to or invested with any person or entity, public or private, violating this section.

The Puerto Rican Constitution, in Article 2, section 20, enumerates certain human rights including education, the right to work, the right of an adequate standard of living, etc. This represents somewhat of a departure from precedent and it will be interesting to see if these provisions, more closely resembling language in European constitutions, will provide any significant support toward achieving the enumerated goals or whether the provision will be one of "nice sentiments" only.

The final area is the constantly recurring problem of state support for activities under sectarian sponsorship. Most of the state constitutional provisions which specifically deal with the problem are absolute in that either all assistance is prohibited or certain types of assistance is authorized. Again without invading the substantive merits of the issue, it seems that the issues might be more rationally discussed if proposals to permit assistance contained specifically enumerated policy guidelines. For example, assistance to parochial schools should not be at the expense of the public school system; parochial school support should not be a means which in either design or effect will promote racial segregation; the kinds of activity supported must be ones which the state is authorized to carry out itself, etc. Perhaps these suggestions are illusory in terms of the battle lines which have been drawn; or the suggested guidelines may be overly susceptible to abuse. It would seem, though, that if legislation is going to authorize assistance, a constitutional provision with guidelines would provide a better frame of reference.

Conclusions

1) A basic question we are facing is not how to resolve the overall problems of federalism, but whether a pluralistic, rather than a monolithic, approach to safeguarding individual rights is desirable. If a shared responsibility is indicated, the breakdown for sharing will be between national and local entities. If the megalopolis is to replace the state as the significant and powerful local govermental entity, and it is not here suggested that it should or would, then perhaps some attention ought to be given to how cities rather than states can protect rights.

Perhaps some organic document which represents the real beginning of the super-city ought to contain its own declaration of individual rights. While these declarations would have to be consistent with the federal and state constitutions, they might permit attention to be given to the details of individual rights in a peculiarly urban context. Continuing population growth coupled with reapportionment may render such an idea useless, for the cities may in fact become or control the states. Still it does represent a possibility of keeping alive the concept of cooperative federalism.[253]

2) Without reflecting on what would happen if the privilege against self-incrimination were removed from the Fifth Amendment,[254] or if the Supreme Court changed substantially both in personnel and philosophy, there are still four practical advantages to a viable state Bill of Rights. First, on some matters states can and will go further at any given time in protecting individual rights than the Supreme Court. Second, while state courts have many competing interests to reconcil when considering problems involving conflicts between the state and individuals, they do not have to feel restrained by the additional problem of federalism. There have been repeated examples of restraint by the national government where state interests are also involved. The Supreme Court, for example, not only considers what it believes to be the best legal approach to problems, but also the effect of its decisions on federal-state relations.[255]

A third ground is the ability of the states to experiment. Examples of such experimentation are not easy to find in the individual rights area. Still, there are some examples[256] and much potential, particularly in such areas as privacy. Finally, the most important consideration involves the implementation of rights. It is one thing for the Supreme Court to say that a particular practice invades individual rights, but a completely different matter for all of the local authorities involved in the practice to correct or discontinue the activity. It seems there would be a better chance of local public officials accepting or enforcing local laws and

253. MARTIN, *supra* note 5 at 35 ,37, 46.

254. *See, e.g.*, H. Res. 1400, 90th Cong., 2d Sess. (1968):

> The fifth article of amendment to the Constitution of the United States is amended by inserting immediately after "nor shall be compelled in any criminal case to be a witness against himself" the following: "except in open court."

255. *E.g.*, Wolf v. Colorado, 338 U.S. 25 (1949); Adamson v. California, 332 U.S. 46 (1947). Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 CALIF. L. REV. 929 (1965).

256. The area of privacy and the question of approaching it broadly or narrowly has previously been referred to and is one of the best examples. *See* note 248 *supra* and accompanying text. The various approaches to the non-establishment of religion is another example. *See* notes 79-88 *supra* and accompanying text.

decisions than those which emanate from Washington.

Curiously and sadly the worst indictment against some states on certain issues is not that they are indifferent to individual rights, but that they are hostile to them. There seems to be appearing today on some state levels an attitude of—let the Supreme Court concentrate on protecting individuals and we will protect society. Somehow the American Constitutional ideal that society is strengthened when due rights are accorded to the lowest man in society is dormant or disappearing rapidly on the state level. Of course, there are many reasons for this phenomenon but at least part of the problem is this feeling of preemption. At least some of the newer constitutions and proposed constitutions have not evidenced thoughts of abdication because of "incorporation"; and while changes have been modest they demonstrate that there are large gaps in the federally protected rights which will have to be filled by the states.

APPENDIX

This Appendix contains the Bills of Rights provisions of the fifty states and the Model State Constitution and uses the organization of the Federal Bill of Rights. Some state provisions have been arbitrarily excluded from the chart where they seem to involve exclusively local considerations such as elaborate provisions on boundaries or particularly detailed schemes of compensation for taking private property.

When a state has a relevant provision, it is so indicated by putting the section number of the state provision in the appropriate place. An asterisk (*) following a section number means that the state provision in some respects is less comprehensive than the federal provision or the general level of state protections, as the case may be. A double asterisk (**) means that the state has adopted a modern statement to cover the relevant rights. In some states the right to bear arms is subject to qualification either in that it specifically does not apply to concealed weapons or it gives the legislature the power to modify the right; this is indicated on the chart by "(R)" following the section number. Many states provide in their constitution for the legislative creation of exceptions to the necessity for indictment by grand jury; this is indicated on the chart by the word "information" immediately above the section number.

Following the chart there is a collection of miscellaneous state provisions which are in force only in some states.

Some of the state provisions, particularly those dealing with religion or due process, are very old and require some interpretation. The placement of these provisions in various chart sections, therefore, may be subject to question.

STATE BILLS OF RIGHTS PROVISIONS

	AMENDMENT I		Additional State Provisions on Religion
	RELIGION		
	No establishment	Free-exercise of	No expenditure of funds for religious purposes
ALABAMA (Art. I)	§3	§3	§3*
ALASKA (Art. I)	§4	§4	
ARIZONA (Art. II)	§12*	§12*	§12
ARKANSAS (Art. II)	§24	§24	
CALIFORNIA (Art. I)	§4	§4	
COLORADO (Art. II)	§4	§4	
CONNECTICUT (Art. I)		§3	
DELAWARE (Art. I)	§1	§1	
FLORIDA	§6	§5	§6
GEORGIA (Art. I)		§2-112	§2-114
HAWAII (Art. I)	§3	§3	§3 & Art. IV §6
IDAHO (Art. I)	§4	§4	
ILLINOIS (Art. II)	§3	§3	
INDIANA (Art. I)	§4	§§2, 3, 4	§6
IOWA (Art. I)	§3	§3	§3*
KANSAS	§7	§7	
KENTUCKY	§5	§§1, 5	§5*
LOUISIANA (Art. I)	§4	§4	Art. IV, §8
MAINE (Art. I)	§3	§3	
MARYLAND		Art. 36	Art. 36
MASSACHUSETTS (Sec. 2)	Art. 11	Art. 2	
MICHIGAN (Art. I)		§4	§4
MINNESOTA (Art. I)	§16	§16	§16
MISSISSIPPI (Art. 3)	§18	§18	
MISSOURI (Art. I)	§§6, 7	§5	§7
MONTANA (Art. III)	§4	§4	Art. XI, §8
NEBRASKA (Art. I)	§4	§4	
NEVADA (Art. I)	§4	§4	
NEW HAMPSHIRE (Part First)	Art. 6*	Art. 5	
NEW JERSEY (Art. I)	§4	§3	§3
NEW MEXICO (Art. II)	§11	§11	
NEW YORK (Art. I)		§3	
NORTH CAROLINA (Art. I)		§26	
NORTH DAKOTA (Art. I)		§4	
OHIO (Art. I)	§7	§7	
OKLAHOMA (Art. II)		Art. I, §2	§5
OREGON (Art. I)		§§2, 3	§5
PENNSYLVANIA (Art. I)	§3	§3	
RHODE ISLAND (Art. I)		§3	
SOUTH CAROLINA (Art. I)	§4	§4	
SOUTH DAKOTA (Art. VI)	§3	§3	§3
TENNESSEE (Art. I)	§3	§3	
TEXAS (Art. I)	§6	§6	§7
UTAH (Art. I)	§4	§§1, 4	§4
VERMONT (Ch. I)		Art. 3	
VIRGINIA (Art. I)		§16	§58*
WASHINGTON (Art. I)	§11	§11	§11
WEST VIRGINIA (Art. III)	§15	§15	§15
WISCONSIN (Art. I)	§18	§18	§18*
WYOMING (Art. I)	§18	§18	§19
MODEL STATE CONSTITUTION	§1.01	§1.01	

STATE BILLS OF RIGHTS PROVISIONS

	AMENDMENT I—Religion (Con't) Additional State Provisions on Religion		
	No religious test for public office	No religious test for employment	No religious test for witness
ALABAMA (Art. I)	§3		
ALASKA (Art. I)			
ARIZONA (Art. II)	§12	§12	§12
ARKANSAS (Art. II)	§26*		§26
CALIFORNIA (Art. I)		§4	§4
COLORADO (Art. II)			
CONNECTICUT (Art. I)			
DELAWARE (Art. I)	§2		
FLORIDA			§5
GEORGIA (Art. I)	§2-113		
HAWAII (Art. I)			
IDAHO (Art. I)			
ILLINOIS (Art. II)			
INDIANA (Art. I)	§5		§7
IOWA (Art. I)	§4		§4
KANSAS	§7		§7
KENTUCKY			
LOUISIANA (Art. I)			
MAINE (Art. I)	§3		
MARYLAND	Art. 37*		Art. 36
MASSACHUSETTS (Sec. 2)			
MICHIGAN (Art. I)			§18
MINNESOTA (Art. I)	§17		§17
MISSISSIPPI (Art. 3)	§18		
MISSOURI (Art. I)	§5		§5
MONTANA (Art. III)			
NEBRASKA (Art. I)	§4		§4
NEVADA (Art. I)			§4
NEW HAMPSHIRE (Part First)			
NEW JERSEY (Art. I)	§4		
NEW MEXICO (Art. II)			
NEW YORK (Art. I)		§3	
NORTH CAROLINA (Art. I)			
NORTH DAKOTA (Art. I)			§4
OHIO (Art. I)	§7		§7
OKLAHOMA (Art. II)			
OREGON (Art. I)	§4		§6
PENNSYLVANIA (Art. I)	§4*		
RHODE ISLAND (Art. I)	§3		
SOUTH CAROLINA (Art. I)			
SOUTH DAKOTA (Art. VI)			
TENNESSEE (Art. I)	§4		
TEXAS (Art. I)	§4*		§5
UTAH (Art. I)	§4		§4
VERMONT (Ch. I)			
VIRGINIA (Art. I)	§58	§58	
WASHINGTON (Art. I)	§11	§11	§11
WEST VIRGINIA (Art. III)	§15	§15	
WISCONSIN (Art. I)	§19		§19
WYOMING (Art. I)	§18		§18
MODEL STATE CONSTITUTION			

STATE BILLS OF RIGHTS PROVISIONS

	AMENDMENT I—Religion (Con't) Additional State Provisions on Religion		
	No religious test for juror	No denial of civil or political rights	Oath or affirmation permitted
ALABAMA (Art. I)		§3	
ALASKA (Art. I)			
ARIZONA (Art. II)	§12		§7
ARKANSAS (Art. II)		§26*	
CALIFORNIA (Art. I)			
COLORADO (Art. II)		§4	
CONNECTICUT (Art. I)			
DELAWARE (Art. I)			
FLORIDA			
GEORGIA (Art. I)			
HAWAII (Art. I)			
IDAHO (Art. I)		§4	
ILLINOIS (Art. II)		§3	
INDIANA (Art. I)			§8
IOWA (Art. I)			
KANSAS		§7	
KENTUCKY		§5	
LOUISIANA (Art. I)			
MAINE (Art. I)			
MARYLAND	Art. 36		
MASSACHUSETTS (Sec. 2)			
MICHIGAN (Art. I)		§4	
MINNESOTA (Art. I)			
MISSISSIPPI (Art. 3)			
MISSOURI (Art. I)	§6		
MONTANA (Art. III)		§4	
NEBRASKA (Art. I)			
NEVADA (Art. I)			
NEW HAMPSHIRE (Part First)			
NEW JERSEY (Art. I)		§5*	
NEW MEXICO (Art. II)		§11	
NEW YORK (Art. I)		§11	
NORTH CAROLINA (Art. I)			
NORTH DAKOTA (Art. I)			
OHIO (Art. I)			
OKLAHOMA (Art. II)		Art. I, §2	
OREGON (Art. I)	§6		§§7, 11
PENNSYLVANIA (Art. I)			
RHODE ISLAND (Art. I)		§3	
SOUTH CAROLINA (Art. I)			
SOUTH DAKOTA (Art. VI)		§3	
TENNESSEE (Art. I)	§6		
TEXAS (Art. I)			§5
UTAH (Art. I)	§4		
VERMONT (Ch. I)		Art. 3*	
VIRGINIA (Art. I)		§58*	
WASHINGTON (Art. I)	§11		§6
WEST VIRGINIA (Art. III)	§11	§§11, 15	
WISCONSIN (Art. I)			
WYOMING (Art. I)	§18		
MODEL STATE CONSTITUTION		§1.02	

STATE BILLS OF RIGHTS PROVISIONS

	AMENDMENT I	Additional State Provision	
	Freedom of speech and press	Responsibility for abuse of speech and press	Right to assemble
ALABAMA (Art. I)	§4	§4	§25
ALASKA (Art. I)	§5	§5	§6
ARIZONA (Art. II)	§6	§6	§5
ARKANSAS (Art. II)	§6	§6	§4
CALIFORNIA (Art. I)	§9	§9	§10
COLORADO (Art. II)	§10	§10	§24
CONNECTICUT (Art. I)	§§4, 5	§4	§14
DELAWARE (Art. I)	§5 press only	§5	§16
FLORIDA	§13	§13	§15
GEORGIA (Art. I)	§2-115	§2-115	§2-124
HAWAII (Art. I)	§3		§3
IDAHO (Art. I)	§9	§9	§10
ILLINOIS (Art. II)	§4	§4	§17
INDIANA (Art. I)	§9	§9	§31
IOWA (Art. I)	§7	§7	§20
KANSAS	§11	§11	§3
KENTUCKY	§§1, 8	§8	§1
LOUISIANA (Art. I)	§3	§3	§5
MAINE (Art. I)	§4	§4	§15
MARYLAND	Arts. 10 & 40	Ar. 40	
MASSACHUSETTS (Sec. 2)	Art. 16		Art. 19
MICHIGAN (Art. I)	§5	§5	§3
MINNESOTA (Art. I)	§3	§3	
MISSISSIPPI (Art. 3)	§13		§11
MISSOURI (Art. I)	§8	§8	§9
MONTANA (Art. III)	§10	§10	§26
NEBRASKA (Art. I)	§5	§5	§19
NEVADA (Art. I)	§9	§9	§10
NEW HAMPSHIRE (Part First)	Art. 22 press only		Art. 32
NEW JERSEY (Art. I)	§6	§5	§18
NEW MEXICO (Art. II)	§17	§17	
NEW YORK (Art. I)	§8	§8	§9
NORTH CAROLINA (Art. I)	§20 press only	§20	§25
NORTH DAKOTA (Art. I)	§9	§9	§10
OHIO (Art. I)	§11	§11	§3
OKLAHOMA (Art. II)	§22	§22	§3
OREGON (Art. I)	§8	§8	§26
PENNSYLVANIA (Art. I)	§7	§7	§20
RHODE ISLAND (Art. I)	§20 press only	§20	§21
SOUTH CAROLINA (Art. I)	§4		§4
SOUTH DAKOTA (Art. VI)	§5	§5	§4
TENNESSEE (Art. I)	§19	§19	§23
TEXAS (Art. I)	§8	§8	§27
UTAH (Art. I)	§§1, 15	§1	§1
VERMONT (Ch. I)	Art. 13		Art. 20
VIRGINIA (Art. I)	§12	§12	
WASHINGTON (Art. I)	§5	§5	§4
WEST VIRGINIA (Art. III)	§7*		§16
WISCONSIN (Art. I)	§3	§3	§4
WYOMING (Art. I)	§20	§20	§21
MODEL STATE CONSTITUTION	§1.01		§1.01

STATE BILLS OF RIGHTS PROVISIONS

	Add'l State Provision		
	AMENDMENT I	AMEND. II	AMEND. III
	Right to Petition	Right to bear arms	No quartering
ALABAMA (Art. I)	§25	§26	§28
ALASKA (Art. I)	§6	§19	§20
ARIZONA (Art. II)	§5	§26	§27
ARKANSAS (Art. II)	§4	§5	§27
CALIFORNIA (Art. I)	§10		§12
COLORADO (Art. II)	§24	§13	§22
CONNECTICUT (Art. I)	§14	§15	§17
DELAWARE (Art. I)	§16		§18
FLORIDA	§15	§20 (R)	
GEORGIA (Art. I)	§2-124	§2-122 (R)	§2-119
HAWAII (Art. I)	§3	§15	§16
IDAHO (Art. I)	§10	§11 (R)	
ILLINOIS (Art. II)	§17		§16
INDIANA (Art. I)	§31	§32.	§34
IOWA (Art. I)	§20		§15
KANSAS	§3	§4	§4
KENTUCKY	§1	§1 (R)	§22
LOUISIANA (Art. I)	§5	§8 (R)	Art. 19, §7
MAINE (Art. I)	§15	§16	§18
MARYLAND	Art. 13		Art. 31
MASSACHUSETTS (Sec. 2)	Art. 19	Art. 17	Art. 27
MICHIGAN (Art. I)	§3	§6	§8
MINNESOTA (Art. I)			
MISSISSIPPI (Art. 3)	§11	§12 (R)	
MISSOURI (Art. I)	§9	§23 (R)	§24
MONTANA (Art. III)	§26	§13 (R)	§22
NEBRASKA (Art. I)	§19		§18
NEVADA (Art. I)	§10		§12
NEW HAMPSHIRE (Part First)	Art. 32		Art. 27
NEW JERSEY (Art. I)	§18		§16
NEW MEXICO (Art. II)		§6 (R)	§9
NEW YORK (Art. I)	§9		
NORTH CAROLINA (Art. I)	§25*	§24 (R)	§36
NORTH DAKOTA (Art. I)	§10		§12
OHIO (Art. I)	§3	§4	§13
OKLAHOMA (Art. II)	§3	§26 (R)	§14
OREGON (Art. I)	§26	§27	§28
PENNSYLVANIA (Art. I)	§20	§21	§23
RHODE ISLAND (Art. I)	§21	§22	§19
SOUTH CAROLINA (Art. I)	§4	§26	§26
SOUTH DAKOTA (Art. VI)	§4	§24	§16
TENNESSEE (Art. I)	§23	§26 (R)	§27
TEXAS (Art. I)	§27	§23 (R)	§25
UTAH (Art. I)	§1	§6 (R)	§20
VERMONT (Ch. I)	Art. 20	Art. 16	
VIRGINIA (Art. I)			
WASHINGTON (Art. I)	§4	§24 (R)	§31
WEST VIRGINIA (Art. III)	§16		§12
WISCONSIN (Art. I)	§4		
WYOMING (Art. I)	§21	§24	§25
MODEL STATE CONSTITUTION	§1.01		

STATE BILLS OF RIGHTS PROVISIONS

	AMENDMENT III (Continued)		AMENDMENT IV
	Additional State Provision on Military		
	Military subordinate to civil power	No standing army in peacetime	No unreasonable search and seizure
ALABAMA (Art. I)	§27	§26	§5
ALASKA (Art. I)	§20		§14
ARIZONA (Art. II)	§20	§27	Privacy §8**
ARKANSAS (Art. II)	§27	§27	§15
CALIFORNIA (Art. I)	§12	§12	§19
COLORADO (Art. II)	§22		§7
CONNECTICUT (Art. I)	§16		§7
DELAWARE (Art. I)	§17	§17	§6
FLORIDA	§21		§22
GEORGIA (Art. I)	§2-119		§2-116
HAWAII (Art. I)	§14		§5
IDAHO (Art. I)	§12		§17
ILLINOIS (Art. II)	§15		§6
INDIANA (Art. I)	§33		§11
IOWA (Art. I)	§14	§14	§8
KANSAS	§4	§4	§15
KENTUCKY	§22	§22	§10
LOUISIANA (Art. I)	§14		§7
MAINE (Art. I)	§17	§17	§5
MARYLAND	Art. 30	Art. 29	Art. 26*
MASSACHUSETTS (Sec. 2)	Art. 17	Art. 17	Art. 14
MICHIGAN (Art. I)	§7		§11
MINNESOTA (Art. I)	§14	§14	§10
MISSISSIPPI (Art. 3)	§9		§23
MISSOURI (Art. I)	§24		§15
MONTANA (Art. III)	§22		§7
NEBRASKA (Art. I)	§17		§7
NEVADA (Art. I)	§11	§11	§18
NEW HAMPSHIRE (Part First)	Art. 26		Art. 19
NEW JERSEY (Art. I)	§15		§7
NEW MEXICO (Art. II)	§9		§10
NEW YORK (Art. I)			§12
NORTH CAROLINA (Art. I)	§24	§24	
NORTH DAKOTA (Art. I)	§12	§12	§18
OHIO (Art. I)	§4	§4	§14
OKLAHOMA (Art. II)	§14		§30
OREGON (Art. I)	§27		§9
PENNSYLVANIA (Art. I)	§22	§22	§8
RHODE ISLAND (Art. I)	§18		§6
SOUTH CAROLINA (Art. I)	§26	§26	§16
SOUTH DAKOTA (Art. VI)	§16		§11
TENNESSEE (Art. I)	§24	§24	§7
TEXAS (Art. I)	§24		§9
UTAH (Art. I)	§20		§14
VERMONT (Ch. I)	Art. 16	Art. 16	Art. 11
VIRGINIA (Art. I)	§13	§13	
WASHINGTON (Art. I)	§18	§31	Privacy §7**
WEST VIRGINIA (Art. III)	§12	§12	§6
WISCONSIN (Art. I)	§20		§11
WYOMING (Art. I)	§25		§4
MODEL STATE CONSTITUTION			§1.03(a)

STATE BILLS OF RIGHTS PROVISIONS

	AMEND. IV (Con't)	AMENDMENT V	
	Particulars for warrant	Presentment or indictment by Grand Jury	Double Jeopardy
ALABAMA (Art. I)	§5	§8	§9
ALASKA (Art. I)	§14	§8	§9
ARIZONA (Art. II)	**	Information §30	§10
ARKANSAS (Art. II)	§15	§8	§8
CALIFORNIA (Art. I)	§19	Information §8	§13
COLORADO (Art. II)	§7	§8*	§18
CONNECTICUT (Art. I)	§7	§8	
DELAWARE (Art. I)	§6	§8	§8
FLORIDA	§22	Information §10	§12
GEORGIA (Art. I)	§2-116		§2-108
HAWAII (Art. I)	§5	§8	§8
IDAHO (Art. I)	§17	Information §8	§13
ILLINOIS (Art. II)	§6	§8*	§10
INDIANA (Art. I)	§11		§15
IOWA (Art. I)	§8	§11	§12
KANSAS	§15		§10
KENTUCKY	§10	§12	§13
LOUISIANA (Art. I)	§7	Information §9	§9
MAINE (Art. I)	§5	§7	§8
MARYLAND	Art. 26*		
MASSACHUSETTS (Sec. 2)	Art. 14		
MICHIGAN (Art. I)	§11*		§15
MINNESOTA (Art. I)	§10		§7
MISSISSIPPI (Art. 3)	§23	§27*	§22
MISSOURI (Art. I)	§15	Information §17	§19
MONTANA (Art. III)	§7	Information §8	§18
NEBRASKA (Art. I)	§7	§10*	§12
NEVADA (Art. I)	§18	Information §8	§8
NEW HAMPSHIRE (Part First)	Art. 19		Art. 16
NEW JERSEY (Art. I)	§7	§8	§11
NEW MEXICO (Art. II)	§10	Information §14	§15
NEW YORK (Art. I)	§12	§6*	§6
NORTH CAROLINA (Art. I)	§15*	§12*	
NORTH DAKOTA (Art. I)	§18	§8*	§13
OHIO (Art. I)	§14	§10*	§10
OKLAHOMA (Art. II)	§30	Information §17	§21
OREGON (Art. I)	§9		§12
PENNSYLVANIA (Art. I)	§8	§10	§10
RHODE ISLAND (Art. I)	§6	§7	§7
SOUTH CAROLINA (Art. I)	§16	§17	§17
SOUTH DAKOTA (Art. VI)	§11	Information §10	§9
TENNESSEE (Art. I)	§7*	§14	§10
TEXAS (Art. I)	§9	§10	§14
UTAH (Art. I)	§14	Information §13	§12
VERMONT (Ch. I)	Art. 11		
VIRGINIA (Art. I)	§10*		§8
WASHINGTON (Art. I)	**	Information §25	§9
WEST VIRGINIA (Art. III)	§6	§4	§5
WISCONSIN (Art. I)	§11		§8
WYOMING (Art. I)	§4	§13*	§11
MODEL STATE CONSTITUTION	§1.03(a)		§1.06(c)

STATE BILLS OF RIGHTS PROVISIONS

AMENDMENT V (Continued)

	Self-Incrimination	Due Process	Compensation for taking property
ALABAMA (Art. I)	§6	§6	§23
ALASKA (Art. I)	§9	§7	§18
ARIZONA (Art. II)	§10	§4	§17
ARKANSAS (Art. II)	§8	§8	§§22, 23
CALIFORNIA (Art. I)	§13	§13	§§14, 14½
COLORADO (Art. II)	§18	§25	§§14, 15
CONNECTICUT (Art. I)	§8	§8	§11
DELAWARE (Art. I)	§7	§7	§8
FLORIDA	§12	§12	§12
GEORGIA (Art. I)	§2-106	§2-103	§2-301
HAWAII (Art. I)	§8	§4	§18
IDAHO (Art. I)	§13	§13	§14
ILLINOIS (Art. II)	§10	§2	§13
INDIANA (Art. I)	§15		§21
IOWA (Art. I)		§9	§18
KANSAS	§10		
KENTUCKY	§11	§14	§13
LOUISIANA (Art. I)	§11	§2	§2
MAINE (Art. I)	§6	§6-A	§21
MARYLAND	Art. 22	Art. 23	
MASSACHUSETTS (Sec. 2)	Art. 12		Art. 10
MICHIGAN (Art. I)	§17	§17	
MINNESOTA (Art. I)	§7	§7	§13
MISSISSIPPI (Art. 3)	§26	§14	§17
MISSOURI (Art. I)	§19	§10	§26
MONTANA (Art. III)	§18	§27	§§14, 15
NEBRASKA (Art. I)	§12	§3	§21
NEVADA (Art. I)	§8	§8	§8
NEW HAMPSHIRE (Part First)	Art. 15	Art. 15	
NEW JERSEY (Art. I)			§20
NEW MEXICO (Art. II)	§15	§18	§20
NEW YORK (Art. I)	§6	§6	§§7A, C, D
NORTH CAROLINA (Art. I)	§11	§17	
NORTH DAKOTA (Art. I)	§13	§13	§14
OHIO (Art. I)	§10		§19
OKLAHOMA (Art. II)	§21	§7	§§23, 24
OREGON (Art. I)	§12		§18
PENNSYLVANIA (Art. I)	§9	§9	§10
RHODE ISLAND (Art. I)	§13	§10	§16
SOUTH CAROLINA (Art. I)	§17	§5	§17
SOUTH DAKOTA (Art. VI)	§9	§2	§13
TENNESSEE (Art. I)	§9	§8	§21
TEXAS (Art. I)	§10	§19	§17
UTAH (Art. I)	§12	§7	§22
VERMONT (Ch. I)	Art. 10	Art. 10*	Art. 2
VIRGINIA (Art. I)	§8	§§8, 11	§58
WASHINGTON (Art. I)	§9	§3	§16
WEST VIRGINIA (Art. III)	§5	§10	§9
WISCONSIN (Art. I)	§8	§8	§13
WYOMING (Art. I)	§11	§6	§§32, 33
MODEL STATE CONSTITUTION	§1.04	§1.02	

STATE BILLS OF RIGHTS PROVISIONS

	AMENDMENT VI—In all criminal prosecutions		
	Speedy and public trial	Impartial jury	Trial in district where crime committed
ALABAMA (Art. I)	§6	§6	§6
ALASKA (Art. I)	§11	§11	
ARIZONA (Art. II)	§24	§24	§24
ARKANSAS (Art. II)	§10	§10	§10
CALIFORNIA (Art. I)	§13		
COLORADO (Art. II)	§16	§16	§16
CONNECTICUT (Art. I)	§8		
DELAWARE (Art. I)	§7	§7	
FLORIDA	§11	§11	§11
GEORGIA (Art. I)	§2-105	Law & Fact §2-205	
HAWAII (Art. I)	§11	§11	§11
IDAHO (Art. I)	§13		
ILLINOIS (Art. II)	§9	§9	§9
INDIANA (Art. I)	§13	§13	§13
IOWA (Art. I)	§10	§10	
KANSAS	§10	§10	§10
KENTUCKY	§11	§11	§11
LOUISIANA (Art. I)	§9	§10	§9
MAINE (Art. I)	§6	§6	
MARYLAND	Art. 21*	Art. 21	Art. 20
MASSACHUSETTS (Sec. 2)		Art. 12*	Art. 13
MICHIGAN (Art. I)	§20	§20	
MINNESOTA (Art. I)	§6	§6	§6
MISSISSIPPI (Art. 3)	§26*	§26	§26
MISSOURI (Art. I)	§18A	§18A	§18A
MONTANA (Art. III)	§16	§16	§16
NEBRASKA (Art. I)	§11	§11	§11
NEVADA (Art. I)			
NEW HAMPSHIRE (Part First)			Art. 17
NEW JERSEY (Art. I)	§10	§10	
NEW MEXICO (Art. II)	§14	§14	§14
NEW YORK (Art. I)			
NORTH CAROLINA (Art. I)		§13*	
NORTH DAKOTA (Art. I)	§13		
OHIO (Art. I)	§10	§10	§10
OKLAHOMA (Art. II)	§20	§20	§20
OREGON (Art. I)	§11	§11	§11
PENNSYLVANIA (Art. I)	§9	§9	§9
RHODE ISLAND (Art. I)	§10	§10	
SOUTH CAROLINA (Art. I)	§18	§18	
SOUTH DAKOTA (Art. VI)	§7	§7	§7
TENNESSEE (Art. I)	§9	§9	§9
TEXAS (Art. I)	§10	§10	
UTAH (Art. I)	§12	§12	§12
VERMONT (Ch. I)	Art. 10	Art. 10	Art. 10
VIRGINIA (Art. I)	§8*	§8	§8
WASHINGTON (Art. I)	§22	§22	§22
WEST VIRGINIA (Art. III)	§14*	§14*	§14
WISCONSIN (Art. I)	§7	§7	§7
WYOMING (Art. I)	§10*	§10	§10
MODEL STATE CONSTITUTION	§1.06(a)	§1.06(a)*	§1.06(a)

STATE BILLS OF RIGHTS PROVISIONS

	AMENDMENT VI—In all criminal prosecutions (Con't)		
	Informed of nature and cause of accusation	To be confronted with witnesses	Compulsory process for obtaining witnesses for accused
ALABAMA (Art. I)	§6	§6	§6
ALASKA (Art. I)	§11	§11	§11
ARIZONA (Art. II)	§24	§24	§24
ARKANSAS (Art. II)	§10	§10	§10
CALIFORNIA (Art. I)	§13	§13*	§13
COLORADO (Art. II)	§16	§16	§16
CONNECTICUT (Art. I)	§8	§8	§8
DELAWARE (Art. I)	§7	§7	§7
FLORIDA	§11	§11	§11
GEORGIA (Art. I)	§2-105	§2-105	§2-105
HAWAII (Art. I)	§11	§11	§11
IDAHO (Art. I)			§13
ILLINOIS (Art. II)	§9	§9	§9
INDIANA (Art. I)	§13	§13	§13
IOWA (Art. I)	§10	§10	§10
KANSAS	§10	§10	§10
KENTUCKY	§11	§11	§11
LOUISIANA (Art. I)	§10	§9	§9
MAINE (Art. I)	§6	§6	§6
MARYLAND	Art. 21	Art. 21	Art. 21
MASSACHUSETTS (Sec. 2)	Art. 12	Art. 12	Art. 12*
MICHIGAN (Art. I)	§20	§20	§20
MINNESOTA (Art. I)	§6	§6	§6
MISSISSIPPI (Art. 3)	§26	§26	§26
MISSOURI (Art. I)	§18A	§18A	§18A
MONTANA (Art. III)	§16	§16	§16
NEBRASKA (Art. I)	§11	§11	§11
NEVADA (Art. I)			
NEW HAMPSHIRE (Part First)	Art. 15	Art. 15	Art. 15
NEW JERSEY (Art. I)	§10	§10	§10
NEW MEXICO (Art. II)	§14	§14	§14
NEW YORK (Art. I)	§6	§6	
NORTH CAROLINA (Art. I)	§11	§11	
NORTH DAKOTA (Art. I)			§13
OHIO (Art. I)	§10	§10	§10
OKLAHOMA (Art. II)	§20	§20	§20
OREGON (Art. I)	§11	§11	§11
PENNSYLVANIA (Art. I)	§9	§9	§9
RHODE ISLAND (Art. I)	§10	§10	§10
SOUTH CAROLINA (Art. I)	§18	§18	§18
SOUTH DAKOTA (Art. VI)	§7	§7	§7
TENNESSEE (Art. I)	§9	§9	§9
TEXAS (Art. I)	§10	§10	§10
UTAH (Art. I)	§12	§12	§12
VERMONT (Ch. I)	Art. 10	Art. 10	Art. 10
VIRGINIA (Art. I)	§8	§8	§8
WASHINGTON (Art. I)	§22	§22	§22
WEST VIRGINIA (Art. III)	§14	§14	§14
WISCONSIN (Art. I)	§7	§7	§7
WYOMING (Art. I)	§10	§10	§10
MODEL STATE CONSTITUTION	§1.06(a)	§1.06(a)	§1.06(a)

STATE BILLS OF RIGHTS PROVISIONS

	AMEND. VI—In all criminal prosecutions (Con't)	AMEND. VII	AMEND. VIII
	Assistance of counsel for defense	Trial by Jury common law actions	No excessive bail, nor excessive fines
ALABAMA (Art. I)	§6	§11	§§15, 16
ALASKA (Art. I)	§11	§16	§12
ARIZONA (Art. II)	§24	§23	§15
ARKANSAS (Art. II)	§10	§7	§9
CALIFORNIA (Art. I)	§13	§7	§6
COLORADO (Art. II)	§16	§23	§30
CONNECTICUT (Art. I)	§8	§19	§8
DELAWARE (Art. I)	§7	§4	§11
FLORIDA	§11	§3	§8
GEORGIA (Art. I)	§2-105		§2-109
HAWAII (Art. I)	§11	§10	§9
IDAHO (Art. I)	§13	§7	§6*
ILLINOIS (Art. II)	§9	§5	
INDIANA (Art. I)	§13	§20	§16
IOWA (Art. I)	§10	§9	§17
KANSAS	§10	§5	§9
KENTUCKY	§11	§7	§17
LOUISIANA (Art. I)	§9		§12
MAINE (Art. I)	§6	§20	§9
MARYLAND	Art. 21	Art. 5	Art. 25
MASSACHUSETTS (Sec. 2)	Art. 12	Art. 15	Art. 26
MICHIGAN (Art. I)	§20	§14	§16
MINNESOTA (Art. I)	§6	§4	§5
MISSISSIPPI (Art. 3)	§26	§31	§§28, 29
MISSOURI (Art. I)	§18A	§22A	§21
MONTANA (Art. III)	§16	§23*	§20
NEBRASKA (Art. I)	§11	§6	§9
NEVADA (Art. I)	§8	§3	§6
NEW HAMPSHIRE (Part First)	Art. 15	Art. 20	Art. 33
NEW JERSEY (Art. I)	§10	§9	§12
NEW MEXICO (Art. II)	§14	§12	§13
NEW YORK (Art. I)	§6	§2	§5
NORTH CAROLINA (Art. I)	§11	§19	§14
NORTH DAKOTA (Art. I)	§13	§7	§6
OHIO (Art. I)	§10	§5	§9
OKLAHOMA (Art. II)	§20	§19	§9
OREGON (Art. I)	§11	§17	§16
PENNSYLVANIA (Art. I)	§9	§6	§13
RHODE ISLAND (Art. I)	§10	§15	§8
SOUTH CAROLINA (Art. I)	§18	§25	§19
SOUTH DAKOTA (Art. VI)	§7	§6	§23
TENNESSEE (Art. I)	§9	§6	§16
TEXAS (Art. I)	§10	§15	§13
UTAH (Art. I)	§12	§10*	§9
VERMONT (Ch. I)	Art. 10	Art. 12	Pt. 2, Art. 32*
VIRGINIA (Art. I)		§11	§9
WASHINGTON (Art. I)	§22	§21	§14
WEST VIRGINIA (Art. III)	§14	§13	§5
WISCONSIN (Art. I)	§7	§5	§6
WYOMING (Art. I)	§10	§9	§14
MODEL STATE CONSTITUTION	§1.06(a)		§1.06(b)

STATE BILLS OF RIGHTS PROVISIONS

	AMEND. VIII (Continued)	Additional State Penal Provisions	
	No cruel and unusual punishment	All persons bailable except for capital offenses	Penal administration to be based on reformation and need for protecting public
ALABAMA (Art. I)	§15	§16	
ALASKA (Art. I)	§12	§11	§12
ARIZONA (Art. II)	§15	§22	
ARKANSAS (Art. II)	§9	§8	
CALIFORNIA (Art. I)	§6	§6	
COLORADO (Art. II)	§30	§19	
CONNECTICUT (Art. I)		§8	
DELAWARE (Art. I)	§11	§12	
FLORIDA	§8	§9	
GEORGIA (Art. I)	§2-109		
HAWAII (Art. I)	§9		
IDAHO (Art. I)	§6	§6	
ILLINOIS (Art. II)		§7	
INDIANA (Art. I)	§16	§17	§18
IOWA (Art. I)	§17	§12	
KANSAS	§9	§9	
KENTUCKY	§17	§16	
LOUISIANA (Art. I)	§12	§12	
MAINE (Art. I)	§9	§10*	
MARYLAND	Arts. 25, 16		
MASSACHUSETTS (Sec. 2)	Art. 26		
MICHIGAN (Art. I)	§16	§15	
MINNESOTA (Art. I)	§5	§7	
MISSISSIPPI (Art. 3)	§28	§29	
MISSOURI (Art. I)	§21	§20	
MONTANA (Art. III)	§20	§19	§24
NEBRASKA (Art. I)	§9	§9	
NEVADA (Art. I)	§6	§7	
NEW HAMPSHIRE (Part First)	Art. 33		Art. 18
NEW JERSEY (Art. I)	§12	§11	
NEW MEXICO (Art. II)	§13	§13	
NEW YORK (Art. I)	§5		
NORTH CAROLINA (Art. I)	§14		
NORTH DAKOTA (Art. I)	§6	§6	
OHIO (Art. I)	§9	§9	
OKLAHOMA (Art. II)	§9	§8	
OREGON (Art. I)	§16	§14	§15
PENNSYLVANIA (Art. I)	§13	§14	
RHODE ISLAND (Art. I)	§8	§9	
SOUTH CAROLINA (Art. I)	§19	§20	
SOUTH DAKOTA (Art. VI)	§23	§8	
TENNESSEE (Art. I)	§16	§15	
TEXAS (Art. I)	§13	§11	
UTAH (Art. I)	§9	§8	
VERMONT (Ch. I)		Pt. 2, Art. 32	
VIRGINIA (Art. I)	§9		
WASHINGTON (Art. I)	§14	§20	
WEST VIRGINIA (Art. III)	§5		
WISCONSIN (Art. I)	§6	§8	
WYOMING (Art. I)	§14	§14	§15
MODEL STATE CONSTITUTION	§1.06(b)	§1.06(b)	

STATE BILLS OF RIGHTS PROVISIONS

	AMEND. IX	AMEND. XIV	Additional State Provisions
	Enumeration of Constitutional Rights does not deny others retained by people	Equal protection of the law	All men have certain inalienable rights
ALABAMA (Art. I)	§36		§1
ALASKA (Art. I)	§21	§§3, 1	§1
ARIZONA (Art. II)	§§33, 32	§13	
ARKANSAS (Art. II)	§29	§§3, 18	§2
CALIFORNIA (Art. I)	§23	§21*	§1
COLORADO (Art. II)	§28		§3
CONNECTICUT (Art. I)		§20	
DELAWARE (Art. I)			
FLORIDA	§24		§1
GEORGIA (Art. I)	§2-502		
HAWAII (Art. I)	§20	§4	§2
IDAHO (Art. I)	§21		§1
ILLINOIS (Art. II)			§1
INDIANA (Art. I)		§23*	§1
IOWA (Art. I)	§25	§6*	§1
KANSAS	§20		§1
KENTUCKY			§1
LOUISIANA (Art. I)	§15		
MAINE (Art. I)	§24	§6A	§1
MARYLAND	Art. 45		
MASSACHUSETTS (Sec. 2)		Art. 12	Art. 1
MICHIGAN (Art. I)	§23	§2	
MINNESOTA (Art. I)	§16		
MISSISSIPPI (Art. 3)	§32		
MISSOURI (Art. I)			§2
MONTANA (Art. III)	§30		§3
NEBRASKA (Art. I)	§26		§1
NEVADA (Art. I)	§20		§1
NEW HAMPSHIRE (Part First)			Arts. 2, 4
NEW JERSEY (Art. I)	§21	§5	§1
NEW MEXICO (Art. II)	§23	§18	§4
NEW YORK (Art. I)		§11	
NORTH CAROLINA (Art. I)	§38		§1
NORTH DAKOTA (Art. I)		§20*	§1
OHIO (Art. I)	§20		§1
OKLAHOMA (Art. II)	§33		§2
OREGON (Art. I)	§33	§20	
PENNSYLVANIA (Art. I)	§25	§26	§1
RHODE ISLAND (Art. I)	§23		
SOUTH CAROLINA (Art. I)		§5	
SOUTH DAKOTA (Art. VI)		§18*	§1
TENNESSEE (Art. I)			
TEXAS (Art. I)			
UTAH (Art. I)	§25		§1
VERMONT (Ch. I)			Art. 1
VIRGINIA (Art. I)	§17		§1
WASHINGTON (Art. I)	§30	§12*	
WEST VIRGINIA (Art. III)			§1
WISCONSIN (Art. I)			§1
WYOMING (Art. I)	§36		§1
MODEL STATE CONSTITUTION		§1.02	

STATE BILLS OF RIGHTS PROVISIONS

	Additional State Provisions (Continued)		
	Political power inherent in people	No bill of attainder	No Ex Post Facto
ALABAMA (Art. I)	§2		§22
ALASKA (Art. I)	§2	§15	§15
ARIZONA (Art. II)	§2	§25	§25
ARKANSAS (Art. II)	§1	§17	§17
CALIFORNIA (Art. I)	§2	§16	§16
COLORADO (Art. II)	§1	§9	§11
CONNECTICUT (Art. I)	§2	§13	
DELAWARE (Art. I)			
FLORIDA	§2	§17	§17
GEORGIA (Art. I)	§§2-101, 2-501	§2-302	§2-302
HAWAII (Art. I)	§1		
IDAHO (Art. I)	§2	§16	§16
ILLINOIS (Art. II)	§1		§14
INDIANA (Art. I)	§1		§24
IOWA (Art. I)	§2	§21	§21
KANSAS	§2		
KENTUCKY	§4	§20	§19
LOUISIANA (Art. I)	§1		Art. 4, §15
MAINE (Art. I)	§2	§11	§11
MARYLAND	Art. 1	§18	§17
MASSACHUSETTS (Sec. 2)	Art. 4	Art. 25	Art. 24
MICHIGAN (Art. I)	§1	§10	§10
MINNESOTA (Art. I)	§1	§11	§11
MISSISSIPPI (Art. 3)	§§5, 6		§16
MISSOURI (Art. I)	§1	§30	§13
MONTANA (Art. III)	§1	§9	§11
NEBRASKA (Art. I)	§1	§16	§16
NEVADA (Art. I)	§2	§15	§15
NEW HAMPSHIRE (Part First)	Arts. 1, 3		Art. 23
NEW JERSEY (Art. I)	§2	Art. 4, §7, ¶3	Art. 4, §7, ¶3
NEW MEXICO (Art. II)	§§2, 3	§19	§19
NEW YORK (Art. I)			
NORTH CAROLINA (Art. I)	§§2, 3		§32
NORTH DAKOTA (Art. I)	§2	§16	§16
OHIO (Art. I)	§2		
OKLAHOMA (Art. II)	§1	§15	§15
OREGON (Art. I)	§1		§21
PENNSYLVANIA (Art. I)	§2	§18	§17
RHODE ISLAND (Art. I)	§1		§12
SOUTH CAROLINA (Art. I)	§1	§8	§8
SOUTH DAKOTA (Art. VI)	§26		§12
TENNESSEE (Art. I)	§1		§§11, 20
TEXAS (Art. I)	§2	§16	§16
UTAH (Art. I)	§2	§18	§18
VERMONT (Ch. I)	Art. 5		
VIRGINIA (Art. I)	§2	§58	§58
WASHINGTON (Art. I)	§1	§23	§23
WEST VIRGINIA (Art. III)	§§2, 3	§4	§§4, 11
WISCONSIN (Art. I)	§1	§12	§12
WYOMING (Art. I)			§35
MODEL STATE CONSTITUTION			

STATE BILLS OF RIGHTS PROVISIONS

	Additional State Provisions (Continued)		
	No impairing obligations of contracts	Privilege of Writ of Habeas Corpus shall not be suspended except by authority of the State	No suspension of laws except by legislature
ALABAMA (Art. I)	§22	§17	§21
ALASKA (Art. I)	§15	§13	
ARIZONA (Art. II)	§25	§14	
ARKANSAS (Art. II)	§17	§11	§12
CALIFORNIA (Art. I)	§16	§5	
COLORADO (Art. II)	§11	§21	
CONNECTICUT (Art. I)		§12	
DELAWARE (Art. I)		§13	§10
FLORIDA	§17	§7	
GEORGIA (Art. I)	§2-302	§2-111	
HAWAII (Art. I)		§13	§13
IDAHO (Art. I)	§16	§5	
ILLINOIS (Art. II)	§14	§7	
INDIANA (Art. I)	§24	§27	§§25, 26
IOWA (Art. I)	§21	§13	
KANSAS		§8	
KENTUCKY	§19	§16	§15
LOUISIANA (Art. I)	Art. 4, §15	§13	
MAINE (Art. I)	§11	§10	§13
MARYLAND			Art. 9
MASSACHUSETTS (Sec. 2)			Art. 20
MICHIGAN (Art. I)	§10	§12	
MINNESOTA (Art. I)	§11	§7	
MISSISSIPPI (Art. 3)	§16	§21	
MISSOURI (Art. I)	§13	§12	
MONTANA (Art. III)	§11	§21	
NEBRASKA (Art. I)	§16	§8	
NEVADA (Art. I)	§15	§5	
NEW HAMPSHIRE (Part First)		Part II, Art. 91	Art. 29
NEW JERSEY (Art. I)	Art. 4, §7, ¶3	§14	
NEW MEXICO (Art. II)	§19	§7	
NEW YORK (Art. I)		§4	
NORTH CAROLINA (Art. I)		§21	§9
NORTH DAKOTA (Art. I)	§16	§5	
OHIO (Art. I)		§8	§18
OKLAHOMA (Art. II)	§15	§10	
OREGON (Art. I)		§23	§22
PENNSYLVANIA (Art. I)	§17	§14	§12
RHODE ISLAND (Art. I)	§12	§9	
SOUTH CAROLINA (Art. I)	§8	§23	§13
SOUTH DAKOTA (Art. VI)	§22	§8	§21
TENNESSEE (Art. I)	§20	§15	
TEXAS (Art. I)	§16	§12	§28
UTAH (Art. I)	§18	§5	
VERMONT (Ch. I)		Part 2, Art. 33	Art. 15
VIRGINIA (Art. I)	§58	§58	§7
WASHINGTON (Art. I)	§23	§13	
WEST VIRGINIA (Art. III)	§4	§4	
WISCONSIN (Art. I)	§12	§8	
WYOMING (Art. I)	§35	§17	
MODEL STATE CONSTITUTION		§1.05	

STATE BILLS OF RIGHTS PROVISIONS

	Additional State Provisions (Continued)		
	No corruption of blood	Civil courts open to all persons	No imprisonment for debt
ALABAMA (Art. I)	§19	§§10, 13	§20
ALASKA (Art. I)	§15		§17
ARIZONA (Art. II)	§16		§18
ARKANSAS (Art. II)	§17	§13	§16
CALIFORNIA (Art. I)			§15
COLORADO (Art. II)	§9	§6	§12
CONNECTICUT (Art. I)		§10	
DELAWARE (Art. I)	§15	§9	
FLORIDA		§4	§16
GEORGIA (Art. I)	§2-203	§2-104	§§2-206, 2-121
HAWAII (Art. I)			§17
IDAHO (Art. I)		§18	§15
ILLINOIS (Art. II)	§11	§19	§12
INDIANA (Art. I)	§30	§12	§22
IOWA (Art. I)			§19
KANSAS	§12	§18	§16
KENTUCKY	§20	§14	§18*
LOUISIANA (Art. I)		§6	
MAINE (Art. I)	§11	§19	
MARYLAND	Art. 27	Art. 19	
MASSACHUSETTS (Sec. 2)		Art. 11	
MICHIGAN (Art. I)		§13*	§21
MINNESOTA (Art. I)	§11	§8	§12
MISSISSIPPI (Art. 3)		§§24, 25	§30
MISSOURI (Art. I)	§30	§14	§11
MONTANA (Art. III)	§9	§6	§12
NEBRASKA (Art. I)	§15	§13	§20
NEVADA (Art. I)			§14
NEW HAMPSHIRE (Part First)		Art. 14	
NEW JERSEY (Art. I)			§13
NEW MEXICO (Art. II)			§21
NEW YORK (Art. I)			
NORTH CAROLINA (Art. I)	§37	§35	§16
NORTH DAKOTA (Art. I)		§22	§15
OHIO (Art. I)	§12	§16	§15
OKLAHOMA (Art. II)	§15	§6	§13
OREGON (Art. I)	§25	§10	§19
PENNSYLVANIA (Art. I)	§19	§11	§16*
RHODE ISLAND (Art. I)		§5	§11*
SOUTH CAROLINA (Art. I)	§8	§15	§24
SOUTH DAKOTA (Art. VI)		§20	§15*
TENNESSEE (Art. I)	§12	§17	§18
TEXAS (Art. I)	§21	§13	§18
UTAH (Art. I)		§11	§16
VERMONT (Ch. I)		Art. 4	Part 2, Art. 32
VIRGINIA (Art. I)			
WASHINGTON (Art. I)	§15		§17
WEST VIRGINIA (Art. III)	§18	§17	
WISCONSIN (Art. I)	§12	§9	§16*
WYOMING (Art. I)		§8	§5
MODEL STATE CONSTITUTION			

STATE BILLS OF RIGHTS PROVISIONS

	Additional State Provisions (Continued)	
	Truth as a defense to libel	Power to revoke, grant, franchise, privilege or immunity
ALABAMA (Art. I)	§12	§22
ALASKA (Art. I)		
ARIZONA (Art. II)		§9
ARKANSAS (Art. II)	§6	
CALIFORNIA (Art. I)	§9	
COLORADO (Art. II)	§10	
CONNECTICUT (Art. I)	§6	
DELAWARE (Art. I)	§5	
FLORIDA	§13	
GEORGIA (Art. I)	§2-201	
HAWAII (Art. I)		§19
IDAHO (Art. I)		§2
ILLINOIS (Art. II)	§4	
INDIANA (Art. I)	§10	
IOWA (Art. I)	§7	
KANSAS	§11	§2
KENTUCKY	§9	§3
LOUISIANA (Art. I)	Art. 19, §9	
MAINE (Art. I)	§4	
MARYLAND		
MASSACHUSETTS (Sec. 2)		
MICHIGAN (Art. I)	§19	
MINNESOTA (Art. I)		
MISSISSIPPI (Art. 3)	§13	§6
MISSOURI (Art. I)	§8	§3
MONTANA (Art. III)	§10	§2
NEBRASKA (Art. I)	§5	
NEVADA (Art. I)	§9	
NEW HAMPSHIRE (Part First)		
NEW JERSEY (Art. I)	§6	
NEW MEXICO (Art. II)	§17	
NEW YORK (Art. I)	§8	
NORTH CAROLINA (Art. I)		
NORTH DAKOTA (Art. I)	§9	§20
OHIO (Art. I)	§11	
OKLAHOMA (Art. II)	§22	
OREGON (Art. I)		
PENNSYLVANIA (Art. I)		
RHODE ISLAND (Art. I)	§20	
SOUTH CAROLINA (Art. I)	§21	
SOUTH DAKOTA (Art. VI)	§5	§12
TENNESSEE (Art. I)	§19*	
TEXAS (Art. I)	§8*	
UTAH (Art. I)	§15	
VERMONT (Ch. I)		
VIRGINIA (Art. I)		
WASHINGTON (Art. I)		
WEST VIRGINIA (Art. III)	§8	
WISCONSIN (Art. I)	§3	
WYOMING (Art. I)	§20	
MODEL STATE CONSTITUTION		

MISCELLANEOUS STATE CONSTITUTIONAL PROVISIONS

Provisions for verdict less than unanimous in Civil Actions
Alaska § 16, Ariz. § 23, Ark. § 7, Colo. § 23, Hawaii § 10, Idaho § 7, Mich. § 14, Minn. § 4, Mo. § 22A, Mont. § 23, Neb. § 6, Nev. § 3, N.M. § 12, N.Y. § 2, Ohio § 5, Okla. §19 (Misdms. also), S. D. § 6, Utah § 10, Wash. § 22, Wis. § 5.

Civil Juries less than twelve
Cal. § 7 (misd. crime, also), Va. §§ 11 & 8 (misdms.).

No sex discrimination for service on jury
Colo. § 23, Hawaii § 12, N.C. § 19, Wash. § 21.

Witnesses shall not be unreasonably detained
Ark. § 9, Cal. § 6, Colo. § 17, Fla. § 8, Mich. § 16, Mont. § 17, Nev. § 6, N. D. § 6, S.C. § 19, Wyo. § 12.

No costs except on conviction
Ga. § 2-110, N.C. § 10.

No abuse of person under arrest and/or in jail
Ga. § 2-109, Ind. § 15, Ore. § 13, Tenn. § 13, Utah § 9, Wyo. § 16.

No intereference with lawful exercise of suffrage
Ariz. § 21, Colo. § 5, Idaho § 19, Mo. § 25, Neb. § 22, N.M. § 8, Okla. § 4, Pa. § 5, S. D. § 19, Wash. § 19.

No property qualification for office
Colo. § 24, Idaho § 20, Minn. § 17, N.C. § 22, R.I. § 11, Utah § 4.

Right to Appeal
Ariz. § 24, Mich. § 20, Neb. §§ 24 & 23, Utah § 12.

Presumption of Innocence
R.I. § 14.

Right of Education
N.C. § 27, Wyo. § 23.

No citizen exiled
Ala. § 30, Kan. § 12, Neb. § 15, Ohio § 12, Okla. § 29, Tex. § 20, Vt. § 21, W. Va. § 5.

Alien's bona fide residents same rights as native born citizens
Ala. § 31, Ark. § 20, Colo. § 27, Mont. § 25, N.M. § 22*, Ore. § 31*, S. D. § 14, Wis. § 15, Wyo. § 29.

No limitation on damages for personal injury or death
Ariz. § 31, N.Y. § 16 (death only), Ohio § 19(a)* (death only).

Unqualified right to work
Fla. § 12, Mo. § 29*, N.D. § 23, S.D. § 2, Wyo. § 22*.

Right of Employees to organize
Mo. § 29, N.Y. § 17.

Representation shall be apportioned according to population
Nev. § 13, S. C. § 2.*

Conscientious Objection permitted
N.H. Art. 13, Vt. Art. 9.