

Land & Water Law Review

Volume 26
Issue 1 *Special Focus: Wyoming Centennial --
100 Years of State Law*

Article 3

1991

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Michael J. Horan

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Horan, Michael J. (1991) "The Wyoming Constitution: A Centennial Assessment," *Land & Water Law Review*. Vol. 26 : Iss. 1 , pp. 13 - 31.

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University of Wyoming
College of Law

LAND AND WATER LAW REVIEW

VOLUME XXVI

1991

NUMBER 1

THE WYOMING CONSTITUTION: A CENTENNIAL ASSESSMENT

*Michael J. Horan**

How come I don't get no respect?—Rodney Dangerfield

INTRODUCTION

Nineteen ninety-one marks the two hundredth anniversary of the Bill of Rights of the United States Constitution.¹ It is also the climax of the nationwide celebration begun in 1987 to commemorate the Bicentennial of the Constitution of the United States. For five years Americans have been showered with a veritable galaxy of exhibits, lectures, conferences, competitions, performances, ceremonies, and souvenirs reminding them of the fundamental law they live under and the events surrounding its framing, ratification, and enlargement by the Bill of Rights.² The importance of the document itself, the original of which is carefully preserved and on public exhibition in the National Archives Building in Washington, D.C., cannot be underestimated. It set an acceptable matrix within which the political forces of nationalism and decentralization could compete, created the frame-

* B.S., Georgetown University, 1960; Ph.D., Georgetown University, 1966. Professor of Political Science, University of Wyoming.

1. U.S. CONST. amends. I-X.

2. The main agency on the national level concerned with promoting constitutional awareness activities during the five-year Bicentennial celebration period has been the Commission on the Bicentennial of the United States Constitution, chaired by former United States Supreme Court Chief Justice Warren E. Burger. The activities of the Commission are chronicled in its bimonthly newsletter *WE THE PEOPLE*. Similar agencies were established on the state and local levels, including the Wyoming Commission on the Bicentennial of the United States Constitution, chaired by former Speaker of the Wyoming House of Representatives Bill McIlvain. Since statutory authority for the Wyoming commission expired at the end of 1987, recent Bicentennial activities in the state have been under the auspices of the Wyoming State Bar.

work for an effective national government, and delimited the power of popular majorities to interfere with cherished individual freedoms. In a nation which proclaims the rule of law, it is the basic legal norm, the sacred (but secular) text to which public policy, and the actions of all public officials must conform.³ As such, the text of the Constitution is widely published not only in statutory codes,⁴ but in the annotated treatises, casebooks, and textbooks which form a portion of the readings for academic courses in American constitutional law and history.

By contrast, the one hundredth anniversary of the Constitution of the State of Wyoming (adopted in convention at Cheyenne, September 30, 1889, and ratified by the people of Wyoming thirty-six days later) was barely noticed. Wyomingites could choose from over a thousand different events (including a wagon train)⁵ and a wealth of "Lasting Legacy" projects (e.g., books, parks, statues, historic preservation projects, etc.)⁶ devised to celebrate the centennial of the State's entrance into the Union on July 10, 1890. A traveling exhibition containing a few pages from the original engrossed document was about all that could be mustered⁷ to remind the people of the state of the other fundamental law by which they are governed: the Wyoming Constitution.

That document, like its counterparts in each of the other forty-nine states, allocates political authority within and between the state and local governments,⁸ and deals with matters of paramount concern to the welfare of the people of the State⁹ which lie beyond the scope of the United States Constitution. Also like the constitutions of other states, the Wyoming document recognizes personal rights¹⁰ (as well as

3. See U.S. CONST. art. VI, cl. 2 (stating the Constitution "shall be the supreme law of the land"); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

4. See, e.g., 1 U.S.C. LIII vol. 1 (1988).

5. WYO. CENTENNIAL COMM'N 3 ROUNDUP: A QUARTERLY PUBLICATION OF THE WYOMING CENTENNIAL COMMISSION 2 (Summer, 1990) [hereinafter WYO. CENTENNIAL COMM'N.]

6. *Id.* at 3.

7. WYO. CENTENNIAL COMM'N, *supra* note 5, at 30. Mention should also be made of Wyoming Supreme Court (then) Chief Justice G. Joseph Cardine's contribution *Wyo Constitution: 100 Years of High Court, Women's Vote*, published as a guest column in *The Star-Tribune* (Casper, Wyo.), Oct. 1, 1989, at A-11, cols. 5-6. This item focused primarily on the debates in the Wyoming Constitutional Convention over women's suffrage and a separate state supreme court. An examination of the pages of the *Star-Tribune* for the editions of September 30, 1989 (the one hundredth anniversary of the day the Wyoming Constitutional Convention finished its work in producing the state constitution) and November 5, 1989 (the like anniversary of the ratification of the constitution by Wyoming voters) failed to discover any mention of these important events in the state's history. Similarly, there is little or no mention of the centennial of the Wyoming Constitution in the *Star-Tribune's* special supplement commemorating statehood, WYO. 100: CELEBRATION WYOMING'S STATEHOOD CENTENNIAL (undated) (available in William Robertson Coe Library, University of Wyoming).

8. E.g., WYO. CONST. art. 3 (legislative dep't); art. 4 (executive dep't); art. 5 (judicial dep't); art. 12 (county organization); art. 13 (municipal corps.).

9. E.g., *id.* art. 6 (suffrage and elections); art. 7 (education); art. 8 (irrigation and water rights); art. 15 (taxation and revenue); art. 16 (public indebtedness).

10. E.g., *id.* art. 1, § 1 (right of revolution), § 14 (right to bail in non-capital

group interests¹¹) which are omitted from the federal document. Although the Wyoming Constitution is legally subordinate to the United States Constitution,¹² there is no question that its provisions are otherwise the supreme law of the State and take precedence over contrary provisions of state statutes, administrative regulations, and common law.¹³

It is easy to understand how the centennial of statehood (as well as the ongoing Bicentennial of the United States Constitution) has captured public excitement and imagination sufficiently to overshadow the Wyoming Constitution's anniversary. The lack of public interest in the state constitution reaches further than this, however, and is hardly confined to Wyomingites. A nationwide poll in 1988 sponsored by the Advisory Commission on Intergovernmental Relations found that only forty-four percent of Americans knew their state had a constitution,¹⁴ and there is no evidence to suggest that people in Wyoming are any better informed in this regard than elsewhere. Compared to the United States Constitution, state constitutions are less frequently mentioned in history, civics, and political science courses in public schools, colleges and universities.¹⁵ To the extent that most people think of constitutional law, they think only in terms of federal constitutional law.¹⁶ Law schools seldom offer courses in state constitutional law.¹⁷ The state-level equivalents of Story's *Commentaries on the Constitution of the United States*,¹⁸ Cooley's *Constitutional Limitations*,¹⁹ or Tribe's *American Constitutional Law*²⁰ have yet to be written.²¹ The past twenty years have witnessed a resuscitation of the

cases), § 29 (alien property rights).

11. *E.g.*, *id.* art. 1, § 22 (rights of labor); art. 19, § 1 (protection of stockgrowers).

12. U.S. CONST., art. VI, cl. 2; WYO. CONST. art. 1, § 37; art. 21, § 24.

13. Unlike the federal Constitution, the Wyoming Constitution makes no direct assertion as to its supremacy as state law. The Supreme Court of Wyoming has treated it as the fundamental law of the state. See *Ex parte Bergman*, 3 Wyo. 395, 403, 26 P. 914, 916 (1890); *Bower v. Big Horn Canal Ass'n*, 77 Wyo. 880, 891, 307 P.2d 593, 597 (1957). See generally 16 C.J.S. *Constitutional Law* § 3c (1984). Debates in the Wyoming Legislature reflect this same assumption. Telephone interview with Mr. Bob Burnett, former Speaker of the Wyoming House of Representatives (Jan. 30, 1991).

14. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, STATE CONSTITUTIONS IN THE FEDERAL SYSTEM 2 (1989) [hereinafter ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS].

15. *Id.* A Wyoming law first enacted in 1925 requires all public schools and colleges in the state to give instruction in the principles of the United States and Wyoming constitutions. WYO. STAT. § 21-9-102 (1986).

16. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, *supra* note 14, at 1.

17. *Id.* at 2. No such courses are presently listed in the curriculum of the University of Wyoming College of Law.

18. J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES (abr. 1833).

19. T. COOLEY, CONSTITUTIONAL LIMITATIONS (6th ed. 1890).

20. L. TRIBE, AMERICAN CONSTITUTIONAL LAW (1978).

21. No systematic analyses of Wyoming constitutional law exist in published form, but one such work is currently in preparation. R. KEITER & T. NEWCOMB, THE WYOMING CONSTITUTION: A REFERENCE GUIDE (Greenwood Press, forthcoming 1992 or 1993). Discussions of specific topics may be found in various volumes of the LAND & WATER L. REV.

subject,²² but it is still true that among lawyers, state constitutional law is relatively unknown and little practiced.²³ While constitutions in general are not the sort of browsing materials which make for easy reading, the sheer length and incredible detail found in some state constitutions²⁴ discourage all but state judges and a few lawyers and their clients, and have been targets of repeated criticism by writers on contemporary state government.²⁵ Finally, the sweeping extensions of federal judicial power through such devices as the "new" equal protection,²⁶ the incorporation of the Bill of Rights into the due process clause of the fourteenth amendment,²⁷ and the vast array of federal regulatory laws enacted since the New Deal, in conjunction with the restraintist orientation of some state supreme courts, have loosed an avalanche of litigation assertedly based on federal constitutional claims, with a corresponding decline in claims based upon relatively untested provisions of state constitutional law.²⁸

A more restraint-minded majority on the United States Supreme Court in recent decades has eschewed further developments along these lines by limiting the reach of some of the most celebrated civil liberties precedents of the Warren and Burger courts.²⁹ The Justices have also employed doctrines of standing and exhaustion of state court remedies to cut back on grievants' access to the federal courts.³⁰ One consequence of this retrenchment has been for litigants seeking judicial expansion of individual rights increasingly to turn to state tribunals to develop the relatively untested protections of state bills of

22. Among the most comprehensive discussions of this subject are: Howard, *The Renaissance of State Constitutional Law*, 1 EMERGING ISSUES IN ST. CONST. L. 1 (1988), and Symposium, *The Emergence of State Constitutional Law*, 63 TEX. L. REV. 959 (1985). See also 17 PUBLIUS: THE J. OF FEDERALISM 1 (1987).

23. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, *supra* note 14.

24. See *infra* page 18 and note 42.

25. See, e.g., D. GRANT & L. OMDAHL, *STATE AND LOCAL GOVERNMENT IN AMERICA* 106-09 (5th ed. 1989); T. SANFORD, *STORM OVER THE STATES* 189 (1967) (state constitutions are "the drag anchors of state progress").

26. U.S. CONST. amend. XIV, § 1, cl. 4. See generally R. BERGER, *GOVERNMENT BY JUDICIARY: THE TRANSFORMATION OF THE FOURTEENTH AMENDMENT* (1977); J. BAER, *EQUALITY UNDER THE CONSTITUTION: RECLAIMING THE FOURTEENTH AMENDMENT* (1983); H. ABRAHAM, *FREEDOM AND THE COURT* 19-21 (5th ed. 1988).

27. U.S. CONST. amend. XIV, § 1, cl. 3. See generally R. BERGER, *supra* note 26; H. ABRAHAM, *supra* note 26, at 38-117; R. RUTLAND, *THE BIRTH OF THE BILL OF RIGHTS* (1955).

28. See G. HOUSEMAN, *STATE AND LOCAL GOVERNMENT: THE NEW BATTLEGROUND* 62-63 (1986).

29. Compare *Miranda v. Arizona*, 384 U.S. 436 (1966) with *Harris v. New York*, 401 U.S. 222 (1971), and *New York v. Quarles*, 467 U.S. 649 (1984); compare *Reynolds v. Sims*, 377 U.S. 533 (1964) with *Brown v. Thomson*, 462 U.S. 835 (1983); compare *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971) with *Board of Educ. of Okla. City Pub. Schools v. Dowell*, 59 U.S.L.W. 4061 (1991); compare *Roe v. Wade*, 410 U.S. 113 (1973) with *Webster v. Reproductive Health Serv.*, 109 S. Ct. 3040 (1989).

30. For standing cases, see, e.g., *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208 (1974); *Warth v. Seldin*, 422 U.S. 490 (1975); *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982); *Allen v. Wright*, 468 U.S. 737 (1984). On exhaustion of state court remedies, see *Younger v. Harris*, 401 U.S. 37 (1971), and *Stone v. Powell*, 428 U.S. 465 (1976).

rights. The corresponding shift of emphasis toward state constitutional law necessarily entails a decentralized approach to judicial power, rather than a reliance upon the national lawmaking potential of the federal court system. Though some notable individual rights gains have been achieved, it is still too early to ascertain whether this development is the forerunner of a sea of change.³¹

CRITICISMS OF THE WYOMING CONSTITUTION

The Wyoming Constitution has taken its own lumps in addition to the criticisms directed at state constitutions generally. Referring to the Wyoming constitutional convention's heavy borrowing from the constitutions of nearby states, Professor T. A. Larson, Wyoming's premiere historian, has characterized the document as a product of the cut and paste method of constitution-making, with little originality beyond the provisions dealing with irrigation and water rights.³² The diffusion of executive authority among five elected officials, including the governor, has been faulted for blurring political responsibility and hindering efficient management in the administration of state affairs.³³ The numerous constitutional specifications regarding legislative procedure, as well as the short amount of time for legislative sessions, have been cited as obstacles to the ability of government to meet the needs of a society undergoing rapid economic change.³⁴ The constitution's stricture against gubernatorial threats to wield the veto power has been attacked as inane,³⁵ and the prohibition against log-rolling³⁶ in legislative voting seems out of touch with the informal norms of practical politics.

No purely objective judgment as to the validity of these criticisms is possible, because too much depends on the perspective and experiences of the observer. What is an obstacle to progress in the eyes of one may be a design to safeguard freedom in the eyes of another. If a constitution is the method by which "a generation of citizens attempt to nail down what is important to them[,]"³⁷ there may well be differences of opinion among those citizens about what is important enough to rate constitutional mention, and the content of such debates is

31. See generally the sources listed *supra* note 22 for discussions of this development.

32. T. A. LARSON, *HISTORY OF WYOMING* 246-47, 253 (2d ed. 1978). For a similar estimate see L. GOULD, *WYOMING: FROM TERRITORY TO STATEHOOD* 112-13 (1989).

33. J. RICHARD, *GOVERNMENT AND POLITICS OF WYOMING* 65, 77-79 (2d ed. 1969).

34. G. CAWLEY, J. CLARK, M. HORAN, M. MURDOCK, A. SCHENKER & O. WALTER, *THE EQUALITY STATE: GOVERNMENT AND POLITICS IN WYOMING* 45-46 (rev. ed. 1990) [hereinafter *THE EQUALITY STATE*].

35. Jordan, *Wyoming: A New Centennial Reflection*, 62 *ANNALS OF WYO.* 114, 122 (Fall 1990).

36. *Vote-Trading*. See J. PLANO & M. GREENBERG, *THE AMERICAN POLITICAL DICTIONARY* 216 (7th ed. 1985).

37. C. PRESS & K. VERBURG, *STATE AND COMMUNITY GOVERNMENTS IN THE FEDERAL SYSTEM* 190 (2d ed. 1983).

bound to shift with the passage of time. Scholars do not even agree on the precise nature of a constitution *per se*, differing over whether the core idea of the term is fundamental law, a framework of law, a mechanism for guaranteeing certain modes of political and social conduct, a reflection of the interests and attitudes of its authors, or a list of society's goals and purposes.³⁸ Add to this variable recipe the pressure of coming up with a document which could win public approval and satisfy a majority of Congress without taking any more time off from personal occupations than was absolutely necessary,³⁹ and it is not difficult to understand how the result of the constitutional convention of 1889 came to be a pastiche of familiar concepts flavored by the circumstances of the State's history, political culture, and physical environment.

THE ELEMENTS OF THE WYOMING CONSTITUTION IN HISTORICAL CONTEXT

What were the principal ingredients of this constitutional mix, and in what respect are they primarily reflective of the Wyoming experience rather than representative of a commonality among most state constitutions? How do they manifest themselves in the language of the document and its implementation in the processes of government? What has been their evolution over time, and how do they add up today?

At the outset, it may be noted that Wyoming has had only *one* constitution and *one* constitutional convention during its hundred years as a state, mirroring a tradition of political and legal stability found in only a minority of the states today.⁴⁰ Sixty-one separate amendments have been adopted (out of 101 submitted to the electorate) since the Wyoming Constitution went into effect July 10, 1890.⁴¹ The document is estimated to contain 31,800 words, more than triple the length of the United States Constitution, and a verbosity exceeded only by twelve other states.⁴²

In terms of broad contents, its twenty-one articles, much like other state constitutions, contain a preamble or statement of purpose,

38. G. HOUSEMAN, *supra* note 28, at 56. See generally NOMOS XX: CONSTITUTIONALISM (J. Pennock & J. Chapman eds. 1979).

39. Regular attendance at sessions of the convention was a serious problem. Peterson, *The Constitutional Convention of Wyoming*, Vol. VII, No. 6, U. WYO. PUBLICATIONS, 101, 124 (May 1940).

40. Only nineteen states have had the same constitution from the date of their admission into the Union to the present. Ten states have had a single constitutional convention. Louisiana has had eleven constitutions since 1812, the most recent one adopted in 1974. THE COUNCIL OF STATE GOV'TS, THE BOOK OF THE STATES vol. 28 at 22, 40 (1990-91) [hereinafter THE BOOK OF THE STATES].

41. *Id.* at 40. These figures include four amendments adopted in the general election of November 6, 1990.

42. Vermont's constitution is shortest (estimated at 6,600 words), while Alabama's, with an estimated 174,000 words, is longest. *Id.*

a bill (declaration) of rights,⁴³ provisions creating the structure of state⁴⁴ and local⁴⁵ government, and specific financial limitations and mandates affecting the revenue raising authority of government on all levels.⁴⁶ It also contains provisions on broad topical areas of the well-being of the community,⁴⁷ a grab-bag of miscellaneous stipulations apparently thought unsuitable for placement elsewhere in the text,⁴⁸ and, finally, provisions whereby the document may be formally amended or completely revised.⁴⁹ The text is written in the dry, businesslike, and frequently legalistic style of other late-nineteenth century constitutions. The style was no doubt facilitated by the readiness of the men⁵⁰ who wrote it to draw liberally upon—even replicate—arrangements they found in the copies of constitutions of environmentally similar states which had been distributed to the committees which did the principal work of the 1889 convention.⁵¹

Those constitutional arrangements were grounded on doctrines long imbedded in the American political culture and taken for granted by the convention delegates:⁵² popular sovereignty,⁵³ political equality,⁵⁴ republicanism,⁵⁵ separation of powers,⁵⁶ checks and balances,⁵⁷

43. WYO. CONST. art. 1.

44. *Id.* arts. 3-5.

45. *Id.* arts. 12-13.

46. *Id.* arts. 15-16.

47. *Id.* arts. 6-11, 14, 17-18.

48. *Id.* art. 19.

49. *Id.* art. 20.

50. Although three women had been nominated, all fifty-five delegates elected to the constitutional convention were men. T. A. LARSON, *supra* note 32, at 88.

51. Peterson, *supra* note 39, at 104. T. A. LARSON, *supra* note 32, at 247 cites the constitutions of North Dakota, Montana, and Idaho as the primary source materials for the convention delegates.

52. This was best expressed by former Wyoming territorial governor George W. Baxter, delegate from Laramie County, when he stated on the fourteenth day of the convention:

We are here for the purpose of framing a constitution for the state of Wyoming . . . So far as the greater part of our work is concerned we should not be greatly perplexed, because we are traveling over well known ground. From the earliest days of the republic down to the present time the ablest, truest and best men of the several states of this union have been called into the service of the people in formulating into the clearest and most concise language those fundamental principles of liberty, justice and equality, which must of necessity be the foundation of any instrument intended for the government of a free people. It seems to me, therefore, that so far as nine-tenths of our labor is concerned, we have only to exercise an intelligent and discriminating judgment in our study of the work of the constitutional builders who have preceded us.

JOURNAL AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF WYOMING 347 (1893) [hereinafter CONSTITUTIONAL CONVENTION DEBATES].

53. WYO. CONST. art. 1, § 1 (all power is inherent in the people).

54. *Id.* art. 1, §§ 3, 27; art. 6, § 1.

55. *Id.* art. 1, § 7; art. 3, § 1. *But cf.* art. 3, § 52 (initiative and referendum) (adopted 1968).

56. *Id.* art. 2.

57. *See, e.g., id.* art. 3, §§ 17-18 (legislative power of impeachment); art. 4, § 5 (governor's pardoning power); art. 4, §§ 8-9 (governor's veto powers).

civilian supremacy over the armed forces,⁵⁸ natural rights (including private property),⁵⁹ judicial independence,⁶⁰ bicameralism,⁶¹ local self-government,⁶² allegiance to the Union,⁶³ and obedience to the Constitution of the United States.⁶⁴

These doctrines are not necessarily expressed in the same language employed in the federal Constitution. The Wyoming document implicitly accepts the right of revolution⁶⁵ as a corollary to the idea of popular sovereignty, a matter which the framers of the federal Constitution preferred to leave couched in the more ambiguous language of the preamble. The Wyoming Declaration of Rights incorporates some protections⁶⁶ against governmental overbearing which have no parallels in the federal Bill of Rights. Where corresponding freedoms are found, they are occasionally stated in broader⁶⁷ or more restrictive⁶⁸ terminology. Separation of church and state, which the United States Supreme Court has construed the no establishment of religion clause of the First Amendment to require,⁶⁹ is given specific form in the Wyoming Constitution's prohibitions against appropriation of public funds to religious organizations.⁷⁰ Similarly, the Wyoming Constitution is clear in its prohibition against religious instruction in the public schools of the State,⁷¹ also a problematic issue under the federal Constitution.⁷²

58. *Id.* art. 1, § 25 (military shall be in strict subordination to civil power).

59. *See, e.g., id.* art. 1, § 2 (equality in natural rights), § 4 (freedom from unreasonable searches and seizures), § 6 (no deprivation of life, liberty, or property without due process of law), § 18 (religious liberty), § 20 (freedom of speech and press), § 28 (no taxation without consent), § 32 (right to just compensation for property taken for public or private use), § 36 (protection of unenumerated rights).

60. *Id.* art. 5.

61. *Id.* art. 3, § 1.

62. *Id.* art. 12 (county organization); art. 13 (municipal corporations).

63. *Id.* art. 1, § 37; art. 21, § 24.

64. *Id.*

65. *Id.* art. 1, § 1 (people "have at all times an inalienable and indefeasible right to alter, reform or abolish the government in such manner as they may think proper").

66. *See, e.g., id.* art. 1, § 5 (no imprisonment for debt), § 14 (bail in non-capital cases), § 16 (prisons shall be "safe and comfortable"); art. 17, § 1 (conscientious objectors excused from bearing arms in militia) (incorporated in WYO. STAT. § 19-2-102 (1977)).

67. *See, e.g., id.* art. 1, § 24 (right to bear arms in self-defense).

68. *See, e.g., id.* art. 1, § 18 (religious liberty does not excuse "acts of licentiousness or justify practices inconsistent with the peace or safety of the state"), § 20 (libel an abuse of freedom of press). *But cf.* art. 21, § 25. Polygamy was undoubtedly on the minds of the members of the convention. CONSTITUTIONAL CONVENTION DEBATES, *supra* note 52, at 837-40.

69. U.S. CONST. amend. I, cl. 1; *Everson v. Board of Educ.*, 330 U.S. 1 (1947).

70. WYO. CONST. art. 1, § 19; art. 3, § 36. *But cf.* art. 15, § 12 (property used exclusively for religious worship, church parsonages, and church schools exempt from taxation); art. 10, § 12 (railroads not barred from extending special privileges to "ministers of the gospel").

71. *Id.* art. 7, § 12.

72. *Compare Illinois ex rel. McCollum v. Board of Educ.*, 333 U.S. 203 (1948) with *Zorach v. Clauson*, 343 U.S. 306 (1952).

Equality, which was forthrightly proclaimed in the Declaration of Independence, but left out of the original United States Constitution under the pressure of the slavery question,⁷³ is emphatically, if not repeatedly, set forth in the Wyoming Constitution. It is first framed as a broad philosophical principle,⁷⁴ then subsequently applied to political,⁷⁵ legal,⁷⁶ and civil⁷⁷ rights, without regard to race, sex, religion, or (in the case of property rights) resident aliens.⁷⁸ Most individual liberties protected in the constitution are secured against violations committed by government and public officials. Injuries to rights committed by *private* persons or agencies are normally redressed under statutory or common law.⁷⁹ However, a few provisions of the Wyoming Constitution appear to impose legal obligations directly upon private entities without any necessity for specific legislative or judicial effectuation,⁸⁰ while other guarantees are at least worded in such a way as to invite such an interpretation.⁸¹ Up to the present, however, the Wyoming Supreme Court has not shown any willingness to accept the offer.⁸² Nor has the court seen fit to independently construe the substantive content of the "rights of labor" and educational opportunities recognized in the Declaration of Rights.⁸³ These provisions appear to be directed, at least initially, to the legislature.

Many aspects of the Wyoming Constitution are understandable in light of the circumstances of the American, and specifically Wyoming, political culture and physical environment of the late nineteenth century, or what one convention delegate referred to as the "[q]uestions arising from the evils or the necessities of the day and generation in

73. R. KLUGER, *SIMPLE JUSTICE* 31-35, 709 (1975); E. GINZBERG & A. EICHNER, *THE TROUBLESOME PRESENCE: AMERICAN DEMOCRACY AND THE NEGRO* 40-67 (1964); D. FEHRENBACHER, *SLAVERY, LAW, & POLITICS: THE DRED SCOTT CASE IN HISTORICAL PERSPECTIVE* 8-15 (1981).

74. WYO. CONST. art. 1, § 2.

75. *Id.* art. 1, §§ 3, 27; art. 6, § 1. *But cf.* art. 17, § 1 (state militia consists of all able-bodied male citizens of the state).

76. *Id.* art. 1, § 34. *See* Washakie County School Dist. No. 1 v. Herschler, 606 P.2d 310 (Wyo. 1980), *cert. denied*, 449 U.S. 824 (1980).

77. WYO. CONST. art. 6, § 1. *See also* art. 7, § 10 (distinction or discrimination in public schools on account of sex, race, or color prohibited).

78. *Id.* art. 1, § 29. *But cf.* art. 19, § 3 (aliens may not be employed on public works unless they have declared their intention to become citizens).

79. *Cf.* 16 C.J.S. *Constitutional Law* § 3a (1984).

80. *See, e.g.*, WYO. CONST. art. 1, § 30 (monopolies prohibited); art. 19, § 6 (importing armed bodies to suppress violence prohibited unless called upon by legislature or governor).

81. *See, e.g., id.* art. 1, § 4 (prohibition against unreasonable searches and seizures), § 20 (freedom of speech and press); art. 21, § 25 ("no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship"). *See also* Keiter, *An Essay on Wyoming Constitutional Interpretation*, 21 *LAND & WATER L. REV.* 527, 559, 561 (1986).

82. *See* State v. George, 32 Wyo. 223, 231 P. 683 (1924) (prohibition against unreasonable searches and seizures is a limit only upon governmental power); Keiter, *supra* note 81, at 559.

83. WYO. CONST. art. 1, §§ 22, 23.

which we live[.]”⁸⁴ The State’s pioneering enfranchisement of women⁸⁵ was the continuation of an experiment born in territorial days,⁸⁶ in turn a result of the scarcity of women, hopes of recruiting settlers, and growing pressure for female suffrage in other parts of the West.⁸⁷ By 1889, the results of this experiment were viewed favorably enough by Wyomingites to justify the conclusion that women’s suffrage was right as a matter of principle.⁸⁸

The provisions of the constitution guarding against religious instruction in the public schools of the State and the appropriation of state money to religious institutions⁸⁹ are consistent with the secular orientation of the territorial population.⁹⁰ These provisions were not unlike similar prohibitions written into the laws of other states during the period to squelch the efforts of Catholic groups to secure public aid for parochial schools.⁹¹

Albert L. Sturm has shown how the spate of constitution-making in America between 1860 and 1900⁹² reflected a public mood to curb the power of local government to borrow heavily for public improvements, a practice which had brought many cities to the point of bankruptcy in the wake of the depression of 1873.⁹³ In Wyoming, this mood may be seen in the state constitution’s specific limitations on the ability of counties, municipalities, and school districts to create indebtedness.⁹⁴

This period of American history also witnessed a growing sentiment to authorize public regulation of the more notorious practices of unrestrained economic enterprise,⁹⁵ a determination not overlooked by the framers of Wyoming’s constitution.⁹⁶ The Union Pacific Railroad in particular was a dominant feature in the economic livelihood of many, and owned huge amounts of rich coal lands along its rights-

84. CONSTITUTIONAL CONVENTION DEBATES, *supra* note 52, at 348 (statement of George W. Baxter).

85. WYO. CONST. art. 6, § 1.

86. Act of Dec. 10, 1869, ch. 31, 1869 Gen. Laws of Wyo. Terr.

87. T. A. LARSON, *supra* note 32, at 78-84.

88. *Id.* at 84-89, 248-49; CONSTITUTIONAL CONVENTION DEBATES *supra* note 52, at 344-59, *passim*.

89. WYO. CONST. art. 1, § 19; art. 3, § 36; art. 7, § 12.

90. T. A. LARSON, *supra* note 32, at 225.

91. S. AHLSTROM, *A RELIGIOUS HISTORY OF THE AMERICAN PEOPLE* 832, 843 (1972); A. STOKES & L. PFEFFER, *CHURCH AND STATE IN THE UNITED STATES* 422-23 (rev. ed. 1964). See COLO. CONST. art. IX, § 7; IDAHO CONST. art. IX, § 5; MONT. CONST. art. X, § 6; N. DAK. CONST. art. VIII, § 5; S. DAK. CONST. art. VIII, § 16.

92. Thirty-eight constitutions were written in eighteen states between 1860 and 1875. Nineteen more were written in eighteen states from 1875 to 1900. Sturm, *The Development of American State Constitutions*, 12 *PUBLIUS: THE J. OF FEDERALISM* 57, 66 (1982).

93. *Id.* at 66-68.

94. WYO. CONST. art. 16, §§ 3-5 (§ 5 amended 1920, 1954, 1962).

95. Sturm, *supra* note 92, at 66-68.

96. See WYO. CONST. art. 9 (mines and mining); art. 10 (corporations, including railroads); art. 1, § 30 (monopolies prohibited).

of-way. In constitutionalizing the right to bring wrongful death actions,⁹⁷ mine inspection and safety requirements,⁹⁸ an eight-hour day in mines,⁹⁹ a ban on female and child labor in "dangerous" mines,¹⁰⁰ and a prohibition on importing private police forces,¹⁰¹ the convention delegates clearly had in mind certain employment practices of the Union Pacific and its mining operations in the years before statehood.¹⁰² These perceived abuses had also been the targets of territorial legislation.¹⁰³ The political vulnerability of the railroad as well as the revenue needs of the State were important factors in writing into the constitution (rather than leaving it up to the legislature) a tax on coal lands or upon the value of the gross product thereof.¹⁰⁴ It became the duty of the legislature to protect and assist other economic interests, such as the stockgrowers¹⁰⁵ and the vaguely worded "labor."¹⁰⁶

Sectional conflict, including fear of political domination by the southeastern area of the State, led convention delegates from the western and northern counties to insert into the constitution a provision¹⁰⁷ guaranteeing each county at least one seat in both houses of the legislature, regardless of population.¹⁰⁸

The criticality of water to agricultural, industrial, and community development in Wyoming's semiarid climate led the delegates to reject the common law doctrine of riparian ownership in favor of an explicit assertion of state control of water in natural streams, to be apportioned by the state water engineer on the basis of who first started using the water for beneficial purposes.¹⁰⁹ The needs of future economic development, as well as a certain distrust of the legislature, also contributed to a section of the Declaration of Rights allowing for private use of the power of eminent domain for certain purposes.¹¹⁰

97. *Id.* art. 9, § 4. See generally CONSTITUTIONAL CONVENTION DEBATES, *supra* note 52, at 796-98.

98. WYO. CONST. art. 9, §§ 1-2. See generally CONSTITUTIONAL CONVENTION DEBATES, *supra* note 52, at 607-11, 678.

99. WYO. CONST. art. 19, § 2.

100. *Id.* art. 9, § 3 (repealed 1978).

101. *Id.* art. 19, § 6. Pinkerton detectives were the object of this section. CONSTITUTIONAL CONVENTION DEBATES, *supra* note 52, at 402-04.

102. G. BAKKEN, ROCKY MOUNTAIN CONSTITUTION MAKING, 1850-1912 at 80-81 (1987).

103. *Id.*; T. A. LARSON, *supra* note 32, at 77.

104. WYO. CONST. art. 15, §§ 2-3; G. BAKKEN, *supra* note 102, at 59-60, 64; T. A. LARSON, *supra* note 32, at 251-53.

105. WYO. CONST. art. 19, § 1.

106. *Id.* art. 1, § 22; art. 19, §§ 2-4, 7-8. The University of Wyoming might well be added to the list of protected "economic" interests today. *Id.* art. 7, §§ 15-17.

107. *Id.* art. 3, § 3 (held partially ineffective in *Schaefer v. Thomson*, 240 F. Supp. 247 (D. Wyo. 1964)).

108. G. BAKKEN, *supra* note 102, at 45; T. A. LARSON, *supra* note 32, at 250-51. See generally CONSTITUTIONAL CONVENTION DEBATES, *supra* note 52, at 410-26, 567-72, 628.

109. WYO. CONST. art. 8, §§ 1-5; G. BAKKEN, *supra* note 102, at 66-69; T. A. LARSON, *supra* note 32, at 253-55.

110. WYO. CONST. art. 1, § 32; BAKKEN, *supra* note 102, at 33.

The position of the legislature is perhaps the most telling example of the interaction between theory and practice in the Wyoming Constitution. Modern representative democracies by and large vest the determination of public policy in the legislative branch, whose members are chosen directly or indirectly by the electorate.¹¹¹ In contrast to the national government, where Congress legally may exercise only those powers delegated to it by the federal Constitution,¹¹² state legislatures inherently are vested with full power to pass laws on any topic, subject only to the substantive and procedural limitations found in the state and federal constitutions.¹¹³ The Wyoming Supreme Court has held this principle to be implied in the state constitution, even if not there in so many words.¹¹⁴ Experience with corruption and financial profligacy in American legislatures after the Civil War, however, suggested the necessity of prescribing additional restrictions upon legislative behavior in the state constitution, beyond those already provided by checks and balances, bills of rights, and the ballot box.¹¹⁵ The Wyoming Constitution epitomizes this tendency in its numerous procedural specifications for enactment of bills,¹¹⁶ in its various restrictions upon the legislature's power to tax,¹¹⁷ borrow,¹¹⁸ and spend,¹¹⁹ and in the many provisions obliging (rather than simply authorizing) the legislators to pass certain kinds of laws.¹²⁰

111. W. EBENSTEIN, C. PRITCHETT, H. TURNER & D. MANN, *AMERICAN DEMOCRACY IN WORLD PERSPECTIVE* 16-17 (3d ed. 1973); Crane, *Legislators and the Formulation of Public Purpose*, in *GOVERNMENT & POLITICS: AN INTRODUCTION TO POLITICAL SCIENCE* 460, 464, 471-72 (A. Dragnich & J. Wahlke eds. 1966). See generally J. Locke, *An Essay Concerning the True Original, Extent and End of Civil Government* [*Second Treatise on Civil Government*], in *SOCIAL CONTRACT: ESSAYS BY LOCKE, HUME, AND ROUSSEAU* 77-78 (E. Barker ed. 1960); *THE FEDERALIST* No. 39 (J. Madison).

112. U.S. CONST. amend. X.

113. *Id.*; D. GRANT & L. OMDAHL, *supra* note 25, at 96; C. PRESS & K. VERBURG, *supra* note 37, at 158.

114. *Budge v. Board of Comm'rs of Lincoln County*, 29 Wyo. 35, 44, 208 P. 874, 876 (1922); *State ex rel. Wyoming Agric. College v. Irvine*, 14 Wyo. 318, 339, 84 P. 90, 106 (1906).

115. C. PRESS & K. VERBURG, *supra* note 37 at 168-73; G. BAKKEN, *supra* note 102, at 45, 53; Sturm, *supra* note 92, at 66-68.

116. *E.g.*, WYO. CONST. art. 3, § 6 (limitation of session duration) (amended 1972), § 22 (appropriations bills may not be introduced within five days of close of sessions), § 23 (no bill to become law unless first considered in committee), § 24 (bill must contain only one subject, to be clearly expressed in its title), § 27 (special and local laws forbidden), § 42 (vote-trading defined as bribery).

117. *Id.* art. 15, §§ 4, 11 (amended 1988).

118. *Id.* art. 16, §§ 1-2 (subsequently limited by § 12).

119. *Id.* art. 3, § 39 (aid in the construction of railroads forbidden); art. 16, § 6 (state prohibited from engaging in any work of internal improvement unless authorized by a two-thirds vote of the people) (subsequently limited by §§ 9-12).

120. *E.g.*, *id.* art. 1, § 22 (protection of rights of labor), § 23 (legislature "shall suitably encourage means and agencies calculated to advance the sciences and liberal arts"); art. 3, § 45 (offense of corrupt solicitation shall be defined by law); art. 5, § 14 (legislature shall provide for appointment of district court commissioners); art. 6, § 13 (legislature shall pass laws "to secure the purity of elections, and guard against abuses of the elective franchise."); art. 7, § 1 (legislature shall provide for public schools); art. 10, § 1 (legislature shall enact a general incorporation law).

CONSTITUTIONAL CHANGE

How has the Wyoming Constitution changed in the hundred years of its existence as the fundamental law of the state, and in what directions?

The document itself contains two modes whereby it may be formally amended, or even totally replaced: legislative initiative,¹²¹ or proposed revision by a constitutional convention called by the legislature with popular approval.¹²² Proposals of either kind must be ratified by a majority of the electors.¹²³ As a matter of practice, the former method has been used exclusively, precedent for the convention route being confined to the original 1889 assembly.

It is true that the Wyoming Constitution, as do all documents of its genre, also changes in ways other than through formal revision. Judicial interpretation, so clearly vital in adapting the meaning of the United States Constitution to changing circumstances, plays a part in keeping state documents up to date, although perhaps less so than on the federal level.¹²⁴ The Supreme Court of Wyoming, while no radical innovator in state constitutional jurisprudence,¹²⁵ frequently has spoken of the importance of adapting constitutional provisions to evolving times and circumstances.¹²⁶ Moreover, the court has taken a more prominent role in the shaping of public policy through state constitutional interpretation in recent years.¹²⁷

Statutory amplification of fundamental law is an important change-agent as well. While the Wyoming Constitution seems more preoccupied with restricting rather than enhancing the powers of the state legislature, surely such recent laws as the Wyoming Industrial Siting Act¹²⁸ and the mineral severance tax law of 1969¹²⁹ reinterpreted the legislature's constitutional police and taxing powers to cope

121. WYO. CONST. art. 20, § 1.

122. *Id.* art. 20, § 3.

123. *Id.* art. 20, §§ 1, 4. That is, a majority of the electors voting in the election, and not merely a majority of those voting on the proposed amendments. *State ex rel. Blair v. Brooks*, 17 Wyo. 344, 99 P. 874 (1909) (3-0 decision); *State ex rel. White v. Hathaway*, 478 P.2d 56 (Wyo. 1970) (2-2 decision).

124. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, *supra* note 14, at 2.

125. See Keiter, *supra* note 81, at 550.

126. *E.g.*, in *Chicago & Northwestern Ry. Co. v. Hall*, 46 Wyo. 380, 26 P.2d 1071 (1933), where Justice Blume wrote of the Wyoming document: "The Constitution is, in a sense, a living thing, designed to meet the needs of progressive society, amid all the detail changes to which such society is subject." *Id.* at 391, 26 P.2d at 1073; *County Court Judges Ass'n v. Sidi*, 752 P.2d 960, 967 (1988): "A constitution is not lifeless, but is a flexible, living document intended to accommodate new conditions and circumstances in a changing society . . ." (Cardine, J.).

127. See, *e.g.*, *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d 310 (1980), *cert. denied*, 449 U.S. 824 (1980); *Hoem v. State*, 756 P.2d 780 (1988); *Harvey v. State*, 774 P.2d 87 (1989).

128. Industrial Development Information and Siting Act, WYO. STAT. §§ 35-12-101 to -119 (1977 & Supp. 1990).

129. WYO. STAT. § 39-6-303 (1990).

with the strains placed upon the State's resources as a result of the boom in energy development experienced during the 1960's and 1970's. The County Court Act of 1971 likewise implemented the legislature's constitutional authority over the lower courts to modernize the structure, jurisdiction, and personnel matters of local tribunals of justice.¹³⁰ The tradition according to which the Speaker of the Wyoming House of Representatives serves only one term and then retires from the House is purely a matter of informal practice followed by both parties in the House,¹³¹ but exemplifies how custom can affect constitutional arrangements, even though the result arguably is to weaken the institutional position of the legislature vis-à-vis the governor.¹³²

Change can also be accomplished by ignoring constitutional provisions whose validity is thrown into doubt by federal law¹³³ or court decision,¹³⁴ or which are inconvenient,¹³⁵ or overlooked.¹³⁶

CHANGE BY AMENDMENT

The most significant internal device for changing state constitutions generally has been the formal amendment process.¹³⁷ Ostensibly, it is also the most visible.¹³⁸ In Wyoming, sixty-one separate amendments have been added to the state constitution.¹³⁹ Voters in this

130. WYO. STAT. §§ 5-5-101 to -175 (1977 & Supp. 1990). See WYO. CONST. art. 5, § 1 (amended 1967).

131. Telephone interview with Mr. Herb Pownall, former Clerk of the Wyoming House of Representatives (Jan. 8, 1991) [hereinafter Pownall Interview].

132. THE EQUALITY STATE, *supra* note 34, at 53.

133. *E.g.*, WYO. CONST. art. 6, § 2 (21-year age requirement for voting contrary to U.S. CONST. amend. XXVI); art. 6, § 9 (literacy requirement for voting barred by federal Voting Rights Act, 42 U.S.C. § 1973b(f) (1988)).

134. See, *e.g.*, Schaefer v. Thomson, 240 F. Supp. 247 (D. Wyo. 1964) (holding partially ineffective Wyo. CONST. art. 3, § 3 (each county to have at least one senator and one representative in the legislature)); Delgiorno v. Huisman, 498 P.2d 1246 (Wyo. 1972) (holding unconstitutional one year residency requirement for voting in Wyo. CONST. art. 6, § 2). Compare WYO. CONST. art. 19, § 3 (barring aliens from public works employment unless they have declared intention to become United States citizens) with Sugarman v. Dougall, 413 U.S. 634 (1973), and subsequent cases requiring that state laws which discriminate against aliens in eligibility for public employment must advance a compelling state interest by the least restrictive means.

135. For many years, the Wyoming Legislature evaded the session duration limits stipulated in art. 3, § 6 by simply stopping the clock a few minutes before the end of the last legislative day, in order to deal with the crush of business which occurred as the session drew to a close. This practice apparently ended in the 1970s. Pownall interview, *supra* note 131. See generally Note, *Stopping the Clock in the Wyoming Legislature*, 10 WYO. L. J. 203 (1956); Williams, *State Constitutional Limits on Legislative Procedure: Legislative Compliance and Judicial Enforcement* 17 PUBLIUS: THE J. OF FEDERALISM 91 (1987).

136. WYO. CONST. art. 12, § 4, directing the legislature to enact a township form of government law on a local option basis, has never been implemented in legislation.

137. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, *supra* note 14, at 2.

138. Proposed amendments must be submitted to the voters in every state except Delaware. THE BOOK OF THE STATES, *supra* note 40, at 40.

139. *Supra* page 18 and note 41.

State have encountered constitutional amendment proposals on the ballot in every general election since 1966. During the first half of the State's existence only twelve amendments were adopted, the first requiring the legislature to create a state board of equalization.¹⁴⁰ Since 1960, thirty-seven amendments have been inserted into the constitution.¹⁴¹

Some articles have been the subject of amendment far more frequently than others, with article 15 (taxation and revenue) altered twelve times, and articles 3 (legislative department) and 16 (public indebtedness) altered nine times.¹⁴² Other articles, such as the brief provisions of article 8 on irrigation and water rights, have been untouched by amendment. Some amendments have affected the political system of the State more profoundly than others. While assessments in this regard are likely to differ, the following changes seem most significant in terms of altering the original Wyoming Constitution.

First, the complete overhaul of sections 4-6 of article 5 concerning how supreme court justices and district court judges are chosen, retained, and disciplined. Adopted in 1972, this complex amendment significantly limited democracy in the constitution by abolishing direct popular election of judges and substituting the Missouri Plan of judicial selection in which the Wyoming State Bar and the Governor play the dominant roles in filling vacancies in the judiciary.¹⁴³ Judges must stand for popular retention on a nonpartisan, noncompetitive ballot, a requirement which has presented little difficulty for the overwhelming number of candidates who have sought retention in office.¹⁴⁴ The Judicial Supervisory Commission, a new agency, is given primary responsibility for handling complaints concerning judicial misbehavior and/or unfitness for the bench,¹⁴⁵ but the secrecy which envelops most of its work precludes assessment of its effectiveness.¹⁴⁶ The 1972 amendment also provides for compulsory retirement of judges when they reach the age of seventy,¹⁴⁷ fixes the size of the supreme court at between three and five members,¹⁴⁸ and allows the justices themselves

140. WYO. CONST. art. 15, § 9.

141. *Chronological Table of Amendments to Wyoming Constitution*, 1 WYO. STAT. 245 (1990). The practice in Wyoming is to incorporate amendments into the body of the constitution rather than adding them at the end, as in the case of the United States Constitution.

142. *Id.*

143. WYO. CONST. art. 5, § 4(b)-(e). See Griffin & Horan, *Judicial Merit Retention in Wyoming: An Analysis and Some Suggestions for Reform*, 25 LAND & WATER L. REV. 567, 568 (1980).

144. WYO. CONST. art. 5, § 4(g)-(h). See Horan & Griffin, *Ousting the Judge: Campaign Politics in the 1984 Wyoming Judicial Retention Elections*, 24 LAND & WATER L. REV. 371, 373-75 (1989). In sixty-five of the sixty-seven retention elections held for district and supreme court judges since 1972, the candidates were retained, usually by heavy majority "yes" votes.

145. WYO. CONST. art. 5, § 6.

146. See Griffin & Horan, *supra* note 143, at 588-91.

147. WYO. CONST. art. 5, § 5.

148. *Id.* art. 5, § 4(a).

to pick their chief.¹⁴⁹

Second, the so-called "home rule" amendment, also adopted in 1972. The original language of Article 13, section 1, requiring the powers of cities and towns to be grounded in statutory delegation from the legislature, was totally rewritten to empower cities and towns broadly "to determine their local affairs and government as established by ordinance . . ."¹⁵⁰ This constitutionalization of local self-government is hedged with certain restrictions,¹⁵¹ but nonetheless is to be "liberally construed."¹⁵² The same revised section now permits cities and towns to elect out of certain statutes.¹⁵³ Although supporters of the amendment saw it as a victory for municipalities in handling their own affairs, its actual effect depends in large part on how the authority contained therein is implemented and interpreted. According to one expert on Wyoming law, the verdict is still out on this question.¹⁵⁴

A third 1972 amendment which allowed the legislature to meet annually rather than biennially, provided that no session lasts any longer than forty days, with a maximum of sixty working days for the entire biennium.¹⁵⁵ The optional twenty-day session in even-numbered years is for consideration of the budget only, unless a two-thirds vote of either house can be mustered to allow introduction of specific non-budget bills.¹⁵⁶ This change was designed to afford more time to the legislators to consider items of proposed expenditures in the executive budget. In view of the fact that total state expenditures currently exceed \$1.5 billion annually,¹⁵⁷ this change in the state constitution is a small but nonetheless significant step in the direction of enabling the legislature to exercise meaningful supervision over the extensive fiscal operations of state government.

In terms of the policy responsibilities of government in the state constitution, two changes, or rather series of changes, may be acknowledged as being critical.

First, the prohibition in article 16, section 6 against the State engaging "in any work of internal improvement" unless authorized by a two-thirds vote of the people has been diluted by successive amendments to make it inapplicable to the construction of highways,¹⁵⁸

149. *Id.*

150. *Id.* art. 13, § 1(b).

151. Municipal authority is subject to "statutes uniformly applicable to all cities and towns, and to statutes prescribing limits of indebtedness." The legislature also prescribes the "levying of taxes, excises, fees, or any other charges," and may require certain ordinances to be referred to the voters. *Id.*

152. *Id.* art. 13, § 1(d).

153. *Id.* art. 13, § 1(c).

154. E. GEORGE RUDOLPH, WYOMING LOCAL GOVERNMENT LAW 76-83 (1985).

155. WYO. CONST. art. 3, §§ 6-7.

156. *Id.* art. 3, § 6.

157. THE EQUALITY STATE, *supra* note 34, at 74.

158. WYO. CONST. art. 16, § 9 (adopted 1916).

water projects,¹⁵⁹ and airport facilities.¹⁶⁰ Impetus for these changes came not only from technological progress in the form of the automobile and airplane, but also from the steady increase in federal grants made available to state and local governments for such purposes.¹⁶¹ Regardless of the motivation behind them, these constitutional modifications have allowed the State to build a modern road transportation network and water storage system, matters once believed to be the responsibilities of local government or private enterprise. Of course, all have been critical to the development of the economic infrastructure of the State.¹⁶²

Finally, in seven general elections since 1920, Wyoming voters have approved amendments locating new funding potential for public education by creating or raising the taxing authority of the state and counties for this purpose,¹⁶³ and by steadily increasing the amount of indebtedness school districts may incur for building and maintaining educational facilities.¹⁶⁴ In a state whose political culture prides itself on low taxation, numerous restrictions on public debt, and a balanced budget,¹⁶⁵ these constitutional changes not only symbolize a growing commitment to the quality of public education, but also have contributed to the emergence of Wyoming as one of the nation's leaders in per capita expenditures on public education at all levels.¹⁶⁶

Judging by experience, one of the most far-reaching changes in the State's basic law appears to have delivered more on promise than performance. The direct initiative and referendum provisions of the constitution,¹⁶⁷ added in 1968 and then amended eighteen years later, place Wyoming among approximately half of the states which have incorporated direct democracy into their basic laws.¹⁶⁸ As Larson noted,¹⁶⁹ interest in a method by which the people could directly enact and reject legislation reaches back into the Progressive Era of Wyoming history. An insufficient number of yes votes defeated a proposed amendment to this effect in the general election of 1912,¹⁷⁰ but

159. *Id.* art. 16, § 10 (adopted 1940).

160. *Id.* art. 16, § 11 (adopted 1948).

161. See generally J. RICHARD, *supra* note 33, at 7-9; T. A. LARSON, *supra* note 32, at 344-45, 407-08, 424-25, 528-30; D. GRANT & L. OMDAHL, *supra* note 25, at 491-92, 497, 504.

162. See also WYO. CONST. art. 16, § 12 (economic development loan fund authorized) (adopted 1986).

163. *Id.* art. 7, § 2 (amended 1924); art. 15, § 15 (adopted 1948, amended 1982); art. 15, § 17 (adopted 1966, amended 1982).

164. *Id.* art. 16, § 5 (amended 1920, 1954, & 1962).

165. *Id.* art. 16. See generally THE EQUALITY STATE, *supra* note 34, at 9-10.

166. THE EQUALITY STATE, *supra* note 34, at 86-87.

167. WYO. CONST. art. 3, § 52. For an analysis of this provision before its amendment in 1986, see Murdock & Murdock, *Corporate Expression in Wyoming Ballot Issues, Referenda and Initiatives: A Political and Legal Dilemma*, 24 LAND & WATER L. REV. 449 (1979).

168. D. GRANT & L. OMDAHL, *supra* note 25, at 237.

169. T. A. LARSON, *supra* note 32, at 562.

170. M. ERWIN, WYOMING HISTORICAL BLUE BOOK 1109-12 (1946).

supporters of the idea finally triumphed fifty-six years afterwards. Notwithstanding former Governor Hathaway's view that the initiative and referendum provisions were the greatest achievement of the 1967 legislative session,¹⁷¹ they have proven somewhat disappointing to those who believed they would give public opinion a more significant role in lawmaking.

During the twenty-two years since adoption of this amendment, only two out of sixteen applications for initiative filed with the Wyoming Secretary of State have gained the required number of signatures of registered voters for placement of their proposition on the general election ballot.¹⁷² The first, a 1984 initiative to declare in-stream flows as a beneficial use of water under Wyoming law, was ultimately voided because legislation enacted in 1985 was determined to accomplish the same objective.¹⁷³ According to news reports, an initiative to prohibit triple trailers on Wyoming highways recently obtained enough signatures to qualify for placement on the 1992 general election ballot.¹⁷⁴ No petitions for referendum on a legislative act have ever been filed.¹⁷⁵

CONCLUSION

The Wyoming Constitution may have nothing to blame but itself for being largely overlooked in the celebration of the centennial of statehood. A rush job in its creation, it is largely a stitching together of borrowings from other states. It often strays from the fundamental into details more appropriate for legislation. One searches in vain for the well-turned phrase in a torrent of restrictions, duties, and advice poured over government more reflective of the ideas of a century ago than of today. In a nation which has been described as "a land of constitutions[.]"¹⁷⁶ there seems little reason to single this one out for encomiums.

Yet, the Wyoming Constitution has come to occupy its own place in the State's life. If it has failed to impress itself upon the popular consciousness, it is still respected as fundamental law by those in charge of public affairs in the State. If it is wanting in innovation, much that is borrowed undergirds the general structure of law and

171. As reported in T. A. LARSON, *supra* note 32 at 562.

172. Placement of an initiative proposition on the ballot requires a petition signed by registered voters equal in number to fifteen percent of those who voted in the preceding general election, and resident in at least fifteen counties. WYO. CONST. art. 3, § 52(c); WYO. STAT. §§ 22-24-101 to -123 (1977 & Supp. 1990). A summary of the applications for initiative filed with the Wyoming Secretary of State from December 1968 to February 1990 was provided to the author in a letter from the Secretary of State's office (Dec. 12, 1990).

173. WYO. CONST. art. 3, § 52(d).

174. *The Star-Tribune* (Casper, Wyo.) Jan. 5, 1991, at B1, cols. 1-2.

175. Letter from Secretary of State's office cited *supra* note 172.

176. D. GRANT & L. OMDAHL, *supra* note 25, at 94.

politics common to America as a whole. The framers' selective replication of constitutional provisions from elsewhere was not guesswork, but reliance upon ideas and processes that had been tried and found workable in places culturally and geographically proximate to Wyoming. In this sense, the lawyers, businessmen, politicians, and cattlemen who dominated the constitutional convention were not dreamers, but men who believed practical experience was the best guide in their labors.

Where conditions required departure from past practice, as in the case of state ownership of water rights, the framers tempered the individualism of the law with a dose of socialism (though they would have rejected the use of that term).

If these hard-headed delegates legislated in the constitution, they knew exactly what they were up to,¹⁷⁷ and wrote in such provisions because they thought they were important enough not to leave up to the unbridled discretion of future legislatures. Like the federal constitutional convention of a century earlier, sectional rivalry and compromise affected the outcome. If some of the results seem wed to interest group maneuvering or the popular mood of the times, it would be unrealistic to suppose any constitution could exclude these influences.¹⁷⁸

Finally, in its provisions for change, both formal and informal, the constitution has been flexible enough to accommodate the needs of a state whose population has increased tenfold, and become far more urbanized and economically dependent upon forces beyond their control. Population growth, industrialization, or political crisis may at some time in the future cause Wyomingites to reconsider whether a constitution fashioned a century ago can persist without wholesale revision,¹⁷⁹ but until now that document has served them well. It has worked. It has been a lasting legacy.

177. CONSTITUTIONAL CONVENTION DEBATES, *supra* note 52, at 797.

178. D. GRANT & L. OMDAHL, *supra* note 25, at 96-97, 109-10.

179. See, Grant, *State Constitutional Revision and the Forces that Shape It*, 9 STATE & LOCAL GOVERNMENT REVIEW, 60-64 (1977).