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An Effort to Revise the Minnesota Bill of Rights

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Note: An Effort to Revise the Minnesota Bill of Rights

I. INTRODUCTION

The past ten years have witnessed a great deal of activity in various states directed towards the writing of new constitutions or the revision of old ones. Although the bills of rights have not usually been a central focus of state constitutional revision, they have been included in the scope of revision efforts. Partly because of the overwhelming impact of the Federal Bill of Rights and partly because of a feeling that fundamental rights are already adequately protected in state constitutions, some commentators question whether state bills of rights should receive any attention at all. Others believe that there are new emerging rights which must be identified and given constitutional protection by the states and that obsolete provisions should be eliminated from present constitutions.

This note will attempt to analyze the function of a bill of rights in a state constitution and then to examine recent efforts to revise the Minnesota Bill of Rights. The Minnesota experience can perhaps demonstrate some of the goals that may be formulated in revising a bill of rights. It also provides one illustration of the drafting problems and political considerations involved in such a process.

II. THE BILL OF RIGHTS IN STATE CONSTITUTIONS

A. NEED FOR STATE BILLS OF RIGHTS

While all state constitutions contain a bill of rights, the Fed-

4. See Recent Revision, § II. C., p. 162 infra, for a general discussion of the revision process.
eral Bill of Rights has played the major role in the protection of the rights of individuals and groups. The Federal Bill of Rights may be differentiated from state bills of rights on the basis of development and impact. Reasons which have been advanced to explain why thorough judicial development of the bill of rights has occurred only at the federal level include the special caliber of the federal judiciary, a tendency of state courts to rely on decisions construing the federal provisions rather than developing their own law, and the emphasis placed on federal constitutional development in the training of lawyers.  

The Federal Bill of Rights has been elaborated and refined by the Supreme Court in a continuing process in which litigants regularly attempt to assert their rights. Although it was originally interpreted as a restriction solely on the federal government, much of it has now been made applicable to the states through the fourteenth amendment. The Federal Bill of Rights also can be distinguished by its relative brevity and lack of denial. These factors may furnish an additional explanation for the difference in development, for the general language of the federal guarantees may provide more room for, and indeed greater necessity for, judicial interpretation. Additionally, litigants often ignore the possibility of bringing an action under a state constitutional guarantee and base their case solely on the federal provision. And even where both the federal and state guarantees are raised, the court may choose to discuss the issues from the standpoint of the federal provisions alone.

In spite of the prominent role played by the Federal Bill of Rights, there are a number of reasons why state bills of rights remain important. Since state governments have inherent power in contrast to the federal government which is limited to those powers specifically delegated to it, there is arguably a greater need for state constitutions to include restrictions on that power.

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Reasons why attorneys might choose to rely solely upon the federal provision include avoidance of possible abstention problems and lack of clarity of the state section. Interview with anonymous attorney, in Minneapolis, Minnesota, April 4, 1973.

7. See Mazor, supra note 4, at 333-34.
by way of bills of rights. It must also be recognized that state bills of rights contain certain types of rights not found in the Federal Constitution which otherwise would not receive protection. Some believe that it is more desirable in a federal system for the individual to look to the state government for the protection of his rights, and some have advocated careful revision of state bills of rights to "halt, or at least slow down, the expansion of federal power." There are others who look upon the fifty state constitutions as a unique opportunity for experimentation. While all appear to agree that only fundamental rights should be included in a constitution, opinions differ on what is fundamental, and many commentators believe that as society and technology change, there must be a periodic inquiry as to whether there are new rights in need of protection. State bills of rights have in fact pioneered in the recognition of certain rights which have later been read into the Federal Constitution by the Supreme Court.

There are also reasons why it can be important for state bills of rights to contain the same rights guaranteed in the Federal Constitution. Since not all of the rights in the first eight amendments in the Federal Constitution have been applied against the states, those rights not incorporated into the fourteenth amendment should be included in the state constitution if there is a desire for such guarantees. Moreover, the interpretation of the federal rights is not immutable. Perhaps the most significant factor, however, is that state courts may construe provisions in the state bill of rights, although identical to federal provisions, as affording greater protection.

While it is not common for state courts to construe state constitutional provisions in a different manner from their federal counterparts, some notable examples exist. An early case in which a state court arrived at a different result was Wynehamer v. People, in which a state prohibition law was held to violate the state's guarantee of due process in so far as it applied to the property of those owning liquor at the time of its enactment.

8. See, e.g., Force, supra note 4, at 141-42 (right to bail, prohibition of imprisonment for debt, guarantee of the legal remedy, etc.)
12. See, e.g., Mazor, supra note 4, at 345-46.
13. 13 N.Y. 378 (1856).
that time this doctrine of substantive due process had not yet been adopted by the United States Supreme Court; moreover, state courts continued to invalidate economic legislation on the basis of their own interpretation of state due process clauses many years after the doctrine was abandoned at the federal level. In addition, some procedural rights "have been applied by states to an extent beyond that required . . . by the corresponding federal guarantees." In many states, clauses dealing with freedom of religion and separation of church and state have been more restrictively applied. And in Sailer Inn, Inc. v. Kirby, the California Supreme Court went beyond the United States Supreme Court to declare sex a suspect classification requiring a compelling state interest to justify legislation using it as a basis for differentiation.

B. TYPES OF PROVISIONS IN STATE BILLS OF RIGHTS

Bills of rights in state constitutions consist in general of three categories of provisions: sections which may be characterized as statements of political theory, sections which guarantee substantive rights and sections which provide procedural protection. There is considerable similarity among state bills of rights because the federal example served widely as a model and the states borrowed freely from each other. Another ele-
ment which may have led to greater uniformity is the work of the National Municipal League and, in particular, the various editions of its Model State Constitution which especially concentrate on procedural guarantees.22

While provisions in a bill of rights are generally considered to be self-executing and therefore enforceable without supplemental legislation, they may be treated differently by courts if the prohibition is directed at private action rather than at state action. That is, a prohibition will always be self-executing in its negative effect upon the legislature, which has no power to enact legislation permitting something constitutionally forbidden, but a prohibition against private action may be construed as requiring legislative implementation for enforcement.23 Further, the rights may be held not to be self-executing if by their terms they indicate a necessity for enabling legislation. In such a case, even if drafted in mandatory form, they cannot be enforced if the legislature fails to comply with the mandate.24 However, legislation inconsistent with such provisions will be nullified by the courts.25

Opinions differ as to whether non-enforceable rights belong in a state constitution. Some authorities believe that they can serve a useful symbolic purpose.26 Others believe that a "sparse" document is preferable because the inclusion of "unenforceable statements of principle" would "merely serve to dilute the mandatory nature of established . . . protections."27


22. See National Municipal League, Model State Constitution (6th rev. ed. 1968). The model Bill of Rights contains only seven sections: one modeled on the first amendment to the Federal Constitution, a due process and equal protection section, a section prohibiting political tests for public office, and four procedural sections relating to searches and seizures and interceptions, self-incrimination, habeas corpus, and rights of accused persons.


24. See F. Grad, supra note 2 at 20 (Some Implications of State Constitutional Amendment for the Draftsman).

25. Id. at 16-19.


C. Recent Revision

General revision of a state constitution is usually accomplished through the use of constitutional conventions or special commissions. Perhaps the most important distinctions between them are that the convention is composed of elected delegates while the commission is appointed and that the convention results in direct submission of its product to the voters whereas the commission’s recommendations must first be approved by the legislature. In most states, the legislature must initiate the question of a convention, and the people must generally approve the holding of a convention and its final product by the majority of those voting on the proposal. Commission recommendations must be approved by the legislature and the people according to the particular provision for amendment in each state. The legislative approval required for submission to the electorate usually consists of a special majority of two-thirds or even three-fifths, while most states require a majority of the popular votes cast on the provision. In many states, comprehensive revision by commission is made difficult by restrictions on the number of amendments which can be submitted to the voters at one time and by rules which limit the content of amendments to a single subject.

The use of either a convention or a commission may be more advantageous depending on the circumstances. The constitutional convention provides an opportunity to study the adequacy of the constitution as a whole and to present an entire document to the voters. But legislators have traditionally been suspicious of the convention method which bypasses the legislature, and critics claim that it has not been as ideal in form as in theory.

28. See F. Grad, supra note 2, at 22-23 (Some Implications of State Constitutional Amendment for the Draftsman). Variance in the popular vote requirement appears to be a crucial factor in the success of amendments; the requirement of a majority of all votes cast in the election is more difficult to meet. The relative influence on successful amendment proposals may be seen by the Minnesota experience where a 72% passage ratio declined to 32.5% when the state shifted to the latter requirement.

29. Id. at 19. Nevertheless, the number of amendments added to state constitutions presents a striking contrast to the number added to the Federal Constitution. For example, in Louisiana there have been 460, in California 350, and over 90 in Minnesota. 2 H. Gimlin, State Constitutional Reform Editorial Research Reports 705 (1968).

In the 10 states having constitutional conventions since 1966, the voters approved only four of the new constitutions.\textsuperscript{32} Study commissions on the other hand have frequently been dominated by legislators and have had an even lower ratio of voter acceptance until recently.\textsuperscript{33} In the last few years commissions have been used in several ways. They have been increasingly employed to prepare a comprehensive plan for constitutional revision by a methodical program of section-by-section submission to the electorate; and they have been especially effective in achieving change by adopting so-called gateway amendments which may ease the vote requirement for passage and permit revision of a whole article at one time.\textsuperscript{34}

State constitutional revision has historically occurred in waves. One analyst has identified at least four periods of widespread revision:\textsuperscript{35} the period after the Civil War when provisions relating to that struggle were introduced into state constitutions, e.g., extension of the suffrage to blacks in some states; the late nineteenth century when the populist distrust of officials led to constitutional restriction on judicial terms and provisions for a longer ballot and for the initiative and referendum; the first two decades of the twentieth century in which there was an interest in increasing executive powers; and the period of the last 10 years. The current revision "wave" is said to have been initiated by the 1964 decision in \textit{Reynolds v. Sims}\textsuperscript{36} requiring reapportionment of state legislatures and thus eliminating the main obstacle to winning legislative support for the calling of a constitutional convention.\textsuperscript{37} Within three years of the decision, twenty-two states had initiated some form of constitutional revision,\textsuperscript{38} and many others have since followed.\textsuperscript{39}

\textsuperscript{32} See \textit{Minnesota Constitutional Study Commission, Final Report} 9 (1973).
\textsuperscript{33} One critic indicates that in the 25 year period before 1968 only one constitution produced by a commission was approved by the voters, even though there had been sixty commission active in some thirty states. See H. Gimlin, \textit{supra} note 30, at 709. See also \textit{Minnesota Constitutional Study Commission, Final Report} 11 (1973).
\textsuperscript{34} California and Pennsylvania have used this method. See \textit{Council of State Governments, Recent Constitutional Revision Activities} 1967-1968, at 3 (1969); Sumner, \textit{Constitutional Revision by Commission in California, State Gov't} 135-38 (Spring, 1972).
\textsuperscript{35} Adrian, \textit{supra} note 31, at 313-19.
\textsuperscript{36} 377 U.S. 533 (1964).
\textsuperscript{37} See Adrian, \textit{supra} note 31, at 319.
\textsuperscript{38} Id. at 320.
Despite the recognition during the sixties that new solutions must be found for many social and civil rights problems, there appeared to be greater interest in so-called “efficiency and economy” constitutional change than in the bill of rights. Probably the most important generating forces behind the revision efforts have been constitutional restrictions on governmental organization and financing, such as limitations on the executive or on taxation or debt powers. The need to reapportion has also been a significant motive. No state appears to have instituted constitutional revision because of an apparent urgent need for change in the bill of rights.

Nevertheless, the work of the conventions and commissions reflects a continuing interest in reviewing the bill of rights and suggests that certain types of rights are gaining support for inclusion in state constitutions. It is also noteworthy that recent amendments proposed in the bill of rights area have had a higher ratio of successful passage than proposals in any other area. While the most common interest appears to be in constitutional provisions barring discrimination, special interest has also been shown in providing greater protection against wiretapping and eavesdropping devices, in adding right to bear arms sections, in guaranteeing the right to organize, in protecting the individual dealing with administrative agencies, in assuring the rights of the fetus or alternatively of the prospective mother desiring an abortion, and in protecting the handicapped. There have also been demands to add guarantees relating to the protection of the environment.

42. See, e.g., R. Rankin, State Constitutions: Bill of Rights, 8-9 (1960).
43. See discussion in text accompanying notes 105-116 infra.
45. See discussion in text accompanying notes 150-55 infra.
46. See, e.g., Graves, supra note 43, at 18; Rankin, The Bill of Rights, in W. Graves, Major Problems in State Constitutional Revision 166-67 (1960).
49. See discussion in text accompanying note 68 infra.
III. THE MINNESOTA CONSTITUTIONAL STUDY COMMISSION AND THE BILL OF RIGHTS

A. BACKGROUND

While the Minnesota Constitution provides for constitutional change by convention or by amendment, change in Minnesota has traditionally occurred through the amendment process. The only constitutional convention in the state's history was held in 1857 to draft the original constitution. While the required majority in the legislature necessary to put an amendment on the ballot is a simple majority, a two-thirds vote is required for a constitutional convention. The popular majority needed to pass an amendment is a majority of those voting in the election rather than a majority of those voting on the particular provision, while the document produced by a convention must receive a three-fifths vote of approval. Dissatisfaction with the piecemeal amendment process prompted the legislature to create a Minnesota Constitutional Commission in 1948 which recommended extensive changes and the calling of a constitutional convention. Although no convention was called by the legislature, many of the commission's recommendations were subsequently adopted as amendments, including provisions for simultaneous terms for the constitutional officers, reorganization of the judiciary, and home-rule.

A constitutional convention was once again suggested by the Governor of Minnesota in a special message to the legislature in March, 1971, in which he mentioned four areas where he considered reform to be "especially critical": methods to make the legislature more effective such as flexible annual sessions and party designation; changes to allow flexibility in tax policy; environmental protection; and review of the appropriateness of dedicating constitutional funds to certain purposes such as the highway trust fund. Governor Anderson favored a convention.

50. It actually consisted of two separate conventions since the Republicans and Democrats refused to meet together. See generally W. Anderson, A HISTORY OF THE CONSTITUTION OF MINNESOTA (1921).
51. MINN. Const. art. XIV, §§ 1-2.
52. Id., § 1.
53. Id., § 3.
56. See MINNESOTA CONSTITUTIONAL STUDY COMMISSION, FINAL REPORT 6 (1973).
because of its possibilities for citizen input and prompter action. However, he also proposed that a commission be created to initiate the study. The legislature chose to follow only the second suggestion.

The Minnesota Constitutional Study Commission, authorized by the 1971 session of the legislature, was organized in October of 1971. Its membership consisted of six members of the House of Representatives appointed by the Speaker, six senators appointed by the Senate Committee on Committees, one person appointed by the Chief Justice of the Supreme Court, and eight persons appointed by the Governor. The scope of the commission's task as outlined by the legislature was to:

study the Minnesota Constitution, other revised state constitutions and studies and documents relating to constitutional revision, and propose such constitutional revisions and a revised format for a new Minnesota constitution as may appear necessary, in preparation for a constitutional convention if called or a basis for making further amendments to the present constitution.

It was also to “consider the constitution in relation to political, economic and social changes.”

While the commission met in plenary session at least monthly until the completion of its work in December of 1972, the bulk of the work was done by small committees. The commission decided at an early meeting to rely on its own membership to form

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57. Minn. Laws 1971, ch. 806, § 3.
58. Aubrey W. Dirlam, Richard W. Fitzsimons, O.J. Heinitz, L.J. Lee (resigned from the legislature and therefore from the commission in the fall of 1972 when he was appointed to the Board of Regents of the University of Minnesota), Ernest A. Lindstrom, Joseph Prifrel. (Included were the speaker and majority leader of the 1971 session.)
60. James C. Otis, Justice of the Minnesota Supreme Court.
61. Chairman Elmer L. Andersen, and Carl A. Auerbach, Orville J. Evenson, Joyce A. Hughes, Betty Kane, Diana E. Murphy, Karl F. Rolvaag, Duane C. Scribner. (The group consisted of two former governors, two law professors, a union official, a past state chairwoman of one of the political parties, an administrative official at the University of Minnesota, and a past president of the Minneapolis League of Women Voters.)
62. Minn. Laws 1971, ch. 806, § 3(2).
63. There were ten committees charged with studying particular areas of the Minnesota Constitution: Amendment Process, Bill of Rights, Intergovernmental Relations and Local Government, Judicial Branch, Legislative Branch, Education, Executive Branch, Finance, Natural Resources, and Transportation. In addition there were a Steering Committee, a Final Report Committee, and a Structure and Form Committee.
the committees. Although this decision limited the variety of viewpoints that could be represented, the commission chairman believed that the exclusive use of commission members made organization less cumbersome and avoided delay, and he was also impressed by the apparent willingness of the commission to tackle the job itself. The priorities at the outset of the commission's work may have been evidenced by the fact that the larger committees were those entrusted with the issues of legislative reform and reapportionment, restrictions on state financing, and organization and selection of the judiciary.

Although the 1948 Constitutional Commission had no separate committee to investigate the bill of rights area, the chairman of the 1972 commission selected this as one of the 10 substantive areas for concentration. He may have been partly influenced by expressions of public interest in the bill of rights and by a letter from one member of the commission urging that such a committee be created, but it also appears that personally he believed environmental rights should be protected in state constitutions. However, he never indicated at the time that he believed this issue should be considered by the Bill of Rights Committee, which voluntarily deferred the matter to the Natural Resources Committee partly because of the number of complex issues already facing it.

B. Procedure of the Bill of Rights Committee

The Bill of Rights Committee, which consisted of three members responsible for studying the first article of the Minnesota Constitution, operated in a manner similar to that of the other

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64. Interview with Elmer L. Andersen, Chairman of the Minnesota Constitutional Study Commission, in St. Paul, Minnesota, March 6, 1973.

65. The Legislative Branch and Finance Committees each had five members while the Judicial Branch and Transportation Committees had four members. The other study committees each had only three members, the minimum number of commissioners required by the enabling legislation. Minn. Laws 1971, ch. 806, § 3(3).


67. This commissioner was subsequently appointed chairman of the committee.

68. Interview with Elmer L. Andersen, Chairman of the Minnesota Constitutional Study Commission in St. Paul, Minnesota, March 6, 1973. The chairman indicated that he believed it was important to designate a special committee to reaffirm the importance of the Bill of Rights in a time of social, as well as economic and technological, change.

69. Chairman Diana E. Murphy, Senator Robert J. Brown, and
committees of the commission. All were hampered by lack of staff, which limited the availability of research and drafting assistance. As a result the scope of the committee studies was largely dependent upon efforts of individual members and input from the public.

Unlike the practice in some states, particularly those using a constitutional convention approach, no special studies were prepared to serve as a foundation for commission study. Instead the work was initiated by a letter requesting suggestions for deletions, additions, and revision of the Minnesota Constitution. This letter was sent to all department heads of state government, to former state officials and other individuals known to be interested in constitutional change, to registered lobbyists, and to a long list of organizations including political parties, civic and professional groups, and those working for minority rights and social change. Although the response was not overwhelming, the replies received aided the various committees in deciding on issues and approaches. The Bill of Rights Committee proceeded to schedule a series of public hearings. On the basis of the responses to the commission's letter, the committee selected the two areas, discrimination against and the rights of those confined in state prisons and mental institutions, in which public interest seemed to be the greatest for discussion at the first hear-

Representative L.J. Lee. The committee was also responsible for studying the Elective Franchise article. Its recommendations for change in this article were almost entirely adopted by the commission. See Minnesota Constitutional Study Commission, Final Report 24-25 (1973).

70. The legislative appropriation was only $25,000. This was spent on staff salaries, office and printing expenses, and transportation. The only full-time employee was a secretary, but a summer assistant was also hired to work on publicity and reports. In addition Professor Fred Morrison of the University of Minnesota Law School, Research Director for the commission, received a salary for one month in which he devoted full time to certain of the committee reports.

While an arrangement with the University of Minnesota Law School provided that nine students prepare constitutional research papers for credit, the fact remained that the commission did not have the kind of expert assistance available to assure an in-depth study of the scope outlined by the legislature. Nevertheless, in addition to the final report of the commission, an individual committee report was submitted in each area discussing the issues and eventual recommendations.

Most study commissions operative in other states have received a larger appropriation. The California commission has received almost three million dollars during the eight years in which it has worked. Commissions of a term of two years or less in Alabama, Arkansas, and Louisiana have received $100,000. Minnesota Constitutional Study Commission, Final Report 41-42 (1973).

71. An example which the committee found to be particularly
Further hearings were held to take testimony on any subject related to the bill of rights.73

During the hearings the committee received testimony from forty-five individuals, the majority of whom were spokesmen for organizations and thus presumably representative of other persons with similar views.74 A number of government officials also testified.75 Communications other than at the hearings were received in the form of memoranda, letters and telephone calls. This information together with the results of the committee members' own research efforts, plus some supplementary aids, provided the foundation for the committee's discussion, deliberation, and eventual recommendations.

The committee adopted an informal decisional procedure. Following the completion of the public hearings and the gathering of other information, the committee met to discuss all of the proposals submitted. After a vote was taken on whether to recommend constitutional change in each area, the chairman was authorized to draft proposed language where necessary for those areas receiving majority approval. The draft language was then submitted to the committee. When finally satisfactory to the committee, the proposals were incorporated into the committee report written by the chairman and sent to the Revisor of Statutes for his comments.

helpful is G. Braden & R. Cohn, The Illinois Constitution: An Annotated and Comparative Analysis (1969). A special bibliography on state constitutional revision was prepared for the commission, however, by the legislative reference library.

72. The first hearing took place at the State Capitol in St. Paul on April 6.

73. A second hearing was held on the campus of Moorhead State College on May 4, and a final all-day hearing at the Capitol on June 21 completed the formal taking of testimony.

74. The organizations included the Minnesota Civil Liberties Union, the Mental Health Association of Minnesota, the National Organization of Women, Minnesota Women's Political Caucus, State League of Human Rights Commissions, the Women's Equity Action League, the Committee for Effective Crime Control, the Minneapolis Urban Coalition Action Council, United Cerebral Palsy, the United Blind of Minnesota, Epilepsy League of Minnesota, Minnesota Citizens Concerned for Life, and the Minnesota Public Interest Research Group. Minnesota Constitutional Study Commission, Bill of Rights Committee Report 25-27 (1973).

75. Among the officials who testified before the committee were the Department of Corrections Commissioner, the Director of Education and Manpower Development in the Department of Public Welfare, the United States Congressman from the fifth district, a representative of the State Department of Human Rights, and the University of Minnesota Equal Opportunities Compliance Officer.
While the committee concentrated most of its attention on proposals for additions to the bill of rights, it also sought to ascertain whether the present article would be improved by revision or deletion of any of its sections. Since there existed no critical analysis of the Minnesota Bill of Rights like that prepared for constitutional revision efforts in some states, and since almost no dissatisfaction with present provisions was expressed by the public, the committee was dependent on its own survey and that of the 1948 Constitutional Commission in determining the need for change.\textsuperscript{76} In contrast to the other committees which were inclined to concentrate upon several matters, the Bill of Rights Committee attempted to consider a great number of issues with the result that there was less opportunity to investigate the ramifications of each proposal. Although the committee singled out the rights of women and those in state institutions and the right to privacy as being perhaps most in need of additional constitutional protection, it also attempted to fully consider proposals in other areas of concern.

Ultimately the committee recommendations were presented to the full commission on September 20, 1972. Before action could be taken on most of them, the commission voted to adjourn until after the November election when it became apparent that many of the legislators on the commission were feeling pressured by the need to devote their time to campaigning instead of commission deliberations.\textsuperscript{77} The committee decided to modify its proposals before the next commission meeting. On the basis of its analysis of the commission's reactions to its recommendations, the committee felt that there was little chance that they would be accepted in their original form. The revised recommendations were, on the whole, adopted with very little discussion or dissension at the November meeting.\textsuperscript{78}

C. RECOMMENDATIONS OF THE BILL OF RIGHTS COMMITTEE

The Bill of Rights Committee recommendations were based on its study of the Minnesota Bill of Rights,\textsuperscript{79} as well as on its analysis of proposals submitted to it and provisions found in other constitutions. The present Minnesota Bill of Rights, con-

\textsuperscript{76} See REPORT OF THE CONSTITUTIONAL COMMISSION OF MINNESOTA 16-20 (1948).
\textsuperscript{77} Interview with Diana E. Murphy, Chairman of the Bill of Rights Committee, in Minneapolis, Minnesota, January 10, 1973.
\textsuperscript{78} See discussion in text accompanying notes 197-208 infra.
\textsuperscript{79} MINN. Const. art. I.
sisting of eighteen sections, provides affirmative protection for liberty of the press, the right of trial by jury, the rights of the accused in criminal proceedings, and the right of habeas corpus. Other sections forbid excessive bail, unreasonable punishments, unreasonable searches and seizures, and imprisonment for debt. There are also provisions ensuring just compensation for the taking of private property for public use and freedom of religion as well as sections on treason, land tenure, the military as subordinate to the civil power, and the farmer's right to sell without a license. Perhaps the section receiving the most attention from the committee was section 2 which has been construed as a due process and equal protection guarantee although worded in an archaic and unfamiliar manner.\textsuperscript{80}

As a result of its study the committee decided to recommend that six sections be added to the Minnesota Bill of Rights, that two sections be deleted, that one be moved to another article, and that one be modified. The sections to be added relate to the rights of the mentally disabled, the equality of rights, the right to know, the right of assembly and the right to bear arms.

1. Rights of the Mentally Disabled

Persons suffering from mental illness or mental retardation have not usually been singled out for specific constitutional treatment by the states. While Texas has a section in the bill of rights relating to commitment procedures,\textsuperscript{81} most states have chosen to set out such safeguards in statutes. Such statutes often contain detailed provisions concerning release, voting rights, or the right to contract. Constitutional protection has been invoked for the mentally disabled under the due process clauses of the federal and state constitutions and through the right to habeas corpus guaranteed in many constitutions.

New developments in this area of the law were reflected in

\textsuperscript{80} Id., § 2:
Rights and Privileges.
No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the State otherwise than the punishment of crime, whereof the party shall have been duly convicted.

\textsuperscript{81} Tex. Const. art. 1, § 15. In 1935 an amendment was added to the right of trial by jury section: “Provided that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.”
testimony to the committee. Questions of due process have most frequently been raised in regard to commitment procedures, but since 1966 and the District of Columbia Circuit's decision in Rouse v. Cameron, some courts have recognized a constitutional right to treatment. The right to treatment doctrine posits that involuntary commitment to a state mental hospital cannot be justified constitutionally unless the individual receives treatment for his illness. Under the doctrine the individual may obtain his release by habeas corpus if only custodial care is offered or the treatment is found inadequate. It may also be possible to sue the government for damages or use mandamus to force treatment. Although the doctrine has been criticized on the ground that adequate treatment is not a workable standard, some courts are adopting what they consider to be enforceable guidelines.

Recently the doctrine has been extended to cover the mentally retarded. Recognizing that medical science no longer considers the level of retardation to be permanently fixed, a federal district court ruled in Wyatt v. Stickney that there is a constitutional right to habilitation, treatment geared to raise the level of the individual's "physical, mental, and social efficiency."

Local concern about the right to treatment came to the committee's attention through the hearings and through media reports of law suits. Testimony from the representative of the State Department of Public Welfare stressed such areas of concern as admission, in-hospital practices and privacy. The director of the Occupational Training Center, Inc. urged the committee to review the adequacy of the language of section 2 of the

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83. 373 F.2d 451 (D.C. Cir. 1966).
84. Id. at 458-59.
85. See Comment, 80 Harv. L. Rev. 898, 902-03 (1967).
88. Id. at 395-407.
89. Statement of Miriam Karlins, Director of Education and Manpower Development, Department of Public Welfare, to the Minnesota Constitutional Study Commission, at the hearing on April 6, 1972.
Minnesota Bill of Rights in light of the decision in Wyatt. The committee also took notice of a lawsuit brought in the Federal District Court of Minnesota seeking declaratory and injunctive relief on the ground that the state hospitals for the retarded do not meet constitutionally minimal standards of adequate habilitation.91

Other concerns were also expressed in the area of mental illness. Despite the passage in Minnesota of the Hospitalization-Commitment Act92 in 1967 giving increased protection to persons suffering from mental illness, there is evidence that the rights of such persons are still being violated. In disregard of the procedure mandated by the Act, it appears that “many patients have not been afforded a full and fair commitment hearing.”93 Further, some believe that the Act did not go far enough: that persons committed to mental hospitals should have the same right to immediate counsel, bail, and access to the telephone as do those charged with committing a crime;94 that while the Act is concerned only with admission and retention procedures, the rights of patients during their hospitalization must also be safeguarded; that the use of drug therapy, electroshock and lobotomy present special problems in regard to the rights of the individual that have not been adequately dealt with;95 and that the Act does not provide adequate protection of rights upon discharge.96 The committee also took note of the fact that a class action suit97 had been brought in the federal district court seeking to have parts of the 1967 Act declared unconstitutional because it provides that a patient's discharge may be revoked without notice or an opportunity to be heard.

While the committee believed that many of the problems

91. Welch v. Likins, Civil No. 472-451 (D. Minn., Filed Aug. 30, 1972). The suit has been brought by the Legal Aid Society of Minneapolis on behalf of six patients in state hospitals and as a class action on behalf of all mentally retarded patients in these institutions; it is presently in the discovery stage.
95. Statement of Miriam Karlins, supra note 89. See generally Hearings on Constitutional Rights of the Mentally I11, supra note 82, at 11.
96. Statement of Miriam Karlins, supra note 89; see Haydock & Orey, Involuntary Commitment in Minnesota, supra note 93.
outlined before it could be handled by legislation, it felt that the actual and potential abuses in this area were of a nature so closely associated with fundamental human rights that a specific guarantee in the constitution was warranted. However, the committee hoped to avoid creating problems by employing overly specific language. It also chose not to mention in the constitution itself the right to treatment because of the complex issues which it raises, particularly in view of limited state funds.

In drafting the provision the committee relied heavily upon proposals submitted by the State Department of Public Welfare. Although the department had suggested an amendment to section 298 to include specifically "those citizens alleged to be mentally disabled or impaired," the committee preferred to propose a guarantee of the rights of the mentally disabled in a separate section to be added to the bill of rights. By use of a separate section, the committee hoped to emphasize the guarantee, which incorporated the language of the present section 2 to read:

RIGHTS OF THE MENTALLY DISABLED: No person shall be disenfranchised or deprived of his rights or restrained in his physical person on the basis of mental disability or impairment unless by the law of the land or judgment of his peers.99

Because the committee was particularly concerned about the dangers inherent in some of the types of treatment in institutions for the mentally ill or retarded, it wished to assure that procedures would be followed which would protect the rights of those treated. Under the present Minnesota statute, such requirements are set out only in relation to surgery.100 Even in this case, the head of the hospital may order surgery only if the relatives or guardian cannot be found and the hospital official deems the patient incompetent to judge for himself. In order to assure adequate protection for the patient not only in the surgery situation but also in the administration of drug therapy and electroshock, the committee offered an additional new section:

INVIOLABILITY OF THE BODY: No person shall be compelled to undergo procedures involving surgery, convulsive electroshock, confinement of person or bodily movements, or any procedure causing irreversible physiological effects unless informed consent of the person or his guardian is given or unless

98. Minn. Const. art. I, § 2; see note 80 supra.
appropriate procedures have been followed to obtain legal approval for their application in such instances.101

This proposal was identical in form to the Department of Public Welfare suggestion. Inclusion of the term “convulsive electroshock” was suggested by the department. However, the terms could be interpreted as a more restricted category of treatment than the committee intended. The treatment aimed at is the therapeutic administration of electricity, gas, or drugs which may not involve actual shock but which causes a convulsion. Some medical experts criticized the proposal because they believed that it implied that “convulsive electroshock” necessarily caused “irreversible physiological effects,” but the phrase “any procedure causing irreversible physiological effects” was intended as a separate category, rather than as a general term inclusive of the other examples listed.

The committee considered incorporating the provision on “Inviolability of the Body” into the section on “Rights of the Mentally Disabled” but decided to give it an independent validity so that it might be used to prevent such procedures as forced sterilization of others in the general populace. For example, the provision is intended to prevent the state from ordering sterilization of all those with two or more children.

2. Equality of Rights

The most common constitutional guarantee that relates to equality of rights is the guarantee of equal protection of the laws. It is found in some 21 state constitutions, as well as in the Model State Constitution and the Federal Constitution. An additional type of equal rights provision found in some state bills of rights requires that individuals shall be free from discrimination or interference with their civil rights. Such provisions are normally combined with an equal protection clause as in the Michigan guarantee that:

No person shall be denied the 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.

102. Interview with Richard Gibson, a Minneapolis Star reporter who had access to the written reactions of medical personnel in the state hospitals to the committee’s proposal, in Minneapolis, Minnesota, March 16, 1973.
104. Model State Const. art. I, § 1.02.
because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation. Whether such a clause has any independent efficacy is a matter of debate. The judicial construction accorded an early example in New York is used as an illustration by some who question such efficacy. There a provision guaranteeing that "[n]o person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state" was interpreted as creating no civil rights apart from those already existing in the constitution or statutes. Thus, attempts to hold discrimination against blacks in housing illegal under the section were unsuccessful. Nevertheless, there appears to be a trend towards inclusion of such a provision in state bills of rights. The Model State Constitution, which is based on the concept of including only enforceable rights, has included a civil rights provision not because it is "essential" but "because of current and continuing interest in the subject." Among the new constitutions in which a civil rights guarantee appears are Alaska, Hawaii, Illinois, Montana, New Jersey, and Puerto Rico. The Illinois provision which applies to discrimination on the basis of race, religion, ancestry, and sex in employment and housing, is especially interesting in that it explicitly assures that the rights shall be enforceable without legislation.

While those constitutions which contain protection for spec-

106. N.Y. Const. art. I, § 11.
110. Ill. Const. art. I, § 17:
No Discrimination in Employment and the Sale or Rental of Property.
All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer or in the sale or rental of property.
These rights are enforceable without action by the General Assembly, but the General Assembly by law may establish reasonable exemptions relating to these rights and provide additional remedies for their violation.
ified classes of people have traditionally included the categories of race, religion, and ancestry, there is a growing tendency to include others. Sex has been recognized as a forbidden basis of discrimination in a number of state bills of rights. Generally this has been done in the framework of an equal protection provision so that the guarantee is limited by the traditional equal protection doctrine which has not recognized sex as a suspect classification. However, in those states such as Pennsylvania which have adopted an equal rights amendment similar to that proposed by Congress, “reasonable” discrimination on the basis of sex can no longer be upheld.

Another group for which specific constitutional protection has been advocated is the physically and mentally handicapped. At present, the only explicit mention of the handicapped appears in the new Illinois Bill of Rights, which has a section barring discrimination against the handicapped in the sale or rental of property, and in employment in so far as it is “unrelated to ability.” Several constitutions also bar discrimination on account of “social origin or condition” although generally-stated economic or social rights provisions are thought by many to be currently unenforceable.

Although the Minnesota Bill of Rights Committee quickly agreed that some kind of guarantee of equal rights should be added to the constitution, it found it difficult to agree on either the contents or the wording of such a section. Even though section 2 of the Minnesota Constitution has served the general purpose of an equal protection clause, it does not declare the policy of the state in a clear and understandable manner.


113. See Brown, Emerson, Falk & Freedman, supra note 112, at 884-85. The language of the Pennsylvania amendment reads as follows: Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.

114. ILL. CONST. art. I, § 19:

No Discrimination Against the Handicapped.

All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer.

115. MONT. CONST. art. III, § 3; P.R. CONST. art. II, § 1.


117. See note 80 supra.
thermore, the committee wished to provide greater protection than that which is available under the equal protection clause. It wished to formulate a basic principle that would not necessarily be limited to state action but could also apply to private discrimination. It also wished to provide an adequate guarantee of rights for several groups for whom equal protection doctrines had provided uncertain protection. At the same time it wanted to keep the constitution free of unnecessary detail and to avoid rigidity.

In addition to a guarantee of the rights of racial minorities, persons with varying religious beliefs, and aliens, the committee was convinced by voluminous testimony in the course of the public hearings that the rights of women and the handicapped should be recognized in the constitutional provision. More persons testified about the rights of women than about any other issue.\textsuperscript{118} Although these persons favored a separate equal rights amendment to the Minnesota Constitution similar to the proposed federal amendment\textsuperscript{119} and the recent addition to the Pennsylvania Constitution,\textsuperscript{120} only the chairman of the committee supported this approach. The other members preferred the concept of a single general section dealing with the whole area of equality of rights.

Drafting presented complex problems. The proposal originally favored by the committee,\textsuperscript{121} based largely on a provision in the Puerto Rico Constitution, was criticized as being unenforceable. The problem lay in its similarity to the New York civil rights provision which has been consistently construed as creating no rights not embodied elsewhere in the constitution or statutes.\textsuperscript{122} However, the New York decisions construing the section were based largely on statements of the drafters that the section could have no effect without legislative implementa-

\textsuperscript{118} Minnesota Constitutional Study Commission, Bill of Rights Committee Report 17 (1973).
\textsuperscript{120} See note 113 supra.
\textsuperscript{121} The proposal was submitted by the Action Council of the Urban Coalition of Minneapolis:

No person may be denied the enjoyment of his or her civil right or be discriminated against in the exercise thereof because of race, color, creed, religion, sex, ancestry, birth, social origin or condition, or political or religious ideas.

Statement of Franklin J. Knoll, Executive Director of the Minneapolis Urban Coalition Action Council, to the Bill of Rights Committee at the hearing on June 21, 1973.
\textsuperscript{122} See text accompanying note 106 supra.
It is therefore possible that a different result would obtain where it was clear that the section was intended to create enforceable rights.

While the committee preferred to create a self-executing section, such an approach involved many difficulties, particularly because the committee wished to reach private discrimination. Civil rights statutes such as Minnesota's normally contain a number of exceptions to their coverage. Political considerations may necessitate such exceptions to ensure passage of civil rights legislation. In similar fashion, a committee draft barring private discrimination immediately encountered objections from legislators who raised the spectacle of forcing the YWCA to admit male boarders. The inclusion of the handicapped in the section compounded the problem, for all recognized that inability to perform in a particular job is a bona fide reason for employment rejection. Since the committee wished to avoid adding statutory detail to the constitution, it was unwilling to try to incorporate exceptions into a broad self-executing section. As a result, the committee drafted a self-executing equal protection clause to apply to state action and in addition, included language which the committee hoped would declare a more general policy, mandatory on the legislature:

EQUALITY OF RIGHTS: Neither the state nor any of its instrumentalities shall deny any person the equal protection of the law. The Legislature shall provide by law for the protection of persons against discrimination in the provision of housing, education, employment, public accommodations, public facilities


125. The Office of the Revisor of Statutes was particularly concerned about the inclusion of the handicapped in the section:

Of course a person may be unfit for a particular job because of a physical or mental handicap. Discrimination because of that unfitness cannot be the kind of discrimination that the section is intended to reach. The present language of the section will force courts to invent some new term to describe discrimination because of physical or mental unfitness and is an invitation to litigation about elementary matters. Less important but similar questions might be raised about the reference to creed, religion and sex. Perhaps some or all of these could be resolved by a reference to fitness for employment. I realize that the practice with discrimination law has been to use categorical language and rely on the courts to develop exceptions. Nevertheless, this process has the air of "passing the buck", and the Committee might consider whether it can do better.

Letter from Harry M. Walsh, Acting Assistant Revisor of Statutes, to Diana Murphy, September 18, 1972, on file Minnesota Law Review.
and services on account of race, color, creed, religion, sex, national or social origin, or physical or mental handicap.\textsuperscript{126}

The committee hoped to attain several ends with this language. In adding such categories as sex, physical or mental handicap, and social origin, the committee realized that it was going beyond the constitutions of most other states, but it believed that these categories represented persons who had suffered undue discrimination of a nature calling for a basic guarantee of their rights by the state. It hoped that the listing of protected categories in the second sentence might also be given weight by Minnesota courts in applying the equal protection provision in the first: that the listing of a category such as sex with the traditionally more favored categories of race, color, creed, and national origin might lead courts to apply a similar standard in determining the constitutionality of legislation.

The committee also wished to indicate the areas in which discrimination should be prohibited. These areas are identical to those found in the Minnesota civil rights statute\textsuperscript{127} except for the addition of “services,” which represented an attempt to work towards the elimination of discrimination in such things as obtaining financing or credit.

3. \textit{The Right to Know}

Particularly in light of the development of sophisticated eavesdropping and wiretapping devices, the Bill of Rights Committee was especially concerned about safeguarding the right to privacy and sought testimony in this area. However, the only proposal submitted to the committee concerned the right of the individual to know about, inspect, and challenge information being collected concerning him. Although no constitutional provisions elsewhere contain such a right, the new constitution recently submitted to the voters of Montana\textsuperscript{128} has a right to know provision in its bill of rights.

The committee believed that the currently available non-constitutional remedies provide inadequate protection. A federal statute\textsuperscript{129} requires credit reporting agencies to notify an

\textsuperscript{126} MINNESOTA CONSTITUTIONAL STUDY COMMISSION, BILL OF RIGHTS COMMITTEE REPORT 16 (1973).
\textsuperscript{127} MINN. STAT. § 363 (1973).
\textsuperscript{128} The thrust of the Montana provision would be to open state meetings and agencies to the public, but an additional ambiguous reference to the right to “examine public documents” could arguably allow an individual to inspect all state records referring to him. MONT. CONST. art. II, § 9.
individual of the existence of investigations and records affecting him and of their nature and substance. However, since the individual has no right under the statute to examine the record itself, critics have pointed out that "a defamatory innuendo might go undiscovered." Furthermore, the statute applies only in the private sector and only in the narrow area of credit reports. As to public agencies, it has been suggested that in certain circumstances an individual might be able to charge the state with a due process violation where information related to him is not made available.

Since no relevant provision was found in other constitutions, the committee had to rely upon its own drafting skills to modify the original proposal presented by a law student at the University of Minnesota. That proposal contained three paragraphs: the first guaranteed the general right of the individual "to know about or the right to examine . . . any files or reports or records concerning his or her own reputation" gathered by any organization, corporation or government agency; the second paragraph provided that no information from such a file could be disseminated without notifying the subject or recording in the file the nature of the disclosure and the parties to whom the information was released; the third paragraph partly exempted government agencies "conducting criminal investigations." One complication which immediately became apparent was a potential deleterious effect on the freedom of the press. However, because the committee felt the right was entitled to constitutional protection, it attempted to combine a general statement with a stipulation that the details were to be worked out by the legislature:

RIGHT TO KNOW. Any organization, corporation, or government entity keeping a file on an individual shall notify that individual of the existence of the file and allow him or her to examine it. This provision shall be subject to such reasonable regulation as the Legislature may impose.

The stipulation of legislative regulation was intended to allow the legislature to exempt the press and governmental crim-
inal investigations from coverage, but the Office of Revisor of Statutes criticized the wording. According to the Revisor the preferable drafting practice would be to make the matter "subject to law."  The use of the terms "any organization, corporation, or government entity" was deliberately far-reaching since the committee hoped to protect the right against private as well as public abuse, but the terms probably were not intended to encompass such things as the records of volunteer organizations or information gathered by attorneys in building a case. When such problems were raised, the committee expressed the view that these questions should be properly considered by the legislature. Moreover, the committee believed that detailed provisions setting forth the proper procedure to be followed when disseminating information also would be more appropriately handled by statutory treatment.

4. The Right of Assembly

The right of assembly is one of the basic democratic guarantees found in the first amendment to the Federal Constitution, the Model State Constitution, and in forty-seven of the state constitutions. Since the right of assembly was contained in the draft constitutions of both the Republican and Democratic conventions in 1857, its absence from the Minnesota Constitution may very well be due only to oversight. Addition of this right to the Minnesota Constitution was one of the recommendations of the Minnesota Constitutional Commission of 1948, which called it "a fundamental American Bill of Rights provision."

The wording recommended by the Bill of Rights Committee follows that of the Federal Constitution and the proposal of the 1948 commission:

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135. Letter from Harry M. Walsh, Acting Assistant Revisor of Statutes, to Diana Murphy, September 18, 1972, on file Minnesota Law Review. Mr. Walsh commented, "There has been considerable difficulty with constitutional provisions that refer to the legislature in its capacity as a law making body. If the Committee desires that a matter should be subject to law, it should use the word 'law'."
137. Model State Const. art. I, § 1.01.
THE RIGHT OF ASSEMBLY. The Legislature shall not abridge the right of the people to assemble and to petition the government for redress of grievances.\textsuperscript{141}

Since the right to assemble and the right to petition are stated separately, this wording would appear to avoid the kind of conflict which arose during the Illinois Constitutional Convention where it was argued that the right was qualified by succeeding unseparated phrases, i.e., “the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives, and to apply for redress of grievances.” There, to assure that the right of assembly was an independent right, even if not absolute, a comma was added after “manner.”\textsuperscript{142} However, it might be noted that the concept of independent rights would have been further strengthened in the Minnesota proposal if “or” had been used instead of “and” and if “rights” had been substituted for “right.”

While the earlier commission suggested that the right of assembly be added to section 2 of the Minnesota Bill of Rights (which has served as the due process and equal protection section), the recent committee believed that it would be more logical to add it to section 3 (liberty of the press and free speech) or insert it as a separate section.

5. Right to Bear Arms

Minnesota is one of a minority of states with no constitutional protection of the right to bear arms. While the second amendment to the United States Constitution refers to the “right of the people to keep and bear arms,” this right is qualified by language which indicates that its purpose is to provide for a militia.\textsuperscript{143} The view has been expressed that since a militia today is not dependent upon the private possession of weapons, the amendment does not speak to the right of the individual to bear arms.\textsuperscript{144} Moreover, the Supreme Court has held that the amend-

\begin{itemize}
  \item \textsuperscript{141} Minnesota Constitutional Study Commission, Bill of Rights Committee Report 19 (1973).
  \item \textsuperscript{142} E. Gertz, For the First Hours of Tomorrow: The New Illinois Bill of Rights 90 (1972).
  \item \textsuperscript{143} U.S. Const. amend. II: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”
\end{itemize}
ment restricts only Congress and not the states and has not incorporated it into the fourteenth amendment.\textsuperscript{146}

However, some thirty-six states have arms provisions in their own constitutions.\textsuperscript{146} Some of these expressly allow regulation of the right, and state courts have in any event recognized that the right is not absolute but may be regulated under the police power.\textsuperscript{147} The amount of permissible regulation may depend, however, on whether the particular state's provision is considered a collective or an individual right.\textsuperscript{148} If the right is interpreted as a collective one primarily related in purpose to providing a militia, it may be found not to protect the private possession of arms. On the other hand, if the provision is interpreted as a guarantee to the private individual, it would probably prevent an absolute prohibition on private possession and use. This distinction has remained largely theoretical up to the present time, since state courts have generally not attempted to engage in such analysis, but an increase in state gun control legislation might force questions of construction upon the courts.\textsuperscript{149}

Although only recently the right to bear arms was characterized in the literature as an example of a right no longer needing constitutional protection,\textsuperscript{150} there appears to be a resurgence of interest in it, probably because of the move towards gun control legislation and possibly also because of racial strife. An organization called The Committee for Effective Crime Control prepared a memorandum for the Bill of Rights Committee which included the wording for a suggested amendment to the Minnesota Constitution. This group also testified at a public hearing and organized one of the few lobbying efforts directed at the members of the Bill of Rights Committee and the other commissioners.

Spokesmen for the group advanced the theory that the absence of a right to bear arms provision in the Minnesota Constitution was due to the unique circumstances surrounding its origin. The Republicans and Democrats elected to the constitutional convention of 1857 refused to meet together but instead drafted separate documents. A conference committee then met

\textsuperscript{145} United States v. Cruikshank, 92 U.S. 542 (1875).
\textsuperscript{146} Impact of Right to Bear Arms Provisions, supra note 144, at 187.
\textsuperscript{147} Id. at 187-89.
\textsuperscript{148} Id. at 194.
\textsuperscript{149} Id. at 193.
\textsuperscript{150} See J. Wheeler, Salient Issues of Constitutional Revision 17 (1961).
and reported back to the separate conventions which adopted the
creation individually.\textsuperscript{151} Under the Crime Control Commit-
tee's view, the right to bear arms provision, included in the Re-
publican draft but not in the Democratic draft, was not proposed
by the conference committee merely because the committee al-
legedly followed the policy of retaining only those sections con-
tained in both drafts. The Committee for Effective Crime Con-
trol stressed that "[n]ot a word was spoken against the amend-
ment by either party in the published debates."\textsuperscript{152}

In addition to stating the right of the individual "to acquire,
possess and use arms," the group's proposed amendment added
the provision that "[n]o license or registration tax or fee shall
ever be imposed on this right."\textsuperscript{153} At least one member of the
committee feared that such a provision might be used to prevent
any kind of registration of weapons although the proponent
denied that it would have such effect. The words "possess and
use arms" were selected in preference to the common usage of
"keep and bear arms" because the drafters apparently felt this
would prevent an interpretation that the right was limited by
being associated with the militia.

Two members of the Bill of Rights Committee wished to
adopt the proposal as offered, and under the rules of the com-
mittee, majority approval was sufficient for adoption. The chair-
man, however, was concerned that the proposed wording might
rule out almost any kind of gun control legislation and noted
that it was more far-reaching than any provisions currently
found in state constitutions. Although the chairman preferred
that no amendment be proposed in this area, she offered a sub-
stitute modeled upon a recent addition to the Illinois Constitu-
tion:

RIGHT TO BEAR ARMS. Subject only to the police power,
the right of the individual citizen to keep and bear arms shall
not be infringed.\textsuperscript{154}

Reports of the work of the Bill of Rights Committee of the
Illinois Constitutional Convention indicate that such wording
was a compromise solution there.\textsuperscript{155} The right was intentionally
placed in the individual, and it was intended to guarantee that

\begin{itemize}
  \item \textsuperscript{151} See W. ANDERSON, A HISTORY OF THE CONSTITUTION OF MINNE-
      SOTA (1921).
  \item \textsuperscript{152} The Committee for Effective Crime Control, Memorandum to
      the Bill of Rights Committee, May 22, 1972, on file State Capitol of
      Minnesota.
  \item \textsuperscript{153} Id.
  \item \textsuperscript{154} ILL. CONST. art. I, § 22.
  \item \textsuperscript{155} E. GERTZ, supra note 142, at 109-10.
\end{itemize}
no complete ban on the use or possession of arms could be enacted, but that under the police power a wide range of regulatory measures would be available to the state. This substitute proved acceptable to the majority of the Minnesota committee and was accordingly adopted as a recommendation over the dissent of the chairman. In its report the committee indicated that while the majority believed that the right to bear arms should be included in the constitution, the committee as a whole did not want "to foreclose reasonable legislative measures for the control of crime" and therefore preferred the Illinois language. Since the committee was informed about current efforts of the state attorney general to obtain legislation to restrict the sale of handguns, it might be inferred that this form of gun control was an example of what was considered "reasonable."

6. Recommended Deletions and Modification

From its study of the present bill of rights in the Minnesota Constitution, the committee concluded that it could be improved by deletion of unnecessary sections, transfer of one section, and the modification of another under which some difficulties have arisen. The committee recommended the deletion of two sections which appear to be obsolete:

TREASON DEFINED. Sec. 9. Treason against the State shall consist only in levying war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

LANDS DECLARED ALLODIAL; LEASES, WHEN VOID. Sec. 15. All lands within the State are declared allodial, and feudal tenures of every description, with all their incidents, are prohibited. Leases and grants of agricultural lands for a longer period than twenty-one years hereafter made, in which shall be reserved any rent or service of any kind, shall be void.

Although treason against the United States is covered in article III of the United States Constitution, the crime of treason against the state is invariably found in the bills of rights of the state constitutions. Thirty-eight states define the crime in the bill of rights in a manner similar to the Minnesota definition, and 37 states also include the requirement for two witnesses.

156. MINNESOTA CONSTITUTIONAL STUDY COMMISSION, BILL OF RIGHTS COMMITTEE REPORT 19 (1973).
158. MINN. CONST. art. I, § 9.
159. MINN. CONST. art. I, § 15.
in order to convict. Since the Supreme Court's decision in Pennsylvania v. Nelson, it has been clear that congressional preemption prevents the states from using such clauses as a basis for regulating treason against the United States. Nevertheless, it remains constitutionally permissible for a state to seek to regulate treason against itself.

From a realistic point of view, however, it appeared to the committee that today treason is a problem for the federal government rather than for the states and that the presence of such a section in the Minnesota Constitution serves no real purpose. In any case, the committee felt the legislature needed no constitutional authorization for the statutory crime of treason found in the Criminal Code. Deletion of the section would make treason merely a matter of statute, and to the committee it appeared to be an excellent example of the kind of constitutional surplusage which should be removed.

The section on allodial lands has no federal counterpart and analogous provisions are not commonly found in state constitutions. In its recommendation of deletion, the committee relied on the study made by the 1948 commission and its own perusal of the case law. The committee was not aware of any continuing need in Minnesota for a constitutional limitation on agricultural holdings. However, the Revisor's Office believed that "the problems dealt with by . . . Section 15 are not necessarily extinct" and that deletion would "permit a somewhat greater variety of interests in agricultural lands to exist." It was also argued that the alodial concept in the first sentence needs to be retained to ensure that some form of feudal tenure could not be established in the future.

163. N.Y. Const. art. I, § 10, on which it was modeled has been repealed. See criticism in R. Dishman, State Constitutions: The Shape of the Document 4 (1960).
164. The 1948 commission advocated its removal because the section "serves no useful purpose and can be eliminated without adverse effect." Report of the Constitutional Commission of Minnesota 19 (1949).
165. While there are very few Minnesota cases arising under this section and none since 1940, the lease provision, as in other jurisdictions, has been construed to apply only where the land is to be used for agricultural purposes. Minnesota Valley Gun Club v. Northline Corp., 207 Minn. 126, 290 N.W. 222 (1940); State v. Evans, 99 Minn. 220, 108 N.W. 958 (1906).
166. Letter from Harry M. Walsh, supra note 135.
167. Interview with Robert Stein, Professor of Law, University of
In addition to the two deletions it recommended, the committee supported the suggestion of the Structure and Form Committee that section 18 be moved from the bill of rights to a revised article XIII. Section 18, which allows farmers to sell their products without a license, is unique to the Minnesota Constitution and is often cited by commentators as one of the more interesting curiosities to be found in state constitutions.\textsuperscript{168} This section was added to the Minnesota Bill of Rights in 1906 by an overwhelming vote to create a special favored position for the farmer.\textsuperscript{169} No dissatisfaction with the section itself was expressed by either committee of the commission, but the view of both was that the subject matter was inappropriate for the bill of rights.

The final change proposed by the Bill of Rights Committee was to add a new sentence at the end of section 12. Section 12 in its original form\textsuperscript{170} only outlawed imprisonment for debt and provided that some property could be declared exempt from seizure for payment. However, in 1888 the section was amended\textsuperscript{171} to authorize the imposition of mechanics liens, which the Minnesota Supreme Court had previously not allowed on homestead property on the ground that it belonged within the exempt category.\textsuperscript{172} Since the Minnesota lien statute\textsuperscript{173} has been criticized because it does not require that the homeowner be given actual notice of the imposition of the lien, the Attorney General\textsuperscript{174} has suggested that a requirement be added to the constitutional section which would assure that notice be given the owner.

The committee wished to introduce the principle of notice to the section without functioning in a legislative capacity and hoped to achieve these goals with the addition of the following

\begin{footnotesize}


\textsuperscript{170} Id. at 156.

\textsuperscript{171} Id.

\textsuperscript{172} Meyer v. Berlandi, 39 Minn. 438, 40 N.W. 513 (1888); Cogel v. Mickow, 11 Minn. 475 (11 Gil. 354) (1886).

\textsuperscript{173} Minn. Stat. § 514 (1971).

\textsuperscript{174} Letter from Warren Spannaus, Attorney General, to Elmer Andersen, Chairman of the Constitutional Study Commission, fall, 1972,
\end{footnotesize}
sentence: “The Legislature may reasonably regulate the form and notice of such liens.”\(^{175}\) Although the committee wished to avoid specifying how such notice was to be assured, the suggested sentence may be criticized in that its form is too vague to establish the intended guarantee of the right of notice to the homeowner at the time the lien is imposed. Furthermore, the sentence was open to the criticism that constitutional provisions should be made “subject to law” rather than to such reasonable regulation as the legislature may provide.\(^{176}\)

7. **Areas of Concern in Which Provisions Were Not Recommended**

A number of other proposals were suggested to the committee which, for a variety of reasons, were not adopted. In addition, there were several other rights in which the committee had some interests but which found no advocates in those persons appearing before it.

One area which was the focus of considerable public attention but which did not seem to lend itself to constitutional treatment related to persons in the state prisons. Eight states have provisions in their bills of rights that concern prisons, providing for safe or healthy prisons or prisons based on the principles of reformation.\(^{177}\) There was disagreement among the persons testifying in Minnesota as to whether prisoners' rights should be mentioned in the constitution. The Commissioner of the Department of Corrections\(^ {178}\) testified that administrative and legislative action would be sufficient to alleviate whatever problems exist. The chief spokesman for a constitutional amendment\(^ {179}\) admitted that almost all of the measures which he advocated could be accomplished through other means, but he argued that there was nonetheless a need for a fundamental guarantee of prisoners' rights such as that found in the United Nations 1955 Bill of Rights for prisoners. The kinds of rights mentioned to the committee included the right to counsel at disciplinary

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176. See text accompanying note 135 supra.
178. David Fogel.
179. Thomas Murton, Murton Foundation for Criminal Justice, Inc. and Professor in Criminal Justice Studies at the University of Minnesota.
hearings, freedom from censorship, end to indeterminate sentencing, right to fair compensation for work, and visiting rights. No proposed language for a prisoners' rights section was submitted to the committee, and it indicated in its report that it believed the issues presented were "matters for the legislature" rather than for the constitution.

Proposals were also made to the committee to provide constitutional protection for homosexuals. The original proposal was to amend section 16, an anti-establishment section guaranteeing the freedom of religion and conscience, to state that "the enumeration of rights in this constitution shall not be construed to deny or impair others retained by and inherent in the people including jus societatis congeneratae."

The phrase was coined by a Latin professor to suggest a union of persons similar in nature, and it was apparently offered in the belief that it would be more acceptable to the public than the term "homosexual." Subsequently the proponents suggested as an alternative that jus societatis congeneratae be included in a general equality of rights section such as the committee was considering. The committee majority rejected the proposals largely for the reason "that it is not possible to include every group in the constitution."

Other proposals urged upon the committee included the creation of a constitutional office of ombudsman and a section guaranteeing access to certain services without regard to income. Constitutional language was suggested only for the latter in a proposal to guarantee "the right to available and adequate health care, to the benefits of higher education and to legal assistance without regard to the individual's ability to pay." With the exception of the right to education without regard to income, which appears in the North Carolina Constitution, rights such as these have not been included in any state bills of rights, although some commentators believe that they represent emerg-

180. MINNESOTA CONSTITUTIONAL STUDY COMMISSION, BILL OF RIGHTS COMMITTEE REPORT 22 (1973).
182. Testimony of Mr. Baker at the hearing on June 21, 1972.
183. MINNESOTA CONSTITUTIONAL STUDY COMMISSION, BILL OF RIGHTS COMMITTEE REPORT 22 (1973). One member supported constitutional protection for homosexuals but was opposed to use of the Latin phrase.
184. Letter from John Milton (subsequently elected state senator) to Diana Murphy, August, 1972, on file State Capitol of Minnesota.
185. N.C. CONST. art. I, § 15: "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."
ing rights which may eventually achieve constitutional status.\textsuperscript{186} Although the committee was interested in the ombudsman proposal, it believed that there was not yet sufficient support for such a section in Minnesota. Since one type of ombudsman had just been created in the Department of Corrections, the committee believed that it would be wise to observe the results of that experiment before elevating the concept to constitutional status.

Support was also voiced for the inclusion of provisions relating to abortion, the rights of juveniles, and Indian rights, but no suggested amendments were offered. The committee preferred to leave the question of abortion to the legislature. While abortion has become a major constitutional issue because of the Supreme Court's decision invalidating many state abortion laws,\textsuperscript{187} experience at the Illinois Constitutional Convention had already indicated the divisive role the issue can play in constitutional revision. In that convention, much time and energy was taken up by the ultimately unsuccessful attempt to add the unborn to the protection of life guaranteed in the due process section.\textsuperscript{188} In the area of Indian rights the committee had sought out testimony from Indian people, but the only issue raised before it related to a very specific problem in regard to interracial marriages.

In sum, as the committee stated, the explanation of its failure to recommend proposals in these areas was that "they were not constitutional issues, or . . . too little information was available as background, or . . . there was little apparent public interest."\textsuperscript{189}

D. ACTION TAKEN ON COMMITTEE RECOMMENDATIONS

The first important decision made by the commission was to decide whether to recommend that a constitutional convention be called. Those who opposed the calling of a convention argued that the need in Minnesota for constitutional revision was not acute because of the beneficial effect of the 1948 commission,\textsuperscript{190} that there was no evidence of public interest in a convention, and that a more reasoned approach could be assured with an

\textsuperscript{186} See R. Rankin, State Constitutions: Bill of Rights 19 (1960).
\textsuperscript{188} E. Gertz, supra note 142, at 32-35.
\textsuperscript{189} Minnesota Constitutional Study Commission, Bill of Rights Committee Report 22 (1973).
\textsuperscript{190} See Minnesota Constitutional Study Commission, Final Report 10 (1973).
appointed commission. The minority preference for revision by an elected convention was based on the belief that the citizens of the state should be involved to the greatest extent possible and that only a convention would ensure the full exploration of all the issues. With regard to the bill of rights in particular, at least one member of the minority felt that a convention would be more receptive to change in that area. After much deliberation, the commission decided to recommend to the legislature that constitutional revision in Minnesota be carried out by a phased program of periodic submission of sections to the electorate rather than by the calling of a constitutional convention.

Under its phased program of revision, the commission subsequently adopted a priority list of five amendments which it recommended to the legislature for action in 1973: (1) a single amendment encompassing the changes in form and organization of the constitution as worked out by the Structure and Form Committee; (2) a gateway amendment which would make future change easier by lowering the percentage of the popular vote required to pass amendments, providing for the submission of amendments at special elections, easing the calling of a constitutional convention, and providing for citizen initiative of amendments dealing with legislative structure; (3) an amendment providing for a commission to reapportion the legislature periodically; (4) an amendment allowing the state to levy taxes computed as a percentage of federal taxes; and (5) an amendment repealing the gross earnings tax paid by railroads in lieu of other taxes.191 The commission also adopted many other recommendations proposed by the individual committees with the intent that these recommendations would be acted on in future legislative sessions.

The commission's action regarding the proposals for the bill of rights can only be understood in relation to the sequence of their presentation. A number of commissioners believed from the outset that no real purpose was to be served by having a committee study the bill of rights. Others, while having no objection to the organization of such a committee, did not feel that the bill of rights was one of the priority areas for the commission's work or that it involved the same urgency as other problem areas. When the committee presented its recommendations at the September meeting, not only were these underlying attitudes articulated, but a number of commissioners also voiced specific objections to some of the proposals. Several commission-

191. *Id.* at 36-37.
ers objected to singling out any particular group for constitutional protection on the ground that it was unfair to other groups in society. Another argument was that inclusion of a particular group in an amendment to the bill of rights would imply that the group had not been afforded protection in the past, an implication that the proponent of the argument apparently felt was either unjustified or impolitic.

Not only was it apparent that the commission was reluctant to single out certain categories of persons in the constitution, such as the mentally disabled and those included in the draft proposal on equality of rights, but it was also clear that it objected to other features of the drafting. The language of the proposed section on the rights of the mentally disabled, which had been copied from section 2 of the Minnesota Bill of Rights, was criticized as being vague and unclear. Accordingly, it was suggested that "unless by the law of the land or judgment of his peers" be replaced by "except by due process of law" to clarify its meaning. A motion was then made to lay the proposal over until the next meeting so that it might be redrafted. The suggested section on inviolability of the body was criticized as being too detailed for a constitutional guarantee, and it was alleged that it could be interpreted to cover abortion and blood transfusions. After voting not to adopt this proposal, the commission decided to adjourn until after the election.

The unfavorable reaction to the bill of rights report at the September commission meeting caused the committee to revise its proposals before the November meeting. After consulting with one of the most influential critics of the proposals, the committee decided to submit a due process and equal protection section in place of the recommended sections on the rights of the

192. This argument was made by the labor representative and by one of the law professors. Constitutional drafting experts also caution that courts may apply the canon of construction expressio unius est exclusio alterius to hold that a group not specifically mentioned could not be protected under a provision in which a number of groups are listed. F. Grad, supra note 2, at 29 (Content of State Constitutions: Criteria for Inclusion and Exclusion).

193. The proponent was Senator Jack Davies.

194. See text accompanying notes 98-99 supra.

195. This kind of change was also recommended for the New York Constitution. Since "law of the Land" has been held to be synonymous with "due process of law," it is felt that it is better drafting practice to use that wording which is generally accepted. See Report of the Special Committee on the Constitutional Convention of the Association of the Bar of the City of New York, Bill of Rights 3 (1967).

196. See text accompanying notes 97-102 supra.
mentally disabled, equality of rights, and the right to know. The committee took this course because it believed that there was no chance that the three proposals would be accepted by the commission and that at least some of their objectives could be accomplished with such a provision. The wording of the proposed section was almost identical to that of the fourteenth amendment to the Federal Constitution:

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws. The Legislature shall have power to enforce, by appropriate legislation, the provisions of this section.¹⁰⁷

One of the sharpest critics of the bill of rights proposals moved to strike the words "have power to" so that the sentence would read "shall enforce," urging that the wording be made mandatory on the legislature. The committee chairman was put in the position of being able to decide the issue since there was a tie vote of the other commissioners. Because she feared that the mandatory language would provide a means by which the whole section would be defeated,¹⁰⁸ she voted against the change.

The committee hoped that many of the rights which it had sought to protect with its original proposals could be raised under such a section. While the advantage of expressing a special concern in the constitution for the mentally disabled and the groups specified in the equality of rights proposal would be lost, there would be a gain in flexibility. However, such a clause did not go as far as the committee had hoped in providing protection against discrimination since it would only apply to state action and would not cover the handicapped or provide adequate safeguards against sex discrimination.¹⁰⁹ As far as the right to know was concerned, the committee realized that the only possibility for raising it under the section would be in cases involving state agencies and that even there it would be problematic, but at the same time it was aware of the potential problems created by the overbroad language of its original proposal.²⁰⁰

The committee wished to maintain some innovative influ-

¹⁹⁷. MINNESOTA CONSTITUTIONAL STUDY COMMISSION, BILL OF RIGHTS COMMITTEE REPORT 15 (1973). The proposal made no reference to section 2 which presumably would therefore also remain in the article.

¹⁹⁸. There had been instances when proposals of other committees had been amended by a commissioner who subsequently opposed the amended proposal. Although the ostensible purpose of the amendment in those cases had been to improve the measure, its real effect was to decrease its potential supporters.

¹⁹⁹. See text accompanying notes 111-114 supra.

²⁰⁰. See text following note 140 supra,
ence by including with the proposed constitutional section two resolutions urging the legislature to implement the section in specific ways:

The Legislature should implement the . . . [above section] by such legislation as will protect groups which have suffered inequities and discrimination. This legislation should assure due process rights to the mentally ill and mentally retarded and provide protection for all persons regardless of race, religion, sex, national or social origin, physical handicap, or mental illness or mental retardation.

The Legislature should implement [this section] by laws which will protect the individual's right to access to information collected and preserved relative to him.201

These resolutions were quickly adopted after very minor alteration202 and thus became a part of the commission's final recommendations to the legislature.

The commission also voted to recommend that the right of assembly section be added to the Minnesota Bill of Rights, but it never voted on the proposed deletion of obsolete sections since the committee withdrew these proposals from consideration. The committee had no evidence that the inclusion of the provisions had any harmful effect, and the objections raised to their removal by the Office of the Revisor of Statutes caused it to reconsider its position.

The commission handled the right to bear arms provision in a different manner from the other proposals. The Attorney General made a special appearance before the commission to urge that the right to bear arms provision be defeated, arguing that while it would not legally prevent gun control legislation, its approval might make the passage of such legislation politically more difficult in that it would be viewed as a victory for opponents of gun control. Little support for the section was voiced except from the one committee member in attendance who had supported the measure; but nonetheless the commis-


202. In the resolution relating to the proposed due process and equal protection section the words "the mentally ill or mentally retarded" were inserted in place of "the mentally disabled" at the instance of Chairman Andersen who believed they were more accurate and carried less of a negative connotation. For the same reason "physical handicap, or mental illness or mental retardation" were substituted for "physical or mental handicap."

The resolution relating to the right to know was altered to improve its style. "Access to information collected and preserved relative to him" was substituted for the original wording "access to information collected and stored on him" at the suggestion of Representative Dirlam.
sion chose to dispense with the item by tabling the motion rather than by possibly facing a roll call vote which would force the commissioners to reveal their positions on this controversial issue. However, since the chairman of the commission explained before the vote that the effect of the motion to table would be to kill the measure, the vote may be interpreted as representing the commission's opposition to inclusion of a right to bear arms section in the Minnesota Constitution.

The proposal to amend section 12 in reference to mechanics liens led to a decision to recommend that a future commission examine the question of whether the section should be amended or entirely deleted from the constitution. It was pointed out in the discussion that the proposed amendment would have no legal effect since the legislature already had the power to regulate the notice and form of such liens, but some commissioners believed that the section should incorporate a guarantee that notice to the property owner be required. Others suggested that there was no need for any reference to mechanics liens in the constitution because the subject matter is one that can and should be handled by statute. Since the original inclusion of the subject in the constitution was to counteract judicial decisions, the mechanics lien section resembles the workmen's compensation provision in the New York Bill of Rights which is often used to illustrate the kind of provision once necessary but retained in the constitution only out of timidity once its function has been served.

Some of the issues which concerned the committee were subsequently presented to the legislature in the form of proposed statutes and, despite the priorities of the commission's phased

204. See F. Grad, supra note 2, at 19-20 (Content of State Constitutions: Criteria for Inclusion and Exclusion).
205. One bill would appear to meet many of the deficiencies of the present mechanics lien law. It would require notice to the homeowner before a lien could be imposed and would allow the homeowner to delay his payment to the contractor until the subcontractors are paid or to make the payment directly to the subcontractors. H.F. No. 711, S.F. No. 6. Gun control legislation which has been introduced would require a permit for the purchase of handguns or for carrying them on the street or in a car; one of the objectives is to prohibit the possession of handguns by persons convicted of crimes of violence, alcoholics and drug addicts, the mentally ill, and those under eighteen. H.F. No. 791, S.F. No. 806. While such a statute would probably be upheld under the type of right to bear arms amendment advocated by the committee's majority, there would be greater question as to its legality under an amendment such as the one proposed by the Citizens for
plan, also in the form of a constitutional amendment. The senator member of the Bill of Rights Committee\textsuperscript{206} plans to introduce a constitutional amendment based on the commission's proposal for a due process and equal protection provision. Except for this amendment, it is impossible to assess what influence, if any, the work of the Bill of Rights Committee may have had on the development of legislation, although its work may have been a factor\textsuperscript{207} in the process which led to the ratification of the federal equal rights amendment in Minnesota.\textsuperscript{208}

Since the commission decided on a phased program of amendment, it remains unclear when, if ever, its recommendations for the bill of rights will come before the legislature. If a new commission is appointed to carry out the program as the present commission suggested, there is no guarantee that it would simply adopt the present recommendations. However, it seems likely that such a group would rely at least to some extent on the final report of the commission and the committee reports in the individual constitutional areas. Nevertheless, it is too soon to ascertain whether the effort to revise the bill of rights in Minnesota will bear any direct fruit.

\textbf{IV. CONCLUSION}

Even though the Federal Bill of Rights plays a predominant role in the development of constitutional law and usage in the courts, there is also a significant function for the bill of rights in state constitutions. Recent constitutional revision activities indicate that there is considerable interest in revising these bills of rights to make them more effective by removing obsolete sections and by incorporating additional rights.

The effort to revise the Minnesota Bill of Rights illustrates some of the difficulties involved in such an undertaking and

\textsuperscript{206} Robert J. Brown.

\textsuperscript{207} Interview with Diana E. Murphy, Chairman of the Bill of Rights Committee, in Minneapolis, Minnesota, January 10, 1973.

\textsuperscript{208} Minn. Laws 1973, Resolution No. 1 (H.F. No. 3).
also some of the objectives. While the Bill of Rights Committee and many members of the public believed that there would be value in including additional rights in the constitution, this position was met with a certain skepticism on the part of many commissioners. Their resistance to the committee's recommendations was only partly based on a different philosophy, however, for the draft proposals were not perfectly drafted. The absence of staff assistance was probably critical in the drafting areas, although the chairman believed that the problem might have been alleviated if the committee's proposals had been submitted earlier to the Office of the Revisor of Statutes. In any event, the amount of assistance the Revisor could have furnished could not have equalled that available in states where the appropriation for revision efforts was appreciably greater. A comparison of the Minnesota experience with other states also suggests that a constitutional convention may be more interested in examining the bill of rights area than a commission dominated by legislators, who may be more conservative in their approach to constitutional change and are probably most interested in revision as a tool to remove obstacles which hamper legislative action.

The Minnesota experience also indicates that bill of rights revision efforts in general could be made more effective. The work in the various states is inevitably repetitive, and all could benefit by better communication. More study of the function which present state provisions have performed is needed to allow an analysis of their utility and to suggest ways in which state bills of rights could be made more useful. Further study of the possible need to guarantee additional fundamental rights in a time of social and technological change should be combined with efforts to draft such provisions in model form.