CONSTITUTIONAL TAX LIMITS AT THE STATE LEVEL: AN OVERVIEW AND SELECTED CASE STUDIES

by

George A. Uhimchuk

Dissertation submitted to the Graduate Faculty of the Virginia Polytechnic Institute and State University in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

in

Economics

APPROVED:

James M. Buchanan, Chairman

Gordon Tullock

Robert D. Tollison

T. Nicolaus Tideman

Geoffrey Brennan

August 1980

Blacksburg, Virginia

ACKNOWLEDGMENTS

Acknowledgments are all too often rudimentary and incomplete. With the realization that the foregoing expression of appreciation is completely understated, I would like to thank Professor James M. Buchanan for his valuable assistance in the writing of this dissertation. I would also like to express my appreciation to the other members of my committee, Professors Tideman, Tollison, Brennan, and Tullock for their helpful comments and suggestions. I also would like to thank Professor Albert Sturm for access to his collection of state constitutions.

and typed the final manuscript for which they deserve praise for their hard work and perseverance in a long and tedious task.

I must express my deep appreciation to , and for their encouragement, support, and most of all for their friendship and love.

Finally, I would like to express my special appreciation to my parents and my sister for their unwavering support and encouragement throughout my academic career.

TABLE OF CONTENTS

TABLE OF CONTENTS, continued

TABLE OF CONTENTS, continued

LIST OF TABLES

LIST OF FIGURES

PART I

CHAPTER 1

TAX REVOLT, EVOLUTION OF THOUGHT AND DEFINITIONS

> "In America the principle of the sovereignty of the people is not either barren or concealed, as it is with some other nations; it is recognized by the customs and proclaimed by the laws; it spreads freely, and arrives without impediment at its most remote consequences. If there be a country in the world where the doctrine of the sovereignty of the people can be fairly appreciated, where it can be studied in its application to the affairs of society, and where its dangers and its advantages may be foreseen, that country is assuredly America."[1]

I. Introduction

With the passage of the Jarvis-Gann amendment (Proposition 13) in California in June 1978, "tax revolt" in the United States entered the mainstream of political activity and became an important topic for discourse in public finance. The Advisory Commission on Intergovernmental Relations, in its Winter 1979 issue of Intergovernmental Perspective (vol. 5, no. 1), labeled the year 1978 as "the year of the New Propulism," [sic.] a

---

[1]Alexis De Tocqueville, Democracy in America, trans. Henry Reeve in World's Greatest Literature, Albert Ellery, ed., (P.F. Collier and Sons, 1900; New York: The Colonial Press) p. 55.

title which "...captures the fact that this new grassroots populist movement is advancing its cause through use of propositions on ballots across the nation." (p. 4)

ACIR asserts that:

> The New Propulism [sic.] is more than a citizen revolt over high taxes. In a much larger sense, it is a response to perceived breakdown of the traditional mechanisms, such as the representational process and the party system, for discerning public sentiment and forging consensus. At the same time, it illustrates the effectiveness of other channels provided for citizen and interest group access, principally the initiative and referendum, as well as the overall adaptive capacity of the American federal system. Above all, it reminds us that "by and for the people" is more than a constitutional principle--it is a vital operational characteristic of our federal system. (p. 4)

Whether one chooses to label the subset of political events that occurred in 1978 and subsequently in 1979 as a "tax revolt" or 'new propulism' [sic.] is secondary to the fundamental nature of the exercises in political democracy that occurred in those years. The Jarvis-Gann amendment to the California state constitution is significant in this respect for three reasons.

First of all, the Jarvis-Gann amendment represented a constitutional constraint on the powers to tax held by the California governmental units. The provisions of the amendment

> "(1) placed a limit on the amount of property taxes that can be collected by a local government

> to 1% of the 1975 market value; (2) restricted the growth in assessed property values to 2% a year (except new construction or changed ownership); (3) required a two-thirds vote of the legislature to increase state taxes; (4) authorized local governments to impose certain nonproperty taxes only if two-thirds of the voters approve."[2]

It is important to note the distinction between a constitutional constraint upon governmental powers and a legislative statutory constraint upon those powers. This distinction will be discussed below, but for the present discussion it is sufficient to note that the distinction between constitutional and legislative constraints lies in the degree of immunity of constitutional constraints to temporary or whimsical political pressures.

Secondly, the Jarvis-Gann amendment may have possibly signaled the beginning of a nationwide movement on the part of the voters to roll back the powers of government. Finally, and perhaps most importantly, the Jarvis-Gann amendment is a direct mandate by the voters upon government, which may be considered the ultimate exercise of the democratic process. The voters directly enacted their

---

[2]Advisory Commission on Intergovernmental Relations, Intergovernmental Perspective 5, no. 1 (Winter 1979), p. 7.

desires for fiscal reform, with 65% of the voters supporting the amendment.[3]

In November of 1978, eight additional states followed the fiscal reform movement initiated in California. The voters of Arizona, Hawaii, Michigan and Texas approved constitutional constraints on government spending levels. The voters in Alabama, Missouri, Nevada and South Dakota approved constitutional constraints upon their state governmental units' power to tax.[4]

During 1979, three states enacted constitutional measures that may be tied to the tax reform movement. Louisiana voters approved an amendment that restricts the assessment of public service property for ad valorem taxation to 25% of the market value of the property. The voters of Missouri supported a constitutional amendment that earmarks approximately 50% of the state's sales tax to support transportation infrastructure. California voters, again as in 1978,

---

[3] Newsweek Magazine XCI, no. 25 (June 1978), p. 20.

[4] Advisory Commission on Intergovernmental Relations, op. cit., (Winter 1979), p. 10.

established constitutional constraints on government's spending by initiative petition.[5]

The events comprising the 'tax revolt' that occurred in 1978 and 1979 are significant in that they represented an awakening of the American voter to the extent of the political powers embodied in the constitutions of the various states. In addition these and like events present politicians with a set of voter preferences that cannot be ignored by the politician who seeks to remain in office. The events also indicate that the voter is in fact interested in the fiscal performance of government and that the voter will support institutional arrangements that insure fiscal responsibility on the part of those in government.

For those individuals interested in the study of public finance, the events leading up to and those events that may be considered a part of the 'tax revolt' provide a field of study which may shed light on what may be considered the bounds or limits of government. The 'tax revolt' movement indicates that in addition to the issues dealing with the optimum means of taxation and distribution of public sector services, the size of the

---

[5]Albert Sturm, "State Constitutional Developments during 1979 and the 1970s," prepared for publication in National Civic Review 69, no. 1 (January 1980).

public sector in relation to the private sector is an important element of social order. Presumably, as the public sector grows beyond some preferred size, the incentives to engage in tax evasion and entry into the "black market" increase.

II. Precursory Attitudes of the Classical Political Economists

Examination of the classical literature in economics indicates that there was relatively little formal discussion concerning the relative size of the public sector. Discussions concerning taxation primarily dealt with the issues of equity, incidence, efficiency of the tax system, etc. Most discussions of taxation appear to have been evolved from Adam Smith's discussion in Book V, Chapter II of The Wealth of Nations, where Smith presented his four general "maxims" of taxation.[6] Smith does not engage in a formal discussion concerning tax limitations; however, the reader of The Wealth of Nations will find that Smith implies that the size of

---

[6]Adam Smith, An Inquiry and Causes of the Wealth of Nations, Edwin Canaan, ed., (New York: The Modern Library, 1937) p. 777.

the public sector and hence the taxes to finance this sector should be restrained. According to Smith, "the first duty of the sovereign" is to provide for the defense of the society[7]; the second duty of the sovereign is to maintain a system of internal order and justice[8]; and the "third and last duty of the sovereign or commonwealth is that of erecting and maintaining public institutions and those public works, which, though they may be in the highest degree advantageous to a great society, are, however, of such a nature, that the profit could never repay the expense to any individual or small number of individuals..."[9]

Smith's discussion of the public sector and taxation is derived from his earlier discussion dealing with the accumulation of capital, in which he states:

> "It is the highest impertinence and presumption, therefore, in kings and ministers, to pretend to watch over the economy of private people, and to restrain their expense, either by sumptuary laws, or by prohibiting the importation of

---

[7] Ibid, p. 653.

[8] Ibid, p. 669.

[9] Ibid, p. 681.

> foreign luxuries. They are themselves always, and without any exception, the greatest spendthrifts in the society. Let them look well after their own expense, and they may safely trust private people with theirs. If their own extravagance does not ruin the state, that of their subjects never will."[10]

In his discussion of taxation, Smith states "there is no art which one government sooner learns from another, than that of draining money from the pockets of people."[11]

In his Principles of Political Economy, John Stuart Mill[12] presents an elaboration of Adam Smith's views toward governmental powers and taxation. Mill's treatment of the issue of the relative size of the public sector may be considered to be in line with the contemporary school of thought which will be elaborated upon below. Mill agrees with Smith's "maxims of taxation," and elaborates in considerable detail on the effects of various tax schemes upon the economy. Mill goes beyond Smith in his elaboration of the potential abuses that may be brought about by government through taxation and

---

[10] Ibid, p. 329.

[11] Ibid, p. 813.

[12] John Stuart Mill, Principles of Political Economy in World's Greatest Literature, Albert E. Bergh, ed. (P.F. Collier & Son, New York: Colonial Press, 1900).

asserts that "yet mere excess of taxation, even when not aggravated by uncertainty, is, independently of its injustice, a serious economical evil. It may be carried so far as to discourage industry by insufficiency of reward. Very long before it reaches this point, it prevents or greatly checks accumulation, or causes the capital accumulation to be sent for investment in foreign countries."[13] Mill continues to consider the political aspects of governmental powers and argues against excessive reliance upon government to satisfy the needs of society. Under the heading "Limits of the Province of Government," Mill presents a line of reasoning, based upon individual political and economic freedom, arguing against over-expansion of government. Perhaps the most notable and most direct argument against too much government is found in the following passage on government agencies.

> A second general objection to government agency, is that every increase of the functions devolving on the government is an increase of its power, both in the form of authority, and still more, in the indirect form of influence. The importance of this consideration, in respect to political freedom, has in general been quite sufficiently recognized, at least in England; but many, in latter times, have been prone to think that

---

[13] Ibid, p. 386.

limitation of the powers of the government is only essential when the government itself is badly constituted; when it does not represent the people, but is the organ of a class, or coalition of classes: and that a government of sufficiently popular constitution might be trusted with any amount of power over the nation, since its power would be only that of the nation over itself. This might be true, if the nation, in such cases, did not practically mean a mere majority of the nation, and if minorities were only capable of oppressing, but not of being oppressed. Experience, however, proves that the depositaries of power who are mere delegates of the people, that is of a majority, are quite as ready (when they think they can count on popular support) as any organs of oligarchy, to assume arbitrary power, and encroach unduly on the liberty of private life. The public collectively is abundantly ready to impose, not only its generally narrow views of its interests, but its abstract opinions, and even its tastes, as laws binding upon individuals. And the present civilization tends so strongly to make the power of persons acting in masses the only substantial power in society, that there never was more necessity for surrounding individual independence of thought, speech, and conduct, with the most powerful defenses, in order to maintain that originality of mind and individuality of character, which are the only source of any real progress, and of most of the qualities which make the human race much superior to any herd of animals. Hence, it is no less important in a democracy than in any other government, that all tendency on the part of public authorities to stretch their interference, and assume a power of any sort which can easily be dispensed with, should be regarded with unremitting jealousy. Perhaps this is even more important in a democracy than in any other form of political society; because, where public opinion is sovereign, an individual who is oppressed by the sovereign does not, as in most other states of things,

> find a rival power to which he can appeal for relief, or, at all events, for sympathy.

Although Mill's discussions dealing with the role of the public sector are quite comprehensive, he nevertheless fails to discuss the role of a fiscal constitution in the context of a democratic market economy. Consequently, Mill's concern over the potential abuse of governmental powers and the stifling effects of excessive taxation may be considered incomplete, since he offers no concrete prescription as to how a democracy is able to protect itself from an overly zealous public sector.

In contrast to Smith and Mill, David Ricardo, in his best known work, The Principles of Political Economy and Taxation,[14] does not address the topic of an overexpansion of the public sector. Ricardo's treatment of taxation, although extensive, fails to consider the warnings that are found in Smtih's and Mill's writings. It is evident, however, that Ricardo did in fact recognize the damaging potential of taxation when he stated "but the great evil of taxation is to be found, not so much in any selection of its objects, as in the general amount of its effects taken

---

[14]David Ricardo, The Principles of Political Economy and Taxation (New York: Everyman's Library, 1817; E.P. Dutton & Co., Inc., 1972).

collectively."[15] Nevertheless, Ricardo does not pursue this line of reasoning any further in this work.

III. Post-Classical Attitudes

The evolution of thought among public finance theorists appears to have developed into three views with respect to the role of the public sector in relation to the private. One side of the argument is perhaps exemplified by Adolph Wagner. Wagner viewed the State as the sovereign and the relationship of the populace to the State as one of compulsory association. Accordingly, Wagner states that

> "the final and most essential difference between private and public economy lies in the significance of the State in the life of the nation and in the State's sovereign position in and above the economic life of the people. The nature and extent of state activities must be directed toward the fulfillment of objectives which are recognized as proper and determined in accordance with the interests of the people. In this respect the State and hence also its fiscal economy are outside the competitive market. Thanks to its sovereignty, the State is free to define its own tasks, the manner of their discharge and thus the amount and kind of services to be provided for the people, without reference to their demand for these services."[16]

---

[15] Ibid, p. 96.

[16] Adolph Wagner, "Three Extracts on Public Finance," p. 1-15; in Richard A. Musgrave and Alan T. Peacock, eds., Classics in the Theory of Public Finance, (New York: St. Martin's Press, 1967) p. 5.

Wagner believed that any constraints upon the government's powers to tax and to spend must evolve from within the government itself, and thus he denounced any external attempts, presumably constitutional constraints, to limit the activities of the government. Wagner's discussion of budgetary policy indicates that there are no practical upper bounds to public sector activities other than complete expropriation of the national product or that fraction which would discourage economic activity. Wagner asserts that:

> "all earlier attempts to lay down absolute figures of expenditure or to define an upper limit of its proportion to national income, have always miscarried. These attempts are based on a false, superficial and mechanical conception of the relationship of the State to the national economy, instead of on a proper organic view."[17]

Wagner was not alone in proposing the 'organic' view of the State. A second example of this line of reasoning may be found in the writings of Lorenz Von Stein.[18] According to Stein,

---

[17]Musgrave and Peacock, op.cit.

[18]Lorenz Von Stein, "On Taxation," in Musgrave and Peacock, eds., Classics in the Theory of Public Finance, (New York: St. Martin's Press, 1967) p. 28-36.

> "it is not the concept of community, but only the concept of the independent State which should be recognized as the basis for the historical and organizational evolution of taxes into constitutional tax systems--so much so, that in fact the labour of millenia was needed before taxation could begin, in the 19th century, to reach its full development."[19]

However, Stein may be considered to have a more moderate view of the State than Wagner since he tempers his opinion in stating that "The rudiments of taxation are indeed to be found wherever a State justifies its right to levy contributions by reference to its own will and needs. The full flowering of taxation, however, occurs only when the will of a people, acting through legislation, confers upon the State the right to intervene in the economy."[20]

To both Wagner and Stein, the State and the existence of the State appear to be the most important elements in the social organization. Accordingly, the role of the private sector is subservient to the State; consequently, there is little room in this scheme for constitutional

---

[19] Ibid, p. 30.

[20] Musgrave and Peacock, op.cit., p. 30.

tax limits. Constitutional restrictions upon the activities of the State are contrary to the notion that the State is the sovereign power. This view is diametrically opposed to the underlying philosophy of the American experience, by which the individual states are considered the sovereign, and sovereign power is derived from the people through the constitution.

The second view of the relation of the public sector to the private sector identifiable in the literature on public finance may be labeled as the paternalistic function of government. According to this line of reasoning, the individual is not credited with the intelligence to make 'correct' decisions as to the disposal of individual income. Consequently, the government assumes the role of parent and makes the 'correct' decisions on behalf of the citizenry. As an example of this point of view, consider the work of Hunter and Allen. In their public finance text, Hunter and Allen assert that

> "the attitude of many individuals seems to indicate that, from the standpoint of taxation, a governmental unit is best which keeps taxation to a minimum. But the maximum social welfare may not be attained by this policy. If the social income results in a surplus over that necessary for the accustomed standard of living, the people to whom this surplus accrues may spend it much less wisely than the state would if it took it in taxation

> and spent it for general health, education or some other activity for the common good."[21]

Constitutional constraints upon government are inconsistent with this line of reasoning, since according to this view, the government must be able to expand without any constraints in order to absorb any surplus of income generated in the economy. Casual empiricism indicates that most American voters do not subscribe to the parental role of government view.

The third view of the relation of the public sector to the private sector may be labeled as the individualistic view. Among the early scholars, Knut Wicksell serves as an example of a proponent of this view and may in fact be credited as one of the original contributors to the literature of public finance in which this view was developed. Wicksell's writings appear to be consistent with both Smith and Mill in that the private sector is considered the focal point of economic activity. Accordingly, the public sector's purpose is to serve the needs which evolve

---

[21]Mertin H. Hunter and Harry K. Allen, Principles of Public Finance, (New York: Harper and Brothers Publishing Company, 1940) p. 172.

from private activities. Along with Smith and Mill, Wicksell recognized the harmful effects of an over-expanded public sector in stifling economic activity. However, Wicksell appeared to be primarily concerned with the establishment of a fiscal structure that would at best maximize the individual's utility, and at least minimize coercion on the part of government. To meet these ends, Wicksell proposed his principle of "voluntary consent and unity," which "requires first of all that no public expenditures ever be voted upon without simultaneous determination of the means of covering their cost."[22] Presumably, Wicksell's proposal would take into account the distributional consequences of taxation when the production of collective goods is called for by the voter.

Implicit in Wicksell's line of reasoning are the basic elements of what may be considered a fiscal constitution, a set of pre-determined rules that in effect limit the spending and taxing abilities of the government. In his discussion of the potentials of political exploitation when the ruling party changes

---

[22]Knut Wicksell, "A New Principle of Just Taxation," trans. James Buchanan, in Musgrave and Peacock, op. cit., p. 72-118.

from one class of the population to another, Wicksell provides the reader with further evidence that he was in fact cognizant of the notion of a fiscal constitution and that the set of rules would constrain the taxing powers of the government. Wicksell states that

> "there can be no doubt that the best and indeed the only certain guarantee against such abuses of power lies in the principle of unanimity and voluntary consent in the approval of taxes. This is precisely the reason why those who yield but with bad grace and evil foreboding to the ever more insistent claims for democracy, should make every effort now to establish this principle in existing tax legislation. It is scarcely to be expected that the new ruling classes will freely impose such self-restraint upon themselves if they do not already find it embodied in the constitution."[23]

The roots of the Public Choice approach toward government and specifically the fiscal activities of government can be traced to the writings of Wicksell and others. However, the Public Choice approach goes beyond the traditional market type of analytics which focus on the exchange of collective goods for tax revenues. The uniqueness of the Public Choice approach in the analysis of the relation of the public sector to the private sector lies in the applying of economic

---

[23]Musgrave and Peacock, op. cit., p. 95-96.

analytical techniques to the political process and incorporating this form of analysis with the traditional market type of analytics. In essence, the traditional approach to public finance may be considered myopic in that the analytics do not consider the political exercises that are associated with collective goods provision in a democratic society. Traditional public finance deals primarily with the allocative and distributional consequences of collective good provision, but does not address the problem of how a particular allocation and distribution is determined in a democratic society. How a society arrives at any state of affairs that is described by an allocative and distributive scheme is a political as well as an economic exercise. In order to arrive at an understanding of the public finances, it is necessary to consider both the economic and political considerations because not only does the actual provision of collective goods require the input of scarce resources, but also the determination of what goods are to be provided, how much is to be produced, and the distributional consequences of the provision requires the input of scarce resources into the political process. In the market for private goods, assuming that transaction costs are minimal, the allocative and distributive properties of the economy are determined through the

price system where dollar 'votes' cast by consumers reflect in a fundamental sense the intensity of preferences for a particular market basket of goods and services. Once transaction costs become significant, both positive and negative externalities may persist such that individuals in the community have little or no incentives to enter into an exchange; consequently, certain goods may not be produced or certain bads are over produced. By entering into a collective agreement, individuals may be able to secure their desired ends provided that there exist the appropriate institutional arrangements that may be used to facilitate collective exchange. In the United States the consumer's consumption bundle consists of a mixture of goods procured in the private market and goods procured collectively. The choice between private provision and public provision of goods and services may be based upon technical reasoning or, what is more commonly done in the United States, purely a political exercise. In technical terms, public goods are defined as those goods which exhibit the characteristics of jointness efficiency in production and non-excludability of non-payers from usurping benefits. Based on the implications of these characteristics, it is generally accepted that if members of a society desire a public good to be provided, the good would be produced collectively.

The public may, and often does, choose to provide goods that may be considered private in technical terms through the collective process. As stated above, in the collective goods market, the individual signals his wants and desires through the political process, and because of non-rivalry in consumption with pure public goods and the distributional effects when goods or services are provided through general taxation, the individual bears only a portion of the total cost. If the individual does not pay his share of the cost, he generally cannot be economically excluded from usurping benefits from the public good or collective good. Strategic behavior by the individual may result in a "free-rider" problem.

IV. The Role of A Fiscal Constitution

In a democratic society, in which governmental coercion is to be kept to a minimum, the provision of collective goods requires that individuals enter into bargaining to determine what goods shall be collectively produced, how much will be provided, and how the costs shall be distributed. With large numbers of individuals, the costs of reaching agreement may be extremely high. A fiscal constitution may reduce the costs of reaching an agreement, and reduce the "free-rider"

problem by separating the repetitive decisions from the non-repetitive decisions. The fiscal constitution provides a semi-permanent set of rules prescribing the scope of which goods will be provided collectively and how the costs will be distributed among individuals. Agreement is reached separately from the specific public good proposals.

As stated above, the fiscal constitution serves as an institution that reduces the cost of reaching agreement with respect to the choice among alternative public goods. Once a fiscal constitution is agreed upon, individuals are able to choose collective projects independent of the distribution of costs. This provides an incentive for individuals to reveal their true preferences. There is little to be gained by individual strategic action. If an individual understates his true preferences or overstates his true preferences, he will not change his tax share. The result of such strategic behavior is to signal the collectivity to provide a quantity of public goods that does not equal the individual's value of the good. The fiscal constitution also allows individuals to limit the scope of which goods would be provided collectively. Pure private goods and pure public goods are polar extremes of the continuum of goods that exhibit various strengths of public good characteristics. The

fiscal constitution provides a means by which individuals may determine the dividing line between goods that are to be produced collectively and goods that are to be produced privately. Once this dividing line is established, individuals acting as entrepreneurs are able to determine the types of commercial activity that are feasible and potentially profitable. The fiscal constitution may be considered an institutional link between the purely economic activities in a society and the associated political activities in the same society.

Implicit in the foregoing discussion is the notion that the fiscal constitution establishes a set of agreed upon constraints on the activities of the public sector. Stated more specifically, the fiscal constitution establishes a set of constraints by which government may act. These constraints upon government may occur in the form of procedural requirements or in the form of substantive or quantitative requirements. This distinction between procedural and substantive constraints is applicable to constitutional tax limitation provisions. With respect to taxation, procedural constraints or limits establish rules which govern the government's power to tax; thereby they influence the procedures of taxation and thus provide an indirect control on the level

of taxation. Substantive constraints prescribe the end result of taxation independent of how the end is achieved,[24] which presents a direct control over the level of taxation.

Constitutional tax limits may be procedural, substantive, or both. Although both forms of constraints tend to be complementary, their effects upon society and government differ. Procedural constraints would tend to influence the distributive properties of the tax burden in conjunction with limiting the size of the public sector. Procedural constraints establish the rules by which taxes are levied and these rules of taxation determine for the most part the distribution of the tax burden. In general, the distribution of tax shares is of great importance to the utility maximizing individual whereas government would tend to be indifferent over the source of its revenues, when political considerations are assumed away. On the other hand, substantive constraints on the

---

[24]For a thorough discussion regarding procedural and substantive distinction see Buchanan and Brennan, The Power to Tax: Analytical Foundations of a Fiscal Constitution, (Cambridge: Cambridge University Press, 1980) Chapter 16; also see Buchanan, "Constitutional Constraints on Governmental Taxing Power," Working Paper #CE-78-12-4, 1978, Virginia Polytechnic Institute and State University.

power to tax, when not tied to procedural constraints would be neutral in a distributional sense but directly effect the size of the public sector by limiting directly the revenues available at the government's disposal. The implication of this line of reasoning is that procedural constraints would tend to be susceptible to strategic political behavior to a greater extent than substantive constraints.

Recent contributions to the theory of Public Choice suggest that government has a tendency to grow beyond the optimal size. This malignant growth of government has been attributed to governmental decision makers who, as described by Buchanan, "act in accordance with their own rather than some vaguely defined general or public interest."[25] The crux of the problem must be attributed to the institutional structure through which collective goods and services are provided rather than to the individuals whose only recourse is to act within the institution.[26]

---

[25]J.M. Buchanan, "Constitutional Constraints on Governmental Taxing Power," Working Paper #CE-78-12-4, 1978, p. 3.

[26]See also Gordon Tullock, The Politics of Bureaucracy, (Washington: Public Affairs Press, 1965) and William Niskanen, Jr., Bureaucracy and Representative Government, (New York: Aldine-Atherton, Inc., 1971).

According to Buchanan, "mere observation of the rates at which governments have grown, and notably in the decades since World War II, is perhaps sufficient to justify examination of the prospects for fiscal constraints."[27] Hayek projects, perhaps an extremum that may not be reached but yet may be approached, that "this trend, if allowed to continue, would before long swallow up the whole of society in the organization of government."[28]

V. Constitutional Constraints on Fiscal Authority: A Sketch of the Historical Record

The importance of constitutional tax limits from a theoretical standpoint cannot be denied once one considers the role of the fiscal constitution in a

---

[27] J.M. Buchanan, "Constitutional Constraints on Governmental Taxing Power," op.cit., p. 2.

[28] F.A. Hayek, Law, Legislation and Liberty, Vol. III, The Political Order of a Society of Free Men, (Chicago: University of Chicago Press, 1980) Chapter 16; quoted in Buchanan, "Constitutional Constraints on Governmental Taxing Power," p. 1.

democratic market oriented society. The years 1978 and 1979 witnessed considerable political activity with respect to constitutional constraints upon governmental fiscal activities and powers, enough activity on the part of the voter to install restraints on government that it alone warrants further investigation. However, constitutional tax limitations are not new to the American experience at the national level or at the state-local level.

The evidence of historical study suggests that the Founding Fathers of the United States recognized the proclivity of the state to grow beyond that which is necessary or desirable. They attempted to deal with the problem by limiting the power of the state at the constitutional level. Their first attempt, the Articles of Confederation, was unsuccessful due to a delegation of too little power to the federal government. Congress was not constrained in its ability to ask for revenues from the states; however, the states were able to choose whether they paid the tax or not. The constraint on the central government's taxing power was implicit in the Articles of Confederation since the Continental Congress was not granted any means of coercing the states to make payments. The result of this arrangement was the

obvious; the free-rider principle prevailed, resulting in a fiscal chaos and near collapse of the federation.[29]

The constitutional convention of 1787 was in reality a constitutional revolution, since the writing of a new constitution was against the existing rule. The present constitution of the United States apportions power to the federal government from the state governments with limitations on the extent of the power granted. In addition the Constitution imposes restrictions on the powers of the states which, being sovereign states, they inherently possess.[30]

Tax limitations in the Constitution of the United States affect two forms of government; they restrict the taxing power of the states and they restrict the taxing power of the federal government. In addition, tax limits are either stated explicitly or implicitly. For

---

[29]For a comprehensive discussion of taxation and the Articles of Confederation see Charles A. Beard, An Economic Interpretation of the Constitution of the United States, (New York: The Free Press, 1965).

[30]Thomas M. Cooley, A Treatise on the Constitutional Limitations, (New York: Da Capo Press, 1972) p. 9-10; also Chapter 14.

example, Section Eight of Article One explicitly states that taxes "shall be uniform throughout the United States." Alternatively, "the due process of law" clause of the Fourteenth Amendment may and has been considered an implicit tax limit to the extent that double taxation was considered an 'oppressive assessment.'[31]

The federal Constitution has been somewhat stable in terms of reform and change since its inception. In contrast, state constitutions have been quite volatile in that there has been considerable change and revision through the years. For example, 1,293 constitutional changes have been adopted in forty-nine states during the period 1966 to 1972.[32]

---

[31]There has been considerable controversy concerning due process and its relation to taxation. It is evident that the Court has reversed itself in this matter, consequently the accepted doctrine is dependent not only on the specifics of the case under consideration but also upon the philosophical considerations of the judge. In Blackstone vs. Miller 188 U.S. 189,202 (1903) the court allowed double taxation. In the case of Safe Deposit and Trust Co. vs. Virginia 280 U.S. 83 (1929) and in the case of Farmer's Loan and Trust Co. vs. Minnesota 280 U.S. 204,209 (1930) the court condemned double taxation on the basis that it violated the concept of "due process." See Virginia Wood, Due Process of Law,(Port Washington, NY: Kennikot Press, 1951) p. 341 and Chapter 5.

[32]Albert L. Sturm, Trends in State Constitution-Making 1966-1972, (Lexington, Kentucky: Council of State Governments, 1973), p. 2.

VI. Plan for This Study

This dissertation presents an account of constitutional tax limitations at the state level in the United States. Particular attention is given to (1) the effectiveness of the limitations in constraining spending by state-local governments and (2) the political environment in which the tax limitations were enacted. This study examines the various tax limitations which have been incorporated into the fiscal constitutions of state governments. The historical and contemporary account of tax limitations is derived by direct examination of state constitutions of the United States. The examination of constitutions has a venerable tradition with the intellectual precedence accredited to Aristotle and is further exemplified by Macaulay, to mention only two respected scholars. For example, Aristotle examined 158 constitutions in his attempt to classify state forms. Macaulay suggested in the early 19th century that

> "we ought to examine the constitution of all those communities in which, under whatever form, the blessings of good government are enjoyed; and to discover, if possible, in what they resemble each other, and in what they all differ from those societies in which the object of government is not attined. By proceeding thus we shall arrive, not indeed at a perfect theory of government,

> but at a theory which will be of great practical use, and which the experience of every successive generation will probably bring nearer and nearer to perfection."[33]

The methodology employed in this study is essentially historical and comparative, in which case studies are used to gain an in-depth understanding of the evolutionary experience of the state constitutions examined. The case studies are comparative and attempt to determine how the existing tax limits came about. The study reveals what changes in the tax limits have occurred over time, with particular attention paid to the political and economic forces which may have acted upon the evolutionary process of constitutional reform in the states that are examined.

Constitutional fiscal restraints on government are enforced through the judicial system in a society characterized by a separation of governmental powers, as in the United States. Fiscal measures in a constitution can either constrain the taxing side of the fiscal account, the spending side of the fisc, or both. This study deals exclusively with constitutional provisions

---

[33]Robert Tollison, Thomas Deaton, and Robert Ekelund, Jr., "A Modern Interpretation of Aristotle on Legislative and Constitutional Rules," Southern Economic Journal 43, no. 1 (July 1976), p. 903-911.

that control the revenue generating abilities of government. Because the federal Constitution, by the 'due process' clause, equally binds state governments to adhere to the tax limits implied by the clause, implicit limits will not be considered as relevant to this study. Effects of implicit tax limits in constitutions are directly dependent upon judicial interpretation of the particular case at hand; consequently, the study of implicit constitutional tax limits may best be reserved to a study of the fiscal effects of the judicial system in the United States.

Explicit constitutional tax limits are used as constraints upon the revenue generating powers of governments in the United States in several readily recognizable alternative forms. At this point, it may be prudent to define the alternative forms of constitutional tax limits that are used in the American fiscal system. The alternative forms of constitutional tax limits may act independently or they may be complementary in their constraining effects of government taxing powers. In none of the possible combinations of constitutional tax limits where more than one form acts upon governmental powers are the effects degenerative such that one form of limit negates the effects of an alternative form of limit. This does not imply that

constitutional constraints on the ability to tax are necessarily binding on the government in question. It is quite possible that a particular limit at hand may be set at a level that is greater than the revenue maximizing level of taxation; consequently the limit would not be binding on the government being examined. Furthermore, there are differences in the constraining ability of the alternative forms of tax restraints in that the limit may be evaded by government through some appropriate action or that the limit itself does not present a formidable barrier to the collection of revenues by the government.

VII. Forms of Tax Limits

In this study eight forms of constitutional tax limits are considered. Although the eight forms of constitutional tax limits may not exhaust the theoretical possibilities, they seem to represent the complete set of constitutional tax limits used in the United States.

(1) The first form of constitutional tax limit is the base limit. The base of a tax is the object to which the tax is applied. In the United States, there are several commonly used bases to which taxes are applied. Examples of typical tax bases are: property values,

income, price of a commodity or service, quantity of a commodity, and individuals. (For example, a poll tax is a tax on individuals themselves.) The base limit as a constitutional tax limit is on the surface a very simple type of limit in that it excludes or prohibits the government to levy a tax upon the base that it mentions. The strength of the base limit lies in how explicitly the base is defined within the context of the constitution. If the base in question is precisely defined, then it would be virtually impossible for a government to get around the limit. If the base in question is not precisely defined, then the determination of whether a tax is levied is dependent upon judicial and legislative interpretation; consequently the limit may be circumvented. An alternative means by which governments can get around a base limit is to tax a close complement to the base in question. For example, a constitutional provision may state that cemetery plots are exempt from taxation. It is then possible for the government to tax caskets and thus in effect generate revenues from the burial of the dead. Admittedly, this constraint does present a constraining effect on the ability to generate tax revenues; however, the constraint is diluted.

(2) The second type of constitutional tax limit is the rate limit. A tax rate limit may be defined as a constitutional provision that specifically establishes a ceiling or in some cases both a ceiling and a floor on the percentage of value that may be expropriated as the tax in the case of a tax on the value of some base, or the rate limit may specify a dollar amount that may not be exceeded in the collection of tax revenues, from a particular base. In other words, the tax rate is the per-unit of base that results in revenues for the government and the rate limit is the restriction on how large a per-unit figure is allowable by the constitution. There are actions that may be taken by a government in order to circumvent the rate limit. In particular, governments may be able to expand the tax base in order to generate revenues that would be held back from the government by the rate limit.[34]

(3) The third type of constitutional tax limit that may be defined is the rate structure limit. The rate

---

[34]See Brennan and Buchanan, "The Logic of Tax Limits: Alternative Constitutional Constraints on the Power to Tax," Virginia Polytechnic Institute Working Paper #CE-78-12-2,1978, p. 13, for a discussion concerning the ability of governments that are revenue maximizers to circumvent tax limits.

structure of a tax system is the relationship of the rate of tax on a base and how that rate changes with changes in the base. The rate structure limit may be defined as a constitutional provision that sets out the ways in which the tax rate may or may not change with changes in the tax base or changes within the tax base. The effectiveness of the rate structure limit as a constraint upon government is again dependent on the precision of the wording of the limiting clause in the constitution. For example, a uniformity clause in a constitution that states that taxes shall be uniformly levied upon the same class of property would be an effective constraint preventing the government from practicing tax discrimination provided that the government does not attempt to circumvent the limit by legislatively increasing the number of classes of property. Due to the fact that most constitutions are long-lived, most constitutional provisions tend to be quite general in their wording so that the constitution is fairly flexible and adaptable to changes in the social setting. Unfortunately, the level of generality found in American constitutions inhibits the effectiveness of many tax limiting devices.

(4) The fourth type of constitutional tax limit that may be considered is the share limit. The share limit may be defined as a constitutional provision that specifies the fraction of a specific economic aggregate that may be collected by government as tax revenues. The share limit provides a formidable constraint on the government's ability to raise revenues since it is not particularly susceptible to judicial or legislative quibbling in the determination of how much revenue the government is allowed to collect. The constraining ability of the share limit is, however, dependent upon the level of generality in its specification. The greater the generality of the share limit, the greater will be its constraining effects, and the converse holds true. For example, suppose that two alternative share limits are under consideration for inclusion in a fiscal constitution. Assume that the first share limit is quite general in that it states that the government may not collect more than twenty percent of the income generated within the state. Assume that the second share limit states that sales tax revenues may not exceed twenty percent of the total income generated within the state. Clearly, the first share limit is more general than the second example. Under the first form of the share limit, the government may not collect revenues

above the twenty percent of total income level no matter what type of tax is used. However, under the second form of the share limit total government revenues may exceed twenty percent of total income provided that revenues generated through the sales tax do not exceed the twenty percent of total income level.[35]

(5) Consider now the political subdivision limit. The political subdivision limit may be defined as a constitutional clause that specifies which political subdivision of a state government is allowed or not allowed to levy a particular type of tax. For example, a political subdivision limit may state that county governments may not levy a sales tax. The effect of such a provision in a constitution is, of course, that county governments are excluded from using the sales tax as a revenue source, which limits the revenue generating ability of the county government. Governmental units are able to get around this constraint by making agreements as to which governmental unit will concentrate on levying which tax and side payments are then arranged to transfer funds through intergovernmental

---

[35]See Brennan and Buchanan, "The Logic of Tax Limits," Virginia Polytechnic Institute Working Paper #CE-78-12-2, for citations concerning the base limit, the rate structure limit, the rate limit and the share limit (1978).

transfers. The constraining effect of this type of tax limit is not completely lost since revenue maximization becomes a function of the ability of governmental units to reach an agreement, and, in addition, the political limits of each tax may be reached fairly quickly.

These first five forms of constitutional tax limits act directly upon the government's power to tax. The remaining three forms of constitutional tax limits included in this study constrain the taxing ability of the government in a rather indirect manner; nevertheless they do constrain the ability of governments to collect revenues. The last three forms of tax limits are three variations on earmarking: earmarking of revenue, earmarking of the type of tax to the base, and the earmarked tax/base limit.

(6) Consider first earmarking of revenue, which may be defined as a constitutional provision that allocates the revenue collected by a specific tax to a specific set of collective goods. This form of earmarking indirectly limits the government's ability to raise revenue. Earmarking of revenues limits the usefulness of revenues that are generated because the revenues can only be used as specified in the constitution; thus the funds cannot be used to expand government services in other areas. Consequently, the incentive to collect the

tax is dependent only upon the services that are consumed. Any further expansion of revenues beyond that necessary to supply the particular service in question would result in a budget surplus. The generation of a budget surplus can be politically devastating, as exemplified by the California experience with the Jarvis-Gann amendment.

(7) The second form of earmarking is the earmarking of the type of tax to the base. Earmarking of the type of tax to the base may be defined as a constitutional provision that specifies a particular type of tax that is to be exclusively applied to a particular tax base. For example, a constitutional provision may specify that only an ad valorem tax may be levied on real estate. This may be considered to act more directly upon the powers of government to generate revenue than the earmarking of revenue since the earmarking of the type of tax to the base only allows a single specific type of tax to be used by the government on the tax base in question. The constraining ability of earmarking of the type of tax to the base is dependent upon how well the taxpayer is able to adjust his behavior in order to avoid paying the tax.

(8) The final form of earmarking as a constitutional tax limit is the earmarked tax/base limit. The earmarked tax/base limit may be defined as a constitutional provision that specifies the type of tax that is to be levied on a particular tax base and that the revenues generated by the tax are to be used only for a specified purpose and that the rate of tax not exceed a stated rate. As may be apparent from the definition of the earmarked tax/base limit, it is a unique composition of the rate limit, earmarking of the type of tax to the base, and the earmarking of revenue.

VIII. Summary

This chapter has presented a general discussion of the relevance of this study to the political events that occurred in 1978 and 1979. A continuation of the movement to control the relative size of government is expected to continue into the 1980's. The study is related to the field of public finance and political economy in general in that in order to predict the course of future events and to be able to intelligently offer policy prescriptions, it is necessary to understand the events that occurred in history and to have an indication as to the present state of affairs. This chapter has been

descriptive although brief with respect to the evolution of thought concerning the relation of the public sector to the private sector and the attitudes of the economic profession toward the issues of taxation. This chapter has also provided a definitional foundation for the remainder of the study.

IX. Preview of Remainder of Study

Part I of this study examines tax limits as constitutional devices from a "macro" view to the extent that an overall picture of the contemporary and historical situation is presented.

An important aspect of constitutional tax limits as devices to control the fiscal performance of government is the amendment process of state constitutions. Chapter 2 focuses upon the amendment process as found in the United States as of 1980. Particular attention is paid to the possible methods of changing state constitutions from an institutional perspective. Empirical evidence is then presented which relates the actual performance of states to the institutions available to implement a constitutional change. Throughout Chapter 2 particular attention is paid to the political process involved in changing state constitutions.

Chapter 3 presents an account of the 1979 tax limitation situation in the United States. The tax limits used in states are classified according to the type of limiting device and data is presented which enables the reader to compare the relative restrictiveness of state constitutions in terms of the constraints on the states' power to tax. In addition it is shown that constitutional tax limits do indeed have a constraining effect upon the fiscal performance of state governments. The final section of Chapter 3 presents the historical situation of constitutional tax limits in the states at the time of admission into the Union. The historical evidence is then compared to the contemporary situation in an attempt to provide the reader with the flavor of the evolutionary pattern of constitutional tax limits in the United States.

Part II of this study provides a 'micro' view of constitutional tax limits. Chapters 4, 5, 6, and 7 provide an indepth historical review of the evolution of constitutional tax limits in Virginia, New York Florida, and Oklahoma. Within these case studies particular attention is paid to the political situations that surround the inception of constitutional constraints upon the state governments' power to tax. The final

chapter in Part II, Chapter 8 provides a discussion comparing the evolutionary experience of the states that were examined.

Part III of this study contains a single chapter that ties together the 'macro' view of Part I with the 'micro' view of Part II. The purpose of this chapter, aside from providing an overall conclusion and summary, is to relate the current situation in the United States and the 'tax-revolt' movement of 1978-79 to the historical evidence. The tie between the history and the present 1980 situation provides implications that are relevant to policy prescriptions and to problems that must be resolved both in theory and in practice in concerning the future of constitutional tax limits and the principles of democracy.

CHAPTER 2

METHODS OF AMENDING STATE CONSTITUTIONS

I. Introduction

The most important feature of a constitution is that it establishes a set of rules by which a government may act. These rules generally have no definite life span; they are considered permanent. However, constitutional rules do change over time. Constitutions are amended and, at the extreme, completely rewritten. Constitutional change may occur as a result of legislative proposal, constitutional convention proposal, or revolution. For purposes of this study, revolutions will not be considered. Generally, all three of the remaining methods of initiating constitutional change may produce amendments to existing constitutions. Only the convention method of initiating constitutional change can result in a completely new constitution. In all cases, the process of constitutional change is subject to manipulation by the legislature. However, the final approval of all constitutional changes is subject to the scrutiny of the general public since all state constitutions except for the state of Delaware

require that a referendum be held before any constitutional change may be implemented. Each state's constitution in the United States includes the rules by which the constitution may be amended or rewritten; thus a notable feature of American constitutions is that they are organic documents adaptable to a changing society.

II. Legislative Method of Initiating Constitutional Change

Among the various ways of initiating a constitutional change, legislative proposal is the only method constitutionally authorized in all the states of the Union as of 1980. There are, however, variations among states as prescribed by the states' constitutions, as to the particular procedures that must be followed in order to modify the constitution. In general, constitutional proposals are introduced to the legislators for consideration by a member of the legislature during the regular session of the governing body. The major differences concerning the enactment of a constitutional change among the states lie in the number of times that a proposal must be reviewed by the legislators, the minimal legislative votes necessary for the proposal to be adopted by the legislature, and the required plurality of the ratifying popular vote.

The number of times that a proposition faces the legislators ranges from a single session to two sessions of the legislature, while the legislative voting requirements form a relatively complex array of minimal standards that must be met in order for the proposal to be endorsed by the legislature. The array of legislative requirements as they exist in 1980 may be summarized by first of all considering the number of legislative sessions that must review the proposal and secondly, by considering the legislative voting requirements for each session. As mentioned above, legislative constitutional proposals must be reviewed by the legislature in either a single session or in two separate sessions depending upon the constitutional requirements of the particular state. In order for a constitutional proposal to be successful, it must receive a minimal vote, as specified in the state's constitution, in each session that it is reviewed. The least restrictive rules governing legislative proposals would require that a proposal be reviewed by one session of the legislature and receive a simple majority vote of approval prior to ratification by the general public. A more stringent set of rules would require that a legislative proposal receive majority approval in two sessions. Alternatively, the rules may require that a legislative constitutional

proposal receive a majority vote in the first session and a 2/3 majority vote in the second session. The most complicated set of rules found in state constitutions, although they may not be the most stringent, occur in the state of Vermont where the rules for adopting legislatively proposed constitutional amendments require that the proposal be voted upon in two sessions, such that in the first session the proposal receives a simple majority in the House of Representatives and a 2/3 majority vote in the state Senate and in the second session the proposal must receive a simple majority of both houses of the legislature.[1]

From an examination of Appendix A, "Legislative Proposal of Amendments," in Sturm's Thirty Years of State Constitution-Making: 1938-1968[2] and direct examination of state constitutions in order to update Sturm's table to 1980, it is evident that there are eight variations of the constitutional rules that prescribe the legislative method of amending state constitutions. The eight variants of the legislative initiative method can be arranged according to the

---

[1]Albert L. Sturm, Thirty Years of State Constitution-Making: 1938-1968, (New York: National Municipal League, 1970) p. 126.

[2]Ibid, p. 118-127.

degree of difficulty of securing passage in the legislature of a constitutional amendment. The results of the exercise are presented in Table 2-1, "Rank Ordering of Legislative Initiative," where Column One presents the rank and Columns Two and Three indicate the necessary requirements in each session of the legislature while the rows indicate the minimal conditions which must be met to secure passage of a proposal to the constitution in the legislature. Table 2-2, "Legislative Proposal Method: Voting Requirements in States," presents a listing of the states according to the classification scheme presented above. From Table 2-2 it is evident that the 2/3 majority rule voted upon in a single session is the most popular scheme used in the United States. Simple majority in a single session, simple majority over two sessions, and 3/5 majority rule over a single session appear to be equally popular forms of legislative voting on constitutional matters, as each scheme is used in nine states. As may be noted in Table 2-2, there are several contingency plans used in various states. Under the contingency plans, if the prescribed majority vote is not obtained in the single session of the legislature, but the vote does meet the criteria for a simple majority, then the constitutional change may still be enacted if the proposition receives a simple majority vote in a second session of the legislature.

TABLE 2-1

CLASSIFICATION AND RANK ORDERING
OF LEGISLATIVE INITIATIVE

Classification and Rank Ordering	Minimal Requirements in Each House	
	First Session	Second Session
1	Simple majority	none
2	3/5 majority	none
3	2/3 majority	none
4	3/4 majority	none
5	Simple majority	Simple majority
6	2/3 majority in Senate Simple majority in House	Simple majority in both houses
7	2/3 majority	Simple majority
8	2/3 majority	2/3 majority

TABLE 2-2

LEGISLATIVE PROPOSAL METHOD: VOTING REQUIREMENTS IN STATES

Simple Majority in One Session	Ratification Vote
Arizona	Majority on proposal
Arkansas	Majority on proposal
Minnesota	Majority in election
Missouri	Majority on proposal
New Mexico	Majority on proposal
North Dakota	Majority on proposal
Oklahoma	Majority in election
Oregon	Majority on proposal
South Dakota	Majority on proposal

3/5 Majority in Single Session	Ratification Vote
Alabama	Majority on proposal
Florida	Majority on proposal
Kentucky	Majority on proposal
Maryland	Majority on proposal
Nebraska 35% total votes cast +	Majority on proposal
New Hampshire	2/3 vote on proposal
North Carolina	Majority on proposal
Ohio	Majority on proposal
New Jersey (if < 3/5 then maj.+ maj.)	Majority on proposal

2/3 Majority in Single Session	Ratification Vote
Alaska	Majority on proposal
California	Majority on proposal
Colorado	Majority on proposal
Georgia	Majority on proposal
Hawaii (if < 2/3 then maj. + maj.)	Majority on proposal 35% of total voting
Idaho	Majority on proposal
Illinois	Majority of votes in election or 2/3 voting on proposal
Kansas	Majority on proposal
Louisiana	Majority on proposal
Maine	Majority on proposal

TABLE 2-2: Continued

2/3 Majority in Single Session	Ratification Vote
Michigan	Majority on proposal
Mississippi	Majority on proposal
Montana	Majority on proposal
Texas	Majority on proposal
Utah	Majority on proposal
Washington	Majority on proposal
West Virginia	Majority on proposal
Wyoming	Majority in election
3/4 Majority in Single Session	**Ratification Vote**
Connecticut (if < 3/4 then maj. + maj.)	Majority on proposal
Simple Majority in Two Sessions	**Ratification Vote**
Indiana	Majority on proposal
Iowa	Majority on proposal
Massachusetts	Majority on proposal
Nevada	Majority on proposal
Pennsylvania (emergency 2/3 once)	Majority on proposal
Rhode Island	3/5 on proposal
Virginia	Majority on proposal
Wisconsin	Majority on proposal
New York	Majority on proposal
2/3 Majority in Senate and Simple Majority in House in First Session; with Simple Majority in Both Houses in Second Session	**Ratification Vote**
Vermont	Majority on proposal
2/3 Majority in First Session and Simple Majority in Second Session	**Ratification Vote**
South Carolina (second vote after rat.)	Majority on proposal

TABLE 2-2: Continued

Tennessee (First session by simple maj.; second session 2/3 majority)	Majority of vote for government
2/3 Majority in Each of Two Sessions	**Ratification Vote**
Delaware (election between)	No vote

(Source: A. Sturm, Thirty Years..., p. 118-127.)

III. Popular Ratification of Legislative Constitutional Proposals

Once approved by the legislature, a constitutional proposition must, in all states except for Delaware, be approved by the voters. There are, however, differing rules regarding the referenda among the states. In general, the constitution of each state specifies the time that the referenda are to take place, publication requirements concerning the referenda, and the plurality of the vote necessary for proposals to become a part of the constitution. The most notable, and perhaps the most significant difference concerning the referenda is the plurality of votes necessary for approval of the proposition. In thirty-seven (37) of the American states, a simple majority of the votes cast on a particular proposition is sufficient for ratification. The remainder of the state constitutions qualify the majority vote needed for ratification of a proposal in one of several ways: (a) the proposition must receive a simple majority of all the votes cast in the election; (b) the proposition must receive a qualified majority (usually 2/3 or 3/5) of the votes cast on the proposition; or (c) a combination of rules (a) and (b). Column Two in Table 2-2 presents the referendum vote requirements as of 1980 in the United States.

As mentioned above, Delaware is the only state of the Union that does not require ratification of constitutional changes by the citizens of the state. The Delaware constitution does require that a constitutional measure be voted upon in two sessions of the legislature with the proposal receiving a minimum of 2/3 majority from the legislators. In addition, the constitution of Delaware requires that there be a general election for legislators between the legislative sessions voting on constitutional provisions. Thus, Delaware is the only state that totally adheres to the concept of representative democracy.

South Carolina's legislators enjoy a veto power concerning constitutional modifications that is unique to that state. The constitution of South Carolina requires that a constitutional proposition be voted upon by the legislators twice. The first round of voting by the legislators requires that the constitutional proposition receive a minimum of 2/3 majority vote. The second round of legislator voting occurs after the referendum is complete, and that second legislative voting follows the simple majority rule of voting. It is quite conceivable for a constitutional change to be rejected by the legislators even though the general population accepts the constitutional modification. Thus,

the states of South Carolina and Delaware are the only states where the voter does not have the final word concerning constitutional changes when such changes are initiated within the legislature.

IV. Constitutional Convention Method of Initiating Constitutional Change

The second method of changing state constitutions relevant to this study is the constitutional convention and referendum. There are four identifiable stages to the convention method of instituting a change in a state's constitution. First of all, the decision to hold a convention must be made. This may be accomplished by popular vote where the decision is made by the citizenry; by constitutional mandate where the constitution specifies that a popular vote to determine if a constitutional convention will be held must be on the ballot every 'x' number of years; by judicial mandate where the court determines that a constitutional convention is necessary to instill some notion of fairness, usually to the apportionment of legislators; and finally, the legislators may determine if a convention is to be held. The second phase of the convention process is the selection of the convention

delegates. Candidates for the position of convention delegate emerge from the pre-existing socio-political environment of the state and final selection is made by popular vote. The third phase of the convention process is the operation of the convention itself. The convention may be considered an exercise in short term politics where the results of the political decisions and concessions that are made by be long-lived. Accordingly, Cornwell, Goodman, and Swanson "predict that most conventions will organize in ways roughly similar to the closest familiar model, the legislature, but with some differences. In bodies of this one-shot nature, we would not expect standing committees with the influence of those in Congress with their tradition, hierarchy, socialization systems, and well-defined clientele relationship... They will have the rules and parliamentary procedures of legislative bodies and the need for group decision-making but without the heavy weight of senior members and past traditions to structure how they go about it."[3] The final phase of constitutional change by the convention method is the referendum, where the citizenry has the opportunity to reject or accept the product of the convention.

---

[3]E.E. Cornwell,Jr., J.S. Goodman, and W.R. Swanson, State Constitutional Conventions, (New York: Praeger Publishers, 1975) p. 48-49.

Out of the total of fifty states, forty state constitutions authorize the use of the convention method to amend or rewrite the constitution of that state. Only 11 states' constitutions require periodic submission to the voter the question of whether a convention is to be held.[4] Consequently, it appears that the legislators have a substantial amount of control over the determination of whether a convention is to be held in most states. Further examination of the convention process indicates that the legislators have significant influence over the general direction that the convention follows, due to the fact that the legislators must pass an enabling act in order for the convention to proceed.

The voter in most states has two fundamental inputs into the convention process. Firstly, the voter in all but four states must by popular vote authorize the convention and choose the delegates from the qualified candidates. Secondly, the voter must approve the product of the convention, as was mentioned above. However, it is possible for the voter to be influenced by those with vested interests, in the outcome of the convention due to the associated campaigning that occurs

---

[4]Sturm, op. cit., p. 136-137.

prior to the convention and prior to the referendum. Clearly, the resources at the disposal of the legislators make them a prime source of political propaganda that is aimed at the voter. Studies indicate that there is considerable "politicking" by political coalitions that are outside of but not exclusive of the legislators.[5]

V. Citizen Initiative Method of Initiating Constitutional Change

The third alternative means of initiating a constitutional change in the United States is the citizen initiative and referendum. A citizen initiative occurs when individual citizens of a state form a coalition specifically for the purpose of modifying the constitution of the state and by following the constitutionally prescribed procedures cause the proposal to be entered onto the ballot for a general referendum on the matter. This method of attempting to make a constitutional change is unique in that it is an exercise in direct democracy whereas the convention and legislative initiative are based upon the concept of representative democracy.

---

[5]See Cornwell, Goodman, and Swanson, op. cit., for an extensive examination of the constitutional convention process.

Assuming that the constitutionally prescribed procedures are followed by those individuals who attempt to enter a change into the constitution, there is little that the legislators can do to stop the action. Aside from attempting to disqualify the proposal on procedural grounds, the legislators may campaign against the measure or, as in the 1978 California experience, the legislators may offer a competing proposition that is more suitable to the vested interests of the status quo than the citizen initiative. Alternatively competing coalitions may follow the same course of action as the legislators. Although the legislators are able to utilize their political influence against a citizen initiative, there is no direct legislative action that can be taken against an initiative proposal which makes the citizen initiative a powerful tool by which the citizen may keep government in check.

The power of the citizen initiative as a tool of democracy is quickly eroded by the free rider principle. Specifically, the free rider principle is most problematic at the qualification stage of the citizen initiative process, where the cost of effective individual action is the greatest. The qualification stage of the citizen initiative process primarily involves the circulation of petitions and the generation of political support for

the proposal. The circulation of petitions is perhaps the most costly activity in terms of individual action followed by the actual filing of the appropriate documents with the electoral commission of the state. These initial actions necessary to place a proposal on the ballot require that a relatively small set of voters take it upon themselves to see to it that all the procedures are properly performed. It is doubtful that the payoff from a constitutional change is great enough to compensate any particular individual for the resources that must be invested in qualifying a constitutional proposal for the ballot, yet in the aggregate, the benefits of the proposal may be quite large -- the citizen initiative may be considered a Samuelsonian good.[6] Once the constitutional proposal is on the ballot, then the individual at minimum faces the costs associated with voting if he wishes the measure to be ratified and in addition, the individual may actively campaign on behalf of the proposition. It must be recognized that

---

[6]See J.M. Buchanan, "Markets, States and the Extent of Morals," The American Economic Review 68, no. 2 (May 1978), p. 365.

active campaigning for or against a proposition generates a good that is public such that the individual cannot internalize the benefits thus generated.

In the United States, sixteen states have provisions in their constitutions which enable the citizens of the state to utilize the citizen initiative and referendum as a means of amending the constitution. The requirements for use of the citizen initiative are quite similar among the states. In general, those states that utilize the citizen initiative, the signature requirement for the initial petition ranges between 8% and 15% of the total votes cast in the last election; usually this requirement specifies that the percentage is in terms of the votes for the governor.[7] Massachusetts and North Dakota are the exceptions to the general rule in that the requirement is ten signatures from voters plus 3% of the votes cast for governor in the last election, and 20,000 signatures from electors at large, respectively.[8] The referendum requirement is once again quite similar among the states where the general rule is that the proposition must receive a simple majority of the votes

---

[7] A. Sturm, op. cit., p. 128-131.

[8] Ibid.

cast on the proposition. The exceptions occur in Massachusetts, where the requirement is that the majority be at least 30% of the ballots cast in the election; Nebraska, where the requirement is that the majority is not less than 35% of the votes cast; Nevada, where the requirement is that the proposal receives a simple majority in two successive elections; and in Oklahoma, where the simple majority requirement is in terms of the total votes cast in the election.[9]

VI. Methods of Amending State Constitutions Available in the States as of 1980

All American state constitutions have some sort of provision for amending or at the extremum completely rewriting the constitution of the state. There are, however, differences among the states as to the methods of constitutional change that are allowable. Table 2-3, "Amendment Methods in States," presents a listing of the states classified according to the methods of amending the constitution permitted in the particular state. Accordingly, it is evident that all states utilize the legislative proposal and referendum (except Delaware which does not utilize the referendum) as a means of

---

[9] Ibid.

TABLE 2-3

AMENDMENT METHODS IN STATES

Legislative Proposals Only:

Indiana	(1816)	Pennsylvania	(1787)
Louisiana	(1812)	Texas	(1845)
Mississippi	(1817)	Vermont	(1791)
New Jersey	(1787)		

Legislative and Convention Proposals

Alabama	(1819)	Illinois	(1818)	New Hampshire	(1788)
Alaska	(1959)	Iowa	(1846)	New Mexico	(1912)
Connecticut	(1776)	Kansas	(1855)	New York	(1788)
Delaware	(1776)	Kentucky	(1792)	North Carolina	(1789)
Georgia	(1777)	Maine	(1820)	Rhode Island	(1790)
Hawaii	(1959)	Maryland	(1776)	South Carolina	(1788)
Idaho	(1890)	Minnesota	(1858)	Virginia	(1788)
Tennessee	(1796)	Utah	(1896)	Wisconsin	(1848)
Washington	(1889)	West Virginia	(1863)		
Wyoming	(1890)				

Legislative and Initiative Proposals:

Arkansas	(1836)
Massachusetts	(1780)

Legislative, Convention and Initiative Proposals:

Arizona	(1912)	Missouri	(1821)	Oklahoma	(1907)
California	(1849)	Montana	(1889)	Oregon	(1859)
Colorado	(1876)	Nevada	(1864)	South Dakota	(1889)
Florida	(1838)	North Dakota	(1889)	Nebraska	(1867)
Michigan	(1835)	Ohio	(1802)		

initiating constitutional change. None of the American state constitutions rely on the convention with referenda or the citizen initiative with referenda as the sole means of initiating constitutional change. It follows that these two methods of initiating constitutional change are always paired up with at minimum the legislative proposal method. In twenty-eight states, constitutional changes may be initiated by the legislature or by the constitutional convention, and in only two states constitutional changes may be initiated by the legislatures and by the citizen initiative. Fourteen state constitutions permit all three methods of initiating constitutional change. According to Table 2-3, it is evident that approximately one-third of the state constitutions permit the use of direct democracy in formulating the rules by which government must operate.

In addition to categorizing the states according to the permitted methods of initiating a constitutional amendment, Table 2-3 includes the year of admission of each state into the Union. Examination of Table 2-3 reveals that in the case of the citizen initiative method of initiating a constitutional change the states that permit this method are relatively young. The term young is admittedly quite ambiguous, however, for the purposes at hand, it is possible to distinguish young

states from old states not purely on the basis of age but on the basis of whether the state's first constitution was written with a model constitution as a guide. As a consequence of this definition of old and young states it is evident that old states refers to the original thirteen governmental units that formed the Union of the United States. Clearly, states that entered the Union after the establishment of the United States may be considered to be young in the sense that these states could rely upon the experience of the old states in writing their constitutions. Thus, old states are defined as those states which were the first generation of states in the Union.

An examination of Table 2-3 reveals that the citizen initiative is used only by young states with the exception of Massachusetts. According to data presented by Sturm,[10] Massachusetts implemented the use of the citizen initiative in 1918. In fact, Sturm's data indicates that the earliest effective date of the citizen initiative method of amending a state constitution occurred in the State of Oregon in 1902.

---

[10] Ibid, p. 128-130.

Accordingly, it is quite evident that the citizen initiative is a fairly new constitutional feature.

The legislative and convention methods of amending state constitutions have been in use since the beginnings of the United States. The convention method may be considered to be the oldest method of writing a constitution since the original state constitutions written at the time of the American Revolution were written by the convention method.

VII. Frequency of Amending Methods in the United States

The previous discussion has indicated that states may be classified into four sets where each set is characterized by the combination of methods available to amend the constitution of the states in the set. The discussion in this section will now turn to answer the question of how frequently the various methods of amending a constitution are employed. There are three ways of defining the frequency of the methods used to amend constitutions. The first definition of frequency is achieved by calculating the number of constitutional changes that were initiated by a particular method in terms of the total number of states in the Union. This method is, however, unsatisfactory due to the fact that

not all the states have all the methods of initiating constitutional change available for use. Consequently, the measure of frequency would be biased against those methods that are not available in all fifty states; therefore, this measure of frequency will not be further considered. The second method of calculating the frequency of the methods of constitutional change is to calculate the fraction of the number of constitutional changes in terms of the number of states that allow the particular method of constitutional change. This method of frequency measurement may be labelled as the gross frequency. The third alternative definition of frequency is to calculate the fraction of constitutional changes in terms of the actual number of states that participated in the process of amending the constitution. This method of calculating the frequency of the methods may be labelled as the net frequency.

Up to this point, the discussion concerning the frequency of the methods of constitutional change has not distinguished between the proposal of constitutional change and the adoption of the proposed change. It must be recognized that not all proposed constitutional changes are actually adopted. Thus, further insight may be gained if the frequency of methods to amend constitutions takes into account the success rate of constitutional

amendment proposals. One way of achieving the distinction between proposals and adoptions in relation to the methods of initiating the constitutional change is to calculate the gross and net frequencies for both proposals and adoptions in terms of the method initiating the process. Table 2-4, "Methods to Amend and Success Rate," presents the relative success rates of the three principal methods of initiating a constitutional change. Included in Table 2-4 is the aggregate of all methods of initiating constitutional change for comparative purposes. Table 2-4 presents the success rate of the various methods of initiating constitutional change in historical perspective. The first column of Table 2-4 present the figures for all states from the formation of the United States to the year 1969. The second and third columns present the success rate figures for the years 1950 through 1968 and 1970 through 1979, respectively. The final column in Table 2-4 presents the totals of column one and column three and may be considered the aggregate success rate of the methods of initiating constitutional change in the states of the United States from the formation of the Union to the end of 1979.

There are two basic conclusions that may be derived from an examination of Table 2-4. First of all, looking along the rows labelled "success rate", it is apparent that

TABLE 2-4

METHODS TO AMEND AND SUCCESS RATE

	To 1969	1950-68	1970-79	Total
All Methods				
Total Proposed	7761	3507	2050	9811
Total Adopted	4883	2495	1395	6278
Success Rate	62.92%	71.14%	68.05%	63.99%
Legislative Proposal				
Total Proposed	6873	3313	1888	8761
Total Adopted	4503	2377	1311	5814
Success Rate	65.52%	71.75%	69.44%	66.36%
Constitutional Convention				
Total Proposed	284	97	96	380
Total Adopted	194	83	65	259
Success Rate	68.31%	85.57%	67.71%	68.16%
Citizen Initiative				
Total Proposed	498	97	66	564
Total Adopted	161	35	19	180
Success Rate	32.22%	36.08%	28.79%	31.91%

Source: Sturm 30 Years, p. 91.

Sturm "State Constitutional Developments During 1979 and the 1979's" National Civic Review, Vol. 69, No. 1, January 1980.

the success rate of constitutional proposals has not changed a great deal over time. Although the figures for column one cannot be broken down into ten to twenty year intervals, due to the unavailability of data, it is evident that the success rate reaches a local maximum in the interval from 1950 to 1968. However, the success rate does not appear to vary more than a few percentage points between the periods that are shown. The second basic point to be made from Table 2-4 is that there is a very significant difference in the success rate of initiating constitutional change among the three methods of initiating the change. The differences in success rate between the legislative proposal method and the constitutional convention method appear to be quite small and stable over time. The major difference arises when the citizen initiative proposal method is compared to either the legislative proposal or the constitutional convention method. This can be seen by comparing the rows labelled "success rate" under the Legislative Proposal, Constitutional Convention, and Citizen Initiative headings in any of the columns. In either comparison, the success rates of the methods are in a ratio of approximately two to one.

Table 2-5, "Frequency and Success Rates of the Three Methods of Amending State Constitutions," presents the results of the calculation of both gross and net frequencies of the methods initiating constitutional change. The frequencies are presented for the years 1970 through 1979. Furthermore, the frequencies have been broken down according to the method of initiation of constitutional change and according to the total proposals initiated and the actual number of proposals that were adopted. In Table 2-5, the 'N' represents the number of states that were involved in a constitutional change in the year indicated; consequently, the 'N' frequencies are the net number of constitutional amendments that were acted upon per state. The 'C' designation represents the total number of states that "could" have employed the particular method of initiating the change; consequently, the 'C' frequencies represent the gross measure as described above. The final right-hand column represents the ten-year average of the frequencies calculated. The units attached to these figures are the "average number of proposals per state per year." The differences between the proposed rows is of course the result of the success rate of the particular means of initiating a constitutional change.

TABLE 2-5

FREQUENCY AND SUCCESS RATES OF THE THREE METHODS OF AMENDING STATE CONSTITUTIONS

All Methods	1970 No. of Amendments	1970 Frequency Per State	1971 No. of Amendments	1971 Frequency Per State	1972 No. of Amendments	1972 Frequency Per State	1973 No. of Amendments	1973 Frequency Per State
Proposed	332	N 7.72 C 6.64	42	N 3.00 C .84	455	N 9.89 C 9.10	75	N 4.41 C 1.50
Adopted	178	N 4.14 C 3.56	30	N 2.14 C .60	326	N 7.09 C 6.52	48	N 2.82 C .96
N*	43 = N		14 = N		46 = N		17 = N	
C**	50 = C		59 = C		50 = C		50 = C	
Legislative Proposal								
Proposed	328	N 8.20 C 6.56	42	N 3.00 C .84	431	N 10.02 C 8.62	66	N 4.71 C 1.32
Adopted	178	N 4.45 C 3.56	30	N 2.14 C .60	319	N 7.42 C 6.38	43	N 3.07 C .86
N*	N = 40		N = 14		N = 43			
C**	50 = C		50 = C		50 = C		N = 14 50 = C	
Convention								
Proposed	1	N 1.00 C .02	0	N 0 C 0	10	N 3.33 C .24	7	N 7.00 C .17
Adopted	0	N 0 C 0	0	N 0 C 0	4	N 1.33 C .10	5	N 5.00 C .12
N*	42 = C		42 = C		42 = C		42 = C	
C**	N = 1		N = 0		N = 3		N = 1	
Citizen								
Proposed	3	N 1.50 C .19	0	N 0 C 0	14	N 2.33 C .88	2	N 1.00 C .13
Adopted	0	N 0 C 0	0	N 0 C 0	3	N .50 C .19	0	N 0 C 0
N*	16 = C		16 = C		16 = C		16 = C	
C**	N = 2		N = 0		N = 6		N = 2	

*N = Number of states involved.
**C = Number of possible states involved.

TABLE 2-5: Continued

All Methods	1974 No. of Amendments	1974 Frequency Per State	1975 No. of Amendments	1975 Frequency Per State	1976 No. of Amendments	1976 Frequency Per State	1977 No. of Amendments	1977 Frequency Per State
Proposed	294	N 6.84 C 5.88	58	N 4.46 C 1.16	343	N 8.58 C 6.86	56	N 5.60 C 1.12
Adopted	222	N 5.16 C 4.44	34	N 2.62 C .68	239	N 5.98 C 4.78	41	N 4.10 C .82
N*	43 = N		13 = N		40 = N		10 = N	
C**	50 = C		50 = C		50 = C		50 = C	
Legislative Proposal								
Proposed	278	N 6.62 C 5.56	54	N 3.86 C 1.08	315	N 7.88 C 6.30	54	N 5.40 C 1.08
Adopted	210	N 5.00 C 4.20	34	N 2.43 C .68	233	N 5.83 C 4.66	40	N 4.00 C .80
N*	N = 42		N = 14		N = 40		N = 10	
C**	50 = C		50 = C		50 = C		50 = C	
Convention								
Proposed	7	N 3.50 C .17	0	N 0 C 0	12	N12.00 C .29	0	N 0 C 0
Adopted	4	N 2.00 C .10	0	N 0 C 0	4	N 4.00 C .10	0	N 0 C 0
N*	42 = C		42 = C		42 = C		42 = C	
C**	N = 2		N = 0		N = 1		N = 0	
Citizen								
Proposed	9	N 1.50 C .56	4	N 4.00 C .25	16	N 2.00 C 1.00	2	N 2.00 C .13
Adopted	8	N 1.33 C .50	0	N 0 C 0	2	N .25 C .13	1	N 1.00 C .06
N*	16 = C		16 = C		16 = C		16 = C	
C**	N = 6		N = 1		N = 8		N = 1	

*N = Number of states involved.
**C = Number of possible states involved.

TABLE 2-5: Continued

All Methods	1978 No. of Amendments	1978 Frequency Per State	1979 No. of Amendments	1979 Frequency Per State	10 Year Average Per State Per Year
Proposed	365	N 9.13 C 7.30	30	N 2.50 C .60	N 6.21 C 4.10
Adopted	252	N 6.30 C 5.04	25	N 2.08 C .50	N 4.24 C 2.79
N*	40 = N		12 = N		
C**	50 = C		50 = C		
Legislative Proposal					
Proposed	290 + 8	N 7.27 C 5.96	29	N 2.92 C .58	N 5.94 C 3.79
Adopted	199 + 0	N 4.85 C 3.98	24	N 2.00 C .48	N 4.12 C 2.62
N*	N = 41		12 = N		
C**	50 = C		50 = C		
Convention					
Proposed	51	N17.00 C 1.21	0	N 0 C 0	N 4.38 C .21
Adopted	48	N16.00 C 1.14	0	N 0 C 0	N 2.83 C .16
N*	42 = C		42 = C		
C**	N = 3		N = 0		
Citizen					
Proposed	16	N 1.60 C 1.00	1	N 1.00 C .06	N 1.69 C .41
Adopted	5	N .50 N .31	1	N 1.00 C .06	N .46 C .12
N*	16 = C		16 = C		
C**	N = 10		N = 1		

*N = Number of states involved.
**C = Number of possible states involved.

Source: Strum 30 years and Stumm National Civic Review.

Consider, for example, the year 1974, in which there were a total of 294 proposals for constitutional change made in all fifty of the American states with the result that 222 of the proposals were actually adopted. The gross frequency of proposals for all methods of initiating constitutional change is 5.88 amendments per state for that year, but since only 43 states were involved in the amending process, the net frequency for proposals in 1974 is 6.84 amendments per state. Of the 294 constitutional proposals that were acted on in 1974, 278 were the product of the legislatures, 7 were the product of constitutional conventions, and 9 proposals were the product of citizen initiatives. The corresponding net frequencies in terms of proposals are 6.62 amendments per state for legislatively initiated revisions, 3.50 proposals per state for convention initiated amendments, and 1.50 proposals per state for citizen initiatives. Consequently, in 1974 constitutional proposals that were initiated by the legislatures had the greatest frequency of use followed by the convention method and then by the citizen initiative method. In 1974 the figures indicate that there were more states that used the citizen initiative method than the constitutional convention method and yet, the higher frequency of use is attributable to the convention method

due to the greater productivity of the convention method in producing constitutional amendment proposals. The figures presented in Table 2-4 indicate that in general most constitutional changes are the result of legislative action followed by constitutional conventions and then by citizen initiative. This general ranking of the methods of initiating constitutional change indicates that perhaps the voter does indeed trust the elected representative to do the 'right' thing in terms of forming the rules by which government must operate. Alternatively, and perhaps a more plausible explanation, is the fact that the free rider principle prevails in the political setting of constitutional evolution.

This chapter has presented a general survey of the methods used to initiate constitutional changes in the United States as of 1980. In addition, the discussion has indicated the relatively accessability to initiate constitutional changes to the legislators and to the voter. The final portion of the discussion has been concerned with the frequency with which the three basic methods of initiating constitutional change have been used in the decade of the 70s and historically.

CHAPTER 3

A SURVEY OF TAX LIMITS IN STATE CONSTITUTIONS

I. Introduction

This chapter presents a general overview of constitutional tax limits as they are found to exist at the state level in the United States in 1979. As mentioned in the introduction, tax limits at the constitution level are not new to the American experience. In order to expose the historical heritage of constitutional tax limits in the United States, tax limits that were incorporated into each state's original constitution will also be presented. In addition to the presentation of historical and current constitutional tax limits, evidence that supports the assertion that constitutional tax limits do in fact constrain the behavior of state governments will be included. Data for this chapter was obtained by collecting and updating each state's constitution (as of 1979). Data for the historical section of this chapter was obtained by direct examination of each state's original constitution. In essence, the set of fiscal constitutions which reflect the current status of each state along with the set of

fiscal constitutions which reflect the original status of each state was assembled for this study.

II. Preliminary Observations

As mentioned above, the set of updated (as of 1979) fiscal constitutions was assembled for this study. Direct examination of each state's fiscal constitution revealed the presence of constitutional tax limitations. Each constitutional tax limit was then categorized according to the type of limit as defined in Chapter 1 above. The results of the examination was then tabulated according to state and type of limit and is displayed in Table 3-1 "Tax Limits in State Constitutions."

Table 3-1 presents a very generalized picture of state-level constitutional tax limitations where symbol "X" is used to register the presence of a particular type of tax limit in the state's constitution. Table 3-1 does not reflect the number of times that a particular tax limit appears in a constitution as a consequence of the generality of the survey. Furthermore, different types of tax limits present differing degrees of restrictiveness on the behavior of state legislators and taxing authorities.

The first feature that may be noted from an examination of Table 3-1 is that there is a fairly wide spectrum of apparent restrictiveness of the state constitutions.

TABLE 3-1

TAX LIMITS IN STATE CONSTITUTIONS

State	No Fiscal Constitution	No Tax Limits	Political Subdivision	Base Limit	Rate Limit	Rate Structure	Share Limit	Earmark of Revenue	Earmark of Type of Tax to Base	Earmarked Tax/Base Limit	C* L** I*** R**** Amendment Process	Date of Admission
Alabama		O		X	X	X		X			L C R	1819
Alaska				X O							L C R	1959
Arizona				X O	X	X		X			L C I R	1912
Arkansas			O	X	X	O		X	X	O	L I R	1836
California				X	X	X O	X	X			L C I R	1849
Colorado			X O	X O	X O	X O		X			L C I R	1876
Connecticut	X O										L C R	1776
Delaware	O		X			X					L C NO	1776
Florida				X	X	X O			X		L C I R	1838
Georgia	O			X	X	X					L C R	1777
Hawaii				X O							L C R	1959
Idaho			O	X O	X O	X O		X O			L C R	1890
Illinois						X			X O		L C R	1818
Indiana		O				X					L R	1816
Iowa			O	X				X O			L C R	1846
Kansas				X O		X O				X	L C R	1855
Kentucky		O	X	X	X	X		X			L C R	1792
Louisiana		O		X	X	X		X			L R	1812
Maine						X O		X			L C R	1820
Maryland		X		O							L C R	1776

TABLE 3-1: Continued

State	No Fiscal Constitution	No Tax Limits	Political Subdivision	Base Limit	Rate Limit	Rate Structure	Share Limit	Earmark of Revenue	Earmark of Type of Tax to Base	Earmarked Tax/Base Limit	C* L** I*** R**** Amendment Process	Date of Admission
Massachusetts		O				X		X			L I R	1780
Michigan				X O	X	X	X	X			L C I R	1835
Minnesota				X O		X O		X	X		L C R	1858
Mississippi		O		X		X		X		X	L R	1817
Missouri			X	X O	X	X O		X			L C I R	1821
Montana			O	O	O	X O		X O			L C I R	1889
Nebraska		O	X	X	X	X		X			L C I R	1867
Nevada				X O	X O	X O		X			L C I R	1864
New Hampshire						X O		X			L C R	1788
New Jersey		O		X		X		X			L R	1787
New Mexico				X	X O	X O		X			L C R	1912
New York	O			X		X	X		X		L C R	1788
North Carolina		O		X	X	X		X			L C R	1789
North Dakota				X O	O	X O		X O			L C I R	1889
Ohio				X O	X	X		X			L C I R	1803
Oklahoma				X O	X O	X O		X O	X	X	L C I R	1907
Oregon			O	X	X	X O		X O			L C I R	1859
Pennsylvania		O		X		X		X			L R	1787
Rhode Island		X								O	L C R	1790
South Carolina		O		X	X	X		X	X		L C R	1788

TABLE 3-1: Continued

State	No Fiscal Constitution	No Tax Limits	Political Subdivision	Base Limit	Rate Limit	Rate Structure	Share Limit	Earmark of Revenue	Earmark of Type of Tax to Base	Earmarked Tax/Base Limit	C* L** I*** R**** Amendment Process	Date of Admission
South Dakota				X O	X O	X O		X O		X	L C I R	1889
Tennessee				X O		X O	X				L C R	1796
Texas				X O	X	X O		X O	X	X	L R	1845
Utah			X O	X O	X O	X O	X	X			L C R	1896
Vermont		X O									L R	1791
Virginia		O	X	X		X					L C R	1788
Washington				X O	X	X O		X			L C R	1889
West Virginia				X	X O	X O		X		X	L C R	1863
Wisconsin						X O		X O			L C R	1848
Wyoming				X O	X O	X O		X	X	X	L C R	1890

X - Indicates that this type of tax limit is present in the current constitution.
O - Indicates that this type of tax limit was present in the state's original constitution.

C* - Convention
L** - Legislative
I*** - Initiative
R**** - Referendum

At the extreme liberal end of the spectrum is Connecticut which does not have anything that could be called a "fiscal constitution" and consequently no constitutional tax limits. Maryland, Rhode Island, and Vermont also occupy the extreme liberal end of the spectrum with no tax limits. At the other extreme, in which a state constitution would exhibit all eight types of constitutional tax limits, there are no samples. The greatest amount of apparent relative restrictiveness occurs in the state constitutions of Oklahoma, Texas, Utah and Wyoming, where each state has claim to six types of constitutional tax limits. Figure 1 presents the distribution of the incidence of tax limits among states. Accordingly, the average number of types of tax limits per state is 3.36. From this it may be seen that the whole distribution of states is shifted slightly toward the liberal side, while the distribution itself is skewed to the right or conservative end. Thus one might conclude that the typical American state constitution is "middle of the road" with approximately four types of tax limits.

III. Incidence of Constitutional Tax Limits

The most popular type of tax limit found in U.S. state constitutions is the rate structure form. Out of the total of fifty states, forty-two state constitutions contain

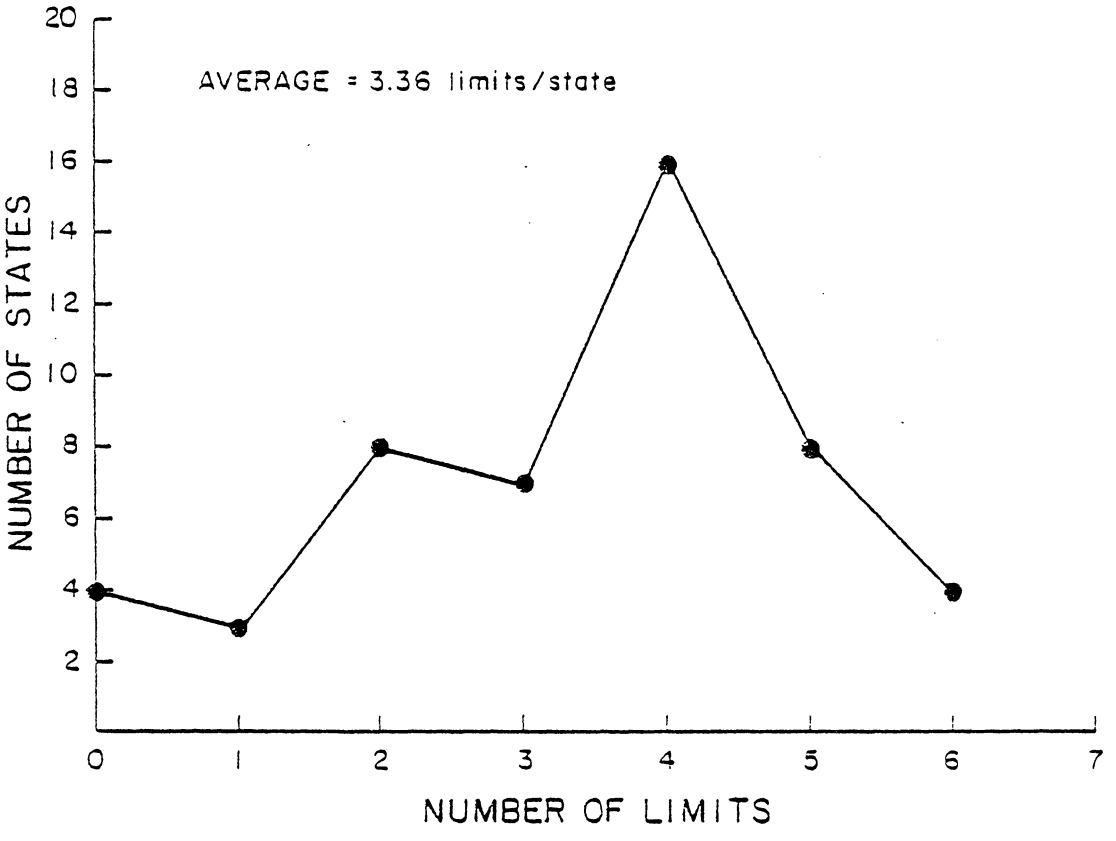

FIGURE 1. INCIDENCE OF STATE CONSTITUTIONAL TAX LIMITS AS OF 1979

provisions which constrain the rate structure of taxation. Rate structure limitations are generally found in state constitutions in the form of uniformity clauses such that the state government or its taxing authorities are prevented from practicing tax discrimination within classes of a particular tax base. However, these constraints do not restrict the establishment of or definition of assorted classes of a particular tax base. Consequently, state governments can practice tax discrimination by increasing the number of defined classes for a particular tax base. The second most popular type of constitutional tax limit is the base limit. Out of the total of fifty states, thirty-eight states have this form of fiscal constraint included in the constitution. Generally, base limits are expressed as exemptions for certain types of property, groups of individuals, or organizations from the taxable base within the state. By far the most common form is the exemption from taxation of non-profit organizations such as religious organizations, schools, other governmental units, and charitable groups. Base limits appear to be binding on the state's ability to tax. The only method available to the state for getting around this constraint is to attempt to disqualify the tax exemption status of the particular target for taxation on the basis that the target or potential source of revenue does not meet the criteria that are set forth in the constitution.

To meet their ends, state officials must overcome the barriers that are presented by the courts.

A word of caution seems to be appropriate at this point. Upon reading state constitutions, care and attention must be paid to the wording that is used in the particular constitution that is being examined. Binding constitutional base limits on taxation generally are stated by a phrase such that the state "shall" exempt rather than the state "may" exempt where the latter seems to give the legislators the discretion as to whether or not a particular base will be taxed.

The least popular type of constitutional constraint on the power to tax in the states of the United States is the share limit. To this date (July 1980) only California, Tennessee, New York, Michigan and Utah have incorporated into their constitutions this form of restraint on the state to generate revenue. Perhaps the reason for the limited usage of this share limit is the complex and perhaps confusing tie between revenues that the state may collect and some economic aggregate that most citizens and most likely the legislators themselves do not understand or relate to. Alternatively, traditional Public Finance predicts that governments would be vulnerable to a financial bind as a result of this type of fiscal constraint. For these reasons we may expect to find few states using

this form of fiscal restraint. Furthermore, a share limit on governmental revenue would be binding on governments since there are few courses of action that the taxing authority may take in order to avoid the constraint. Thus, it is expected that share limits would not receive the support of legislators at the constitutional level of enactment.

IV. Comparison of the Apparent Relative Restrictiveness of State Constitutions

State constitutions vary according to the number of types of constitutional tax limitation provisions as evident from Table 3-1. A realistic hypothesis that may be made is that constitutions with many types of tax limits are relatively more restrictive than constitutions which have few or no tax limitation provisions. States may be arrayed according to the number of tax limitation provisions that are found in their constitution. This ordering would reflect the apparent relative restrictiveness of a state's constitution. Table 3-2 "Number of Types of Tax Limits in States as of 1979," presents the arrangement of states according to the number of types of tax limitation provisions and consequently this table presents the states according to their apparent relative restrictiveness of the constitution. Oklahoma, Texas, Utah, and Wyoming may

TABLE 3-2

NUMBER OF TYPES OF TAX LIMITS
IN STATES AS OF 1979

States With 6 Types of Limits

Oklahoma	Texas
Utah	Wyoming

States With 5 Types of Limits

California	Missouri	South Dakota
Colorado	Nebraska	West Virginia
Kentucky	South Carolina	

States With 4 Types of Limits

Alabama	Idaho	Mississippi	North Carolina
Arizona	Louisiana	Nevada	Ohio
Arkansas	Michigan	New Mexico	Oregon
Florida	Minnesota	New York	Washington

States With 3 Types of Limits

Georgia	North Dakota	Virginia
Kansas	Pennsylvania	
New Jersey	Tennessee	

States With 2 Types of Limits

Delaware	Maine	New Hampshire
Illinois	Massachusetts	Wisconsin
Iowa	Montana	

States With 1 Type of Limit

Alaska	Hawaii	Indiana

States with No Tax Limits

Connecticut	Maryland	Rhode Island	Vermont

be considered to have the most constrained state fiscal constitutions with each state constitution exhibiting six types of tax limitation provisions. Oklahoma, Texas, and Wyoming are similar to the extent that each state's constitution contains base, rate, rate structure, and the three forms of earmarking as tax limitation provisions. According to Table 3-1, Utah is unique in that its constitution contains political subdivision and share limits as substitutes for two forms of earmarking. This difference among the most constrained states is perhaps a factor in the differences in performance of the states as may be noted from Table 3-3 below. Connecticut, Maryland, Rhode Island, and Vermont form the set of states which have the least constrained fiscal constitutions, where the constitutions contain no tax limitation provisions. Referring again to Table 3-3 below, it is quite evident that the states in least restrictive category exhibit an extremely diverse range of performance. This may be contrasted to the set of states that are the most constitutionally constrained where the highly constrained states tend to exhibit a higher general rank than the least constrained states which, as stated above, show little signs of being grouped toward any portion of the ranking. Perhaps this points out that constitutional constraints on governmental

taxing powers are not necessarily the primary elements that determine the fiscal performance of a state government.

V. Fiscal Performance in Relation to Constitutional Restrictiveness

Assuming that the number of types of limits that is included in a constitution is indicative of the degree to which the constitution restricts the fiscal behavior of state governments, we should be able to find a relationship between the number of limits in a constitution and the fiscal performance of that state. Specifically there should exist a negative relation between the number of types of tax limits in a constitution and the level of taxation in that state. However, the level of taxation in a state does not necessarily provide an accurate representation of fiscal appetite. State governments may substitute debt for current taxation in any particular year or set of years. Paying attention to the level of taxation in a state may be misleading in that government may be expanding while taxes remain constant due to the use of debt.

The basic interest in this study is the relative size of government as compared to the size of the private sector. Thus the examination of the expenditure side of a state's fiscal account is perhaps a more accurate representation of the control over resources that are commanded by government

as compared to the resources that are controlled by the private sector. Constitutional tax limits are interesting to the extent that they are a tool of democracy that perform two tasks; to instill some notion of "fairness" in the expropriation of resources from the private sector for public use, and to constrain size of the public sector. The notion of "fairness" in taxation is beyond the scope of this study since an evaluation or report on the "fairness" of the tax system within a state must include in the survey the expenditure side of the fisc, and how the expenditures of state governments are constitutionally constrained. This study is concerned with the use of constitutional tax limits as a means to control the size of government. The size of government, and to a lesser extent the growth of government is not dependent upon current tax levels but rather upon the extent to which a particular government has control over the scarce resources within that state. Examination of the expenditure side of a state's fiscal account, specifically the level of government spending, will circumvent the distortive effects that are brought about by the financing of spending through the use of debt. In order to test the hypothesis using the tax data, it would be necessary to utilize time series data that would cover an extended period of time, which would be for most practical purposes a prohibitively costly endeavor.

Within the United States there is considerable disparity in the levels of wealth among the fifty states. A cross-sectional test of the hypothesis that constitutional constraints effect the performance of state governments requires that relatively wealthy states be compared to relatively poorer states. Thus it becomes necessary to normalize the level of expenditures of state governments such that a cross section comparison would be meaningful.

Measurement of the level of wealth within a state is nearly impossible due to the elusiveness of the concept of wealth to measurement. The wealth of a state must take account of the physical assets that are found in that state which clearly is measurable. In addition to the physical assets, the wealth of a state is also a function of the productive capacity in the state. Productive capacity is dependent on the capital within the state. However, capital may be found in the form of physical assets or embodied in the people in the form of human capital. Clearly the measurement of the levels of human capital in a state is not feasible. One way around the measurement problem is to use the level of income that is generated within a state. The level of income in a state embodies the physical wealth and the human wealth into a single figure. Cross sectional spending levels may be normalized and then compared by

considering the fraction of state income that is spent by the state government.

Another distortion that arises when comparing the levels of spending by governments in the states is the result of federal government transfers. It is commonly recognized that the federal government of the United States does not transfer revenues to states on an equal basis. Poorer states generally receive proportionately more federal funds than the wealthier states. Cross sectional comparisons of state spending levels requires that the distortions in the levels of spending brought about by federal intra governmental transfers be eliminated. The distortions may be eliminated by subtracting federal revenues from the revenues that are spent by state governmental units.

By combining the foregoing arguments, a measure of the performance of state governmental units that is consistent with cross sectional testing may be expressed by:

$$S = \frac{\text{Expenditures - Federal Transfers}}{\text{State Income}} \qquad (1)$$

Table 3-3 "Relative State Fiscal Performance in 1978," presents the value of S for the year 1978 in the United States. Table 3-3 is arranged in rank order, such that the ordering runs from the highest spending state to the lowest spending state. The arrangement of Table 3-3 gives the rank

TABLE 3-3

RELATIVE STATE FISCAL PERFORMANCE IN 1978

State	Number of Types of Limits	Values of S (Exp.-Transfer)	Rank	I.D.
Alaska	1	0.2375	1	2
New York	4	0.1900	2	32
Hawaii	1	0.1846	3	11
Montana	2	0.1621	4	26
Minnesota	4	0.1614	5	23
Arizona	4	0.1564	6	3
North Dakota	3	0.1539	7	34
Wisconsin	2	0.1530	8	49
Maryland	0	0.1528	9	20
Louisiana	4	0.1512	10	18
Vermont	0	0.1483	11	45
Nevada	4	0.1481	12	28
Utah	6	0.1476	13	44
Oregon	4	0.1478	14	37
Colorado	5	0.1467	15	6
South Dakota	5	0.1450	16	41
California	5	0.1450	17	5
Massachusetts	2	0.1446	18	21
Delaware	2	0.1442	19	8
Mississippi	4	0.1442	20	24
Iowa	2	0.1434	21	15
Wyoming	6	0.1421	22	50
Michigan	4	0.1415	23	22
New Mexico	4	0.1390	24	31
Idaho	4	0.1387	25	12
Nebraska	5	0.1371	26	27
Rhode Island	0	0.1356	27	39
New Hampshire	2	0.1356	28	29
Kansas	3	0.1343	29	16
Washington	4	0.1342	30	47
Florida	4	0.1329	31	9
New Jersey	3	0.1325	32	30
Maine	2	0.1316	33	19
Illinois	2	0.1308	34	13
West Virginia	5	0.1292	35	48
Pennsylvania	3	0.1283	36	38
South Carolina	5	0.1274	37	40
Tennessee	3	0.1274	38	42
Ohio	4	0.1268	39	35
Alabama	4	0.1263	40	1

TABLE 3-3: Continued

State	Number of Types of Limits	Values of S (Exp.-Transfer)	Rank	I.D.
Virginia	3	0.1242	41	46
Kentucky	5	0.1217	42	17
Georgia	3	0.1213	43	10
Oklahoma	6	0.1198	44	36
North Carolina	4	0.1180	45	33
Texas	6	0.1162	46	43
Connecticut	0	0.1143	47	7
Indiana	1	0.1105	48	14
Arkansas	4	0.1090	49	4
Missouri	5	0.1052	50	25

order of states according to the proclivity of the state government to spend. In addition, Table 3-3 presents the number of constitutional tax limits for each state and an identification number assigned to each state. The identification number of each simply is that state's alphabetical rank. The data used in the construction of Table 3-3 is displayed in Table 3-4 "State Fiscal Data for 1976-1977," under the headings of Income Tax Revenue, Federal Transfers and the Expenditures. The fiscal data was compiled from United States Census Figures.[1] Multiplying the values of S in Table 3-3 by 100 will reveal the percentage of income that is generated within a state that is spent by governmental units of that state. To test the hypothesis that constitutional tax limitations constrain government spending it is necessary to determine if there exists a positive relation between the rank of the state and the number of types of tax limits in that state's constitution. A negative relation between the rank of a state and the number of types of tax limits would indicate that constitutional tax limits tend to increase state spending.

---

[1] Governmental Finances in 1976-1977, U.S. Bureau of the Census, Series GF-77, No. 5, (Washington, D.C.: U.S. Government Printing Office, 1978).

State Tax Collections in 1977, U.S. Bureau of the Census, Series GF-77, No. 1 (Washington D.C.: U.S. Government Printing Office, 1977).

TABLE 3-4

STATE FISCAL DATA FOR 1976-1977

State	Income Millions	Per Capita Income	Tax Revenue Millions	Federal Revenue Millions	Expenditures Millions
Alabama	20.7	5,622	1,870.1	1,082.7	3,696.3
Alaska	4.3	10,586	934.4	311.8	1,333.1
Arizona	14.9	6,509	1,897.8	523.7	2,853.4
Arkansas	11.9	5,540	1,059.3	581.8	1,878.6
California	173.2	7,911	23,842.9	7,423.3	32,532.1
Colorado	18.8	7,160	2,157.6	767.4	3,524.6
Connecticut	25.1	8,061	2,750.9	710.2	3,579.3
Delaware	4.5	7,697	482.7	199.9	848.7
Florida	56.5	6,684	5,309.2	1,779.7	9,287.5
Georgia	30.4	6,014	3,074.7	1,373.4	5,060.9
Hawaii	6.8	7,677	872.1	458.8	1,714.1
Idaho	5.1	5,980	547.9	270.4	977.7
Illinois	87.3	7,768	9,674.0	2,816.1	14,237.0
Indiana	36.9	6,921	3,477.6	1,003.9	5,080.1
Iowa	19.8	6,878	2,155.2	716.9	3,556.3
Kansas	16.6	7,134	1,692.3	546.2	2,775.5
Kentucky	20.6	5,945	2,079.1	973.3	3,479.5
Louisiana	23.2	5,913	2,494.0	1,224.6	4,733.5
Maine	6.2	5,734	714.1	399.2	1,214.9
Maryland	31.3	7,572	3,691.8	1,228.8	6,013.0

TABLE 3-4: Continued

State	Income Millions	Per Capita Income	Tax Revenue Millions	Federal Revenue Millions	Expenditures Millions
Massachusetts	42.0	7,258	5,792.8	1,897.1	7,968.4
Michigan	69.6	7,619	8,016.8	2,841.1	12,687.3
Minnesota	28.3	7,129	3,601.7	1,236.3	5,803.2
Mississippi	12.0	5,030	1,260.1	700.8	2,431.6
Missouri	31.9	6,654	2,923.5	1,166.7	4,523.6
Montana	4.7	6,125	582.7	310.4	1,072.3
Nebraska	10.5	6,720	1,208.1	359.9	1,799.1
Nevada	5.1	7,988	564.8	175.0	930.4
New Hampshire	5.5	6,536	525.0	202.4	947.9
New Jersey	58.6	7,994	6,826.6	1,957.5	9,722.8
New Mexico	7.0	5,857	743.2	427.3	1,400.3
New York	135.1	7,537	22,444.8	6,515.1	32,177.9
North Carolina	32.8	5,935	3,275.2	1,555.0	5,426.0
North Dakota	4.0	6,190	445.1	238.9	854.3
Ohio	75.8	7,084	6,856.6	2,260.9	11,871.5
Oklahoma	17.8	6,346	1,681.8	803.9	2,937.0
Oregon	16.7	7,007	1,884.5	891.1	3,359.7
Pennsylvania	82.6	7,011	9,074.6	3,145.6	13,746.5
Rhode Island	6.3	6,775	741.3	345.4	1,199.7
South Carolina	16.2	5,628	1,578.6	750.7	2,814.3

TABLE 3-4: Continued

State	Income Millions	Per Capita Income	Tax Revenue Millions	Federal Revenue Millions	Expenditures Millions
South Dakota	4.1	5,957	433.6	218.9	813.3
Tennessee	24.9	5,785	2,425.0	1,098.4	4,266.1
Texas	87.3	6,803	8,178.3	2,726.3	12,873.1
Utah	7.5	5,923	827.0	415.8	1,523.0
Vermont	2.8	5,823	391.3	202.9	618.0
Virginia	35.2	6,865	3,468.1	1,298.3	5,671.8
Washington	27.5	7,528	3,004.0	1,273.9	4,963.9
West Virginia	11.1	5,986	1,157.1	580.0	2,013.6
Wisconsin	32.0	6,890	4,048.3	1,250.3	6,147.0
Wyoming	3.1	7,562	401.3	197.8	638.3

One method of determining if there is a relation between the performance of a state government and the apparent restrictiveness of that state's constitution is to perform a linear regression of least squares using the data that is presented in Tables 3-2 and 3-3. There are two basic regressions that may be performed. The first regression that may be run is performed by regressing S (the fraction of expenditures minus transfers divided by the level of income) as the dependent variable on to the number of types of tax limits in the constitution of the states as the independent variable. The alternative test is to regress the rank of the state in terms of the state's proclivity to spend as the dependent variable on to the number of types of constitutional limits as the independent variable.

Due to the nature of the data, specifically, that there are multiple observations at the same point, it is necessary to use the technique known as weighted least squares in running the regressions.

A fundamental assumption in linear regression analysis is that the dependent variable is distributed normally about some expected value. If the case is such that there are multiple observations of the dependent variable for a given value of the independent variable, then performing a regression of the least squares type would in essence be

searching for a set of lines that depict the relationship between the dependent variable and the independent variable rather than a single linear relationship. In order to insure that the estimated line of regression depicts the single best fit when there are multiple observations of the dependent variable the technique of weighted least squares is used. The technique of weighted least squares requires that the regression be performed on the average of the multivalent observed dependent variables. If the technique of weighted least squares is not used, then the results of the regression would tend to be biased toward the null-hypothesis.[2]

The results of both regressions that were run support the hypothesis that constitutional tax limits affect the performance of state governmental units. Specifically the results indicate that constitutional tax limitations tend to constrain the levels of state governmental spending. The first test that was performed used the average S or the average of the fraction of state income spent by the public sector as the dependent variable. In this test, the number of types of tax limits was used as the independent variable. The estimated coefficient was reported as -0.187698 with a

---

[2]K. A. Brownlee, Statistical Theory and Methodology in Science and Engineering, (New York, John Wiley & Sons, Inc., 1965), Chapter 11.

standard error of 0.974649 and the associated T-statistic was reported as being -1.92580. The item that is of interest in these results is the sign of the coefficient which was reported as being negative. The negative coefficient indicates that the estimated line of regression has a negative slope. This result may be interpreted as stating that as the number of types of tax limits is increased, then the particular state in question would tend to spend a smaller fraction of total income in that state. Although the T-statistic indicates that these results are somewhat weak, in that they are acceptable under a 90% degree of confidence rather than the usual 95% level of confidence, the hypothesis cannot be legitimately rejected or ignored. The second test that was performed used the number of types of limits as the independent variable and the average rank as the dependent variable. The estimate coefficient is reported to be 1.161761 with a standard error of 0.336099. The associated T-statistic was reported to be 4.81290. Again the item that is of interest to this study is the sign of the coefficient which was reported as being positive meaning that the estimated line of regression is positively sloped. The positive slope of the estimated line of regression indicates that as the number of types of tax limits are increased in a state's constitution, the rank of the state becomes higher. Since,

in this case, the higher the rank of a state in question means that that state's government spends a smaller fraction of total income than the next lower ranking state, the result supports the hypothesis. Note that in this second test, the results are within the usual 95% level of confidence. The discrepancy in confidence levels is perhaps the result of the fact that in the second test where rank is used, the spacing between the variables was equal and discrete whereas in the first test the fractions of spending levels appeared to be compacted in some regions to a greater extent than in other regions, as revealed by an examination of Table 3-3. The main contention to be made from these results is that there exists a relationship between the number of types of constitutional tax limits and the fiscal performance of a state's public sector. Furthermore, the results indicate that constitutional tax limitations have a constraining effect on the proclivity of public sector spending at the state/local level.

VI. Historical Perspective of State Constitutional Tax Limits

The data for the historical study of constitutional tax limits in the United States was obtained by direct examination of reproductions of the original documents. The examination of constitutions was limited to the

constitution of each state in its original wording at the time of admission of the particular state into the Union. The results of this search are tabulated and presented in Table 3-1 using the symbol "O" to register the presence of a particular type of tax limit at the time that the state was admitted into the Union. The first and perhaps the most obvious comparison to be made is that there has been considerable change in the employment of constitutional tax limitations since 1776 and throughout the growth of the United States.

Evidence that there has been considerable change in the employment of constitutional tax limitations can be seen by comparing the apparent restrictiveness of the historical constitutions with the contemporary situation. The historical situation is displayed in Table 3-5 "Number of Types of Tax Limits in States: Historical View" in which states are arrayed according to the number of types of tax limitation provisions that are found in the state's first constitution. The arrangement of Table 3-5 presents the states according to their apparent relative restrictiveness of the state's original constitution. This arrangement is identical to the method used to construct Table 3-2 above, consequently a comparison may be made between the present situation and the historical situation.

TABLE 3-5

NUMBER OF TYPES OF TAX LIMITS IN STATES: HISTORICAL VIEW

States With 5 Types of Limits

Idaho
Montana

States With 4 Types of Limits

Colorado
South Dakota
Nevada
Utah
North Dakota
Oklahoma

States With 3 Types of Limits

Arkansas
Oregon
Texas
Wyoming

States With 2 Types of Limits

Iowa
Kansas
Minnesota
Missouri
New Mexico
Tennessee
Washington
West Virginia
Wisconsin

States With 1 Type of Tax Limit

Alaska
Arizona
California
Florida
Hawaii
Illinois
Maine
Maryland
Michigan
New Hampshire
Ohio
Rhode Island

States With No Tax Limits

Alabama
Connecticut
Delaware
Georgia
Indiana
Kentucky
Louisiana
Massachusetts
Mississippi
Nebraska
New Jersey
New York
North Carolina
Pennsylvania
South Carolina
Vermont
Virginia

The historical constitutions appear to form a more compact set in terms of the difference between the most liberal and most conservative constitutions than is the case with the contemporary constitutions. In addition, the historical constitutions appear in general to be more liberal than the current set of constitutions. At the extreme liberal end of the historical spectrum of apparent restrictiveness, there are seventeen states that did not have any constitutional constraints on governmental taxing powers upon admission into the Union. Note that among the seventeen states with no tax limits embodied in their constitutions at the time of admission into the Union, four states; Connecticut, Delaware, Georgia, and New York had no fiscal constitution. These states were members of the original 13 colonies that formed the United States, thus it is not surprising that their first constitutions did not embody a fiscal constitution since the writing of these constitutions was truly experimental.

The limiting cases which comprise the conservative end of the spectrum of apparent restrictiveness in terms of fiscal restraint on government is somewhat more liberal than the current situation. The historical conservative limit occurs at the five types of constitutional limits as compared to the present level of six types of limits.

Idaho and Montana form the set of states which had the most restrictive constitutions upon admission into the Union.

Figure 2 presents the distribution of the incidence of constitutional tax limits among the states at the time of admission of the states into the Union. The average number of types of constitutional tax limits per state is 1.88. Comparing Figure 1 with Figure 2 it is quite evident that there has been a dramatic shift in the incidence of types of constitutional tax limits over time. This shift towards the conservative end of the spectrum indicates that whatever governmental growth that has occurred over time has been accomplished in the face of increasing constraints on the ability of government to maximize revenues.

The most popular type of tax limit found in the historical constitutions is the rate structure limit. Of the total of fifty states, twenty-four states were admitted into the Union with a rate structure provision written into the constitution. The second most popular form of constitutional fiscal restraint on the taxing side of the fiscal account is the base limit. Twenty-one states had base limit provisions written into the constitution at the time of admission into the Union. The least popular constitutional tax limitation provision in the historical sense is the share limit. From Table 3-1, it is evident that there were no states admitted into the Union with a share limit provision

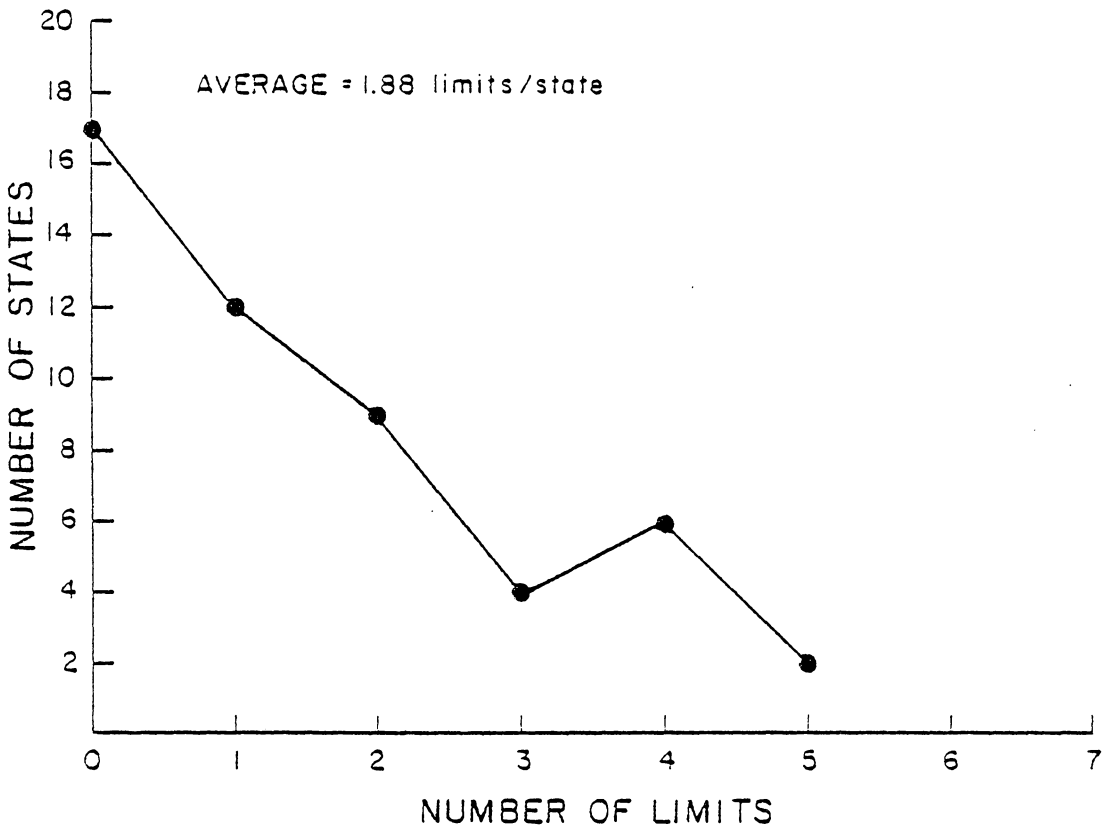

FIGURE 2. HISTORICAL INCIDENCE OF STATE CONSTITUTIONAL TAX LIMITS

written into the constitution. The comparison between the current situation and the historical situation indicates that the relative popularity of the various forms of tax limitation provisions has not changed very much over time. The major difference between the present use of constitutional tax limits and their historical use lies in the incidence of use. In other words, the pattern of use has changed little, whereas the use of that pattern has increased through time.

The typical evolutionary pattern concerning the use of constitutional tax limitations in the United States has been that those states which incorporated a tax limit in the constitution at the time of admission into the union would carry forth those types of limits and add additional types through time. Those states which did not have a fiscal constitution or the constitution of that state did not incorporate any tax limits would evolve to the use of tax limits as is described by the current situation. There are several exceptions to the typical evolutionary pattern that are noteworthy.

At the time of its admission into the Union, Connecticut did not incorporate any fiscal rules into its constitution. This in itself is not all that unusual in that Delaware, Georgia, and New York were also admitted into the Union with no fiscal constitution. What makes Connecticut an

interesting case is the fact that over the two hundred years of American history, Connecticut has not adopted any fiscal provisions into its constitution. The fiscal performance of Connecticut is equally unexpected. With no fiscal constraints upon the government one would expect that Connecticut would exhibit "poor" performance. The examination of Table 3-3, reveals the unexpected result that Connecticut is ranked number 47 out of the total of fifty states. Thus with no fiscal constitution, Connecticut presents an interesting case in that the state has no fiscal constitution and yet the fiscal performance of the state has been relatively responsible with respect to the performance of the other states of the Union.

Arkansas, Maryland and Rhode Island present cases of the evolutionary process that is in the opposite direction of what may be considered to be the normal constitutional evolutionary pattern. Upon admission into the Union, Arkansas' constitution of 1836 incorporated tax limits that may be defined as political subdivision limits, rate structure limits, and earmarked tax/base limits. None of the original types of tax limitation provision have survived through time. The present constitution of Arkansas incorporates tax limits that are categorized as the base limit, rate limit, earmark of revenue limit, and the earmark of the type of tax base limit. Thus, the original set of

constitutional tax limits has been replaced by a completely different set of revenue restraints. Although other states have replaced one type of tax limit for other types, Arkansas is unique in that the substitution of the types of tax limits is complete. According to Table 3-3, Arkansas ranks forty-ninth in terms of the state's proclivity to spend. The states of Maryland and Rhode Island present the unusual cases where constitutional tax limits that were incorporated into the state's constitution at the time of admission into the Union have been eliminated from the constitution with no replacements. Upon admission into the Union, Maryland's original constitution included a base limitation provision. Maryland's constitution of 1867, which is the constitution that is presently in effect, does not incorporate any tax limitation provisions. According to Table 3-3, Maryland ranks ninth according to the definition of a state's proclivity to spend as defined above. Rhode Island followed a slightly different path to a constitution with no tax limits. Rhode Island admitted into the Union in 1790 with no official constitution. Rhode Island operated under its territorial charter until 1842 when the state's first constitution was adopted. The original text of the 1842 constitution included an earmarked tax/base limit. Article XXVII annulled the section containing the earmarked tax/base limit in 1951 and did not replace

the tax limit with any other form of tax limitation. Accordingly, Rhode Island's current constitution contains no tax limitation provisions. According to Table 3-3, Rhode Island ranks twenty-seventh in terms of a state's proclivity to spend.

These observations indicate that there are several interesting questions that warrant further investigation. Firstly, how did the constitutional tax limits that currently exist come about. Secondly, why do some states with few constitutional tax limits spend a larger fraction of income than states with the same number of limits. Thirdly, why do some states with many types of tax limits perform poorly relative to other states with few constitutional constraints. To answer these questions and gain further insight into the constraining ability of constitutional fiscal provisions it is necessary to investigate individual states to compare and contrast the social and political setting found within the states. Because of the large number of states that can be examined, an all inclusive study is prohibitively lengthy; consequently, only a small sample of states will be examined in detail.

PART II

CHAPTER 4

SELECTED CASE STUDIES: INTRODUCTION

This part presents four in depth case studies of the evolution of constitutional tax limits in the United States. Particular attention is paid to the political and social events that led up to the noted changes in the states' fiscal constitutions. Each state is examined from the date of admission into the Union up to 1979. The purpose of the case studies is to shed light upon the circumstances which motivate the inception of tax limitation devices into the states' organic laws. Consequently, considerable reference is made to descriptive as well as documentary history in each state with the result that these case studies employ a methodology that is historically descriptive.

The criteria used for choosing which states would be incorporated in this study were based upon two fundamental differences that exist among the states of the Union. The first fundamental difference among the various states is the age of the state. States may be divided into two sets--old states and young states. Old states represent the landed establishment of the United States; consequently,

the set of old states is represented by the original thirteen British Colonies which formed the first comprehensive attempt to establish a government based upon a democracy in the history of modern civilization. What makes these old states unique is the fact that at the time of writing of the old states' first constitutions, there were no models of constitutional democratic government which the writers of the constitutions could draw upon. Consequently, each state's original constitution was quite experimental, which explains many of the differences among the forms of government that were established. The similarities arise from the fact that often the writers of one state's constitution had some input into the writing of another state's constitution. Nevertheless, because there was no experience under the constitutional form of democracy each of the original states of the Union persent an attempt to determine which devices would or would not work toward the effective operation of a democracy. New states, of course, could draw upon the experience of old states in the writing of their constitutions.

The second fundamental difference among the states arises from within the states' constitutional provisions regarding the citizen's ability to exercise direct democracy. Direct democracy, the common form in the United States being the citizen initiative, is a fairly modern device in constitutions and presents a unique form of

political pressure that is quite analogous to the economist's notion of the potential entrant in the construction of models of the monopoly. The notion of the potential entrant must be kept in mind when reviewing the evolutionary experience of states which incorporate that feature in the constitution. Although the citizen initiative may not be exercised in a particular instance, nevertheless, the political pressure of the potential exercise of the citizen initiative is still present when constitutions are amended by alternative methods.

The four states that are incorporated into this study are Virginia, New York, Oklahoma, and Florida. Virginia and New York fall into the category of old states and states that do not utilize the feature of citizen initiative in the constitution. These two states also present differences in economic and socio/political development to the extent that they supported opposing sides in a conflict that resulted in the Civil War and has continued in more subtle terms into modern times. The states of Oklahoma and Florida present examples of new states which incorporate the citizen initiative into the state's organic laws. Oklahoma is a very young state that incorporated the citizen initiative from the date of its first constitution. In addition, Oklahoma presents a case where political ideas have been imported from various sections of the Union and thus presents a 'melting pot' in American politics and

constitutional evolution. Florida, on the other hand, is somewhat older than Oklahoma but nonetheless, quite young as states go. Florida presents an example of a state that has evolved into a melting pot of political ideas imported into the state over a considerable span of time so that a considerable portion of Florida's historical constitutional evolution occurred without the citizen initiative.

Clearly, the choice of states for the form of case studies that is presented below is somewhat arbitrary. Admittedly, there may be better examples of constitutional evolution among the states; however, on the other hand, there are far less interesting cases that could have been chosen. If time were not a scarce resource it would be optimal to present all of the states. However, time, among other relevant resources is scarce and with each case study involving a considerable amount of documentary and historical digging, it is hoped that the examples chosen will shed light upon the conditions that have led to the incorporation of constitutional tax limits into the American form of representative democracy.

CHAPTER 5

CASE I: VIRGINIA

The state of Virginia was one of the original thirteen colonies that broke away from England in 1776 and formed the United States. The history of Virginia can be traced as far back as the early 1600's through the documentation and reports of the explorers of the new world. For purposes of this study it is only necessary to examine the historical account of the development of Virginia from the time of the American revolution. It was the American revolution and the political sentiments of the revolution translated into an experimental form of government which has evolved to the present polity of the United States of which Virginia is a member state. The tax revolt of 1978 in California is not new to the American experience; (if one can label the political events of 1978 California as a tax revolt). It may, in fact, be claimed to be an extension of an American tradition since the revolution of 1776 must truly be considered a tax revolt. The principle of the American revolution was aptly stated by Patrick Henry in 1776 as "No taxation

without representation, and no legislation without representation."[1]

The first constitution of Virginia was written by a convention that met from May 6, 1776 to July 5, 1776 in Williamsburg, Virginia, the colonial capitol.[2] The final draft of the constitution was not submitted to the voters for ratification but was adopted by the convention on July 29, 1776.[3] The convention was not specifically organized to form a new government for Virginia; its purpose was, however, to deal with the impending conflict with the British government. According to Lyon G. Tyler, the Virginia constitution was the first state constitution that was intended to form an independent and permanent government in America.[4]

The Virginia constitution of 1776 did not contain any tax limits, and in fact, there is very little attention paid to fiscal function of the new government.[5] Perhaps

---

[1]Philip Alexander Bruce, Virginia, Rebirth of the Old Dominion, (Chicago: Lewis Publishing Company, 1929), p. 397.

[2]David L. Pulliam, The Constitutional Conventions of Virginia, (Richmond: D.T. West, 1901) p. 16.

[3]Ibid, p. 17.

[4]Lyon Gardner Tyler, History of Virginia, Vol. II, (New York: American Historical Society, 1924), p. 249.

[5]Ben:Purley Poore, The Federal and State Constitutions, Colonial Charters and Other Organic Laws of the United States, Vol. I & II, Second edition (New York: Lenox Hill Publishing and Distributing Company, 1924), p. 1908-1912.

it may seem ironic that the convention did not give the fiscal system of the new government a thorough treatment even though the reason for the new government and the revolution was the British tax policy toward the colonies. However, a critic of the writers of Virginia's first constitution must take into account that the new government, a democracy with a written constitution as the foundation of governmental powers, was unique to the political organization of governments in 1776. The convention had no models of what constituted a constitution; it was in essence the prototype for the American system. Perhaps a second reason that the constitution of 1776 did not develop a set of fiscal rules was that hostilities were taking place with Britain. Upon an examination of assorted historical accounts of the era, it becomes evident that the attention of the convention members was towards the revolution and the need quickly to organize a government that could deal with domestic issues and form alliances with neighboring colonies in order effectively to fight the British.

As may be expected, the constitution of 1776 was not satisfactory as a basis for government, and almost at the outset there was considerable dissent with demands for reform. Among the most serious defects aside from the absence of fiscal content were the lack of separation of powers, limited suffrage, no formal provisions for

amendments, apportionment was not based upon population, and the fact that the constitution was not ratified by a popular vote.[6] However, it must be noted that the constitution did establish a status-quo[7] for the post-revolutionary period. Stated more concretely, the constitution established a distribution of political power through the system of apportionment and suffrage that favored a minority coalition of the population.

According to the constitution of 1776, "The right of suffrage in the election of members for both Houses shall remain as exercised at present..."[8] In other words, the constitution of 1776 carried over the same requirements for the right to vote that were used under colonial rule. The right to vote was held by free white men that were land owners and by "free-holders" (a free-holder was a person that held a lease for land where the term of the lease was for life) provided that the value of land met a minimum of approximately 25 acres of cultivated land and

---

[6]A. E. Dick Howard, "For the Common Benefit: Constitutional History in Virginia As A Casebook For the Modern Constitution-Maker," Virginia Law Review 54, No. 5, (June 1968) p. 816-927.

[7]J. M. Buchanan and Gordon Tullock, The Calculus of Consent, (Ann Arbor: The University of Michigan Press, 1962) Chapter 6.

[8]Poore, op. cit., p. 1919.

150 acres of uncultivated land.[9] According to Howard, approximately one third to one half of the free white males in Virginia were eligible to vote at the time that the constitution of 1776 was written.[10] According to this account, the right to vote was held by wealthy classes of early Virginia.

The constitution of 1776 did establish the system of representation to the legislature for the new state of Virginia. According to the constitution, the legislature was to be made up of two branches, the House of Delegates and the Senate. The House of Delegates was composed of two delegates from each county in the state plus one delegate from the major cities of Williamsburg, Norfolk, West-Augusta and other cities as determined by the legislature.[11] The Senate membership was derived by districting the state into 24 districts and allowing each district one Senator.[12] This system of legislative apportionment and rules of suffrage sectionalized the State into the Eastern section and the Western section. Because

---

[9]A.E. Dick, Howard, Commentaries on the Constitution of Virginia, Vol. I, (Charlottesville: University Press of Virginia, 1975), p. 318-319.

[10]Ibid., p. 319.

[11]Poore, op. cit., p. 1910.

[12]Ibid.

of the historical development of the state, wealth was concentrated in the Eastern portion of Virginia; consequently, the legislature was controlled by the landed aristocracy of the East.[13]

Economic activity of post-revolutionary Virginia centered around the production and exportation of agricultural products, of which tobacco was the primary cash crop. During this period, scientific methods of cultivation were not used; consequently, soil exhaustion became an important factor in the socioeconomic development of the state. The result of soil exhaustion in the mature eastern plantations was a westward migration of population. According to Howard (1968) the eastern portion of Virginia experienced a period of economic decline while the western portion of the state prospered. Conflict between the East and West over governmental expenditures aimed at the development of infrastructure became the stimulus for constitutional reform. Because of the system of legislative apportionment and limited suffrage, the legislature was controlled by the East, while both East and West contributed tax revenues into the state coffers. As may be expected, the legislature followed the

---

[13]Howard, Commentaries On the Constitution of Virginia, Vol. II, (Charlottesville: University Press of Virginia, 1974), p. 1020.

interests of the eastern establishment. Accordingly, each legislative session was marked with calls for a constitutional convention to reform the 1776 constitution.[14] As the principle of self interest predicts, those individuals with a vested interest in the status quo, having control over the legislature, effectively resisted the call for a convention until threats of "extra-legal remedies" convinced the legislature that a further postponement of a constitutional convention was not in the interests of continued sovereignty of the existing government.[15] The resulting call for a constitutional convention was affirmed by a vote of 21,875 to 16,645 in a referendum held in 1828.[16]

Virginia's second constitution was written in a convention held in Richmond from October 5, 1829 to January 14, 1830.[17] Representation to the convention was based upon the existing senatorial representation scheme which meant that the West was represented by 36 delegates while the East had 60 delegates.[18]

---

[14]Howard, "Constitutional History in Virginia," p.842-846.

[15]Ibid., p. 846.

[16]Ibid., p. 847.

[17]Ibid.

[18]Ibid.

Representation at the constitutional convention once again reflected the political power of those with vested interest in the status-quo, and the resulting document embodied in its provisions the biased nature of representation in the constitutional convention. The objectives of those calling for reform were summarized by delegate Philip Doddridge of Brooke County during debates as:

> "First, an equal apportionment of Representation among white population; second, an extension of the Right of Suffrage to all who pay taxes; third, a total abolition of the Executive Council; fourth, a single Executive Head, or Governor, to be elected by the people and responsible to them; fifth, future apportionments to keep representation equal among the people; sixth, a provision for future amendments."[19]

About all that can be said about the product of the 1829-30 convention is that the constitution of 1830 did not contain any of the major reforms that were sought by the callers of the convention. As may be noted, taxation was not an issue with the reformers; consequently, the Constitution of 1830 did not contain any tax limitation provisions. The 1830 constitution remained in force as written by the convention until the western section of the state gained enough population and political power to force the eastern establishment into a third constitutional

---

[19]Howard, "Constitutional History in Virginia," p. 849.

convention. Accordingly, the legislature of 1849-50 passed the necessary legislation for the constitutional convention of 1850-51.

The Virginia constitutional convention of 1850-51 met in Richmond from October 14, 1850 to August 1, 1851 and produced a radically revised constitution for the state of Virginia which was adopted by a referendum with a vote of 67,562 in favor of adoption and 9,938 votes against.[20] The constitution of 1850, as it is referred to in the literature, was considerably different from its predecessors in that it incorporated almost all of the changes that were desired by the 'reform movement.' Suffrage was extended to most free white males and legislative apportionment was based upon population. These two issues may be accredited with the introduction of Virginia's first set of constitutional tax limits.[21] Historical accounts indicate that the financial Panic of 1837 provided the incentive for constitution writers to limit the state's ability to borrow, this was the case in other states as well as in Virginia.[22] A conclusion that may be drawn is that constitutional debt limitations were introduced into

---

[20]Pulliam, op. cit., p. 92; Poore, op. cit., p. 1919.

[21]Howard, Constitution of Virginia, Vol. II, p. 1024.

[22]Ibid., p. 1023.

Virginia's constitution in an attempt to maintain sound and prudent financial practices on the part of governmental officials, and not as the result of political bickering. On the other hand, constitutional tax limits appear to be the direct result of such political antagonisms. According to Howard, "The East again feared that if it allowed the West the political power it sought, eastern property, especially slaves, would be subject to excessive taxation aimed at destroying slavery and used to finance improvements beneficial to the West. Although the West was able at the 1850-51 Convention to make some gains in political power, it paid for these gains in part with the constitutional provisions on taxation."[23]

Article IV Sections 22, 23, 24 and 25 of the constitution of 1850 present Virginia's first set of constitutional tax limits as follows:

> "Section 22. Taxation shall be equal and uniform throughout the commonwealth, and all property other than slaves shall be taxed in proportion to its value, which shall be ascertained in such manner as may be prescribed by law.
>
> Section 23. Every slave who has attained the age of twelve shall be assessed with a tax equal to and not exceeding that assessed on land of the value of three hundred dollars. Slaves under that age shall not be subject to taxation; and other taxable property may be

---

[23]Howard, Virginia Constitution, Vol. II, p. 1024-25.

> exempted from taxation by the vote of a majority of the whole number of members elected to each house of the general assembly.
>
> Section 24. A capitation-tax, equal to the tax assessed on land of the value of two hundred dollars shall be levied on every white male inhabitant who has attained the age of twenty-one years; and one equal moiety of the capitation-tax upon white persons shall be applied to the purposes of education in primary and free schools; but nothing herein contained shall prevent exemptions of taxable polls in case of bodily infirmity.
>
> Section 25. The general assembly may levy a tax on incomes, salaries, and licenses; but no tax shall be levied on property from which any income so taxed is derived or on the capital invested in the trade or business in respect to which the license so taxed is issued."[24]

Embodied in these sections are the rate structure tax limit, the base limit, earmarkings of revenue, and what may be considered a secondary rate limit. Section 22 is primarily a rate structure limitation where the taxing authority is prevented from exercising tax discrimination with respect to property. Also included in Section 22 is a base limit that prevents the taxation of slaves in accordance with the tax scheme that is applied to other classes of property. The rate structure limit may be considered somewhat forceful in that it does not allow for the classification of property into various classes, thus further preventing tax discrimination, as is the common

---

[24]Poore, op. cit., p. 1928.

practice found in contemporary constitutions. It appears that the motivation for Section 22 stems from the fears of the East of being exploited in terms of taxation by the West once the East relinquished political power to the West.[25] Section 23 presents a base limit in that slaves under the age of 12 years cannot be taxed and this section also embodies a rate limit in that slaves are to be taxed at a rate equal to the rate of taxation applied to land valued at $300. It is apparent that Section 23 was included by the East as a means of protecting the economic use of slave labor. This is evident from the fact that slave labor in Virginia was primarily in use in the East and not as prevalent in the West.

Section 24 presents a rate limit to the extent that while males are taxed at a rate that is equal to the tax applied on land valued at $200; in addition this section embodies a base limit in that white males less than 21 years of age were not taxable. It is evident from the trend of population expansion at the time that this provision would have an effect of shifting the revenue burden of the state finances upon the West which at this point exceeded the East in population and in the growth of

---

[25]Charles Henry Ambler, Sectionalism in Virginia From 1776 to 1861, (Chicago: Russell Publishing Company, 1964; reprint of 1910 ed.), p. 266.

population.[26] Section 24 also included an earmark of the revenue generated by the capitation-tax by which one half of the revenue generated would be allocated toward the financing of free schools in Virginia. "It was an effort to impose the expense of these institutions on the West which desired them most."[27]

Section 25 empowered the legislature to use an income tax and a tax upon licenses of doing business. Once these taxes were levied, the provision imposed a base limit preventing that taxation of property that was used in connection with the generation of taxed income. Consequently, once an income tax was levied, a property tax on capital could not be levied. This provision would tend to favor those sections of the state that engaged in manufacturing and trade, i.e. the East.

The historical evidence supports the contention that those individuals which benefitted the most from the status quo that was the result of the constitution of 1776 were most reluctant to give up their advantageous political positions. Once forced to do so, the eastern establishment utilized constitutional tax limits as a means of securing and extending some of the economic benefits that

---

[26]Howard, "Constitutional History of Virginia," p. 858.

[27]Ambler, op. cit., p. 267n.

went along with their political power. The economic consequences of constitutional reform forced the East into playing a strategy that would minimize the losses incurred through the surrender of political power to the West.

The constitution of 1850 remained in force as written by the convention until Virginia's seccession from the Union in 1861. The seccessionary constitution which replaced the constitution of 1850 was the same basic document as the 1850 constitution with appropriate changes regarding the allegiance of Virginia to the confederate states.[28] A major result of the Civil War was the dismemberment of the state of Virginia into what today are the states of West Virginia and Virginia. The removal of the State of West Virginia from Virginia removed the political dichotomy between the East and West from the political situation in Virginia.

The Civil War also produced the constitution of 1864 in the state of Virginia. The constitution of 1864 formed the basis of government for those portions of Virginia that were within Union lines but excluded from the newly formed state of West Virginia, this government was known as the

---

[28]Poore, op. cit. p. 1937.

Restored Government of Virginia.[29] Basically the constitution of 1864 is a repetition of the constitution of 1850 with the appropriate omissions concerning and recognizing slavery as an institution of society, and a condemnation of the Confederacy.[30]

The secessionary constitution of 1861, the constitution of West Virginia and the constitution of 1864 present a discontinuum to the evolutionary pattern of Virginia's constitutional development due to the fact that they are the product of revolution and the break-down of traditional political processes. Although a state of anarchy did not prevail, the war time situation did not lend itself to 'normal' political activities. The Civil War disestablished the status quo created by the constitution of 1850, and it was not until the defeat of the Confederacy and Reconstruction that a new status quo was established by the Union military which permits the continuation of the study of the foundations of constitutional tax limits through the democratic political process. For the reason

---

[29] William F. Swindler, Sources and Documents of United States Constitutions, (Dobbs Ferry, New York: Ocean Publishing Company, 1977), p. 92.

[30] Poore, op. cit., p. 1937-1952.

just presented, an indepth review of these constitutions will not be included in this study.[31]

The surrender of General Lee on April 9, 1865 marked the end of the Civil War.[32] At this point in Virginia's history, the economic, social, and political situation was quite confusing and chaotic. The economy of Virginia was shattered by the war in two principal ways. Due to the number of military battles that were fought on Virginia soil, a significant portion of both public and private capital was destroyed. In addition the emancipation of the slaves meant that the traditional form of labor arrangements no longer existed.[33] Most significant from the sociological point of view was that the black people were free individuals as a result of the war. This factor of course, is directly related to the political scene of the times in that the conservative white population did not accept the black as an equal and did not recognize the black's entitlement to vote. Political issues dealing with white supremacy and black equality

---

[31]For a description of the political situation during the Civil War, see; Hamilton James Eckenrode, The Political History of Virginia During Reconstruction, (Baltimore: Arno Publishing Company, reprint of 1904 ed.) Chapters 1 & 2.

[32]Ibid., p. 26.

[33]Ibid, p. 43.

were at that time one of the principal factors that brought about Congressional reconstruction in the South.[34] Although the racial issue was addressed in the writing of the constitution of 1870, it is evident that these issues were left unsettled and surfaced in future constitutional revisions.

At the end of the Civil War, the only formal government for the state of Virginia was the Restored Government of Virginia. This government was not acceptable to Congress due to its stand on racial issues. Consequently, Congress did not accept or recognize the Congressional representatives that were sent to Washington in December of 1865.[35] The reconstruction of act of March 2, 1867 passed by Congress placed Virginia under the military government headed by General John M. Schofield and the State was referred to as Military District Number One.[36] Under the directorate of the reconstruction act, the constitutional convention of 1868 was assembled in Richmond to write a new constitution for the state of Virginia as a condition of readmission of the state into the Union.

---

[34]Eckenrode, op cit., p. 38.

[35]Ibid.

[36]Ibid., p. 52.

The constitutional convention of 1868 was comprised of 33 delegates that were considered conservatives and represented the "old, long-dominant planter class" of Virginia and 72 delegates that represented the radical faction in Virginia. The radicals were composed of 14 native white Virginians, 24 black Virginians and the remainder of the radical delegation was composed of individuals that may be considered to have been new settlers in Virginia.[37] Apparently the majority coalition did not represent the majority of the Virginian population either in humanitarian sentiment or political persuasion.[38]

The convention of 1868 completed its work on April 7, 1868 and the proposed constitution was submitted to the voters on July 6, 1869. The constitution was ratified by a vote of 210,585 in favor versus a vote of 9,136 against the proposal.[39] The constitution of 1870 incorporates many of the same constitutional tax limitation provisions as the constitution of 1850 and the constitution of 1864. There were several additions to the number of tax limits in this new constitution over the number of tax limits in

---

[37]Eckenrode, op. cit., p. 87.

[38]Ibid., p. 88

[39]Poore, op. cit., p. 1952.

previous documents and, in addition, the wording of some of the tax limits that were carried over was changed in order to clarify their meaning. Article X, Sections 1, 2, 4, and 5 contain the bulk of the tax limits in this constitution and additional tax limitation provisions are incorporated in Article VIII, Section 9 as follows:

ARTICLE X

Taxation and Finance

> Section 1. Taxation except as hereinafter provided, whether imposed by the State, county, or corporate bodies, shall be equal and uniform, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as prescribed by law. No one species of property, from which a tax may be collected, shall be taxed higher than any other species of property of equal value.
>
> Section 2. No tax shall be imposed on any of the citizens of this State for the privilege of taking or catching oysters from their natural beds with tongs, in the waters thereof, but the amount of sales of oysters so taken by any citizen in any one year may be taxed at a rate not exceeding the rate of taxation imposed upon any other species of property.
>
> Section 3. The legislature may exempt all property used exclusively for State, county municipal, benevolent, charitable, educational, and religious purposes.
>
> Section 4. The general assembly may levy a tax on incomes in excess of six hundred dollars per annum, and upon the following licenses, viz: the sale of ardent spirits, theatrical and circus companies, menageries, jugglers, itinerant pedlers, and all other shows and exhibitions for which an entrance-fee is

required, commission merchants, persons selling by sample, brokers, and pawnbrokers, and all other business which cannot be reached by the ad-valorem system. The capital invested in all business operations shall be assessed and taxed as other property. Assessments upon all stock shall be according to the market-value thereof.

Section 5. The general assembly may levy a tax, not exceeding one dollar per annum, on every male citizen who has attained the age of twenty-one years, which shall be applied exclusively in aid of public free schools; and counties and corporations shall have power to impose a capitation-tax, not exceeding fifty cents per annum for all purposes.

ARTICLE VIII

Education

Section 8. The general assembly shall apply the annual interest on the literary fund, the capitation-tax provided for by this constitution for public free-school purposes, and an annual tax upon the property of the State of not less than one mill, nor more than five mills, on the dollar, for the equal benefit of all the people of the State, the number of children between the ages of five and twenty-one years in each public free-school district being the basis of such division. Provision shall be made to supply children attending the public free-schools with necessary text books, in cases where the parent or guardian is unable, by reason of poverty, to furnish them. Each county and public free-school district may raise additional sums by a tax on property for the support of public free schools. All unexpanded sums of any one year in any public free-school district shall go into the general school-fund for redivision the next year: Provided, that any tax authorized by this section to be raised by counties or school districts shall not exceed five mills on a dollar in any one year, and shall not be

subject to redivision, as hereinbefore provided in this section.[40]

Section 1 of Article X presents a strengthened version of the uniformity clause that was introduced in the constitution of 1850. The uniformity clause is a rate structure limit that prevents governments from practicing tax discrimination. An examination of transcripts of the debates on this clause indicates that the delegates did in fact recognize the potency of this clause in deterring tax discrimination. According to the records of the debates, it is evident that the delegates strengthened the working of this section over the wording in the constitution of 1850 because there was considerable tax discrimination practiced by local governmental units. This action on the part of the convention is significant to the extent that it is the first example of constitutional constraints used in Virginia to control the abuses of government of the power to tax.[41]

Section 2 of Article X presents an earmark of the type of tax to the base. An interpretation of this

---

[40]Poore, op. cit., p. 1968-69.

[41]W. H. Samuel, The Debates and Proceedings of the of the Constitutional Convention of the State of Virginia, Vol. I, (Richmond: Office of the New Nation, 1868), p. 650-56.

section indicates that the legislature may not levy a tax upon the collection of oysters by means of a license tax. The legislature may, however, levy a sales tax upon the quantity of oysters that are sold. Moreover, the tax on the sales of oysters is limited by this provision to the rate of taxes imposed upon alternative forms of property.

According to the Debates, the intended purpose of this tax limit was to insure that the burden of the tax on the state's natural resources was placed upon the commercial interests and the commercial success of oyster gathering rather than upon the poor population of the area which utilized the resources for family use.[42]

Section 4 of Article X empowered the legislature to levy an income tax and in so doing imposed upon the power to tax incomes a base limit that excluded the first $600 from the income tax base. In addition this section empowered the legislature to levy a license tax and taxes upon capital invested in business. The debates concerning this section were at most quite lengthy and at the least quite confused. There was much bickering over whether the burden of taxation should be upon business and commerce or placed upon the landowner. At the base of

---

[42]Samuel, op. cit., p. 660-665.

the arguments presented in the debates was the desire for the system of taxation to be comprehensive and the burden of the taxes to be appropriated according to the ability to pay. The resulting section of the constitution embodies a compromise developed by the convention. Upon examination of the debates the apparent motivation behind the incorporation of the base limit in this section was to place a greater portion of the burden of taxation upon the wealtheir members of society, or perhaps more accurately to relieve the poorest individuals of some of the burden of taxation.[43]

Section 5 of Article X empowered the state government to levy a capitation-tax. The provisions of this section presented the legislature with a base limit in that only males are taxed and those males that are taxed must be 21 years of age or more. The capitation-tax upon males was also limited by a rate limit of $1 per taxpayer. The taxes generated by this section were earmarked toward the financing of education. In addition this section empowered local governmental units to levy a capitation-tax with a rate limit of $.50 per individual. The local revenues generated by the capitation-tax were not earmarked

---

43 Samuel, op. cit., p. 679-726.

nor does there appear to be a base limit incorporated into this provision of Section 5.

An examination of the debates on this section indicates that the delegates accepted the notion that education had external benefits such that all members of the community should pay in support of the educational system. This is, of course, the basis for incorporating the earmark of the capitation-tax into this section. The use of the capitation-tax was chosen to prevent any member of the community from evading the payment of a tax regardless of whether the individual owned property. The rate limit imposed on the capitation-tax was intended to protect the poorest and least educated members of the population from being exploited by the tax collector. The discussion in the debates indicates that there was considerable abuse of the capitation-tax by the county tax collectors. The rate of $1 per individual was considered not to be excessively burdensome to the poorest classes. The county capitation-tax was the result of a compromise in that counties could levy a capitation-tax up to the limit of $.50 per individual. The county capitation-tax in conjunction with the state capitation-tax was not deemed to be excessive. The county version of the capitation-tax was not earmarked because the funds were intended to defray the cost of

services provided by the county. The primary service that the capitation-tax would pay for was the maintenance of roads. In all, the primary purpose of the limits included in this section was to end the previous abuses of extracting taxes beyond what was due by the taxpayer.[44]

The final set of constitutional tax limits that were incorporated into the constitution of 1870 occurred in Article VIII which deals with the topic of education. Section 8 of Article VIII specifies that in addition to the capitation-tax which was provided for in Article X, the legislature is authorized to levy a property tax to be applied to the public school fund. The property tax provision incorporates a rate limit of five mills on the dollar and in addition any property tax that would be levied by counties under the authorization of this section was also limited to a rate of five mills on the dollar.

Article XII presents the first constitutional provision in Virginia that specifies the method by which the constitution may be amended. According to the provision, Amendments may be proposed by either house of the legislature and must be approved by a simple majority of

---

[44]Samuel, op. cit., p. 732-750.

both houses in two successive sessions. The Article stipulates that such constitutional proposals must be ratified by a simple majority of the qualified voters voting in the election. A second feature of this article is that it mandates that in the year 1888 and every twenty years thereafter the question of whether a constitutional convention is to be held was to be placed on the ballot of the general elections.[45]

The constitution of 1879 was amended in 1872, 1874, 1876, and 1882.[46] The amendments to the constitution of 1870 did not deal with the fiscal portion of the constitution; consequently they are beyond the scope of this study. These amendments are significant to the extent that they represent a continuation of the struggle among the various factions for political power.

The fiscal constitution that was incorporated into the constitution of 1870 appears to be 'fair' and an examination of the proceedings of the convention indicates that the delegates were indeed aiming at a 'fair' system of taxation. This conclusion may be considered to be somewhat a mixing considering the oppressive nature of the suffrage provisions (Article III) in the constitution

---

[45]Poore, op. cit., 1971-72.

[46]Ibid., p. 1974-75; Swindler, op. cit., p. 144.

and the animosity among the relevant political factions that were involved in the writing of the constitution. In fact, the version of Article III that became a part of the constitution that was adopted by the referendum was a modification of the provisions that were produced by the convention due to the efforts of General Schofield, Congress, and the committee of Nine.[47] There is, however, a line of reasoning that ties together the 'fairness' of the fiscal constitution that was adopted both by the convention and by the referendum and the economic, social, and political turmoil of the Reconstruction era.

It is commonly recognized that there are spoils to a war, and these spoils of war in general go to the victor of the war. Such was the case of the Civil War; the spoils went to the Union. The spoils of the Civil War that were ursurped by the Union were of a 'global' nature; however, there was much to be gained by individual (or small coalition) action at the local level through state politics. The political situation in Virginia during reconstruction was almost in a state of anarchy. In that there was no clear dominating coalition that controlled the situation. There were three major dominating coalitions;

---

[47]Richard L. Morton, History of Virginia, Vol. III, (New York: American Historical Society, 1924), Chapters 5, 6 and 7.

the blacks with their white supporters of local origin, the conservatives, and the northern radicals, none of which had political supremacy. The constitution of 1870 was used as an instrument in an attempt to secure the spoils of war at the state/local level. The situation of the times was characterized by a great degree of uncertainty as to who would end up on top and who would be on the bottom. Thus, one may conclude that each coalition used its input into the writing of the constitution to establish a lever that would enable that particular coalition to end up on top of the situation after the end of (what was considered) Reconstruction. The fiscal system that was written into the constitution appears to be 'fair' due to the level of uncertainty as to what the future would bring and due to the historical abuses of the tax system by the 'landed aristocracy.'

The blacks, having spent their lives at the bottom of the social structure, were at the receiving end of fiscal abuse and, with their newly acquired political power, attempted to correct for these abuses by transferring some of the burden of taxation to the wealthier classes. In so doing they took care of themselves. It is felt that the blacks also had aspirations of acquiring wealth through their newly acquired economic and political freedom and thus strived for a system of taxation that

would not stifle their accumulation of wealth. The blacks also needed the support of the Northern radicals in order to achieve their goals. As a consequence, the blacks took care of their radical friends in order to secure their support, by striving for or at least accepting a tax constitution that did not usurp all the rents from the political and commercial activities of the "Carbetbaggers."

The Northern Radicals, or Carpetbaggers, as they were referred to at that time, supported the cause of the blacks since they (the blacks) were the carpetbaggers' foothold into the South. The radicals did not advocate a tax system that would place a heavy burden upon the land owner and the wealthy because they themselves expected to accumulate wealth in the post Civil War period. If the radicals had established an unfair tax scheme, they themselves would have had to live under their own tyranny. In addition, the radical's support of the blacks against the southern whites was tempered by a relevant degree of racism that characterized black-white relationships.

The southern whites at the time were attempting to salvage any of their remaining wealth and political power that was scuttled by the war. In order to protect their future interests the whites of the South compromised with the blacks and the radicals to the extent that they would

not lose everything they had. In addition, it is a believable proposition that the Southern whites went along with reforming the tax abuses that were used against the poorest classes because the whites themselves had incurred such severe losses due to the war that perhaps many of the whites felt that they might spend part of the future under the rules that governed the lowest class.

The constitution of 1870 may be considered the staging area for the political struggles that occurred in Virginia during the last three decades of the eighteen hundreds. The main field of battle in the struggle for political supremacy became the right to vote. The fiscal constitution became a weapon that was used to disenfranchise the losing coalition in the following constitutional convention.

During the years following the implementation of the constitution of 1870, the conservative whites of Virginia concentrated their efforts on disenfranchising the black voter. Efforts to eliminate the black voter from the Virginia political scene were conducted through legal channels as well as illegal means. The constitutional amendment of 1876 was perhaps the first significant legal step taken in the process of disenfranchising the black. The amendment to Article III among other provisions made the payment of the poll tax a requirement for voter

eligibility. In addition, the amendment listed petty larceny as a disqualifitory crime. "These two provisions were aimed directly at the negro for it was thought that many would fail to pay the tax, and petty larceny was a common offense among them."[48] The poll tax requirement was removed as a voting requirement by the constitutional amendment of 1882 due to its unpopularity among whites as well as blacks. Efforts continued to disenfranchise the black voter "by more stingent election laws."[49] Through the course of the years' various illegal methods were employed to either eliminate the black voter or to neutralize the vote through the use of bribery, or ballot box stuffing, among other means.[50] "In spite of the fact that the white people of Virginia had practically taken the vote from the negros by the middle of the '90's, they (the whites) were greatly dissatisfied with political conditions as they existed."[51] According to Morton, the

---

[48]Ralph Clipman McDanel, The Virginia Constitution Convention of 1901-1902, (Baltimore: Da Capo Publishing Company, 1972; reprint of 1928 ed.) p. 6.

[49]Ibid.

[50]Morton, op. cit., p. 298-301.

[51]Ibid., p. 301.

graft and corruption that was used against the blacks had adverse spillover effects on the whites.[52]

As time passed, it became increasingly advantageous for the Democratic party, which represented the conservative faction in Virginia to bring forth a constitutional convention. Upon successive attempts to bring about a convention, the Democrats were unsuccessful in generating the necessary support at the polls.[53] The effort to establish a constitutional convention became successful through efforts that were initiated in the general assembly of 1889-1900.[54] "To give the measure all the assistance possible the Assembly provided that the ballots should carry the words, "For Constitutional Convention," at least one inch below any heading or other printing, and in order to vote against the calling of the convention it was necessary to mark out these words. An unmarked ballot counted as a vote for the convention.[55]

With the call for the constitutional convention being successful, on May 23, 1901, the delegates were elected such that 88 Democrats and 12 Republicans formed

---

[52]Morton, op. cit., p. 301.

[53]McDanel, op. cit., 7-12.

[54]Ibid., p. 12.

[55]Ibid.

the set of convention delegates.[56] "While the restriction of the suffrage was the principal business before the Convention in the minds of many of its members and of the people of the State, there were many other features of the Underwood Constitution (Constitution of 1870) which it was proposed to change. Among these the ones that received the most comment were: the abolition of useless offices and the reduction of governmental expenses, simplification of the process of levying and collecting taxes, reforms in the judiciary, and effective methods of corporation regulation.[57]

The constitution of 1902 as written by the convention of 1901-1902, incorporated many changes, the most notable change being the disenfranchisement of the black voter. This constitution was not submitted to the voter as a referendum issue, but was proclaimed the organic law of the state of Virginia by the convention itself.[58] According to McDanel, it is doubtful that the product of the convention would have withstood the test of the referendum. The most obvious reason for the probable rejection was the disenfranchisement of the black voter. The black voter

---

[56]McDanel, op. cit., p. 19.

[57]Ibid., p. 24.

[58]Ibid., Chapter V.

was disenfranchised through the use of a non-coercively collected poll tax that relied upon the free-rider principle, which will be discussed below, and by a provision that continued the disqualification of those individuals that committed petty larceny which, it was felt at that time, had a high incidence among the blacks. It appears that the political strength of the Democratic party at the time of the convention was in fact strong enough to force upon the people of Virginia a constitution that met the ends of the Southern conservative voter. Clearly, the political competition that began during reconstruction was being resolved by this constitutional convention. A victor had emerged. And that victor used the convention and the binding nature of the constitution to ensure that political power and control was held by the conservative. With the constitution of 1902, the "Good-Old Boys" were going to have things their way, at least for a while.

Article XIII of the constitution of 1902 deals with the topic of taxation and finance. A comparison of the constitution of 1902 with its predecessor reveals that there had been instituted a considerable amount of change in the fiscal constitution of Virginia. Upon examination of Article XIII the question arises as to whether the changes in the constitution that related to taxation were

the result of political manipulation so that the dominating coalition could utilize the power of taxation to meet the desires of the coalition or whether the changes were the result of deliberations in which the object of the change was to secure a notion of 'fairness' in the tax system. An examination of the debates concerning the various provisions of the constitution indicates that there were elements of both motives on the part of the delegates.

Article XIII Section 168 of the constitution of 1902 presents a modified version of the uniformity clause that was initiated in the constitution of 1870. Section 168 in conjunction with Section 169 allows the legislature to levy taxes according to classes of property rather than having the taxation of property uniform upon all classes. In effect, the modification of the 1870 uniformity provision reduced the restrictiveness of the rate structure limit. According to the debates, proponents of the classification schemed modelled the provision according to the method used in Pennsylvania, Colorado, Georgia, Idaho, Montana, Louisiana, and Missouri.[59] Proponents

---

[59]J. H. Lindsay, ed. and compiler, Report of the Proceedings and Debates of the Constitutional Convention of the State of Virginia, Vol. II, (Richmond: Hermitage Press Inc., 1906), p. 2534.

of the classification scheme argued that the system of taxation under such a scheme would be more 'fair' than the operating system and cited the writings of economist David A. Wells in support of the proposition.[60] Opponents of the classification scheme were concerned with the ability of the legislature to tax discriminate by using the power to define classes for taxation.[61] From a reading of the debates it is not obvious as to the motive behind the proponents of the classification scheme; however, the debates tend to imply that both sides of the argument were concerned with the ability of the government or raise revenues and the fairness of the collections.

Section 169 of the finance article imposes a base limit in addition to the rate structure limitation mentioned above. The base limit is in the form of requiring that assessments on property for purposes of taxation be based upon the market value of the property. The debates are clear on this issue, in that the intent of the delegates was to remove inequalities in taxation and limit the ability for government to tax discriminate.[62]

---

[60]Lindsay, op. cit., p. 2636.

[61]Ibid., p. 2625-41.

[62]Ibid., p. 2643-46.

Section 170 of Article XIII is basically a repetition of the income tax provision of the constitution of 1870. This section incorporates a base limit that exempts the first $600 of income from taxation. In addition, the section empowered the legislature to levy license taxes and franchise taxes. These items were not debated in the general session of the convention. The portion of the section that was a new addition to the constitution limited the use of special assessments on property owners whose land abutted public roads in such a manner that the peoperty owner would not be liable for improvements made by the government. The constraint was made to be more restrictive for county roads than town or city roads. This provision was debated in the general session, and it is evident from the discussion held that the purpose of the provision was to encourage the construction and development of public infrastructure associated with roads. In addition the delegates were concerned with the distribution of the benefits and costs of such projects and felt that the costs should have been shared by those other than owners of abutting parcels of land.[63]

Section 173 of the 1902 Virginia constitution presents the taxing authority with a revised version of the

---

[63]Lindsay, op. cit., p. 2641-43.

capitation-tax. The rate limit and the base limit embodied in the 1870 version was retained in its original form except that the capitation-tax was to be levied by the state government instead of the previous method of a combined state-county levy. Another interesting feature of this provision is the voluntary method of collecting the tax. According to Section 173, the capitation-tax could not be collected by any legal form of coercion. A final modification to the 1870 capitation-tax provision was that counties were allowed to levy a poll tax of $1.00 per head for local use.

The capitation-tax as prescribed in the constitution was to serve two functions; a source of revenue, and a means of disenfranchising the black voter, with the latter function being the primary purpose for the tax.[64] The delegates did not believe that the amount of the tax was particularly oppressive but utilized the free-rider principle in the strategy to eliminate the black vote. The requirement for eligibility to vote was that the tax must have been paid 6 months prior to the election. The delegates predicted that many of the black voters would not pay the tax on time and thus make themselves ineligible to vote. The nonenforceability of the collection of the

---

[64]Lindsay, op. cit., p. 2647, 2937.

tax was included as an apparent safe-guard against any overly zealous tax collector spoiling the plan by coercing the payment of the tax.

Sections 176, 177, and 179 deal with the fiscal aspects of the State Corporation Commission which was established by this same constitution. The functions of the Corporation Commission were "legislative, judicial, and executive. It creates, regulates, and supervises all domestic corporations permitted to do business in the state. The legislative functions of the commission are to prescribe rates and classifications for transportation companies; to prescribe rates for transmission companies; and to prescribe other regulations, such as demurrage charges."[65]

In addition to the above discussed article on taxation and finance, the constitution of 1902 devotes considerable attention to corporations in Article XII. It may be argued that the intent of the convention delegates was to secure governmental control of commerce in the state of Virginia. At the end of the Civil War, Virginia had primarily an agricultural economy.[66] The period following the War witnessed considerable economic

---

[65]F. A. Magruder, Recent Administration in Virginia, (Baltimore: Johns Hopkins Press, 1912), p. 151.

[66]Morton, op. cit., p. 345-353.

change in that large plantations, which were no longer profitable as a result of the war, were often divided into small farms. The war was responsible for the destruction of a significant portion of the infrastructure in the state. It appears that during reconstruction, the Carpetbaggers imported not only their political views, which were rejected by the white Southerner, but also brought along with them what appears to be the roots of the industrialization that occurred in Virginia from 1870 to 1900's. A criticism of the constitution of 1870 which, as shown above, was the product of Northerners, was that its fiscal policy favored the growth of cities. "One of the greatest factors in transforming the social and economic life of Virginia was the development of the railroads."[67] In 1860, there were 1,350 miles of railroad in Virginia.[68] By 1885 the mileage figure was increased to 2,430 with 32 railroads in operation.[69] Prior to the Civil War, railroad development was financed through state government and local government investment which produced a significant portion of the state public debt.[70] The pre-war state debt,

---

[67]Morton, op. cit., p. 358.

[68]Ibid., p. 356.

[69]Ibid., p. 360.

[70]Morton, op. cit., p. 364 and McDanel, op. cit., p. 59.

the debts incurred as a result of the war, and the wartime destruction of the railroads provided the impetus for the state government to divest itself of its financial interests in the railroad industry. Examination and synthesis of the various historical accounts indicates that as the state was divesting itself of railroad interests, the railroads were expanding through private investment, and the expansion of the railroads was accompanied by a series of mergers of many of the original railroad lines. Although figures and names of the sources of the investment funds that went into the railroad industry are not readily available, the historical accounts mention the Standard Oil Company and a consortium of Philadelphia financiers as significant investors in the Virginia railroad industry.[71] McDanel indicates, as may be expected, that the corporate interests, especially the railroads, were involved in lobbying and other political activities such as campaign funding of state legislators, and these corporate interests were in opposition to the call for the constitutional convention of 1901-1902.[72] From the situation described above, it may be concluded that the delegates

---

[71]Morton, op. cit., p. 364-66; Bruce, op. cit., p. 381-2; McDanel, p. 59-64.

[72]McDanel, op. cit., p. 61-65.

to the convention of 1901-92, the majority being members of the Democratic party which represented the white southern landed interests, utilized Article VII and VIII, which were the articles dealing with corporations and taxation and finance, in order to control the commercial interests that were being developed in the state of Virginia at the time. It appears that by 1900, a political victor had emerged and that victor was confident that it would remain in power over the indefinite future. With the constitution of 1902, the black was disenfranchised and Northern corporate interests were brought under the control of the Southern Gentry.

The period following the inception of the 1902 constitution may be described as the 'machine era' in Virginia politics. The Democrats were in control of the constitution, the legislature, the judiciary, and the executive. The principal activity in Virginia politics was the determination of who was at the helm from within

the ranks of the Democratic party.[73] The machine metaphor presents a good description of the Virginia scene when one considers state level politics as the unit and local government politics as the components which when assembled form the unit. The backbone of the organization's power was built upon a system of political loyalties where local governmental office holders were able to exercise considerable power within their jurisdiction. The local official was often compensated for his services in government administration by a fee system in which the official pocketed revenues collected from fines, permits, and other miscellaneous charges.[74]

The constitution of 1902 remained in effect as the basic organic law for the state of Virginia until 1971.[75]

---

[73]For a thorough discussion of the situation in the early 1900's, see Jack Temple Kirby, Westmoreland Davis, (Charlottesville: University Press of Virginia, 1968); and Allen W. Moger, Virginia: Bourbonism to Byrd, (Charlottesville: University Press of Virginia, 1968). Also see Wythe W. Holt, Jr., "Constitutional Revision in Virginia, 1902 and 1928: Some Lessons on Roadblocks to Institutional Reform," Virginia Law Review 54, no. 5, (June 1968) p. 903-927.

[74]Moger, op. cit., p. 340.

[75]A. Sturm, "The Constitution of Virginia: 1776 and 1976," in Sandra H. Wilkinson, ed., Governing the Commonwealth Then and Now: A Bicentennial Report for Virginia, Institute of Government, (Charlottesville: University of Virginia, 1978), p. 15.

During the 69 years that the constitution of 1902 was in effect, there were several major revisions along with many amendments to the original document.[76]

The first amendment to the constitution of 1902 that is of interest to this study occurred as a result of the legislative initiative method and was ratified on November 2, 1920.[77] This amendment is quite obscure in Virginia's history; however, it is important for this study because it was a direct expansion of the government's power to tax. (A thorough literature search revealed no scholarly commentaries on this amendment.) The amendment modified Section 136 of the 1902 constitution, which in its original form placed a rate limit of five mills on the dollar that local governmental units could levy for school purposes. The amendment removed the rate limit completely and replaced the limit with a statement that empowered the legislature to establish the rate of taxation by a statute.[78]

---

[76] See William J. Van Schreeven, The Conventions and Constitutions of Virginia 1776-1966, (Richmond: The State Library, 1967), p. 17-22, for a listing of the amendments from the date of inception up to 1962.

[77] Ibid, p. 18.

[78] Acts of Assembly, (Richmond: Superintendent of Public Printing, 1918), p. 789, 1920, 93.

Due to the lack of literary discussion of this amendment, one can only speculate as to the reason behind the passage of it by the legislators and its ratification. Considering the fact that the Democratic 'machine' was fully entrenched in Virginia politics by 1920, and the fact that voter turnout in elections was quite low and generally supported machine legislation, it may be deduced that the amendment was the product of the machine's quest for power. Clearly, the amendment increases the machine's power over taxation because the amendment empowered the machine-dominated legislature to set the maximum rate of taxation. The amendment also increased the machine's influence over local governments and their officials because local governments power to tax is derived from the legislators in this particular case. Consequently, the machine could use its newly acquired power over local taxation as a lever to keep local politicians in line with machine policy. Perhaps the fiscal amendment of 1920 is an example of how governments can expand through the use of the constitutional amendment.

On November 8, 1927 two additional constitutional amendments that pertain to Virginia's fiscal constitution were ratified by the voters. The first amendment of 1927 modified Section 22 by exempting wives and widows of veterans of the Civil War from the poll tax levy as a

qualification for voting. Although this amendment primarily deals with suffrage, nevertheless it is a part of the fiscal constitution of 1927 Virginia and furthermore the amendment presents a base limit on the state's power to tax.[79] It appears that the purpose of this amendment was to gain the political support of the white woman voter in Virginia. The political machine in Virginia had to contend with the passage of the Federal Constitutional amendment that extended suffrage to women. The literature indicates that the Virginia political machine was worried about the enforcement of the fifteenth amendment of the U.S. Constitution which would have brought forth the negro vote. With this amendment it appears that the machine was able to disenfranchise the black woman voter since few would qualify as wives of widows of Civil War veterans. In addition the amendment appears to serve as a peace offering to the white woman over the machine's opposition to the ratification of the 19th amendment of the U.S. Constitution.[80]

The other amendment that pertains to this study modified Section 170 of the Virginia 1902 constitution by allowing local government units to levy special

---

[79]Van Schreeven, op. cit., p. 19.

[80]Moger, op. cit., p. 342.

"assessments upon abutting landowners for local public improvements."[81] As may be noted, this amendment completely reverses the provision that was included in the constitution by the convention of 1901. Once again the lack of historical documents and scholarly commentaries presents a vacuum in the constitutional history of Virginia that pertains to this amendment. However, considering the nature of this amendment and the fact that it was incorporated at the early stages of Harry F. Byrd's governorship it is evident that this amendment was an early attempt toward fiscal reform by the Byrd administration. Byrd's basic fiscal philosophy was "pay as you go" and was considered one of his most significant policies.[82] According to the historical literature, Byrd was credited with having a keen conservative attitude toward governmental fiscal responsibility, and although he was credited with the control of perhaps the most powerful eras of the Virginia political machine, he utilized his power toward governmental efficiency and fiscal responsibility. The results of the Byrd fiscal program may not have achieved a desirable end; he nevertheless attempted to operate government as a "business."[83]

---

[81] Van Schreeven, op. cit., p. 19.

[82] Moger, op. cit., p., 342.

[83] Ibid,. Chapter 14; and Kirby, op. cit., Chapter 9.

When one considers Byrd as an administrator, it becomes plausible that he would have subscribed to the theory that abutting landowners would indeed benefit more from public projects such as sewers and side walks than landowners located on non-abutting land, and the most expedient way of generating the required revenues for the development of such infrastructure without a general increase in taxation would be to levy a special assessment on the abutting landowner. Byrd as the politician, would have used the increase in local governmental official's power as a 'carrot' to maintain the strength of the machine.

By far, the most significant fiscal changes in the Virginia constitution since its inception in 1902 were the product of the Byrd administration with the constitutional revision of 1928. Harry Byrd was elected to the office of Governor in 1925 and took over the duties of governor "... in 1926 at a time when the organization was on the defensive because of Virginia's backwardness, and in danger of losing its hold on the state. He knew the situation was precarious, and that he would have to move agressively, with a sweeping program of reform, in order to keep control."[84] Although the organization may have

---

[84]Virginius Dabney, Virginia the New Dominion, (Garden City, New York: Doubleday Publishing Company, 1971) p. 481.

been in trouble with respect to control of state politics, Byrd was in command of the machine and was able to initiate his plans for the reorganization of the state government with little or no opposition from the legislators.[85] Under the authority of the legislature, Byrd retained the services of the New York Bureau of Municipal Research to make a study of the organization and management of the Virginia state government. The advice of the Bureau was formed into a legislative plan by a committee headed by William T. Reed "...a Richmond tobacco manufacturer and confidant of Byrd...," and was then 'pumped' through the legislature as a series of constitutional amendments and legislative statutes.[86] According to Holt, "the net result of the revision was contrary to this rhetoric; [the claim that the government structure would be improved and democracy advanced] the machine's position was strengthened, the ability of the government to perform its duties effectively was lessened, and the degree of democracy was diminished. Although many minor revisions were made in the constitution in 1928, the major changes were three: (1) incorporation of the "pay as you go" policy into the constitution; (2) streamlining and

---

[85] Dabney, op. cit., p. 482.

[86] Ibid.

centralizing of the executive branch of government, chiefly through adoption of the "short ballot;" (3) adoption of the so-called "tax segregation" system.[87] The figures perhaps rebuff the critics of the Byrd plan. Upon Byrd's ascendance into the office of governor the state treasury had a deficit of $1,368,000, and when Byrd left his position in 1930, the treasury had a surplus of $4,250,000, while taxes were reduced by $5,500,000 during this term.[88]

In terms of the constitutional tax limits that were incorporated into the Byrd revision which was accomplished through the legislative initiative method, the score appears to be on the liberal side; in other words the revision of 1928 removed more tax limitation provisions than were installed. The uniformity clause of Section 168 was reworded with no substantial changes from the provision as found in the original constitution of 1902. Perhaps the most significant amendment was included in Section 171 which introduced into the Virginia constitution a political subdivision tax limitation provision such that the property tax was reserved for the exclusive use by local/county governmental units. The amendment to Section 171 was the essence of Byrd's tax segregation plan. The

---

[87]Holt, op. cit., p. 914.

[88]Dabney, op. cit., p. 484.

final tax limitation provision that was included in this series of constitutional amendments was the strengthening of the base limit found in Section 183. The amendment to Section 183 extended the base limits of the 1902 version of this section to include almost all non-profit property in the state. On the liberal side, the 1928 constitutional amendments removed all of the 1902 rate limits incorporated in Sections 176 through 181 pertaining to the taxation of corporations. With the provisions set forth in Sections 176 through 181, the machine-dominated legislature gained complete discretion as to the taxation of corporations through the Corporation Commission. Thus, it is evident that governmental taxing powers were radically expanded.

The constitution of 1902 as amended in 1928 remained in effect until the limited constitutional convention of 1945 was called in order to enact a constitutional provision that would eliminate the poll tax requirement for military personnel. Under the enabling act for the convention, the convention could only consider the military exemption issue even though there was considerable public sentiment for a complete repeal of the poll tax

requirement for voter qualification.[89] The convention method of initiating constitutional change was used in order to bypass the constitutional requirement that legislative proposals be considered by two sessions. The convention did not submit the amendment to the voters, but followed the precedent of the convention of 1902 and ordained the amendment as part of the constitution. No other changes were made in the constitution by the convention.

In 1946, an amendment to Section 183(a) of the constitution eliminated the tax exempt status of Federal Government property located in Virginia. According to Howard, states cannot tax federal property; consequently, this amendment to the Virginia constitution has no real meaning.[90] This amendment is mentioned here in order to maintain as complete an account as possible of the fiscal evolution of the Virginia constitution. However, due to the ineffectual nature of this amendment, further consideration of it will be omitted.

In 1960, a clarification was made to Article XVII dealing with the poll tax requirement for eligibility to

---

[89]Francis Howard Heller, Virginia State Government During the Second World War, (Richmond: Virginia State Library, 1949), Chapter 1.

[90]Howard, Constitution of Virginia, Vol. II, p. 1074.

vote in which the military exemption that was introduced in 1945 was reenacted. This amendment did not provide any tax limit even though the subject of the amendment was the poll tax. Basically, the amendment extended the exemption status of military personnel from the payment of poll tax as a requirement to be eligible to vote.[91] Fundamentally, the fiscal constitution in the state of Virginia was not significantly changed from the Byrd amendments of 1928 until 1971.

By the end of the 1960's the Virginia political machine was showing signs of old age. The leaders of the machine were dying off, while the civil rights acts and the Supreme Court paved the way for a considerably more liberal element of the population to express their views in the voting booth. In short, these factors contributed to the election of Mills Godwin as Governor of Virginia in 1966.[92] Godwin successfully proposed to the General Assembly the need for a constitutional revision and obtained the authorization to create the Commission on Constitutional Revision.[93] The Commission submitted its report to the Governor and the

---

[91]Van Schreeven, op. cit., p. 21.

[92]Dabney, op. cit., Chapter 39.

[93]A. E. Dick Howard, "Constitutional Revision: Virginia and the Nation," University of Richmond Law Review 9, no. 1 (Fall 1974), p. 4.

General Assembly in January of 1969, and the General Assembly proceeded to review the report and modify its provisions to form a series of constitutional amendments to be submitted to the voters of Virginia as the constitution of 1971.[94] The new constitution was submitted to the voter in the form of four questions which would be voted upon separately. Of the four proposals on the ballot, Proposal 1 contained the main body of the proposed constitution and included the major part of the fiscal constitution for the state. Proposal 2 dealt with lotteries and Proposals 3 and 4 dealt with general obligation bonds and revenue bonds.[95] Thus, the constitution of 1971 was written by the legislature through the legislative method of proposing constitutional amendments. In contrast to previous constitutional changes, considerable effort was made to inform the voter as to the features of the proposed constitution throughout the state; thus for the first time since the Civil War the fundamental notion of democracy was exercised in the ratification of the organic law of the state.[96]

---

[94]Howard, "Constitutional Revision: Virginia," p. 4-8.

[95]Ibid, p. 8-9.

[96]Ibid., p. 16-21.

The constitution of 1971 in general reflects the public sentiment of the late 1960's and early 70's. The constitution is quite liberal as compared to its predecessors in that it promotes universal suffrage, equal opportunity, and perhaps most of all the idea that government can solve all of society's problems. In keeping with this line of thought, the fiscal constitution was written with public sector spending in mind; consequently there are few tax limitation provisions incorporated into the document. The only tax limitations in the constitution occur in Section 1, where the uniformity clause was carried forth with little change, Section 4 which carried forth the political subdivision tax limit originated in the Byrd era, and Section 6 which carried forth the base limits of the Byrd era. The constitution of 1971 has remained in effect as written up to 1980. There have been no amendments to the fiscal portion of the constitution during the nine years of its life. In the wake of the California 'tax revolt' future tax limits may be expected.

The state of Virginia was formed at the time of the American Revolution and it was not until Virginia's third constitutional convention that constitutional tax limits entered the picture. The first set of tax limits affected the growth of government as a by product, and the motive for implementing the constraints was indirectly related

with government abuse of its taxing power. The motivation behind Virginia's first constitutional tax limitation provisions was an attempt by the proponents of the limits to protect the institution of slavery as an economical method of labor-employer relations. It appears that the tax limits were intended not to produce an equatable bases of taxation but rather the limits were to maintain the status quo of the inequitable form of taxation that existed at that time. With the adoption of the constitution of 1850, Virginia had become entrenched in the struggles associated with slavery and racism. This obsession in Virginia of keeping the black man at the bottom of the social stratum not only brought about the Civil War but also became a characteristic of politics in Virginia well into the twentieth century. The era of reconstruction after the Civil War was a period of political struggles that was fueled by racism and nonmarket competition for the spoils of the war ravaged territory. The competition for the spoils of war involved the use of constitutional tax limits to promote the political power of the proponents of the amendments. Following reconstruction, once a dominant coalition had assumed power, constitutional tax limits were used as a part of a general scheme to disenfranchise the black man and to provide political control over commercial activity in Virginia.

There are however, examples in Virginia's history that point out that constitutional tax limits were used as a means of curbing abuses on the part of the tax collector. Such examples occurred in the constitution of 1870 and also in the revisions of 1828 under the direction of the Byrd machine. Although the Byrd machine utilized constitutional tax limits to enhance the fiscal soundness of the state's taxing policy, it must be recognized that on net the reforms of 1928 increased the taxing power of the government to a much greater extent than they reduced it. In general the Byrd era reforms appear to have been those that best promoted the power of the Byrd machine in dominating state politics. Thus, Virginia's constitutional evolution has been quite extensive with the dominating characteristic being that constitutional tax limits have been primarily used to promote the political power of a coalition that was able to establish control over government.

CHAPTER 6

CASE II: NEW YORK

Like Virginia, the state of New York was one of the original thirteen colonies that broke away from England in 1776 and formed the union of states known as the United States. As late as May, 1775 the notion of Colonial independence was not popularly entertained even though there was considerable conflict between the Colonies and England over the issues of taxation and legislative representation.[1] Relations between the mother country and the colonies deteriorated rapidly to the extent that on May 16, 1776 the second Continental Congress in preparation for the inevitable suggested that the individual colonies adopt a suitable form of government that would enable the colonies to function independently of the mother country.[2]

The situation in New York paralleled the scene in Virginia in that both colonies were agriculturally based societies, and differed to the extent that

---

[1] DeAlva S. Alexander, A Political History of the State of New York, Vol. I (Port Washington, NY: I. J. Friedman Publishing Company, 1909), p. 2.

[2] Ibid., p. 1.

mercantile trades were at a higher state of development than in Virginia. "New York had probably the most aristocratic social structure of all the British American colonies. Landlords in alliance with Manhattan merchants dominated the political scene, overawing royal governors and the common folk alike."[3] "Politics in the state of New York immediately before and after 1783 is the story of the struggle of a propertied, intelligent minority to maintain itself against a less well-to-do, less sophisticated majority."[4] "Geographically, the majority found its strength in the agricultural upcountry, in the rural sections as opposed to the urban; and economically and socially, among the lower classes, the patriot mechanics or small farmers of the revolution."[5] Both factions entered into a competitive political race in which successive committees were formed, where each committee claimed to supersede the powers of the former committee and where each successive committee was more radical in terms of the association of the colonies to the mother

---

[3]David M. Ellis, James A. Frost, Harold C. Syrett, Harry F. Carman, A History of New York State, (Ithaca, New York: Cornell University Press, 1967), p. 71.

[4]E. Wilder Spaulding, New York in the Critical Period 1783-1789, (Port Washington, NY: Ira J. Friedman, Inc., 1963), p. 84.

[5]Ibid.

country. The result of this political process was the Third Provincial Congress which appears to have been conservative in terms of its political composition.[6] In following the above-mentioned recommendation of the Continental Congress, the Provincial congress chose to have the first constitution for the state of New York written by a convention whose delegates were elected by the people. "The voters, who were probably freemen, freeholders, and person of property valued at £40, showed themselves as usual to be more radical than their representatives in favoring independence and the formation of a new government. It was this Fourth Provincial Congress which met at White Plains on July 9, 1776, under the name of the "Convention of the Representatives of the State of New York," which framed the first state constitution under which New York lived for forty-five years."[7]

The New York constitutional convention began on March 12, 1777 at which John Jay, a conservative, presented his draft of the new constitution and the debate over details was commenced by the 66 member delegation. Jay's remarks that the constitution that was drafted was liberal stemmed from the fact that the majority coalition

---

[6]Spaulding, op. cit., p. 86.

[7]Ibid., p. 86-87.

at the convention, "led by John Morin Scott, believed in the reign of the people."[8] The resulting constitution concentrated governmental powers in the legislature and embodied many of the features of the colonial government along with the relevant portions of English common law.[9] The first constitution for the State of New York did not incorporate any tax limitation provisions, and in fact did not mention finances, such that the reader of the document would conclude that there was no fiscal constitution for the newly formed state. The constitution of 1777 was not submitted to the voter for ratification, but was ordained in effect by the convention on April 22, 1777.[10]

As may be noted by the dates concerning the meeting of the constitutional convention, the period involved in writing the constitution was extremely short. The constitution was drafted rather quickly due to the ongoing war between the Americans and the British. One may speculate that the document would not have been as liberal had the convention had time to debate the issues to the extent that conventions usually do. According to

---

[8]Alexander, op. cit., p. 13.

[9]Ibid., p. 13-16.

[10]Ibid., p. 15.

Alexander, the constitution was praised in other states as an excellent document.[11] However, the writing of constitutions during this period of American history was experimental. Delegates had no models to follow, nor was there a developed theory of government and constitutions at the time. Clearly, the delegates were facing a high degree of uncertainty, and perhaps this is the reason that the document was acceptable to the various factions that voted in favor of the constitution during the final days of the convention.

The constitution of 1777 remained in effect until 1821. During this period the constitution was amended by a convention in 1801. The amendment of 1801 did not pertain to the fiscal system of the state; it addressed the relationship between the governor and the Council of Appointment.[12] Due to the topic of the amendment, it is beyond the scope of this study and consequently will not be further considered. By 1821, the spoils system in conjunction with the Council of Appointment, inefficient administration, and suffrage issues led to popular support for constitutional revision, which was resisted by the

---

[11] Alexander, op. cit., p. 15.

[12] Ibid., p. 115, and Ellis, et. al., op. cit., p. 135.

politicians in office until 1821, when popular sentiment became overheated.[13]

The constitutional covention for the state of New York met from August 28 to November 10, 1821.[14] The convention was dominated by a coalition known as the Bucktail party which at that time was considered somewhat liberal in its political persuasion. "The convention's work centered about three principles - broader suffrage, enlarged local government, and a more popular judiciary system."[15] The convention remodeled the constitution of 1777 into a document that was more democratic in that it reflected the rapid expansion of population in the Western sections of the state and established the legislature as the dominant lawmaking body with the governor having a limited veto power similar to the Federal Constitution. The constitution of 1821 extended the elective franchise to almost all white men and granted limited suffrage to the black voter. It is in Article II, the article dealing with the elective franchise, that the first constitutional tax limit was introduced into New York's organic law. According to Article II, any white male of age twenty-one or more who met the resident requirements and

---

[13]Ellis, et.al., p. 146; Alexander, op. cit., p. 298.

[14]Alexander, op. cit., p. 298.

[15]Ibid., p. 299.

paid a tax to the state was qualified to vote. The black citizen, in addition to meeting the same requirements as whites, had to posses "a free hold estate of the value of two hundred and fifty dollars, over and above all debts..." in order to qualify to vote.[16] In addition, Article II states that "and no person of color shall be subject to direct taxation unless he shall be seized and possessed of such real estate as aforesaid."[17] Thus a base limit on the taxation of blacks was introduced by this provision to the suffrage article.

According to the historical accounts of the debates in the convention of 1821, the base limit on the taxation of blacks that did not qualify to vote was issued as a means of compensating the black citizen for the more stringent suffrage requirements imposed upon them. According to Ellis, et.al., there emerged in the debates three factions concerning the suffrage issue. The most liberal position was taken up by the Federalists, who desired universal manhood suffrage; the conservative position was advocated by the "radical" democrats who desired to exclude the black vote completely; the compromise position which advocated the proposition that was

---

[16]Ben:Purley Poore, Federal and State Constitutions of the United States, Vol. I and II, (New York: Lenox Hill Publishing Company, 1924 second edition), p. 1343.

[17]Ibid.

accepted by the convention, was led by Van Buren.[18] According to the accounts of the debates, the reasoning behind the restriction placed upon the black voter did not primarily stem from racial hatred, although racism was prevalent at that time, but stemmed from the concern that the black, due to his socioeconomic position in society, would not present any intelligence to the voting process. Delegate Briggs in debate indicated that the "...qualification ought not be imposed on blacks any more than whites." While Delegate Kent stated that "...it was true that the blacks were in some respects a degraded portion of the community, but he was unwilling to see them disfranchised and the door eternally barred against them. The proviso would not cut them off from all hope, and might in some degree alleviate the wrongs we had done them. It would have a tendency to make them industrious and frugal, with the prospect of participating in the right of suffrage." In the midst of the discourse, Delegate Judge Platt indicated that he would prefer that both whites and blacks indigent be disfranchised not on the basis of color but on the basis that the indigent was unfit to

---

[18]Ellis, et. al., op. cit., p. 147.

vote due to his presumed lack of intelligence and character.[19]

The second constitutional tax limitation provision in the 1821 constitution was an earmark of the duties on the manufacturing of salt and on auctioned goods toward funding of construction of navigable water ways within the state.[20] Due to the lack of accounts of the debates an analysis of the issues concerning the incorporation of this provision must be speculative. However, according to the historical accounts of the era, New York was experiencing a period of rapid growth and was competing with other states for industrial development and a market for the products of the state. The strategy followed by the public sector was to develop a cheap means of transportation, primarily through the construction of canals, in order to attract industry and lower the price of goods produced in upstate New York. According to Sowers, "Taxation played a very unimportant role during the first fifty years of the state's existence. The expenses of the state were small and the revenues were obtained in other

---

[19] C. Z. Linkous, The Constitutional History of New York From the Beginning of Colonial Period to the Year 1905, Vol. I, (Rochester, NY: Lawyers Cooperative Publishing Company, 1906), p. 661-665.

[20] Poore, op. cit., p. 1348.

ways than from direct taxation. The chief sources of revenue were the receipts from the sale of public lands, the revenue derived from the investment funds and several indirect methods of taxation which had been employed in the state from an early period, such as auction duties, lotteries, pedlar's licenses, and fees of public officers."[21] From the above account of the concerns in New York in 1821 it is evident that the earmark was not intended as a means of restricting taxation, but rather as a means of insuring funding of public good projects. Obviously, the earmark must have maintained taxation at a low level since its direction of revenue to desired and planned projects would prevent the necessity of the state levying a tax for such purposes.

The final new feature to New York's organic law that was incorporated into the constitution of 1821 was a provision for future amendments. Accordingly, Article VIII stipulates that the legislative method of initiating a constitutional amendment may be used under this constitution. According to Article VIII, any proposed amendment must be passed by both branches of the legislature in two separate sessions with a simple majority in the first round of voting and a two-thirds majority in the second legislative

---

[21]Don C. Sowers, The Financial History of New York State, (New York: AMS Press, 1969), p. 114.

session; then the proposal must be submitted to the general electorate where a simple majority is needed to incorporate the proposal into the constitution. No mention is made in the constitution of 1821 concerning the convention method of modifying the constitution.[22]

As early as 1768, public discourse entertained the notion of building a system of canals in order to develop a system of relatively inexpensive transportation to facilitate the development of the region west of the Hudson and Mohawk rivers. Due to the revolution, these public projects were not considered again until 1784 when Christopher Colles, an engineer, petitioned the General Assembly to consider a system of canals to be built in upstate New York. In 1792 the legislature incorporated the Western and Northern Inland Lock Nagigation Companies, thus commencing a series of public projects that would dominate fiscal issues for the next 90 years.[23] "The canal paid quickly the debt of its construction, about $7,000,000. Then its revenue was turned toward defraying general governmental expenses. So far had the tolls exceeded expectations that dependence was being placed on

---

[22]Poore, op. cit., p. 1348-49.

[23]Noble E. Whitford, "The Canal System and Its Influences," in Alexander C. Flick, ed., History of the State of New York, Vol. 5, (New York: Columbia University Press, 1934), p. 300-10.

them to pay for large improvements, besides helping with general expenses. "...in 1825, the canal commissioners had made some extravagant predictions concerning tolls, and these were being more than fulfilled. There had been no direct taxes since 1827, and public sentiment was opposed to borrowing money which might cause their renewal."[24]

From the description of the financial situation concerning the canal system, especially the revenue generating capability of the canal tolls, it is evident that the political incumbents could take advantage of the situation by reducing the taxation of salt and auction goods, thus securing public support for reelection purposes. Due to the fact that the duties on salt and auction goods were incorporated into the constitution of 1821, any changes in the taxes would require a constitutional amendment. The first such change was incorporated in an amendment ratified in 1833 by a vote of 93,260 to 7,860. The amendment to Article VII, Section 10 empowered the legislature to reduce the rate of taxation on salt to a minimum of six cents per bushel of salt but retained the earmark of the salt tax directing the revenue of tax to

---

[24]Whitford, op. cit., p. 323-24.

canal development.[25] The second amendment to the fiscal constitution of 1821 was ratified in 1835 by a vote of 68,126 to 8,765. The amendment of 1835 removed all but $33,500 of the earmark on revenues generated by the salt tax and the auction tax, and eliminated those parts of Article VII that related to the amount of the taxes.[26]

The success of the canal system in generating revenues for the state was indeed a boon for public goods projects and especially for debt financing of such projects. Accordingly, there was no state tax levied for the years 1826 to 1842.[27] As may be expected, the financial success of the canal system as a source of revenue for the state was shortlived. Traffic on the canals appears to have reached capacity by the year 1835; consequently the legislature proceeded in authorizing the expansion of the canals with enthusiasm and more debt financing to the extent that by the year 1839, the state had committed itself to a debt of approximately $30,000,000.[28] During this period, the legislature began

---

[25] Poore, op. cit., p. 1350.

[26] Ibid.

[27] John A. Fairlie, The Centralization of Administration in New York State, (New York: Columbia University Press, 1898) p. 160.

[28] Ibid, p. 152.

lending the state's credit to private firms that were engaged in the development of railroads. The policy of extending loans to the private railroad interests resulted in a state credit of $5,000,000 with the railroads. The railroads proved to be disastrous to the revenue generating capability of the state owned canals. It is elementary economics that the advent of the railroads would eliminate the monopoly on transportation held by the state. Furthermore, one would expect that the railroads would have a competitive advantage over the canals because of the greater speed of the trains, the ability of the trains to operate year round, and finally the flexibility of rail routing as compared to the geographical dependence of the canal routes. Competition from the rails was so keen that the legislature at first banned the rails from transporting freight. "In 1847 the legislature permitted the railroads to carry freight provided they paid equivalent tolls to the canal fund. Shippers kept complaining about the high rates, and after considerable agitation the tolls were repealed in 1851."[29]

"These events followed shortly upon the commercial panic of 1837... The revelations of the canal commissioners (concerning the extent of state debt) had a disastrous effect upon the credit

---

[29]Ellis, et. al., op. cit., p. 251.

of New York State. Its stocks rapidly depreciated, its treasury became practically empty, money could not be borrowed for public uses for long terms, and it was with great difficulty that temporary loans could be procured to meet pressing emergencies."[30] The result was that for the first time in several years, the state levied a direct tax on real and personal property in accordance with the "pay-as-you-go" policy initiated in 1842 under Governor Wright.[31] Although the "pay-as-you-go" policy was accepted by the public, the people's natural distaste for taxes and the realization that sound fiscal policy does not rely upon the extensive use of public debt to finance public good projects generated extensive support for a constitutional convention aimed at reforming the state's fiscal constitution. Accordingly, the popular vote on the convention question in the 1845 elections was 213,257 in favor of the convention and 33,860 opposed.[32]

The convention of 1846 met on June 1, 1846 in Albany, New York and has been acclaimed the "people's convention" since the delegates were elected on the basis of manhood

---

[30] J. Hampden Dougherty, Constitutional History of the State of New York, (New York: Neale Publishing Company, 1915), p. 153.

[31] Ibid.

[32] Ibid.

suffrage (actually women and blacks that could not meet the property qualifications could not vote; consequently the description may be somewhat hedging on the notion of democracy). "The cardinal distinction between this convention and its predecessors is that its work seemed chiefly to be a revesting of delegated power in the people of the State. The chief innovation of the convention of 1846 was in limiting the sphere of legislative action. It deprived the legislature of power to incur debts or undertake costly schemes of public improvement without direct popular consent, and forbade its loaning the credit of the state to private capital, thus putting into the organic law the principles for which Michael Hoffman had earnestly and successfully contended in 1842."[33]

The product of the convention, the constitution of 1846 was ratified by the people of New York in November of 1846 by a vote of 221, 528 in favor of the constitution and 92,436 against the constitution.[34] As mentioned above, a primary concern of the convention was the restriction on the power of government to incur debt. Constitutional tax limitation as such, did not become a significant feature of the constitution of 1846, presumably because the system

---

[33]Dougherty, op. cit., p. 163.

[34]Poore, op. cit., p. 1351.

of taxation had not been abused during the preceeding years. The exemption on the taxation of black people who did not qualify to vote was retained in Article II, which dealt with suffrage. In Article VII, which is the article that limited the legislature in its power to incur debt, an earmark of tax revenue was included in Section 12. Section 12 stipulates the conditions under which the state could incur a debt and stipulates that any law which imposes a debt on the state's finances must incorporate a tax that would have paid the debt and the interest on the debt. The tax was earmarked strictly for the retirement of the debt and no other purpose.[35]

A final feature of the constitution of 1846 is found in Article XIII, which pertains to the amending of the organic law. In addition to the legislative method of proposing constitutional amendments, Section 2 stipulated that conventions could be used to modify the constitution and stipulated that the convention question be placed on the ballot every twenty years.[36]

The constitution of 1846 was amended in 1854, 1864, 1869, 1872, 1874, and 1884. Except for the amendment of 1874 and 1884, none of the amendments pertain to subjects

---

[35]Poore, op. cit., p. 1353.

[36]Ibid, p. 1366.

that are within the scope of this study. The amendment of 1874 that is of interest to this study pertains to the suffrage article of the constitution. Article II was amended to eliminate the property requirement for the right to vote pertaining to black people. As a consequence of the extension of suffrage to blacks, the tax exemption of unqualified black voters had no meaning and was eliminated from the constitution.[37] The amendments of 1874 and 1884 were proposed by a constitutional commission, which is an extension of the legislative method of amendment proposal.[38]

The constitutional commission performed a study of local governments and reported that localities had assumed massive indebtedness which can be traced back to the development of the railroads in New York.[39] Local governmental authorities enthusiastically supported the construction of railroads by loaning funds and credit to the firms even though the railroads were private firms. The incentive was quite great for localities to be involved financially with the railroads because the rails provided

---

[37]Poore, op. cit., p. 1373.

[38]Ellis, et. al., op. cit., p. 359.

[39]Finla G. Crawford, "Constitutional Developments, 1867-1915," in A. C. Flick, ed., History of the State of New York, Vol. I, (New York: Columbia University Press, 1934), p. 213.

an alternative to the canals, which by their nature were seasonal, for transporting commercial goods upon which the localities thrived. As with the case of the state government, and canal development, local politicians' enthusiasm for railroads overcame their notion of good business policy (this of course may be expected since the politician was not pledging his personal wealth) to the extent that localities became entrenched in debt. It was not until 1881 that a constitutional amendment was introduced to the legislature to curb the abuses of local public finances.[40] The constitutional amendment to Article VIII added Section 10 and was ratified in 1884 and presented cities with not only a debt limit but also a tax limit. The tax limitation provision of the constitutional amendment of 1884 appears to have been a share limit by which cities were restricted to a rate of taxation on real property such that the revenues collected could not exceed a specified percentage of the value of taxable property in the political jurisdiction of the taxing authority.[41] Although the literature is extremely obscure concerning this amendment it is evident that the purpose of this

---

[40]Crawford, op. cit., p. 213.

[41]William J. Quirk and Leon E. Wein, "A Short Constitutional History of Entities Commonly Known as Authorities," Cornell Law Review 56, no. 4, (April 1971), p. 575f.

constitutional restraint upon the taxing power of local governments was indeed a rollback on the expansionary efforts of governmental authorities. Clearly the property owner would have borne the burden of the debts through higher property taxes, which were the principal source of revenue for cities. By this time in New York's history, cities were populated primarily by "common folk" who were the immigrants from Europe (principally Ireland, Germany, France, Holland, and Italy) who arrived in this country during the early 1800's.[42] On the other hand, the politicians were primarily from established New York families and thus may be thought of as the 'landed gentry' in New York State. It may be concluded that the interests of these two groups were not consistent; consequently the stage was set for exploitation. As to the reasoning behind the reform of the abuse, one must delve into the topic of partisan machine politics.

When the constitutional commission of 1872 collected its material on the operation of local governments, the Republican machine dominated the legislature and the governor's office, having just discredited the Democrats through the revelations concerning the Tweed Ring. Apparently, the Republicans did not attempt to reform

---

[42]Richard J. Purcell, "Immigration From the Canal Era to the Civil War," in A.C. Flick, ed., History of the State of New York, Vol. 7, (New York: Columbia University Press, 1934), p. 52-53.

local government administration, especially concerning the development of the railroads, because progress in the upstate region's commercial prosperity appeared to be tied to the development of the railroads. It was not until the office of the governor had succeeded to the Democrats by the election of Tilden, who destroyed the 'Canal Ring,' (a bipartisan alliance that extracted money from the canals) and to Lucius Robinson, a Democrat, that the issue of local governmental indebtedness came into public light. Robinson was hampered by a Republican-dominated legislature; consequently it was not until Democrat Alonzo Cornell assumed the office of governor, with the backing of a legislature that had just been taken over by the Democrats, that a legislatively proposed constitutional amendment reached the polls for ratification. Throughout the period political struggles between the Democrats and Republicans were extremely bitter. "Victory (at the polls in November) meant jobs for the faithful who had got out the vote and an opportunity for graft for those who got the jobs. For the electorate it meant little more than a change in names without a change in policies. Upstate Republicans could be as corrupt as Tammany Democrats, and officials from both parties received kickbacks from contractors, falsified their accounts, and exacted political contributions from

their subordinates on the public payroll."[43] The downfall of the Tweed Ring of the Democrats in 1872 meant that the Democrats would acquire a new 'boss.'[44]

Throughout most of the 1800's partisan politics dominated New York's political activity. Among the most prominent issues were the canal system, legislative apportionment, political machines, an inefficient judiciary, and as mentioned above, state debt. Although abuses of governmental power were prevalent throughout the 1800's, taxation does not appear in the literature as an important issue in terms of the levels of taxation or the use of governmental taxing power as a political weapon. Such was the case leading up to and during the constitutional convention of 1894. The constitutional convention should have been held several years earlier; however, the legislature failed to provide the necessary legislation in 1887 to enable the convention to convene due to partisan politics.[45] The primary issues dealt with by the convention of 1894 were the apportionment of the legislature, reorganization of the judiciary, suffrage and elections,

---

[43]Ellis, et. al., p. 353-354.

[44]For a complete discussion of the political situation in New York at this time in history, see Ellis, et. al., op. cit., Chapters 27 and 28.

[45]Crawford, op. cit., p. 215.

forest lands, corporate franchise, the penal system, mental asylums, and education.[46] The constitution of 1897, the product of the convention of 1894, contained the basic elements of a fiscal constitution. The most notable features of the fiscal constitution of 1897 were the limitations on the powers of the legislature to incur debts and the prohibition of the extension of the State's credit to private interests. One of the constitutional tax limitation provisions that were incorporated into the constitution occurs in Article VII, Section 4 which stipulates the conditions that must be met in order for the state to incur debts for special projects. Accordingly, when a debt is incurred, Section 4 mandates that the state levy a tax that is specifically earmarked toward the repayment of the debt and the interest.[47] In addition the convention carried forth the tax limitation provisions of Article VIII, Section 10 which was discussed above.

Following the inception of the constitution of 1897, constitutional development proceeded through a series of legislatively proposed amendments. Out of the total of thirty amendments that were proposed by the legislature,

---

[46]Crawford, op. cit., p. 216.

[47]William F. Swindler, ed., Sources and Documents of United States Constitutions, (Dobbs Ferry, NY: Oceano Publishing Company, 1977), p. 263.

twenty-two were approved by the voters. The amendments did not deal with taxation, but were concerned with the judiciary, city debts, state highways, and workmen's compensation.[48]

In April of 1914, the voters approved a call for a state constitutional convention in accordance with the provisions on conventions in the 1897 constitution.[49] The constitutional convention of 1915 met on April 6, 1915 and submitted its work with no substantive changes to the fiscal constitution, to the voters in November of 1915. The proposed constitution was submitted in four separate sections and each was defeated by the voters by large majorities.[50]

During the years following the constitutional convention of 1915, amendments to New York's fiscal constitution were concerned primarily with details involving state debt and consequently are beyond the scope of this study. It was not until the constitutional convention of of 1938 that the state's fiscal constitution received considerable overhauling.

---

[48] Crawford, op. cit., p. 224-25.

[49] Ibid., p. 228.

[50] Ibid, p. 234.

The constitutional convention of 1938 was convened as a result of the provision in the state's constitution which mandated that the question of whether a convention shall be held on the ballot. According to O'Rourke and Cambpell, the political parties of the era were apparently relatively statisfied with the condition of the constitution to the extent that discussions in the legislature indicated opposition to the calling of a convention and there was no campaigning by the politicians on behalf of the convention.[51] Nevertheless, the voters, primarily in New York City, approved of a convention and forced the political parties into action competing for control of the convention. "The final score, in terms of formal party allegiance, gave the Republicans control of the convention with ninety-one delegates as against seventy-six for the Democrats and a lone Fusion-American Labor party delegate."[52] The Democrats of 1938 were, of course, 'New Dealers,' while the Republicans presented a conservative majority to the convention. Thus, one would expect that the product of the convention would reflect the conservative views of the majority. Considering the fact that

---

[51]Vernon O'Rourke and Douglas W. Campbell, Constitution-Making in a Democracy, (Baltimore: The Johns Hopkins University Press, 1943), p. 62-63.

[52]Ibid, p. 79.

at this point in history the nation had been experiencing a severe depression, it is not surprising to find that the product of the convention contained many New Deal elements that were introduced by the Democratic minority, but these liberal provisions were tempered by the conservative fiscal attitude of the Republicans.

The proposed constitution was submitted to the voters in several separate sections. The first proposal embodied the main portion of the state's fiscal constitution, and "the striking feature of the proposal (is) the large proportion of the amendments it contains which concern either new permissible objects of public expenditure, or new controls over the getting and spending of public money. There is clearly a feeling in the minds of many large groups that government can and should perform more and more services for its citizens, and this feeling has translated itself into a number of amendments. Health insurance, greater aid in railroad crossing elimination, the purchase of railroads for public operation by the city of New York, the transportation of children to and from any school or institution of learning as well as slum clearance and low-rent housing, all exemplify the tendency to extension. The transfer of more and more activities from private to public agencies has of course increased the amount of money to be raised by various taxes and loans,

and contributors of these funds naturally exert a substantial pressure on all law making bodies to pass regulations governing the raising and spending of public money."[53]

The constitution of 1938 as ratified by the voters of New York contains, for the first time, a separate article dealing with the government's power to tax. Although Article XVI of the 1938 constitution is fairly short with only five sections, it represents a major step in the formalization of New York's fiscal constitution. Section 1 of Article XVI introduces into New York's constitution a base limitation on the government's taxing powers in the form of tax exemptions. The base limit is also incorporated into Section 3 where assets held in trust for an out-of-state trustee are considered to be non-taxable and undistributed profits are declared tax exempt; finally the base limit is incorporated into Section 5 where the constitution exempts from taxation the pensions of governmental employees.[54] This provision prohibits the state from levying ad valorem and excise taxes on tangible personal property. Section 4 of Article XVI presents the

---

[53] Arthur E. Sutherland, "Lawmaking by Popular Vote: Some Reflections on the New York Constitution of 1938," Cornell Law Quarterly 24, no. 1 (December 1938), p. 5-6.

[54] Section 3 incorporates an earmark of the type of tax to base as a tax limitation provision in addition to the base limit mentioned above.

only rate structure tax limitation provision in the constitution of 1938. The provision in Section 4 prohibits the taxing authority from practicing tax discrimination in connection with corporations conducting business within the state that were incorporated under federal government laws rather than under state laws. The final tax limits incorporated into the constitution of 1938 occur in Article VIII, Section 10 which carries forth the share limit on the taxation of real property by local governments as was introduced by amendment to the constitution of 1846.[55]

From 1938 to 1979 there have been many changes introduced to the New York constitution, although few of the changes have involved the tax limitation provisions incorporated in the constitution. In 1953, Article VIII, Section 10 was amended by the legislative proposal method. The modification to Section 10 increased the share limit on property taxation for New York City from 2 percent to 2.5 percent of the average total valuation of taxable property in New York City.[56] The reason behind the increase in the city's tax limits was due to the fact that New York City, being a unique case, provides both city

---

[55]"Constitution of New York" in the Consolidated Laws of New York Annotated, (Brooklyn, NY: Edward Thompson Company, 1954).

[56]National Municipal-Review, "News in Review," H. M. Olmsted, ed., (September 1953), p. 401.

governmental services and county governmental services. This factor combined with the general post war expansion of local governmental services brought about a fiscal squeeze that was not experienced by the other cities of the state.[57] Consequently, the taxing ability of the city's government was enhanced by the amendment of 1953 in order to alleviate the fiscal problem of the city.

Except for the 1953 amendment discussed above, no other tax limitation provisions have been added or removed from the constitution of New York State. In 1957 the constitutionally mandated call for a constitutional convention was rejected by the voters of the state, and in 1967 a constitutional convention was held upon approval of the voters primarily to settle issues regarding legislative apportionment. The voters rejected the product of the convention.[58]

New York's origin was quite similar to that of Virginia, however, the focus of political activity followed

---

[57] State of New York Temporary Commission on the fiscal Affairs of State Government, A Program for Continued Progress in Fiscal Management, Vol. 1, (February 1955), p. 122-23 and p. 135.

[58] The New York Constitutional Convention of 1967, Proceedings of the Academy of Political Science, Vol. 28 no. 3, (New York: Columbia University Press, 1967); and Donna E. Shalala, The City and the Constitution: The 1967 New York Convention's Response to the Urban Crisis, (New York: National Municipal League of New York, 1972), p. 105.

a different course due primarily to the different direction in which the economy of New York evolved. Soon after the American revolution, New York established itself as the trade center for the new nation. This fundamental difference between New York and Virginia was the result of a deliberate choice made by the leaders and developers of New York to build the system of inland canals that made New York the gate way for commercial traffic through the Appliachian Mountains. So successful was this canal system in promoting commerce and perhaps more importantly in generating revenues for the state that it was not until the middle of the 1800's that New Yorkers had to contend with any serious taxation. However, even prior to the levy of significant taxes the constitution of New York embodied tax limitation provisions. The constitution of 1821 contained the first tax limit for New York. As was the case in Virginia, the fundamental reason behind the incorporation of the tax limitation device was racism. New York was not a profitable area for the use of slavery consequently, there were few slaves held in New York and the economic impact of slavery was small in comparison to the situation in the South. However, just because slavery was not economically viable in New York does not go to say that New Yorkers were any less racist in their attitudes towards the blacks. It appears that New Yorkers

were not willing to allow the black man to have any significant political power yet it seems that there was concern for the incentives faced by the black man that were to be imposed upon the blacks by the whites. The first constitutional tax limits in New York were actually compensation for those individuals that were disenfranchised.

Instead of slavery, New Yorkers became entrenched in public debt due to the early successes of the canals. It was this propensity to incur public debt along with graft ridden machine politics that fed the incentives to impose restraints upon the government's taxing powers. Thus the restraints in governmental taxing powers was a by product of controlling the proclivity to incur public debt. Because New York did not suffer the consequence of being defeated and the occupation of invading military forces, the political bickering associated with the machine politics of the state did not resort to the constitution as a means of maintaining power. Perhaps the reason behind not using the constitution as a means of maintaining political domination by a particular coalition was due to the close similarities between the primary coalitions that were competing to control the government which is in sharp contrast to the Virginia experience.

CHAPTER 7

CASE III: FLORIDA

The territory of the North American Continent known as Florida was deeded to the United States by Spain on February 22, 1821 by the Adams-Onis treaty and it was not until March 30, 1822, that Congress established a territorial government as a preliminary step toward statehood.[1] Although the principal reason behind Spain's decision to relinquish control of the territory to the United States lies with the aggressive military campaigns waged by the United States military, a contributing factor for the aggression was the inability or perhaps lack of interest on the part of the Spanish effectively to govern the colony. Although Florida was a Spanish colony for over two centuries, by 1763, "Spanish Florida consisted of Saint Augustine, the garrison at Saint Marks, and the struggling settlement at Pensacola. Beyond the reach of the protecting forts at these centers, there was no-man's land inhabited largely by Seminole Indians, with English French traders exercising more influence than did the

---

[1]Charleton W. Tebeau, A History of Florida, (Coral Gables, Florida: University of Miami Press, 1971),p.117-19.

Spanish."[2] From 1763 to 1783 Florida was considered part of the British Empire as a consequence of the Treaty of Paris, but this interval of British occupation ended at the insistence of the Spanish in negotiations between the British, the French and the Spanish in 1779. The British subjects chose to evacuate Florida rather than live under Spanish rule and left the territory by 1783.[3] At the time of the transfer of Florida to the United States, Tebeau claims that the territory was basically a frontier military outpost that depended upon subsidies from the Spanish in order to survive.[4] Tebeau goes on to assert that "The brief British occupation had left almost as much impression upon the provinces as the long Spanish tenure. A few runaway slaves from Alabama and Georgia and a slightly larger number of whites, some of them with slaves, had moved into the Northeastern section of Florida. A larger bank of runaways had gathered in the Apalachicola River area. These, with a small number of Spaniards who elected to remain, made up the population in 1821. Florida had fewer inhabitants than at any time since discovery in 1513 and there were few alien dwellers

---

[2]Tebeau, op. cit., p. 72.

[3]Kathryn Abbey Hanna, Florida Land of Change (Chapel Hill: The University of North Carolina Press, 1948), p. 75-95.

[4]Tebuau, op. cit., p. 133.

in the newly acquired territory."[5] From this it is evident that ideas behind the formation of government in Florida would primarily come from the settlers who migrated from the United States.

Once the issues dealing with the transfer of the territory from Spain to the United States was settled, settlers, primarily from the Southern states, began the migration into Florida. The economy of the newly acquired territory was primarily agricultural with cotton, tobacco, and citrus fruit being the major crops. Tourism was listed as a second and growing industry even at this early date. However, the political development of the territory was to be influenced significantly by the extensive amount of land speculation that began at this early date.[6]

Upon the proclamation of the Adams-Onis treaty, President James Monroe named General Andrew Jackson as the first governor of the territory and filled the top ten positions of the new government with people to whom he owed favors.[7] Jackson filled the remaining positions with cronies of his own which appears to have been the basis

---

[5]Tebeau, op. cit., p. 134.

[6]Hanna, op. cit., p. 167-68. Also see Arthur W. Thompson, Jacksonian Democracy of the Florida Frontier, (Gainesville: University of Florida Press, 1961), p. 3.

[7]Tebeau, op. cit., p. 119.

of political power within the territory.[8] According to Thompson, "political and economic affairs within the territory remained firmly in the hands of the Jackson appointees and followers. Like-minded individuals, many of them from Virginia, continued to flow into the area during the twenties and the early thirties, building up the strength of the original band. "The Nucleus," as this group was commonly referred to, entrenched itself across the Northern settled tier of the territory from St. Augustine to Pensacola."[9] Jackson's cronies were able to accumulate considerable wealth by speculating in land and later turning to slave holding and cotton plantations. These same individuals are credited with the establishment of the banking system (in the territory) that appears to have been responsible for a considerable amount of abuse of the credit system within the territory.[10] Although political parties had not evolved in the territory until after statehood, this coalition of Jackson's followers became "the core of the Florida Whigs" and paradoxically the old "Jackson men" would bitterly oppose

---

[8] Thompson, op. cit., p. 3.

[9] Ibid., p. 3.

[10] Ibid., p. 3-6.

the rise of the newer political and economic tendencies embodied in the "Jackson Democrats."[11]

By 1837, Govenor Call, one of the original Jacksonian cronies, along with his supporters, successfully initiated the process of admitting Florida into the Union by holding a territory-wide referendum on the issue. The selection of delegates to the constitutional convention occurred after the bank panic of 1837 with the result that political factions were formed on the basis of pro and con the banking establishment. This division in the coalitions that were to participate in the convention was the first sign of political partisianship that would dominate the atmosphere of the convention.[12]

Florida's first constitutional convention met in St. Joseph, Florida in December of 1838 and completed its work in January of 1839. "Constitution making was actually a rather simple process. The constitutions of other Southern states, especially Alabama, provided models, and only on the subject of banking did Floridians depart from the usual pattern."[13] The usual pattern, of course, was to disenfranchise the blacks, entrench slavery into

---

[11]Thompson, op. cit., p. 7.

[12]Ibid, p. 8-11.

[13]Tebeau, op. cit., p. 126.

the society by preventing the legislature from emancipating the blacks, and provide the convention and the legislative initiative as the only methods of amending the constitution.[14] With respect to banking, Article XIII contained several noteworthy features that stem from their previous abuses. Accordingly, Section 5 severely restricted the ownership of property by banks that was not directly used in conducting business to no more than two years. Section 9 limited the payment of dividends to ten percent of the capital stock and required a "safety fund."[15]

Article VIII of the Florida constitution of 1838 deals with taxation and finance. Section 1 of Article VIII contained the only tax limitation provision that was incorporated into the state's first constitution. The tax limit incorporated into Section 1 was a rate structure limit in the form of a uniformity clause.[16] The proposal introducing the tax limitation provision

---

[14]Ben:Purley Poore, The Federal and State Constitutions of the United States I & II, Second edition, (New York: Lenox Hill Publishing and Distributing Co., 1924) p. 317-331.

[15]Ibid, p. 328.

[16]Ibid, p. 325.

to the convention has been attributed to David Levy, an anti-bank Democrat who believed "that the banks were a device of the privileged few for the swindling of the hard-working many."[17] It is apparent that the banks did indeed operate to the advantage of their supporters at the expense of the general population in two ways. Firstly, the banks issued bonds that were backed by the territorial government. When the bonds went into default, which apparently was not uncommon, tax revenues were used to repay the debt. The second form of banking abuse dealt with the creation of money. The indications are that the banks would over-issue specie to the extent that "when the frontier farmer came to town to make some purchases or send a remittance, he discovered as one individual disgustedly reported in 1838: "I should lose about a bit in a dollar."[18] The indications from the accounts of the era strongly imply that the excessive money creation was a part of a general scheme by which the large land owners and speculators would derive the benefits of money creation by obtaining mortgages on land they had overvalued. The uniformity of taxation clause incorporated into Section 1 of Article VIII was a means

---

[17] Thompson, op. cit., p. 14 and 24.

[18] Ibid, p. 24.

of discouraging the overvaluation of land and property by those individuals who were playing the banking game. By not permitting tax discrimination on the part of the government, which was primarily controlled in the territory by the bank game players, the cost of playing the bank game was increased because overvalued land would require the payment of taxes on the market value of the land as well as the overvaluation.[19]

The Florida constitution of 1838 remained intact throughout the period of development after admission into the Union until the Civil War. Florida joined the other southern states that formed the Confederacy, which is not at all surprising when the origin of the majority of the population is taken into account. In January of 1861, Florida's constitution was amended by a convention as a formality of secession. The constitution was not substantially changed other than the substitution of the words "Confederate States" for the words "United States."[20]

Upon the defeat of the Confederacy, Florida was occupied along with all of the other Confederate states by Union military and faced reconstruction policies established by the Federal government as conditions for

---

[19] Ibid, Chapters 1 and 3; also Tebeau, op.cit., Chapters 9 and 10.

[20] Poore, op.cit., p. 332.

readmission into the Union. Among the conditions set forth by the Federal government as prerequisites for readmission, Florida, along with the other states, would have to hold a constitutional convention and amend its organic document to reflect the Federal government's demands.[21] Accordingly, on October 25, 1865, the delegates elected by white voters assembled in Tallahassee, Florida and worked on the revision of the Florida constitution until November 7, 1865.[22] In terms of Florida's fiscal constitution, the constitutional convention brought forth the same provisions that were incorporated into the constitution of 1838 with an additional provision that authorized the legislature to levy a capitation-tax.[23] The civil government of Florida would never really operate under the constitution of 1865. Upon the death of Lincoln, Congress took matters in hand and initiated what is commonly referred to as radical reconstruction. Under the terms of radical reconstruction, Florida would remain under military supervision while the civil government operated with very little power and authority. Perhaps

---

[21]William W. Davis, The Civil War and the Reconstruction in Florida, (New York: Columbia University Press, 1913) Chapter 14.

[22]Ibid, p. 361-64.

[23]Poore, op.cit., p. 332-46.

the most significant issue of the era was the enfranchisement of the black. It is this issue in conjunction with the rejection of the 14th amendment to the Constitution that is considered the primary reason for the strict policies imposed upon the Southern states by Congress. Florida was destined to have a second-post-Civil War constitutional convention, but this time the blacks were not to be excluded.

The constitutional convention of 1868 assembled in Tallahassee on January 20, and adjourned on February 25, 1868.[24] The delegation that was elected to the convention was composed as follows:

> "Eighteen of them were negroes, and three of these negroes were citizens of other states. Of the twenty-seven whites, one or two were Conservatives, fifteen or sixteen Radical carpetbaggers from the North, and ten or twelve Southern loyalist or 'scalawags'... All in all, these prospective constitution makers bade fair to be rather a motely assemblage, even to an optimist. Crass ignorance, inexperience, aggressiveness, vulgarity and a mixture of colors were their most protuberant characteristics."[25]

The events that occurred during the convention are described by Davis along with appropriate documentation. In summation, the convention turned into a fiasco with little resemblance to a body charged with the writing of

---

[24]Davis, op.cit., Chapter 19.

[25]Ibid, p. 493-97.

organic laws of a society. Although the events of the convention may be considered somewhat interesting and at least amusing, they are nevertheless beyond the scope of this study. What is relevant to this study is the fact that a group of serious-minded delegates removed themselves from the 'formal' convention and formed a constitution for the state based upon the constitution of Vermont and Missouri.[26] According to Davis' account the constitution that was written by the "secederes" was written in the town of Monticello and thus bore the town's name. The product of the Monticello convention enfranchised the blacks without complete submission to the demands of the radical coalition. It appears that the proposed constitution was a compromise that was acceptable to the Florida voter although not without reservations.[27]

The constitution that was written in 1868 was ratified by the Florida voters in May of 1868 with a vote of 14,520 in favor and 9,491 against.[28] With respect to Florida's fiscal constitution, several tax limitation provisions were incorporated into Article VIII

---

[26] Ibid, p. 511.

[27] Ibid, Chapter 19.

[28] Poore, op.cit., p. 347.

which addressed the topic of taxation and finance. Section 1 of Article VIII brought forth the same rate structure limitation provision that was a part of Florida's previous constitutions. Section 6 of the 1868 constitution was newly incorporated into Article VIII authorizing the legislature to levy a capitation-tax. Within this provision, a rate limit was incorporated which limited the rate of capitation-tax to one dollar per annum per person.[29] The next tax limitation provision in the 1868 constitution was incorporated into Section 8 of Article VIII. Section 8 prohibited the state from levying any taxes for the "benefit of any chartered company of the State, or for paying the interest on any bonds issued by said chartered companies..."[30] The final set of constitutional tax limitations that were incorporated into the constitution of 1868 are to be found in Article IX, on Education, in Section 5 and 8. Sections 5 and 8 incorporate an earmark tax limit. Under the mandates of Section 5, a property tax of not less than one mill on the dollar was to be levied and the revenues were to be used exclusively for the support of the education system in the state. Section 8 required counties to levy a tax

---

[29] Ibid, p. 358.

[30] Ibid.

that equalled the revenue that was derived from the common school fund and the revenues of the tax were to be used for educational purposes.[31]

Reconstruction constitution writing in Florida was a variation of the experience that occurred in Virginia. It appears that three factions were in competition for political domination in order to secure the spoils of the war-ravaged territory. As was the case in Virginia, the competing coalitions were the blacks, the Southern gentry, and the carpetbaggers and their sympathizers. It is unfortunate that records were not kept of the proceedings of the actual deliberations that occurred in the writing of the constitution in Monticello, since this was the document that became the organic law of the state. With respect to the 'fairness' of the constitution it is perhaps fortunate that there indeed was a breakdown in the formal operation of the convention because it may be asserted that due to the breakdown the resulting constitution was not as oppressive toward any particular group as it could or would have been. It must, however, be recognized that one can only speculate as to what might have been.

The constitution of 1868 was amended by the legislative method in 1870 and in 1875. The series of amendments

---

[31] Ibid, p. 356.

to the constitution of 1868 did not modify the state's fiscal constitution, thus are mentioned in order to keep as complete account of Florida's constitutional evolution as possible while maintaining the scope of this study.[32]

Although the constitution of 1868 was a compromise over what would have resulted had the convention of 1868 operated according to accepted formal procedures, nevertheless, the Radicals were able to dominate the political scene until 1875 when the Democrats were able to reaffirm their political position. Although the political events that occurred during reconstruction in Florida were quite parallel to those in Virginia, differences between the regions produced somewhat different outcomes. The first significant differences between Florida and Virginia was that the black to white population ratio was greater in Florida than in Virginia. Furthermore, the black population in Florida concentrated into a few counties whereas in Virginia the black population was more dispersed.[33] The second difference between Florida and Virginia was that there appeared to be fewer spoils of war in Florida than in Virginia; consequently Florida was less of an attraction to carpetbaggers than was

---

[32] Ibid, p. 365-66.

[33] Edward C. Williamson, Florida Politics in the Gilded Age 1877-1893, (Gainesville: The University Press of Florida, 1976), p. 10.

Virginia. Finally, it appears that Florida, being quite younger than Virginia, had more persons of Northern origin that had made the state their permanent home than Virginia. These factors tended to moderate the reactions within Florida toward reconstruction and the emancipation of the blacks. Florida did have the three factions that competed for political and economic domination after the Civil War; however, none of the factions had the individual power nor the determination to carry through the complete scheme. It appears that it was much easier for the coalitions to make amends in Florida than was the case in Virginia. The result in Florida was that the Democrats, who had the primary support of the Southern whites and some blacks, did indeed take over the role of dominating the political scene, but this domination was in moderation when compared to the situation in Virginia.

Upon the accession of the Democrats into political power, the move was made to entrench the coalition's dominant position into the constitution of the state in order to perpetuate their control. Thus came about the constitutional convention of 1885 which served as the finale to the Civil War conflict. The constitutional convention convened in June of 1885[34] with 82 Democrat

---

[34]William F. Swindler, Sources and Documents of United States Constitutions, (Dobbs Ferry, NY: Oceano Publishing Company, 1977), p. 372.

delegates, 23 Republicans, and 3 Independents.[35] "Although negroes were not represented in proportion to their number, only seven delegates being negroes, the convention represented a fair cross section of the state's middle-class white voters. Thirty-five delegates were lawyers, twenty-eight farmers, ten merchants, six doctors, six teachers, and two ministers.[36] The product of the convention was the Florida constitution of 1885 which was adopted by a referendum by a vote of 31,803 in favor and 21,243 opposed.[37]

The constitution of 1885 was very different from its predecessor in that it decentralized the power of the state government, particularly the governor's office, and paved the way for disenfranchisement of the blacks by making the payment of the poll tax a prerequisite for voter registration. Article IX of the constitution of 1885 formed the basis of Florida's fiscal constitution. The convention retained the rate structure tax limitation provision that originated in Florida's first constitution, and it retained the prohibition of taxation for the benefit of corporations. There were two new tax limitation provisions introduced into the constitution: an earmark

---

[35]Williamson, op. cit., p. 133.

[36]Ibid.

[37]Swindler, op. cit., p. 372.

of the poll tax and a base limit. Article VI, on Suffrage and Eligibility, Section 8, authorized the levy of a capitation-tax as a requirement for eligibility to vote. This same section earmarked the revenues of the poll tax for support of the educational system within the state. In Article IX, on Taxation and Finance, Section 5, the capitation-tax was limited to a rate of one dollar per head and the earmark of the tax was repeated.

The obvious intent of the poll tax was to increase the costs associated with voting so that the blacks would be disenfranchised. There was, however, opposition to the poll tax by some of the whites, especially those who lived in primarily white counties.[38] The earmark of the poll tax appears to have been used as a means of rationalizing the poll tax to those that were opposed to the tax.

The second tax limitation provision introduced into the constitution of 1885 is found in Section 9 of Article IX. Section 9 imposes a base limit that exempted the first $200 of property owned by war widows and those individuals disabled as a result of the war. This provision appears to have been the direct result of the partisan spoils system since the basis of the Democrats'

---

[38]Williamson, op. cit., p. 137.

political support came from those individuals who supported the Confederacy during the Civil War and the base limit provided a modest means of redistributing wealth to the supporters of the party.

The convention also brought forth the tax limitation provisions that were incorporated into the education article in the constitution of 1868. However, Section 8 of the education article was changed so that counties were given a range of tax rates which they had to levy for the support of public schools. The minimum county tax rate was set at 3 mills on the dollar and the maximum tax rate was set at 5 mills on the dollar.[39] From this it can be seen that the financing of schools would be derived primarily from within the county itself. Consequently, it appears that the provisions of Article XII, on Education, minimize the transfer of educational revenue across counties, thus predominantly white counties were not to subsidize the educational system in predominantly black counties.

Following the inception of the constitution of 1885, politics in Florida was dominated by the Democratic party to the extent that Republicans were almost completely out of the picture. During the period 1892 to 1896, the Populist party, which supported Bryan, free silver, and

---

[39]Swindler, op. cit., p. 393.

nationalization of the railroads, made an unsuccessful bid for a position in the Florida political scene. By the turn of the century Florida "entered a period of one-party politics, and the Democrats divided into warring, amorphous personal factions."[40]

During the period following the inception of the 1885 constitution, Florida experienced a considerable degree of development, particularly in the expansion of the railroads and fruit growing industry.[41] Florida's fiscal system was apparently working well as exemplified by the fact that during the depression of 1897, "Florida's financial rating remained solid. Its per capita debt of $2.50 was the lowest of any state in the Union, and the total state bonded debt of $1,232,500, as of December 31, 1896 was reduced to $1,032,500 by December 31, 1900."[42]

The first amendment to the Florida fiscal constitution of 1885 occurred under the governorship of William Sherman Jennings (1901-1905). Jennings was a native of Illinois and lived in Florida for approximately 15 years

---

[40]Arnold Mare Pavlovsky, "We Busted Because We Failed: Florida Politics, 1880-1908," Ph.D. Dissertation, Princeton University, (December 1973), p. 188-215.

[41]Caradine Mays Brevard, A History of Florida, (Deland, Florida: The Florida State Historical Society, 1925), p. 187-191.

[42] Ibid., p. 190.

prior to his election to the governor's office. The principal campaign promises were: "liberal support of public education, improvement of public roads, municipal ownership of public utilities, taxation of corporation franchises, passage of a new primary law and revision of the convict lease system. Jennings failed to fulfill, with two exceptions, his promises."[43]

Concern over the development of public education in Florida was an ongoing topic since 1849. By the turn of the century, attendance in public schools had dramatically increased while at the same time the school term was lengthened, a state directed curriculum was established, qualified teachers were recruited, and improvements in the supportive capital structure of the educational system were made.[44] In order to accomplish this expansion of the educational system, the legislators proposed an amendment to Article XII Section 8 of the constitution, that increased the permissible county property tax levy from the established 5 mills on the dollar to 7 mills on the dollar. The voters approved

---

[43] Pavlovsky, op. cit., and W. T. Cash, The Story of Florida, (New York: The American Historical Society, Inc., 1938) p. 529-530.

[44] Nita Katharine Pyburn, The History of the Development of a Single System of Education in Florida 1822-1903, (Tallahassee: Florida State University, 1954).

the amendment on November 18, 1904 by a vote of 5,993 in favor and 5,346 against.[45] Expansion and growth perhaps are the best descriptions of Florida during the early 1900's. From 1885 to 1905 the population expanded by 82%; from 1885 to 1915 the population expanded by 172%.[46] The literature indicates that a substantial portion of the increase in population was due to migration of people from Northern states. Although politics in Florida were dominated by the Democratic party, from 1900 to 1928 the Republicans were able to show consistent gains of support, presumably due to the influx of Northerners.[47] By 1912 the rapid growth in population was apparently straining the county school systems of the state. On November 5, 1912 the voters ratified a legislatively proposed constitutional amendment to Article XII, Section 17 that authorized the establishment of special tax school districts. The tax school districts were authorized by the amendment to issue bonds upon local voter approval

---

[45] David F. Dickson, Proposed Amendments to the Florida Constitution of 1885, (Florida: Institute of Government Research, Florida State University, 1966) p. 21.

[46] Richard E. Bain, "Legislative Representation in Florida: Historic and Contemporary," Masters thesis, Florida State University, (June 1960), p. 139; 143.

[47] George N. Greer, "Florida Politics and Socialism at the Progressive Era, 1912," Masters thesis, Florida State University, (December 1962), p. 107.

and to levy an ad valorem tax to finance the bonds. Included in this amendment was a tax rate limit of 5 mills on the dollar that restricted the levy of the special tax school districts. The amendment was approved overwhelmingly by a vote of 16,348 in favor and 4,014 against.[48]

According to Nelson, during the first half of the second decade of the century, Florida's economy did experience a mild depression, yet, in 1913 Governor Trammell reported that the finances of the state were in good shape with a balance of $374,000 in the state's General Revenue Fund.[49] Perhaps it was due to the prosperity of the state government in the light of economic depression, although mild, that it became politically expedient for the legislative to propose a constitutional amendment to Article IX, Section 9 increasing the tax exemption of $200 to $500 on property owned by widows and disabled persons. The amendment was ratified by the voters of Florida November 7, 1916 by a vote of 20,859 in favor and 12,641 against.[50]

---

[48]Dickson, op. cit., p. 25.

[49]Wallace Martin Nelson, The Economic Development of Florida 1870-1930, (Ph.D. dissertation, University of Florida, 1962), p. 21 and p. 222.

[50]Dickson, op. cit., p. 26.

World War I brought on relative prosperity in Florida by stimulating manufacturing specifically the major industry of ship and boat building.[51] The war prosperity apparently was shared by most sectors of the economy. Accordingly Cash writes "Then was a time of such material prosperity for producers of all classes as seldom comes in a generation.[52] With the ensuing war boom, proponents of education, through a legislatively proposed constitutional amendment, secured additional revenues. The amendment to Article XII, Section 8 increased the maximum allowable millage from 7 mills to 10 mills on the dollar in the county school tax provisions.[53] The amendment was ratified on November 5, 1918 by a vote of 21,895 in favor and 10,723 against.[54]

However, the increase in taxation for county schools proved to be insufficient. The revenues generated by the increased levy apparently did not reach the teachers of Florida with the result that many left the field for other employment. "During 1919 and 1920 there was such a scarcity of public school teachers that county superintendents and school boards were compelled to employ a

---

[51]Nelson, op. cit., p. 21.

[52]Cash, op. cit., p. 576.

[53]Dickson, op. cit., p. 28.

[54]Ibid.

large number of persons without legal qualifications."[55] By 1921 the legislators responded by proposing a constitutional amendment to Article XII, Section 10 that authorized an increase in the special school disctict tax rate from 3 mills to 10 mills on the dollar.[56] The amendment was ratified on November 7, 1922 by a vote of 31,952 in favor and 9,804 against.[57]

The first half of the 1920's presented Florida with an economic boom that greatly expanded development and wealth in the state. The economic expansion appears to have been the cumulative result of several developments. Credit must be given to the railroad building of Henry M. Flagler and H. B. Plant, which in combination provided rapid transportation to Southern Florida. Plant's rail line provided transportation to Tampa while Flagler's line followed the east coast and provided transportation to Miami.

The second factor contributing to the prosperity of the early 20's was the discovery and development of phosphate after 1889. Of course, the mining industry benefited from the rail industry and vice versa. The

---

[55]Cash, op. cit., p. 576.

[56]Dickson, op. cit., p. 28.

[57]Ibid.

third factor accounting for the boom was the tourist from the cold North. With the opening up of Flagler's rail line, Southern Florida became an important winter resort area.

The fourth factor in the boom of the 20's was the drainage of the Everglades swamp area. The drainage project began under the administration of Governor N.B. Broward and provided an alternative area to the "vacation land" for speculation in land.

Finally, Florida enjoyed the effects of the general prosperity that was occurring nationwide. Perhaps it was the national prosperity that provided the link between all the above mentioned factors that are attributable to the boom of the 20's.[58]

Since the nation was experiencing a period of prosperity and fortunes were being made, it was rational to attempt to attract this wealth into the state. To accomplish this end, the legislature proposed a constitutional amendment to Article IX, Section 11 which prohibited the levy of income taxes and inheritance tax; in addition the measure exempted from taxation the first $500 of household goods. The prohibition on the income tax and inheritance tax obviously would attract new

---

[58]Cash, op. cit., p. 580-82.

residents, presumably of the wealthier type, into the state. The base limit on the property tax appears to be a token to the little man to make him feel that the tax system was not purely regressive. The amendment was ratified by the voters on November 4, 1924 by a vote of 60,640 in favor and 14,386 against.[59]

Apparently, the influx of tourists and associated expansion of construction and increase in land values generated the necessary revenues needed by the state[60] through excise taxes and property taxes so that the state was compensated for the loss of revenues presented by the amendment.

In 1924 the legislature proposed an amendment to Article XII, Section 17 which placed a limit of 20% of the value of taxable property on the indebetedness of special school districts. The amendment eliminated the tax rate limit that was previously incorporated into the article. Apparently, the tax rate limit was slowing the process of retiring the debt incurred by the districts with little effect on the amount of debt accumulated by the districts. The amendment was ratified on November 4,1924

---

[59]Dickson, op. cit., 29.

[60]Cash, op. cit., p. 583-587.

by a vote of 38,036 in favor and 16,032 against.[61] The final action by the legislature in regards to Florida's fiscal constitution that was voted upon in 1924 was an amendment to Article IX, Section 1 which introduced a rate limit of 5 mills on the dollar on the ad valorem taxation of intangible property. The amendment appears to have been a part of the plan to attract new wealth into the state. The base limit on income and inheritance would tend to attract wealth into the state while the rate limit on the intangible property tax would encourage individuals to hold their wealth within the state. This final amendment was also ratified on November 4, 1924 with the vote being 36,971 in favor and 16,289 against.[62]

Between 1920 and 1930 Florida's population increased by 52% of which most of the increase was concentrated in the Southern portion of the state. The New inhabitants of Southern Florida were primarily persons that were "of some financial substance who had been life-long Republicans" bringing with them Northern political attitudes and wealth.[63]

---

[61] Dickson, op. cit., p. 30; see also Nelson, op. cit., p. 258.

[62] Ibid, p. 31.

[63] James William Dunn, "The New Deal and Florida Politics," Ph.D. dissertation, Florida State University, (August 1971), p. 21.

The flurry of land speculation which characterized the boom of the early 1920's subsided rather quickly in 1926. No indications as to the causes of the premature beginning of the Great Depression have been encountered in the literature; however, it is sufficient for the purposes of this study that this early beginning of the depression did affect the state's financial position. The sudden end of the boom left many building projects unfinished to the extent that private investors moved their capital out of the state while leaving local governments with the problem of paying off debts incurred in anticipation of continued rapid community growth and prosperity.[64]

The Depression in Florida not only produced dramatic change in the state's economy but also brought out changes in the state's political parties. Throughout the years of Democratic domination of state politics, factions bickered within the party. The onset of the Depression appears to have increased the rift between the liberal and conservative elements of the party. When the National Democratic Party nominated Al Smith for the Presidency in 1928, Florida's Democrats openly split over the issues of prohibition and religion.[65] In addition to the rift

---

[64]Dunn, op. cit., p. 1-15.

[65]Ibid, p. 30.

within the Democratic party, the Republican party was experiencing increasing support, apparently, from the Southern counties of the state. The result was that Florida voted Republican in the presidential election for the first time since the Civil War.[66] The Democratic party had split into factions among which the most powerful leader was the liberal-oriented Duncan U. Fletcher. The second faction of the Democratic party was the "Hooverites" who were for prohibition and supported Republican leadership in national politics provided that prosperity would be forthcoming.[67] The third faction of the Democratic party was conservatively oriented and managed to elect its representative into the governor's office. Doyle E. Carlton served as Governor of Florida from 1929 to 1933.[68] Carlton proposed that Florida follow a course of government action based upon economy in government and promotion of private enterprise.[69]

The trump character in this episode of Florida's history was none other than Alfred DuPont. DuPont had moved into Florida in 1926 and had been active in cornering

---

[66] Dunn, op. cit., p. 33.

[67] Ibid, p. 32.

[68] Ibid, p. 33.

[69] Ibid, p. 37.

the banking industry of Florida which was at that time on the verge of complete collapse.[70] DuPont began to speculate in land, particularly in Northern Florida where land prices were low. DuPont's activities were, of course, stimulating to local economies, especially in those areas where DuPont invested in industrial capacity. DuPont's activities were noted by Governor Carlton and apparently Carlton offered some state concessions if DuPont continued with his industrial development.

DuPont was able to get the legislature to build highways which opened up the land he bought to the market.[71] DuPont also managed to have Governor Carlton promise to scale down governmental expenditures[72] and it appears that at least one of the constitutional amendments was at DuPont's request. In return "DuPont provided the industry by gradually investing millions of dollars in paper mills and pine forests."[73]

On November 4, 1930 the voters of Florida ratified three amendments to the state's fiscal constitution that

---

[70] Dunn, op. cit., p. 15.

[71] Ibid., p. 41.

[72] Ibid., p. 42.

[73] Ibid., p. 41; see also James Marquis, Alfred L. Dupont, the Family Rebel, (New York: Bobbs-Merrill Company, 1941), Chapters 26, 27, and 28.

pertain to the tax system of the state. Of the three amendments, one appears to have directly benefitted Dupont, another taxed him while the third was neutral. The amendment that benefitted DuPont was legislatively proposed and added Section 12 to Article IX.[74] The amendment exempted from taxation "designated industrial plants established on or after July 1, 1929 and real estate used in conjunction therewith, from all taxation for a fifteen year period commencing July 1, 1929, but not extending beyond 1948."[75] This amendment was ratified by a vote of 40,723 in favor and 14,342 against.[76]

The second amendment appears to have the tables somewhat turned on DuPont. The legislatively proposed amendment to Article IX, Section 11 removed the base limit previously imposed upon the taxation of inheritance. According to Marquis, Dupont himself believed that inheritance should be taxed although it is not all evident that he supported this amendment.[77] Circumstantial evidence does indicate that the passage of this amendment was tied to the inheritance tax imposed by the Federal

---

[74]Dickson, op. cit., p. 33.

[75]Ibid.

[76]Ibid.

[77]Marquis, op. cit., p. 28.

government. According to Due and Friedlaender, the Federal government introduced in the 1920's a death tax law by which state inheritances became credits against the Federal levy. Thus the incentive was created for states to tax themselves and retain revenues or be taxed by the Federal government and loose revenues to the Federal fiscal system. This Federally mandated levy was aimed at Florida in particular. According to Due and Friedlaender, Florida became notorious for "luring old wealthy persons to the state."[78] Nevertheless, the 1930 inheritance tax amendment adopted in reaction to Federal fiscal policies that appear to have been aimed at stifling competition among states. The amendment was ratified by a vote of 47,725 in favor and 8,380 against.[79]

The final amendment, which was legislatively proposed and ratified by a vote of 53,088 in favor and 8,033 against, added Section 13 to Article IX.[80] The amendment changed the method of taxing motor vehicles in the state by subjecting "motor vehicles to a license tax for their

---

[78] John F. Due and Ann F. Friedlaender, Government Finance, (Homewood, Illinois Richard D. Irwin Inc., 1977), p. 445.

[79] Dickson, op. cit., p. 33.

[80] Ibid.

operation in lieu of all ad valorem property taxes.[81] One may speculate that aside from support for this amendment by the general public, industrialists would tend to support the change, particularly if they operate motor vehicles within their plants or private lands, since generally these vehicles are not licensed.

The 1932 elections in Florida introduced into the state's political scene an unknown, David Sholtz, who was elected governor of the state. Sholtz's platform was based upon government economy, nonmembership in Florida's political elite and, above all, tax reductions.[82] During Sholtz's term two amendments were presented to the voters for their consideration. The first amendment to be examined was the addition of Section 7 to Article X of the 1885 constitution. This amendment presented a base limit that provided a $5,000 homestead exemption.[83] The amendment was ratified on November 6, 1934 by a vote of 123,484 in favor and 40,842 against.[84] According to Dunn, the intent of the amendment was to provide tax relief to

---

[81]Dickson, op. cit., p. 33.

[82]Dunn, op. cit., p. 78-95.

[83]Dickson, op. cit., p. 34.

[84]Ibid.

to the homeowner who was overburdened by taxation and to stimulate the real estate market in Florida.[85]

The second constitutional amendment added Section 14 to Article IX, which was a base limitation that "exempted motion picture studios, plants, chattels and incidental properties established on or after July 1, 1933, from all ad valorem taxation for a period of fifteen years.[86] The amendment was ratified on November 6, 1934 by a vote of 70,642 in favor and 43,068 against.[87] Although there is no discussion of this amendment, it is evident that the amendment would stimulate the production of motion pictures in Florida. The question that remains is whether this amendment was the result of specific vested interests or an attempt on the part of Florida to compete against California for this industry.

In 1937 Fred P. Cone took over the position of Florida's governor. According to Dunn, Cone had no real administrative program and only requested "that the legislature base its activities on a policy of prudent economy in government.[88] Perhaps this lack of executive leadership

---

[85]Dunn, op. cit., p. 132.

[86]Dickson, op. cit., p. 35.

[87]Ibid.

[88]Dunn, op. cit., p. 263.

opened the door for some legislation promoted by private lobbyists. In 1938 the legislature proposed two amendments to Florida's fiscal constitution. The first amendment modified Section 7 of Article X by liberalizing the homestead exemption ratified in 1934 to include "equitable ownership and including homes of an owner's dependents." Consequently, this amendment expanded the base limit that was previously incorporated into the constitution. The amendment was ratified on November 8, 1938 by a vote of 119,628 in favor and 11,442 against.[89] Due to the minor nature of this amendment, the literature has bypassed it completely.

The second amendment that was ratified on November 8, 1938 amended Article IX, Section 2 by abolishing the state ad valorem tax on real personal property. The amendment was ratified by a vote of 110,104 in favor and 15,108 against.[90] The origins of this amendment can be traced back to the lobbying efforts of Alfred DuPont. Marquis James wrote that "Mr. DuPont's lobby, operating on a less sumptuous scale, paid more attention to tax reform. The fight against the ad valorem levy was not successful in his lifetime, however. His estate kept up the battle and

---

[89]Dickson, op. cit., p. 37.

[90]Ibid.

five years after Mr. DuPont's death a constitutional amendment was ratified abolishing the tax for state purposes."[91] James also indicates that DuPont had actively supported the Homestead exemption amendment of 1934 and the abolition of the income tax in Florida. However, DuPont did favor a heavy inheritance tax as the best way of taxing the rich.[92]

Curiously, DuPont did get his way, for on November 5, 1940 the voters ratified by a vote of 106,662 against 76,050 a legislatively proposed amendment that repealed Article XII, Section 6 and replaced it with Article IX, Section 2. The amendment basically retained the ban on ad valorem taxation while removing the restraint on the taxation of inheritance. In addition, the repeal of Article XII, Section 6 also removed from the constitution the provisions that "established the special school tax of one mill.[94]

During the same election, the voters also ratified a legislative proposal that added Article IX, Section 15 to the constitution by a vote of 103,177 in favor and 67,528

---

[91]Marquis, op. cit., p. 453.

[92]Ibid.

[93]Dickson, op. cit., p. 38.

[94]Ibid.

against. The amendment "authorized legislature to allocate and distribute to counties in equal amounts any or all of excise taxes collected from pari-mutual pools."[95] Presumably the amendment concerning pari-mutual betting taxes was the result of Governor Cone's response to House Speaker G. Pierce Wood's claim that the state was facing financial disaster unless more revenues were generated.[96] Again the literature becomes empty in discussions of these amendments.

In the November 5, 1940 elections two minor amendments to the state's fiscal constitution were ratified. The first one considered here modified Section 9 of Article IX, which liberalized the qualification of widows for property tax exemption by removing the provision that widows must "have a family dependent upon her for support." This amendment was ratified by a vote of 161,606 in favor and 42,451 against.[97] The final fiscal amendment ratified in 1942 added Article IX, Section 16 to the constitution that earmarked a portion of the excise tax on petroleum products to the State Roads Distribution Fund and established the State Board of Administration to administer the

---

[95]Dickson, op. cit., p. 38.

[96]Dunn, op. cit., p. 326-27.

[97]Dickson, op. cit., p. 39.

Fund. The amendment basically formalized what had been common practice in Florida of earmarking the petroleum tax for road purposes.[98]

The legislature continued its efforts to attract new capital into the state and maintain existing capital within the state by proposing a constitutional amendment in 1943 that modified Article IX, Section 1. The amendment lowered the tax rate limit on the ad valorem taxation of intangible property from the existing 5 mills to 2 mills on the dollar. The amendment, however, expanded the tax base to include a 2 mill tax on secured obligations in lieu of all other assessments. The amendment was ratified on November 7, 1944 by a vote of 95,632 in favor and 47,904 against.[99] Presumably the legislature was banking on the publicity of the amendment to reassert that there would be no state income tax, thus trying to attract capital into the state.[100]

On November 4, 1952 the voters of Florida ratified a legislatively proposed constitutional amendment that added Article XII, Section 18 to Florida's organic law. The amendment "authorized State Board of Education to issue

---

[98]Dickson, op. cit., p. 39.

[99]Ibid, p. 42.

[100]Tebeau, op. cit., p. 414.

4 percent capital outlay bonds."[101] The amendment incorporated an earmark of a portion of revenue generated by the motor vehicle license tax. Thus in this amendment, the earmark was used not as a tax limiting device but rather as debt guarantee which presumably helped the State Board of Education to issue bonds, thus promoting debt in the state. The purpose of the revenue was to supply start up revenues for capital projects.[102] The amendment was ratified by a vote of 355,734 in favor and 204,163 opposed.[103]

During the period between 1952 and 1964 there were no tax limitation related amendments ratified into the state's constitution. By 1964 however, financing of education became an issue in Sarasota county. Upon the county's request, the legislature proposed an amendment to Article X, Section 7 that modified the base limits of the homestead exemption for Sarasota county. The amendment made the first $2,000 dollars of assessed valuation taxable and exempted from taxation the next $5,000. The amendment also required that this scheme was applicable for school

---

[101]Dickson, op. cit., p. 51.

[102]William F. Larson, "Florida's Proposed Constitutional Amendments 1952," (Florida: Public Administration Clearing Service of the University of Florida, 1952) p. 2-6.

[103]Dickson, op. cit., p. 51.

purposes only and that the voters of Sarasota county must approve the measure. The amendment was ratified in the statewide election on November 3, 1964 by a vote of 458,981 in favor and 379,722 against. The county election on the issue was held on May 5, 1964 and the vote was 7,969 in favor and 6,344 against.[104]

The popularity of mobile homes in Florida is quite obvious to the traveler. However, it was not until 1965 that the legislators realized that they had omitted a feather that could be plucked. The constitutional amendment of 1930 that exempted motor vehicles from the ad valorem property tax because of the license tax, produced a state of confusion when levying a tax on mobile homes. The legislatively proposed amendment to Article IX, Section 13 resolved the controversy by specifying that mobile homes fit under the definition of motor vehicles, thus were subject to the license tax. If the mobile home was permanently fixed to the land then the mobile home was subject to the ad valorem property tax levy. The amendment was ratified by the voters on November 2, 1965 by a vote of 347,349 in favor and 330,493 opposed.[105]

---

[104]Dickson, op. cit., p. 75.

[105]Ibid, p. 77.

The year 1967 may be considered one of the most significant in Florida's history and may be considered the division between "old" Florida and "new" Florida. Two events occurred in 1967 that form the basis of the dramatic change in Florida's government and politics. In 1967 a three-judge Federal Court enforced the U.S. Supreme Court's decision in the Baker vs. Carr case which brought about legislative reapportionment based upon "one man, one vote."[106]

The second item was the ratification by the voters on November 5, 1968 of a new constitution for the state that was written by the Constitutional Revision Commission enacted by the legislature in 1965.[107]

Up until these changes, Florida was governed by a legislature that was apportioned on the basis of equal representation for each county regardless of the population. Between 1950 and 1970 estimates indicate that Florida received 3 million migrants of which 94 percent

---

[106]James Nathan Miller, "Florida Threw Out the Pork Chop Gang," National Civic Review, July 1971, p. 366-380.

[107]E. Lester Levine, "The 1969 Florida Legislature: A New Constitution and New Procedures," Governmental Research Bulletin, Vol. VI, no. 3, (May 1969); also Albert L. Sturm, "Constitutional Revision: A Challenge to Floridians," Government Research Bulletin, Vol. II, no. 4, (September 1965).

settled in the Southern half of the state. Florida's population changed from primarily rural to urbanized counties with little concentration into the cities.[108] "The result was that legislators representing about 15 percent of the population, concentrated in about three dozen backwoods counties, formed a majority of both houses and their representatives - a group of "ole boys" from the courthouses known as the Pork Chop Gang - ran the show.[109] Accordingly, Miller indicates that legislation was written and totally controlled by lobbyists who represented outside interests such as bankers, insurance companies, and other interests that dominated the legislators by supplementing the legislators' $100 a month income; a form of bribery.[110] Miller's interviews with Florida Representative Ralph Turlington, State Senator Louis dela Parte, Representative Quillian Yancey and probably others provide an astonishing yet revealing account of how entrenched the state law making body was in the provision of special interest legislation. However, due to the Federal Court's coercion, the situation has been radically changed such that an observer

---

[108] Jack Bass and Walter DeVries, The Transformation of Southern Politics, (New York: Basic Books, Inc., 1976) p. 109.

[109] Miller, op. cit., p. 366.

[110] Ibid, p. 367-68.

would not be able to tie the old legislature to the new legislature without prior knowledge of the reapportionment.

The Florida Constitution, as stated above, was rewritten by the Constitution Revision Commission which consisted "of 37 members as follows: the attorney general; one member of the Supreme Court to be designated by the Chief Justice and four additional persons who are not members of the Supreme Court also to be appointed by the Chief Justice; ten members to be appointed by the Governor, one of whom he shall designate as Chairman; eight members of the Senate to be selected by the President of the Senate; eight members of the House of Representatives to be designated by the Speaker of the House; and five members to be appointed by the President of The Florida Bar and confirmed by its Board of Governors."[111]

The basic drive behind the revision of the state's constitution appears to have come from Governor Burns who "committed his administration" to a "position of leadership" in achieving revision of Florida's "amendment-riddled constitution."[112] It is interesting to note how the legal profession was secured into a dominant position in the

---

[111] Sturm, op. cit., p. 5.

[112] Ibid.

Constitutional Revision Commission. Surprisingly, it was not until 1971 that the judicial Article of the Constitution was revamped due to "intense political infighting" within the 1968 Revision Commission.[113] One final item to note is, as can be seen from the composition of the commission as presented above, that the Constitutional Revision Commission is nothing more than an extension of the legislature; consequently the revision of Florida's constitution in 1968 was based upon the legislative proposal method of amending a state's constitution.

Within the constitution of 1968, the article covering Finance and Taxation became Article VII which was designated as Article IX in the constitution of 1885. The tax limitation provisions incorporated into the constitution of 1968 occur as follows:

> Section 1(a) of Article VII contained the provision that "no state ad valorem taxes shall be levied upon real estate or tangible personal property," which was carried forward from section 2 of Article IX of the 1885 constitution.
>
> Section 1(b) of Article VII stipulated that motor vehicles, boats, airplanes, trailers, etc. were to be subject to a license tax but exempt from ad valorem taxation. This provision was carried forward from Section 13 of Article IX in the 1885 constitution.

---

[113] Talbot D'Alemberte, "Florida Judicial Reform: Constitutional Revision, 1972," Governmental Research Bulletin, Vol. X, no. 1 (March 1973).

Section 2 of Article VII provides the rate structure limitation embodied in a uniformity clause regarding ad valorem taxation which occurred in Section 1 of Article IX of the 1885 constitution. Section 2 of the 1968 constitution also brought forward the 2 mill rate limit on ad valorem taxation of intangible property.

Section 3 of Article VII, part (a) provides a base limit by exempting municipal property from taxation provided the property is located within the boundary of the municipality and part (b) provided a base limit in the form of tax exemptions of $1,000 of household goods and personal effects of households and widows, blind people, and those personally disabled, received an additional exemption of $500 on property. The provision regarding widows and disabled persons was a modified version of Section 9, Article IX of the 1885 constitution. The provision exemptiong households increased the base limit from $500 and was brought forward from Section 11 of Article IX.

Section 5 of Article VII contains in very confusing language the prohibition on income and inheritance taxes. The confusion in this article arises in the statement "No tax... shall be levied...in excess of the aggregate of amounts which may be allowed to be credited upon or deducted from any similar tax levied by the United States or any state." As of 1980 the people of Florida do not pay a state income tax. This article is a modified version of the 1885 Article IX, Section 9.

Section 6 of Article VII is the $5,000 homestead exemption which is the base limit that originally formed a part of Article X in the 1885 constitution.

Section 9(a) of Article VII prohibits local governmental units from taxing intangible property, while part (b) provides a rate limit of 10 mills for the county and municipal property tax, but special districts and counties providing municipal services face a rate limit that is provided by general laws. This section was derived from

Section 5 of Article IX and from Article XII on Education in the 1885 constitution.[114]

The rewriting of Florida's constitution greatly simplified the state's fiscal constitution. In the process several of the tax limitation provisions that were incorporated by the amendment process through the years were eliminated. Some of the provisions that were eliminated had sunset provisions such that they were not enforceable.[115] Others were eliminated presumably to give the legislators control over the generation and distribution of revenues. Clearly the change to the constitution of 1968 marked an increase in the government's power to tax.

The constitution of 1968 also contained new provisions regarding the amendment of the constitution. The constitution of 1968 allows amendments to be legislatively proposed, and recognizes the Revision Commission as a legitimate means of the amendment process. In addition the 1968 Constitution mandates that a Constitutional Commission be convened every 20 years and specifies the

---

[114]All quotations presented above are from "Constitution of the State of Florida as Revised in 1968," in the Florida Handbook 1969-1970, compiled by Allen Morris, (Tallahassee: Peninsular Publishing Company, 1969), p. 474-506.

[115]For example Section 12 Article IX of the 1885 constitution exempting industrial plants from taxation, which expired in 1948.

formula that was used in 1968 as the means of choosing the commission members. Perhaps the most significant addition to Florida's constitution occurs in Article XI, Section 3 on Amendments, which provides the people of the state with the power to exercise direct democracy through the citizen initiative method of amending the constitution. The constitution of 1968 was ratified by a vote of 645,233 in favor and 518,940 against.[116]

In 1971 the Voters of Florida ratified by a vote of 841,433 in favor and 355,023 against a legislatively proposed amendment to Section 5 of Article VII. The amendment added part (b) to Section 5 and authorized the state to levy an income tax upon corporations with a rate limit of 5% which could be changed by a 3/5 vote of each house of the legislature. In addition, Section 5(b) contained a base limit that exempts "from taxation not less than five thousand dollars ($5,000) of the excess of net income subject to tax over the maximum amount allowed to be credited against income taxes levied by the United States and other states."[117]

---

[116]Morris, op. cit., p. 492.

[117]Ibid., p. 606.

The taxation of corporate incomes is attributable to the efforts of Governor Reubin Askew. During the election campaign of 1970, Askew "built his campaign largely around his "Fair Share Tax Program," which he claimed would require the state's business community to share in the financing of government.[118] Accordingly, Askew intended to use the revenues generated by the tax to support "expanded programs for education, health, and welfare.[119] This line of reasoning was readily accepted by the voters since Askew was elected on that platform and the amendment was ratified.

It is obvious that without the corporate controlled legislative lobby which, as stated above, dominated the legislature prior to reapportionment, that Florida's law makers would not have pursued this potential source of revenue that could now be tapped without significant political cost to the legislature and without an easily recognizable cost to the voter. The base limitation provision incorporated into the amendment appears to be aimed at small corporations that operate within the state.

---

[118]C. H. Donovan, "Proposed Corporate Income Tax Amendment Constitution, 1971, Civic Information Series, no. 51, (Florida: Public Administration Clearing Services, University of Florida, 1971), p. 2.

[119]Ibid.

One must recognize that the base limit favors small business and that the small business is no longer the "Mom and Pop" operation but rather has evolved into "Mom and Pop, Inc."

In 1976 the legislators proposed an amendment to Section 9(b) of Article VII which authorizes local governmental units to levy ad valorem taxes for water management purposes in excess of the preexisting tax limits. The provision also incorporates rate limits on the water levy of 0.05 mill for the northwest portion of the state and 1.0 mill for the remainder of the state.[120] The amendment was ratified by the voters on March 9, 1976.[121]

The basis for this amendment resulted from a change in the boundary lines of the Florida Water Management Districts which had taxing authority under the provisions of Article VII, Section 9(b). In 1975 the Fifth Circuit Court issued a delcaratory judgment that the boundary charges would mean that the districts were new; consequently they would not fall under Section 9(b). The proposed amendment would in effect restore the taxing power of these

---

[120] Morris, op. cit., p. 617-18.

[121] Clement H. Donovan, "Amendment Providing Limited Taxing Power for Florida Regional Water Control Districts" Civic Information Series no. 58, (Florida: Public Administration Clearing Service, University of Florida, 1976) p. 2.

special districts. But now, under the provisions of the amendment, the tax rate that could be levied was limited.[122]

In 1978 the Constitutional Revision Commission met and submitted to the voters of Florida a set of extensive revisions to the constitution. The revisions were overwhelmingly rejected by the voters. The amendments were voted upon separately with the result that the finance and taxation article was rejected by a vote of 779,389 in favor and 1,058,574 against.[123] Basically the rejected finance article would have provided a shift in the tax burden from business to the consumer through the use of tax exemptions.[124]

Incorporated into the set of amendments was a provision that would have allowed casino gambling in Dade County. According to conversations with assorted residents in the Tallahassee area, the whole set of constitutional amendments were rejected because of the voters' distaste for casino

---

[122] Donovan, "Taxing Power for Florida," p. 4-5.

[123] Morris, op. cit., p. 484.

[124] Manning J. Dauer, "Proposed 1978 Florida Constitution Revision and Proposal on Casino Gambling," Civic Information Series no. 61, (Florida: Public Administration Clearing Service, University of Florida, 1978), p. 20-24.

gambling. The vote on the remainder of the proposals was as follows:

Basic Document - 623,703 for; 1,512,106 against

Equal Rights - 1,002,479 for; 1,326,497 against

Single-Member Legislative Districts - 982,847 for; 1,113,394 against

Appointive Cabinet - 540,979 for; 1,614,630 against

Appointive Public Service Commission - 772,966 for; 1,095,736 against

Merit Selection Circuit and County Judges - 1,058,574 for; 1,095,736 against

Independent Education Board - 771,282 for; 1,353,626 against[125]

Examination of these figures indicates that although a considerable number of voters may have voted "no" on all the issues to insure that a particular one did not pass, it is evident that there were many voters that were selective in how they voted.

Florida represents an example of a young state and a state that has, although it was fairly recent, adopted the citizen initiative. Florida did not have a landed aristocracy as was the case with both Virginia and New York, Florida experienced several waves of inmigration that appears to have had an impact upon the development of the

---

[125] Morris, op. cit., p. 484.

state both economically and politically. With each wave of people came attempts to not only new political ideas but also new economic opportunities. The writing of Florida's first constitution was not anywhere near the experimental state that had occurred in Virginia and New York. The writers knew or at least could draw upon the experience of other states when a particular provision was being considered. The first constitutional tax limit in Florida's organic laws came about in the state's first constitution and were aimed at a specific abuse in the state's banking system. Thus in Florida's first tax limit example it was the private sector that needed control and not so much the public sector. Florida was among the Confederate states that went through the ordeal of reconstruction. The constitutional evolutionary pattern that emerged in Virginia also occurred in Florida only the intensity of the political activities was not as great. Constitutional tax limitation provisions were used to promote a particular political coalition at the expense of an alternative coalition. Although constitutional tax limits were used to insure that finances of the educational system of the state were such that education was publically promoted, tax limits were used to insure that one particular group, the whites, did not finance the education of another group, the blacks. Throughout the early portion of the

twentieth century, constitutional tax limitation devices served two purposes. The primary purpose was to promote the vested interests of some commercial activity for the benefit of the owners of the enterprize while the second purpose which appears to have been a complementary by-product was to promote the importation of commercial activity into the state. Since 1968 Florida's constitution has evolved under the political pressures of the citizen initiative. Admittedly Florida's experience under the potential of direct democracy has been short, it does appear that the incorporation of the citizen initiative has changed the flavor of acts that have been submitted by the legislature for voter approval. The 1971 amendment which increased the government's power to tax by providing for the use of the corporate income tax is an example of the legislature's efforts to generate revenues for a growing bureaucracy without offending the individual voter. The legislative amendment ratified in 1976 which established a tax levy for water management purposes incorporated rate limits that appear to be quite low in comparison to other rate limits that have been used in the various states. Rarely does one find tax limits in the form of rate limits that are less than one mill on the dollar.

CHAPTER 8

CASE IV: OKLAHOMA

The state of Oklahoma was admitted into the union in 1907; consequently its constitution was written at a time when considerable amounts of experience had been accumulated in America in the writing of constitutions. By this time in the history of the United States the so-called 'state of the art' of constitution writing had advanced to the point where many of the omissions and 'defects' that were inherent in constitutions written in 1776 were recognized. Secondly, it is evident from the study of the evolution of constitutions in other states that the potential for using a constitution to promote special interest had been recognized. Constitutional evolution in Oklahoma began with this background, which is in contrast to the case studies presented above.

Oklahoma may be considered to have been one of the last frontiers in the lower forty-eight. It was not until April 22, 1889 that the territory was opened to settlement by the white man.[1] Prior to this date, the territory was

---

[1]Edwin C. McReynolds, Oklahoma, A History of the Sooner State, (Norman: University of Oklahoma Press, 1954), p. 288.

considered strictly Indian territory. Approximately one-half of the state (the Western portion) was to remain under the authority of the Indian nation while the Eastern half of the territory was opened to settlement. Accordingly the evolution of territorial government was heading toward the formation of two separate states, each seeking admission into the Union. The formation of the separate Indian state, Sequoyah, had reached the stage where a formal constitution had been written by a convention in 1905, but this state's admission into the Union was stifled by partisan politics in Washington, D.C. The Republican-dominated Congress recognized that the proposed state of Sequoyah would have been dominated by Democrats, consequently introducing two Democrats into the Senate, eroding the Republican's control in Congress. The result was that Congress passed the Oklahoma Enabling Act of 1906 which mandated that a single state of Oklahoma be admitted into the Union.[2] The significance of the attempts to form the state of Sequoyah lies in the fact that the Indians would participate in the writing of the constitution of the state of Oklahoma and that features of the Sequoyah constitution would find their way into the constitution of Oklahoma.[3]

---

[2]H. Wayne Morgan and Ann Hodges Morgan, Oklahoma A Bicentennial History, (New York: W. W. Norton and Company, Inc., 1977), p. 72-81.

[3]Ibid., p. 82.

It is claimed that the Eastern portion of Oklahoma Territory was settled by individuals who were "...dissatisfied with the existing order that had frustrated them elsewhere. Farmers especially disliked the cattlemen, who in their view profited handsomely from grazing the Indian lands they wished to make into family farms. During the early territorial days, nesters carried rifles to warn off cowboys determined to run cattle over their crops. By the beginning of the twentieth century, this historic tension had matured into a suspicion of big or complex business enterprise and a corollary bias toward the small farmer that became the core of political attitudes as Oklahomans looked toward statehood."[4]

The Oklahoma Enabling Act of 1906 authorized a constitutional convention at which fifty-five delegates from the Indian territory would convene with fifty-five delegates from the Oklahoma territory, along with two delegates from the Osage Nation, (a portion of the Indian territory that had not formalized a local government along the lines of accepted white government) to write a constitution for the state of Oklahoma. The convention delegation was comprised of twelve Republicans that appear to have represented federal governmental interest and corporate interests, namely railroads, while the remaining delegation

---

[4] Morgan, op. cit., p. 72.

of one-hundred was Democratic. In terms of socio-economic background, the convention was dominated by farm-and-labor representatives and thirty-four of the delegates from the Indian territory were veterans of the Sequoyah constitutional convention.[5] The convention was also influenced by national issues such as the depression of the 1890's, urbanization, ethnic tension, fear of big business, along with progressive solutions publicised in national press.[6] "Most of her (Oklahoma) residents had witnessed or experienced the prevailing issues in former homes. Many sought a new life in the Twin Territories, only to confront the same poor public facilities, political corruption, and economic disadvantages they thought they had left behind.[7]

The product of the convention was a detailed and lengthy document that reflected the anti-big business, government, machine politics and judiciary attitude of the Oklahoman Democratic Party. Extensive power was reserved to the people in the form of direct democracy, while the legislature received the bulk of governmental powers. Distrust of government and political power resulted in the statutory nature and length of the constitution such that there was little room left for judicial interpretation of the convention's intent.[8]

---

[5] Morgan, op. cit., p. 81-83.

[6] Ibid., p. 83.

[7] Ibid.

[8] Ibid., p. 85-86.

The core of Oklahoma's fiscal constitution of 1907 may be found in Article X, and within the twenty-two sections of this article there were incorporated six provisions which may be considered tax limits. Section 5 of Article X restricts the taxing authority from practicing extensive tax discrimination by including a uniformity clause which stipulates that taxation must be uniform upon the same class of subjects. Section 6 of the finance article presents the limits of the tax base within the state and basically excludes from the tax base public property, educational institutions, religious and charitable property, one-hundred dollars worth of personal property, growing crops, veterans and their widows of the Civil War, orphan homes, Indians, the Federal government. Section 9 of Article X provides a general rate limit on ad valorem taxation of thirty-one and one-half mills on the dollar of valuation. In addition, this section specifies the division the rate of taxation between state and local governmantal units, and limits any increase in the rate of taxation to a five mill on the dollar increase provided that three-fifths of the voters affected approved. Sections 17 and 19 incorporate a general earmark such that all laws authorizing a tax must specify the purpose of the tax and that revenues cannot be diverted to any other use than that specified in the revenue act.

The final tax limitation provision that was incorporated into the constitution of 1907 as adopted by the convention was included in Article XIX which deals with insurance

companies. This article sets up the conditions under which foreign insurance companies could do business in Oklahoma. Within this article, Section 2 specifies that an annual tax be collected from foreign insurance companies and provides a schedule of the tax according to the type of insurance the company deals in. The provision of Section 2 that stipulates the tax on insurance companies also specifies the amount of annual tax that was to be collected from each type of company. This provision establishes a tax floor as well as a tax ceiling. Due to the wording of Section 2, the tax limit in this section may be considered both a rate limit and a rate structure because it specifies the rate of tax per year per company in terms of a dollar amount and implicit within the wording, the rate structure is specified since each type of company is assigned a specific tax figure.[9]

A comparison of Oklahoma's first constitution with the first constitutions of 'old' states reveals the fact that Oklahoma's first constitution incorporates a highly developed fiscal constitution that took years to achieve in the older states. This feature is of course explained by the fact that Oklahoma was originally settled quite late in the history of the United States, and that the settlers

---

[9]Proposed Constitution of the State of Oklahoma (Washington: Government Printing Office, 1907).

had experienced constitutional democratic government in their previous place of residence and imported their ideas of what should be included in the constitution from other states. In addition, the literature indicates that the people that settled Oklahoma recognized the potential for abuse of governmental powers from their previous experience. One may conclude that the delegates to the convention of 1907 recognized the bounds of what they thought would be good government, and explicitly incorporated provisions into their constitution to keep government within those bounds. However, the spirit of democracy did not end with the completion of the convention's work and the ratification of the constitution, but was incorporated into the state's organic law as a permanent feature in the form of the right of the citizens to initiate legislation, demand a referendum on any legislative act, and amend the constitution. Reference to, and provisions for the exercise of the citizen initiative was incorporated into no less than four articles of the constitution of 1907. Article II, the Bill of Rights, Section 1 states that "All political power is inherent in the people;..." and that the people have the right to modify the form of government. Article V, dealing with the Legislative Department, states in Section 1 that the "people reserve to themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature,

and also reserve power at their own option to approve or reject at the polls any act of the legislature."[10] Article XVIII Section 4 extends the powers of direct democracy to local governmental matters. And finally, Article XXIV Section 3 on Constitutional Amendments stipulates that Sections 1 and 2, which provide for the legislative initiative and convention as means for amending the constitution, ..."shall not impair the right of the people to amend this Constitution by a vote upon an initiative petition therefore." These provisions dealing with the right to exercise direct democracy in the state of Oklahoma are in sharp contrast with the provisions that were incorporated in the case studies detailed above. In fact, the provisions regarding the citizen initiative are quite liberal and progressive when compared to the constitutions of the states in the United States as of 1979. Section 2 of Article V specified that a citizen legislative proposal required 8% of the legal voters support in the form of a petition and that constitutional amendment proposals required 15% of the legal voters signatures on a petition.[11] The impact of these provisions has had significant effects upon the

---

[10] Proposed Constitution of Oklahoma, op. cit.

[11] William F. Swindler, Sources and Documents of United States Constitutions, (Dobbs Ferry, NY: Oceano Publishing Company, 1977), p. 101.

evolution of Oklahoma's constitution. For example, during the period 1908 and 1949 there were 95 proposals submitted to the voters through the citizen initiative process and by the legislators. Out of the 95 proposals, 34 were adopted.[12] Out of the total of 95 constitutional provisions submitted to the voters, 67 were legislative initiatives, of which 28 were adopted, and 28 proposals were citizen initiatives of which 11 were adopted.[13] As pointed out by Thornton, legislative proposals have had a success rate of 34.33% while the proposal submitted through the citizen initiative method have had a success rate of 39.29% for the period 1908 through 1949.[14] Thornton also indicates that the time of the voting for constitutional proposals is determined by the governor in the case of citizen initiatives and by the legislators in the case of legislative initiatives

---

[12] H. V. Thornton, Oklahoma Constitutional Studies, (Guthrie, Oklahoma: Co-operative Publishing Company, 1950) p. 25n.

[13] Ibid., p. 21.

[14] Ibid.

and that only 8 citizen proposals have been voted upon in special elections.[15]

The first amendment to Oklahoma's fiscal constitution was the product of the legislative initiative process and was ratified at a special election in 1913 by a vote of 63,300 in favor and 30,295 against. The fiscal amendment of 1913 added Section 12(a) to Article X, on Taxation and Finance, which earmarked all of the taxes collected from railroads, pipe lines, telephone companies, and public service corporations collected in the name of the Common School Fund to be applied exclusively to the maintenance of the Common School Fund.[16] The literature does not provide any definitive reasons behind the enactment of this constitutional tax limit; however, the literature does indicate that from the time of admission of the state into

---

[15]At the time of this writing there have been no definitive studies concerning the success rate with respect to the origin of a constitutional proposal and the timing of the elections, while the content of the proposal is considered in terms of its 'desirability.' The significance of the figures presented will not be addressed in this study since it is beyond the scope of this work. However, one must consider the political impact of the timing of the elections on propositions in order to determine if there is a relation between the political motivations of the legislature and the governor and the success rate of the proposals.

[16]Thornton, op. cit., p. 26; and Constitution of the State of Oklahoma, (St. Paul, Minnesota: West Publishing Company, 1967), p. 44.

the Union to the year 1912 there was considerable effort placed into the development of the educational system in Oklahoma. One can only speculate that the legislators attempted to insure that adequate financing of the educational system would be maintained over time.[17]

The second amendment to Oklahoma's fiscal constitution was an overhaul of Section 9 in Article X. This amendment was initiated by the legislature and was ratified by the voters in 1923. However, because the amendment was ratified in a special election, the Supreme Court in State vs. State Board of Equalization held it illegally adopted.[18] It was not until 1933 that the same amendment became a part of the state's organic law when it was ratified by a vote of 183,623 in favor and 20,739 against.[19] The 1933 amendment to Section 9 made the general ad valorem tax limit more stringent from the original limit, 30.5 mills on the dollar, to 15 mills on the dollar of valuation. In addition, a political subdivision tax limitation provision was incorporated into this section along with earmarking provisions. The political subdivision limitation provision stated that "no ad valorem tax shall be levied for state

---

[17]McReynolds, op. cit., p. 323-24.

[18]Swindler, op. cit., p. 132n.

[19]Thornton, op. cit., p. 27.

purposes, nor shall any part of the proceeds of any ad valorem tax levy upon any kind of property in this State be used for State purposes;..."[20] The earmarking limitations were embodied in two provisions that in the first case allowed counties to levy an additional 2 mills on the dollar to be used to support separate schools for white and black children, and in the second case, allowed school districts to levy an additional 10 mills on the dollar to be used for school purposes.[21] And finally, Section 9 was amended to allow the state and its subdivisions to levy an ad valorem tax on property with no explicit limit for the exclusive purpose of retiring any preexisting debt.[22] The 1923 version of the amendment to Article X Section 9 occurred shortly after a transition of political parties that dominated the governor's office and the legislature. At the time of admission of the state into the Union, as mentioned above, the political scene was dominated by the Democrats. A period of political discontent occurred as a result of the depression of 1920-21, which shifted political support to the Republicans to the extent that the Republicans obtained a majority in the House of Representatives while the

---

[20]Swindler, op. cit., p. 132.

[21]Ibid.

[22]Ibid.

Democrats held a majority in the Senate. By 1922, the situation shifted in favor of the Democrats due to electorate dissatisfaction with the lack of deliverance by the Republicans of their campaign promises.[23] It appears that the revival of Democratic domination of state politics enabled the party to initiate a program of reforms that tended to benefit the farmers and laborers from which the party received its principal support. Among the programs that were initiated were free textbooks and state aid to public schools, "Warehouses inspection, grain inspection and cotton grading under the state board of agriculture, and revision of the workmen's compensation laws were passed. Community marketing commission and the state corporation commission was given increased authority to regulate cotton gins."[24] According to McReynolds (1954) "New tax laws were necessary to meet rising expenses of government, especially in the building and maintenance of highways. Unexpected increase in the gross revenue receipts of 1922 had made the ad valorem levy for general expenses of government unnecessary for that year. But the Ninth Legislature levied a state tax of one cent per gallon on retail sales

---

[23]McReynolds, op. cit., p. 334-340.

[24]Edwin C. McReynolds, Alice Marriott, and Estelle Faulconer, Oklahoma, the Story of Its Past and Present, (Norman: University of Oklahoma Press, 1971), p. 296.

of gasoline and a new tax on buses and trucks employed as common carriers."[25] Thus it appears that the windfall in ad valorem revenues and the ability to shift the burden of taxes to other sources, the Democrats were able to propose a constitutional tax limitation provision that would serve their supporters for years to come. However, as stated above, the Supreme Court held that the ratification of the amendment was invalid, consequently annulling the constitutional act.

Although the figures were not available at the time of this writing, it appears as though the Democrats continued with their program of expansion of the public sector with the result that in 1931 the state deficit had grown to approximately $5,000,000, while the tax burden borne by the small property owner does not appear to have been reduced. Governor Bill Murray attempted to equalize the tax burden in 1931 by directing that the tax commission reduce the assessments on small home owners and at the same time increase the assessments on corporate property, along with the imposition of a corporate license tax.[26] Clearly, the governor's actions resulted in a shift of the tax burden to the business sector. It must be recognized that

---

[25]McReynolds, History of the Sooner State, p. 342.

[26]Ibid., p. 363.

by 1931 the governor must have been under considerable pressure from the general population to reduce the levels of taxation and economise on governmental expenditures due to the depression. Since the Democrats were not dependent upon the business sector for political support this effort by the governor temporarily appeased the general public. However, one may speculate that the business sector could not have provided the necessary revenues to support governmental programs simply because of the depression. Apparently the source of popular discontent was local government and the ad valorem tax system because by 1933 popular pressure upon the legislature resulted in the reintroduction of the 1923 amendment to Section 9 of Article X. The amendment was ratified in August of 1933 by a vote of 183,623 in favor of the proposal and 20,739 against the measure.[27] The effects of the depression did not end with the enactment of the 1933 fiscal amendment. The actions of the general voter indicated that the electorate demanded a reduction of taxes without a reduction of governmental services. In 1934, E. W. Marland was elected governor on a platform that stated "Elect me and bring the New Deal to Oklahoma,"[28] Marland faced a state deficit of $20,000,000 in 1935 and

---

[27] Robert K. Carr., State Control of Local Finances in Oklahoma, (Norman: University of Oklahoma Press, 1937) p. 39-40.

[28] McReynolds, History of the Sooner State, p. 373.

attempted to initiate a program by which $2,500,000 was repaid each year financed by increases in taxes on petroleum output, cigarettes, rentals, insurance premiums, inheritance, incomes and a property tax designed to benefit the destitute.[29] Apparently, Marland's program was not completely suitable to the general electorate for they reacted by ratifying a citizen initiative proposal to the Oklahoma constitution in September of 1935, which provided for the legislature to enact a homestead exemption to the ad valorem property tax.[30] The citizen initiative introduced Article XII-A into the Oklahoma constitution and contained two sections. Section 1 of the new Article XII-A stated that "All homesteads as is or may be defined under the laws of the State of Oklahoma for tax exemption purposes, may hereafter be exempted from all forms of ad valorem taxation by the legislature..."while Section 2 of the article specified that any exemptions enacted by the legislature "shall be infull force and effect for a period of not less than twenty years..."[31] Although the wording of the amendment is weak in terms of the binding effect it

---

[29]McReynolds, History of the Sooner State, p. 373.

[30]Carr, op. cit., p. 42n-43n.

[31]Swindler, op. cit., p. 137.

had upon the legislature it nevertheless got the message across to the legislature that it would not be politically expedient to ignore the desires of the general electorate. The legislators, behaving rationally, passed an act exempting the first $1000 of assessed valuation from the ad valorem property tax.[32]

By 1946 the constraining effects of the tax limitation provisions that were incorporated into Article X Section 9 appeared to have become too stringent. In 1946 five constitutional amendments were incorporated into Oklahoma's constitution, three of which amended Article X Section 9 and the other two amended Article XIII. Of the five amendments, four were citizen initiatives and the fifth was legislatively initiated.

The first amendment that was ratified in 1946 was initiated by the legislature. The amendment modified Section 9 of Article X by increasing the tax levied by the excise board by one mill on the dollar and earmarking the revenue for school related capital expenditures. The proposal was ratified on July 2, 1946 by a vote of 277,497 in favor and 97,900 against. Although there is no available literature that provides the reasoning behind these amendments it becomes evident from the other amendments that

---

[32]Carr, op. cit., p. 42n.

this amendment was a legislative response to popular demand for increased public provision of education in the state.

The remainder of the 1946 amendments were all ratified on November 5, of that year and were all citizen initiatives. Two of the amendments acted upon Section 9 of Article X and the other two, which were obviously related, operated upon Article XIII.

The first amendment to Article X Section 9 increased the ad valorem county property tax for school purposes and established a new rate limit of 15 mills on the dollar. This proposition was ratified by a vote of 271,331 in favor and 175,257 against. The second citizen initiated proposal was virtually identical to the amendment that was ratified on July 2 and once again provided an increase in the excise board levy of one mill on the dollar for capital improvements in schools. This measure was ratified by a vote of 267,549 in favor and 169,971 against.

Of the two amendments that pertained to the Education Article (Article XIII) the first one charged the legislature with the duty of raising revenues and providing the means of distribution among the various counties of the state such that each common school received sums providing a per capita of school enrollment of $42 support in addition to permanent school fund appropriations. This proposal was ratified by a vote of 264,058 in favor and 174,374 against.

The final citizen initiative directed the legislature to provide a system of free textbooks for all pupils in the common schools and the creation of a state wide board and local boards to select the books that would be used in the public schools. This amendment was ratified by a vote of 261,807 in favor and 167,563 against.[33]

The series of amendments that were incorporated into Oklahoma's constitution in 1946 in an obvious sense increased the taxing powers of the government. But what is of most significance is the fact that two of the tax increasing proposals were citizen initiated. The two citizen initiated amendments that increased the government's ability to tax present an example of a consumption decision on the part of the electorate while the other two amendments indicated the purpose of the increase in government spending that was desired. The significance of this example is that it points out that the levels of taxation and the quantity of public goods consumed in a society can and in fact have been determined through the process of direct democracy and that the electorate is able to adjust the levels of taxation and the quantities of public goods produced by government to suit the needs of the electorate.

---

[33]Staff of the State Election Board, Directory of Oklahoma 1977, State Capitol, Oklahoma City, p. 652; McReynolds, History of the Sooner State, p. 386; Thornton, op. cit., p. 29.

In 1948, Article X Section 9 was once again amended to increase the permissable rate of taxation on real property for school purposes by 2 mills. This amendment was initiated by the legislature and ratified by the electorate in July of 1948.[34]

The amendments to the Oklahoma constitution that were incorporated during 1946 and 1948 tended to relieve the constraining effect of the amendment of 1933. A reasonable explanation of this series of constitutional amendments perhaps lies in the reaction of the electorate in Oklahoma to the conditions brought forth by the Great Depression and the ensuing recovery. It is commonly recognized that the depression devastated the economic wellbeing of virtually all sectors of society. The reaction in Oklahoma was a demand on the part of the electorate to roll-back the level of taxation within the state. The recovery which was presumably fueled by World War II presented a boom to the economy in Oklahoma to the extent that agricultural output experienced an increase in demand in addition to an increase in demand for petroleum production and manufactured goods. It appears that during the recovery period Oklahomans prospered in relation to the not so distant past and reacted by focusing their attention

---

[34]Thornton, op. cit., p. 517.

toward the educational system within the state. During the Depression, education and the maintenance of the educational system would, one would expect, be of lower priority than food, clothing, and shelter. Once these primary consumer needs were satisfied, it is reasonable to assume that the people would once again concern themselves with the educational system in the state. Accordingly we find that during the post war period 1944-1949, expenditure per pupil increased 73 percent.[35]

In order to finance the renewed interest in education it was necessary to roll back the tax limits that were incorporated into the Oklahoma constitution.

The development of the educational system in Oklahoma remained an important issue in relation to amending the constitution up until the present. During the late forties and up to the mid-fifties educational finances and racial segregation became intertwined. Public education in Oklahoma was originally provided to both races, however the racial groups were kept separate by means of duplication of the educational facilities for blacks and whites. By the late 1940's the U. S. Supreme Court began its initial stages of judicially mandated desegregation of public schooling in the United States. The response in Oklahoma was one

---

[35]McReynolds, History of the Sooner State, p. 418.

of mild resistance to desegregation; however, Oklahomans did not expend any considerable amount of resources to avoid desegregation. An attempt at stalling desegregation occurred in 1948 after the Supreme Court handed down its decision in the Sipuel Vs. Board of Regents of the University of Oklahoma on January 12, 1948.[36] Although the decision of the Supreme Court dealt with desegregation of higher education in Oklahoma, it became obvious to the political leaders of the state that the focus of the court might turn to public education in general.

In 1948, the legislature proposed an amendment to Oklahoma's fiscal constitution that would, it appears, serve two functions; forstall court action on desegregation of public schools by improving the quality of education received by the blacks, and secondly concentrate the cost of the improvements into the black community. The proposed amendment to the constitution modified Section 9 of Article X to enable counties at their own discretion to levy an additional one mill on the dollar valuation of property for the support of separate schools for white and blacks. The

---

[36]Allan A. Saxe, "The Early Developments of State Policy on Desegregation of Public Schools in Oklahoma, Unpublished theseis to Master of Arts, the University of Oklahoma Graduate College, p. 21.

amendment was ratified on July 6, 1948 by a vote of 253,815 in favor and 106,486 against.[37]

By 1954-55 it was inevitable that racial segregation in public schools would not be tolerated by the Federal government and this realization sent Oklahoma public officials into a panic. The issue this time appears to have been financial rather than pure racism. "Apparently desegregation at the higher level conditioned the minds of the people (favorably) toward the segregation-desegregation question when the question arose at the lower level."[38] "The primary fear was that railroads, power companies, and other business interests that paid substantial taxes had a legal right to object on constitutional grounds to any further assessments for separate schools. Court litigation of this nature was expected virtually to cripple Oklahoma's fiscal structure."[39] In its attempt to remedy the fiscal crisis faced by the state, the legislature proposed a constitutional amendment

---

[37] Directory of Oklahoma 1977, op. cit., p. 654; also see "Turner Urges Three Changes in Constitution," Daily Oklahoman, 6 June 1948, p. 2A.

[38] Interview with Ada Lois Sipuel Fisher, April 13, 1963 from Saxe, op. cit., p. 25; Ms. Fisher was the plaintiff in the 1948 Supreme Court Case mentioned above.

[39] Saxe, op. cit., p. 38.

that would modify Article X Sections 9, 10 and 26 "by providing for ad valorem taxes for public schools and placing restrictions thereon and limiting consideration thereof on State guaranteed school programs,..." and expand the debt limits of school districts and add Sections 32 and 33 to Article X to provide funds for buildings and expansion.[40] The amendment was ratified by the people of Oklahoma on April 5, 1955 by a vote of 231,097 in favor and 73,021 against the measure.[41]

Except for oil production, the development of industry in Oklahoma appears to have been a slow process. By 1958 industrial development entered the mainstream of public concern to the extent that public officials were looking for ways of attracting industry into the state. However, the first definitive action taken at the constitutional level was to eliminate a disincentive for industry to locate within the state. In 1958 the legislators proposed a constitutional amendment that was basically a base limit on the state's power to tax. The amendment to Article X Section 8 changed the assessment of real property in the state for ad valorem taxation from the existing 100% of market valuation to 35% of the market value of the property.

---

[40] Directory of Oklahoma, op. cit., p. 657.

[41] Ibid.

Although the 100 % assessment figure was never adhered to by the state's assessors, the amendment's publicity would, it was felt, attract industry into the state.[42] The amendment was ratified on July 1, 1958 by a vote of 251,317 in favor and 132,972 against.[43]

Along with the increased interest in industrial development of Oklahoma, community development was also sought. In 1960 the legislators proposed an amendment that would allow county governments to levy an additional 2.5 mills of the ad valorem tax to support county health departments. Accordingly the additional levy would have had to have been approved by the voters of the individual counties.[44] The amendment was ratified on July 5, 1960 by a vote of 201,218 in favor and 193,497 against.[45]

On July 26, 1960 the voters of Oklahoma ratified a second amendment that was proposed by the legislators. This

---

[42] Directory of Oklahoma, 1977, op. cit., p. 659; and "State to Vote on Tax Value, Water Issues", Daily Oklahoman, 29 June 1958, p. 19A.

[43] Ibid.

[44] Ibid., p. 661; and "Four Amendments to Be Settled," Daily Oklahoman, 26 June 1960, p. 23A.

[45] Directory of Oklahoma, op. cit., p. 661.

second amendment modified Article X by adding Section 10(a) which permitted counties to levy "not less than one nor more than two mills on the dollar" for public library purposes. The amendment was ratified by a vote of 114,294 in favor and 113,671 against.[46]

Although there is no substantive background material available concerning the two amendments to the fiscal constitutuion that were ratified in July of 1960, both were the product of the legislature, both were ratified by fairly slim margins, and curiously and perhaps strategically, the amendments were submitted to the voters at different times, perhaps to insure their passage.

On May 1, 1962 the voters ratified a legislatively proposed amendment to Article X that added Section 35 by a vote of 263,850 in favor and 195,020 against. Section 35 permitted counties to levy up to five mills on the dollar upon voter approval for the purpose of selling bonds in order to attract industry into the county by making loans to business or giving outright grants to stimulate industrial development.[47]

---

[46] Directory of Oklahoma, op. cit., p. 693.

[47] Ibid., p. 663; and "Tuesday Vote Due to Decide One Question," Daily Oklahoman, 29 April 1962, p. 24A.

In 1965 school districts appeared to have been in financial difficulty with the result that the legislators proposed a constitutional amendment to Section 9 of Article X that would allow an additional 10 mill on the dollar levy for the county ad valorem tax. Because it was a special election, only ad valorem taxpayers were allowed to vote on the issue; despite that, the issue was ratified by a vote of 125,779 in favor and 59,535 against.[48]

The funding of the school system was not settled by the amendment of 1965 for the notion came about that Oklahoma was lacking in the field of vocational training. Again the legislators proposed a constitutional amendment that would authorize a maximum 5 mill levy for the support of vocational training at the high school level. Arguments in favor of the additional levy were based upon the notion that industry required employees with technical skills which were not being provided by the existing system. In addition the proponents argued that adults also required retraining in new skills in order to maintain their employability. Finally the proponents indicated that the funds raised by the levy would be matched by the Federal Government. It appears that the

---

[48] Directory of Oklahoma, op. cit., p. 668; and see "Wheels in Motion for School Vote," Daily Oklahoman, 28 July 1965, p. 5.

support for the amendment stemmed from the commercial interests in Oklahoma since in reality industry would benefit the most because the public would pay for the training of their employees. The voters accepted the arguments half heartedly and ratified the amendment on May 24, 1966 by a vote of 214,698 in favor and 206,458 against.[49]

Thus it appears that the agriculturally based economy of Oklahoma was to be transformed into an economy based upon industry. Efforts to attract industry occurred from the tax incentive method of providing industry with a labor force trained by the state. Of course, the public would pay for it all.[50]

In the continuing effort of attracting industry into the state, it appears that Oklahomans faced another related problem. Once industry did locate in the state, it appears that accumulated wealth was exported due to the taxation of of intangible property such as bank deposits, stocks, bonds

---

[49] Directory of Oklahoma, op. cit., p. 670; and "Improving Job Training," May 7, 1966, p. 10; and "Voters Face 2 Questions, Party Contests in Runoff," Daily Oklahoman, 9 May, 1966, p. 21; also "Next Tuesday's Ballot Questions Explained," May 18, 1966 O.C.T. File clipping obtained from Legislative Library, Oklahoma City; also Oklahoma Government Bulletin, Vol. 13, no. 4, (Winter 1966); finally see "Trade Schools, Annual Session to be Decided," Daily Oklahoman, 22 May 1966, p. 26.

[50] See "Yes and No of State Question," Daily Oklahoman, 22 May 1966, p. 18.

and other investments. In order to encourage the holding of intangible wealth within the state the legislators proposed a constitutional amendment that would incorporate a new base limit into the Oklahoma constitution by prohibiting the taxation of intangible personal property. The amendment was submitted to the voters on August 27, 1968 and was ratified by a vote of 329,848 in favor and 92,710 against.[51]

The efforts to attract industry into the state continued with a legislative proposed amendment that was submitted to the voters on September 17, 1968. The legislatively proposed amendment incorporated yet another base limit on the ad valorem property tax by exempting property that was being transported through the state and exempting property that was kept within the state for up to 90 days for the purpose of "assembly, storage, manufacturing, processing or fabricating," It appears that the amendment was particularly aimed at not only industry that was locating within the state but also as an inducement to shippers to utilize the state's port

---

[51] Directory of Oklahoma, op. cit., p. 672; see also "Eight Ballot Issues Coming At Once," Daily Oklahoman, 16 June 1968, p. 15; and "Primary Ballot to Contain Eight Constitutional Amendments," Madill Record, 15 August 1968.

development on the Arkansas River. The amendment was ratified by the voter by a vote of 182,326 in favor and 92,601 against.[52]

On November 7, 1972 the voters of Oklahoma approved a legislative amendment proposal to the 35% assessment provision previously mentioned by a vote of 537,310 in favor and 387,272 against. The amendment basically tightened up the wording of the previous amendment by incorporating the words "of its fair cash value for the highest and best use as actually used, or previously classified for use." Accordingly with this change the base limit was somewhat relaxed such that the state could contest the assessment of property that was say assessed as agricultural land but was actually used for oil production.[53]

The final two amendments that were approved by Oklahoma voters both increased the taxing ability of the government. In both cases, the purpose of the increased levy was to support community development. On August 24, 1976 the voters approved a legislative proposal that authorized the levy of 3 mills on the dollar for the support of

---

[52]Directory of Oklahoma, op. cit., p. 673; and "Important Vote Tuesday," (T.S.W. newspaper clipping obtained from the Legislative Library, Oklahoma City), 15 September 1968.

[53]Directory of Oklahoma, op. cit., p. 679.

emergency medical districts by a vote of 256,368 in favor and 215,679 against. On November 2, 1976 the voters approved a legislative proposal that expanded the levy of ad valorem taxes for library purposes from the previously established 2 mills to 4 mills on the dollar. The vote for this amendment was 484,604 in favor and 455,115 against.[54]

Oklahoma presents a most interesting case of a young state that has had considerable experience of constitutional evolution under all three methods of amending a state constitution. Although the white settlers of Oklahoma, having lived in states that were directly involved in the Civil War conflict, did experience the affects of war, the experience was not felt by them as a community of Oklahomans. Perhaps because of their disassociation with their former homes, Oklahomans did not appear to import the sectionalism to the extent that it existed in other areas of the nation. Also, as noted above the settlers, in addition to being land hungry, were attempting to escape the prevailing machine politics that existed throughout the United States. This fresh political attitude is quite evident in Oklahoma's first constitution which incorporated

---

[54] Directory of Oklahoma, op. cit., p. 685.

many quite modern features such as citizen initiative, and a comprehensive fiscal constitution. The historical evidence that was reviewed in conducting the case study on Oklahoma indicates that there was a general distrust among the population of big government and this attitude manifest itself into the constitution in the form of direct democracy provisions and tax limits.

Through the course of time Oklahomans have contracted and then expanded the state's power to tax. These adjustments to the state's fiscal powers appear to reflect, more than anything else, the trade offs between private consumption and collective consumption in the light of the economic conditions faced by the voter. This is especially evident in the events that occured between 1929 and 1950. Alternatively, and perhaps most importantly in terms of this study, Oklahomans have used constitutional tax limitation provisions as instruments to attract industry and wealth into the state. The second motive for implementing tax limits is quite similar to the Florida experience with the difference that there is little evidence to suggest that Oklahomans implementing special interest amendments.

CHAPTER 9

SUMMARY OF CASE STUDIES

Part II has presented four case studies of the evolution of the constitutional tax limitations in the organic laws of Virginia, New York, Oklahoma, and Florida. The attempt will be made here to summarize the findings of the cases and to draw upon the experience of these four states to isolate the general bases of constitutional tax limits.

This study has presented a considerable quantity of material that empirically describes the evolution of constitutional tax limits in the four case studies presented.

The first and perhaps the most obvious finding of this study is that aside from the fact that constitutional tax limits are not new additions to state constitutions, tax limits have been used to both expand and contract the powers of government to tax. Chapter three of Part I indicates that state constitutions have become more constraining through time. However, from the case studies of Part II it is evident that the degree of constraints placed upon governments has oscillated through time with the net result that state constitutions are in general more restrictive in 1979 than they were when the states entered the Union. The oscillations in the degree of restrictiveness

is perhaps indicative that constitutions are continually adjusted to meet the needs presented by the times. This adjustment process, as evidenced by the case studies, has not always been to the benefit of the general population, particularly when the state constitution is used as a political weapon. The final point to be brought out in this context is that constitutional tax limits have been used to promote objectives that are quite remote from their theoretical purpose of controlling the growth of government.

The purpose of this study has been to determine the conditions that promote the inception of constitutional tax limits into a state's constitution. However, the case studies of Part II indicate that the conditions which promote the inception of tax limitation devices are in fact quite variable and that much depends upon the motives which drive the political agents that propose the adoption of constitutional tax limits. Consequently, the question to be answered is what purpose have constitutional tax limits served through the course of American history? To answer this query, both sides of the coin must be examined. On the one side we find that constitutional tax limits constrain the taxing ability of government, and on the other side we find that constitutional tax limits have been changed to expand government's ability to generate revenues. The case studies become useful in this respect.

Although the sample is small, the assertion to be made here is that patterns do indeed emerge despite the differences in the particular states studied.

In looking at those instances that constitutional tax limits constrained government's powers to tax four general motives emerge from the cases presented in Part II. The first and perhaps the most frequent use of constitutional tax limitations has been to entrench a particular coalition's ascension of power and control of the government by using constitutional tax limitations to increase the costs faced by the opposition. Closely associated with this motive is the promotion of political and private vested interests in a particular state of affairs. This admittedly is quite a broad and general statement although it is a positive statement. Normatively, the rule implies a lack of 'fairness' in the sense that if the positions of the competing coalitions were reversed then the original proponents of the particular constitutional tax limit would invest resources to do away with the particular provision.

The second alternative motive for increasing the constraints on government's power to tax has been to eliminate or stifle financial transfers among governmental sub-divisions such that one coalition is able effectively to avoid subsidizing a particular activity of another

coalition. This motive has been used primarily to avoid the subsidization of education across county lines because of racial differences.

The third motive that has emerged from the case studies is that tax limits have been used to promote economic development in the states. Political leaders have used tax limits as carrots to attract industry and wealth into the state.

The final motive behind the inception of constitutional tax limits has been to control governmental abuses of the power to tax. This, of course, is consistent with the prevailing thinking of public finance economists.

On the other side of the coin, there are many examples where constitutions were amended to increase the ability of governments to generate revenues. There appears to be two motives behind this action. Firstly, the evidence indicates that the power to tax has been increased by a dominating coalition to increase the coalition's power over governmental and political matters. Thus a coalition may use constitutional tax limits to secure its position of domination and then relax the constraints in order to complement its political power with more control over the power of the purse.

The second reason behind the relaxation of tax constraints is quite straight forward. The evidence indicates

that tax limits have been relaxed as a result of a consumption decision on the part of the tax payer.

Clearly, there are considerable normative judgments involved when dealing with constitutional tax limits. However, these normative judgments are not restricted to tax limits but cover the general topic of constitutions as the basis by which a society is governed. Constitutions provide the rules by which government operates in a democracy, but these same instruments provide the polity with an extremely powerful weapon that can and has been used against the polity itself by some subset of the political agents in the society for promoting private interests. The empirics indicate quite clearly that when a status quo exists, then strategic action can be quite successful. However, society is faced by a severe problem because constitutions do need to be amended as was suggested by Jefferson, and the amendments cannot be expected to emerge from behind a Rawlsian veil of ignorance. How can we as a society promote the constructive aspects of constitutional change and suppress the weaponry presented by the fundamental laws of the land?

CHAPTER 10

MAJOR LESSONS TO BE LEARNED

I. Introduction

Traditionally, there has been a negative attitude expounded by many scholars toward the concept of constraining the fiscal powers of government. This negative attitude towards the constraint of governmental powers has become entrenched through time in the fields of public finance, political science, and constitutional law, and only recently, in the face of inflation, mounting fiscal deficit, and escalating taxation has the accepted wisdom come under intellectual scrutiny. Attention to this matter appears to have come from two independent directions. On the one hand, intellectual attention has focused upon constitutional tax limits as a continuation of the evolution of economic thought that was traced back to Adam Smith in Chapter 1. This body of thought has long recognized the need to constrain government constitutionally in order to promote the general welfare of society.

The second source of interest in constitutional fiscal restraint is new and may be considered to be a

reaction on the part of the converts to political realities. Politicians, lawyers, political scientists, and economists, among others, have turned their attention to constitutional fiscal restraints only after the highly publicized 1978 California citizen initiative, Proposition 13, which was a mandate for fiscal responsibility in government. These new supporters of conservative fiscal principles form a group of individuals that appear to have been awakened to the fact that the citizen does not desire a paternalistic government, that governments can be led astray by their own institutional design, and that the relationship between the private and public sectors ought to be a balanced one. This chapter will proceed to outline the major conclusions that are brought out by this study.

II. Constitutional Tax Limits Work

It was shown in Chapter 1 that there are eight readily identifiable forms of constitutional tax limits that are common to constitutions at the state level in the United States. Chapter 3 presented the historical starting point of each state of the Union and an examination of the product of two hundred years of evolutionary experience in the area of constitutional restraints on government's power to tax. The evidence

presented in Chapter 3 supports a simple, but nevertheless, important statement that constitutional tax limits do affect the fiscal performance of state governments and that the effect, in general, has been in the intended direction, i.e. tax limits tend to reduce the size of government spending.

III. Constitutional Tax Limits Serve More Than a Single Purpose

Part II of this work presented in four chapters in-depth examinations of the evolution of constitutional tax limits in the states of Virginia, New York, Florida, and Oklahoma. Within the case studies particular attention was paid to the social constitutions, events, and political actions that led to the inception of constitutional tax limits and to the amendment of pre-existing limits in that state's constitution. The case studies revealed that constitutional tax limitation provisions have been used for purposes beyond the theoretical recognition of limiting the size of government. Perhaps the most common use of tax limits has been to adjust the political environment to suit the needs and desires of a particular coalition. Constitutional tax limits were used as a tool either to eliminate competition in the political process or to manipulate the process of competition to produce

a predetermined outcome. In addition, the case studies have indicated that constitutional tax limits have been used to restrict transfers of wealth between coalitions and to promote the economic development of the state.

IV. The Historical Trends of Constitutional Tax Limits

Chapter 3 has shown that through time state constitutions have become increasingly restrictive concerning government's power to tax. However, the case studies of Part II point out that there has been considerable oscillation of the degree that a constitution constrains government's taxing power over short periods of time. As mentioned earlier in this study, and as supported by the case studies, constraints on the taxing power of government are adjusted to suit the needs of society. This is particularly evident in the presence of the citizen initiative. A good example of the adjustment process occurred in Oklahoma in the period of the Great Depression and the subsequent recovery. Although the particulars of the economic conditions were different, this adjustment process appears to be precisely what occurred in New York, Virginia, and Florida; it is quite evident that the citizen initiative plays an important role.

According to Chapter 3, Oklahoma is among the most constitutionally constrained states with 6 types of tax limits. New York and Florida, each having 4 types of tax limits in their constitution, are slightly more constrained than the average American state with the average number of types of tax limits being 3.36. Virginia, having 3 types of tax limits in its constitution is slightly below the average. From the historical section of Chapter 3 and from the case studies it is quite evident that these states entered the Union with constitutions that were less constrained. Oklahoma entered the Union with 4 types of tax limits written into its constitution, Florida entered the Union with one type of tax limit, and New York and Virginia entered the Union with no tax limits. During the interval of time covering the history of the United States, and that of the sample states examined, New York experienced the greatest amount of change in its constraints by increasing the number of types of tax limits by four. Florida and Virginia increased the number of types of tax limits written into the constitution by three and Oklahoma increased the number of types of constraints by two. It is evident from these figures that there has been little change in the ranking of apparent relative restrictiveness of the states through time, although the gap between these states has decreased.

V. Constitutional Weaponry is Short Lived

The case studies reveal that a principal reason for the decrease in the gap between the most and the least restrictive constitutions has been the need to control government abuse of the fiscal system. This may be argued to be true despite the fact that many of the constitutional tax limitation provisions were written into state constitutions as a result of political bickering and rent-seeking on the part of certain coalitions. However, as may be noted in the history of New York and Virginia in particular, those constitutional tax limits that were used as political weapons did not survive the test of time, whereas those tax limitation provisions that were aimed at abuses of the fiscal system tended to survive through time. Consequently, it appears that the problem of using the fiscal constitution as a political weapon is a relatively short run phenomenon although quite costly to society.

VI. Potency of Tax Limits Was Recognized Early

The data from Chapter 3 indicates that the most popular type of constitutional tax limit is the rate structure followed by the base limit. The least popular

type of tax limit, according to Chapter 3 is the share limit. The historical case studies of Part II indicate that people did recognize the potency of the various tax limitation devices throughout the history of tax limits in the United States. Virginia, in particular, presents an example of a state where the rate structure tax limit had been amended on several occasions in order to adjust the degree to which government could tax discriminate. The adjustment process appears to have been tied to the revenue generating capability of the particular tax levy that was the target of the rate structure limitation. The base limit appears to have been popular due to some degree of altruistic behavior on the part of the majority toward some subset of society. However, equally important to the popularity of the base limit has been the promotion of certain activities that society considered to be desirable and especially activities that appear to be associated with positive externalities. The share limit's lack of popularity appears to also be associated with its potency as a limit on the size of the public sector. The share limit may be one of the most potent tax limits which has been used in the cases examined and was used only in New York where fiscal abuse was particularly damaging to the society. The share limit was first implemented in New York in 1881 to control the fiscal

policies of municipal governments that had amassed excessive debts in the railroad expansion period of New York's history.

VII. Tax Limits Have Been Relaxed

The case studies have also pointed out that from time to time constitutional constraints upon government's power to tax have been relaxed. There appears to be two reasons for the relaxation or elimination of fiscal constraints. By far the most common reason has been the result of a consumption decision on the part of the citizenry. The evidence presented in the case studies indicates that at times collectively provided services such as education, medical care, and so forth, were expanded as a direct result of public mandates. In general, this type of expansion of the public sector appears to have occurred during periods when the economy in general was expanding.

The alternative reason behind the relaxation of constitutional tax limits was the result of efforts on the part of a politically dominant coalition to secure discretionary control over the state fiscal system, in other words, a quest for power. Although there are some negative connotations associated with the quest

for power, in itself, it may not be bad; much depends upon the process of power accumulation and how the power is utilized once acquired. Take, for example, the 1920 and 1928 constitutional revisions in Virginia under the Byrd administration. Clearly, the elimination of several of the constitutional constraints provided a significant increase in the power of the Byrd Machine. However, the Byrd administration utilized its increase in power not only to promote its own interests, but it also promoted prudent fiscal policies such that state debt was eliminated and taxes were reduced.

VIII. Amendment Methods and Social Preferences

Chapter 2 in Part I reviews the institutions for amending state constitutions in the United States. Accordingly, there are three principal methods of initiating constitutional amendments in the United States, and that there are variations on these methods among the states. In addition, Chapter 2 indicates that the legal availability of the principal methods varies among states, and the case studies presented in Part II do shed some light upon the effects of the availability of the three methods.

Constitutional amendments in all states except Delaware must go through two phases in order to become a

part of the state's constitutional laws. First, an amendment to a state constitution must be initiated or proposed by formal consideration. Second, the amendment proposal must be ratified by the general electorate. It may be argued that the referendum is a secondary check upon the ideas that end up being a part of a state's constitution.

The referendum in its present 1980 form is strictly a binary decision making process. The general electorate is only able to accept or reject whatever ideas are put before it, there is no mechanism for adjustment of proposals. On the other hand, the initiation of constitutional amendments is not subject to binary decision making, there is considerable opportunity for ideas to be adjusted to meet the desired wants of its sponsor. At the initiation stage one might say that "anything goes." Obviously, considerable importance must be assigned to the accessibility of the initiation process. Full accessibility to this process occurs in states that utilize the legislative, convention, and the citizen initiatives: at the other extreme, maximum restriction occurs in states that utilize only the legislative method of initiating constitutional amendments. This may have significant impact on special interest legislation.

IX. Citizen Initiative Works Against Special Interest Legislation

According to Landes and Posner, and Crain and Tollison, constitutional amendments form a more durable contract than legislative acts; consequently constitutional amendments are more desirable for special interest legislation.[1] However, Landes and Posner, and Crain and Tollison do not consider the impacts of the convention and citizen initiative methods of introducing a constitutional amendment. It appears that the presence of the citizen initiative method has some perverse effects upon constitutional special interest legislation, primarily by reducing the durability of amendments. A review of the case studies of Part II indicates that there have been more constitutional amendments that appear to be of special interest in Virginia, New York, and Florida prior to 1968, than in Oklahoma and Florida after 1968. One may recall that Virginia, New York, and Florida prior to 1968 did not utilize the citizen initiative as a method of initiating constitutional change while Florida

---

[1]William M. Landes and Richard A. Posner, "The Independent Judiciary in an Interest-Group Perspective," Journal of Law and Economics 18 (1975), p. 875; W. Mark Crain and Robert D. Tollison, "Constitutional Change in an Interest-Group Perspective," The Journal of Legal Studies VIII, no. 1 (January 1979), p. 165.

after 1968 and Oklahoma permit the use of the citizen initiative. Thus, the evidence presented in the case studies of Part II supports the findings of Crain and Tollison in the absence of the citizen initiative. If one assumes that special interest amendments work against the general welfare then it becomes readily apparent that the presence of the citizen initiative increases the costs of special interest amendments because the citizens can negate special interest amendments on their own accord. Thus, as expected, the evidence indicates that there appears to be less special interest legislation in states where the citizen has direct access to the amendment process.[2]

X. Proposition 13 in Historical Perspective

A comparison of the 1978 "Tax Revolt", which began in California with the adoption of the Jarvis-Gann Amendment (Proposition 13), with the evolution of constitutional tax

---

[2]Crain and Tollison believe that the durability of constitutional amendments and consequently the durability of constitutional special interest legislation may be proxied by the length of the constitution. The argument presented here indicates that this is so only in the absence of the citizen initiative.

limits throughout the history of the United States indicates that the 1978 California experience, and similar subsequent attempts in other states, is not very much different in terms of the product of the political process, from the evolutionary experience found in the case studies presented above. Clearly the 1978 "Tax Revolt" does not appear to be the result of machine politics. Nor does it appear to be based upon any sinister ulterior motive. The 1978 "Tax Revolt" appears to resemble the adjustments to the size of the public sector as found in the case studies. These adjustments to the size of the public sector are important in that they do reflect the fact that government taxing powers are abused from time to time. The abuse of the power to tax may or may not be intentional on the part of the bureaucrats. However, the bottom line is that the size of the public sector was over-expanded.

What differentiates the 1978 "Tax Revolt" from most, but not all efforts to restrain government's power to tax is the fact that the California experience was the result of direct action on the part of the citizenry. Thus, the major difference between the 1978 experience and the historical experience is not so much in the provisions of the tax limits, but rather in the method by which these limits came about. Even in this respect

the 1978 California experience is quite similar to the events that occurred in Oklahoma during the Great Depression when property taxes were rolled back as a result of popular mandates. The difference between the Oklahoma experience and the California experience was that the legislators of the Depression era Oklahoma were given discretionary power over the tax reduction whereas the California legislator was faced with a specific mandate. Perhaps the reason for this difference lies in the economic environment of each situation. As mentioned, the Oklahoma action took place during a period when the economy of the state was quite depressed. Perhaps the voters of Oklahoma retained trust in their elected representatives because the legislators were also facing economic hardships. The California electorate was faced with an inflationary economy which on the surface appeared to resemble economic prosperity. The California voter, in general, was paying among the highest property taxes in the nation due to the combined effects of inflation on the valuation of property and the method of property assessment used in California. At the same time the California state government was accumulating a sizeable surplus of revenue which perhaps added insult to the injury of the taxpayer. Clearly the bounds of good government were overstepped in California

which presumably provided a boom for the budget maximizing bureaucrat. Without the presence of the citizen initiative option in California it is quite doubtful that the California legislators would have acted on behalf of the property taxpayer. Perhaps relief to the taxpayer would have come in the form of increased government aid to those severely harmed by the property tax system. This would have meant an increase in the size of the public sector rather than the needed roll back of the public sector. Admittedly, one can only speculate as to what might have been. However, what is quite clear is that with the ratification of Proposition 13 in California, an agreement was reached as to the system of property taxation practiced in that state.

XI. Epilogue

The results of political actions are dependent upon many factors, so much so that the precise influence of any particular factor such as constitutional tax limits cannot be determined. The end state of a political process or the end product of a set of institutional arrangements may in fact be secondary in terms of importance to the process of change itself. A basic theme in Buchanan and Tullock's The Calculus of Consent

is that the end state achieved through the democratic process is of secondary importance to the process itself.[3] In other words, agreement among people is of primary importance and not what in particular is agreed upon. The implementation of constitutional fiscal constraints involves an agreement among members of society and what becomes important is how that agreement is reached. Is the agreement among all members of a society, a majority of society, or imposed by a relatively small subset of society? Thus, the institutions for amending constitutions may indeed be of greater significance than the particulars of any amendment incorporated into a constitution.

In summary, this study has shown that the evolution of constitutional tax limits at the state level in the United States has been quite rich. The study has revealed that tax limits are effective constraints upon the taxing powers of government. The case studies brought out the fact that constitutional tax limits have been used as political weapons which must be distinguished from legitimate attempts to curb abuses of the power to tax. Perhaps the most significant finding of this study

---

[3]James M. Buchanan and Gordon Tullock, The Calculus of Consent (Ann Arbor: University of Michigan Press, 1962).

is that the methods that are available to amend state constitutions play an important role in the evolutionary process of constitutional change, and this is the distinguishing feature of the 1978 experience from the attempts found in American history. Clearly, this study refutes the popular fear that the citizen initiative would cause the amendment process to get out of hand.

One may conclude that representative democracy as an economizing device in collective decision-making breaks down from time to time and that an acceptable solution is found in the institution of direct democracy. The citizen initiative as a method of implementing direct democracy has through time proven itself as a viable means of reaching agreement at the constitutional level of American Society.

BIBLIOGRAPHY

Acts of Assembly. Richmond: Superintendent of Public Printing, 1918.

Advisory Commission on Intergovernmental Relations. Intergovernmental Perspective 5, no. 1 (Winter 1979).

Alexander, DeAlva Stanwood. A Political History of the State of New York, vol. 1. Port Washington, New York: I.J. Friedman Publishing Co., 1909.

Ambler, Charles Henry. Sectionalism in Virginia from 1776 to 1861. Chicago: Russell Publishing Company, 1964; reprint of 1964 edition.

Bain, Richard E. "Legislative Representation in Florida: Historic and Contemporary." Masters Thesis; Florida State University (June 1960).

Bass, Jack and DeVries, Walter. The Transformation of Southern Politics. New York: Basic Books, Inc., 1976.

Beard, Charles A. An Economic Interpretation of the United States. New York: The Free Press, 1965.

Brevard, Caradine Mays. A History of Florida. Deland, Florida: The Florida State Historical Society, 1925.

Brownlee, K.A. Statistical Theory and Methodology in Science and Engineering. New York: John Wiley and Sons, Inc., 1965.

Bruce, Philip Alexander. Virginia, Rebirth of the Old Dominion. Chicago: Lewis Publishing Company, 1929.

Buchanan, James M. "Constitutional Constraints on Governmental Taxing Power," Working Paper #CE-78-12-4 (1978). Virginia Polytechnic Institute and State University.

Buchanan, James M. "Markets, States and the Extent of Morals." The American Economic Review 68, no. 2 (May 1978): p. 365.

Buchanan, James M. and Brennan, Geoffrey. The Power to Tax: Analytical Foundations of a Fiscal Constitution. Cambridge: Cambridge University Press, 1980.

_____. "The Logic of Tax Limits: Alternative Constitutional Constraints on the Power to Tax." Working Paper #CE-78-12-2 (1978). Virginia Polytechnic Institute and State University.

Buchanan, James M. and Tullock, Gordon. The Calculus of Consent. Ann Arbor: The University of Michigan Press, 1962.

Cash, W.T. The Story of Florida. New York: The American Historical Society, Inc., 1938.

Carr, Robert K. State Control of Local Finances in Oklahoma. Norman: University of Oklahoma Press, 1937.

"Constitution of New York." The Consolidated Laws of New York Annotated. Brooklyn, New York: Edward Thompson Company, 1954.

Constitution of the State of Oklahoma. St. Paul, Minnesota: West Publishing Company, 1967.

Cooley, Thomas M. A Treatise on the Constitutional Limitations. New York: Da Capo Press, 1972.

Cornwell, E.E., Jr.; Goodman, J.S., and Swanson, W.R. State Constitutional Conventions. New York: Praeger Publishers, 1975.

Crain, W. Mark and Tollison, Robert D. "Constitutional Change in an Interest-Group Perspective." The Journal of Legal Studies VIII, no. 1 (January 1979): p. 165.

Crawford, Finla G. "Constitutional Developments, 1867-1915." Edited by Alexander C. Flick. Vol. 7: History of the State of New York. New York: Columbia University Press, 1934.

D'Alemberte, Talbot. "Florida Judicial Reform: Constitutional Revision, 1972." Government Research Bulletin X, no. 1 (March 1973).

Dabney, Virginius. Virginia: The New Dominion. Garden City, New York: Doubleday Publishing Company, 1971.

Dauer, Manning J. "Proposed 1978 Florida Constitution Revision and Proposal on Casino Gambling." Civic Information Series No. 61. Florida: Public Administration Clearing Service, University of Florida, 1978.

Davis, William W. The Civil War and the Reconstruction in Florida. New York: Columbia University Press, 1913.

Dickson, David F. Proposed Amendments to the Florida Constitution of 1885. Florida: Institute of Government Research, Florida State University, 1966.

Donovan, Clement H. "Proposed Corporate Income Tax Amendment, Constitution of 1971." Civic Information Series No. 51. Florida: Public Administration Clearing Service, University of Florida, 1971.

_____. "Amendment Providing Limited Taxing Power for Florida Regional Water Control Districts." Civic Information Series No. 58. Florida: Public Administration Clearing Service, Florida State University, 1976.

Due, John F. and Friedlaender, Ann F. Government Finance. Homewood, Illinois: Richard D. Irwin, 1977.

Dunn, James William. "The New Deal and Florida Politics." Ph.D. Dissertation; Florida State University (August 1971).

Eckenrode, Hamilton James. The Political History of Virginia During Reconstruction. Baltimore: Arno Publishing Company, 1904 (reprint).

"Eight Ballot Issues Coming at Once." Daily Oklahoman, June 16, 1978: p. 15.

Ellis, David M.; Frost, James A.; Syrett, Harold C., and Carman, Harry F. A History of New York State. Ithaca, New York: Cornell University Press, 1967.

Fairlie, John A. The Centralization of Administration in New York State. New York: Columbia University Press, 1898.

"4 Amendments to Be Settled." Daily Oklahoman, June 26, 1960: p. 23A.

Greer, George N. "Florida Politics and Socialism at the Progressive Era, 1912." Masters Thesis; Florida State University (December 1962).

Hanna, Kathryn A. Florida: Land of Change. Chapel Hill, North Carolina: University of North Carolina Press, 1948.

Hayek, F.A. Law, Legislation and Liberty. Vol. III: The Political Order of a Society of Free Men. Chicago: University of Chicago Press, 1980.

Heller, Francis Howard. Virginia's State Government During the Second World War. Richmond: Virginia State Library, 1949.

Holt, Wythe W., Jr. "Constitutional Revision in Virginia, 1902 and 1928: Some Lessons on Roadblocks to Institutional Reform." Virginia Law Review 54, no. 5 (June 1968): p. 903-927.

Howard, A.E. Dick. "For the Common Benefit: Constitutional History in Virginia as a Casebook for the Modern Constitution-Maker." Virginia Law Review 54, no. 5 (June 1968): p. 816-927.

_____. Commentaries on the Constitution of Virginia. Charlottesville: University of Virginia Press, 1975.

_____. "Constitutional Revision: Virginia and The Nation." University of Richmond Law Review 9, no. 1 (Fall 1974).

Hunter, Mertin H. and Allen, Harry K. Principles of Public Finance. New York: Harper and Brothers Publishing Company, 1940.

"Improving Job Training." Daily Oklahoman, May 7, 1966: p. 10.

Kirby, Jack Temple. Westmoreland Davis. Charlottesville: University of Virginia Press, 1968.

Landes, William M. and Posner, Richard A. "The Independent Judiciary in an Interest-Group Perspective." Journal of Law and Economics 18 (1975): p. 875.

Larson, William F. "Florida's Proposed Constitutional Amendments, 1952." Florida: Public Administration Celaring Service of the University of Florida, 1952.

Levine, E. Lester. "The 1969 Florida Legislature: A New Constitution and New Procedures." Governmental Research Bulletin VI, no. 3 (May 1969).

Lindsay, J.H., ed. and comp. Report of the Proceedings and Debates of the Constitutional Convention of the State of Virginia Vol. III. Richmond: Hermitage Press, Inc., 1906.

Linkous, C.Z. The Constitutional History of New York from the Beginning of Colonial Period to the Year 1905. Rochester, New York: Lawyers Cooperative Publishing Company, 1906.

McDanel, Ralph Clipman. The Virginia Constitution Convention of 1901-1902. Baltimore: Da Capo Publishing Company, 1972; reprint of 1928 ed.

McReynolds, Edwin C. Oklahoma, A History of the Sooner State. Norman: University of Oklhoma Press, 1954.

McReynolds, Edwin C.; Marriott, Alice, and Faulconer, Estelle. Oklahoma: The Story of Its Past and Present. Norman: University of Oklahoma Press, 1971.

Magruder, F.A. Recent Administration in Virginia. Baltimore: Johns Hopkins Press, 1912.

Marquis, James. Alfred I. Dupont, The Family Rebel. New York: Bobbs-Merrill Company, 1941.

Mill, John Stuart. Principles of Political Economy. Edited by Albert E. Bergh. World's Greatest Literature. New York: Colonial Press, 1900.

Miller, James Nathan. "Florida Threw Out the Pork Chop Gang." National Civic Review (July 1971): p. 366-80.

Moger, Allen W. Virginia: Bourbonism to Byrd. Charlottesville: University of Virginia Press, 1968.

Morgan, H. Wayne and Morgan, Ann Hodges. Oklahoma, A Bicentennial History. New York: W.W. Norton and Company, Inc., 1977.

Morris, Allen, comp. "Constitution of the State of Florida as Revised in 1968." Florida Handbook of 1969-1970. Tallahassee: The Peninsular Publishing Company, 1969.

Morton, Richard L. History of Virginia Vol. III. New York: American Historical Society, 1924.

Nelson, Wallace Martin. The Economic Development of Florida 1870-1930. Ph.D. Dissertation; University of Florida (June 1962).

New York Constitutional Convention of 1967. Proceedings of the Academy of Political Science. New York: Columbia University Press, 1967.

"News in Review." Edited by H.M. Olmsted. National Municipal Review (September 1953): p. 401

Newsweek Magazine XCI, no. 25 (June 1978): p. 20.

Niskanen, William, Jr. Bureaucracy and Representative Government. New York: Aldine-Atherton, Inc., 1971.

O'Rourke, Vernon and Campbell, Douglas W. Constitution-Making in a Democracy. Baltimore: Johns Hopkins University Press, 1943.

Oklahoma Government Bulletin 13, no. 4 (Winter 1966).

Pavlovsky, Arnold Mare. "We Busted Because We Failed: Florida Politics, 1880-1908." Ph.D. Dissertation; Princeton University (December 1973).

Poore, Ben:Purley. The Federal and State Constitutions, Colonial Charters and Other Organic Laws of the United States I & II, 2nd ed. New York: Lenox Hill Publishing & Distributing Company, 1924.

"Primary Ballot to Contain 8 Constitutional Amendments." Madill Record, August 15, 1968.

Proposed Constitution of the State of Oklahoma. Washington: Government Printing Office, 1907.

Pulliam, David L. The Constitutional Conventions of Virginia. Richmond: D.T. West, 1901.

Purcell, Richard J. "Immigration from the Canal Era to the Civil War." Edited by Alexander C. Flick. Vol. 7: History of the State of New York. New York: Columbia University Press, 1934.

Pyburn, Nita Katharine. The History of the Development of a Single System of Education in Florida 1822-1903. Tallahassee: Florida State University, 1954.

Quirk, William J. and Wein, Leon E. "A Short Constitutional History of Entities Commonly Known as Authorities." Cornell Law Review 56, no. 4 (April 1971): p. 575f.

Ricardo, David. The Principles of Political Economy and Taxation. New York: E.P. Dutton & Company, 1972.

Samuel, W.H. The Debates and Proceedings of the Constitutional Convention of the State of Virginia. Richmond: Office of the New Nation, 1868.

Saxe, Allan A. "The Early Developments of State Policy on Desegregation of Public Schools in Oklahoma." Masters Thesis; University of Oklahoma Graduate College (unpublished).

Shalala, Donna E. The City and The Constitution: The 1967 New York Convention's Response to the Urban Crisis. New York: National Municipal League of New York, 1972.

Smith, Adam. An Inquiry and Causes of the Wealth of Nations. Edited by Edwin Canaan. New York: The Modern Library, 1937.

Sowers, Don C. The Financial History of New York State. New York: AMS Press, 1969.

Spaulding, E. Wilder. New York in the Critical Period 1783-1789. Port Washington, New York: Ira J. Friedman, Inc., 1963.

Staff of the State Election Board, Directory of Oklahoma 1977. State Capitol, Oklahoma City: p. 654.

State of New York Temporary Commission on the Fiscal Affairs of State Government. A Program for Continued Progress in Fiscal Management (February 1955): p. 122-23 and 135.

"State to Vote of Tax Value, Water Issues." Daily Oklahoman, June 29, 1958: p. 19A.

Sturm, Albert. "The Constitution of Virginia: 1776 and 1976." Edited by Sandra H. Wilkinson. Governing the Commonwealth Then and Now: A Bicentennial Report for Virginia, Institute of Government. Charlottesville: University of Virginia, 1978.

_____. "Constitutional Revision: A Challenge to Floridians." Government Research Bulletin II, no.4 (September 1965).

_____. "State Constitutional Developments During 1979 and the 1970's." National Civic Review 69, no. 1 (January 1980).

_____. Trends in State Constitution-Making 1966-1972. Lexington, Kentucky: Council of State Government, 1973.

_____. Thirty Years of State Constitution-Making: 1938-1968. New York: National Municipal League, 1970.

Sutherland, Arthur E. "Lawmaking by Popular Vote: Some Reflections on the New York Constitution of 1938." Cornell Law Quarterly 24, no. 1 (December 1938): p. 5.

Swindler, William F. Sources and Documents of United States Constitutions. Dobbs Ferry, New York: Oceano Publishing Company, 1977.

Tebeau, Charlton W. A History of Florida. Coral Gables, Florida: University of Miami Press, 1971.

Thompson, Arthur W. Jacksonian Democracy of the Florida Frontier. Gainesville: University of Florida Press, 1961.

Thornton, H.V. Oklahoma Constitutional Studies. Guthrie: Co-Operative Publishing Company, 1950.

Tocqueville, Alexis De. Democracy in American. Translated by Henry Reeve. Edited by Albert Ellery. The World's Greatest Literature. New York: The Colonial Press, 1900.

Tollison, Robert; Deaton, Thomas, and Ekelund, Robert, Jr. "A Modern Interpretation of Aristotle on Legislative and Constitutional Rules." Southern Economic Journal 43 (July 1976): p. 903-911.

"Trade Schools, Annual Session to be Decided." Daily Oklahoman, May 22, 1966: p. 26.

"Tuesday Vote Due to Decide One Question." Daily Oklahoman, April 29, 1962: p. 24A.

Tullock, Gordon. The Politics of Bureaucracy . Washington: Public Affairs Press, 1965.

"Turner Urges Three Changes in Constitution." Daily Oklahoman, June 6, 1948: p. 2A.

Tyler, Lyon G. History of Virginia. New York: American Historical Society, 1924.

U.S. Bureau of the Census. Governmental Finances in 1976-1977, Series GF-77, no. 5. Washington, DC: U.S. Government Printing Office, 1978.

_____. State Tax Collections in 1977, Series GF-77, no. 1. Washington, DC: Government Printing Office, 1977.

Van Schreeven, William J. The Conventions and Constitutions of Virginia 1776-1966. Richmond: The State Library, 1967.

Von Stein, Lorenz. "On Taxation." Edited by Richard A. Musgrave and Alan T. Peacock. Classics in the Theory of Public Finance. New York: St. Martin's Press, 1967.

"Voters Face 2 Questions, Party Contests in Runoff." Daily Oklahoman, May 9, 1966: p. 21.

Wagner, Adolph. "Three Extracts on Public Finance." Edited by Richard A. Musgrave and Alan T. Peacock. Classics in the Theory of Public Finance. New York: St. Martin's Press, 1967.

"Wheels in Motion for School Vote." Daily Oklahoman, July 28, 1965: p. 5.

Whitford, Noble E. "The Canal System and Its Influences." Edited by Alexander C. Flick. Vol. 5: History of New York State. New York: Columbia University Press, 1934.

Wicksell, Knut. "A New Principle of Just Taxation." Translated by James Buchanan. Edited by Richard A. Musgrave and Alan T. Peacock. Classics in the Theory of Public Finance. New York: St. Martin's Press, 1967.

Williamson, Edward C. Florida Politics in the Gilded Age, 1877-1893. Gainesville: The University Presses of Florida, 1976.

Wood, Virginia. Due Process of Law. Port Washington, New York: Kennikot Press, 1951.

"Yes and No of State Question." Daily Oklahoman, May 22, 1966.

The vita has been removed from the scanned document

CONSTITUTIONAL TAX LIMITS AT THE STATE LEVEL: AN OVERVIEW AND SELECTED CASE STUDIES

by

George A. Uhimchuk

(ABSTRACT)

The passage of the Jarvis-Gann amendment (Proposition 13) in California in June 1978 focused widespread attention on constitutional constraints on government's power to tax. In addition, Proposition 13, along with the political events that led up to the inception of this particular amendment and subsequent amendments in other states, reversed the traditional negative attitude concerning constraints upon government implicitly expounded by many scholars and public servants. This dissertation presents an overview of constitutional tax limits at the state level in the United States and examines the constitutional evolution of four selected states. The methodology employed is essentially historical and comparative.

This study reveals that constitutional tax limits do indeed constrain government although they have been often used for purposes other than strictly limiting

the power to tax. The evidence presented indicates that the potency of constitutional tax limits was recognized as early as the formation of the United States and that at the state level the evolutionary experience of constitutional tax limits is quite rich.

A significant finding of this study is that the methods that are available to amend state constitutions play an important role in the evolutionary process of constitutional change. This is the feature that distinguishes the 1978 California experience from earlier attempts to limit government's taxing powers found in American history. The historical accounts suggest that representative democracy does not always yield socially desired outcomes and that the citizen initiative, a form of direct democracy, may provide a workable means of circumventing many problems associated with representative democracy.