

OF TIME, PLACE, AND THE ALASKA CONSTITUTION

G. ALAN TARR*

ABSTRACT

This Article places the Alaska Constitution in historical perspective by comparing it with other state constitutions. It first considers how the convention delegates' need to satisfy four audiences—Congress, Alaska residents who would ratify the constitution, those who would live under the constitution, and posterity—affected the constitution's design. It next shows how the Alaska Constitution reflects the fact that it is the state's first constitution, that it is a western constitution, and that it is a mid-twentieth-century constitution. Finally, it compares the Alaska Constitution with the Hawaii Constitution, which was drafted at the same time.

I. INTRODUCTION

Constitutions inevitably reflect the time and place of their creation. This is especially true of state constitutions: knowing when and where a state constitution originated is crucial for understanding it. The Alaska Constitution, which was completed and ratified in 1956 and took effect with statehood in 1959,¹ is a case in point. It is a western constitution, and

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* Emeritus Board of Governors Professor of Political Science, Rutgers University-Camden. B.A., College of the Holy Cross, 1968; M.A., University of Chicago, 1970; Ph.D. (Political Science), University of Chicago, 1976.

1. The Constitution of the State of Alaska, THE GREAT STATE OF ALASKA, <https://ltgov.alaska.gov/services/alaskas-constitution/> (last visited Sept. 21, 2018). In 1949, Alaska's territorial legislature formed the Alaska Statehood Committee, which helped prepare for a constitutional convention. *Who's Who: Alaskans: Statehood Committee*, UNIV. OF ALASKA (June 17, 2009), <https://www.alaska.edu/creatingalaska/whos-who/alaskans/statehood-committee/>. In September 1955, Alaskans in a nonpartisan election chose the delegates to the convention. *Hearing on SB 29 and SB 49*, S. STATE AFFAIRS STANDING COMM., 26th Leg. (2009) (statement of Mayor Botelho at 9:18:00 AM). The convention convened on November 8, 1955, and adjourned on February 5, 1956, submitting its work to the voters for ratification. June Allen, *Alaska's Constitutional Convention: 1955 Honoring its 50th Anniversary*, STORIES IN THE NEWS (Sept. 15, 2005), <http://www.sitnews.us/JuneAllen/ConstitutionalConvention/091605>

western constitutions differ in both style and substance from their eastern, southern, and midwestern counterparts.² In part, these differences are a matter of timing—states admitted to the Union later have confronted some problems not present for earlier generations.³ In part too, the differences are a matter of population—the initial western constitutions were designed for states that were thinly settled but with an expectation of growth and development.⁴ And in part, western constitutions reflect the geography and economy of the region—for example, several deal with water resources and mining, whereas the constitutions of other regions deal with these differently or not at all.⁵ The Alaska Constitution is also a mid-twentieth-century constitution, and as this Article shows, the constitutions drafted in the years following World War II are themselves distinctive, reflecting a particular reform perspective.⁶

Finally, the Alaska Constitution is the state's first—and thus far only—constitution. This is important because subsequent constitutions in a state (and most states have had multiple constitutions) typically resemble the state's earlier constitutions, introducing changes to the earlier template rather than altogether abandoning it.⁷ As this Article reveals, the most fruitful comparison here is with the Hawaii

_50th_anniversary.html. Alaskans ratified the constitution by a vote of 17,477 to 8180 on April 24, 1956. Statehood Files: Voting Certificate 1956, University of Alaska (June 17, 2009), https://www.alaska.edu/creating_alaska/statehood-files/voting-certificate-1956/. President Dwight Eisenhower signed the Alaska statehood bill in 1958, and Alaska officially became a state on January 3, 1959. *Alaska Statehood*, DWIGHT D. EISENHOWER: PRESIDENTIAL LIBRARY, MUSEUM, AND BOYHOOD HOME, https://www.eisenhower.archives.gov/research/online_documents/alaska_statehood.html (last visited Sept. 26, 2018).

2. See, e.g., AMY BRIDGES, *DEMOCRATIC BEGINNINGS: FOUNDING THE WESTERN STATES* (2015); DAVID ALAN JOHNSON, *FOUNDING THE FAR WEST: CALIFORNIA, OREGON, AND NEVADA, 1840-1890* (1992); John D. Hicks, *The Constitutions of the Northwest States*, 23 U. STUD. U. NEB. 1 (1923). For a treatment of constitutional development in another region that underscores the distinctiveness of western constitutionalism, see PAUL E. HERRON, *FRAMING THE SOLID SOUTH: THE STATE CONSTITUTIONAL CONVENTIONS OF SECESSION, RECONSTRUCTION, AND REDEMPTION, 1860-1902* (2017).

3. See, e.g., Fred A. Seaton, *Alaska's Struggle for Statehood*, 39 NEB. L. REV. 253 (1960); *Alaska's Long Struggle for Statehood*, P.R. REPORT (Oct. 1, 2012), <https://www.puertoricoreport.com/alaskas-long-struggle-forstatehood/#.W6rwNpNKifU>.

4. See BRIDGES, *supra* note 2, at 31-41 (discussing the initial settlement of the first western territories to become states and its impact on state constitutional conventions).

5. *Id.* at 4-5; G. ALAN TARR, *UNDERSTANDING STATE CONSTITUTIONS 197-98* (Princeton Univ. Press ed. 1998).

6. See TARR, *supra* note 5, at 153-61.

7. See *id.* at 144-72 (discussing how state constitutions have evolved in the twentieth century).

Constitution, as both Alaska and Hawaii were admitted as states in 1959, and their fates pre-admission were closely connected.

This Article clarifies what is distinctive about the Alaska Constitution and about Alaska's constitutional experience by placing it in a national context. First, it describes the political circumstances in which the Alaska Constitution was framed. Next, it examines how time and place influenced the substance and development of the Alaska Constitution, focusing on its character as a first constitution, a western constitution, and a mid-twentieth century constitution. It then considers Alaska's constitutional experience in comparison with Hawaii's. Finally, it concludes with reflections on the past and future of the Alaska Constitution.

II. THE TASKS CONFRONTING ALASKA'S DELEGATES

According to William Gladstone, the United States Constitution was "produced by the human intellect, at a single stroke" at the Philadelphia Convention of 1787.⁸ The same could not be said of the Alaska Constitution. Indeed, the forty-nine men and six women who met in Fairbanks and drafted that document neither claimed nor sought such originality.⁹ As they recognized, their work needed to address itself to several audiences. First, it had to appeal to members of Congress, who would ultimately vote on statehood. As Robert Atwood, a leading member of the Alaska Statehood Committee, put it in a speech to the delegates: "The document you write will be, can and should be a

8. JOHN BARTLETT, *FAMILIAR QUOTATIONS* 534 (13th ed. 1955) (quoting William Ewart Gladstone's letter to the committee in charge of the celebration of the Centennial Anniversary of the American Constitution dated July 20, 1887).

9. The decision to have fifty-five delegates intentionally harkened back to the fifty-five delegates who met in Philadelphia in 1787 to draft the U.S. Constitution. *Constitutional Convention*, UNIV. OF ALASKA (June 18, 2009), <https://www.alaska.edu/creatingalaska/constitutional-convention/>. Yet the decision had ramifications beyond tying Alaska's constitutional convention to that earlier convention. Having fewer delegates than was normal in twentieth-century conventions allowed strong personal relationships and a sense of common purpose to develop—indeed, John Whitehead, the leading chronicler of the creation of the Alaska Constitution, described the convention's deliberations as "a bonding and uniting experience." JOHN S. WHITEHEAD, *COMPLETING THE UNION: ALASKA, HAWAII, AND THE BATTLE FOR STATEHOOD* 241 (Howard Lamar et al. eds., 2004). The best indication of this was the formation, post-convention, of the "55 Club" that reunited those responsible for creating the state's first constitution. *Id.* at 348. As Henry Wells has noted: "In Hawaii and Alaska, the conventions evolved into cohesive bodies of dedicated men and women who came to think of themselves as partners in lofty and historic enterprises that demanded their best efforts and closest cooperation." Henry Wells, *Constitutional Conventions in Hawaii, Puerto Rico, and Alaska*, in *MAJOR PROBLEMS IN STATE CONSTITUTIONAL REVISION* 52, 63 (W. Brooke Graves ed., 1960).

compelling new argument for statehood itself.”¹⁰ More specifically, the delegates had to craft a document that demonstrated the political maturity of the state and show that it was ready for self-government. Members of Congress would consider whether the constitution was reasonable rather than extreme and in the mainstream rather than idiosyncratic, which cautioned against including provisions that departed too much from the prevailing constitutional wisdom.¹¹ Thus, when the delegates debated whether to establish a unicameral or a bicameral legislature, delegate Dora Sweeney cautioned that Congress might not approve a unicameral legislature, and this swayed the vote.¹² This concern led delegates to defer some contentious issues, most notably aboriginal rights and native land claims, which eventually were settled by the federal Alaska Native Claims Settlement Act of 1971.¹³

The same concern may also have led them to frame some guarantees in the Declaration of Rights (Article I), such as the establishment clause and the right to bear arms, in language identical to that found in the federal Bill of Rights, even though other states had adopted different – and arguably broader – protections of these rights.¹⁴ Yet this deference was not unlimited. The delegates included a guarantee of fair treatment during legislative investigations, a clear reaction to the hearings Senator Joseph McCarthy and the House Un-American Activities Committee

10. Robert Atwood, Chairman, Alaska Statehood Comm’n, Opening Session Address at the Alaska Constitutional Convention (Nov. 8, 1955) (transcript available at <http://www.alaska.edu/creatingalaska/constitutional-convention/speeches-to-the-conventio/opening-session-speeches/atwood/>). This was a widely shared view: looking back on his experience as a delegate, Vic Fischer acknowledged that “[m]ost Alaskans originally conceived of constitution writing primarily as a means to obtain statehood.” Vic Fischer, *Alaska’s Constitution, in ALASKA AT 50: THE PAST, PRESENT, AND NEXT FIFTY YEARS OF ALASKA STATEHOOD* 147, 152 (G. W. Kimura ed., 2009). Pro-statehood sentiment was certainly strong in Alaska. In a 1946 plebiscite Alaskans had supported statehood by 60% to 40%. WHITEHEAD, *supra* note 9, at 210.

11. In this respect Alaska’s delegates were no different from those in other states drafting constitutions as a prelude to statehood. For example, commenting on Montana’s 1889 constitution, Larry Elison and Fritz Snyder described it as “enacted more as a tool to achieve statehood than to provide a well-thought-out structure of governance for the state.” LARRY M. ELISON & FRITZ SNYDER, *THE MONTANA STATE CONSTITUTION* 6 (Oxford Univ. Press 2011).

12. GERALD A. MCBEATH, *THE ALASKA STATE CONSTITUTION: A REFERENCE GUIDE* 12 (1997).

13. 43 U.S.C. §§ 1601–1629h (2012).

14. ALASKA CONST. art. I, § 4 (freedom of religion); *id.* art. I, § 9 (jeopardy and self-incrimination); *id.* art. I, § 10 (treason); *id.* art. I, § 19 (right to keep and bear arms). This last provision was amended in 1994 to safeguard an individual right to keep and bear arms. See GORDON HARRISON, ALASKA LEGISLATIVE AFFAIRS AGENCY, *ALASKA’S CONSTITUTION: A CITIZEN’S GUIDE* 37 (Alaska Legislative Affairs Agency ed., 5th ed. 2013).

conducted, though Senator McCarthy had been disgraced and censured by the Senate by the time the language was adopted.¹⁵

Second, the proposed constitution would have to appeal to Alaska residents, who had the power to ratify or reject the delegates' handiwork.¹⁶ This cautioned against provisions that might excite controversy or might be perceived as partisan, considerations that might alienate voters. It also may have encouraged the delegates to consult potential voters directly by conducting public hearings at various locations throughout the state during a fifteen-day recess halfway through the convention.¹⁷ Certainly, these voters were more attentive to the deliberations in Fairbanks than they were to ordinary legislative activity.¹⁸

This need to enlist popular support may have led the delegates to include several provisions ensuring that the new government would be responsive to public opinion. Thus, the constitution set the voting age at twenty,¹⁹ a year lower than that in most states; it established the initiative, the referendum, and the recall;²⁰ and it mandated that the question of whether to hold a constitutional convention be submitted to voters every ten years.²¹ To quote Atwood's speech to the delegates once again: "This is a custom job you have on your hands. It's to be built and it must please the customer."²²

Third, the constitution had to create a government that would work, a real concern given Alaska's experience with a weak and fragmented executive and a dysfunctional legislature in the territorial government, or else it would be quickly changed or discarded. The relative infrequency of amendment—as of 2017, only forty-three amendments to the constitution had been proposed and only twenty-nine adopted—testifies to their success in this respect.²³ So too does the populace's refusal to call a new convention at the opportunities that it has to do so every ten years.

15. *Id.* art. I, § 7.

16. *Id.* art. XIII, § 1.

17. WHITEHEAD, *supra* note 9, at 247.

18. See CLAUS-M. NASKE, A HISTORY OF ALASKA STATEHOOD 222–24 (1985).

19. ALASKA CONST. art. V, § 1. The voting age was lowered to eighteen by constitutional amendment in 1970. See HARRISON, *supra* note 14, at 107.

20. ALASKA CONST. art. XI. The constitution authorized only statutory initiatives, and these had to conform to the requirements for legislatively enacted statutes, such as the single subject rule. *Id.* art. II, § 13. The lieutenant governor can refuse to certify measures, preventing them from appearing on the ballot if they are clearly unconstitutional. *Id.* art. XI, § 2.

21. *Id.* art. XIII, § 3.

22. Atwood, *supra* note 10.

23. John Dinan, *State Constitutional Developments in 2016*, in THE BOOK OF THE STATES 2017 1, 10 tbl.1.1 (Council of State Gov'ts ed., 2017), <http://knowledge.center.csg.org/kc/system/files/1.1.2017.pdf>.

Finally, delegates wanted the constitution to be a document that would earn them the gratitude and respect of future generations.²⁴ This is hardly surprising. Convention delegates typically share a longer-term perspective than do legislators, and they usually make a greater effort to rise above narrow partisan concerns.²⁵ This was certainly true in Alaska: whereas bitter partisanship dominated sessions of the territorial legislature, harmony largely prevailed in the constitutional convention.²⁶ To encourage such an atmosphere, the delegates were elected by non-partisan ballot, though Democrats outnumbered Republicans by about a 2-1 margin;²⁷ and the convention was held at the University of Alaska in Fairbanks, rather than in the territorial capital of Juneau, in order to signal that it was not politics as usual.²⁸

The delegate selection process resulted in the most representative body ever elected in Alaska, and – as has been true in other conventions – “the assembly of delegates with diverse occupations and backgrounds, meeting for weeks of deliberations” encouraged “conversations across great distances in social standing, education, experience, and politics.”²⁹ Delegate Vic Fischer summed up the perspective of his fellow delegates: “The vision was that we were writing for posterity” and that the constitution should be designed “to serve a future that not one of us could really visualize.”³⁰

24. See *Constitutional Convention: Delegates*, UNIV. OF ALASKA (Apr. 28, 2015), <https://www.alaska.edu/creatingalaska/constitutional-convention/delegates/> (“The story of the 1955-56 Alaska Constitutional Convention is a good one and is a pleasure to tell. The main difficulty in telling it lies in passing on to those who were not there the dedication, the vitality, the exhilaration and the idealism that in 1955-56 characterized Alaska’s constitution-making process.”).

25. See, e.g., *Benjamin Franklin, Speech in Congress*, June 11, 1787, available at <https://www.loc.gov/exhibits/creating-the-united-states/convention-and-ratification.html> (“For we are sent hither to consult not contend, with each other; and Declaration of a fix’ Opinion, and of determined Resolutions never to change it, neither enlighten nor convince us.”).

26. See TERRENCE COLE, *FIGHTING FOR THE FORTY-NINTH STATE: C. W. SNEDDEN AND THE CRUSADE FOR ALASKA STATEHOOD 176-77* (2010).

27. Wells, *supra* note 9, at 56.

28. In choosing to hold the convention at the state university, removed from the scene of ordinary politics, Alaska was following the example of New Jersey, which held its 1947 constitutional convention at Rutgers University. WHITEHEAD, *supra* note 9, at 239-40.

29. On the representativeness of the convention, see WHITEHEAD, *supra* note 9, at 238-39; on deliberative dynamics in constitutional conventions, see BRIDGES, *supra* note 2, at 150.

30. Sally H. Campbell, *The Alaska Constitution: Promoting Statehood, Providing Stability*, in *THE CONSTITUTIONALISM OF AMERICAN STATES* 685, 686 (George E. Connor & Christopher W. Hammons eds., 2008). This understanding of the delegates’ responsibility is hardly unique to Alaska. For example, James Garlington, a delegate to the Montana convention of 1972, described the constitution drafted there as “the finest gift to the young people of Montana that

III. THE ALASKA CONSTITUTION AS A FIRST CONSTITUTION

As two consultants to the Alaska Constitutional Convention observed, “the Alaska convention took both a more fundamental and a more comprehensive view of its task than would the typical convention in an already admitted state.”³¹ It could do so because, instead of tinkering with an existing constitution and the government it established, Alaskans were creating anew, which encouraged a more expansive view. It is hard to overestimate the importance of this factor. When a convention is revising a constitution, it is almost inevitable that it will use the existing constitution as the basis for its deliberations and retain many non-controversial provisions of that document.³² Beyond that, interests will have formed for and against the current arrangements—the most frequent division in state constitutional conventions is between the advocates of change and those seeking to safeguard the advantages they enjoy under the current regime.³³ This affects both the alternatives that are considered and the debate on those alternatives.³⁴

is within our power to give.” ELISON & SNYDER, *supra* note 11, at 27. And looking back at his experience as a delegate to the 1947 New Jersey Constitutional Convention, Wesley Lance observed: “I knew my colleagues well, and they were politicians before the convention and politicians after the convention, but at the convention they were statesmen.” Videotape: The Opportunity of a Century (PBS 1987) (on file with author).

31. John E. Bebout & Emil J. Sady, *Staging a State Constitutional Convention, in* MAJOR PROBLEMS IN STATE CONSTITUTIONAL REVISION 67, 69 (W. Brooke Graves ed., 1960).

32. See, e.g., Carol E. Hoffecker & Barbara E. Benson, *Festina Lente: The Development of Constitutionalism in Delaware, in* THE CONSTITUTIONALISM OF AMERICAN STATES 163, 176 (George E. Connor & Christopher W. Hammons eds., 2008); Amy Gossett, *The Louisiana Experience: Culture, Clashes, and Codification, in* THE CONSTITUTIONALISM OF AMERICAN STATES 302, 314 (George E. Connor & Christopher W. Hammons eds., 2008); James E. Anderson, *The Texas Constitution: Formal and Informal, in* THE CONSTITUTIONALISM OF AMERICAN STATES 368, 370 (George E. Connor & Christopher W. Hammons eds., 2008); Jeremy Walling, *Understatement and the Development of Illinois Constitutionalism, in* THE CONSTITUTIONALISM OF AMERICAN STATES 401 (George E. Connor & Christopher W. Hammons eds., 2008).

33. See ELMER E. CORNWELL, JR., JAY S. GOODMAN, & WAYNE R. SWANSON, *STATE CONSTITUTIONAL CONVENTIONS: THE POLITICS OF THE REVISION PROCESS IN SEVEN STATES* 88–95 (1975) (noting that cleavages among groups of delegates could arise between reformers and those hoping to protect the status quo).

34. See *id.* at 90 (noting that the delegates in four states overwhelmingly perceived their deliberations in terms of conflict between reformers and those attempting to protect the status quo). Of course, other divisions, such as urban versus rural and Republican versus Democrat, may cross-cut the division based on attitude toward existing arrangements. *Id.*

But even though there was no existing constitution or state government, Alaska did have a constitutional history of sorts—its experience as a territory—and that experience influenced the delegates’ deliberations and decisions.³⁵ This is hardly unusual. As Amy Bridges has observed, “territories had histories of government and law that were the prologue to convention deliberations and served as a resource for delegates.”³⁶ Upon its purchase from Russia, Alaska was first governed as a colony and then as the District of Alaska until 1912, when the Organic Act of 1912 brought it its first elements of self-government.³⁷ That Act provided for an elective bicameral legislature—eight seats in the upper house, sixteen in the lower—which met biennially.³⁸ However, Congress could veto all its actions,³⁹ the President appointed the territory’s governor, and all legal actions were heard in federal courts,⁴⁰ whose judges were appointed by the President with the advice and consent of the Senate—that is, without any input from the territory’s population.⁴¹ The arrangement did not produce good government. As delegate Vic Fischer put it: “We started with a shared base of knowledge from having lived through the misgovernment of territorial Alaska.”⁴²

The Alaska delegates believed that a major source of “misgovernment” was the territorial government’s weak and fragmented executive,⁴³ so they replaced it with a strong and unified executive. This was not a foregone conclusion: most state constitutions, particularly those drafted in the nineteenth century, dispersed executive power by making multiple executive offices elective.⁴⁴ By 1880, over two-thirds of the states elected their secretary of state, their state treasurer, their auditor, and their attorney general; and even today thirty-nine elect their attorney general, thirty-four their state treasurer, and thirty-four their secretary of state.⁴⁵

35. For an overview of Alaska’s early experience after acquisition by the United States, see generally TED C. HINCKLEY, *THE AMERICANIZATION OF ALASKA, 1867-1897* (1972).

36. BRIDGES, *supra* note 2, at 21.

37. Act of Aug. 24, 1912, ch. 387, 37 Stat. 512 (1912).

38. § 4, 37 Stat. at 513.

39. § 3, 37 Stat. at 512.

40. See *Strong Alaska Governor*, N.Y. TIMES, Apr. 17, 1913 (noting that Major J. F. Strong was appointed governor, following the resignation of the previous governor).

41. CHIEF JUSTICE ALEXANDER BRYNER, STATE OF THE JUDICIARY 3 (2006), available at <https://public.courts.alaska.gov/web/soj/docs/state06.pdf>.

42. Fischer, *supra* note 10, at 153.

43. *Id.*

44. See Lawrence M. Friedman, *State Constitutions in Historical Perspective*, 496 THE ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI. 33, 37-38 (1988) (noting how early state constitutions had weak executive branches).

45. M. Barbara McCarthy, *The Widening Scope of American Constitutions* 52-55 (1928) (Ph.D. dissertation), reprinted in DISSERTATION COLLECTION PH.D. VOL. 2

But the delegates rejected this alternative, establishing the governor as the sole elected statewide executive official, serving a four-year term and eligible to stand for reelection.⁴⁶

To avoid a fragmentation of power, the governor was authorized to supervise all the principal executive departments, to reorganize those departments if “necessary for effective administration,” to appoint the heads of the departments (with confirmation by a majority of the members of the legislature in joint session), and to remove department heads at his or her discretion.⁴⁷ The governor was also given a veto and an item veto.⁴⁸ Finally, after each federal census, the governor (not the legislature), assisted by a board, was to reapportion the state.⁴⁹

It should be noted that in drafting the constitution, the Alaska delegates were free of one constraint generally imposed on prospective states. By empowering Congress to admit new states to the Union, the U.S. Constitution gives Congress the power to establish the conditions under which those states will be admitted.⁵⁰ In the enabling acts by which it authorized prospective states to devise constitutions and apply for statehood, Congress typically imposed conditions on the substance of state constitutions.⁵¹ But Alaskans did not wait for authorization from Congress to call a convention and draft a constitution.⁵² Indeed, they hoped that their unilateral action might spur a reluctant Congress to act on statehood⁵³ – and the absence of an enabling act meant that there were no mandates from Congress that had to be met. Alaska’s action was hardly unprecedented – Hawaii likewise held a constitutional convention

(Catholic Univ. ed., 1929); COUNCIL OF STATE GOV’TS, *THE BOOK OF THE STATES* 213 tbl.4.15 (2017), <http://knowledgecenter.csg.org/kc/system/files/4.15.2017.pdf>.

46. ALASKA CONST. art. III, §§ 1, 3–5. In contrast with the U.S. Constitution, which limits the President to two terms, the Alaska Constitution limits the governor to two consecutive terms but allows a former governor to run for the office again after an intervening term. *Id.* art. III, § 5. The Alaska Constitution does create the office of lieutenant governor – originally the office was called the secretary of state – but in general elections, candidates of the same party for the governor and lieutenant governor run together on a single ticket. *Id.* art. III, §§ 7–8.

47. *Id.* art. III, §§ 23–25.

48. *Id.* art. II, § 15.

49. *Id.* art. VI, § 3.

50. U.S. CONST. art. IV, § 3. The analysis in this paragraph draws on TARR, *supra* note 5, at 39–40, and Eric Biber, *The Price of Admission: Causes, Effects, and Patterns of Conditions Imposed on States Entering the Union*, 46 AM. J. LEGAL HIST. 119 (2004).

51. See Biber, *supra* note 50, at 120 (“Of the thirty-seven states admitted to the Union since the adoption of the Constitution, . . . almost all of them have had some sort of condition imposed on them when they were admitted.”).

52. See HARRISON, *supra* note 14, at 3 (explaining the delegates’ plan for statehood).

53. *Id.*

without awaiting an enabling act, as had California, Idaho, and Washington in the nineteenth century—and the delegates knew that Congress could still reject the proposed constitution or require changes as a condition of statehood.⁵⁴

IV. THE ALASKA CONSTITUTION AS A WESTERN CONSTITUTION

Despite its distance from the Lower 48, Alaska shares characteristics with other western states and its constitution-makers confronted many of the same challenges. One major concern for western states has been the power of outside economic forces. The states typically “exported primary products, lacked resources necessary for their own development, and were dependent on distant investors and the equally distant federal government for their future prosperity.”⁵⁵ Thus, during the late nineteenth and early twentieth centuries, when several western states drafted their initial constitutions or revised earlier ones, they sought to tame the economic and political power of large corporations, such as mining and railroad companies.⁵⁶ Even as they sought to circumscribe corporate power, western constitution-makers had to be careful not to impose overly burdensome restrictions because the corporations were a crucial source of capital for economic development.⁵⁷ Put simply, the western states wanted “to reap the rewards and avoid the pitfalls of economic growth.”⁵⁸

To do so, western constitutions not only reaffirmed the legislature’s power to regulate corporations, but also included provisions specifically regulating corporations or creating institutions charged with overseeing their operations and curbing illicit practices and abuses. For example, Idaho’s 1889 Constitution declared railroads to be public highways and subjected their rates to legislative regulation.⁵⁹ The Idaho and Montana constitutions forbade enactment of retroactive laws favorable to railroads,⁶⁰ while the Idaho Constitution established a labor

54. BRIDGES, *supra* note 2, at 27.

55. *Id.* at 21.

56. *Id.* at 147.

57. *See id.* at 144–48 (discussing the concerns delegates had when writing the constitutions of California, New Mexico, and Arizona).

58. *Id.*

59. IDAHO CONST. art. XI, § 5. For discussion of the development of article XI of the Idaho Constitution, see DENNIS C. COLSON, IDAHO’S CONSTITUTION: THE TIE THAT BINDS 134–48 (1991).

60. IDAHO CONST. art. XI, § 12; MONT. CONST. art. XV, § 13 (repealed 1972).

commission,⁶¹ and the Wyoming Constitution an inspector of mines.⁶² The Colorado Constitution established a commissioner of mines,⁶³ and both the Colorado and Wyoming charters directed the legislature to enact laws regulating ventilation in mines and prohibiting child labor in them.⁶⁴

Western constitutions also provided legal protections for workers, aiming to overturn or preempt unfavorable judicial rulings. Thus, the Montana and Wyoming constitutions abrogated the “fellow-servant” rule,⁶⁵ a common-law doctrine that prevented workers from collecting for work-related injuries. The Wyoming Charter also forbade labor contracts that released employers from liability for injuries their workers suffered.⁶⁶ Finally, western constitutions addressed the management and allocation of valuable resources within their borders. For example, the Colorado, Utah, and Wyoming constitutions all addressed water rights in great detail.⁶⁷

Like earlier western constitutions, the Alaska Constitution recognizes that the state’s prosperity is tied to powerful economic actors beyond its borders. It forthrightly commits the state to economic development: “It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use.”⁶⁸ But it insists that such development should work to the benefit of all residents of the state. There was concern at the time of the convention that out-of-state corporations like the Kennecott copper mine were not benefiting Alaska residents and that out-of-state fish trap owners were depleting the state’s salmon resource.⁶⁹ Thus, the very first provision of the Declaration of Rights affirms that “all persons have a natural right to . . . the enjoyment of the fruits of their own industry,”⁷⁰ and the maximum development of the state’s resources must be “consistent with the public interest.”⁷¹

61. IDAHO CONST. art. XIII, § 1.

62. WYO. CONST. art. IX, § 1. For discussion of these provisions, see BAKKEN, *supra* note 55, at 75–84, and Hicks, *supra* note 2, at 92–95.

63. COLO. CONST. art. XVI, § 1.

64. *Id.* § 2; WYO. CONST. art. IX, § 3 (repealed 1978).

65. MONT. CONST. art. XV, § 16 (repealed 1972); WYO. CONST. art. IX, § 4.

66. WYO. CONST. art. X, § 4(c).

67. COLO. CONST. art. XVI, §§ 5–8; UTAH CONST. art. XVII, § 1; WYO. CONST. art. VIII. On the debates over water rights in western conventions, see DONALD PISANI, *WATER, LAWN AND LAW IN THE WEST: THE LIMITS OF PUBLIC POLICY, 1850–1920* (1996) and BRIDGES, *supra* note 2, at 70–81.

68. ALASKA CONST. art. VIII, § 1.

69. HARRISON, *supra* note 14, at 131.

70. ALASKA CONST. art. I, § 1.

71. *Id.* art. VIII, § 1. Article VIII, section 2 directs the legislature to “provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.” *Id.* art. VIII, § 2 (emphasis added).

In seeking the rewards of economic development without its pitfalls, the Alaska Constitution departs from predecessor western constitutions in some respects. Here, one sees the interaction of time and place in constitution-making. First, whereas earlier constitutions eliminated legal doctrines that disadvantaged workers, the judicial development of tort law in intervening years had changed the legal landscape and enhanced protections for workers so that such constitutional safeguards were not needed.⁷² Second, the expansion of federal protections for workers – most notably the National Labor Relations Act⁷³ – likewise made superfluous the inclusion of many protections enshrined in earlier constitutions. Third, as shall be discussed in greater detail below, during the first half of the twentieth century, the understanding of appropriate constitutional design changed dramatically, discouraging the inclusion of detailed policy prescriptions in state constitutions.⁷⁴ Therefore, whereas concerns about corporate power did not change, the constitutional response to them did.

The Alaska Constitution does seek to reassure non-Alaskans – and perhaps particularly members of Congress who would vote on statehood – by prohibiting the state from taxing property owned by non-residents higher than property owned by residents.⁷⁵ Yet, in the years since statehood, when congressional disapproval was no longer a concern, Alaska has sought to grant preferences to Alaska residents with regard to hiring, benefits from the Permanent Fund, the hunting of wild game, and other matters.⁷⁶ These initiatives have regularly been challenged in the courts and often invalidated under the U.S. Constitution or the Equal Protection Clause of the Alaska Constitution.⁷⁷ In response to this litigation, the Alaska Constitution was amended in 1988 to state that “[t]his constitution does not prohibit the State from granting preferences, on the basis of Alaska residence, to residents of the State over nonresidents to the extent permitted by the Constitution of the United States.”⁷⁸

72. For an overview of pertinent developments, see Lawrence Baum & Bradley C. Canon, *State Supreme Courts as Activists: New Doctrines in the Law of Torts*, in *STATE SUPREME COURTS: POLICYMAKERS IN THE FEDERAL SYSTEM* 83 (Mary Cornelia Porter & G. Alan Tarr eds., 1982); see also John Fabian Witt, *The Long History of State Constitutions and American Tort Law*, 36 *RUTGERS L.J.* 1159 (2005).

73. National Labor Relations Act, 29 U.S.C. §§ 151-69 (2012).

74. See *infra* Section V.B.

75. ALASKA CONST. art. IX, § 2.

76. HARRISON, *supra* note 69, at 10, 40-42.

77. *Id.* at 41-42.

78. ALASKA CONST. art. I, § 23. For a review of the litigation over preferences to Alaska residents, see HARRISON, *supra* note 69, at 12-13, 40-42.

Alaska's major innovation was the inclusion of an entire Article devoted to natural resources—Article VIII. Article VIII confirms legislative authority over the control and allocation of natural resources but does so in such a way as to prevent exclusive grants or special privileges. It guarantees “[f]ree access to the navigable or public waters of the State;”⁷⁹ mandates that “wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use;”⁸⁰ and authorizes the legislature to acquire “sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value” for the benefit of the public.⁸¹ It directs the legislature to manage the state's renewable resources “on the sustained yield principle” — that is, so that harvesting the resource does not endanger its survival.⁸² Article VIII bears some resemblance to provisions in earlier western constitutions dealing with water rights, but the directive principles it announces and the legislative authority it confirms are distinctive.

V. THE ALASKA CONSTITUTION AS A MID-TWENTIETH-CENTURY CONSTITUTION

The Alaska Constitution is readily identifiable as a mid-twentieth-century constitution in both its form and its contents. To understand why, one must consider two key features of state constitution-making: constitutional borrowing and the progressive view of constitutional design.

A. Constitutional Borrowing

Throughout American history, the drafters of state constitutions have looked beyond the borders of their own states, borrowing extensively from other state constitutions.⁸³ If anything, the passage of time has increased interstate borrowing. During the nineteenth century, states seeking congressional approval for their admission to the Union sought to avoid controversy by modeling their constitutions on those of existing states.⁸⁴ In addition, settlers carried constitutional ideas west with them—indeed, some delegates to western conventions had previously

79. ALASKA CONST. art. VIII, § 14.

80. *Id.* art. VIII, § 3.

81. *Id.* art. VIII, § 7.

82. *Id.* art. VIII, § 4.

83. See Christian G. Fritz, *Rethinking the American Constitutional Tradition: National Dimensions in the Formation of State Constitutions*, 26 RUTGERS L.J. 969, 980–83 (1995).

84. TARR, *supra* note 5, at 40, 50–55.

served as delegates in the states from which they emigrated—and they reproduced in their new homes the constitutional arrangements with which they were most familiar.⁸⁵

Common problems also led to common solutions, as the availability of compilations of state constitutions, upon which delegates relied from the early nineteenth century, clarified the development of constitutional thinking and provided models for emulation.⁸⁶ Thus, John Hicks has noted that during the late nineteenth century, several western states, seeking to promote mining and irrigation, adopted similarly expansive provisions on eminent domain to encourage those activities.⁸⁷ And Morgan Kousser has described how in the South during the same period, the interstate exchange of constitutional ideas and legal materials furthered a “public conspiracy” to restrict suffrage.⁸⁸ Finally, on several occasions, constitutional innovations in one or a few states unleashed a contagion of emulative change. The transition to an elective judiciary that began in the mid-nineteenth century illustrates this phenomenon.⁸⁹

If anything, the professionalization of constitutional reform during the twentieth century facilitated the process of interstate borrowing. Among the most important developments was the increased use of constitutional commissions, which have the staff, time, and expertise necessary to study the constitutions of other states.⁹⁰ In some instances, these commissions have functioned as an alternative to constitutional conventions, suggesting amendments for legislatures to propose.⁹¹ In other instances, they have served as preparatory commissions for

85. See *id.* at 983 (stating that some California constitution delegates had previously served as delegates to other states’ constitutional conventions).

86. See Christian G. Fritz, *The American Constitutional Tradition Revisited: Preliminary Observations on State Constitution-Making in the Nineteenth-Century West*, 25 RUTGERS L.J. 945, 975–84 (1994) (discussing how constitutional compilations were widely published and utilized during nineteenth century state constitutional conventions, facilitating comparison, analysis, and borrowing).

87. Hicks, *supra* note 2, at 146–47.

88. J. MORGAN KOUSSER, *THE SHAPING OF SOUTHERN POLITICS: SUFFRAGE RESTRICTION AND THE ESTABLISHMENT OF THE ONE-PARTY SOUTH, 1880–1910*, at 39–40 (1974).

89. See, e.g., Jed Handelsman Shugerman, *Economic Crisis and the Rise of Judicial Elections and Judicial Review*, 123 HARVARD L. REV. 1061 (2010); G. ALAN TARR, *WITHOUT FEAR OR FAVOR: JUDICIAL INDEPENDENCE AND JUDICIAL ACCOUNTABILITY IN THE STATES 40–47* (2012).

90. See Robert F. Williams, *Are Constitutional Conventions a Thing of the Past? The Increasing Role of State Constitutional Commissions in State Constitutional Change*, 1 HOFSTRA L. & POL. SYMP. 1, 9, 21 (1996) (stating sixty-two constitutional commissions were formed in thirty-five states between 1938 and 1968, and that constitutional commissions wrote every initial draft of revised state constitutions proposed by legislatures in the 1970s).

91. *Id.* at 1.

conventions, assembling pertinent material and offering analyses of the constitutions of other states.⁹² In Alaska, the Statehood Committee performed this function, aided by outside experts brought in to advise on the task of constitution-making.⁹³

The extent of constitutional borrowing led one delegate toward the end of the California convention of 1849 to lament his colleagues' lack of originality, insisting that the preamble at least should contain "a few lines . . . of our own manufacture."⁹⁴ Yet, recurrence to the constitutional experience of other jurisdictions involves more than a mindless copying of provisions. Rather, it has been a way of consulting the experience of other states and partaking of the accumulated wisdom born of that experience, thereby encouraging more informed choices.⁹⁵ Moreover, constitutional borrowing has involved more than the transfer of particular provisions from one state to another. States have also borrowed their conceptions of proper constitutional design—what a constitution should look like, what it should contain, what it should omit, etc.—from other states.

B. The Progressive Conception of Constitutional Design

Although the states' willingness to consult the constitutions of other states may not have changed, where they have looked and what they have found certainly have. State constitution-making was at its height during the nineteenth century, when American states adopted ninety-four constitutions.⁹⁶ During that era, delegates to constitutional conventions tended to view constitution-making as a progressive enterprise, requiring the constant readjustment of past practices and institutional arrangements in light of changes in circumstances and political thought.⁹⁷

Delegates also believed that the experience of self-government had expanded the fund of knowledge about constitutional design, so that later generations were better situated to frame constitutions than were their less experienced, and hence less expert, predecessors.⁹⁸ This encouraged

92. *Id.* at 11–12.

93. ALASKA STATE COURT LAW LIBRARY, ALASKA CONSTITUTIONAL RESEARCH SOURCES 1 (2011) (noting that the Alaska Statehood Committee contracted with a non-profit organization that provided research, analysis, and advice to government organizations to prepare several staff reports for use by delegates to the Alaska Constitutional Convention).

94. Fritz, *supra* note 86, at 981.

95. BRIDGES, *supra* note 2, at 143.

96. TARR, *supra* note 5, at 96, tbl.4.1.

97. Fritz, *supra* note 86, at 973.

98. Christian G. Fritz, *Constitution Making in the Nineteenth-Century American West*, in LAW FOR THE ELEPHANT, LAW FOR THE BEAVER: ESSAYS IN THE LEGAL HISTORY OF THE NORTH AMERICAN WEST 292, 302–04 (John McLaren et al. eds., 1992).

them to avail themselves of “the institutional knowledge and experience that was unavailable to the eighteenth-century founders.”⁹⁹ It also influenced where they looked for guidance. The interest in “modern” constitutional design discouraged borrowing from older constitutions, including the Federal Constitution, and encouraged appropriating provisions and ideas from the most recently revised state constitutions.¹⁰⁰

This reliance on “modern” constitutional ideas continued during the twentieth century, even as a shift was occurring in the dominant understanding of what a state constitution should look like.¹⁰¹ During the latter part of the nineteenth century, the prevailing view was that legislators could not be trusted to faithfully represent popular sentiments, so policy choices should be enshrined in state constitutions rather than left to legislative discretion, and legislative power should be hemmed in with stringent constitutional limitations.¹⁰² Not surprisingly, the constitutions of the period tended to be long and detailed.

But a crucial change in constitutional views occurred in the early-twentieth century, with the crucial development being the publication of the National Municipal League’s Model State Constitution in 1924.¹⁰³ This model constitution reflected the view that the purpose of state constitutions was to enable state governments to respond vigorously to the problems affecting the states. Proactive state government required “a flexible and adaptable instrument which helps us in the solution of today’s problems” and which would be “flexible and adaptable, with only minor modifications, in managing tomorrow’s tasks as well.”¹⁰⁴

Modernization of state constitutions meant concentrating political authority in the hands of the governor. This was done by eliminating the independent election of other executive-branch officers, collecting the myriad independent boards and agencies into a manageable number of executive departments, and enhancing the governor’s power over

99. JOHN J. DINAN, *THE AMERICAN STATE CONSTITUTIONAL TRADITION* 63 (2006).

100. TARR, *supra* note 5, at 98.

101. *See id.* at 53 (showing how developments during the twentieth century facilitated interstate borrowing).

102. *Id.* at 118–22.

103. NAT’L MUN. LEAGUE, *A MODEL STATE CONSTITUTION* (1924). For the political theory underlying the Model State Constitution, see Daniel J. Elazar, *The Principles and Traditions Underlying American State Constitutions*, 12 *PUBLIUS* 22 (1982); see also Kermit L. Hall, *Mostly Anchor and Little Sail: The Evolution of American State Constitutions*, in *TOWARD A USABLE PAST: LIBERTY UNDER STATE CONSTITUTIONS* 388, 407–10 (Paul Finkelman & Stephen E. Gottlieb eds., 1991). Alaska’s delegates relied on the fifth edition of the Model State Constitution, published in 1948, available at <https://babel.hathitrust.org/cgi/pt?id=mdp.39015030798022;view=1up;seq=1>.

104. Frank P. Grad, *The State Constitution: Its Function and Form for Our Time*, 54 *VA. L. REV.* 928, 929 (1968).

budgetary matters through the executive budget, the item veto, and other devices. It also required removal of the procedural and substantive impediments to legislative action favored by nineteenth-century constitution-makers and refusal to constitutionalize policy choices, as that might unduly limit government's ability to respond to changing conditions. A study of state constitutions proposed in the 1960s and 1970s, after the U.S. Supreme Court's ruling in *Reynolds v. Sims*,¹⁰⁵ found that all the revised state constitutions moved closer to the Model State Constitution, some dramatically so.¹⁰⁶

It is hardly surprising that Alaska's constitution reflects this constitutional understanding. Those who drafted the Alaska Constitution relied heavily on the Model State Constitution and other reform literature.¹⁰⁷ Moreover, the New Jersey Constitution of 1947, which likewise relied on that literature and was praised by reformers as "the most modern state constitution," also had a significant influence on the Alaska Constitution.¹⁰⁸ Prior to the convention, the Statehood Committee contracted with the Public Administration Service in Chicago to prepare briefing papers and copies of recent state constitutions for the delegates, and these also communicated the reform perspective.¹⁰⁹ Finally, the convention hired nine out-of-state consultants to share their expertise and assist the convention deliberations.¹¹⁰ Among these reformers was John Bebout, who had likewise assisted in the creation of the New Jersey Constitution.¹¹¹ The details of what the Alaska delegates chose from the

105. 377 U.S. 533 (1964).

106. CORNWELL, *supra* note 34, at 156–59. In *Reynolds*, the Supreme Court held that states had to apportion both houses of their state legislatures on the basis of population. 377 U.S. at 568. This ruling directly led to constitutional change, as states were obliged to revise their constitutions to comply with the Court's ruling. See G. Alan Tarr, *State Constitutional Politics: An Historical Perspective*, in CONSTITUTIONAL POLITICS IN THE STATES: CONTEMPORARY CONTROVERSIES AND HISTORICAL PATTERNS 3 (G. Alan Tarr ed., 1996). The ruling also indirectly encouraged constitutional change by freeing rural legislators to support constitutional reform. ALBERT L. STURM, THIRTY YEARS OF STATE CONSTITUTION-MAKING: 1938-1968, at 61 (1970). Previously these legislators had usually opposed constitutional reform, fearful that a new constitution would lead to reapportionment, jeopardizing their privileged position. *Id.*

107. WHITEHEAD, *supra* note 9, at 243.

108. John P. Keith, *Recent Constitutional Conventions in the Older States*, in MAJOR PROBLEMS IN STATE CONSTITUTIONAL REVISION 39 (W. Brooke Graves ed., 1967).

109. WHITEHEAD, *supra* note 9, at 242.

110. *Id.* at 242–43.

111. See generally John E. Bebout & Joseph Harrison, *The Working of the New Jersey Constitution of 1947*, 10 WM. & MARY L. REV. 337 (1968), available at <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2841&context=wmlr>.

Model State Constitution and contemporary state constitutions are detailed in the next section.

VI. THE ALASKA AND HAWAII EXPERIENCES COMPARED

Alaska was not the only western state that crafted its first constitution during the mid-twentieth century. Like Alaska, Hawaii held a constitutional convention without waiting for authorization from Congress, and the “hope chest constitution” that emerged from that 1950 convention was likewise meant to spur Congress to grant statehood.¹¹² Because Alaska and Hawaii are so closely linked in their constitutional history and in the campaign for statehood, a comparison of the drafting and substance of their constitutions might be enlightening.

Both territories authorized conventions following plebiscites that approved efforts to secure statehood—Alaska’s in 1946, Hawaii’s six years earlier¹¹³ (indeed, Hawaii was often in the lead, with Alaska following its example). Both territories elected their convention delegates in non-partisan elections, but the composition of the conventions differed considerably. Hawaii’s delegates were an extraordinarily diverse group: of the sixty-three delegates, twenty-seven were Caucasian; nineteen of Japanese ancestry; twelve of Hawaiian or part-Hawaiian ancestry; and five of Chinese ancestry.¹¹⁴ In Alaska, only one delegate, Frank Peratovich, was an Alaska Native.¹¹⁵

This difference in composition affected the contents of the two states’ constitutions. The Hawaii Constitution expressly dealt with the diversity of heritage and culture in the state, confirming that “[t]he State shall have the power to preserve and develop the cultural, creative and traditional arts of its various ethnic groups.”¹¹⁶ It also banned segregation in any state military organization.¹¹⁷ In contrast, the Alaska Constitution did not directly address the cultural diversity of the territory, and an effort by delegate Muktuk Marston to include a state land grant to Alaska Natives was defeated.¹¹⁸ Yet the presence of the single Alaska Native delegate was important because Peratovich succeeded in limiting the English-language requirement for voting to the ability to read *or* speak the language, rather than read *and* speak the language, insisting that some older Alaska

112. ANNE FEDER LEE, *THE HAWAII STATE CONSTITUTION: A REFERENCE GUIDE* 9 (1993).

113. WHITEHEAD, *supra* note 9, at 210, 236.

114. LEE, *supra* note 112, at 8.

115. Campbell, *supra* note 30, at 688.

116. HAW. CONST. art. IX, § 9.

117. *Id.* art. I, § 9.

118. WHITEHEAD, *supra* note 9, at 245.

Natives who lacked reading ability were nonetheless well-qualified to vote.¹¹⁹ In contrast, the proposed Hawaii Constitution required voters to speak, read, and write English or Hawaiian.¹²⁰

Both the Hawaii and Alaska constitutions reflected the prevailing constitutional wisdom, elaborated in the Model State Constitution and enshrined in the recent New Jersey Constitution. The Alaska and Hawaii constitutions are relatively brief documents, featuring strong executives, unified court systems, and few non-civil-liberties restrictions on state legislatures. Both follow the Model State Constitution in providing for home rule, although the local government provisions of the two documents differ based on the different geographic configurations and settlement patterns in Alaska and Hawaii.¹²¹ Both also promote popular engagement in governing by providing for a periodic vote on whether to hold a constitutional convention, although only Alaska follows the Model State Constitution in providing for the initiative, referendum, and recall.¹²² Both largely copy the same litany of rights found in the Model State Constitution, though the Alaska Constitution departs from both the Model State Constitution and the New Jersey Constitution in omitting a right to organize and bargain collectively¹²³ (Hawaii had a long history of strong unions). Neither constitution originally followed the Model State Constitution's recommendation of an eighteen-year-old voting age, instead extending the voting age to twenty.¹²⁴ Finally, both follow the Model State Constitution in expressly recognizing a state responsibility for providing education, promoting public health, and offering public welfare.¹²⁵ Thus, the similarities between the Alaska and Hawaii constitutions far outweigh the differences.

Yet, whereas the Alaska Constitution has remained relatively unchanged since its adoption, the Hawaii Constitution has not. In 1968, less than a decade after statehood, Hawaii held a constitutional convention, which resulted from conflict in the state over reapportionment, ultimately leading to a federal district court ordering

119. *Id.*

120. HAW. CONST. art. II, § 1. This requirement was removed by constitutional amendment in 1968. ANNE FEDER LEE, *THE HAWAII STATE CONSTITUTION: A REFERENCE GUIDE* 72 (1993).

121. The Hawaii Constitution promotes considerable centralization of power in the state government. *See, e.g., id.* art. X (providing a single statewide system of public education). On the contrary, Alaska developed a distinctive system of local government based on boroughs. ALASKA CONST. art. X.

122. ALASKA CONST. art. X; *id.* art. XIII, § 3; HAW. CONST. art. XVII, § 1.

123. *See generally* ALASKA CONST.; HAW. CONST. art. XIII.

124. ALASKA CONST. art. V, § 1; HAW. CONST. art. II, § 1. Both states subsequently lowered the voting age to eighteen.

125. ALASKA CONST. art. VII; HAW. CONST. arts. IX, X.

the legislature to place the question of calling a constitutional convention on the ballot.¹²⁶ Once the people approved a convention, the delegates did not limit themselves to remedying malapportionment—they proposed twenty-three amendments, of which twenty-two were ratified.¹²⁷ Ten years later, voters approved another convention, which proposed thirty-four amendments, all of which were ratified.¹²⁸ Thus, while Alaska has averaged less than one amendment every two years, Hawaii has averaged almost two amendments every year.¹²⁹ Put differently, the similarities between the two constitutions did not mean that they met the needs of their states equally well.

VII. CONCLUSION

Writing during the American Founding, John Adams noted: “How few of the human race have ever enjoyed an opportunity of making an election of government, more than of air, soil, or climate for themselves or their children!”¹³⁰ Yet Alaskans had that opportunity when they created their constitution, and we continue to celebrate their achievement sixty years later. The constitution created the government of the state and has ever since affected the policies it has produced. It has also forged links between the government and the state’s citizens, and at its best it has safeguarded their rights while embodying and advancing their aspirations.¹³¹ It has even influenced constitutional developments beyond the borders of the state. To take but one example, when Michigan developed the environmental article for its 1963 constitution, it drew its inspiration from the Alaska Constitution.¹³² Small wonder, then, that the National Municipal League praised it as “one of the best, if not the best, state constitutions ever written.”¹³³

Yet, let me end by quoting another eminent founder, Thomas Jefferson. Jefferson warned that “some men look at constitutions with

126. LEE, *supra* note 112, at 11.

127. *Id.* at 14.

128. *Id.* at 18.

129. Dinan, *supra* note 23, at 10 tbl.1.1.

130. GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776–1787*, 127 (1969).

131. These accomplishments, of course, are not peculiar to Alaska. See G. Alan Tarr, *The State of State Constitutions*, 62 LA. L. REV. 3, 7 (2001) (asserting that state constitutions create state institutions, influence the effectiveness of state government policymaking approaches, and build connections between state governments and citizens).

132. EMILY ZACKIN, *LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA’S POSITIVE RIGHTS* 164 (2013); DAVE DEMPSEY, *RUIN & RECOVERY: MICHIGAN’S RISE AS A CONSERVATION LEADER* (2001).

133. NASKE, *supra* note 18, at 224.

sanctimonious reverence, and deem them like the arc of the covenant, too sacred to touch.”¹³⁴ This is a mistake, he insisted, because each generation “has a right to choose for itself the form of government it believes most promotive of its own happiness.”¹³⁵ In addition, “laws and institutions must go hand in hand with the progress of the human mind,” and what served the purposes of past generations may not serve those of current or future generations.¹³⁶ He therefore proposed that each generation consider anew the constitutional handiwork of its predecessors, drawing on the experience of life under the document.¹³⁷ Alaska’s founders themselves were persuaded by Jefferson’s argument, providing for a periodic vote on whether to call a new constitutional convention, although no such convention has yet been approved.

Nevertheless, amendments have expanded the rights available to Alaska residents – a ban on sex discrimination,¹³⁸ a right to privacy,¹³⁹ and protection for the rights of victims of crime.¹⁴⁰ They have also provided for the long-term fiscal health of the state through creation of the Permanent Fund,¹⁴¹ appropriations limits,¹⁴² and a budget reserve fund.¹⁴³ There is no better way for Alaska’s citizens to honor its fifty-five founders than by using the accumulated wisdom of experience to engage in the task of constitutional renewal and improvement as conditions change and new problems arise.

134. Letter from Thomas Jefferson to Samuel Kercheval (July 12, 1816), <http://www.let.rug.nl/usa/presidents/thomas-jefferson/letters-of-thomas-jefferson/jefl246.php> [hereinafter Jefferson Letter].

135. *Id.*

136. *Id.* For more on the importance of such popular constitutionalism in the present day and in the state constitutional context, see G. Alan Tarr, *Popular Constitutionalism in State and Nation*, 77 OHIO ST. L. REV. 237 (2016).

137. Jefferson Letter, *supra* note 134.

138. ALASKA CONST. art. I, § 3.

139. *Id.* art. I, § 22.

140. *Id.* art. I, § 24.

141. *Id.* art. IX, § 15.

142. *Id.* art. IX, § 16.

143. *Id.* art. IX, § 17.