

State Constitutions: A Historical Series

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These notes are not a paper. I will not be presenting any substantive results at the Summer Institute this year. For the last several years I have been working on the texts of state constitutions. Only recently has there been any usable output. Over this summer and into next year, the volume of material that you might consider using in your on research will increase dramatically. This is a brief introduction to the constitutions and the way we are handling them. Most of the work described in this report can be accessed on the web at:

<http://www.bsos.umd.edu/wallis/constitution.asp>

Since 1776 there have been roughly 150 state constitutions. They have been amended thousands of times. They deal with broad issues of fundamental rights and small issues of local tax rates. I won't waste time convincing you that these are some of the fundamental building blocks of the American economy.

I was originally drawn to the state constitutions because I was interested in finding a series on state debt limitations. Goodrich has a JEH article in which he documents limitations on state borrowing and on investments in internal improvements, I wanted to extend it. What I found was an enormous expanse of text. There have been three primary compilations of state constitutions, Poore (187-), Thorpe (1907) and Swindler (1976). Swindler builds on the ongoing compilation of state constitutions begun by the Legislative Drafting Research Fund early in the

20th century.¹ Although the LDRF is now defunct, the series it created is still being published by Oceana Press, which makes periodic updates to current state constitutions.

Here is the main problem. Lawyers are interested in the constitution as it exists *today*. They would like a fully amended, i.e. updated, version of each state constitution. These are published regularly in the state legal codes. The desire to have an integrated text, however, means that the historical dimension of the constitutions is difficult to retrieve. Only a few states actually publish the text of the original constitution, along with its amendments. They typically integrate the amendments into the text, often leaving the text of repealed articles and sections out altogether. Creating a historical panel of constitutional texts is, as a result, extremely difficult.

Here is what we have done. The Thorpe volumes were conveniently reprinted in 1993. We purchased three set of Thorpe and had one set unbound and run through a scanner. An army of undergraduates was hired to proofread the scanned text, all 5,000 pages of it. Most of the proofed text, as taken from Thorpe, is currently available on the web site. The are “19th century constitutions,” drafted before 1907.

A good number of proofed 20th century constitutions are also on the web site, or will be on the web this summer. Many of these have been taken directly from official state web sites. We are still filling in those constitutions written after 1907 that have since been replaced.

The proofed texts are the texts of Thorpe. To the extent that we are able to guarantee it, they are also the texts of the original constitutions. Thorpe did not always have the original text.

¹Unlike Thorpe and Poore, who both attempt to present a complete accounting of all the constitutions up to the current date, Swindler usually does not reproduce the constitution currently in effect. He refers the interested reader to the National and State Constitution series published by the LDRF.

Finding truly original texts is a non-trivial problem.

Once a constitution has been proofread, it is placed on the web site. See Table 1 for a brief explanation of the stages that a constitution goes through.

The basic elements of constitutional texts are articles and sections. Some constitutions also have parts, but I will exclude those from this discussion. There are also a variety of odd bits: preambles, bills of rights (often an article), transition schedules, and other miscellaneous text. We use the article and section as our basic unit of text.

Every piece of the constitution is identified with a specific article and section (text in “non-articles”, e.g. preambles, are treated as if they were in an article, and those articles are given special codes). Identifiers are inserted into the text that signify the article number, section number, part number, state, and year of constitution for each piece of text. The mechanics are boring. The “coded” constitutions are then fed into a data base program, which breaks the constitutions up into three (or four) levels of text:

Whole Constitutions

Articles

Sections

Parts (if necessary)

Each piece of text is uniquely associated with a state, year, article, section, and part and is stored in the data base with those identifiers. Coded constitutions can be accessed by article and section number on the web site. There are currently about 20 coded constitutions, a number that should rise rapidly this summer.

Reference conventions typically cite constitutional provisions by article and section number. Indexes, such as the LDRF index of 1915, also cite article and section number. Anyone with access to the index and the web, can pull up whatever articles and sections they want, without having to wade through Thorpe, Poore, or Swindler.

As mentioned, to the extent possible, the proofed texts are original texts. In the next stage, we gather relevant amendments to each constitution. Many of the 19th century amendments are already appended to the proofed texts by Thorpe. We are in the process this summer of constructing amendments for the 20th century, for all constitutions after 1907, no matter when they were written. Keeping track of amendments is a nightmare.

Amendments are coded in the following way:

*** Amendment# Section# Article# State “Constitution Year” “Amendment Year” ***

Each amendment has its own assigned number. Each amendment is associated with the article and section that it amends. Each amendment is associated with a particular state and a constitution written in a particular year. Each amendment is dated by the year in which it was enacted.

Our goal is to locate every amendment and associate it with the article and section it amends, as well as the year in which it became effective. If a section is repealed, we create an amendment which says “Repealed.” If a section is renumbered, we copy the original text into an amendment with the new article and section number. This may sound duplicative, but it makes sense. The fully amended constitution can be thought of as a table with the article and section numbers as rows and the years as columns:

	1900	1901	1902	1903	1904	1905	1906
A1, S1	Blue	Blue	Blue	Blue	Blue	Blue	Blue
A1, S2	Green	Green	Greenish	Greenish	Greenish	Greenish	repealed
A1, S3		Yellow	Yellow	Yellow	Yellow	Yellow	Yellow
A2, S1	Orange	Orange	Orange	Red	Red	Red	Red
A2, S2	Grey	Grey	Grey	Orange	Orange	Orange	Orange
A2, S3				Grey	Grey	Grey	Grey
A3, S1	White	White	repeal	repeal/X	repeal/X	repeal/X	repeal/X

Viewed in this way, the articles and sections do not change over time. The text associated with each article and section may change over time.

This is vitally necessary. Imagine that you pick up a law book written in 1902, it will cite the “Orange” section as Article 2, Section 1. Now pick up the 1903 version of the same book, it will cite the Orange section as Article 2, Section 2. In order to mesh with historical sources, and to build a set of constitutions that incorporate a time dimension, this has to be the underlying structure.

As I said, by the end of the summer most original constitutions should be “coded.” Amendments may take a little longer. If you have Thorpe, you can use his index (or more effectively the LDRF index, which cites article and section number, Thorpe’s index cites page numbers). Then access the web site and call up the individual article and section numbers that you are interested in. Becky could do this for local debt restrictions in 1890 using the LDRF. Ken and Stan could do this for suffrage restrictions in 1820 by using Thorpe.

The next step is to “index” the constitutions. This is a painful process. To date, I have indexed six constitutions. This involves me reading each article and section and assigning a topic or topics to each section. I currently have a set of about 800 topics, arranged in hierarchical fashion. The main topics are given in Table 2.

The following example shows the details from the New York Constitution of 1894, with respect to the election of executive officers of the state. Each topic has five potential references. The first is always to the main topic, and the fifth is always (if it is filled in) to another main topic. The second, third, and fourth entries are for details. In this constitution, section 3 of article 4 deals with executive elections in general, with the times for executive elections, and what to do in case of a tie vote.

Art	Sec	Main Topic	Sub #1	Sub #2	Sub#3	Other Main
		EXECUTIVE ELECTION		CONTESTED ELECTIONS		ELECTIONS
		EXECUTIVE ELECTION		GENERAL ASSEMBLY		ELECTIONS
		EXECUTIVE ELECTION		JOINT ELECTIONS		ELECTIONS
		EXECUTIVE ELECTION		METHOD		ELECTIONS
		EXECUTIVE ELECTION		METHOD		ELECTIONS
		EXECUTIVE ELECTION		RETURNS		ELECTIONS
4	3	EXECUTIVE ELECTION		TIE VOTE		ELECTIONS
4	3	EXECUTIVE ELECTION		TIMES		ELECTIONS
		EXECUTIVE ELECTION		TIMES		ELECTIONS
4	3	EXECUTIVE ELECTION				

The indexing is done in a very large spreadsheet file. As you can see, there are multiple lines in this entry for election times and for election methods. It is quite possible for more than one section to be indexed under the same topic. It is also possible for a single section to be indexed to multiple topics. The indexes are read into the same database as the coded texts. The index topics are associated with the section texts by their

year, state, article, and section numbers.

The indexes can be thought of as a table with topics for rows and constitutions for columns. Following the earlier color example:

	New York 1894	New York 1938	New Mexico 1954
Blue	A1, S1		
Green	A1, S2		
Greenish	A1, S2		
Yellow	A1, S3		
Orange	A2, S1; A2, S2		
Red	A2, S1		
Grey	A2, S2; A2, S3		
White	A3, S1		
X	A3, S1		

In the coded texts, amendments are associated with articles, sections, states, year (of constitution) and year of amendment. If you call up the topic “Orange” for the New York you will get references to both A2, S1 and to A2, S2 for the Constitution of 1894, and other articles and sections for other constitutions. In the text of the sections it will tell you if and when the section was amended or renumbered, as well as the date on which it was amended or renumbered.

The examples are two dimensional representations of what is a four-dimensional

data array: State, year, article/section, and topic. The web site will allow you to search and download by any of the dimensions. At the current time the search and download routines are simple, but we are working to upgrade them this summer.

The final step in the process, which will not get under way until 2001, is to create data sets containing information on specific aspects of the constitutions. We have run some simple pilots of this, but major construction on data bases will follow on the availability of indexed constitutions. For example, I will construct a database containing features of constitutions dealing with debt issues. Construction of the database will be much easier after a substantial number of constitutions have been indexed, so that we can follow through the debt topics.

I have tried to design the data collection/text modification process so that it proceeds in modules. As individual constitutions are completed we put them up on the web site as proofed, coded, or indexed constitutions. These are immediately available for public use, I hope in an accessible way.

Table 1

Stages of Constitutional Text

Stage

Proofed Text	Available on Web site for most 19 th century texts, Available for most 20 th century texts as well. Completion expected this summer.
Amended Text	Underway. Amendments up to 1907 should be completed for most states this summer. For 20 th century amendments by next summer.
Coded Text	For all proofed text by this summer, for amendments as they become available. Coded texts can be searched by article and section number.
Indexed Text	Currently 6 constitutions. Not on the web site yet, but the pilot should be running soon (perhaps by July). Indexed texts will come on line as they are indexed.
Data bases	None yet.

Table 2

This is the working list of major topics:

BANKS

BILL OF RIGHTS

BOUNDARIES

CANALS

CONSTITUTIONAL AMENDMENTS

CONTRACTS

CORPORATIONS

CRIMES

DISTRIBUTION OF POWERS

EDUCATION

ELECTIONS

ENVIRONMENT

EXECUTIVE

GENERAL POWERS/GENERAL PROVISIONS/GENERAL GOVERNMENT

IMPEACHMENT

INITIATIVE AND REFERENDUM

JUDICIAL

LAWS

LEGISLATIVE

LOCAL GOVERNMENT

MILITIA

MISCELLANEOUS

PRISONS

PROPERTY

PUBLIC INSTITUTIONS AND WELFARE

PUBLIC OFFICERS

RAILROADS

SLAVERY

TAXATION AND FINANCE

SUFFRAGE