

CHAPTER TWO

Constitutional Development in Connecticut

State governments across the land are currently characterized by a resurgence of political energy and bold experimentation in public policy making. This is especially evident in the vitality of state legislatures, the recent emergence of dynamic and creative state governors, the modernization of state judicial systems, the organization and intensity of citizen activist groups, and the reinvigoration of political party organizations. In addition to these trends, there has been an increasing amount of attention to and reliance placed on those obscure and dusty documents which for more than two centuries have served as the fundamental law at the subnational level of the governing process: state constitutions. The extent to which state constitutions have been reactivated is perhaps one of the most fascinating and interesting developments in American federalism.

State constitutions have been part of the American republic for more than two centuries. Indeed, state constitutions have a longer and richer history than the federal constitution. Prior to the American Revolution, colonial charters granted to individual colonies by the King of England were employed for the purpose of colonial governance. When America declared independence from England in 1776, a number of colonies proceeded to draft their own state constitutions. State constitutions thus supplanted the old colonial charters that had been granted to the colonies by the King. Generally speaking, the year 1776 marked the beginning of

meaningful self-government among the thirteen states. In many states, the Declaration of Independence and the writing of state constitutions coincided with one another. State constitutions adopted during this era were inevitably replaced by constitutions in subsequent years that were more reflective of institutional developments in the governing process and changes within the state polity. The Massachusetts state constitution, penned by Founding Father John Adams and adopted in 1780, is the one exception. The original constitution has continued to serve as the supreme law for the state of Massachusetts for more than two hundred and twenty years, irrespective of the fact that one hundred and twenty constitutional amendments have been added. The people of Massachusetts have great reverence not only for the wisdom of John Adams, but also for their historic state constitution.¹

Connecticut's Constitutional Heritage

The Fundamental Orders of 1639

Unlike other colonies, Connecticut had for many years enjoyed an impressive degree of political sovereignty. Long before the American Revolution and the emergence of state constitutions among the thirteen states, Connecticut had established for itself a self-governing document very similar to that of a constitution, known as Connecticut's Fundamental Orders. The Fundamental Orders is regarded as one of the oldest self-governance documents in American history. There are those who regard the Fundamental Orders as the first written constitution known to mankind and the fount of constitutional government in the Western world. Adopted more than three hundred and fifty years ago, the Fundamental Orders is the reason why Connecticut license plates bear the inscription *The Constitution State*.

The Fundamental Orders was drafted in 1639 by farmers from the rural Connecticut river towns of Hartford, Wethersfield, and Windsor. Prior to the writing of the Fundamental Orders, issues affecting the three Connecticut towns were resolved in a governing

assembly known as the General Court. The General Court, established in 1637, met periodically to conduct public business in a small building known as the Hartford Meeting House.

Many issues affecting the three communities were resolved in the General Court, including the somewhat notorious decision to wage war on the hostile Pequot Indian tribe. According to Albert E. Van Dusen,

In the river towns many felt they no longer could tolerate the Pequot menace. On May 1, 1637, the General Court at Hartford voted to wage an offensive war and summoned ninety men – forty-two from Hartford, thirty from Windsor and eighteen from Wethersfield. They selected John Mason as commander and voted one hogshhead of beer for the men.²

As the towns grew in size, it became clear that a more effective and representative system of self-government was required. Thus, on May 31, 1638, Hartford's Founding Father, the Reverend Thomas Hooker (1583-1646) formally proposed that the three Connecticut towns enter into a new and more structured political compact. At the Hartford Meeting House, Hooker, in what is now regarded as one of the most historic sermons in American political history, urged the residents of Hartford, Windsor, and Wethersfield to adopt a representative form of government based on the consent and free will of the people. In Hooker's words, "The foundation of authority is laid in the free consent of the people. . . . As God has given us liberty, let us take it."³

Hooker's personal past and pivotal role in Connecticut political history should be specifically noted:

The son of a respectable middle-class landholder, he was born north of London. At college he became a religious radical, then a spell-binding preacher, was marked for death by the Anglican Church, fled with his family to New England, led the first westward migration from

Massachusetts to Connecticut, founded a new town, and alongside of his devotion to moral law laid the basis for civil law that launched a new nation on the road to representative government.⁴

Following Hooker's urgent call for a representative system of government, Roger Ludlow of Windsor proceeded to draft a self-governing document known simply as the Fundamental Orders. The Fundamental Orders consisted of a preamble and eleven orders, and was subsequently adopted by delegates from the three Connecticut towns on January 14, 1639, at the Hartford Meeting House.⁵ Connecticut's long tradition of self-government based on a written constitution had thus begun.

The historic dimension of Connecticut's Fundamental Orders cannot be overstated. Consider two important facts: First, the Fundamental Orders was adopted only nineteen years after the Pilgrims drafted the Mayflower Compact. The Fundamental Orders was therefore one of the very first attempts at self-government in America. As Vincent Wilson, Jr., notes,

Particularly significant is the absence, in the Fundamental Orders, of any reference to England or the authority of the Crown or Parliament. In the wilderness along the Connecticut River, the three towns had, in fact, come close to creating an independent commonwealth.⁶

Second, the Fundamental Orders was adopted approximately one hundred and fifty years prior to the writing of the federal constitution in Philadelphia. Although the federal constitution is by no means modeled after the Fundamental Orders, it is not an exaggeration to suggest that the profound respect the American people have historically exhibited toward written constitutions can be traced to Connecticut's Fundamental Orders of 1639, for it is here that we discover the roots of the American constitutional tradition. The preamble to the Fundamental Orders not only reflects the belief of Connecticut's Founding

Fathers in self-government, but also a firm belief that religion and God should guide the course of public affairs. Unlike the federal Constitution, which would be written many years later, Connecticut's Fundamental Orders clearly merged church and state. The Puritan heritage of Connecticut's Founding Fathers is especially evident:

For as much as it hath pleased Almighty God by the wise disposition of his divine providence so to order and dispose of things that we the Inhabitants and Residents of Windsor, Hartford and Wethersfield are now cohabitating and dwelling in and upon the River of Connectecotte and the lands thereunto adjoining; and well knowing where a people are gathered together the word of God requires that to maintain the peace and union of such a people there should be an orderly and decent Government established according to God, to order and dispose of the affairs of the people at all seasons as occasion shall require; do therefore associate and conjoin ourselves to be as one Public State or Commonwealth.

Reflecting on the Puritan heritage of Connecticut's Founding Fathers, R. Bryan Bademan, a scholar of American religious history, described it in these terms:

The delegates who drafted the Fundamental Orders were Puritans of a similar stamp as those who settled the Massachusetts Bay Colony that same decade. Their concern with good order in society and politics reflected their deeply-held conviction that, while all of life was lived under the sovereign rule of a wise and benevolent God, the reality of human sin made communal discipline and oversight necessary for continued growth and godliness. That the Orders could be ratified without reference to the King of England does not so much suggest their democratic modernity as much as it suggests Puritan interest in the

ancient tradition of covenant-making found in the biblical texts and recently rejuvenated by some Protestant reformers.⁷

The Royal Charter of 1662

In 1662, the Fundamental Orders was replaced by a Royal Charter granted to the colony of Connecticut by King Charles II. It was Connecticut's Governor John Winthrop, Jr., of Saybrook who presented Connecticut's Charter to the King for approval. According to most accounts, Winthrop's charisma, political connections in England, diplomatic skills, and sheer persistence were central to Connecticut's success in obtaining the coveted Charter. Winthrop personally crossed the Atlantic Ocean in his effort to secure the Charter from the King.⁸ Although the newly granted Charter of 1662 superseded the Fundamental Orders of 1639, it would be incorrect to suggest that the Charter actually replaced the Orders as the new body of law.

Under the Fundamental Orders, self-government had already been firmly established as part of Connecticut's political tradition. What the Charter essentially did was guarantee, rather than establish, a system of self-rule that had been in place for more than twenty years. Connecticut colonists had acquired such a deep reverence for the Fundamental Orders that elements and principles of this document were woven into the 1662 Charter. Perspectives regarding the relationship between the Fundamental Orders and the Charter are offered by two Connecticut historians. Christopher Collier offers this view:

It is usually said that the Fundamental Orders was subsumed into the Charter, but perhaps it is more accurate to say that the Orders continued as a parallel though secondary level of fundamental law – quasi-constitutional, if you will.⁹

Richard J. Purcell, in his classic work, *Connecticut in Transition: 1775-1818*, originally published in 1918, provides this observation:

This Charter in substance was similar to the eleven Fundamental Orders of 1639, which had been drafted by representatives of the river towns as their rule of government. This similarity has enabled certain writers to maintain that the Charter was royal only in form, but otherwise a restatement of republican principles.¹⁰

Under the Charter the business of Connecticut government was now to be conducted in a General Assembly. The Charter provided for the annual election of an upper legislative chamber consisting of a governor, a deputy governor, and twelve assistants. The upper chamber was required to meet twice a year along with the lower house of the General Assembly, which consisted of two elected colonists from each Connecticut town. The General Assembly was given broad discretion in its lawmaking capacity, and was allowed to pass any law, as long as the law did not clash or conflict with the laws of England.¹¹

Upon Winthrop's return from England, the Charter was formally presented in Hartford on October 4, 1662. In the words of W.H. Gocher, "It was declared to belong to them and their descendants forever."¹² So cherished was the Royal Charter by the political leadership and citizenry of Connecticut that the document was secreted in an oak tree when Sir Edmund Andros, a former British military commander and Royal Governor of New York, was dispatched to Connecticut by the King of England in 1686 for the purpose of confiscating the Charter and consolidating Connecticut and other New England colonies into a Dominion of New England. The Charter was therefore never relinquished to Andros and remained a living and functional governing document even while it remained in seclusion.¹³

Although Andros did establish a New England Dominion, his rule over the New England colonies was rather short-lived. In 1688, England experienced a political crisis known as the Glorious Revolution. The crisis that beset England is a long and complicated story, but in summary, the Glorious Revolution involved a power struggle between the British monarchy and the British Parliament.

The end result was the abdication of the highly unpopular King James II, and the subsequent emergence of Parliament as a more powerful force within the context of British government. The Glorious Revolution was an important turning point for the development of British constitutionalism. The supremacy of representative government and an expansion of rights for British subjects would be the end result. Moreover, England's Glorious Revolution would have a far-reaching impact on the character of colonial politics. With respect to Connecticut, the removal of King James II from the English throne weakened the authority of Edmund Andros, thereby forcing Andros to relinquish his control over the New England colonies. The events in England that led to Andros's departure from the region encouraged the Connecticut General Assembly in 1689 to formally reestablish Connecticut government under the Charter of 1662.¹⁴ The Charter would remain as Connecticut's governing document until 1818.

New Haven Colony

Any discussion of the Royal Charter of 1662 and the political development of Connecticut as a colony during this time period must recognize the important, but often forgotten, colony of New Haven. Formed in 1638, New Haven Colony functioned as an autonomous political entity until its inclusion into the more dominant Connecticut Colony in 1665. The original six towns of New Haven Colony consisted of New Haven, Milford, Guilford, Branford, Stamford, and the Long Island town of Southold. Protection against hostile Indians appears to have been the principal motive behind the formation of the six town colony.¹⁵ At the time of its incorporation into Connecticut Colony, New Haven Colony had expanded to include nineteen towns, the same number of towns as that in the colony of Connecticut.¹⁶

Although the Royal Charter officially joined New Haven Colony with Connecticut, the initial merger of the two colonies was far from harmonious. Upon learning of the merger, the political leaders of New Haven Colony were deeply resentful. They felt that

the decision to forge a union had been made without consultation or consent. New Haven colonists also feared that the merger would result in a dramatic loss of power over matters unique to towns within the colony. Moreover, there was a concern, particularly among New Haven Colony's political elite, that Connecticut Colony's decision to allow freemen privileges to individuals not affiliated with a church would potentially serve to weaken the relationship between church and state.¹⁷

Although political tension existed between the two colonies after the granting of the Royal Charter, the various towns within New Haven Colony eventually deemed it advantageous to support the union. In 1665, New Haven Colony formally agreed to unite with Connecticut Colony, thus ending New Haven Colony as an autonomous governing entity. This is not to suggest, however, that New Haven Colony's influence within the context of the Connecticut political process was suppressed with the merger in 1665. Several Connecticut governors were chosen from towns within the original New Haven Colony, including William Leete of Guilford in 1676, Robert Treat in 1683, and Jonathan Law of Milford in 1742.¹⁸ New Haven's political influence could also be observed with the legislative enactment on May 8, 1701 to rotate state legislative sessions between the towns of Hartford and New Haven. Prior to this, the General Assembly was convened for the May and October legislative sessions in Hartford. With the enactment in 1701, the General Assembly would meet in Hartford for the May session and convene in New Haven for the October session.¹⁹ This political arrangement continued until the 1870s.

The Constitution of 1818

The Royal Charter of 1662 served as the principal governing document for the state of Connecticut until 1818, the year in which Connecticut adopted a state constitution. The Constitution of 1818 served as Connecticut's fundamental law until 1965, when the current state constitution was adopted. Although the Constitution of 1818 was a somewhat dramatic departure from the Royal Charter

of 1662, it is important to once again note that elements of the Charter, as well as its predecessor, the Fundamental Orders of 1639, were blended into the new governing document. The same holds true for the Constitution of 1965. Thus, rather than viewing Connecticut's constitutional development as a series of new and distinct stages, it is perhaps best to approach the state's constitutional history as an evolving and unfinished story.

The Constitution of 1818 was fundamentally different from the Royal Charter in several important respects. First, church and state were now separated. The formal and legal association between government and the Congregational Church was legally severed with the adoption of the new constitution. According to Connecticut historian Christopher Collier, "Many people in Connecticut were not Congregationalists and didn't like paying taxes to support a church."²⁰ Thus, the long-established policy in Connecticut of supporting Congregationalism through local taxes came to an end. Tolerance of different religious faiths and sects was now emerging in Connecticut. Describing the profound religious impact of the new constitution, historian Jarvis Means Morse put it this way:

The new constitution swept away all special privileges of a religious nature, declaring that no preference should be given by law to any Christian sect or mode of worship. Congregationalism was thus put on a level with other faiths; its ministers could no longer get together to march in procession, drink rum, and decide who was to be governor of Connecticut.²¹

A second important feature of the new constitution concerned the establishment of a three-branch governing system, similar in several respects to the model in place at the federal level. The state legislature, the governor, and state judges now functioned within their own independent spheres of constitutional authority. The separation of executive and legislative authority was an important development, as it directly enhanced the leadership capacity of the

Connecticut state governorship. It had become apparent that a stronger chief executive was needed (although as Morse notes, the state legislature, even with adoption of the new constitution, still remained the dominant element of state government). State governors were given a substantial number of formal powers, but in reality few of these powers were vigorously exercised. Prestige and custom rather than legal authority proved to be the most important sources of gubernatorial authority for a good part of the nineteenth century.²²

The separation of the judiciary from the legislature was also quite significant. The highest organ of judicial power in Connecticut was now located in an independent judiciary consisting of a Supreme Court of Errors and a Superior Court. With the exception of smaller, inferior courts (which still remained under the jurisdiction of the state legislature), the judiciary now enjoyed considerable autonomy from the state legislature.²³

In addition to religious and governmental reform, the Constitution of 1818 extended voting rights to previously disenfranchised citizens. Prior to the adoption of the new constitution, property requirements were associated with voting rights, and political power rested with a property-owning political elite. John Adams's observation on the Connecticut political scene concisely captured this condition:

The state of Connecticut has always been governed by an aristocracy, more decisively than the empire of Great Britain is. Half a dozen, or, at most a dozen families, have controlled that country when a colony, as well as since it has been a state.²⁴

With the adoption of the new constitution, voting rights were now extended to white males twenty-one years of age or older who had paid taxes, lived in the state for at least six months, or had served in the state's militia. The Connecticut electorate was thereby significantly expanded. With adoption of the Constitution of 1818, democratic government, albeit in modified form, began its

evolution within Connecticut politics. Collier notes that the 1818 Constitution was also in many ways Connecticut's first constitution in the true sense of the term. Unlike the Royal Charter and Fundamental orders, the 1818 Constitution met what had become the "standards of constitutionalism in the United States."²⁵

The adoption of a new constitution in 1818 needs to be understood within the context of three important developments: the social and economic transformation of the state itself; the steady rise of the Democratic-Republican Party and resulting partisan realignment; and the political savvy and popularity of a reform-minded state governor. As the nineteenth century progressed, it became clear to political reformers that the state was in need of a governing document that could accommodate the rapidly changing social and economic environment. Economic modernization seemed to require a new style of government with greater decision making capacity. Indeed, the forces of economic modernization had begun to emerge in the small state of Connecticut shortly after the Revolutionary War.

Approaching the end of the eighteenth century, Connecticut, unlike many other former British colonies, had experienced a dramatic economic transformation. Buttons were manufactured in Waterbury, a toll road had been constructed between New London and Norwich, banks had been chartered in New London and Hartford, and the first insurance companies had emerged in Hartford.²⁶ Eli Whitney's invention of the cotton gin in 1793 along with his pioneering efforts in musket manufacturing had far-reaching and profound implications, not only for Connecticut's economy but also for the economies of the thirteen states. By 1818, sixty-seven cotton mills were operating in the state.²⁷ Additional economic developments included a robust whaling industry in New London, gin and brandy production in Hartford County, and a silk industry in the town of Mansfield.²⁸ As the state's economy changed, so too did the needs of the state's population. A new constitution and a government with broader capacity seemed to be the sensible solution.

Change within the fabric of Connecticut politics also contributed to constitutional adaptation. The Federalist Party,

which had practically dominated the state's politics since the 1790s, was by the second decade of the nineteenth century in a state of rapid disintegration and decline. As Richard Hofstadter notes, "party warfare was dying out altogether, as the Federalists continued to dwindle both in states and nation."²⁹ The Federalist Party was losing its control over American politics, including states in New England which had served as a stronghold for Federalist candidates. The Democratic-Republican Party, associated with the ideals and presidencies of Thomas Jefferson and James Madison, had by 1818 clearly eclipsed the Federalist Party at practically all levels of the political system – national, state, and local. In Connecticut, Democratic-Republican candidates were being elected to the General Assembly and town councils, and with this partisan development a new and fresh perspective towards government emerged. As Wesley W. Horton put it, "In anticipation of a Republican victory in the spring elections, in late 1817 and early 1818 the various towns passed resolutions calling for a convention."³⁰

In addition to partisan change and important socio-economic developments, the emergence of the new constitution in 1818 can be attributed directly to Connecticut's newly-elected and reform-minded governor, Oliver Wolcott, Jr. Elected to the state governorship in 1817 as the leader of the Toleration Party, a third-party coalition consisting of Democratic-Republicans and Episcopalians who had become disillusioned with Federalist rule, the highly popular Wolcott was able to generate significant support for constitutional reform. Wolcott's father and grandfather had both served as governors of Connecticut, and the prestige associated with the Wolcott name clearly bolstered the governor's power and successful call for constitutional change.³¹ Wolcott was a central figure in the drive for constitutional reform.

The Constitution of 1818 served as the supreme governing document for the state of Connecticut until 1965. In many ways, the 1818 Constitution admirably served as a pillar of stability for the state during periods of great economic growth, as well as periods of deep and dark economic depression. By the early nineteen-sixties

however, it was apparent that constitutional reform was once again in order for the state of Connecticut. In the view of reformers, a new governing document seemed necessary to guide Connecticut through the remainder of the twentieth century and beyond. Thus, in 1965 a new constitution was proposed, written with great care, and formally adopted. At the time of this writing, the Constitution of 1965 has served as the supreme law for the state of Connecticut for more than forty years. Precisely how long the constitution will remain in place is impossible for any observer to predict. Based on Connecticut's experience with the Constitution of 1818 however, it seems reasonable to predict that this constitution, like its predecessor, will have a very long life indeed.

The Constitution of 1965

By the nineteen-sixties, pressures for constitutional reform once again emerged in Connecticut. This time, the single most important factor behind the demand for reform was the issue of legislative reapportionment. This issue had been festering in Connecticut politics for some time, and it was inevitable that such a volatile issue would result in demand for meaningful constitutional change.

The issue of legislative reapportionment rose to the surface in Connecticut as a result of a widening population disparity between rural and urban communities. During the eighteenth century and the early decades of the nineteenth century, populations of towns in Connecticut did not differ vastly. The population was, to some extent, evenly distributed across the state and among individual local communities. In 1800, excluding the extremes such as the little town of Union with 767 inhabitants, and Stonington with a population of 5,437, the population difference between Connecticut towns was at most only 4 persons to 1, with the majority of towns falling comfortably within this range.³² Older towns in Connecticut each elected two members to serve in the Connecticut House of Representatives, while newer towns, which had fewer inhabitants, were allowed one representative each. Thus, a fair system of equal representation characterized legislative politics

in Connecticut during this particular period and, generally speaking, there was little demand or need for legislative reapportionment.³³

By the middle of the nineteenth century, however, the growing population imbalance between Connecticut's urban and rural communities raised questions of fair legislative representation. More specifically, heavily populated cities began to emerge in Connecticut, but, unfortunately for residents of urban areas, legislative representation did not correspondingly increase. The formula of one or two representatives per local community remained fixed regardless of the community's population growth. Disproportionate legislative representation was now characteristic of Connecticut politics, and the weight of individual votes was extremely unequal. The vote cast by a resident of a small, rural town in Connecticut had far more power and weight than the vote cast by a resident of one of Connecticut's expanding cities. Although there were some minor adjustments and legal tinkering with Connecticut's legislative reapportionment formula during the decades immediately following the Civil War, residents of Connecticut's urban communities remained underrepresented in the General Assembly compared to residents of rural communities. As Horton put it, "By the 1890s, the Connecticut system of representation was a national scandal."³⁴

By 1900, the city of New Haven, which had grown to 108,000 inhabitants, was allotted only two state representatives, while Union, with a population of 428, also had two representatives. Moreover, examination of the population among cities and towns, when compared with the number of representatives allocated, reveals that small, rural towns in Connecticut completely dominated heavily populated cities in legislative politics. According to Horton, "44 towns, with a population of about 30,000, could legislatively overwhelm the four largest cities, with a population of about 300,000."³⁵

In 1902 there was a feeble attempt by political reformers to rectify the grossly malapportioned legislative districts. A constitutional convention was convened, and over the course of five

months a new constitution was written. The proposed constitution failed to win approval among the Connecticut electorate, with more than two-thirds of voters rejecting the document. Rural voters viewed the proposed constitution as a threat to their political power, while voters in urban areas regarded it as an inadequate attempt to increase their political power within the context of legislative politics. Thus, a politically unjust and fundamentally unfair system of legislative politics persisted in Connecticut for a good part of the twentieth century.³⁶

By the early nineteen-sixties, the issue of legislative reapportionment could no longer be ignored by lawmakers and constitutional reformers. The issue of legislative reapportionment had now become one of the hottest political issues, not only in Connecticut, but in states across the land. Voters in rural towns were routinely controlling a majority of seats in the state legislatures. Empirical evidence during this period demonstrates serious political inequality with respect to legislative representation. In Alabama, it was theoretically possible for a minimum of 27.6 percent of the population to elect a majority of the state senate, while 37.9 percent of the state's population could elect a majority of representatives to the state house of representatives. In Connecticut, 32 percent of the state's population could theoretically control a majority of seats in the state senate, while a mere 12 percent could elect a majority of representatives to the state house. In Iowa, 35.6 percent of the population could elect a majority of the state senate, while 27.4 percent of the population could elect a majority of the lower house. Apportionment in Nevada was among the most perverse, with only 8.0 percent of the population controlling a majority of the seats in the state senate, while a majority of seats in the state house were controlled by 29.1 percent of the state's population.³⁷

In addition to raising questions related to representative democracy and, more fundamentally, the concept of political equality, malapportioned legislative districts also raised questions of fairness concerning taxation and allocation of public resources. By the nineteen-sixties, urban communities were providing the lion's share of tax revenue. Unfortunately, public policies and public

resources were rarely directed toward urban centers. The needs and concerns of urbanites were seldom addressed in state legislative committees or on the floors of state assemblies, despite the fact that the bulk of many state operating budgets was based on urban tax dollars. A report issued by the Conference of Mayors during the controversy over reapportionment noted that urban dwellers were for all intents and purposes treated by state lawmakers as “second-class citizens.”³⁸

Thus, mounting pressure in favor of legislative reapportionment was inevitable. Connecticut, like other states across the land, would be forced to undergo legislative reform. In Connecticut, a new constitution would also be written to accommodate this important objective. To more fully understand the impetus behind legislative reform in Connecticut and the writing of a new state constitution, the significance of several historic and monumental rulings issued by the United States Supreme Court regarding the controversial issue of legislative reapportionment must be examined. To understand such rulings is to understand the connection between court rulings on constitutional law and the development of representative democracy in the United States.

Initially, the Supreme Court was reluctant to become involved in matters pertaining to legislative reapportionment. In the view of the Court, the issue was more a political than a legal question, and therefore best left to the elected branches of government to resolve. The Court’s position on legislative reapportionment reflected a long-standing and revered judicial tradition that maintains that law and politics should not be intertwined. Thus, for the Supreme Court to accept a case the issue must in the Court’s view be “justiciable,” i.e., a controversy that appropriately belongs before the Court. This is fundamentally different from what the Court regards as a “political” issue, i.e., a matter best left to the legislative and executive branches of government.

The Supreme Court’s position that legislative reapportionment was a political and therefore non-justiciable issue was articulated quite clearly in *Colegrove v. Green*, 328 U.S. 549 (1946). The ruling

did little to correct the inequitable state of representative democracy in American politics. Malapportioned congressional districts in the state of Illinois were the subject of dispute. Population shifts over a forty-year period had resulted in wide discrepancies between Illinois congressional districts, with a low of 112,116 residents in one district to a high of 914,053 residents in another. Those residing in the most populated congressional districts, it was estimated, had approximately one-ninth the voting power of residents in the least populated districts.³⁹ The Supreme Court, however, failed to see how malapportioned legislative districts constituted a justiciable issue. Justice Felix Frankfurter, one of the Court's strongest proponents of judicial restraint, and the author of the Court's majority opinion in *Colegrove*, addressed the issue in the following terms:

In effect this is an appeal to the federal courts to reconstruct the electoral process of Illinois in order that it may be adequately represented in the councils of the Nation. . . . Nothing is clearer than that this controversy concerns matters that bring courts into immediate and active relations with party contests. From the determination of such issues this Court has traditionally held aloof. It is hostile to a democratic system to involve the judiciary in the politics of the people. And it is not less pernicious if such judicial intervention in an essentially political contest be dressed up in the abstract phases of the law. . . . Courts ought not to enter this political thicket.⁴⁰

Malapportioned legislative districts, in the view of Justice Frankfurter, should be corrected by Congress and the state legislatures, not the Supreme Court. The *Colegrove* ruling of 1946 made clear the Supreme Court's position on the issue of legislative reapportionment: the issue was political and therefore nonjusticiable. As a result of the Supreme Court's unwillingness to resolve legislative malapportionment, political inequality continued to persist in American politics.

The historic breakthrough came sixteen years after *Colegrove*, with the landmark Supreme Court ruling of *Baker v. Carr*, 369 U.S. 186 (1962). In the years following the *Colegrove* ruling, new judges, with a decidedly liberal perspective toward civil rights and political equality, were appointed to the U.S. Supreme Court. Two appointments made by President Dwight Eisenhower were especially relevant: Earl Warren replaced Fred Vinson as chief justice in 1952, and William Brennan was appointed as an associate justice in 1957. It was clear that one of the chief objectives of the Warren Court was to employ judicial power so as to strengthen and advance the principle of equality. With a majority of the justices on the Warren Court subscribing to judicial activism rather than Frankfurter's logic of judicial restraint, it was only a matter of time before the issue of malapportioned legislative districts was deemed justiciable rather than political.

Malapportioned legislative districts in the state of Tennessee came before the U.S. Supreme Court in the *Baker* case. Population shifts over time, along with the reluctance of the Tennessee legislature to redraw districts to conform to an equal population formula, resulted in terribly unbalanced and politically inequitable legislative districts across the state. However, rather than let judicial precedent set in *Colegrove* stand, the Supreme Court ruled that the issue of malapportioned legislative districts was justiciable. The issue, in the Court's view, involved the constitutional principle of equal protection under the law as guaranteed in the Fourteenth Amendment of the United States Constitution and thus belonged before the federal courts. As Robert B. McKay notes, "*Baker v. Carr* disposed of all the preliminary jurisdictional barriers which had earlier prevented Supreme Court determination of appropriate constitutional standards for state legislative apportionment."⁴¹ With reapportionment now considered justiciable, the door had been opened to a broad variety of legal complaints involving inequitable legislative representation. In the years immediately following the *Baker* ruling, the Supreme Court issued a series of landmark judicial rulings that remain the law of the land to this day.

In *Gray v. Sanders*, 372 U.S. 368 (1963), which was not technically a legislative reapportionment case, the Court addressed the county unit system of nominating statewide officials in the state of Georgia. Rural dominance in statewide elections troubled the Court, and in striking down the Georgia plan the Court articulated the importance of the one person-one vote principle. Like *Baker*, the *Gray* case served as a foundation ruling for subsequent reapportionment decisions.⁴²

The following year, in *Wesberry v. Sanders*, 376 U.S. 1 (1964), malapportioned congressional districts were ruled by the Court to be in violation of the Constitution. This ruling extended the one person-one vote principle to federal representation. In the same year, the Supreme Court, in *Reynolds v. Sims*, 377 U.S. 573 (1964), extended the one person-one vote principle to both chambers of the state legislature. The Reynolds case is often identified as a leading example of the Supreme Court's firm belief that every person's vote should be equal in power. According to the Court, states should make every effort to prevent discernible population variance from one legislative district to the next. Voting equality and equal representation depend on periodic legislative redistricting, and population figures must guide the final shape and configuration of legislative districts.

Also in 1964, a case concerning malapportioned legislative districts in Connecticut was heard in federal court. *Butterworth v. Dempsey*, 229 F. Supp 754 D. Conn. (1964), decided by a panel of three federal judges, further confirmed the position of the United States Supreme Court regarding the reapportionment issue. The panel ruled that any state legislative election in Connecticut would be considered legally invalid in the absence of a comprehensive redistricting plan coordinated and enacted by the Connecticut General Assembly. The *Butterworth* ruling was affirmed by the United States Supreme Court in *Pinney v. Butterworth*, 378 U.S. 564 (1964). The *Butterworth* ruling placed Connecticut's malapportioned legislative districts under the judicial microscope:

That defendants . . . are enjoined from doing any act or taking any steps in furtherance of nominating or holding

elections of senators or representatives to the Senate or House of Representatives of the State of Connecticut, and said defendants are further enjoined from certifying or in any manner declaring that the results of any such nominations or elections are valid or that the legislature of the State of Connecticut is properly or legally constituted, unless all senators and representatives are nominated and elected to the Senate and House of Representatives of the State of Connecticut pursuant to a redistricting of the Senate and a reapportionment of the House to be effected promptly by the General Assembly so that the voting rights of plaintiffs in the choice of members of both houses as guaranteed by the equal protection clause of the Fourteenth Amendment of the United States Constitution will not be impaired.⁴³

As one can see, the federal courts traveled quite far with respect to advancing the cause of political equality. In 1946, the Court's position was that the issue of legislative reapportionment was too political. In 1962, the Court ruled that legislative reapportionment was justiciable. In 1964, the Court issued a series of rulings requiring reapportionment in federal and state legislative districts. Judicial activism, not judicial restraint, was clearly the better approach to correcting the problem of grossly malapportioned legislative districts.

The rulings described above exerted direct influence upon national and state politics, Connecticut's included. The rulings of the Supreme Court, as noted earlier, were directly related to the call for a constitutional convention in Connecticut and the writing of an entirely new constitution in 1965. Connecticut's malapportioned legislative districts had been found to be in violation of the U.S. Constitution. However, instead of minor repair and political tinkering, the best remedy seemed to be political reform through the creation of a new state constitution. The new constitution was approved by Connecticut voters in a popular referendum on December 14, 1965, and formally proclaimed by the

governor as the official and supreme body of law for the state of Connecticut on December 30 of the same year. Connecticut's current constitution consists of Fourteen Articles and, at the time of this writing, thirty Amendments.⁴⁴

A State Constitution that Protects Rights and Liberties

Although the federal constitution over the years has served as a principal foundation for American civil liberties and civil rights, it is nevertheless imperative to emphasize the growing importance of state constitutions as documents that also preserve and protect the freedoms of the American people. Far too little is known about this fairly recent development in the field of constitutional law, yet it is one of the most fascinating developments within the context of American jurisprudence. The trend appears to have started in earnest with a seminal article published by U.S. Supreme Court Justice, William J. Brennan, in *The Harvard Law Review*, in January, 1977.⁴⁵ Brennan's article revolutionized the means by which civil liberties and rights would be protected.

After serving twenty years on the U.S. Supreme Court, Brennan had arrived at the conclusion that the federal courts had become deficient with respect to advancing the cause of civil liberties and civil rights. The conservative trend in federal judicial rulings, precipitated by the appointment of conservative judges to the federal bench during the six-year Nixon presidency, was a troubling development to Justice Brennan, who over the years had acquired a reputation as a liberal Justice. In response to judicial conservatism at the federal level, Brennan urged civil liberties and civil rights lawyers to argue their cases by utilizing provisions in state constitutions, rather than similar provisions in the federal constitution. State constitutions contain more rights compared to the federal constitution and state judges are allowed to interpret liberties contained in state constitutions above and beyond the federal standard. Moreover, state constitutional rulings cannot be appealed to the U.S. Supreme Court. In Justice Brennan's view, state constitutions would therefore afford more protection for American civil liberties than would the federal constitution.

Justice Brennan's law review article would serve as the chief catalyst behind a wide range of innovative, creative, and controversial state constitutional cases in years to come.⁴⁶ In Connecticut, the use of the state constitution to advance civil liberties and rights would result in a series of remarkable and very liberal state supreme court rulings. Such rulings would extend rights well beyond the federal standard. Equalized spending for public schools in suburban and urban school districts,⁴⁷ the use of Medicaid funds to pay for an indigent woman's abortion,⁴⁸ extended protection of the right to legal counsel,⁴⁹ additional safeguards against police searches and seizures,⁵⁰ as well as the controversial ruling that the state of Connecticut, not the local community, was constitutionally obligated to provide a quality and equal education to minority children who attended public school in the impoverished city of Hartford,⁵¹ were among the several state supreme court rulings based on the state constitution that were reflective of Justice Brennan's revolutionary strategy for advancing civil liberties and civil rights.

This is not to suggest that the Connecticut supreme court is permanently embarked on a liberal path with regard to state constitutional interpretation. The tenure of a state supreme court judge in Connecticut is for eight years. Although judges can be reappointed, personalities on the court do change and the ideology of the court can potentially be transformed due to the outcome of gubernatorial elections. Nevertheless, despite changes in court personnel, one can be assured that Connecticut's constitution will continue to serve the needs of the state's citizenry well into the twenty-first century.

Notes

1. An excellent account of John Adams's pivotal role in writing the Massachusetts Constitution can be found in David McCullough, *John Adams* (New York: Simon and Schuster, 2001), pp. 220-25. Data regarding state constitutions, including the number of constitutions adopted by

states, date of adoption, number of words in state constitutions, as well as number of proposed and adopted amendments can be found in *The Book of the States* (Lexington: The Council on State Governments, 2004), 36:10.

2. Albert E. Van Dusen, *Puritans Against the Wilderness: Connecticut History to 1763* (Chester, CT: Pequot Press, 1975), pp. 28-29.

3. Quoted in the *Connecticut Register and Manual* (Hartford: State of Connecticut, 2000), p. 55.

4. Ellsworth S. Grant, *The Miracle of Connecticut*. (Hartford: Connecticut Historical Society, 1992), p. 20.

5. Vincent Wilson, Jr. *The Book of Great American Documents*, (Brookeville, MD: American History Research Associates, 1993), pp. 5-10.

6. Wilson, *The Book of Great American Documents*, p. 5.

7. Interview with R. Bryan Bademan, Assistant Professor of History, Sacred Heart University, June 16, 2006.

8. Van Dusen, *Puritans Against the Wilderness*, pp. 52-54

9. Christopher Collier, quoted in Grant's *The Miracle of Connecticut*, p. 26.

10. Richard J. Purcell, *Connecticut in Transition: 1775-1818* (Middletown, CT: Wesleyan University Press, 1963), p. 113.

11. Van Dusen, *Puritans Against the Wilderness*, p. 54.

12. W.H. Gocher, *Wadsworth or the Charter Oak* (Hartford: W.H. Gocher, 1904), p. 216.

13. Gocher, *Wadsworth or the Charter Oak*, pp. 281-333.

14. Van Dusen, *Puritans Against the Wilderness*, p. 71.

15. Edward R. Lambert, *History of the Colony of New Haven* (New Haven, CT: Hitchcock and Stafford, 1838), p. 21.

16. Lambert, *History of the Colony of New Haven*, p. 32.

17. Lambert, *History of the Colony of New Haven*, pp. 31-32

18. Lambert, *History of the Colony of New Haven*, p. 33.

19. Lambert, *History of the Colony of New Haven*, p. 38

20. Interview with Christopher Collier, July 5, 2000. For a full transcript of this lengthy interview, see Gary L. Rose, *Connecticut Government at the Millennium* (Fairfield, CT: Sacred Heart University Press, 2001), pp. 51-58.

21. Jarvis Means Morse, *A Neglected Period of Connecticut History 1818-1850* (New York: Octagon Books, 1978), p. 3.

22. Morse, *A Neglected Period of Connecticut History 1818-1850*, p. 5.

23. Morse, *A Neglected Period of Connecticut History 1818-1850*, p. 4.

24. Quoted in Purcell, *Connecticut in Transition*, p. x.
25. Interview with Christopher Collier, July 5, 2000.
26. David M. Roth and Freeman Meyer, *From Revolution to Constitution: Connecticut 1763 to 1818* (Chester, CT: Pequot Press, 1975), p. 89.
27. Roth and Meyer, *From Revolution to Constitution*, p. 20.
28. Roth and Meyer, *From Revolution to Constitution*, p. 92.
29. Richard Hofstadter, *The Idea of a Party System: The Rise of Legitimate Opposition in the United States, 1780-1840* (Berkeley and Los Angeles: University of California Press, 1969), p. 200.
30. Wesley W. Horton, *The Connecticut State Constitution: A Reference Guide* (Westport: Greenwood Press, 1993), p. 11.
31. Roth and Meyer, *From Revolution to Constitution*, pp. 63-65.
32. Horton, *The Connecticut State Constitution*, p. 14.
33. Horton, *The Connecticut State Constitution*, pp. 14-15.
34. Horton, *The Connecticut State Constitution*, p. 15.
35. Horton, *The Connecticut State Constitution*, p. 16.
36. Horton, *The Connecticut State Constitution*, p. 16.
37. Robert B. McKay, *Reapportionment: The Law and Politics of Representation* (New York: Simon and Schuster, 1965), pp. 46-47.
38. McKay, *Reapportionment*, pp. 55-56.
39. Louis Fisher, *Constitutional Rights: Civil Rights and Civil Liberties* (New York: McGraw-Hill Publishing Co., 1990), p. 1239.
40. *Colegrove v. Green*, 328 U.S. 549 (1946), at 555-56.
41. McKay, *Reapportionment*, p. 79.
42. McKay, *Reapportionment*, pp. 86-87.
43. *Butterworth v. Dempsey*, 229 F. Supp 754 D. Conn. (1964), at 790-91.
44. For a thorough annotation of the Connecticut Constitution replete with case citations, see Horton, *The Connecticut State Constitution*.
45. William J. Brennan, Jr., "State Constitutions and the Protection of Individual Rights," *Harvard Law Review* 90 (January 1977): 489-504.
46. A concise discussion concerning the applicability of state constitutions for the protection and expansion of civil liberties can be found in John J. Harrigan and David C. Nice, *Politics and Policy in States and Communities* (New York: Pearson Education, Inc., 2006), pp. 30-32. An excellent review can also be found in Sue Davis and Taunya Lovell Banks, "State Constitutions, Freedom of Expression, and Search and Seizure: Prospects for State Court Reincarnation," *Publius: The Journal of Federalism*, 17 (winter 1987): 13-31.

47. *Horton v. Meskill*, 172 Conn. 615 (1977). An excellent journalistic account of the applicability of the Connecticut state Constitution with respect to protecting the rights and liberties of the Connecticut citizenry appeared in *The Hartford Courant*, 28 October 1990, pp. A1, A10.

48. *Doe v. Maher*, 515 A2d 134 Conn. Super. (1986).

49. *State of Connecticut v. Stoddard*, 206 Conn. 157 (1988).

50. *State of Connecticut v. Marsala*, 216 Conn. 150 (1990).

51. *Sheff v. O'Neill*, 238 Conn. 1 (1996).