

CHAPTER TWO

Constitutional Development in Connecticut

The Place of State Constitutions

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 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. In most cases, the colony was presided over by a royal governor appointed by the King. There was also a colonial legislature which consisted of two distinct chambers

designed to represent two very distinct interests. The upper house of a typical colonial legislature was created to represent the interests of the Crown, while the colonists were allowed to occupy the lower house of the colonial assembly. Colonial assemblies allowed the colonists to exercise an element of self-government, although public policies enacted by such assemblies routinely required formal approval by the royal governors—and ultimately the King of England.

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 states. Indeed, in many states, the Declaration of Independence and the writing of state constitutions coincided with one another.

Connecticut's Constitutional Tradition

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. Indeed, there are those who regard the Fundamental Orders as the first written constitution known to mankind. 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."¹

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."²

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.³

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.⁴

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 democratic self-government in America. "Particularly significant is the absence, in the Fundamental Orders, of any referencè 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."⁵ 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 founders' firm belief in self-government, but also the belief that religion and God should guide the course of self-government. Indeed, 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.

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. Indeed, Winthrop personally crossed the Atlantic Ocean in his effort to secure the Charter from the King.⁶ 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."⁷ 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 repre-

sentatives 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."⁸

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.⁹

The Charter of 1662 served as the basic organizational document for Connecticut government until 1818. 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."¹⁰ There is a legendary story associated with Connecticut's Charter.

When King James II ascended to the English throne, political tension between England and the colonies escalated. The New England colonies, Connecticut included, proved especially troublesome to the King of England. In an effort to maintain more political control over the region, the King in 1686 charged Sir Edmund Andros with the daunting task of establishing a formal dominion over the existing New England colonies. Andros, a distinguished military commander, had served as the royal governor of New York from 1664 to 1681. The Dominion of New England, as it was to be known, would be governed directly by Andros acting under the authority of the King.

Andros' plan for consolidating the colonies required Connecticut to surrender its highly cherished charter. Needless to say, the colonists of Connecticut, having already enjoyed several decades of self-government, viewed Andros' demand as unacceptable. The following is an excerpt from a letter written by Andros in December 1686 to Connecticut's Governor, Robert Treat:

I am commanded and authorized by his Majesty, at my arrival in these parts, to receive in his name the surrender of your Charter (if tendered by you) and to take you into my present care and charge as other parts of the Government, assuring his Majesty's good subjects of his countenance and protection in all things relating to his service and their welfare . . . I have only to add that I shall be ready and glad to do my duty accordingly, and therefore desire to hear from you as soon as may be, and remain your very affectionate friend, E. Andros.¹¹

Connecticut's political leaders responded to Andros' request through formal written replies in which they informed the King's agent of their decision to retain the Charter. So intense was the resistance that Andros decided to travel to Hartford for the purpose of personally confiscating Connecticut's Charter. He arrived accompanied by an armed force, trumpeters, and a small royal entourage. All the trappings of British royalty were on display in an attempt to intimidate the colonists of Connecticut. Gocher captures Andros' grandiose arrival in these terms:

Two trumpeters preceded his Excellency, the jangling notes of their horns sounding strangely in the ears of those who had been accustomed to hear nothing but the meeting house bell or the roll of a drum to herald the arrival of a dignitary or a call to duty. Sir Edmund was mounted on a steel gray horse, whose fine bony head, tapering ears and crested neck showed that he carried in his veins the barb blood which Charles II and Cromwell had introduced into England and which was now found in nearly all the better mounts of the officers of the English army.¹²

Andros was formally received at the steps of the Hartford Meeting House by several representatives of Connecticut's government, including Governor Treat and Deputy Governor Bishop. It was decided that discussions regarding the Charter should take place not in the Meeting House, but at a nearby tavern which the

colonists routinely used for political meetings regarding local affairs. That meeting would become one of the most dramatic events in Connecticut political history.

As the story is told, Connecticut's Charter was positioned on a wooden table between Andros and several colonists. The room was lit by fourteen candles in two candelabra. There was heated debate regarding the sovereignty of the Charter and whether or not it was legally subject to confiscation. As the debate wore on, Andrew Leete rose from his stool, approached the table where the Charter was placed, and directly challenged the authority of Andros to seize the Charter: "That Charter is in force at this hour. No judgment has been rendered against it. It was granted under the great seal of England and it cannot be surrendered unless the surrender is given under the seal of the Colony. Remember it is Charles I's last word and that is why I use it, that measures obtained by force do not endure."¹³ At that point, according to legend, a rebellious colonist purposely upset the candelabra, plunging the room into total darkness. Amidst the shouting and confusion a colonist by the name of Captain Joseph Wadsworth pirated the Charter from the meeting room, denying Andros the opportunity to confiscate the cherished document.

The Charter was subsequently hidden in an old and exceptionally large oak tree on the Wyllys estate in Hartford. The "Charter Oak Tree," as it became known, emerged as the proud symbol of Connecticut's staunch resistance to British rule and monarchical despotism. This magnificent symbol of self-government fell during a thunder storm on August 21, 1856.

Despite the fact that Andros was unsuccessful in his attempt to seize the Charter, the colony of Connecticut was nevertheless incorporated into the Dominion of New England. For approximately three years, Connecticut was governed by Andros. The colonists, however, still perceived the Charter of 1662 as the legitimate source of law for colonial Connecticut. Even in seclusion it was considered a living and breathing document.

However, in 1688 an important turn of events in England proved quite beneficial to the colonies. The government of England experienced a political crisis known as the "Glorious Revolution." This historic event would eventually result in the

restoration of Connecticut's Royal Charter. 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 democracy. Representative government and an expansion of rights for British citizens would be the end result.

The 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. Andros was forced to relinquish his control over New England and subsequently fled the region. These events encouraged the Connecticut General Assembly in 1689 to formally reestablish Connecticut government under the Charter of 1662.¹⁴

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 merged New Haven Colony with Connecticut, the initial merger of the two colonies was far from harmonious. Indeed, upon learning of the merger, the political leadership of New Haven Colony was deeply

resentful. Political leaders in New Haven Colony felt 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 enactment, 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 Connecticut State 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, the year in which 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. The long-established policy in Connecticut of supporting Congregationalism through local taxes now came to an end. Moreover, association with various religious sects was no longer an illegal act. It was no longer a crime to be an atheist, deist, or Unitarian. Religious tolerance was emerging in Connecticut, and the extremely close association between church and state was now broken. As historian Jarvis Means Morse put it, "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."²⁰

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 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.²¹

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.²²

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' 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."²³ 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 who 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.

The adoption of the Constitution of 1818 needs to be understood in light of three 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.²⁴ 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.²⁵ 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.²⁶ 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. The Federalist Party was not only losing its control over Connecticut politics, but, more generally, over that in states throughout the New England region. The Democratic-Republican Party, associated with the leadership and presidencies of Thomas Jefferson and James Madison, had by 1818 established itself as the dominant political party in national politics. Moreover, the Democratic-Republican Party had made very deep inroads into the politics of state and local communities, including many traditional strongholds of the Federalist Party. In Connecticut, Democratic-Republican candidates were being elected to the General Assembly and town councils. Thus, as the party of Jefferson and Madison began to capture the imagination of Connecticut voters, a new and fresh perspective toward politics emerged. The call for constitutional reform was a by-product of a partisan realignment. 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."²⁷

In addition to partisan change and important socio-economic developments, the emergence of the new constitution in 1818 can also 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.²⁸ 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. Indeed, the 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 thirty-five years. Precisely how long the constitution will remain in place is, of course, impossible for any observer to predict. But based on Connecticut's experience with the Constitution of 1818, 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 difference in population between most Connecticut towns was at most only 4 persons to 1, with most towns falling comfortably within this range.²⁹ 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.³⁰

By 1840, 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. Indeed, the formula of one or two representatives per local community remained fixed regardless of the community's population growth. New Haven's population, for example, increased from 5,000 in 1800 to 20,000 in 1850. Yet New Haven, like the many smaller towns across Connecticut, was still allotted only two representatives to the Connecticut House of Representatives. In short, 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. Indeed, as Horton put it, "By the 1890s, the Connecticut system of representation was a national scandal."³¹

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. As Horton notes, "44 towns, with a population of about 30,000, could legislatively overwhelm the four largest cities, with a population of about 300,000."³²

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.³³

By the early nineteen-sixties, the issue of legislative reapportionment could no longer be ignored by lawmakers and constitutional reformers. Indeed, legislative reapportionment was 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. 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.³⁴

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, however, 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."³⁵

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. Such rulings underscore the pivotal role of the United States Supreme Court with regard to advancing the related principals of political fairness and political equality.

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 hence 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, it should be added, 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.³⁶ 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.³⁷

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 in a fashion to strengthen and advance the principle of equality. With a majority of the justices on the Warren Court subscribing to judicial activism rather than the "Frankfurtarian" 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 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."³⁸ 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.³⁹

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. Simms*, 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.⁴⁰

As one can see, the federal courts traveled quite far with respect to advancing the cause of political inequality. 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.

Central Features of the 1965 Constitution

The new constitution was approved by Connecticut voters in a popular referendum on December 14th, 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. Like all constitutions, the Connecticut Constitution begins with a preamble.⁴¹ One notices a strong religious tone, with Connecticut's free government and the rights and liberties enjoyed by the people attributed to "the good providence of God." The preamble is followed by fourteen articles, which delineate the structure of government and preserve the rights of all Connecticut citizens.

One striking feature of the Connecticut Constitution is that individual liberties are protected in the very first article of this document. In this respect it differs from the federal constitution, in which liberties are guaranteed through a bill of rights contained in the first ten amendments. Article One contains Connecticut's "Declaration of Rights," consisting of twenty sections, each devoted to the preservation of a specific civil liberty or civil right. Those rights and liberties expressed in the federal constitution appear in the Connecticut Constitution as well, including, among others, equal protection under the law, religious freedom, freedom of speech and of the press, protection from unreasonable search and seizure, the right to counsel, the right to assemble, the right to bear arms, and the right to trial by jury. A careful reading of

Connecticut's "Declaration of Rights" points to the conclusion that the framers of Connecticut's Constitution, like those who framed Connecticut's previous constitutions and the framers of the federal constitution, had a profound respect for individual liberty. Moreover, the framers clearly understood the constitutional necessity of imposing formal constraints and limitations on the power and scope of government.

The governing structure for the state of Connecticut is established in Articles Two through Five. Article Two maintains a three-branch government in which power is distributed among legislative, executive, and judicial departments. The specific structure and role of the legislature, executive, and judiciary are described in Articles Three, Four, and Five respectively. The structure, composition, and method of selection for each branch of government are described in clear terms. The powers of each branch, however, are more difficult to ascertain.

Connecticut's Constitution does not enumerate the powers of the state legislature. This is in sharp contrast to the federal constitution, in which the powers of the national legislature are enumerated in seventeen clauses. The federal constitution, unlike the Connecticut Constitution, grants implied powers to the Congress through the "necessary and proper clause" (commonly referred to as the "elastic clause"), thereby affording Congress broad opportunity to implement the enumerated powers and other powers vested in the Constitution. The scope and reach of the Connecticut state legislature's power cannot be determined from a reading of Article Three. Section 1 of Article Three states: "The legislative power of the state shall be vested in two distinct houses or branches; the one to be styled the senate, the other the house of representatives, and both together the general assembly." The framers seem to have had a flexible state legislature in mind when drafting Article Two, as considerable discretion is given to state lawmakers concerning areas within which the state legislature can operate. The ambiguity of legislative power is the result of the Tenth Amendment to the United States Constitution, which "reserves" to states those powers not delegated to the federal government, nor prohibited to the states. What specific powers are reserved to states is not detailed in the federal constitution. Thus

it is not surprising to find legislative power in the Connecticut Constitution undefined.

Article Four establishes the executive branch of government. Several executive posts are created, including those of state governor, lieutenant-governor, secretary of the state, state treasurer, and state comptroller. The governor and the lieutenant governor are elected on the same ticket, while other executive positions are elected on an individual basis. The state's top executive positions are all elected on a statewide basis.

The state constitution affords the state governor a range of enumerated powers (although these powers are described in somewhat loose and vague terms), similar to the powers afforded to the American president in the federal constitution. The governor is commander-in-chief over the state's militia, chief executive of the state government, and has the power to introduce bills to the state legislature as well as the power to grant reprieves to persons convicted of crimes. All bills passed by the state legislature must be approved by the governor in order to become law. The Connecticut governor also has the authority to veto any bill and, in addition, can exercise a line-item veto power over appropriation bills. The veto, including the line-item veto, can be overridden by a two-thirds vote of both houses of the state legislature. In addition to a broad outline of gubernatorial power, Article Four of the state constitution describes in general terms the responsibilities of the lieutenant governor, state treasurer, secretary of state, and state comptroller. Brief mention is also made of the selection process and responsibilities of county sheriffs. The county sheriffs system was subsequently abolished in a constitutional referendum conducted in the election of 2000.

Connecticut's judicial branch of government is established in Article Five. Article Five expressly establishes a state supreme court and a body of superior courts. This Article also empowers the state legislature to create additional lower courts if needed. The Connecticut Constitution does not define the powers of the state judiciary, but instead allows the state legislature to determine judicial power and jurisdiction through state statute. Similar to the process by which federal judges are selected, the state constitution empowers the governor to nominate state judges, who are then

subject to confirmation by the state legislature. Constitutional amendment has to some extent altered the process by which state judges are currently chosen.

Article Six describes voting rights in Connecticut, while Article Seven protects freedom of religion. Free exercise of religious practice is expressly protected and the establishment of a state-supported religion is specifically prohibited. As in the federal constitution, Thomas Jefferson's "wall of separation" between church and state is an integral feature of the Connecticut Constitution. The issue of religious freedom appears to have been accorded very special consideration by the framers at the 1965 constitutional convention.

Article Eight guarantees a system of free public education in Connecticut. It requires the state to maintain an effective system of higher education, including the responsibility of managing and maintaining the University of Connecticut. Article Nine details the process by which public officials can be impeached and removed from office, while Article Ten describes the formal relationship between state and local government. The state constitution provides the state legislature with the authority to determine a local government's power and form of government. Local governments in Connecticut are not autonomous units of government, but instead are considered political subdivisions of the state. The degree of political autonomy at the local level in Connecticut is ultimately determined by the state legislature.

Article Eleven elucidates the oath of office to which all elected and appointed government officials must swear prior to assuming public office. Article Twelve describes the process by which the Connecticut Constitution may be amended. The amendment process is relatively simple. A three-fourths vote in each house of the state legislature is required to propose an amendment. A simple majority vote in a popular referendum, conducted coterminously with a state election, is required to ratify the proposed amendment.

Article Thirteen describes the mechanics for convening a constitutional convention. A convention may be convened through a two-thirds vote of each house of the state legislature, followed by a majority vote of the general electorate. The

Fourteenth Article of the state constitution specifies that the Constitution of 1965 will become official following approval by the people in a popular referendum and formal proclamation by the governor.

The original Constitution of 1965 is comprised of fourteen Articles. Over time the state constitution has been amended. At the time of this writing, twenty-nine amendments have been added to the 1965 document. Contrasting this with the twenty-seven amendments added to the federal constitution over the course of two hundred and ten years (the first ten were added collectively as the "Bill of Rights" in 1791), it is evident that amendments to the Connecticut Constitution are fairly common.

These twenty-nine amendments have altered the structural dimensions of Connecticut state government, expanded civil liberties and civil rights for Connecticut residents, refined the process by which state legislative districts are reapportioned (including a contingency plan should the normal reapportionment process result in stalemate), and modified aspects of Connecticut's election laws. In addition to electing a governor, lieutenant governor, treasurer, secretary of state, and state comptroller, voters also elect a state attorney general. There is explicit protection of equality under the law, including specific prohibitions against discrimination on account of religion, race, color, ancestry, national origin, sex, or physical and mental disability. Constitutional amendments have lowered the voting age for state elections from twenty-one to eighteen and extended the principle of due process of law to individuals accused of a crime. The heavy workload of the state supreme court has been somewhat alleviated through the establishment of an intermediate appellate court. A criminal division headed by a Chief State's Attorney was created within the executive branch of government. There is an amendment that has removed the party lever from Connecticut voting machines, and established a Judicial Selection Commission to assist the governor and lawmakers with the staffing of state courts.

Twenty-nine amendments over the course of thirty-five years suggest a dynamic and flexible state constitution capable of evolving and adapting to change. Connecticut's constitution has been subject to substantial modification in the interest of

responding to new demands of the state's citizenry and to changes in the political environment. The Constitution of 1965 has served the residents of Connecticut very well. The rich constitutional tradition of Connecticut, and the history of the state's constitutional development is captured in the following Profile and Perspective interview with Professor Christopher Collier. Professor Collier is the official historian for the state of Connecticut.

Profile and Perspective

Christopher Collier
State of Connecticut Official Historian
Home interview, Orange, Connecticut
July 5, 2000

How did you become the official state historian for the state of Connecticut, and what exactly does this position involve?

I became the official state historian in 1985. There was a vacancy due to the retirement two or three years earlier of Albert E. Van Dusen, who had been on the job for about thirty-three years. The reason it came to me, I suspect, is because I had published in the field of Connecticut history and had only recently finished a comprehensive bibliography of Connecticut history. I had surveyed the field very thoroughly and had published this work. There were many other candidates for the job, but they chose me. The job involves whatever I want it to involve, although there are some legislative requirements. I must serve on the State Historical Commission and the Museum Advisory Committee. These are both required by law, but otherwise I do what I choose to do.

One of the things I have been doing, when funds are available, is overseeing the publication of the Public Records of the State of Connecticut, of which I was an editor of one volume many years ago. That involves raising money and supervising the editorial work and production. I do a lot of answering the phone when reporters call, perhaps six to ten calls per week. Yesterday, July 4, I received two calls from television, one from radio, and one from a newspaper. I also did a television appearance.

I answer a volume of correspondence, including some from fifth graders across the country who are doing a project on Connecticut government. I also speak to historical societies and other groups, and I serve as a general repository of sources of information for anyone who wants it or needs it. When funds are available, I spend the most time on the Public Records. When

funds are not available, I spend the largest block of time on the telephone answering questions.

What is your main focus of research and writing?

As the state historian, and even before I became state historian, I got involved doing expert witnessing in a number of constitutional cases. My research over the past ten years has really been focused on the legal and constitutional history of Connecticut. I have developed expertise in this area and have offered courses on the state's constitutional history at the UConn Law School and in undergraduate and graduate programs at Storrs. My earlier work concerned historical geography, but more recently the focus has been legal and constitutional history.

With respect to the constitutional history of Connecticut, in what way is the Fundamental Orders of 1639 related to the development of the United States Constitution?

The most basic definition of a constitution is that it is a written document that describes and limits a government. The first time in history that a people got together and wrote such a document, put it into effect, and lived under it, was under the Fundamental Orders. There were documents that had been written, but this was really the first time that people wrote a document, put it into place, and lived under it. So if one defines a constitution as a written document that describes and limits government, then the Fundamental Orders was that—and that's the spirit that is manifest in all constitutional development subsequent to that in the United States. The U.S. Constitution of 1787 is precisely that: a document that describes and limits the government. We do not now think of the Fundamental Orders as a completely legitimate constitution, because it was not ratified by the people, nor did the Orders have a bill of rights. But, nevertheless, the Fundamental Orders carried the spirit of constitutionalism, and it is that spirit that legitimates Connecticut as "The Constitution State."

Was the Fundamental Orders the foundation for the U.S. Constitution?

The Fundamental Orders was very significant, but to suggest that the Orders was the foundation for the U.S. Constitution is to put

it too simply. The Orders contributed to the spirit of constitutionalism, but the federal constitution by no means replicates the Fundamental Orders. There are some who have suggested that the federal constitution was modeled in various ways after the Fundamental Orders and the Royal Charter, and that the Connecticut delegation to the Constitutional Convention of 1787 drew upon their experience with such documents while helping to develop the federal constitution, but that was not the case. We are the "Constitution State" because our Fundamental Orders incorporated the spirit of constitutionalism.

How did the Royal Charter of 1662 differ from the Fundamental Orders of 1639? Why is the Charter of such historical significance?

The Charter of 1662 became necessary because we Connecticut folks were basically squatters. We had left the area that had been a part of Massachusetts under their Charter and were out here under no particular royal grant whatsoever. The Massachusetts General Assembly had assigned a constable to the three Connecticut settlements, but this was not legitimate authority because Massachusetts did not have authority over the area. The Connecticut people were always nervous and feared that the King would come in and disband or disallow their communities. They bought the Warwick Patent in 1644, hoping that it would serve as some sort of constitutional figleaf. But no one really knows if the Warwick Patent ever passed the seals in England and was ever considered a legitimate document. With the restoration of the monarchy in 1660, we decided we had better do something about our status, so we sent John Winthrop, Jr., over to England to approach the powers that be, and ultimately King Charles II, to ask him for a charter. Amazingly, we were granted an extraordinarily liberal charter that virtually created us as an autonomous independent entity. We took great advantage of that autonomy and started acting like we were independent.

The Charter differs from the Fundamental Orders in a number of ways. The Charter describes the government in greater detail. The Charter also narrowed suffrage for colony-wide officers. It used to be that any town meeting voter could vote for deputies to the General Assembly, but under the Charter one had

to be a “freeman.” To move from an “inhabitant” to a “freeman” didn’t take much, but one had to take an oath before higher officials. The Charter also changed the basis of representation in the General Assembly. Under the Fundamental Orders there was (theoretically) a system of proportional representation, in which the original Connecticut towns had four deputies and subsequent towns were allotted deputies in proportion to population. The reality, however, was that a system of representation had developed under the Orders in which each town had two deputies regardless of population. The Charter thus codified what had developed, and hence all towns now had two deputies. This would of course become a very significant matter toward the end of the nineteenth century and ultimately had to be resolved by the U.S. Supreme Court in 1964.

Most colonies upon declaring their independence in 1776 proceeded to write their own state constitutions. Why didn’t Connecticut, like so many other colonies, write a new constitution?

Connecticut and Rhode Island were the only two colonies that did not write a new constitution. Both Connecticut and Rhode Island had a charter and felt no need to write a constitution. Connecticut had a government in place, and unlike in every other colony, Connecticut’s governor was a patriot. The governors in all other colonies, including Rhode Island, were loyalists. Our governor however (“Brother Jonathan”) was the leading patriot and took a leading position in bringing about our independence. We had a government that was committed to the independence movement, and had acted as an autonomous government for about one hundred and fifty years. So there was no need to do anything other than purge our charter of any references to the King, which was done. Eventually the Royal Charter fell behind constitutional movements and developments, and over time it became a somewhat archaic document.

It has been suggested that the Constitution of 1818, which replaced the Royal Charter, was the state’s first true constitution. What is your view of the 1818 Constitution?

Your phrase “first true constitution” is a very telling one. By the 1770s, the Royal Charter and the Fundamental Orders did not

meet the standards of constitutionalism in the United States. Beginning in the 1770s, and most certainly by the 1780s, constitutional theory required that a constitution should be written by an ad hoc body of individuals, not by a legislature. In some states where the legislatures drafted state constitutions the documents were rejected—after all, a government cannot write its own contract. Ad hoc bodies of citizens, dissolved once their work was completed, were now supposed to write constitutions, not state legislatures. A constitution was also supposed to be subject to ratification by the people. Moreover, a constitution needed a bill of rights. So after 1776, the standards of a constitution had changed, along with the procedure for developing a constitution. In Connecticut, the public in general felt that the time had come for a new state constitution. There were other issues as well that led to the Constitution of 1818. Connecticut had an established church, and many people in Connecticut were not Congregationalists and didn't like paying taxes to support the church. By 1818, people could pay taxes to whatever church they attended, but persons who did not attend any church still had to pay taxes to support the Congregational Church. So by 1818, it became apparent that a new constitution was needed—one that was written, referred to the people for ratification, which included a bill of rights, and which disestablished the church.

In Connecticut history, is it accurate to suggest that there are very clear and distinct stages in constitutional development in which one constitution replaces another, or do you think it has been more of an expanding process which continues to build upon constitutional tradition? Does our current constitution embrace principles dating back to the Royal Charter and the Fundamental Orders?

The current constitution distinctly embraces principles dating back to the Royal Charter and the Fundamental Orders. The spirit of constitutionalism (i.e., a written document that defines and limits a government, a government of delegated authority, and a government which derives its authority from the people) begins with the Fundamental Orders of 1639. Another element that in some ways distinguishes Connecticut from other states is its long-term reliance on common law. Because the Charter and Fundamental

Orders were documents that had in fact been altered by the General Assembly, which violates modern constitutional principles, the courts in Connecticut got involved in the protection of individual rights. For example, I discovered a case decided in 1667 in which a court in Connecticut ruled that a search warrant had been too broadly drawn; a precursor to the Fourth Amendment of the U.S. Constitution. But that was a court enforcing individual rights. There was no bill of rights and so we relied in large measure on common law to protect individual rights. Even after we wrote the Constitution of 1818, the court would overturn or circumvent statutes because they violated certain constitutional principles, although they didn't necessarily point to specific provisions of the constitution. This tradition of courts overturning legislation without referring to specific constitutional provisions, continued until 1897. In that year, the court finally ruled that legislation could not be overturned unless there were clear violations of specific provisions of the constitution.

It is my understanding that our current constitution, adopted in 1965, grew out of a concern over legislative reapportionment. How severe was this problem prior to the writing of the 1965 constitution? If you want to understand the Constitution of 1965, you first have to understand the Constitution of 1818. You also need to understand that the people who wrote the 1965 Constitution were handpicked by the Democratic and Republican state chairmen, along with Governor Dempsey. They were handpicked from each of the state's congressional districts. I was a candidate to attend the Convention, but when I attended the congressional district caucus it was clear that the delegates had already been picked. The leaders in the state wanted as little change as possible, and essentially wanted to keep the 1818 Constitution intact. The only reason they were having a constitutional convention to begin with was because of a series of Supreme Court rulings based on the equal protection clause of the Fourteenth Amendment to the U.S. Constitution requiring legislative districts to be equal in terms of population.

The *Butterworth v. Dempsey* decision, which addressed reapportionment problems in Connecticut, was very relevant to writing a new constitution in 1965. At the time, eleven percent of

Connecticut voters could elect a majority of the General Assembly. This had to be changed, but other than the reapportionment problem, there was not much that those who attended the Convention wanted to change. They did expand the bill of rights some, and made some other changes, but fixing the reapportionment problem was the only real fundamental change that occurred. Some had anticipated that under the new reapportionment guidelines the cities and urban centers would be given more representation in the General Assembly, and as a result would have more power in state policy making. The problem with this, however, was that starting in the 1960s people began moving out of the cities, thereby strengthening the political power of the suburbs. We are essentially a state, and even a nation, of suburbs. The cities never gained the political power some had anticipated.

Do you feel that over the course of time the constitutions of Connecticut have adequately served the needs of the residents in this state?

Yes, although there are still some changes that can probably be made to serve the people's needs better. But overall, I think we are in pretty good shape. I think we have a lot to be proud of in regard to our constitutions and the instrumentalities of government. It has not been perfect by any means, but it has worked and it has worked well. You can construe Connecticut as having been an autonomous entity from 1639 to the present, and one can say that Connecticut is the oldest and most continuous self-governing entity in the world. Now that's an extraordinary claim, so we have a lot to be proud of and a lot to be thankful for.

If you were to concisely capture the essence of Connecticut's constitutional tradition, what would you say? What is it about our constitutional tradition that makes our state unique?

I would have to say that the duration of our constitutional tradition is what makes us so unique. Since 1639, there has been a spirit of constitutionalism—the government is our servant, and the people, if they choose, can control what goes on in government. If there are problems in government, it is mainly because the people themselves are not sufficiently involved. All of the

instrumentalities that the public needs to gain control over the government are there.

Is there anything that you would like to add or expand upon?

I have two concerns. First, we have a constitutional framework that allows unconstitutional conditions to persist. This is evident in the recent ruling of *Sheff v. O'Neill*, in which the state supreme court ruled that children in Connecticut were entitled to an equal education. Once this ruling was issued, it became the responsibility of the General Assembly to remedy the situation. However, the General Assembly since *Sheff* has not really dealt with the issue, and for all intents and purposes has done almost nothing to correct the problem. To complicate matters, personnel on the state supreme court have changed to the point where going back into court would be counter-productive from the point of view of the *Sheff* plaintiffs. A majority of the court now probably thinks that the *Sheff* case was decided wrong in the first place. So we have a situation that allows an unconstitutional condition to persist and that is a problem. My second concern is that our 1965 constitution states that no town may be divided for the purpose of ensuring proportional representation, yet we divide towns all the time. This is a violation of our state constitution, yet we do this to fulfill the requirements of the federal constitution. Because of federal mandates, we continue to violate the state constitution. It seems to me that there should be some way to work this problem out.