

A Case Study in Federalism - the United States and Michigan Constitutions: Not Double Vision, Double Constitutions

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ABSTRACT

Each citizen in America lives under two Constitutions - the United States, federal Constitution which applies to all citizens, and the constitution of the state in which the citizen lives. Often overlooked and basically unknown, the state constitutions play a vital role in governance and preserving our unalienable rights. Perhaps the best way to understand each constitution is to compare and contrast them. Accordingly, as a case study, this article examines the age, length, predecessors, drafting process, conventions, ratification process, and amendment procedures of the State of Michigan Constitution of 1963 and the U.S. Constitution. Furthermore, this article examines how each of these constitutions addresses the separation of powers, legislature, executive, judiciary, local government, transportation, education, finance, taxation, and the protection of unalienable rights. Armed with this understanding, we will be better informed citizens, and more ably equipped to participate in self-governance and protect the unalienable rights of the citizenry.

Note: At times this article quotes constitutional text which refers to “he” or “him.” The grammatical convention at the time was to make masculine all generic gender references. That this article quotes the text does not equate to an endorsement of the convention nor did the drafters intend that only men could serve as public officials.

Introduction

Noah Webster, the famous publisher of *A Compendious Dictionary of the English Language*, fittingly observed in an article advocating for the adoption of the U.S. Constitution: “in no country, have the body of the people such knowledge of the rights of men and principles of governments. This knowledge, joined with a keen sense of liberty and watchful jealousy, will guard our constitutions, and awaken the people to an instantaneous resistance of encroachments.” (Webster, Noah. October 17, 1787. *A Citizen of America: An Examination into the Leading Principles of America*,

[https://teachingamericanhistory.org/library/document/a-citizen-of-america-an-examination-into-the-leading-principles-of-america/.](https://teachingamericanhistory.org/library/document/a-citizen-of-america-an-examination-into-the-leading-principles-of-america/))

Unfortunately, that knowledge, keen sense of liberty, and watchful jealousy appear to be on the wane. Indeed, when one is tasked to consider “the constitution” my guess is not many ponder a threshold question: “Which constitution?” One might naturally think the U.S. Constitution must be the topic. Not necessarily so. Because each state also has a constitution, each person lives under two constitutions. Few people understand the United States Constitution well, and only a minute number understand their state constitution. As a former debater, I appreciate that one should understand both sides of an issue to become deeply informed. Likewise, to understand our constitutions deeply, the best course may be to compare and contrast them. Accordingly, this article will review the basic contours of the constitutions of the State of Michigan of 1963 and the United States to discern their commonalities and yawning differences. By necessity of space and time, this article will only address the constitutions from a high level, and will not delve much into the wonderful commentary that this comparison might yield.

Historical Background, Drafting & Ratification

The U.S. Constitution was preceded by the Articles of Confederation and Perpetual Union, which was drafted by the Second Continental Congress in 1777 and effective in 1781. The current Michigan Constitution was preceded by the Northwest Ordinance, Michigan Constitution of 1835, Michigan Constitution of 1850, and Michigan Constitution of 1908.

The U.S. Constitution was drafted pursuant to a constitutional convention held in Philadelphia during the summer of 1787. Each state appointed its own delegates. Although there were 55 delegates, each state’s delegation counted as only one vote. The majority of each state’s delegation would determine the vote of the state (*i.e.*, if a delegation of three members split 2-1 in favor of a measure, that state’s single vote would be cast in favor of the measure). George Washington presided over the federal convention.

The current Michigan Constitution of 1963 was drafted pursuant to a constitutional convention held in Lansing at Constitution Hall (the main auditorium at the Civic Center) from October 1961 to August 1962. The Michigan delegates were elected in a primary election held in July 1961. A delegate was chosen from each of the then-existing 110 state House of Representative districts and 34 state Senate districts. Each delegate voted at the Michigan convention on the principle of one delegate, one vote. Former American Motors Company president and future governor George Romney

(and father of Republican Presidential candidate and current Utah Senator Mitt Romney) was the chairman of the Michigan Convention.

The U.S. Constitution is 4,543 words. The Michigan Constitution dwarfs the United States document with over 31,000 words.

Ratification

The U.S. Constitution required nine of the 13 original states to ratify the document before it became effective. Each state held a ratification convention to debate the merits, and each had a separate process for selecting the delegates to the convention. Although no state rejected the Constitution, the approval of the Constitution was not a forgone conclusion and a vigorous debate ensued in several states, most especially in Massachusetts, New York, and Virginia. Those supporting ratification were dubbed the “Federalists,” and those opposed, the “Anti-Federalists.” Both sides wrote voluminously in the papers and pamphlets of the day. *The Federalist Papers* (written by James Madison, Alexander Hamilton and John Jay) were a series of brilliant newspaper articles advocating ratification. New Hampshire sealed the deal when it ratified the United States Constitution on June 21, 1788. The United States Constitution went into effect in March 1789. Rhode Island delayed its ratification until May 1790.

Adoption of the Michigan Constitution was even a closer call. After a robust campaign, the Michigan Constitution was submitted to a vote of the people of Michigan on April 1, 1963, and adopted by the very slim margin of 810,860 to 803,436. Unlike the U.S. Constitution, at the time of the election, the proposed draft constitution was accompanied at the ballot box with an “Address to the People” that provided commentary about the purpose behind particular provisions of the proposed constitution. In addition, the constitutional convention produced a widely distributed 109-page booklet for consideration by the voters. (Michigan Constitutional Convention. 1962. *What the Proposed New State Constitution Means to You: A Report to the People of Michigan by Their Elected Delegates to the Constitutional Convention of 1961-62*. Lansing, Michigan: State of Michigan.)

Preamble

The United States Constitution has a world famous preamble that explains the reason for the Constitution:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

This Preamble enumerates the purposes of the Constitution, including improving, securing or ensuring the social compact, justice, peace, common defense, common welfare, and liberty.

The Preamble to the Michigan Constitution of 1963 echoes and materially differs from that of the United States:

We, the people of the State of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.

As the text reveals, the Michigan Constitution invokes the Creator expressly, declares gratitude, and centers on the “blessings of liberty.” The U.S. Constitution does not expressly invoke God or promulgate gratitude. The Michigan Constitution omits most of the purposes enumerated for the U.S. Constitution other than securing liberty and attempting to provide those blessings to the people and their posterity.

Separation of Powers

Each constitution provides for three branches of government: legislative, executive and judicial. The United States Constitution does so through a simple enumeration of the branches in Articles I-III. On the other hand, Article III, Section 2 of the Michigan Constitution specifically provides, “The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” The U.S. Constitution has no such express provision.

However, Article I, Section 6 of the U.S. Constitution prohibits any member of Congress from being appointed to “any civil Office created under the Authority of the United States” In practice, this provision forbids members of the Congress from serving in the executive or judicial branches. Article IV, Section 8 of the Michigan Constitution provides that “No person holding any office, employment or position under the United States or this state or a political subdivision thereof, except notaries public and members of the armed forces reserve, may be a member of either house of the legislature.” In other words, except for the two carve outs mentioned in the Constitution, a Michigan legislator cannot be an employee of the federal or local units of government.

Legislative Branch

Article I, Sections 1-3 of the United States Constitution provide for a House of Representatives and a Senate. In a parallel fashion, Article IV,

Sections 1-3 of the Michigan Constitution provide the same. Under Article I, Section 2 of the United States Constitution and Article IV, Section 3 of the Michigan Constitution, members of the House of Representatives are elected for two-year terms. Pursuant to Article I, Section 3, United States senators serve six-year terms and one-third of the Senate is elected during each election cycle (*i.e.*, every two years). Article IV, Section 3 of the Michigan Constitution provides that senators serve four-year terms and all are elected at once during the same year as the election for the governor.

The U.S. Constitution provides no limits to the number of terms members of Congress may serve. Periodically term limits for members of Congress has been raised by various reform minded organizations and individuals, but Congress has never agreed to forward such an amendment to the states for ratification. Reformers turned their attention to imposing term limits through the states. However, in *U.S. Term Limits, Inc. v. Thornton*, 514 US 779 (1995), the United States Supreme Court found unconstitutional and struck down attempts by states to impose term limits on their own congressional delegations. Article VI, Section 54 provides that Michigan legislators can serve a lifetime maximum of three terms (six years total) in the House of Representatives and two terms (eight years total) in the Senate.

To serve as a member of the U.S. House of Representatives, Article I, Section 2 provides that a representative must be at least 25 years old, a citizen of the United States for at least seven years, and an inhabitant of the state in which the representative is elected. The U.S. Constitution does not provide a set number of representatives, only that under the same Article there must be at least 30,000 citizens represented by each representative. The total number of U.S. representatives is determined by Congress, based proportionally on population – subject to the caveat that each state must have at least one representative. The First Congress started with 59 voting representatives. Today, the law has fixed the number at 435.

Under Article I, Section 3 United States senators must be at least 30 years old, a citizen for nine years, and a resident of the state the senator represents. Based on a constitutional amendment codified in Article IV, Section 7, United States senators are elected on a statewide basis, with each state having two senators. Congress began with 22 voting Senators, it has increased today to 100. Article I, Section 4 of U.S. Constitution provides: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.”

In Michigan, Article IV, Section 7 provides that “Each senator and representative must be a citizen of the United States, at least 21 years of age, and an elector of the district he represents.” Under Article IV, Sections 2-3,

Michigan Senate and House districts are both determined by population. In addition, pursuant to Article VI, Section 7, in Michigan “No person who has been convicted of subversion or who has within the preceding 20 years been convicted of a felony involving a breach of public trust shall be eligible for either house of the legislature.” The U.S. Constitution has no such bar.

Unlike the federal Constitution, Article IV, Sections 24-26 of the Michigan Constitution hems in the legislative process by title, object, and other legislative requirements and prohibitions. Article IV, Section 6, recently adopted as a constitutional amendment in a statewide ballot initiative, provides that legislative districts for the Michigan House, Michigan Senate, and Members of the U.S. House of Representatives will be drawn by an independent citizens redistricting commission. The provision details who is eligible and ineligible to serve on the commission, the process by which members are selected, and the process for drawing up districts.

Initiative and Referendum

Under the U.S. Constitution the people are locked out of any direct legislative role - there is no provision for initiative or referendum.

Article II, Section 9 of the Michigan Constitution provides Michigan voters a direct channel to enact or reject legislation. The section provides: “The people reserve to themselves the power to propose laws and enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum.” However, the people may not enact via initiative a law that the Michigan Legislature is otherwise prohibited from passing, and appropriations bills are exempt from the referendum. Initiatives and referendums require petitions be signed by voters equal to at least 8 percent of the voters for Governor in the last general election. If a majority of voters oppose a law subject to a referendum, it fails to become law. Moreover, “Any law proposed by initiative petition shall either be enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature.” Any such laws approved by the legislature are not placed on the ballot, but those which are rejected are placed on the ballot as a referendum for approval or rejection by the voters at the next general election. Any law approved via referendum or initiative takes effect without the signature of the Governor, and may not be amended unless three-quarters of both the Michigan Senate and Michigan House approve. If two such laws conflict, the one receiving the most votes prevails. For example, if one initiative approved by 1,000,000 votes provided that absentee ballots may be counted if received three days after the election and a second initiative approved by 1,500,000 votes provided that absentee ballots must

not be counted unless received no later than the election, the second initiative would prevail.

Executive Branch

Article II, Section 1 provides that the executive power of the United States is vested in the president who is elected pursuant to the Electoral College. Under Article II, Sections 1 and Amendment XII, the electors of each state are chosen by a method of selection determined by the state legislature. Each elector has two votes, one each for president and vice president (who run as a slate). Article II, Section 1 combined with Amendment XXII (which established term limits for presidents) also provide that president and vice president each serve four-year terms, and are limited to two full terms. The vice president pursuant to Article I, Section 3 serves as the president of the Senate, and has no vote unless there is a tie. No other federal executive offices are created or addressed in the U.S. Constitution.

To be president, Article II, Section 1 provides that a person must be a natural-born citizen, at least 35 years old, and have been a resident in the United States for at least 14 years. Article II, Section 2 provides that the president is, among other things, the commander-in-chief of the armed forces. The same provision provides that the president has the power to grant reprieves and pardons (except for cases of impeachment), make treaties (subject to a two-thirds approval of the Senate), and appoint federal judges (subject to the advice and consent of the Senate). Section 3 of Article II establishes that the president has the duty to ensure that the laws are faithfully executed.

Article I, Section 7 provides that the president must be presented with any legislation passed by Congress and, upon the president's signature, it becomes law. The president may instead choose to veto legislation passed by the Congress, in which case it fails to become law. However, the same provision provides that if two-thirds of each house of Congress votes to overrule the veto, it becomes law.

Article V, Section 1 provides that the executive power of the State of Michigan is vested in the governor. Pursuant to Article V, Section 21, the governor and lieutenant governor serve four-year terms, with a maximum of two terms. The same provision provides that the governor is elected in the general election of alternate even-numbered years. On the other hand, candidates for lieutenant governor are nominated by party conventions pursuant to the quirky Article V, Section 21. The same provision provides that "In the general election one vote shall be cast jointly for the candidates of governor and lieutenant governor nominated by the same party."

Under Article V, Section 8, the governor supervises each "principal department . . . unless otherwise provided by" the Constitution. Paralleling

the federal Constitution, the same provision provides that the governor is also to “take care that the laws be faithfully executed.”

Unlike the federal Constitution, Article V, Section 6 is a negative advice and consent clause – any gubernatorial appointments take effect unless a majority of the state Senate votes to disapprove the appointment. Another variation from the federal Constitution is that under Article V, Section 8, the governor has the authority to remove or suspend “any elective or appointive state officer, except legislative or judicial,” for “gross negligence of duty or for corrupt conduct in office, or for any other misfeasance or malfeasance therein”

Like the president, pursuant to Article V, Section 12, the governor is the commander in chief of the armed forces. The president also has the authority under Article V, Section 14 to grant “reprieves, commutations and pardons for all offenses, except in cases of impeachment,” but that power is subject to the procedures and regulations provided by law. The governor has a constitutional mandate under Article V, Section 18 to submit to the Legislature a balanced budget and appropriation bills.

Like the U.S. Constitution, under Article IV, Section 33, upon passage of a bill by the legislature, the Governor has the option of signing it to make it law or to veto it. If the governor vetoes the bill, that veto can be overridden by a vote of two-thirds of the House of Representatives and Senate.

In common with the vice president, under Article V, Section 25, the lieutenant governor is president of the Senate, without a vote except in cases of a tie. To be governor or lieutenant governor, Article V, Section 22 establishes that a person must be 30 years old and have been a voter in the state for the four years “next preceding his election.”

Contrary to the federal Constitution’s silence, Article V, Section 21 provides that the attorney general and secretary of state are likewise elected for four-year terms at the same time as the governor, with a maximum of two terms. Parallel to the lieutenant governor, Article V, Section 21 vests state party conventions with the authority to nominate the attorney general and secretary of state candidates.

Unlike the U.S. Constitution, Michigan Constitution Article V, Section 2 addresses in detail the administrative bureaucracy over which the governor presides. For example, there are no more than “20 principal departments. They shall be grouped as far as practicable according to major purposes.” In addition, unless legislatively vetoed, the governor has plenary authority under Article V, Section 2 to reorganize the executive branch via executive order.

The Michigan Constitution also establishes a statewide elected state board of education (Article VIII, Section 30); elected statewide boards for the University of Michigan, Wayne State University, and Michigan State

University (Article VIII, Section 5); an appointed civil rights commission (Article V, Section 29); an appointed state transportation commission (Article V, Section 28); a Michigan nongame fish and wildlife trust fund (Article IX, Section 42); a Michigan game and fish protection fund (Article IX, Section 41); a Michigan conservation and recreation legacy fund (Article IX, Section 40); a Michigan veterans trust fund (Article IX, Sections 37-39); and a Michigan natural resources trust fund (Article IX, Section 35). Suffice it to say, the Michigan Constitution's penchant for defining the administrative structure of state government is quite intense.

Judicial Branch

Under Article III, Section 1, the judicial power of the United States is vested in "one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." All federal judges under this provision have life terms, subject to being in "good Behavior." The provision also establishes that jurisdiction of the federal courts includes all cases arising under the U.S. Constitution, federal law, treaties, foreign relations, admiralty and maritime, and controversies between the states. There are no minimum qualifications for members of the Supreme Court, and the number of justices is determined by Congress. Yes, anyone, of any age, from anywhere, can be a federal judge or United States Supreme Court Justice. Presumably the drafters of the federal Constitution believed that the nomination and approval process for the federal judges would be of sufficient rigor as to ensure only qualified candidates became judges.

In contrast, Article VI, Section 1 of the Michigan Constitution of 1963 provides that the "judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by two-thirds vote of the members elected to and serving in each house." Under Article VI, Section 2, the Supreme Court has seven members, serving eight-year terms with staggered elections. The Supreme Court is nonpartisan, and "Nominations for justices of the supreme court shall be in a manner prescribed by law." However, an incumbent may be placed on the ballot simply by filing an affidavit of candidacy. Under Article VI, Section 3, the Supreme Court chooses its own chief justice, and the chief justice "shall perform duties required by the court."

The Supreme Court is constitutionally mandated under that provision to appoint "an administrator of the courts and other assistants of the supreme court as may be necessary to aid in the administration of the courts of this state." Pursuant to Article VI, Section 4, the Supreme Court

possesses “general superintending control over all courts . . . and appellate jurisdiction as provided by rules of the supreme court,” and under Article VI, Section 5, rule-making authority over the “practice and procedure in all courts of this state.” Although the Supreme Court originally had no “power to remove a judge,” pursuant to a constitutional amendment embedded in Article VI, Section 5, it may do so pursuant to judicial tenure proceedings.

Unlike the federal Constitution, Article VI, Section 6 provides that “Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal.” That provision also provides that “When a judge dissents in whole or in part he shall give in writing the reasons for his dissent.”

Furthermore, unlike the federal Constitution, Article VI, Section 8 establishes a court of appeals, with the number of judges determined by law. Article VI, Section 9 specifies that Court of Appeals judges serve six-year terms, elected in staggered terms. As defined by Article VI, Section 8, Court of Appeals judges are elected in nonpartisan elections “from districts drawn on county lines and as nearly as possible of equal population, as provided by law.” Furthermore, under Article VI, Section 10, the jurisdiction of the court of appeals is determined by law.

Circuit courts are created pursuant to Article VI, Section 11 and are established along county lines (and can include more than one county), with a minimum of one judge per circuit, as provided by law. That provision provides that circuit courts must conduct sessions at least four times a year, and the number of judges for each circuit is also established by law. Article VI, Section 12 provides that circuit court judges are nominated and elected in staggered (within each circuit) non-partisan elections for six-year terms, and must live in the circuit to which they are elected. Circuit courts under Article VI, Section 13 have

original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with the rules of the supreme court; and jurisdiction of other cases and matters as provided by the rules of the supreme court.

Probate judges are also established under Article VI, Section 15 and follow the same elective and qualification procedures as circuit court judges.

To serve as a judge, Article VI, Section 19 provides that an individual must have been admitted to practice law for at least five years, and cannot be elected or appointed after reaching 70 years old. Furthermore, Article VI, Section 20 establishes that judges are ineligible to be “nominated for or elected to an elective office other than a judicial office during the period of his service and for one year thereafter.”

Recalls

There is no provision in the federal Constitution to recall elected officials.

Article II, Section 8 of the Michigan Constitution, on the other hand, provides that the laws “shall be enacted” to provide for the recall of “all elective officers except judges of courts of record” upon the petition of electors equal to 25% of the number of persons in the last election voting for the office of Governor “in the electoral district of the officer sought to be recalled.” There is a requirement that the petition provide a “statement of reasons or grounds” for the recall, and whether those reasons or grounds are sufficient cannot be reviewed by the courts. In other words, Judges have no role in determining whether a recall is meritorious or whether the statement of reasons or grounds are truthful.

Local Government

Other than ensuring a republican form of government at the state level (Article IV, Section 4), the United States Constitution is utterly silent with regard to local governance. Thus, the U.S. Constitution is absolutely silent with regard to counties, cities, townships, villages, and other municipal forms of government. Local governments remain the domain of the States pursuant to Amendment X of the U.S. Constitution.

The Michigan Constitution addresses the respective powers, immunities, and governance of counties (Article VII, Sections 1-4), townships (Article VII, Sections 14, 17-18, 20, 24), cities (Article VII, Sections 21-24), and villages (Article VII, sections 21-24). The Constitution is so detailed that it bars the bridging and damming of “navigable stream[s]” without the permission of supervisors of the local county (Article VII, Section 12), and it permits county intervention in public utility services and rate proceedings (Article VII, Section 15). Likewise, under Article VII, Section 19, a township is not permitted to grant a public utility franchise “which is not subject to revocation at the will of the township, unless the proposition shall first have been approved by a majority of electors of such township voting thereon at a regular or special election.” Article VII, Section 34 Constitution also provides that the “The provisions of this constitution and the law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers

granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.”

Transportation

Article VII, Section 16 of the Michigan Constitution provides that the Legislature “may provide for the laying out, construction, improvement and maintenance of highways, bridges, culverts and airports by the state and the counties and townships thereof; and may authorize counties to take charge and control of any highway within their limits for such purposes.”

Education

No powers or duties regarding education are provided in the federal Constitution.

On the other hand, Article VIII of Michigan’s Constitution is entirely dedicated to the provision of education. Section 1 of the Article incorporates a key phrase of the Northwest Ordinance: “Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.” Section 2 requires the Legislature to “maintain and support a system of free public elementary and secondary schools as defined by law,” and specifically provides that each school district shall provide “education to its pupils without discrimination as to religion, creed, race, color or national origin.” Pursuant to a constitutional amendment, that Section also bans direct or indirect financial aid to nonpublic schools.

Section 3 creates an 8 member, statewide elected State Board of Education and vests it with “Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees”

Higher education institutions are established by Section 4, and Section 5 provides for statewide elections for Wayne State University, the University of Michigan, and Michigan State University. This provision stems from the perceived mismanagement of the original “Big 3” statewide universities by the Legislature. See, e.g., *State Board of Agriculture v The Auditor General*, 226 Mich 417, 424-425 (1924). The Legislature is mandated by Article XI, Section 7 to establish and financially support public community and junior colleges.

Finance and Taxation

Article I, Section 8 of the federal Constitution simply provides that the United States has the power “To lay and collect taxes, duties, imposts and

excises, to pay the debts and provide for the common defense and general welfare of the United States” and “To borrow money on the credit of the United States.”

In contrast, the Michigan Constitution takes painstaking care to address taxes and fiscal matters. In particular, Article IX, entitled Finance and Taxation, has 43 Sections. Provisions address, among other things, taxes for state expenses (Article IX, Section 1), property taxation (Article IX, Section 2), exemption from taxation for religious and educational nonprofit organizations (Article IX, Section 3), income tax (Article IX, Section 7), sales and use taxes (Article IX, Section 9), fuel taxes (Article IX, Section 9), taxes dedicated to schools (Article IX, Section 11), short term state borrowing (Article IX, Section 14), payments from the State treasury (Article IX, Section 17), public financial records (Article IX, Section 23), public pensions (Article IX, Section 24), limitations on taxes (Article IX, Section 26), limitations on revenue (Article IX, Section 27), the creation of the Michigan natural resources trust fund (Article IX, Section 35), tobacco taxes (Article IX, Section 36), establishment of the Michigan veterans’ trust fund (Article IX, Section 37), establishment of the Michigan conservation and recreation legacy fund (Article IX, Section 40), and the establishment of the Michigan game and fish protection fund (Article IX, Section 4).

Protection of Unalienable Rights

With a few exceptions, the federal Constitution’s protection of unalienable rights is found in the Bill of Rights (Amendments I-X) and the Reconstruction Amendments (Amendments XII-XV). The First Amendment prohibits the establishment of a state church, and guarantees the rights of the free exercise of religion; freedoms of speech and press; and freedoms to assemble and petition the government. The Second Amendment protects the right to bear arms, while the Third Amendment prohibits the quartering of troops. The Fourth - Eighth Amendments mostly protect the rights of criminal defendants or address rights in civil litigation, along with prohibiting the acquisition of property without a public purpose and just compensation.

The Thirteenth Amendment bars slavery, the Fourteenth defines citizenship and ensures the equal protection of laws and due process as applied to the States, while Amendment XV guaranteed the right to vote for all men. The Nineteenth Amendment provides the right to vote to all women, and the right to vote was expanded to 18-year-olds by Amendment XXVI. There is no federal constitutional bar to the death penalty.

The first article of the Michigan Constitution is a Declaration of Rights. Section 1 of Article I provides that “All political power is inherent in the people. Government is instituted for their equal benefit, security and

protection.” The Declaration of Rights is composed of 27 sections. Many of the sections provide similar or parallel provisions to the federal Bill of Rights, including equal protection of the law (Article I, Section 2); the right to peaceably assemble and petition the government (Article I, Section 3); the protection of the free exercise of religion (Article I, Section 4); the freedoms of speech and press (Article I, Section 5); the right to bear arms (Article I, Section 6); the prohibition of bills of attainder, ex post facto laws, and impairment of contracts (Article I, Section 10); and the protection of jury trials (Article I, Section 14).

Other rights are not found in the federal Constitution, such as the rights of crime victims (Article I, Section 24); the prohibition of affirmative action programs in education (Article I, Section 26); and human embryo and embryonic stem cell research (Article I, Section 27). Michigan also defined marriage to be solely between a man and a woman (Article I, Section 25), but that definition was declared unconstitutional by the United States Supreme Court in *Obergefell v Hodges*, 576 US 644 (2015).

Because Michigan was always a free state and did not participate in that dreaded, grave stain in American history, Michigan did not have to ban slavery. Nevertheless, Article I, Section 9 of the Declaration of Rights specifically provides that “Neither slavery, nor involuntary servitude unless for the punishment of crime, shall ever be tolerated in this state.” In addition, maintaining its tradition of being the first English-speaking jurisdiction to ban capital punishment for ordinary offenses, Article IV, Section 46 prohibits the Legislature from enacting the death penalty.

Amendments

To amend the U.S. Constitution, pursuant to Article V, two-thirds of both houses of Congress must submit a proposal to the states, and three-quarters of the states must approve the same. According to the Pew Research Center, approximately 12,000 amendments have been proposed in Congress, and only 33 have gone to the states for consideration. The U.S. Constitution has been amended 27 times. Such amendments include the Bill of Rights (Amendments I-X), the prohibition of slavery (Amendment XIII), establishing equal protection and due process for all people (Amendment XIV), voting rights for African-Americans and women (Amendments XV and XIX), authorizing an income tax (Amendment XVI), altering United States Senate elections (Amendment XVII), and modifying presidential elections and succession procedures (Amendments XII, XX, XII, and XXV).

One particularly vexing focus of a series of amendments has been the selection of the vice president and presidential succession. For example, originally the Constitution provided that electors had two votes for president, and the person who received the second largest number of

electoral votes would become Vice President. When John Adams succeeded George Washington, Adams' rival - Thomas Jefferson - served as his Vice President. Jefferson did not serve loyally, but instead worked to undermine President Adams, including establishing a political party and newspaper to oppose the administration. Matters took an even worse turn in the election of 1800, in which Thomas Jefferson and Aaron Burr ran as a slate against Adams to avoid having Adams become Jefferson's vice president. But a funny thing happened on the way to the election - all of the electors favoring Jefferson and Burr voted for both men - leading to a tie. This tie threw the election to the House of Representatives, which only succeeded in electing Jefferson on the 36th ballot. By requiring an election of a ticket of both president and vice president (i.e., each elector casts one ballot for a presidential candidate and one for a vice presidential candidate), Amendment XII eliminated a rival as Vice President and a tie between partners on a slate.

To amend the Michigan Constitution, pursuant to Article XII, Section 2, citizens can propose an amendment via a ballot initiative when at least 10 percent of the total vote cast for all candidates for governor at the last preceding election sign a petition. The Legislature can also propose an amendment pursuant to Article XII, Section 1, if two-thirds of both houses vote to do so. In either case, Article XII, Sections 1-2 require an amendment to be approved by a majority vote of the people in a statewide election.

According to the State of Michigan, Bureau of Elections, Initiatives and Referendums, under the Constitution of the State of Michigan of 1963, there have been 31 proposed amendments via ballot initiatives and 43 via legislative resolutions. Of the proposed amendments, 32 have been approved and 42 rejected. Approved amendments include establishing the Judicial Tenure Commission (Article VI, Section 30), the creation of the State Officers Compensation Commission (Article IV, Section 12), addressing the filling of judicial vacancies (Article VI, Sections 20, 22-24), prohibiting public funds to aid nonpublic schools and students (Article VIII, Section 2), and authorizing lotteries (Article IV, Section 41). Rejected amendments included attempts to lower the voting age to 18 (twice) (Senate Joint Resolution "A," P.A. 1966, p. 678 and House Joint Resolution "A," P.A. 1970, p. 690), authorizing a graduated income tax (Senate Joint Resolution "G," P.A. 1967, p. 672), and permitting election of members of the Legislature to another state office during their term of office (Senate Joint Resolution "Q," P.A. 1968, p. 708).

Convention

Article V provides that a U.S. constitutional convention can be called "on the Application of the Legislatures of two thirds of the several States,"

and a new constitution may be adopted when three-quarters of the states approve the new constitution (either by constitutional conventions or by the state legislatures, as determined by Congress). No successful movement to call for a convention has occurred, although a movement dubbed the “Convention of the States” has obtained applications from 15 states (both houses of the state legislature), with partial success in 8 others (one house), calling for a convention that would “limit the power and jurisdiction of the federal government, impose fiscal restraints, and place term limits on federal officials.”

The question of whether Michigan should hold a new constitutional convention is placed on the general election ballot every 16 years (beginning in 1978) pursuant to Article XII, Section 3. If a majority of voters concur, a constitutional convention will be held subject to certain parameters set forth in the current Constitution. This process has yet to yield a call for a new convention since the enactment of the 1963 Constitution. The idea of calling a constitutional convention in Michigan was most recently resoundingly rejected in 2010 with nearly two-thirds of the voters rejecting the proposal. If recent history serves as a guide, the people of Michigan seem uninterested in reopening the Pandora’s box of a Constitutional Convention.

Conclusion

The federal and Michigan Constitutions have many similarities. They both rest on the foundation and ratification of the people (indirectly or directly) for legitimacy. They are written and can be amended through clearly defined mechanisms. They include separation of powers, checks and balances among the branches, and a specific list of unalienable rights guaranteed against the government. They define the powers, election or appointment process, and terms of each of the branches of government.

Yet, the differences between our two constitutions are quite immense – revealing the origins and philosophies undergirding each. For example, the Michigan Constitution provides for direct action by the people in modifying their fundamental charter and laws, while the federal Constitution has no such mechanisms. The voters of the State of Michigan directly elect nearly all state constitutional officers, while the federal system provides direct elections of only the Congress. Indeed, federal judges are appointed indirectly by the people’s representatives in Congress and the President and have life tenure; Michigan judges are directly elected and may not run for re-election after the age of 70. Other than judges of record, all elected officials can be recalled in Michigan - not so in the federal system. The Michigan Constitution imposes very severe term limits on the state

legislature, while members of Congress have no limits whatsoever. Michigan has very detailed provisions regarding taxation, spending, transportation, natural resources, and education, while the federal Constitution either fails to address such matters or does so in very broad ways. Understanding their similarities and differences gives us a deeper appreciation for the value they provide and any potential imperfections. Simply put, the U.S. and Michigan Constitutions have a profound impact on our daily lives, significantly are similar and differ in scope and detail, and are well worth learning if we intend to preserve our liberties and freedoms.

References

- UNITED STATES CODE. 1787. An Ordinance for the government of the Territory of the United States northwest of the River Ohio (Northwest Ordinance). New York, NY: Congress.
- CONVENTION OF THE STATES. "Home" and "About Us." Accessed March 24, 2020. <https://conventionofstates.com>.
- DESILVER, DREW. 2018. "Constitution Amendments in the US Rarely Go Anywhere." *Pew Research Center*, April 12. Accessed March 24, 2020. <https://www.pewresearch.org/fact-tank/2018/04/12/a-look-at-proposed-constitutional-amendments-and-how-seldom-they-go-any-where/>.
- FARRAND, MAX. 1913. *The Framing of the Constitution*. New Haven, CT: Yale University Press.
- HAMILTON, ALEXANDER, JAMES MADISON, AND JOHN JAY. 1987 (originally published 1788). (Issac Kramnick, ed). *The Federalist Papers*. New York, NY: Penguin.
- MICHIGAN CONSTITUTION OF 1963.
- MICHIGAN CONSTITUTIONAL CONVENTION. 1961-1962. *Journal of the Constitutional Convention*. East Lansing, MI: State of Michigan.
- MICHIGAN CONSTITUTIONAL CONVENTION. 1962. *Address to the People*. Lansing, MI: State of Michigan.
- MICHIGAN CONSTITUTIONAL CONVENTION. 1962. *What the Proposed New State Constitution Means to You, A Report to the People of Michigan by Their Elected Delegates to the Constitutional Convention of 1961-62*. Lansing, MI: State of Michigan.
- SECRETARY OF STATE, DEPARTMENT OF STATE. 2010. 2010 Michigan Election Results, State Proposal - 10-1: Con Con: To convene a Constitutional Convention, <https://mielections.us/election/results/10GEN/>.
- UNITED STATES CONSTITUTION.

- WARREN, MICHAEL. 2007. *America's Survival Guide: How to Stop America's Impending Suicide by Reclaiming Our First Principles and History*. Minneapolis, MN: Mill City Press.
- WEBSTER, NOAH. 1806. *A Compendious Dictionary of the English Language*. Hartford, CT: Sidney's Press.
- WEBSTER, NOAH. 1787. *An Examination into the Leading Principles of the Constitution*. Philadelphia, PA: Richard & Hall.
- WOOD, GORDON S. 1969. *Creation of the American Republic*. Chapel Hill, NC: University of North Carolina Press.