

Under Proposed Constitution Rights Are Righted

This is the 2nd interpretation of the proposed new constitution by one of 10 University of Montana faculty members, commissioned by the UM Bureau of Government Research.

Declaration of Rights

By EMILIE LORING
Montana's 1972 constitutional convention, as expected, drafted a strong declaration of rights. The proposed article preserves essential rights presently protected, adds important new rights, clarifies present language, and deletes some obsolete provisions of the present constitution.

SUBSTANTIVE RIGHTS:

Traditional rights of self-government, inalienable rights, freedom of speech, press, assembly, and religion, and the right to bear arms all would be retained, although some have been re-phrased. Additional substantive rights would be guaranteed. A strongly phrased new clause would protect against discrimination on the basis of race, color, sex, culture, social origin or condition, or for political or religious ideas. Protection would be given against both private (by any person, firm, corporation, or institution) and governmental discrimination; this would extend protections presently afforded by the 14th amendment to the U.S. Constitution. The present national constitution does not yet protect against discrimination on the basis of sex. The reference to culture would protect American Indians, Montana's largest ethnic minority.

A right to individual privacy is a significant innovation, expressly mentioned in only three other state constitutions. The right is not enumerated in the national constitution but its existence has been suggested in some modern supreme court decisions.

Another important new right would be that of citizens to participate in the operation of government, to examine documents, and to observe the deliberations of all agencies of government. The "right to know" would also be affirmed, except where "demands of individual privacy would exceed the merits of public disclosure." When governmental agencies accumulate vast amounts of essentially private information, sometimes erroneous, serious infringements of privacy elsewhere guaranteed by the draft article could occur if all government files were opened to the public. Examples would be the names of natural parents in adoption proceedings and the names of persons seeking public health treatment for venereal disease. Segments of the Montana press have objected to this exception that would protect personal privacy. It may be hoped they will reevaluate their opposition.

The traditional sovereign immunity of the state from suit would be eliminated. Montana would join more than two-thirds of the states to permit suit for personal or property injury against either the state or its political subdivisions. The draft constitution would absolutely forbid suspension of the writ of habeas corpus, the basic historic judicial mechanism to challenge

Copper Surplus Not Expected To Materialize

NEW YORK (AP) — Stockholders of Kennecott Copper Corp. were told here Tuesday an anticipated surplus of copper appears not to have materialized and the company may quicken its expansion in the United States.

Frank R. Milliken, Kennecott president, told stockholders at their annual meeting that production increases projected in Chile and Zambia were not achieved.

U.S. production was also slowed because of requirements to install air pollution equipment, Milliken said.

"This reduction will continue to affect our operations—and those of other copper producers—for the next two years or so," he said.

Milliken also told stockholders he believes the company can successfully fight a Federal Trade Commission order to divest itself of the Peabody Coal Co. Oral arguments on that order are to be heard in the 10th Circuit Court of Appeals in Denver this fall.

detention and protect personal liberty.
Restoration of all rights to one convicted of crime, after termination of state supervision for that crime, would be a significant new right. Presently the restoration of political rights depends upon the governor, and there is now no provision to restore occupational rights to a felon who has discharged his debt to society.

The proposed constitution reaffirms that lands owned or held by Indians shall remain under the absolute jurisdiction and control of Congress until revoked by the consent of the United States and Montana. A number of Indians testified at the convention, insisting that the disclaimer of state jurisdiction over Indian lands be retained, although there have been assertions that the provision is no longer necessary. Congress has given states permission to amend such constitutional disclaimers when the state wishes to assume criminal and civil jurisdiction over reservations. Montana, except for criminal jurisdiction over the Flathead Reservation, apparently is not prepared to accept the financial and administrative burdens of assuming such jurisdiction and it is therefore doubtful if the disclaimer could be eliminated. Although present national legislation requires Indian tribes to assent to state jurisdiction, there is no state constitutional or legislative provision requiring tribal agreement. The present disclaimer provision is important to Montana Indians.

PROCEDURAL RIGHTS:

Basic procedural rights such as due process of law, freedom from unreasonable searches, right to counsel, to reasonable bail, and against compulsory self-incrimination have been retained in the draft constitution. It also proposes additional protections beyond those now guaranteed. A criminal defendant may not now waive jury trial (to be tried by a judge) in felony cases. The new Bill of Rights would permit such waiver giving the defendant the choice whether jury or judge would try the facts. This has been possible in the federal courts and in about half the states and it is desirable for Montana.

The presumption of innocence would be strengthened by requiring a unanimous verdict in all criminal cases. The present constitution permits a two-thirds verdict in misdemeanor cases. A basic proposition of Anglo-American law is that guilt in a criminal case must be proven beyond a reasonable doubt. If a third of a jury of one's peers is not convicted of guilt, the prosecution has not met this burden of proof.

Presently juvenile proceedings are not considered to be criminal, thus basic rights afforded adults may be denied to young people. A new provision would assure that the rights of those under the age of majority (18) will include all the fundamental protections of the Declaration of Rights. The United States Supreme Court has been moving toward guarantees of basic rights of juveniles in several important ways. If a young person in a first confrontation with the judicial system may be denied the right to counsel, to confront his accusers, to a speedy jury trial, and to other protections afforded adult defendants, it may be difficult to convince that youth of the fairness of "the system."

Some of the draft provisions have been criticized on the ground that they are not "self-enforcing" in the manner of most protections in the Federal Bill of Rights. On the national level freedom of the press is secured by the express prohibition that "Congress shall make no law abridging freedom of speech or press" and that "no state shall . . . deprive any person of life, liberty, or property without due process of law." An injured party may enforce these rights directly by court action against the public official or agency attempting to enforce a law alleged to violate the constitution.

The draft Declaration of Rights states that "all persons have the right to a clean and healthful environment . . . and of pursuing life's basic necessities." This is not self-enforcing. An individual probably could not effectively enforce this right in a court of law because no legal duty has been placed on government. But the 1889 Constitution also imposed moral duties on the legislature. For example, the Constitution now provides that the legislature has the duty to establish a system of public schools. Those who want public kindergartens or more vocational training go to the legislature, not to the courts.

Similarly those who seek environmental legislation may find it helpful to have statements of state policy in the constitution. The legislature would have the power to act in environmental and social welfare areas under either the old or the new constitution.

Citizens desiring stronger legislation or protection environmental and cultural right should consider whether the proposed legislative structure will be more conducive to such a legislative product. The assertion of rights and in the environment and resources article will need legislative action and executive energies to accomplish affirmative results.

The Declaration of Rights in the proposed constitution reaffirms present provisions and declares additional rights. The improvements are probably not sufficient in themselves to swing votes for the proposed document. I find the new Declaration of Rights better both in procedural protections and in political philosophy. If one has serious reservations about other sections, the new Declaration of Rights, alone, is not such an improvement as to warrant an affirmative vote. If the new document is defeated and we are left with the existing constitution, the present Declaration of Rights is satisfactory and we could expand protections through legislative action or constitutional amendment.

County Pay Issue Hits New Snag

BILLINGS (AP) — Federal Court Judge James F. Battin has ruled he does not have jurisdiction in an action brought against the state of Montana on behalf of all elected county officials.

Battin's ruling approved a motion by the state to dismiss the complaint which was filed in U.S. District Court in Billings last July.

The judge said the county officials cited no authority for their contention that the state had surrendered sovereign immunity.

He said the fact that Montana allows suits against it by its own citizens does not support a finding that it has acceded to federal jurisdiction.

The suit was originally filed in state district court at Helena in March 1970 by two county officials — Ed Shubat and Bert Hurwitz — on behalf of themselves and all other elected county officers.

They sought to force the state to abide by a law passed by the legislature in 1969 which allowed county officials to receive pay raises during their terms.

The Lewis and Clark County District Court upheld the law but was reversed by the Montana Supreme Court. The appeal to federal court followed.

17 'Clan' Adolescents Win Appeal of 'Clearcut' Ruling

SAN FRANCISCO (AP) — A court trial to decide whether clearcutting is sound practice on National Forest lands was ordered Wednesday by the 9th U.S. Circuit Court of Appeals.

The court reversed the dismissal of a commune group's injunction suit to stop clearcutting of 59 acres in Oregon's Umpqua National Forest. It ordered the case remanded

to the U.S. District Court in Portland "for trial on its merits."

Family Clan Inc., a commune group of 17 adolescents and three children, filed the suit last June.

They are buying 135 acres of private land across a creek from 59 acres of timber which the federal Forest Service sold to U.S. Plywood Champion Papers for clearcutting.

The site is in the Umpqua National Forest's Tiller District in Douglas County, near Roseburg.

The clan contended that clearcutting of all trees, big and small, would destroy permanently the land's productivity and injure both the clan and the public.

U.S. District Court Judge Alfred Goodwin dismissed the injunction on action last June.

He found valid the government's argument that Congress has granted the Forest Service board discretion in multiple-use management of National Forest lands.

Lottery Success

BUENOS AIRES (AP) — Argentina's national soccer lottery collected nearly \$7 million from the first nine games of the season. Besides the winners, the money will benefit public health, housing, social security and a program to help drug addicts.

Faulty Furnace Claimed in Death at Butte

BUTTE (AP) — A Whitehall man filed suit against Sears, Roebuck and Co., Tuesday, seeking \$300,000 in damages because his wife allegedly died of carbon-monoxide poisoning from a faulty furnace.

Mel Smith filed suit in U.S. District Court, alleging wrongful death in the Nov. 27, 1971 incident that claimed the life of Lolita Smith, 57.

Smith's complaint said Mrs. Smith died from carbon monoxide in the home from a furnace purchased from Sears and allegedly installed without a regulator.

Smith asked \$150,000 as administrator of his wife's estate and the same amount in damages to himself.

Corporations May Lose 'Ruler' Role

MISSOULA (AP) — Dallas Howard, a Democratic candidate for governor, says passage of the proposed state constitution would make it difficult for major corporations "to continue their role as the actual rulers of Montana."

He said a provision in the proposed document "would end once and for all the secret committee meetings wherein legislation of importance to people is often gutted or greatly weakened without a recorded vote of legislators."

Howard, an Assiniboine Indian, said lobbyists for major corporations would thus find legislators much harder to influence.

Referring to charges lodged against the Montana Association of Trade Executives (MATE), Howard questioned whether continued "lack of legislative accountability" may be the reason behind the group's recent meeting.

MATE members at that meeting allegedly set about to raise money for a fund to help defeat the new constitution.

Howard referred to MATE as an "anticonstitution group," and said the organization was merely an offshoot of "the Save Our State (SOS) crowd."

Members of SOS worked for the passage of a sales tax last fall that was considered to be of help to industry at the expense of the common taxpayer.

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