

A brief look at Minnesota's Constitution

Behind multiple locked doors at the Minnesota History Center, two sets of documents lie in darkness, safely preserved from elements that would degrade their aging ink. "I can't tell you where they are, exactly," says Charles Rogers, the government records specialist at the Minnesota State Archives. "It's top secret. They are in excellent physical condition, though." These two separate bundles of paper comprise the original, signed copies of the Minnesota Constitution.

On July 13th, 1857, delegates met in Saint Paul to begin crafting Minnesota's plan for self-government. While debates over the state constitution dominated the news cycle of that time, the document has received much less press attention in recent years – particularly compared to its federal companion. "Every night – whether you're watching Keith Olbermann or Bill O'Reilly - there is a common conversation about federal issues," says Minneapolis attorney Steven Aggergaard. The public is familiar with discussions about federal Constitutional law, he notes, due to high-profile media coverage of federal cases. However, Aggergaard is quick to point out that most legal issues that arise across the country are, in fact, governed by state laws and state Constitutions.

On this – the anniversary of the opening of our state's constitutional convention - it is worth briefly examining what the Minnesota Constitution contains, and how its provisions impact the daily lives of Minnesotans.

A document born of strife

While many decry the rancor of modern politics, the debates over the drafting of Minnesota's constitution make today's political battles seem comparatively tame.

At the opening of the convention, relations between the Democratic and Republican delegations were so strained that the two sides met separately for several weeks. Many delegates came to the convention armed, fearing the outbreak of violence. The lengthy deliberations that followed were "somewhat of a mess, to put it kindly" according to local attorney and author Douglas Hedin.

A vivid portrait of the constitutional convention was painted by Saint Paul

newsman Harlan Hall in his 1904 historical treatise *H.P. Hall's Observations*. According to Hall, the drafting of the state constitution was a deeply contentious affair. The election of convention delegates had been fraught with accusations of fraud, and the Republican and Democratic delegations were highly suspicious of each other's motives. Mistrust was so pervasive that the entire Republican contingent arrived at the House of Representatives the evening before the convention, and occupied its chambers through the night to ensure that they would be seated.

The convention's formal proceedings began a few minutes before noon on July 13th. Hall's account noted that once business was called to order, Democrat Willis Gorman immediately moved for the convention to adjourn. "All the Democrats filed out," he wrote, "leaving the Republicans in peaceful possession of the hall."

The two parties essentially held separate conventions for several weeks, with the Republicans meeting in the House, and the Democrats deliberating in the unfinished Senate chambers. Coverage of these affairs was reported by the partisan press of the day. The Republican-leaning *Minnesotan* called the Democratic assembly a "Border Ruffian Convention." The *Pioneer and Democrat* dropped its coverage of the Republican delegation entirely as time went on.

Eventually, a conference committee comprised of five members from each faction was formed. Douglas Hedin noted that the committee met in executive session, in secret. "They were aware of the earlier debates of the opposing sides, yet they were not bound by those debates and even added new material. Out of that committee," he said, "the constitution arrived."

The committee's compromise language was approved on August 28th, 1857. However, the members of each delegation refused to sign their names to the same physical document. In the end, two hand-copied versions of the Minnesota Constitution were produced – one Republican and one Democrat – each with different sets of signatures. "While the two sides agreed to disagree about signing a single document, their two copies are almost identical, with the exception of punctuation," noted Jessica Kohen, a public relations specialist with the Minnesota Historical Society. Today, the Society has both sets of documents available to view on its web site.

A blueprint for state government

At its most basic level, the Minnesota Constitution provides the operational blueprint for the state's government. Like many state constitutions, Minnesota's founding document shares structural similarities with the U.S. Constitution. It sets out a three-part framework - with executive, legislative, and judicial branches - each with their own discreet powers. Like the federal Bill of Rights, it enshrines certain individual liberties, and places restrictions on state powers. The document also contains procedural rules regarding amendments, elections, taxation and other matters – some of them far more elaborate than those found in the federal constitution. It even contains a set of provisions governing public highways.

In some ways, the Minnesota Constitution is more explicit about the separation and delegation of powers than is its federal cousin. Concepts that are implicit in the U.S. Constitution are more fully expressed by Minnesota's document. While the authors of both the U.S. and Minnesota constitutions granted discreet functions to their governmental branches, the Minnesota document contains express prohibitions against members of one branch from carrying out the duties of another branch. Similarly, civilian control of the military, which can be easily inferred from the “Commander-in-Chief” provision of the federal constitution, is fully articulated by Article I, Section 14 of the Minnesota Constitution.

Rules for lawmaking

The state constitution contains a fair amount of language that governs how Minnesota laws are introduced and passed. The rules established in Article IV guide lawmaking – and generate legal altercations – to this day.

Article IV, Section 16 mandates that members of the legislature register all votes by voice before they are recorded in writing. Section 21 prohibits the passage of bills on the last day of the legislative session. Section 17 requires that each law passed by the legislature only deal with a single subject. According to the section's text, “No law shall embrace more than one subject, which shall be expressed in its title.” Six years ago, this provision informed a procedural controversy over the passage of the Minnesota Citizens Personal Protection Act (MPPA), more commonly known as the “concealed carry” law.

In 2003, several forms of carry language were introduced in both the House and Senate, and one version of the MPPA was eventually attached to a

Department of Natural Resources technical bill. This bill passed the legislature, and was signed by Governor Pawlenty. However, the carry provisions of the resultant law were held to be unconstitutional by Ramsey County Judge John Finley in 2004. Finley stated that the inclusion of carry language in a law related to DNR regulation violated the “one subject per law” mandate of the state constitution. Firearm carry legislation was subsequently introduced on its own during the 2005 legislative session, and the MPPA was passed and signed into law a second time.

Matters of rights

The rights reserved to the citizens of Minnesota are listed in the first article of the state constitution. They range from criminal procedural protections, to prohibitions on slavery. It is important to recognize, as Steven Aggergaard notes, that these “Article I” rights served to protect the citizens of Minnesota long before the U.S. Supreme Court applied the provisions of the Bill of Rights to state governments.

Article I of the Minnesota Constitution contains much language that directly mirrors the Bill of Rights. The protections against the arbitrary taking of private property are similarly structured, as are the search and seizure provisions. “Look at Article I, Section 10,” says Aggergaard. “The text is virtually identical to language found in the Fourth Amendment” to the U.S. Constitution.

In some cases, the language of Article I is broader and more inclusive than the language of the Bill of Rights. In these instances, Minnesota’s document draws upon the language of other state constitutions. For instance, Minnesota’s speech and press provision (Article 1, Section 3) is strikingly similar to the first sentence of Wisconsin’s free speech provision. Not surprisingly, the laws of Wisconsin were directly applicable to the Minnesota Territory prior to statehood.

The practice of transposing entire sections of text from one document to another was fairly common in the drafting of many state constitutions, according to legal scholar Ronald Collins. Attorney Douglas Hedin likewise notes that the drafters of Minnesota’s constitution were “practical partisans” who “consulted and copied other state charters when fashioning the text of Minnesota’s.”

Interpretation and individual rights

Within the past few decades, a trend has emerged among some state high courts regarding the interpretation of individual rights. This so-called “New Judicial Federalism” has urged states to focus on enforcing and expanding the rights offered by their own constitutions. In part, this movement has been a response to the perceived weakening of rights protections by the U.S. Supreme Court, according to Steven Aggergaard. He notes that this trend also represents a departure from previous state-level jurisprudence, in which state rights were sidelined in favor of interpretations derived from the federal constitution.

Under the New Judicial Federalism, state high courts have moved to enforce unique rights found within their own constitutions. Where state language has duplicated that found in the federal constitution, state courts have interpreted such language in ways that have expanded rights. While the decisions of the United States Supreme Court have established the “floor” for individual rights, state courts have increasingly explored where the ceiling might be within their own jurisdictions.

In Minnesota, this inclination has been clearly seen in the realm of criminal law. Within the past two decades, the Minnesota Supreme Court has interpreted the state constitution’s search and seizure provisions far differently than parallel Fourth Amendment case law. The court’s decision in the 2005 case *State v. Carter* held that drug dog sniffs outside of a storage locker constituted searches under the Minnesota constitution, and it placed stricter parameters around their use. Dog sniffs are not treated similarly under federal precedents.

Steven Aggergaard notes that Minnesota’s high court has also moved assertively to enforce the protection of religious freedom found in the state constitution. “Minnesotans enjoy the strongest right to religious liberty in the country,” says Aggergaard. He cites the court’s opinion in *State v. Hershberger (II)* as an example. In *Hershberger (II)*, the court held that governmental regulations could be bent to accommodate sincere religious beliefs. In the Hershberger matter, Amish buggy drivers had refused to affix orange warning signs to their carriages on the basis of their religious aversion to garish colors. The buggy drives were subsequently cited and prosecuted. In *Hershberger II*, the court dismissed the charges on the grounds that they violated the religious protections afforded by the Minnesota constitution.

Minnesota's constitution also protects against the establishment of state religion by banning religious tests for voting, prohibiting state funds from being spent on seminaries, and providing that no one shall be "compelled to attend, erect or support any place of worship." Earlier this year, the American Civil Liberties Union of Minnesota (ALCU-MN) cited the Minnesota Constitution extensively in a lawsuit against the Tarek ibn Ziyad Academy (TIZA). According to the ACLU-MN's complaint, the Islamic charter school receives funds directly from the state of Minnesota, in violation of both the Minnesota and federal constitutions.

Amending the constitution

Amendments to the state constitution are governed by rules set out in Article IX of the document. These rules require that a proposed amendment first be passed by the legislature. Once passed, it is then placed on a general election ballot. Finally, a majority of all those voting in the election must affirmatively vote for the amendment. The lack of a mark next to an amendment question on a ballot counts as a "no" vote.

According to Betty Kane, author of a 1981 legislative manual on constitutional amendments, this set of rules was itself the product of a constitutional amendment. Prior to 1889, it was "easy to get amendments proposed, and easy to get them ratified" she wrote. Once the state imposed stricter standards via the so-called "brewers' amendment" of 1898, the adoption of amendments dropped to less than one-third of its previous level. "Since 1900," Kane wrote, "128 amendments have been submitted to the voters. 54 passed and 74 failed."

Successful amendments of recent decades have included a 1974 re-organization of the sections of the constitution, as well as a series of revenue-related measures. In 1998, voters approved an amendment to establish a trust fund dedicated for environmental and natural resources purposes. The fund's assets are used to facilitate the "protection, conservation, preservation, and enhancement" of Minnesota's natural resources. Loans can also be made from the fund to underwrite water system improvements.

Most recently, voters passed the so-called "Legacy Amendment" related to arts and environmental funding. Its language now comprises Article XI,

Section 15 of the Minnesota Constitution. This provision increased the state sales and use tax until 2034, and required that all revenues generated by the tax be placed into funds dedicated for outdoor and cultural heritage uses, as provided by law.

An iconic document

The original, physical copies of the Minnesota Constitution were housed at the state capitol until the 1940s. After that, they were transferred to the Minnesota Historical Society. For a time during the 1970s, they were placed on display at the capitol building once again. Today, there are few who ask to see the original documents. “Once in a great while we get a request,” says Charles Rogers of the state archive. “Maybe once a year. It’s not very regular.”

The last time the Minnesota Constitution was publicly showcased was during the sesquicentennial celebration of 2008. Its two sets of broadsides were shown in conjunction with the Declaration of Independence, which had been touring the country as part of a road show. At the time, Charles Rogers had an opportunity to mingle with the crowds who had come to see the exhibit. “There were some appreciative comments,” he said of the public’s reaction to the constitution “The actual document has an iconic value to it. All of our laws, statutes, and rights as citizens are based on it. Having the physical artifact in front of you really gives you an emotional connection to our history.”

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