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AN ANALYSIS of the PROPOSED CONSTITUTION

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INTRODUCTION

At the general election on April 1, 1963, the registered electors of the State of Michigan will vote on the adoption of the revised constitution proposed by the constitutional convention which adjourned on August 1, 1962. The revised constitution will be voted on as a single question:

“Shall the revised constitution be adopted?
() Yes () No”

If the revised constitution is approved by a majority of the registered electors voting on the question, it will become the supreme law of the state on January 1, 1964.

This is the first of a series of Research Council publications entitled, *An Analysis of the Proposed Constitution*, which will present a factual analysis of the provisions of the proposed constitution in the several major substantive areas. This series together with other Research Council publications, particularly *A Digest of the Proposed Constitution* (Report No. 213), are designed to provide the citizens with factual information upon the basis of which he can intelligently form a judgment on this important public question.

In one of a series of Research Council publications prepared for the use of the delegates to the convention, Dr. Paul G. Kauper stated the following:

Most of the time and energy spent by the delegates will be devoted to the treatment of specific areas and problems involved in restating the state's organic law.

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It is important, however, that the delegates in approaching these specific tasks be guided by a sense of perspective and an overall view as to the nature and purpose of a state constitution both in relation to the structure of our federal system and in relation to the internal purposes served by the state's constitution.¹

It is equally important that the voter have an understanding of the nature of a state constitution and the place of the state within our federal system in order to evaluate the revised constitution that will be presented to him.

The Written Constitution

The idea of a written constitution defining the structure of government, enumerating the rights of the people, and limiting the powers of government is deeply rooted in American history. The Magna Carta in 1215, the Bill of Rights of 1628 and 1689, and the Habeus Corpus Act of 1679 were significant historical events which influenced American constitutional development. The Mayflower Compact of 1620 was a landmark because it rested on the assumption that men may agree among themselves how they shall be governed and this concept of government based on the consent of the governed underlies American political thinking.

The American states adopted constitutions following the break with England and prior to the drafting of the U. S. Constitution in 1787 and its final ratification in 1789. The U. S. Constitution was the culmination of the concept of a written constitution setting forth the supreme law of the land. This constitution established a federal system of government with powers distributed between the central government and the states. It also provided for a separation of powers and checks and balances among the executive, legislative and judicial branches of the central government. A written constitution is essential to the maintenance of a distribution of powers between the central government and state governments and a separation of powers within a government.

The State Constitution and The Federal System

Michigan is one of fifty states comprising the United States of America. The tenth amendment to the U. S. Constitution states the theory underlying the federal system:

¹ Con-Con Research Paper No. 2, The State Constitution: Its Nature and Purpose, by Paul G. Kauper, J.D., Professor of Law, University of Michigan Law School. Copies of this 29 page report are available from the Research Council. The material in this Analysis is drawn largely from Dr. Kauper's paper.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Under this system the people of each state have the power to devise a system of government for their state subject to such restraints as they themselves impose and to restraints resulting from the federal system. Each state has the constitutional right to exercise the general powers of government subject to the provisions of the U. S. Constitution, laws enacted by Congress pursuant to the constitution, and treaties made by the United States.

In recent years there has been a significant expansion of the powers of the federal government. The broadened interpretation of the commerce power, the demands of national security, the virtually unlimited taxing and spending power, and the increased application by the federal courts of the due process and equal protection clauses of the fourteenth amendment to state actions have all contributed to the growth in power and importance of the federal government.

While the rapid expansion of the powers of the central government has had a considerable impact on the “balance of power” in the federal system, the states are not by any means withering away. The growth in recent years in state-local functions and expenditures has been substantial. The bulk of the criminal law, the system of private law, education, public health, and numerous other activities continue to be primary responsibilities of the states.

The future position of the states in the federal system of government will depend in large measure on how effectively the states can hold up their end of the bargain. If the states can perform their tasks efficiently and responsibly, then the vitality and integrity of the federal system can be maintained. Dr. Kauper points up the challenge faced by the states in revising their constitutions:

To establish a form of government responsive to the will of the people, organized to deal effectively with the problems of our day and equipped with powers adequate to meet the state’s needs....

The State Constitution

There is a distinction between the legislative powers of the U.S. Congress and the powers of a state legislature. The powers of the federal government are delegated powers and must be authorized by express or implied grants of power under the constitution. However, the government established by a state constitution enjoys all the powers of general government subject only to restraints derived from the constitution of the United States or the state’s own constitution. While ultimate sovereign power rests in the people, when the people through their state constitution establish the basic organs of representative government, they impliedly delegate to that government the general powers of government within the sphere of the

state's constitutional competence, subject to those restraints which the people chose to place in the state constitution.

While it is true that states need not point to specific grants of authority in the constitution, it is common to include specific grants of power as well as specific limitations on powers.

There are certain fundamentals that should be provided for in the state constitution. The qualifications of electors, those who are to participate in the political process, must be defined and the direct role they are to play in the legislative process through devices such as the initiative, referendum and recall must be determined. The organs of governmental power (executive, legislative, and judicial) must be established, and authority, powers and duties must be distributed among them. In addition to the three traditional branches of government, constitutional powers may be vested in local units of government and other public corporations such as universities. Various limitations are normally placed on the organs of government in the exercise of their powers—the traditional bill of rights and limitations on taxing and borrowing powers are examples. The provisions of the proposed constitution in these and other important areas will be the subjects of the series of analyses.

Dr. Kauper concluded the memorandum on *The State Constitution* with this statement:

In the end, the convention must submit the results of its deliberations to the state's electors for approval. To merit this approval, a proposed revision of the constitution must be a document that can be read and understood by citizens and which in meritorious features commends itself to the people as a worthy instrument for the furtherance of effective and responsible government directed to the end of serving and promoting the common good.