

1957

## Constitutional Dilemmas: Some Observations on New Mexico

Allan R. Richards

Follow this and additional works at: <https://digitalrepository.unm.edu/nmq>

---

### Recommended Citation

Richards, Allan R.. "Constitutional Dilemmas: Some Observations on New Mexico." *New Mexico Quarterly* 27, 4 (1957).  
<https://digitalrepository.unm.edu/nmq/vol27/iss4/5>

This Contents is brought to you for free and open access by the University of New Mexico Press at UNM Digital Repository. It has been accepted for inclusion in New Mexico Quarterly by an authorized editor of UNM Digital Repository. For more information, please contact [disc@unm.edu](mailto:disc@unm.edu).

ALLAN R. RICHARDS

*Constitutional Dilemmas:  
Some Observations on New Mexico*

The state constitution is customarily a major target of the critics of New Mexico's government. A barrage of superficial criticism assails the whole document: it is too long, too difficult to amend; it creates an inefficient skeleton of government and—because of its excessive detail—it seriously restricts the freedom of the Legislature.

Before evaluating his state constitution and its critics, the New Mexican might first find answers to several fundamental questions. What is the nature of a constitution? What is the rôle of a state constitution under the American system of government? What part does his state constitution play in implementing democracy? What stakes do the critics have in constitutional change?

In a broad sense, a constitution comprises the fundamental rules by which a society regulates itself. Religion, morals, custom, tradition—all engender rules in greater number and with more impact on human behavior than legal rules. Indeed, only when a legal rule is compatible with—or at least not incompatible with—the non-legal rules can it become law; the problem of school integration in the South rather than refuting this point merely proves it.

In a narrow sense, a constitution comprises those basic laws that prescribe the framework of government and the area of social activity it may regulate. Constitutions may be written or unwritten. A written constitution is a collection in one document of those basic laws that authorize the organs of the government it establishes to adopt the less fundamental laws it permits. On the theory that basic laws should not casually be altered, a written constitution usually makes its own amendment difficult. An unwritten constitution is not collected in a single document; rather it consists primarily of those statutes that observers

---

Allan R. Richards has his B.A. and M.A. from the University of Colorado and his Ph.D. from the University of North Carolina. He is Associate Professor of Government at UNM and has published widely.

choose to include. Since legislative enactments are its core, its amendment is relatively simple.

The point to be noted about formal constitutions, be they written or unwritten, is that they spell out very little of what the citizen regards as fundamental and they contain few of the principles that the citizen thinks they contain. Thus neither does the United States Constitution specifically authorize the Supreme Court to declare laws unconstitutional, nor does the Supreme Court review all laws for the constitutionality. The document does not impose even a modified capitalistic, laissez-faire, free enterprise system on the American economy. Judicial decisions, legislative acts, custom, and tradition are as great determinants of governments and their activities as written or unwritten constitutions. Indeed, all formal constitutions ultimately mean only what a society wants them to mean.

This is not to suggest that formal constitutions are totally without influence in determining the immediate course of political events. On the contrary, especially in the short run, the words of a constitution and their judicial interpretation can be quite effective.

In a sense, the New Mexican lives under at least four constitutions. He lives under the American constitution, in the broad sense (this is unwritten). He lives under the United States Constitution, in the narrow sense. He lives under the New Mexico constitution, in the broad sense. Finally, he lives under the New Mexico constitution, in the narrow sense. Of these four, the last is undoubtedly the least significant determinant of what his state government does.

Under the American federal system of government, state constitutions are relegated to an inferior rôle. By the Tenth Amendment, the United States Constitution confers upon states all the power they possess, but "state rights" are incapable of determination until after the national government has acted. Thus state constitutions can confer upon their governments no powers not authorized by the United States Constitution. This situation, of course, minimizes the importance of a state constitution.

Further, the United States Constitution offers better and fundamental protection to an individual against the activities of his state government than his written state constitution does. Recently, it has protected his right to attend non-segregated schools. And it preserves his freedom of speech and protects him against vague "obscene literature" laws that tend to deny him freedom of thought. It prevents his

government from denying its contractual obligations and from taking his property without due process of law. To the extent that his state constitution provides the citizen with these and similar protections, it uselessly duplicates the national constitution. In practice, state constitutions more often restrict economic activity and civil liberties than enlarge them.

Within the limitations of the United States Constitution and the unwritten national and state constitutions, the New Mexico constitution does all that it can do: it reflects the interests of the state with its peculiar problems of area and people. Since little evidence indicates that these interests are changing rapidly, fundamental amendment to the formal constitution seems unlikely. Indeed, the assumption that the process of government in New Mexico would change significantly or measurably as a result either of limited or of "far-reaching" constitutional revision reflects dreams rather than reality. Certainly no evidence suggests that the adoption of a constitutional amendment permitting absentee balloting would alter election results, much less change state policy toward agriculture. And a constitutional amendment authorizing annual sessions of the Legislature would hardly affect either the character of legislators or their votes on state speed limits.

Even were the entire document repealed and were New Mexico to be governed by an unwritten constitution, the pattern of government would remain much as it is, except perhaps that it might result in the reign of law rather than of lawyers. The transition from territory to statehood produced only slight changes in government structure and few substantive results readily apparent to the man on the street.

The forces capable of maintaining a constitutional status quo or of effecting constitutional change will necessarily remain capable of influencing the affairs of state. As a result of constitutional revision, the New Mexico Cattle Growers' Association is not going to disband, the New Mexico Educational Association is not going to close up shop, the New Mexico Taxpayers Association is not going to turn in its charter. The groups now instrumental in determining government activity will continue, their influence unabated. The same types of men will be elected to public office and will continue—through conscience, conviction, or conversion—to pass the same types of laws. And the same types of men will administer them and judge them. The point is that so long as the formal New Mexico constitution reflects the informal New Mexico constitution, the process of government must remain

basically the same, regardless of changes of words in the written document. Constitutional changes cannot divest interests; only when interests become divested can constitutions be amended.

These observations are intended, not in criticism of these conditions, but in analysis of them. Indeed, about these observations a happy note appears. According to what other basic principles would the New Mexican prefer to have his government operate? Would he choose to live under a government not responsive to the interests of the community? Would he choose a government that denies freedom of assembly, that denies citizens the opportunity to unite into groups for the purpose of influencing government? Could a government be called democratic that denied organized citizens the privilege of making their needs felt?

If the position suggested here be accepted, then a state government does no more than compromise competing group interests within limitations nationally imposed. This is at the same time all it does, all it can do, and all that its citizens should want it to do. This is the strength of democracy.

A government that resolves different interests is not weak, but strong, for its ability to strike a middle ground assures its stability and its continuance to live by the rules of the democratic game. The system, as it works and as it ought to work, means that the citizen's political activity should be in his own self-interest. The citizen who acts against his own self-interest is not utilizing the political strength that democracy provides him.

If government policy be the result of pressure from competing groups, if political parties, office holders, and voters be reflective of them, if the importance of state government to the citizen be its policy, then of what significant value is constitutional change?

Rather than spending his time trying to change a constitution that is relatively difficult to amend and relatively ineffective in the determination of government policy, the New Mexican is better advised to join a group that expresses his interests, pay his dues, and be an active member. In all likelihood his dues will be more effective than his individual activity.