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Constitutions

CONSTITUTION, government. The fundamental law of the state, containing the principles upon which the government is founded, and regulating the divisions of the sovereign powers, directing to what persons each of these powers is to be confided, and the manner it is to be exercised as. Definition from: A LAW DICTIONARY ADAPTED TO THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA AND OF THE SEVERAL STATES OF THE AMERICAN UNION by John Bouvier (1856 Ed.)

Here is how Constitutional scholar Henry Black defines a Constitution:

HANDBOOK of AMERICAN CONSTITUTIONAL LAW

by Henry Campbell Black, LL. D. Fourth Edition; West Publishing Company. 1927

Constitution Defined - § 3 . . .

A constitution differs from a statute or ordinary act of legislation in three important particulars:

1. It is enacted by the people as a whole (that is, by vote of the qualified electorate) who are to be governed by it, instead of by their representatives in a congress or legislature.
2. A constitution can be abrogated, repealed, or modified only by the power which created it, namely, the people in the sense stated above, whereas a statute may be repealed or changed by the legislature. The people, however, can modify or repeal their constitution only through the medium of a constitutional convention or constituent assembly, or by affirmative vote on

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amendments or on a new constitution duly submitted by the legislature. In those states where the initiative and referendum are in use, the provisions of the constitution are as binding on the people in the exercise of their legislative prerogative as upon the legislature, that is, these devices cannot be used to alter the constitution in any other mode than as the constitution itself provides. [State v. Dixon, 59 Mont. 58, 195 P. 841; State v. Stewart, 53 Mont. 18, 161 P. 309; City of Ft. Collins v. Public utilities Commission, 69 Colo. 554, 195 P. 1099]

3. The provisions of a constitution refer to the fundamental principles of government and the establishment and guaranty of liberties, instead of being designed merely to regulate the conduct of individuals among themselves. [Constitutions announce principles, while statutes apply them. Sproules v. State, 97 Tex Cr. R. 561, 262 S. W. 757.] But the tendency towards amplification in modern constitutions derogates from the precision of this last distinction.

At present there are at least 51 Constitutions operative in the United States of America. There are the Constitutions of the 50 states of the Union, and the Constitution of the United States. I say "at least" 51 because many of the states of the Union have more than one Constitution. As an example, California has two and Oklahoma had at least six different versions that have been found as of the date of this writing.

As noted above by the famous John Bouvier, a Constitution's essential element is that it is, "...containing the principles upon which the government is founded, and regulating the divisions of the sovereign powers..." You will note that in Bouvier's definition, nothing appears about regulating Citizens. That is because, at least in a free nation, it is **The People**, in agreement with each other, who create the Constitution for the sole purpose of establishing, defining, and limiting the scope of government.

"The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government."
-- Patrick Henry

Every state of the Union has a distinct and unique Constitution of its own. Of course if you are a state Citizen, as opposed to a "citizen of the United States" [federal

citizen], then you should attempt to locate your state's original Constitution because that's the one that establishes the true and original structure, powers, and limitations of your state government...at least when the state addresses you. [See the [Citizenship](#) location within this website for the distinctions between state Citizens and "citizens of the United States".]

All state laws must be made pursuant to the Constitution of the state and all federal laws must be pursuant to the Constitution of the United States. Laws that are manifestly incompatible with the language or intent of the Constitutions are null, void, and unenforceable. While it is commonly understood that a Supreme court of a state, or the United States, will declare a law unconstitutional, most people fail to recognize that the first step in that process is for a Citizen to decide, for himself, that a law is incompatible with the Constitution and refuse to obey the law. In other words, if we never take a stand, all laws will be presumed to be Constitutional. It is only through the belligerent actions of a nation's Citizens that laws are brought under review and then can be judicially declared unconstitutional.

Constitutions must be read and interpreted in plain English. One should take into account the way certain words or phrases may have been used or defined at the time the Constitution was drafted, and how they may differ from the use or definitions now in effect. The use and definitions of words or phrases as they existed at the time the document was written must control the interpretation of the provision(s) under review. Because most pre-Civil War Constitutions are intentionally succinct, significant weight must be given to the intended meaning of each section. If the intended meaning is not immediately clear from the language of the document, the "original intent" can be ascertained by review of the historical context of the issue being addressed and goals that must have been in the minds of the framers of the Constitution as they wrote the words. Usually the authors and signers of a Constitution will have written privately and/or publicly about the document or the various issued addressed within. Such writings have been routinely used to establish the exact meaning of various parts of Constitutions. Additionally, as we enter the 21st century, many of the questions we may ask have already been answered by various Supreme courts.

Constitutions are not "living documents" as is contended by some ignorant and verbose commentators. Because a Constitution defines the structure, powers, and limitations of the government, such elements are fixed, except as such may be altered by the amendment process. When a Constitution includes language that protects personal

liberties (sometimes called "natural rights" or "God-given rights"), these provisions must remain in effect, and remain fixed as they are for all time. They are not subject to modification by amendment because no one, not even our fellow Citizens, has the authority to deprive us of our liberty. If the Constitution in question is a Constitution that is operative in America, there is the added aspect that such Constitutions are controlled by the principles espoused in our Declaration of Independence. In the Declaration of Independence it states,

"...all men are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. **That to secure these rights, Governments are instituted among Men**, deriving their just powers from the consent of the governed, - **That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it**, and to institute new Government."

In other words, if a Constitution was altered in such a way as to diminish personal liberties or remove their protections, then the government constituted by that Constitution would cease to be a valid government and the Citizens would be greatly justified in using whatever means necessary to bring that government to an end.

As our society grows in size, evolves socially, and advances technologically, various issues that have never before been tested upon the Constitution will need to be so tested. It has been this way since the first state Constitution was created and it is still that way today. Fortunately, since the nature of man hasn't changed in thousands of years, the principles contained within these constitutions remains valid and enduring. When all is said and done, the underlying purpose of a Constitution is to keep the ways of men in check.

"Let no more be said about the confidence of men, but bind them down from mischief with the chains of the Constitution".
-- Thomas Jefferson

At this point it is probably prudent to explore why many states have more than one Constitution. Prior to the Civil War, each state of the Union had but one Constitution in existence. There was no apparent need for more than one because that single document could be amended by a vote of the People of the state. However, with the advent of the 14th Amendment to Constitution of the United States, the landscape was radically altered. [See [Citizenship](#) page on this website for the distinction between state Citizens and

"citizens of the United States.]

Citizenship under the 14th Amendment, is not a result of one's birthright [unalienable right], as is the citizenship status of a state Citizen. The status of "citizen of the United States" (aka - federal citizen) is one that is bestowed by the Constitution. In other words, the status of "citizen of the United States" is a statutory privilege granted by the government.

The original Constitutions of the states were created by **The People** of the states and were designed to serve the *de jure* [legitimate] state Citizens. ***As such, these Constitutions limited the operation of government in the manner required for addressing state Citizens.*** However, the state governments were not bound by the same limitations when governing "federal citizens" because these federal citizens did not have the same protections from government interference as do state Citizens. [See case law on the lack of rights of "citizens of the United States".] As can be seen from the following US Supreme Court holding, "federal citizens" do not inherently possess the same rights as do state Citizens:

"The right to trial by jury in civil cases, guaranteed by the 7th Amendment...and the right to bear arms guaranteed by the 2nd Amendment...have been distinctly held not to be privileges and immunities of citizens of the United States guaranteed by the 14th Amendment...and in effect the same decision was made in respect of the guarantee against prosecution, except by indictment of a grand jury, contained in the 5th Amendment...and in respect of the right to be confronted with witnesses, contained in the 6th Amendment...it was held that the indictment, made indispensable by the 5th Amendment, and trial by jury guaranteed by the 6th Amendment, were not privileges and immunities of citizens of the United States, as those words were used in the 14th Amendment. We conclude, therefore, that the exemption from compulsory self-incrimination is not a privilege or immunity of National citizenship guaranteed by this clause of the 14th Amendment."

Twining v. New Jersey, 211 US 78, 98-99

[See case law for more court rulings on this subject.]

One can clearly see that when dealing with federal citizens, a state could act with much greater flexibility. It could act toward federal citizens in ways that would be unconstitutional if done to state Citizens. So why did this require new state Constitutions? In section 1 of the 14th

Amendment, it states:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States **and of the State wherein they reside.**"

By ratifying this language, the states agreed to consider federal citizens living within their borders, a form of state citizen. We say, "a form of" because these federal citizens could not lay claim to the unalienable rights expressed in Declaration of the Independence, and thus were plainly in a different "class of citizenship". [See [Citizenship](#) page on this website for the distinction between state Citizens and "citizens of the United States.] When the states agreed to consider federal citizens as a form of state citizens, it raised significant state Constitutional issues - not the least of which was that these new citizens were not a party to the original state Constitutions! These new citizens were not **The People**, and never could be. The original Constitutions of the states were written by and for **The People** of the states, not these new hybrid (State/Federal) citizens.

Normally these non-*de jure* state Citizens would simply have been considered aliens within the state, but the 14th Amendment changed that. The individual states of the Union now needed to create a new State government (operating in parallel to the *de jure* state government) that was established under a Constitution by and for these hybrid citizens, with their different set of privileges, immunities, and disabilities. To achieve this end, the legislatures of the states of the Union created new Constitutions under which to govern their new hybrid citizens.

These new Constitutions are not "constitutions" in the true sense. A true Constitution creates a government of, by, and for, **The People**; **The People** being the *de jure* Citizens of that society/community/nation. These new Constitutions are actually nothing more than "statutory laws" that are dressed up as Constitutions and referred to as such. The original Constitutions of states admitted to the Union before the Civil War are based on the fundamental beliefs and concepts espoused in the Declaration of Independence. State constitutions drafted after the Civil War must be studied with a careful eye.

Under the long standing and well-settled doctrine of citizenship law, a person becomes a Citizen at birth, by the fact of the land upon which he is born, without there being any law necessary to grant him such citizenship. This is exactly the basis upon which state Citizens become Citizens of their respective states. However, 14th Amendment citizens would have no citizenship at all were it not for the

adoption of the Amendment. This makes their citizenship a "fiction of law". A Constitution can only be created by real "Citizens of the land" and the government that is created by a Constitution can only govern these "Citizens of the land" (and aliens within its borders); that is because the government (at least in America) must derive its power from **The People**.

Now, here we approach fundamental issue - there is no such thing as a legitimate government that governs only "fictions of law". And while federal citizens obviously are real people, their citizenship is a fiction of law, thus rendering "their" constitution a mere statute (created by the *de jure* state legislature) and their newly formed [parallel] State government a mere appendage of the legitimate and original, state government. Unfortunately, we have long ago come to a place where the "mere appendage" is far larger and more well recognized than the original and legitimate state government.

Amending a Constitution

Amending a Constitution is the act of legally changing the document in such a way as to achieve a desired political objective, and make that objective the Supreme Law of the land. In general terms, an amendment may change the document by adding to it, taking from it, or modifying existing elements of it. However, not every element of a Constitution is open to amendment.

While the method of amending a Constitution is generally fixed by the original language of the document, the reasons for amending a Constitution are without specified limits. They can be as pragmatic as determining that a provision within the document does not function very well in practical application, or as whimsical as the transient morays of an era. The 11th Amendment to the US Constitution would be a good example of the former, while the 18th Amendment would be a good example of the latter.

The steps required to amend a Constitution are generally to be found within the main body of the Constitution and must be followed precisely if an amendment is to lawfully become a part of the Constitution. While different Constitutions mandate different procedures for the amendment process, there are several practical steps that are fairly universal:

- Draft the amendment.
- Explain its implications to the legislature and **The People**.
- Promote it. Reinforce why it needs to become a part

of the Constitution.

- Vote on it.
- Certify that the amendment received the required number of votes.

Once certification is complete, the amendment then becomes an official and lawful part of the Constitution. However, because certain elements of a Constitution are not open to amendment; amendments that trespass upon those areas may be declared unconstitutional by the courts, if challenged.

The three principle purposes for amending a Constitution are the following:

1. To establish a "right" as a part of the nation's Constitutional law.
2. To protect a right already understood to exist.
3. To expand the government's authority.
4. To further limit the government's authority.

Whether an amendment, or a part of the main body of the Constitution, each provision of a Constitution falls within two categories. The first being self-executing; the second requiring the legislature to enact legislation to implement the intended purpose of the provision.

"A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced."

Cooley's Constitutional Limitations, 7th ed., p. 121;
Winchester v. Howard, 136 Cal. 432, 439 [64 P. 692, 69 P. 77, 89 Am.St.Rep. 153]; People v. Hoge, 55 Cal. 612. [15 Cal.2d 463]

It should be noted that the legislature has the prerogative to enact laws to protect a right contained in a self-executing provision. An example of this would be voter registration. By requiring voters to register, a citizen's voting rights are secured from abuse by non-citizens.

Further, while a state may impose reasonable and non-restrictive regulations upon the exercise of a Constitution right **secured** [recognized as pre-existing] to a Citizen of a state of the Union (such as the voting example cited above), rights **granted** by the Constitution may be controlled through legislation.

Additionally, It is well settled that a right **granted** by the Constitution may be waived by the inaction of the person

entitled to exercise such right. [*Bigelow v. Ballerino*, 111 Cal. 559 [44 P. 307]; *Gurnsey v. Northern Cal. Power Co.*, 160 Cal. 699 [117 P. 906, 36 L.R.A. (N. S.) 185]; *Sala v. City of Pasadena, supra*; *Yonker v. City of San Gabriel*, 23 Cal.App.2d 556 [73 PaCal.2d 623]].

In America, we now have three forms of Constitutions in operation. The first is the original [de-jure] Constitution of a state. Unless one initiates a court action that relies upon a provision of an original Constitution, the states now function exclusively upon the second form of Constitution - the new state Constitutions for federal citizens. The third form is the federal Constitution.

Because the states no longer actively function on their original Constitutions, they only amend the newer ones. In accordance with the limited protections of federal citizens, amendments to these newer Constitutions can address virtually any issue and can impose restrictions and limitations that are not enforceable upon *de jure* state Citizens.

The federal Constitution currently has 16 amendments that have been added since the document was ratified by the states in 1789. These amendments not only vary in purpose, but also in the areas and persons effected. There is a general belief in America that all amendments to the US Constitution apply to all Americans, as well as to the states of the Union. An examination of the decisions of the US Supreme Court shows that belief to be in error.

The first amendment that is illustrative of a significant point is the 13th. The 13th Amendment makes involuntary servitude and slavery unconstitutional (except as punishment after being duly convicted of a crime). The Amendment bans involuntary servitude and slavery "within the United States, or any place subject to **their** jurisdiction". Please note the word that we have emphasized - "their". This is the manner in which amendments and legislation must be written if the law is to apply within the sovereign lands of the 50 states and to their Citizens.

The 14th Amendment works in just the opposite fashion. The 14th Amendment embraces persons "born or naturalized in the United States, and subject to the jurisdiction thereof". The phrase, "subject to the jurisdiction thereof" does not state the "plural nature" [i.e. "their"] that is required to refer to the states of the Union. In the absence of the plural language, the courts have ruled that the law applies only to federal places or persons. The other manner in which federal law sometimes addresses this issue is with the phrase, "...in the United States, and subject to **its**

"jurisdiction". Both phrases shown in this paragraph refer only to federal places.

This would be a good place to toss in these legal tidbits for you to ponder:

"The persons declared to be citizens are, "All persons born or naturalized in the United States and subject to the jurisdiction thereof." The evident meaning of these last words is not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject..." Elk v. Wilkins, 112 US 94, 101, 102 (1884) [emphasis added]

"The provision of the Constitution of the United States, which gives Congress the power to establish 'an uniform rule of naturalization,' is construed to mean, that the rule when established shall be executed by the State. The Legislature of California has by express enactment, conferred the jurisdiction on the District Courts of this State to grant naturalization, according to the rules established by Congress".

Frank Nowles - Ex Parte, 5 CAL 300 (1855)

The 15th Amendment restricts the federal government and the governments of the states from denying "citizens of the United States" the right to vote based on "race, color, or previous condition of servitude". This amendment applies exclusively to 14th Amendment citizens. You will notice that the 14th Amendment does not give federal citizens the right to vote, nor did the Enforcement Act, the Freedman's Bureau Act, or the Civil Rights Act of 1866, upon which the 14th Amendment was based. There was much debate in Congress and in the press after the ratification of the 14th Amendment on the subject of black voters. While a handful of states allowed blacks to be Citizens and vote, the general consensus was that blacks should not be permitted to vote. Interestingly, many of the Congressmen and Senators who argued most strongly for the 14th Amendment, decried efforts to permit blacks to vote. The 15th Amendment ended that discussion.

The 16th Amendment is addressed in the area of this site that covers income tax.

The 18th Amendment created Prohibition. We've all heard the stories - especially about Al Capone. However, once again we find familiar language being used in the Amendment:

After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors

within, the importation thereof into, or the exportation thereof from ***the United States and all territory subject to the jurisdiction thereof*** for beverage purposes is hereby prohibited.

Does this mean what you're thinking it means? Yes! In *Cunard S. S. Co. v. Mellon*, 262 U.S. 100, 43 S.Ct. 504 (1923), the US Supreme Court held that the language Congress used in the Amendment limited its application to areas under the exclusive legislative jurisdiction of Congress - which of course is not the states of the Union.

The 19th Amendment, like the 15th, lays restriction on the governments concerning interference with voting by "citizens of the United States"; this time no one can deny federal citizens the right to vote based on sex.

The 21st Amendment, which repealed Prohibition, is really rather fascinating. As you just read, in the 18th Amendment, federal lands and other places of exclusive federal jurisdiction were referred to as, "***the United States and all territory subject to the jurisdiction thereof***". In repealing the Amendment, Congress describes those same places this way:

"...any State, Territory, or possession of the United States..."

It is important to note that in federal law, Congress defines various places of exclusive federal jurisdiction as "States". These places are not "states of the Union". They are also sometimes referred to by Congress as "States of the United States".

The 23rd Amendment is both illustrative and disturbing. In this Amendment, the Washington DC is granted the legal right [privilege] to appoint electors to vote for President and Vice-President. This amendment (and various federal court cases) clearly illustrate that the District of Columbia is not a state of the Union. If it were, it would have been appointing electors since the beginning of our nation to vote for these offices, and no amendment would have been required to grant them that privilege.

It is also disturbing in that the people of the District of Columbia are not **The People** who are a party to the US Constitution. Why is a "State" comprised of solely non-*de jure* Citizens being given rights commensurate with the rights of true statehood?

The 24 Amendment again deals exclusively with federal

citizens. This time they may not be denied various voting rights in the event that they fail to pay a poll-tax or any other tax.

The 26th Amendment again deals exclusively with federal citizens. This time they may not be denied voting rights based on age, provided that they have reached the age of 18.

Amendments not specifically listed or discussed were not thought to be relevant the issues being addressed.

The Constitution In Time of War

Many questions exist as to what steps the government may take in time of war, or other national emergency, concerning the US Constitution. The concerns range up to and include a concern that the federal government may attempt to suspend the Constitution.

Let us be clear from the outset; the Constitution provides that the government may alter one element, and one element **only**, during time of war - that being that the government may suspend the right of *habeas corpus*. That's it! Period! End of story!

Since the Founding Fathers were so thorough as to include the government's power to suspend *habeas corpus* in time of war, we can safely and accurately say that it is the complete list of the Constitution's provisions that can be suspended in time of war. If there was no mention at all within the Constitution of what provisions may be suspended during time of war, one might reasonably suggest that their failure to address the subject was an oversight that may be addressed by Congress or the courts if they see fit to do so. However, having the *habeas corpus* provision specifically raised within the Constitution dispels any argument that they had not thoughtfully considered the issues of the Constitution operating in time of war and reached the decision that suspension of *habeas corpus* was adequate to address the circumstance.

At Original Intent we believe that the Founding Fathers intentionally and wisely limited the wartime suspension to only the right of *habeas corpus* in order to restrain future generations of US officials from using war as an opportunity to achieve ends not contemplated by the Constitution. We think that as in so many instances, the Founding Fathers showed great forethought and wisdom in thus restraining future prerogatives. Certainly our national history would suggest that if broader powers of wartime suspension were

available, they would have been used, and likely not in ways of which we would condone.

We must now tell you that the US Supreme Court has made egregious decisions in this area over the years. In many instances political expediency defeated the Constitution in their decisions. Such rulings can be cause for both anger and disappointment, but they are not unanticipated.

"...the Federal Judiciary; an irresponsible body (for impeachment is scarcely a scare-crow), working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing it's noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the States, and the government of all be consolidated into one... when all government...in little as in great things, shall be drawn to Washington as the centre of all power, it will render powerless the checks provided of one government on another and will become as venal and oppressive as the government from which we separated."

-- Thomas Jefferson, 1821

Who among us can read those words and not a feel a sense of dread; a feeling of fear for our way of life? This sense of dread does not come from the fear that such events may occur in the future. It comes from an immediate recognition that this is exactly what has been happening in this nation.

In many court cases, the decision is incorrect because one side or the other did not present the proper argument to the court, and thus the "proper argument" simply was never presented to the court. Although we have no love of judges, for the rare judge with conscience, this must be one of the most difficult moments; knowing that a party is correct in their fundamental position, but having to rule against them because all of their arguments were off-point. In an effort to resolve that problem, let's look at what one Constitutional scholar has to say about the Constitution in time of war:

HANDBOOK of AMERICAN CONSTITUTIONAL LAW

by Henry Campbell Black, LL. D. Fourth Edition; West Publishing Company. 1927 THE CONSTITUTION IN TIME OF WAR.

§ 18. Even in the supreme exigency of a war in which the United States may be engaged, no provision or guaranty of the Constitution is abrogated, dispensed with, or even suspended.

The Constitution of the United States is a law for rulers and

people equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism; but the theory of necessity on which it is based is false, for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence. (*ex parte Milligan*, 4 Wall. 123, 18 L. Ed. 281@ 295.) Indeed, it has been said that in times of stress, such as war or great public clamor, the constitutional restraints should be all the more firmly binding. (*State v. Rowley* (Iowa) 187 N. W. 7.)

And why can the Constitution not be suspended during time of war? Because the rights of a state Citizen do not come from the Constitution and therefore these pre-existing rights cannot be abrogated by the government and, according to the Declaration of Independence, the protection of these rights is the sole purpose for the government's existence. What you are about to read does not apply to "citizens of the United States" because their rights are not pre-existing, but are granted by the Constitution.

§ 6. The constitutions of the American states are grants of power to those charged with the government, but not grants of freedom to the people. They define and guaranty private rights, but do not create them.

The state constitutions in this country grant and limit the powers of the several departments of government, but, generally speaking, they are not to be considered as the origin of liberty or rights. [*Ex parte Quarg*, 149 Cal. 79, 84 P. 766, 5 L.R.A. (N.S.) 183, 117 Am. St. Rep. 115, 9 Ann. Cas. 747; *People v. Warden of City Prison*, 154 App. Div. 413, 139 N.Y.S. 277, 29 N.Y.Cr. R. 66.] But with more particular reference to the rights called natural, it must now be remarked that they exist before constitutions and independently of them. Constitutions enumerate such rights and provide against their deprivation or infringement, but do not create them. It is supposed that all power, all rights, and all authority are vested in the people before they form or adopt a constitution. By such an instrument, they create a government, and define and limit the powers which its agencies are to exercise, and they also specify the rights which the constitution is to secure and the government respect. But they do not thereby invest the citizens of the commonwealth with any natural rights which they did not before possess. This is shown by the provision found in the constitutions of many of the states that the enumeration, in

the Bill of Rights, of particular rights or privileges shall not be construed to impair or derogate from others retained by the people.

