In the 1960s a number of state constitutions were amended to include provisions prohibiting discrimination in the exercise of civil rights. Pennsylvania, for example, added a provision in 1967 which directs that "[n]either the Commonwealth nor any political subdivisions thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right."[71] Similar provisions in other states typically limit the proscription to discrimination on the basis of race, color, or national origin.[72] These antidiscrimination provisions are products of the civil rights movement in the 1950s and 1960s.

Prohibiting this type of discrimination has become increasingly important as state governments have expanded from mere regulation into the provision of services. When state governments merely regulated conduct, prohibiting them from denying persons' civil rights was an effective limit—they did not have the leverage of attaching "unconstitutional conditions" to the provision of services; therefore, it was not as easy to favor one right over another. When the state acts as a service provider, however, as it does in programs such as Medicaid, it has the opportunity, in Professor Lawrence Tribe's words, "to achieve with carrots what [it] is forbidden to achieve with sticks.[73] Thus, these provisions prohibiting discrimination against persons in the exercise of their civil rights are needed to keep states from picking and choosing among citizens' rights they seek to advance or repress.

Several states adopted constitutional provisions banning various forms of sex discrimination at the end of the nineteenth century.[74] Generally speaking, however, the "state ERA" is a phenomenon of the 1970s—the most recent manifestation of equality concerns in state constitutions. More than a third of the states now have amendments prohibiting sex discrimination. As the Maryland Court of Appeals noted:

> [W]e believe that the "broad, sweeping, mandatory language" of the amendment is cogent evidence that the people of Maryland are fully committed to equal rights for men and women. The adoption of the E.R.A. in this state was intended to, and did, drastically alter traditional views of the validity of sex-based classifications.[75]

Despite their powerful mandate, most jurisprudence under these new provisions is dominated by federal equal protection analysis. Indeed, most state courts addressing sex discrimination claims seem preoccupied with federal equal protection constructs, largely undermining the state provisions.

Although many states have interpreted generally applicable rights provisions to guarantee equality under the law, other provisions, not usually found in bills of rights, expressly require equality in specific instances. When applicable,

these provisions offer state courts sound textual basis for invalidating state actions. And at the same time they warrant extending equality guarantees beyond those of federal equal protection doctrine, these provisions allow courts to avoid some of the problems of basing decisions on generally applicable equality provisions. For example, the provision in the New Jersey Constitution requiring a "thorough and efficient" education, like provisions in other states, supported a judicial decision requiring equal and adequate educational funding.[76]

State prohibitions on special rights and privileges, special and local laws, discrimination against persons in the exercise of civil rights, and discrimination on the basis of sex may similarly be viewed as specific and limited equality provisions. In addition, most states have uniformity in taxation provisions that provide specific grounds for enforcing equality.[77] Although these provisions may be limited in focus, they can be far reaching in effect.[78]

Property Rights: Eminent Domain, Takings, and Due Process

The general area of property rights has been dominated by the provisions of the federal Constitution. The Supreme Court of the United States has been relatively active in limiting the authority of state governments to regulate the use of property.[79] Recent decisions, however, have provided states with slightly more leeway.[80] Most state constitutions contain provisions similar to the federal Constitution's prohibitions on taking of private property for public use without just compensation (eminent domain),[81] regulatory taking (inverse condemnation)[82] and deprivation of property without due process of law.[83]

Eminent Domain

Many of the state constitutions, from the earliest times, have prohibited the taking of property for public use without just compensation. Over the years the conception of what constitutes a "public use" has been greatly liberalized.[84] Some state constitutions, however, like that of Alaska, prohibit property from being taken *or damaged* without just compensation.[85] Each of the states has developed an elaborate judicial interpretation of the procedures to be followed in eminent domain, the definitions of what constitutes a "public use" and the processes for determining "just compensation."

Regulatory Taking (Inverse Condemnation)

State courts, in similar fashion to the federal courts, have developed the concept of "inverse condemnation" as a response to governmental regulations that unreasonably limit the use of property. In these circumstances, the government has not instituted any formal eminent domain proceedings, yet the property

owner sues claiming that his property has been "taken" (or "damaged") without just compensation. This is referred to as *inverse* condemnation because the government has never actually started proceedings to take the property, but the property owner argues that its actions are tantamount to such a taking. The textual basis for such claims is the eminent domain clause. Some state courts interpret their state constitutional provision, in these contexts, to be the same as the similar federal constitutional provisions.[86]

Due Process of Law

Many state constitutions contain prohibitions on deprivation of property without due process of law, in language quite similar to that contained in the federal Constitution. Other states use a slightly different formulation, prohibiting deprivation of property except by "due course of law." These provisions come into play, most often, in judicial challenges to the *procedure* by which the government goes about seizing peoples' property or depriving them of its use.

Positive Rights

The idea of a "positive" right indicates a form of affirmative obligation on the part of the government to provide something to people. By contrast, a "negative" right indicates that the government may not do something to people, or deny them certain freedoms. The federal Constitution is often said to contain only negative rights—for example, the First Amendment merely provides that "Congress shall pass no law" but does not affirmatively guarantee freedom of speech or of the press. On the other hand, state constitutions, in addition to negative rights, also contain a number of positive rights.[87]

In truth, the distinction between positive rights or "mandates"[88] and negative rights is not as great as it seems on the surface. For example, in enforcing the negative right prohibiting government from interfering with free speech, the government may be required to expend substantial resources for police to monitor parade routes, crowds, and so on. Further, vindicating the rights against unreasonable search and seizure or self-incrimination can require substantial outlay for investigatory resources. Despite the difficulties of categorizing rights as negative or positive, however, it is clear that there is a range of issues, such as health care, shelter, and subsistence income, that were already dealt with in some state constitutions and that will likely be issues for further state constitutional development.

The New York Constitution contains a requirement that the legislature "provide for the aid, care and support of the needy";[89] Alabama's constitution requires "adequate maintenance of the poor";[90] Colorado's provision promising an "old age

pension to all residents 60 years of age and older";[91] Massachusetts' guarantee of "food and shelter in time of emergency,"[92] together with many other similar provisions form the basis of the conclusion that state constitutions already provide for a number of "positive" rights.[93] Art. XI, sec. 4 of the North Carolina Constitution, provides "Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore, the General Assembly shall provide for and define the duties of a board of public welfare."[94]

Professor Helen Hershkoff has provided a strong case for the inclusion of positive rights in state constitutions.[95]

Privacy

Unlike the federal Constitution, where the right of privacy has been inferred from various nonspecific provisions, several state constitutions now contain explicit privacy guarantees. For example, in Florida the voters adopted the following provision in the Florida Constitution in 1980:

> Section 23, Right of Privacy. - Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Alaska, California, and Montana have similar provisions.[96] The Florida Supreme Court relied on its state constitutional provision to strike down a requirement of parental consent for abortion,[97] and Alaska relied on its provision to strike down a limitation on the private possession of marijuana.[98] The Florida Supreme Court, however, rejected an argument that physician-assisted suicide was protected by Florida's explicit privacy provision.[99] Most privacy provisions are of relatively recent vintage and reflect the evolution of ideas about protecting rights in the states.

Unenumerated Rights

A number of state constitutions contain provisions at the end of their Declarations of Rights responding to the concern that by listing certain rights, others should not necessarily be excluded. For example, art. I, sec. 20 of the Ohio Constitution provides: "This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated, remain with the people."

Several questions arise immediately from the inclusion of such clauses in state constitutions. First, what are the other rights to which such a clause refers? Second, once the other rights are identified, are they judicially enforceable?[100] An example of a state court that found an unenumerated rights clause to support judicial enforcement was Alaska. In *McCracken v. State,*[101] the Alaska Supreme Court determined that there was a right to counsel, including the right to self-representation, in postconviction proceedings. Such proceedings were *civil* in nature, and therefore the explicit state constitutional right to counsel in *criminal* cases did not apply. The court looked to what it considered to be important or fundamental rights at the time of the framing of the constitution and considered those rights to be included in the unenumerated rights clause. The Mississippi Supreme Court ruled in 1998 that a state constitutional right to privacy and the right to choose abortion arose from its unenumerated rights provision.[102] Other courts, however, find that these clauses, much like the Ninth Amendment to the United States Constitution,[103] do not provide judicially enforceable rights.[104]

From a different perspective, unenumerated rights clauses that proclaim the existence of rights that are not explicitly listed can be seen as conflicting directly with the theory of plenary legislative power. In other words, rights provisions often operate as limits on the legislature (and, sometimes, on the executive and even private parties). When such "unenumerated" rights exist, the legislative power is not quite as plenary, or unrestricted, as it seemed.[105]

Issues for the Future

It is, of course, difficult to predict what rights issues will arise in the future. Also, because it is easier to amend state constitutional rights provisions than their federal counterparts, it is not imperative to try to look too far into the future. The Louisiana Constitution was amended in 1974 to include an equality provision prohibiting arbitrary discrimination on the basis of, among other things, "age," "birth," and "physical condition."[106] The word "birth" was chosen to provide protection for illegitimate children.[107]

Even now we are confronted with a range of new privacy concerns arising from the explosion in electronic data gathering, collection and communication in the cyberspace age,[108] and the increasing use of technology in law enforcement,[109] as well as advances in artificial intelligence. The same could be said for issues arising from biomedical ethics and cloning,[110] as well as from the fast-paced changes in reproductive technology.[111] The accelerating rate of globalization and privatization also may raise a variety of state constitutional rights concerns. Finally, none of us can expertly predict the range of issues that will arise in our post-9/11 world. State constitutions will need to be amended to protect rights in this ever-changing world.

NOTES

1. Views of what constituted "modern," state constitutional rights provisions in the last generation included collective bargaining rights for labor, equal rights for women and civil rights provisions. *See* Robert F. Williams, *The New Jersey State Constitution: A Reference Guide* 16 (rev. ed., 1997); Milton Greenberg, "Civil Liberties," in *Salient Issues of Constitutional Revision* 7, 15–19 (John P. Wheeler, ed., 1961); Robert S. Rankin, "The Bill of Rights," in *Major Problems in State Constitutional Revision* 159, 166–74 (W. Brooke Graves, ed., 1967); Frank P. Grad, "The State Bill of Rights," in *Con-Con: Issues for the Illinois Constitutional Convention* (Victoria Ranney, ed., 1970).

2. Rankin, supra note 1, at 175.

3. On November 2, 1982, the Massachusetts voters approved a constitutional amendment which added a second and third sentence to art. 26: "No provision of the Constitution, however, shall be construed as prohibiting the imposition of the punishment of death. The general court may, for the purpose of protecting the general welfare of the citizens, authorize the imposition of the punishment of death by the courts of law having jurisdiction of crimes subject to the punishment of death," Art. 116 of the Amendments to the Massachusetts Constitution. *See also* Cal. Const., art I, § 27; Ore. Const., art I, § 40.

4. "Searches and seizures. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. . . . *This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution*." Fla. Const., art. I, § 12 (amendment in italics).

5. (a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes on the State of California or any public entity, board, or official any obligations or responsibilities *which exceed those imposed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation*. In enforcing this subdivision or any other provision of this Constitution, no court of this state may impose on the State of California or any public entity, board, or official any obligation or responsibility with respect to the use of pupil school assignment or pupil transportation, (1) except to remedy a specific violation by such party that *would also constitute a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution,* and (2) unless a federal court *would be permitted under federal decisional law to impose that obligation or responsibility on such party to remedy the specific violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. . . .* Cal. Const., art. I, § 7. The amendment was upheld against a federal constitutional challenge in *Crawford v. Board of Educ. of Los Angeles,* 458 U.S. 527 (1982).

6. *Raven v. Deukmejian,* 801 P.2d 1077 (Cal., 1990).

7. *Grose v. Firestone,* 422 So.2d 303 (Fla., 1982).

8. *See* Barton H. Thompson, Jr., "Environmental and Natural Resource Provisions in State Constitutions," in this volume.

9. *Hill v. NCAA,* 865 P.2d 633 (Cal., 1994).

10. *See* John Devlin, "Constructing an Alternative to 'State Action' as a Limit on State Constitutional Rights Guarantees: A Survey, Critique and Proposal," 21 *Rutgers L.J.* 819 (1990).

11. James M. Fischer, "Ballot Propositions: The Challenge of Direct Democracy to State Constitutional Jurisprudence," 11 *Hastings Const. L.Q.* 43, 45 (1983).

12. Donald E. Wilkes, Jr., "First Things Last: Amendomania and State Bills of Rights," 54 *Miss. L.J.* 223, 233 (1984).

13. Ibid. *See also* Fischer, supra note 11, at 79.

14. Fischer supra note 11, at 77.

15. Janice C. May, "Constitutional Amendment and Revision Revisited," 17 *Publius: The Journal of Federalism* 153, 178–79 (1987).

16. Harry L. Witte, "Rights, Revolution, and the Paradox of Constitutionalism: The Processes of Constitutional Change in Pennsylvania," 3 *Widener J. Pub. L.* 383, 475 (1993). *See also* Douglas S. Reed, "Popular Constitutionalism: Toward a Theory of State Constitutional Meanings," 30 *Rutgers L.J.* 871 (1999).

17. Lynn A. Baker, "Constitutional Change and Direct Democracy," 66 *U. Colo. L. Rev.* 143 (1995).

18. *State v. Schmid,* 423 A.2d 615, 626 (N.J., 1980).

19. *New Jersey Coalition Against War in the Middle East v. J. M. B. Realty Corp.,* 658 A.2d 757 (N.J., 1994).

20. Jennifer A. Klear, "Comparison of the Federal Courts' and the New Jersey Supreme Court's Treatment of Free Speech on Private Property: Where Won't We Have the Freedom to Speak Next?" 33 *Rutgers L.J.* 589 (2002).

21. Ibid.

22. *See generally* Robert F. Hall, "Remonstrance—Citizens's Weapon Against Government's Indifference," 68 *Tex. L. Rev.* 1409 (1990).

23. *Humphrey v. Lane,* 728 N.E. 2d 1039 (Ohio, 2000).

24. G. Alan Tarr, "Church and State in the States," 64 *Wash. L. Rev.* 73 (1989); Chester J. Anteau, *Religion Under State Constitutions* (1965).

25. Joseph P. Viteritti, "Blaine's Wake: School Choice, The First Amendment, and State Constitutional Law," 21 *Harv. J.L. & Pub. Policy* 657 (1998); Robert F. Utter and Edward J. Larson, "Church and State on the Frontier: The History of the Establishment Clauses in the Washington State Constitution," 15 *Hastings Const. L.Q.* 451 (1988).

26. *See,* for example, *Chittenden Town School District v. Department of Education,* 738 A.2d 539 (Vt., 1999); James A. Peyser, "Issues in Education, Law and Policy: School Choice: When, Not If," 35 *B.C. L. Rev.* 619 (1994); Note, "The Limits of Choice: School Choice Reform and State Constitutional Guarantees of Educational Quality," 109 *Harv. L. Rev.* 2002 (1996).

27. Talbot D'Alemberte, *The Florida State Constitution: A Reference Guide*, 27–28 (1991).

28. Susan P. Fino, *The Michigan State Constitution: A Reference Guide*, 39–40 (1996).

29. Ibid. at 40.

30. 493 P.2d 880 (Cal., 1972). *See also State v. Bullock,* 485 N.W. 2d 866 (Mich., 1992) (same).

31. 619 P.2d 315 (Utah, 1980).

32. *American Fork City v. Cosgrove,* 701 P.2d 1069 (Utah, 1985).

33. *See Commonwealth v. Ludwig,* 594 A.2d 281 (Pa., 1991). The Pennsylvania voters approved an amendment to overrule this decision, but it was declared unconstitutional by the Pennsylvania Supreme Court because the proposed amendment contained more than one subject. *Bergdoll v. Kane,* 731 A.2d 1261 (Pa., 1999). The amendment was properly proposed and adopted in 2003.

34. David Schuman, "The Right to a Remedy," 65 *Temple L. Rev.* 1197 (1992).

35. *See,* for example, *State* ex rel *Ohio Acad. of Trial Lawyers v. Sheward,* 715 N.E. 2d 1062, 1100 (Ohio, 1999); *Fla. Consumer Action Network v. Bush,* No, 99-6689 (Fla. Leon County Cir. Ct., Feb. 9, 2001).

36. Ky. Const., § 54.

37. Ky. Const., § 241; see *Saylor v. Hall,* 497 S.W. 2d 218 (Ky., 1973).

38. Ariz. Const., art. 2, § 31; *see Hayes v. Cont'l Ins. Co.,* 872 P.2d 668, 676 (Ariz., 1994); *Smith v. Myers,* 887 P.2d 541, 544 (Ariz., 1994); Roger C. Henderson, "Tort Reform, Separation of Powers and the Arizona Constitutional Convention of 1910," 35 *Ariz. L. Rev.* 535 (1993). The Arizona provision is discussed in Stanley Feldman, *Comment,* 31 *Seton Hall L. Rev.* 666, 668–69 (2001).

39. Okla. Const., art. XXIII, § 6; *see Reddell v. Johnson,* 942 P.2d 200 (Okla., 1997); *see also* Mont. Const., art II, § 16; *Connery v. Liberty Northwest Ins. Co.,* 960 P.2d 288, 290 (Mont., 1998); *Trankel v. State Dep't of Military Affairs,* 938 P.2d 614, 621 (Mont., 1997).

40. *Van Dusen v. Stotts,* 712 N.E. 2d 491 (Ind., 1999); *Martin v. Richey,* 711 N.E. 2d 1273 (Ind., 1999).

41. *Best v. Taylor Mach. Works,* 689 N.E. 2d 1057 (Ill., 1997); David Fink, Note, Taylor Machine Works, *The Remittiur Doctrine, and the Implications for Tort Reform,* 94 *N.W.U. L. Rev.* 227 (1999).

42. *Smothers v. Gresham Transfer, Inc.,* 23 P.3d 333 (Ore., 2001); *Lakin v. Senco Prod., Inc.,* 987 P.2d 463 (Ore., 1999).

43. *State* ex rel. *Ohio Acad. of Trial Lawyers v. Sheward,* 715 N.E. 2d 1062 (Ohio, 1999); Christopher M. Winter, Comment, "The Ohio Supreme Court Reaffirms Its Right to Declare Statutes Unconstitutional," 31 *Rutgers L.J.* 1468 (2000).

44. *See* Robert F. Williams, "In the Supreme Court's Shadow: Legitimacy of State Rejection of Supreme Court Reasoning and Result," 35 *S.C. L. Rev.* 353 (1984).

45. Robert F. Williams, "In the Glare of the Supreme Court: Continuing Methodology and Legitimacy Problems in Independent State Constitutional Rights Adjudication," 72 *Notre Dame L. Rev.* 1015 (1997).

46. G. Alan Tarr, *Understanding State Constitutions* 174–75 (1998).

47. Ore. Const., art. I, § 15: "Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice." *See generally* Stephen Kanter, "Dealing with Death: The Constitutionality of Capital Punishment in Oregon," 16 *Williamette L. Rev.* 1, 30–52 (1979). The Oregon voters amended their constitution specifically to authorize the death penalty. *See State v. Wagner,* 752 P.2d 1136, 1150 (Ore., 1988) and *Clark v. Paulus,* 669 P.2d 794 (Ore., 1983).

The Indiana Supreme Court held that the state constitutional requirement that the "penal code shall be founded on principles of reformation, and not of vindictive justice" did not prohibit the death penalty. *Adams v. State,* 271 N.E. 2d 425 (Ind., 1971). *See also Woods v. State,* 547 N.E. 2d 772, 784–85 (Ind., 1989) (discussing application of the provision).

48. Ore. Const., art. I, § 25: "No conviction shall work corruption of blood, or forfeiture of estate."

49. Ore. Const., art. I, § 16: "Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offense. . . ."

50. Ore. Const., art. I, § 13: "No person arrested, or confined in jail, shall be treated with unnecessary rigor." *See Stirling v. Cupp,* 625 P.2d 123 (Ore., 1981).

51. Wyo. Const., art. I, § 16.

52. Ga. Const., § 2–114. Georgia's constitutional provision is discussed by Dorothy T. Beasley, "The Georgia Bill of Rights: Dead or Alive?" 34 *Emory L.J.* 341, 380–415 (1985). *See also* Tenn. Const., art. I, § 13; Utah Const., art. I, § 9.

53. *Sterling v. Cupp,* 625 P.2d 123, 128–29 (Ore., 1981).

54. *See* William Van Rogenmorter, "Crime Victims' Rights—A Legislative Perspective," 17 *Pepp. L. Rev.* 59 (1989); Patrick B. Calcutt, Comment, "The Victims Rights Act of 1988, the Florida Constitution, and the New Struggle for Victims' Rights," 16 *Fla. St. U. L. Rev.* 811 (1988); Don Siegelman and Courtney Tarver, "Victims' Rights in State Constitutions," 1 *Emerging Issues in St. Const. L.* 163 (1988); Paul G. Cassell, "Balancing the Scales of Justice: The Case for and the Effects of Utah's Victims' Rights Amendment," 1994 *Utah L. Rev.* 1373 (1994).

55. N.J. Const., art. I, par. 22. *See* Richard E. Weglyn, "New Jersey Constitutional Amendments for Victims' Rights: Symbolic Victory?" 25 *Rutgers L.J.* 183 (1993).

56. *Bandoni v. State* 715 A.2d 580 (R.I., 1998).

57. The federal equal protection clause provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, § 1.

58. *See,* for example, *Love v. Borough of Stroudsburg,* 597 A.2d 1137, 1139 (Pa., 1991); *Commonwealth v. Albert,* 758 A.2d 1149, 1151 (Pa., 2000).

59. *See* Brown, "The Making of the Wisconsin Constitution," 1952 *Wis. L. Rev.* 23, 60 (noting absence of equal protection clause); Hargrave, "The Declaration of Rights of the Louisiana Constitution of 1974," 35 *La. L. Rev.* 1, 6–10 (1974) (discussing Louisiana's equal protection clause); Karasik, "Equal Protection of the Law Under the Federal and Illinois Constitutions," 30 *De Paul L. Rev.* 263, 270, n. 33 (1981) ("Illinois was only the eighth state to include an equal protection clause in its constitution"); Margulies, "A Lawyer's View of the Connecticut Constitution," 15 *Conn. L. Rev.* 107, 108 (1982) (discussing Connecticut's several equality provisions). Georgia added an equal protection clause in 1983. Ga. Const., art. I, § I, par. II.

The Ohio constitution contains an interesting "equal protection and benefit" clause. It provides: "Government is instituted for their equal protection and benefit." Ohio Const., art. I, § 2 (1851).

60. New Jersey's "equal protection" doctrine, for example, is based on a clause that provides: "All persons are by nature free and independent, and have natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." N.J. Const., art. I, par. 1 (1947). This provision was revised in 1947, changing "all men" to "all persons," to grant equal property and employment rights to women.

61. Va. Const., Bill of Rights, § 1 (1776). Of course, at that time most states still denied the franchise to blacks, women, and those who did not own property.

62. Va. Const., Bill of Rights, § 4 (1776). For a similar provision, see Mass. Const., pt. 1, art. VI (1780).

63. Vt. Const., ch. I, art. 7.

64. *Baker v. State,* 744 A.2d 864 (Vt., 1999).

65. Hans A. Linde, "Without 'Due Process: Unconstitutional Law in Oregon,'" 49 *Or. L. Rev.* 125, 141 (1970); *see also* Hans A. Linde, "E Pluribus—Constitutional Theory and State Courts," 18 *Ga. L. Rev.* 165, 182–83 (1984) ("Such provisions long antedated the Civil War, and their target, prohibition of special privileges, was quite different from that of the 14th amendment's equal protection clause"). For a listing of similar state provisions, *see* ibid. at 182, n. 43.

66. *See,* for example, Fla. Const., art. III, § 11(a)(1) (1968).

67. *Housing Auth. v. City of St. Petersburg,* 287 So. 2d 307 (Fla. 1973).

68. Ill. Const., art. IV, § 13 (1970). The Illinois "special laws" provision declares further that "whether a general law is or can be made applicable shall be a matter for

judicial determination." Ill. Const., art. IV, § 13 (1970). The Alabama, Alaska, Kansas, Michigan, Minnesota, and Nevada constitutions contain similar provisions.

69. Ill. Const., art. I, § 2 provides: "No person shall . . . be denied the equal protection of the laws."

70. *Grace v. Howlett,* 283 N.E. 2d 474, 479 (Ill., 1974).

71. Pa. Const., art. I, § 26 (1967); *cf.* N.Y. Const., art. I, § 11 (1938) (earlier version of this type of provision). For discussion of similar provisions in other state constitutions, *see* Sturm, "The Development of American State Constitutions," 12 *Publius: J. Federalism* 57, 87–88 (1982); Sturm and Wright, "Civil Liberties in Revised State Constitutions," in *Civil Liberties: Policy and Policy Making* 179, 182–83 (S. Wasby, ed., 1976).

72. *See,* for example, N.J. Const., art. I, par. 5 (1947).

73. L. Tribe, *American Constitutional La*w § 15–10, at 933, n. 77 (1978). For a complete discussion of unconstitutional conditions, see Seth Kreimer, "Allocational Sanctions: The Problem of Negative Rights in a Positive State," 132 *U. Pa. L. Rev*. 1293 (1984).

74. These provisions usually concerned only women's suffrage. *See,* for example, Utah Const., art. IV, § 1 (1894); Wyo. Const., art. 1, § 3 (1889).

75. *Rand v. Rand,* 374 A.2d 900, 904–05 (Md. 1977). *See generally* Paul Benjamin Linton, "State Equal Rights Amendments: Making a Difference or Making a Statement?" 70 *Temple L. Rev.* 907 (1997); Wolfgang P. Hirczy de Miño, "Does an Equal Rights Amendment Make a Difference?" 60 *Alb. L. Rev.* 1581 (1997).

76. See Paul L. Tractenberg, "The Evolution and Implementation of Educational Rights Under the New Jersey Constitution of 1947," 29 *Rutgers L.J.* 827, 890–936 (1998).

77. *See generally* M. Bernard, *Constitutions, Taxation and Land Policy* (1979) (abstracting tax provisions from the federal and all state constitutions); W. Newhouse, *Constitutional Equality and Uniformity in State Taxation* (2d ed., 1984) (analysis of state tax uniformity and equality provisions, organized into nine prototypical clauses).

78. The primary effect of tax uniformity provisions is to mandate equality in property taxation. *See* Note, "Inequality in Property Tax Assessments: New Cures for an Old Ill," 75 *Harv. L. Rev.* 1374, 1377–80 (1962).

79. *See Lucas v. South Carolina Coastal Council,* 505 U.S. 1003 (1992).

80. *See Palazzolo v. Rhode Island,* 533 U.S. 606 (2001); *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency,* 535 U.S. 302 (2002).

81. Ga. Const., art. I, § III, par. 1; Ky. Const., § 242.

82. Ibid.

83. U.S. Const., amend. XIV.

84. *See* Wendell E. Pritchett, "'The Public Menace' of Blight: Urban Renewal and the Private Uses of Eminent Domain," 21 *Yale L. & Pol'y Rev.* 1 (2003).