

BRIEFING PAPER NO. 1

THE CONSTITUTIONAL CONVENTION: BACKGROUND AND OVERVIEW

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THE CONSTITUTIONAL CONVENTION: BACKGROUND AND OVERVIEW

The Northern Marianas Constitutional Convention has been convened pursuant to legislation enacted by the Fourth Northern Mariana Islands Legislature and signed into law on August 19, 1976. The Constitutional Convention has a unique opportunity and challenge: to draft the first constitution of the newly authorized Commonwealth of the Northern Mariana Islands. This set of 14 briefing papers has been prepared to assist the Convention in this difficult and virtually unprecedented assignment. This first briefing paper is designed to serve as an introduction to the other papers, to place the work of the Convention into an appropriate historic and legal context, and to provide an overview of the issues likely to come before the Convention.

I. BACKGROUND

The essential task of the Constitutional Convention is to shape the basic institutions of government for the new Commonwealth. This undertaking requires first that the delegates identify the political values that their people cherish and the goals they hope to achieve. Next they must fashion the political institutions that reflect these values and provide the machinery to pursue their goals. And finally they must write a constitution to give legal effect to the system they have created and to provide a symbol of unity for all the people of the Commonwealth.

To complete its assignment successfully the Convention must respect certain legal, political and practical constraints: (1) the legal restraints imposed by the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States (hereinafter referred to as "the Covenant") and the United States Constitution; (2) the political constraints flowing from the fact that the new Commonwealth must function within the complex and unique American system of government; and (3) the practical constraints of the size, location and population of the Northern Mariana Islands.

A. The Covenant

The Covenant was the result of efforts over a period of years by the people of the Northern Mariana Islands to achieve political union with the United States. Formal negotiations between the United States and the Marianas Political Status Commission, acting on behalf of the people of the Northern Marianas, were initiated in December 1972 and were completed with the signing of the Covenant on February 15, 1975. After unanimous approval by the District Legislature, the Covenant was approved by the people in a plebiscite held on June 17, 1975, in which there was a favorable vote of 78 percent of the voters. The Covenant was subsequently approved by the United States Congress after extensive

public hearings and was enacted into law on March 24, 1976.^{1/}

The Covenant defines the relationship between the United States and the Commonwealth; it is the pre-constitutional act by which the people of the Northern Mariana Islands exercised their right of self-determination and became a part of the United States of America. The Covenant consists of ten articles, dealing with the political relationship (Article I), the Constitution of the Northern Mariana Islands (Article II), citizenship and nationality (Article III), judicial authority (Article IV), applicability of United States laws (Article V), revenue and taxation (Article VI), United States financial assistance (Article VII), land (Article VIII), Northern Mariana Islands representation in the United States (Article IX), and approval, effective dates, and definitions (Article X). Although the Covenant imposes some important limitations on the Commonwealth, it does not establish a government for the Commonwealth or in any way eliminate the need for a Commonwealth Constitution.

Section 201 of the Covenant provides that the Northern Marianas people "will formulate and approve a Constitution. . . ." Section 203 provides:

^{1/} Pub. L. No. 94-241, (United States Code Congressional and Administrative News No. 3, p. 680 (Apr. 26, 1976)); S. REP. No. 94-433, 94th Cong., 1st Sess. (1975); Hearings on S. J. Res. 107 Before the Senate Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. (1975); S. REP. No. 94-596, 94th Cong., 2d Sess. (1976); H. REP. No. 94-364, 94th Cong., 1st Sess. (1975); Hearings on H.J. Res. 549, H.J. Res. 550 and H.J. Res. 547 Before the Subcommittee on Territorial and Insular Affairs of the Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. (1975)

The Constitution will provide for a republican form of government with separate executive, legislative and judicial branches, and will contain a bill of rights.

The executive power of the Northern Mariana Islands will be vested in a popularly elected Governor and such other officials as the Constitution or laws of the Northern Mariana Islands may provide.

The legislative power of the Northern Mariana Islands will be vested in a popularly elected legislature and will extend to all rightful subjects of legislation. The Constitution of the Northern Mariana Islands will provide for equal representation for each of the chartered municipalities of the Northern Mariana Islands in one house of a bicameral legislature, notwithstanding other provisions of this Covenant or those provisions of the Constitution or laws of the United States applicable to the Northern Mariana Islands.

The judicial power of the Northern Mariana Islands will be vested in such courts as the Constitution or laws of the Northern Mariana Islands may provide. The Constitution or laws of the Northern Mariana Islands may vest in such courts jurisdiction over all causes in the Northern Mariana Islands over which any court established by the Constitution or laws of the United States does not have exclusive jurisdiction.

Within the limitations contained in section 203, the Constitutional Convention is free to create the institutions of government through which the people of the Northern Mariana Islands can achieve their objective of self-government.

The promises and commitments contained in the Covenant can be realized only if the Convention drafts a Commonwealth Constitution acceptable to the people of the

Northern Marianas and to the United States. The Convention is required to transmit the proposed Constitution to the resident commissioner, and the Constitution will then be placed before the people for approval in a referendum.^{2/}

If approved by the people, section 202 of the Covenant provides that:

The Constitution will be submitted to the Government of the United States for approval on the basis of its consistency with this Covenant and those provisions of the Constitution, treaties and laws of the United States to be applicable to the Northern Mariana Islands. The Constitution will be deemed to have been approved six months after its submission to the President on behalf of the Government of the United States unless earlier approved or disapproved. If disapproved the Constitution will be returned and will be resubmitted in accordance with this Section. . . .

As is apparent, the Convention delegates have had a solemn responsibility entrusted to them by the people and are, in a very real sense, the agents "through which the people exercise their sovereignty."^{3/}

2/ ACT CALLING FOR A CONSTITUTIONAL CONVENTION FOR THE NORTHERN MARIANA ISLANDS, NORTHERN MARIANA ISLANDS LEGISLATURE ACT 347-1976, § 14 (Aug. 19, 1976).

3/ Wheeler, Changing the Fundamental Law, in SALIENT ISSUES OF CONSTITUTIONAL REVISION p. 49, at 51 (J. Wheeler ed. 1961) [hereinafter cited as SALIENT ISSUES].

B. The United States Constitution

As part of the United States political system, the Commonwealth of the Northern Mariana Islands is generally subject to the provisions of the United States Constitution. That Constitution defines the relationship between the federal government and the individual states and the people.

Because the United States Constitution does not specifically define a territorial relationship such as that between the United States and the Commonwealth, it was necessary in the Covenant to provide expressly for the extent to which the United States Constitution is applicable to the Commonwealth. Section 501 of the Covenant does so as follows:

To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: Article I, Section 9, Clauses 2, 3 and 8; Article I, Section 10, Clauses 1 and 3; Article IV, Section 1 and Section 2, Clauses 1 and 2; Amendments 1 through 9, inclusive; Amendment 13; Amendment 14, Section 1; Amendment 15; Amendment 19; and Amendment 26; provided, however, that neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law, except where required by local law. Other provisions of or amendments to the Constitution of the United States, which do not apply of their own force within the Northern Mariana Islands, will be applicable within the Northern Mariana Islands only with approval of the Government of the Northern Mariana Islands and of the Government of the United States.

The effect of section 501(a) is to make almost all of the provisions of the United States Constitution applicable to the Commonwealth, with a few specified exceptions designed to reflect unique circumstances existing in the Northern Marianas.^{4/}

Under the Covenant, therefore, the Commonwealth has essentially the same powers with respect to local self-government as are enjoyed by the states. Conversely, the Commonwealth is for the most part subject to the same restrictions on its authority as those that limit the states. For example, powers expressly assigned to the Congress of the United States by the United States Constitution cannot be exercised by the Commonwealth government any more than they can be by one of the states. Throughout its work, therefore, the Convention will be endeavoring to draft a constitution for the Commonwealth that comports fully with the United States Constitution as that document has been made applicable to the Northern Mariana Islands by means of the Covenant.

4/ REPORT OF THE JOINT DRAFTING COMMITTEE ON THE NEGOTIATING HISTORY, reprinted at S. REP. No. 94, 94th Cong., 1st Sess., p. 405 (1975). The principal difference between a state's obligations under the United States Constitution and those of the Commonwealth under § 501 involves Sixth Amendment trial by jury in criminal cases, which the states must offer, Duncan v. Louisiana, 391 U.S. 145 (1968), but which the Commonwealth may use or not as it finds appropriate. The last sentence of § 501 (a) means that, except for the provisions listed and those which apply automatically, no other parts of the United States Constitution will apply to the Northern Marianas unless the Commonwealth government agrees that they should apply.

C. The American Governmental System

The American system of government is based on the concept of federalism -- a system substantially unique when created in the eighteenth century and characterized by multiple levels of government with varying responsibilities and functions. According to a classic Supreme Court decision following the American Civil War, the United States Constitution "looks to an indestructible Union, composed of indestructible States."^{5/}

Although each state in the Union is constitutionally secure and enjoys a large degree of internal freedom of action, none is sovereign in the usual sense of that term. The powers granted by the Constitution to the national government, although limited in scope, are supreme within the system. In addition, certain powers are denied the state. On the other hand, the national government, although a sovereign nation in the family of nations, must find a basis for its actions internally under an express or implied power in the United States Constitution. The Tenth Amendment to the United States Constitution clearly expresses the essence of this federal arrangement:

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

5/ Texas v. White, 74 U.S. (7 Wall.) 700, 725 (1869). *

If the term "sovereignty" has any real meaning in the American system, it must be said to rest with the people from whom the constitutional arrangement draws its support and legitimacy.^{6/}

For many years the constitutional theory expressed in the Tenth Amendment suggested two mutually exclusive spheres of action -- one national and one state. The Supreme Court gave credence to this in a legal theory labeled by one constitutional historian as "dual federalism."^{7/} As the United States grew and its economy expanded and changed, additional demands on government showed the limitations of such a legal theory.^{8/} By the late 1930's, the approach proved too rigid

^{6/} See Kauper, The State Constitution: Its Nature and Purpose, in CON CON: ISSUES FOR THE ILLINOIS CONSTITUTIONAL CONVENTION pp. 6-8 (V. Ranney & S. Gove ed. 1970) [hereinafter cited as ILLINOIS CON CON]; R. Dishman, STATE CONSTITUTIONS: THE SHAPE OF THE DOCUMENT pp. 15-20 (1968) [hereinafter cited as SHAPE OF THE DOCUMENT]; Committee for Economic Development, MODERNIZING STATE GOVERNMENT pp. 10-11 (1967) [hereinafter cited as MODERNIZING STATE GOVERNMENT].

^{7/} E. Corwin, THE TWILIGHT OF THE SUPREME COURT: A HISTORY OF OUR CONSTITUTIONAL THEORY pp. 1-51 (1934).

^{8/} For a period, the United States Supreme Court applied such a theory to strike down as unconstitutional, first, efforts by the states to deal with social and economic problems resulting from rapid industrial growth, and, then, by the national government to regulate the economy, to eliminate such things as child labor, and to provide social services. In the first situation the states had no power to act because of federal protections of "liberty" and "property" and in the second because the matters were reserved for state control under dual federalism.

for modern conditions, and the Supreme Court, following the lead of the President and the Congress, began giving a more flexible interpretation to the Constitution. Out of this has grown a federal system that some have called the "new federalism," "cooperative federalism," or "the federal partnership."^{9/} Whatever it is labeled, the system requires understanding and appreciation if the Convention's efforts to write a Commonwealth Constitution are to be realistic and ultimately successful.

The American system of government is one of the world's most complicated, involving more than 100,000 units. One national government, 50 state governments, over 3000 counties, thousands of cities, towns and villages, and still more thousands of school districts and special districts, and a few territories and commonwealths, regulate and tax the American people and provide services for them. Their combined budgets reach astronomical heights. They employ millions of people directly and other millions indirectly through the services they buy from private industries. They reach deeply into the daily lives of each person. To understand American government, one must view these 100,000 governments as a system, not as isolated and insulated domains. They intertwine in complex ways that belie

9/ J. Clark, THE RISE OF THE NEW FEDERALISM, (1938); M. Grodzins, THE AMERICAN SYSTEM: A NEW VIEW OF GOVERNMENT IN THE UNITED STATES (1966); N. Rockefeller, THE FUTURE OF FEDERALISM (1962).

traditional notions of "levels" of government characteristic of textbook treatments of federalism.^{10/} All American governments are increasingly tied together in the development and administration of public policy. All reflect in varying degrees the American commitment to decentralization, to keeping governmental decisions close to the people. The capability of the Northern Marianas Commonwealth to function as a partner in this complex arrangement and to enjoy the benefits and challenges of self-government depends in part upon its constitutional and political viability.

D. The Experience of the States

Throughout these briefing papers, references are made to the experience of the states and Puerto Rico, and particular provisions of their constitutions are set forth for the consideration of the delegates. In evaluating the relevance of these other constitutions to the assignment of this Convention, the delegates should be aware of the historical circumstances in which they were prepared and should examine critically the relevance of such precedents to the special needs and circumstances of the Northern Mariana Islands.

^{10/} Wheeler, Introduction, in SALIENT ISSUES, pp. ix-xi.

State constitutions are very much the product of the historical period in which they were written. No two state constitutions are the same. As political documents as well as legal statements, they reflect the dominant values, hopes and fears that prevailed in the period of their writing.

Some of the earliest constitutions were brief documents containing explicit statements of the rights of the people and establishing the general framework of government. Characteristically, these early constitutions granted broad powers to the legislature but were apprehensive about assigning any comparable authority to the governor's office because the people were still mindful of the excesses of the British colonial governors. Despite this general attribute, it has been asserted that "our briefest and in many respects our best state constitutions tend to be either the oldest or the latest."^{11/}

Another period of constitution-writing extends from approximately 1800 until 1865, a period of substantial expansion within the United States. With a substantial growth in public debt and the resultant threats to economic

^{11/} Id. p. xiii. The history of constitution writing has been discussed in several sources. See SHAPE OF THE DOCUMENT; SALIENT ISSUES: A. Sturm, THIRTY YEARS OF STATE CONSTITUTION MAKING: 1938-1968 (1970) [hereinafter cited as THIRTY YEARS OF CONSTITUTIONS].

stability, the popular reaction was to limit the fiscal powers of state government. The constitutions of this period, accordingly, are characterized by restraints upon legislative powers. In addition, constitutions written during this period reflect the drive for expansion of eligibility to vote and the popular election of all important public officials. This latter trend left a legacy with which many states are still coping today -- a badly divided executive branch of government that makes both efficient management and political leadership by the governor very difficult.

The constitutions of about half of the states had their character molded during the third period of constitution writing prior to 1912. Some of these constitutions were the aftermath of disorders and dislocations in the South following the Civil War. Elsewhere they were vehicles for the entry of new states into the Union. This was a period of great industrial expansion, of the development of the western part of the United States, and of waves of immigrants settling in the eastern cities. Governments grew rapidly during this period and began to address new concerns. Political corruption rose to new heights. The reformers responded with long, detailed

and restrictive constitutions that tried to limit the power of government officials. As dramatically described by one writer, these constitutions put "a strait jacket and handcuffs upon government."^{12/}

As a reflection of these accumulated historical forces, the state constitutions in existence 15 or 20 years ago were criticized as "lengthy documents, replete with statutory materials and unnecessary and unjustified restrictions on state government, cluttered with obsolete and sometimes inconsistent statements, badly written and illogically arranged. . . ."^{13/} Not only were they criticized for their structure and appearance, they faced scathing appraisals for their adverse impact on state government's capacity to meet twentieth century problems.^{14/} One writer summarized the common characteristics of state

^{12/} Ford, The Influence of State Politics in Expanding Federal Power, PROCEEDINGS OF THE AM. POL. SCIENCE ASS'N pp. 53-63 (1909).

^{13/} Wheeler, Introduction, in SALIENT ISSUES p. xii.

^{14/} An example of this criticism is the report of the Commission on Intergovernmental Relations, appointed by President Eisenhower to carry out the first systematic and comprehensive study of American federalism since the Constitution was written. The Commission report strongly criticized state constitutions and their contributions to the weakness of state governments in the federal system. REPORT OF THE COMMISSION ON INTERGOVERNMENTAL RELATIONS (1955).

constitutions at this time in these gloomy terms: ^{15/}

1. A cumbersome, unrepresentative legislature, inadequately staffed to perform the law-making function intelligently, with excessively restricted powers, often unresponsive to public needs, especially in urban areas, and subject to manipulation by selfish interests.
2. A disintegrated and enfeebled executive with power widely dispersed and responsibility divided among a large number of elective officials on all levels, and an administrative structure of great complexity featured by duplication, overlapping, inefficiency and waste.
3. A diffused, complicated and largely uncoordinated judiciary, often lacking independence, with judges selected on a political basis and frequently without professional qualifications on the lower levels.
4. Rigid restrictions on local government that seriously impede home rule.
5. A long ballot listing a bewildering array of candidates and issues and rendering the task of even the most intelligent voter exceedingly difficult.
6. Provisions for amendment and revision so rigid, in some constitutions, as practically to deprive the people of the opportunity to alter their basic law, and, in others, so lax as to encourage too frequent changes.
7. Inclusion of a mass of detail in the constitution, blurring the distinction between constitutional and statutory law, and necessitating frequent amendments.

15/ THIRTY YEARS OF CONSTITUTIONS p. 2, quoting A. Sturm, MAJOR CONSTITUTIONAL ISSUES IN WEST VIRGINIA p. 10 (1961).

Notwithstanding these deficiencies -- or perhaps because of them -- interested citizens could not muster the political support necessary to stimulate constitutional revision.

By the mid-1960's, however, the situation had changed dramatically. Influenced in large part by the reapportionment decisions of the Supreme Court, many states initiated constitutional revision through the traditional mechanism of the constitutional convention. Between the period from 1964 and 1974, thirteen states used conventions to consider constitutional reform.^{16/} Not all these efforts were marked by the adoption of new constitutions; proposed documents met defeat at the polls in New York, Maryland, Arkansas, New Mexico, North Dakota, Rhode Island and Texas.^{17/}

^{16/} The states were as follows: Rhode Island (1964-69); Connecticut (1965); New York (1967); Pennsylvania and Maryland (1967-68); Hawaii (1968); New Mexico (1969); Illinois and Arkansas (1969-70); Montana (1971-72); North Dakota (1972); and Texas and Louisiana (1974). THIRTY YEARS OF CONSTITUTIONS, Table at 56-60; Council of State Governments, THE BOOK OF THE STATES 1974-75, Table at 19 (1974); Council of State Governments, MODERNIZING STATE CONSTITUTIONS 1966-1972, Table at 38-41 (1973) [hereinafter cited as MODERNIZING CONSTITUTIONS].

^{17/} But the successes were impressive and demonstrated the continued viability that the constitutional convention has as a means of securing important constitutional reform. Even where the convention's products failed substantially to gain public approval, the process was not a total failure. See J. Wheeler & M. Kinsey, MAGNIFICENT FAILURE: THE MARYLAND CONSTITUTIONAL CONVENTION OF 1967-68 (1970).

Many of these reform efforts were successful, however, and it is from these developments particularly that the Northern Marianas Constitutional Convention stands to benefit.

One of the important trends evident in the last decade of constitutional revision has been in the direction of strengthening the capacity of state government to act on behalf of the people. The actions taken generally reveal an acceptance on the part of the citizens of the need for strong leadership in a government held responsible not wholly by constitutional restraints, but by clear lines of authority, simple election systems and a broad eligibility to vote. Legislatures in many states have been given greater opportunities for improving their effectiveness through annual sessions, more control over their procedures and more reasonable methods of setting compensation. Other constitutional changes have resulted in lengthening the term of the governor, removing from constitutional status many executive officers and improving the financial provisions of state constitutions. In addition, important changes have been made in recent years with respect to the selection of judges.^{18/}

^{18/} MODERNIZING CONSTITUTIONS pp. 16-29.

The relevance of this state experience is a matter for the delegates themselves to appraise. Certainly this Convention will want to avoid the mistakes of the past and the difficulties that have resulted from excessively detailed and rigid constitutions. On the other hand, the Constitution for the Commonwealth of the Northern Mariana Islands cannot be drafted by merely duplicating the provisions found in state constitutions -- no matter how newly revised.^{19/} The Northern Marianas has a history of its own and characteristics of geography and population that distinguish it significantly from any of the states in the United States. It is these peculiar circumstances and the aspirations of the people, as perceived by the elected delegates to this Convention, that should inform and instruct the delegates as to how best to adapt state experience to draft a constitution suited to the Northern Mariana Islands.

^{19/} As was stated in the Introduction to the Model State Constitution, used in the preparation of these papers, "there can be no such thing as a 'Model State Constitution' because there is no model state." National Municipal League, MODEL STATE CONSTITUTION p. vii (6th rev. ed. 1968).

II. THE TASK OF THE CONVENTION

The Convention has been convened to prepare a constitution for the Commonwealth of the Northern Mariana Islands. The success of the Convention will depend largely on the delegates' understanding of the function of a written constitution and the wise exercise of informed judgment regarding its content.

A. The Function of Written Constitutions

Written constitutions play a significant role in the American political system. American respect for written constitutions is unmatched. Although the origin of this tradition may be clouded, both the prevailing political theories at the time of the Declaration of Independence and the peculiar circumstances of American history have confirmed the desire of the American people to define and organize their political arrangement in written documents.^{20/} Whatever the origin of this impulse to write things down, the written constitution is very much a part of the American political and legal tradition. It has its impact as a symbol, as expression of political commitment, and as a statement of legally binding principles which can assist -- or hamper -- the realization of political and social goals.

The significance of the written constitution in the United States is heightened by the existence of another

20/ ILLINOIS CON CON pp. 4-6.

institution that is American in origin -- judicial review. Courts, not the political branches of government, are the final arbiters regarding the meaning of the constitution and have the authority to declare legislation invalid if it is not authorized by the constitution. In this way Americans have given the courts equal status with the political branches of government and a significant role in policymaking. The courts have exercised this power almost from the beginning. A classic statement is from Chief Justice John Marshall writing in 1803:

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution is void.

* * *

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.^{21/}

All courts in the American system -- federal and state, appellate and trial -- possess the power of judicial review. However used, judicial review is fundamental to the American system. It serves as a principal element in the system of checks and balances and gives legal effect to the content of written constitutions.

^{21/} Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803).

Apart from its substantial symbolic significance, a written constitution is a legal document that performs certain essential functions. According to one expert,

a constitution is no more than the skeleton or essential frame of orderly government. The constitution defines and provides for the establishment of the chief organs of government. It outlines the relation between these organs and the citizens, between the state and the individual.^{22/}

More specifically, a written constitution should do the following:

- ° establish the important and permanent institutions of government, such as the legislative, executive and judicial branches, and describe in general their relationship;
- ° establish the necessary restraints on governmental powers;
- ° protect the people in the enjoyment of their civil liberties; and
- ° provide methods by which the people may change their constitution if the need arises.

A constitution that confines itself to these essential functions will meet the historic test set forth in another opinion by Chief Justice Marshall, written in 1819. In sustaining the power of the United States to establish a national bank even though the Constitution contained no specific grant of power for that purpose, he wrote:

^{22/} J. Corry, ELEMENTS OF DEMOCRATIC GOVERNMENT p. 17. (1947), quoted in SHAPE OF THE DOCUMENT p. 14.

A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of a prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. It would probably never be understood that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves . . . In considering this question, then, we must never forget that it is a constitution we are expounding.^{23/}

Another way to consider what the Commonwealth Constitution should be is to keep in mind what it should not be:

First, the Constitution should not be a code of laws designed to regulate the day-to-day activities of the people. That is the function of legislation produced by the institutions and through the procedures established by the Constitution.

Second, the Constitution should not be the place to protect against every potential form of wrongdoing by public officials. The people must assume the responsibility for keeping public officials responsive and honest by exercising their right to vote.

Third, the Constitution should not be a detailed design for government institutions. These institutions are subject to continuous change and adjustment, and any specific administrative and political structures established by the

^{23/} McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407 (1819) (emphasis in original).

delegates are most unlikely to survive over time.

Fourth, the Constitution is not the primary statement of the Commonwealth's powers. Except for the limitations in the United States Constitution or laws made applicable to the Northern Marianas, or in the Covenant itself, the Commonwealth will have the full powers of government. Accordingly, the Commonwealth is able to exercise these powers without their specific enumeration in the Constitution, so long as the Constitution makes a general grant of legislative power that comprehends the full reach of governmental power available under the Covenant.

Fifth, the Constitution should not be a sermon.^{24/} Although any constitution deserves some appropriate rhetoric, it is not the place for homilies or pious admonitions that serve no functional purpose.

B. The Content of the Constitution

Accepting these general propositions regarding the functions of a constitution, the implementation of such

^{24/} SHAPE OF THE DOCUMENT pp. 47-49. The constitutions that use such rhetoric are usually the oldest documents. E.g., VT. CONST. ch. I, art. 18 (1793):

That frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the blessings of liberty, and keep government free; the people ought, therefore, to pay particular attention to these points, in the choice of officers and representatives, and have a right, in a legal way, to exact a due and constant regard to them, from their legislators and magistrates, in making and executing such laws as are necessary for the good government of the State.

guidelines is not a simple matter. There may be general agreement that a constitution should be limited to "fundamentals";^{25/} but the definition of what is fundamental is often controversial. The issue is most likely to arise as the delegates consider whether to include in the Constitution mandatory provisions on specific subjects rather than to leave these matters to the discretion of the legislature under general or permissive constitutional guidelines. Proponents of constitutional treatment will argue that the matter is truly fundamental; the opponents will take the contrary view. Striking the proper balance in a constitution requires an appreciation of the available models, and a sensitivity to the consequences of erroneous inclusion in or exclusion from the constitution.

Specific constitutional treatment of a subject has two important consequences: it gives the matter (or requirement) the highest possible legal status in the Commonwealth; and it requires that change come about only through constitutional amendment. Evaluating each question of inclusion by these standards may assist the delegates in deciding how to treat a particular subject. Although a measure certainly does not have to rank with freedom of speech to deserve constitutional status, the delegates should consider whether

^{25/} Even this overstates the point, because many matters that are truly fundamental to a community are not properly included in its constitution. SHAPE OF THE DOCUMENT pp. 26-27.

each matter before them is of the level of importance required to justify inclusion in the Constitution. Similarly, if the delegates conclude that the matter is of such fundamental importance that it should not be changed through the normal legislative process, then constitutional inclusion may be appropriate. These tests suggest that anything placed in the Constitution ought to be so important to the community or to the maintenance of the political system that it should be beyond the control of transient majorities and political leaders who temporarily administer the process of legislation.

The United States Constitution is usually offered as a "superb model of a compact, organic document that is logically arranged, internally coherent, and drafted with the object in mind of stating broad, fundamental, and enduring purposes."^{26/} Written in the eighteenth century, the United States Constitution contains broad grants of power and largely leaves implementation to the political branches of government. Throughout its 187 years, the United States Constitution has required only 26 amendments, the first ten of which (the Bill of Rights) were adopted as a group in order to make the document more acceptable to the American people. It is amazing how its concerns remain relevant

26/ ILLINOIS CON CON p. 16.

and how little in the document has grown archaic. It is significant that a document of only 7300 words, including the 26 amendments, has proved sufficient for a nation growing from three million people to more than two hundred million, from an area nestled against the eastern seaboard to one of continental proportion with outposts in the Antarctic and the Pacific, from an agricultural nation to a heavily industrial one, from a position of isolation to one of world leadership. The United States Constitution is often offered by constitutional scholars as an excellent example of what a constitution should be -- simple yet dignified in language, restricted to fundamentals, allowing scope for development and growth, a constitution written with an eye to the future.^{27/}

The emphasis upon fundamentals and the concern over excessive detail naturally suggest that the best constitutions are the briefest ones and a substantial case has been made for brevity in constitutions.^{28/} A long document usually

^{27/} The experience in the states, however, stands in sharp contrast. Some of the states have had more than 10 constitutions, and only 19 of them operate under their original constitution. In the years from 1950 through 1968, the states adopted a total of 4888 amendments, an average of 271 per year or almost 98 per state for that period. THIRTY YEARS OF CONSTITUTIONS, Table at 29-31. The need for frequent amendment is further evidence of overly detailed constitutions. In recent years, however, the trend has been toward shorter, less detailed constitutions. Those of the most recent states, Alaska and Hawaii, total 12,000 and 15,000 words respectively. Puerto Rico's 1952 Constitution totals 9000 words. Id. Table at 7-9.

^{28/} ILLINOIS CON CON pp. 18-19.

needs frequent amendment, which in turn tends to blur the distinction between the constitution and legislation and to dilute the significance of the basic constitutional document. It has been asserted that the "only constitutions which have been spared the need for frequent amendment are those which are confined to core material."^{29/} There are other problems as well. Excessive restrictions on legislative power invite efforts at circumvention and disrespect for the constitution. Limitations reflecting a lack of trust in public officials may invite litigation and make it difficult to carry out the responsibilities of government. Further, a constitution should be a document that can be used by the ordinary citizen, and a brief and compact constitution is more likely to be read and understood.

Brevity, however, should not be the primary goal of the delegates to the Convention. Sometimes delegates have strained to write a document that is too brief and too simple, missing the point that the goal is to write a good document that provides the framework and power to confront immediate and emerging problems, within a context of responsiveness and responsibility. As one expert has put it:

[A]lthough constitutional brevity has generally been found to be of advantage to state government, it is only one of several values to be achieved, and not necessarily the most important one. To put the last point differently, the best state constitutions are usually brief -- but they are not

^{29/} SHAPE OF THE DOCUMENT p. 35.

best because they are brief, but because they best meet the needs of state government.^{30/}

III. THE BRIEFING PAPERS

The briefing papers have been prepared to assist the delegates in drafting the Commonwealth Constitution. The 13 papers accompanying this introductory paper consider distinct topics and issues to be considered by the Convention; they relate generally to the future Commonwealth's institutions of government, the means by which the citizens retain control of these institutions, and certain specific powers and functions of government. By way of introduction to these papers, it may be useful to describe their preparation and to provide some overview of the issues discussed in them.

A. The Preparation of the Papers

The preparation of these papers involved the following steps: selection of topics; research and selection of issues; and organization and drafting.

1. Selection of topics

The topics covered in the remaining 13 briefing papers were decided upon after an extensive review of pertinent materials. The provisions in other constitutions were reviewed to identify the provisions that typically are included in American constitutions and therefore might be appropriate topics for the Convention to consider. Briefing papers prepared for other recent constitutional conventions, such as those in Alaska, Hawaii and Montana, were reviewed

^{30/} F. Grad, THE DRAFTING OF STATE CONSTITUTIONS: WORKING PAPERS FOR A MANUAL pp. I-4-5 (1967).

with a similar objective in mind. In addition, the specialized literature relating to constitution-writing was reviewed, and the views of experts with extensive experience in the field were sought.

This process led to the identification of certain traditional subjects -- the executive, legislative and judicial branches of government and local government -- that involve issues of constitutional importance relating to basic government institutions. In addition, it was concluded that three papers should be prepared that relate to the means by which the citizens control their government: the bill of rights; eligibility to vote and election procedures; and constitutional amendment. Based on the experience with other constitutions, briefing papers were also prepared for the Convention relating to certain responsibilities or powers of government, even though the Convention might conclude that the subjects need not be treated in the Commonwealth Constitution. These involved the subjects of taxation and finance, education and corporations.

Other briefing papers, however, were selected because of factors unique to the Northern Mariana Islands and the Covenant defining their relationship with the United States. It was for this reason, for example, that

a paper on representation for the Northern Marianas in Washington is included in this set of briefing papers. The Northern Marianas (not being a state) cannot automatically elect representatives to Congress, and the Covenant contains a special provision dealing with this subject. In addition, papers are included that relate to the subjects of restrictions on land alienation in the Northern Mariana Islands, which receives special treatment in the Covenant, and natural resources. Both of these subjects relate to significant issues the resolution of which may be of sufficient importance to justify consideration by the Convention.

It was recognized from the outset that no set of briefing materials could be comprehensive enough to deal with all the subjects of possible interest to the individual delegates participating in the Convention. The 13 papers do discuss, however, those issues that are most likely to be considered by the Convention and they will assist the delegates in drafting a Constitution of sufficient scope and precision to meet the needs of the Commonwealth.

2. Research and selection of issues

The briefing papers have drawn upon a wide variety of research materials. These have included, in

addition to the state constitutional materials described above, theoretical and field studies in political science, judicial decisions interpreting the United States Constitution, and the constitutions of the states, various United States and state statutes, and the legislative history of the Covenant. These materials are listed in an appendix of references at the end of volume II.

Throughout the preparation of these papers, every effort has been made to relate these research materials to the peculiar circumstances confronting the Northern Marianas. Where possible, the papers describe current institutions or experience within the Northern Marianas that may assist the delegates in evaluating the utility or relevance of approaches followed in different parts of the United States.

The issues selected for discussion in the briefing papers were those that seemed of possible constitutional significance. Many issues are considered in the briefing papers that probably should not be included in a constitution; their inclusion in the papers is not intended to suggest otherwise but rather to assist the delegates in making an independent decision.

3. Organization and drafting

As discussed in the Foreword, the briefing papers are the result of a collaborative effort involving lawyers, political scientists, and others with relevant expert qualifications in the areas discussed.

Each of the papers has the same general format. The first section of each paper is intended to provide the delegates with an overview of the particular problem discussed in the paper. This section identifies the relevant provisions of the Covenant and the United States Constitution, provides any appropriate background data, and discusses briefly some of the major policy issues to be considered by the delegates in drafting the particular constitutional article discussed in the briefing paper.

The second section is generally devoted to a discussion of the specific alternatives that may be considered by the delegates. It was impossible, of course, to identify and discuss all the alternatives that could reasonably be considered by the delegates in dealing with the many complex and controversial questions that will undoubtedly come before the Convention. An effort has been made to discuss the major issues in sufficient detail so that the delegates are able to understand and evaluate the alternatives available to them. With respect to the major alternatives discussed

in each paper, current practice within the United States is summarized, and illustrative constitutional provisions are set forth.

The briefing papers have been prepared with the awareness that the Convention delegates alone bear the responsibility for shaping the institutions of the future Commonwealth government and providing for those institutions in a formal document. The principal alternatives are discussed objectively without indicating a preference for one alternative as opposed to another. On some issues, particularly those relating to whether a particular matter should be treated in the Constitution or left to legislative consideration, the papers do on occasion express a view that certain matters should (or should not) be considered as appropriate for inclusion in the Constitution. These judgments are advanced in reliance on the practice of the states in recent decades in revising excessively long and detailed constitutions and on the views discussed above to the effect that a constitutional document should be limited to that which the Convention delegates truly consider to be of fundamental and critical importance.

B. The Scope of the Briefing Papers

It may be useful to highlight some of the important issues discussed in the briefing papers numbered 2 through

14 that follow this paper. Such a summary demonstrates the range and complexity of the matters to be considered by the Convention delegates. It also confirms the fact that the Covenant and the United States Constitution impose relatively few restraints upon the delegates in structuring the basic institutions of their future Commonwealth.

Briefing Paper No. 2: Executive Branch of Government

The briefing paper on the executive branch considers two fundamental issues -- the powers to be allocated the executive branch under the Constitution and the organization of the executive branch through which such powers are to be exercised.

With respect to the powers to be allocated to the executive branch, the paper discusses those powers that might be assigned to the executive branch that affect the legislative and judicial branches of government. The paper considers what kind of veto power, if any, should be provided to the executive branch as a means of ensuring an appropriate collaboration between the executive and legislative branches of government in developing the laws and policies of the Commonwealth. Other powers affecting the legislative and judicial branches are also discussed, such as calling special legislative sessions, appointing members of the judiciary and exercising the power of clemency. Another

set of issues discussed in this paper pertains to the limitations or requirements that the Convention might seek to impose upon the executive branch with respect to the appointment and removal of policy-making and other employees within the executive branch.

The second set of issues discussed in this briefing paper pertains to the organization of the executive branch of government. In particular, the paper assesses the possible provisions of the Constitution relating to the office of governor, including such matters as his qualifications, compensation and term of office. In addition, the briefing paper identifies several other issues relating to the organization of the executive branch, including such difficult questions as the number and functions of other executive branch officers to be provided for in the Constitution, and the extent to which the governor is free to reorganize the executive branch.

In discussing the issues raised by the briefing paper on the executive branch, the delegates will be called upon to make important and difficult judgments regarding the kind of government that they wish to create for the Commonwealth. To some extent, the delegates are writing on a completely clean slate, since they have never lived under an executive branch of government that has been directed by popularly elected officials subject to removal by the

people. The Convention will have to decide on an appropriate and harmonious allocation of powers between the executive and legislative branches in order to avoid needless conflict between these important agencies, and to strive for an executive branch that is both an efficient executor of the laws and fully responsive to the wishes of the people.

Briefing Paper No. 3: Legislative Branch of Government

The briefing paper on the legislative branch considers the same two fundamental issues considered in the executive branch paper, namely, the powers to be allocated under the Constitution to the legislative branch and the organization of the legislative branch.

The briefing paper outlines several alternative methods for defining the powers that the Commonwealth government may exercise through the legislature. First, the Constitution may confine the lawmaking power to action on certain listed subjects. A second alternative would be to grant "all legislative power" to the legislature and provide specific limitations on the exercise of that power. Third, the Convention could make an unqualified grant of "all legislative power" to the legislature that would permit the legislative branch to exercise all powers available to the Commonwealth. Selection among these alternatives is one of the most critical decisions to come before the Convention.

The briefing paper also considers a special problem with respect to the legislative branch under the provisions of section 203(c) of the Covenant. This section requires that there be "equal representation for each of the chartered municipalities . . . in one house of a bicameral legislature." Under this provision, the delegates must provide for a legislature with two separate houses. The provision was included in the Covenant as a means of assuring the people of Rota and Tinian that the interests of their islands will be fully reflected in the institutions of the new Commonwealth government. The Convention delegates have the responsibility of deciding how to allocate the powers of the legislative branch between the two houses, so as to avoid conflict between them and to enable the legislative branch as a whole to serve the interests of all the people of the Northern Mariana Islands.

In addition, the paper deals with the very complicated and sometimes controversial subject of representation in the new legislature, particularly the method of representation, the method of voting, and the number of members to be provided for each of the two houses. The paper also considers numerous issues relating to the organization of the legislative branch; for example, the qualifications, length of term, compensation, and privileges and immunities

of the legislators. Finally, it sets forth for consideration by the delegates a range of problems associated with legislative procedures.

The Convention's decision on issues related to the legislative branch will require careful consideration of many difficult legal, political and practical constraints. The delegates will be called upon to assess the relative importance of enabling their new Commonwealth to respond to the unforeseeable problems of the future free of impractical constitutional restrictions. Before imposing any restrictions on the new legislature, the Convention will wish to assess whether the costs involved are acceptable. It is the legislative branch, after all, that is the repository of those legislative powers available to the new Commonwealth under the Covenant. The delegates will also want to evaluate carefully the requirements of each of the three principal islands within the new Commonwealth, as well as the needs of ethnic and other minorities, to ensure that every segment of the community has a stake in the success of the new Commonwealth.

Briefing Paper No. 4: Judicial Branch of Government

The Covenant provides that the Constitution or laws of the Northern Mariana Islands may create local Commonwealth courts to exercise jurisdiction over those matters

that are not within the exclusive jurisdiction of the federal District Court in the Northern Mariana Islands. This briefing paper discusses whether the Convention should create such a local court system and, if so, with what jurisdiction and structure.

Because the provisions of the Covenant are permissive rather than mandatory, the Convention must initially decide whether to establish a local judicial system in the Constitution. The delegates may decide to create a local court system with jurisdiction over all local cases. Alternatively, the Convention may conclude that the federal District Court provided for under the Covenant should exercise the authority to decide local matters and that a parallel local court system should not be authorized. Because of the flexibility provided by the Covenant, the Convention has numerous other alternatives. One of the most unusual is the possibility of "phasing in" the jurisdiction of local courts over a period of years, leaving to the federal District Court during such a phase-in period the responsibility for resolving particular categories of local cases. To achieve the greatest possible flexibility, the delegates could authorize a phase-in period, but permit the legislature of the Commonwealth to decide the method and timing whereby local courts are to obtain jurisdiction over particular matters.

If the Convention decides to create a local court system, either immediately or at some date in the future, the Convention must then address numerous questions regarding the local courts. One important organizational issue, of course, is the number of courts to create and the extent to which the specifics of the judicial system should be left for legislative resolution rather than constitutional embodiment. The briefing paper also considers questions relating to the qualifications, selection, tenure and removal of judges.

The Convention's decisions with respect to the judicial branch of government require an objective assessment of the kind of court system that is presently feasible in the Northern Marianas and is necessary to achieve the confidence and respect of the people. It is of obvious importance that any judicial branch of government be independent and objective. Any judicial system in the Northern Marianas must also function efficiently and have the necessary resources to accomplish its workload in an expeditious and fair manner.

Briefing Paper No. 5. Local Government

This briefing paper considers whether additional instrumentalities of government should be created to represent the interests of the separate municipalities of Rota, Saipan and Tinian or to perform certain governmental services

and functions. The briefing paper discusses whether such local governments are required in light of the limited resources available to the Northern Marianas, its small population, and the desirability of uniform and equitably distributed services throughout the Commonwealth. Some suggestions are advanced in the briefing paper for mechanisms, in addition to the Covenant-guaranteed requirement of a bicameral legislature, through which the separate islands can make their distinct interests known to the Commonwealth and influence the performance of governmental functions in their communities.

If the Convention decides to create or authorize local governments within the Commonwealth, the briefing paper discusses several subordinate issues that must be resolved. First, the Convention must consider what powers or responsibilities should be assigned to local government entities and the extent to which such power or responsibility should be shared with the Commonwealth government. The briefing paper reviews several of the available alternatives with respect to local governments and discusses some of the practical and legal problems associated with these alternatives. In addition, the paper discusses some of the issues regarding any local government structure and organization,

such as the legislative authority, taxing authority, and delivery of services. The Convention's decisions with respect to local government is among the most important to come before the delegates.

Briefing Paper No. 6: Representation in Washington

This briefing paper discusses the implementation of section 901 of the Covenant, which provides for a resident representative of the Commonwealth to the United States. If the Convention decides to provide for such a Washington representative in the Constitution, it will have to make certain decisions with respect to the office. Some of these issues, such as the representative's qualifications, term of office, and duties are discussed in the briefing paper. The provision for a Washington representative was included in the Covenant as one of the important instruments of self-government available to the new Commonwealth. The Convention delegates will want to consider carefully how best to ensure that the interests of the Northern Marianas people are responsibly and efficiently presented to the agencies of the United States government and others in Washington.

Briefing Paper No. 7: Bill of Rights

Section 203 of the Covenant provides that the Constitution of the Northern Mariana Islands will contain a bill of rights. The briefing paper discusses the principal

alternatives available to the Convention delegates with respect to the drafting of a bill of rights. First, the Convention may decide to duplicate the provisions of the United States Constitution already applicable to the Northern Marianas under the Covenant, in order to emphasize their importance and to demonstrate that the Commonwealth guarantees personal rights. Second, the Convention may decide to be more specific with respect to the rights afforded by the United States Constitution, by codifying certain of the decisions of the United States Supreme Court that amplify and interpret the rights set forth in the United States Constitution. Third, the Convention delegates may decide to enlarge on the rights already applicable to the Northern Marianas or, indeed, create new rights that reflect the particular needs or goals of the Northern Marianas people.

The framing of a proposed bill of rights for the Commonwealth Constitution will require thoughtful consideration of the needs of the Commonwealth and its citizens. A bill of rights serves as a statement of the aspirations of the people and as a constant reminder that the powers of government must be exercised with full respect for the personal liberties of the governed. Drafting a bill of rights for the new Commonwealth provides the Convention delegates, and through

them the people of the Northern Mariana Islands, the opportunity to reassess and reemphasize their commitment to the basic freedoms -- freedom of speech and religion, due process of law, and equal protection under the law -- which characterize the best in the American system of government of which the Commonwealth will be a part.

Briefing Paper No. 8: Eligibility to Vote
and Election Procedures

The self-government guaranteed to the Northern Mariana Islands under the Covenant means that the people themselves have the opportunity to create their institutions of government and to determine the laws under which they are to be governed. To achieve a full measure of self-government, however, requires that the people have a fair and regular opportunity to participate in elections to choose their public officials and to influence public policy. Within certain restraints imposed by the United States Constitution (applicable, of course, to all states and territories within the United States), the Commonwealth is free to define the qualifications of voters in the Commonwealth and to prescribe appropriate election procedures. This briefing paper discusses these subjects.

With respect to voter eligibility, the briefing paper discusses such questions as voter requirements based upon citizenship, age, literacy and residence. As to each

of these requirements there are some important policy and tactical considerations that must be evaluated by the Convention.

The Convention may also wish to consider the extent to which election procedures should be specified in the Commonwealth Constitution -- such matters as voting protections, absentee voting, scheduling of elections, methods of balloting and voter registration. With respect to such specific topics, the Convention has the alternative of providing general authority to the legislature to act within the broad guidelines established in the Constitution. This approach permits flexibility to accommodate changing circumstances and enables the Convention to address the issue without incorporating into the Constitution excessive detail of the kind that might subsequently impair the efficient administration of the election process.

This briefing paper also discusses certain mechanisms for reviewing the action of legislative and executive officials through special popular elections. The paper considers devices such as the initiative, referendum and recall, which have been used in the United States as a means apart from the normal electoral process to enable the voters to recall (or remove) elected officials or to initiate legislation on particular subjects when the legislature has not acted in a way consistent with the wishes of the majority.

These alternatives are discussed in the briefing paper, along with the experience in some of the states using these procedures, in order to enable the delegates to decide whether the Commonwealth Constitution should include such measures as an additional means of ensuring that the Commonwealth government is responsive to the wishes of the people.

Briefing Paper No. 9: Constitutional Amendment

Even the best of constitutions require periodic revision to accommodate changing needs and conditions. This briefing paper analyzes the alternatives available to the Convention with respect to the methods of proposing constitutional amendments and the methods of approving such amendments.

The paper discusses four principal methods of proposing of constitutional amendments. The first such method is the use of a constitutional convention, comparable to this Convention. A second method entails the use of a constitutional commission, composed of government officials or appointed experts, which after appropriate study can make proposals for amendment. A third method authorizes legislative initiative, a process whereby the legislature as part of its regular duties would have the authority to formulate proposals for constitutional amendment. The fourth method permits the voters themselves to generate proposals for constitutional

amendment by obtaining signatures on a petition. With respect to each of these alternatives, the paper reviews the practices of the states, the relevant legal and practical considerations, and the extent to which more than one method could be used in combination to provide the necessary flexibility for future generations.

The paper also considers a number of methods and problems associated with the ratification or approval of constitutional amendments. The paper considers the form of such amendments, the kind of election at which amendments may be submitted to the voters, and possible limitations on popular consideration of amendments.

Although sometimes very technical, procedures related to the proposing and ratifying of constitutional amendments are an important subject for the Convention to consider. Only with an enlightened and flexible procedure for amendment of the Constitution can the people be assured that their basic institutions of government can be periodically renewed as dictated by the changing needs and circumstances of the Commonwealth of the Northern Mariana Islands.

Briefing Paper No. 10: Taxation and Finance

This briefing paper considers the principal issues associated with the drafting of a constitutional article relating to taxation and finance. Although most powers to be

exercised by the legislature are usually not specifically addressed in a constitution, the central importance of financing a government and controlling its expenditures has resulted in frequent constitutional treatment of this subject. Within the limitations of the Covenant and the United States Constitution, the Commonwealth has broad discretionary authority to levy those taxes necessary to fund the institutions of government and to provide public services.

This paper analyzes the alternatives available to the Convention with respect to the powers of the legislature to impose taxes. The paper reviews possible limitations on the taxing power and analyzes specific taxes, such as income, property, corporate and sales taxes, which might be considered appropriate by the delegates. The paper also discusses possible tax exemptions that may be authorized by the Constitution. One overriding consideration in analyzing these issues is the extent to which the Convention desires to leave the legislature unencumbered by constitutional restrictions with respect to its ability to raise funds through taxation in the years ahead.

This paper also considers possible constitutional provisions with respect to Commonwealth indebtedness. Section 607 of the Covenant limits the ability of the Commonwealth to incur debt during any period within which

the United States government is providing direct financial assistance. The principal issue for the Convention is whether any restriction on Commonwealth debt should be written into the Constitution so as to limit the authority of the Commonwealth government to incur debt once the provisions of the Covenant are no longer controlling.

Briefing Paper No. 11: Natural Resources

This briefing paper discusses issues relating to the natural resources and environment of the Northern Mariana Islands. Although several provisions in the Covenant pertain to public and private land, the Covenant and the United States Constitution leave the delegates with broad discretion to decide what provisions, if any, to include in the Constitution.

The paper sets forth specific alternatives that the Convention may wish to evaluate relating to the control and disposition of public lands in the Northern Marianas. The public lands are a valuable resource the regulation and use of which will greatly influence the economic development of the Commonwealth and the quality of life enjoyed by its citizens. The briefing paper considers certain broad restrictions that the Convention may wish to impose on the Commonwealth government so as to ensure that the public lands are administered and used in the best interests of all the people of the Northern Mariana Islands.

In addition, the paper discusses certain issues related to private land, marine resources and environmental concerns about air and water quality. With respect to each of these subjects, the briefing paper reviews the applicable legal restrictions and discusses some of the alternatives available to the Convention to regulate the use of or access to such resources. In considering such issues, of course, the Convention delegates will undoubtedly assign a high priority to the stimulation of economic growth and the contribution that market forces can make to achieve this objective. There are, however, other important goals at stake with respect to the Commonwealth's natural resources, including their conservation and the general quality of life in the Northern Marianas. Balancing these competing interests will be necessary if the Convention decides to include any constitutional provision on the subject of the Commonwealth's natural resources.

Briefing Paper No. 12: Restrictions on Land Alienation

Section 805 of the Covenant provides that, for a period of at least 25 years, the Commonwealth shall restrict the acquisition of permanent and long-term interests in property to persons of Northern Mariana Islands descent. This briefing paper is designed to identify and discuss the issues raised by the provisions of section 805.

The first issue is whether the question of restrictions on land alienation should be treated in the Constitution. The alternative is to leave the problem for regulation by the first legislature elected under the new Constitution.

If the Convention decides to deal with the problem in the Constitution, the briefing paper discusses those issues that must be addressed by the Convention in order to implement section 805. Among these issues are the definition of Northern Marianas descent, the definition of long-term interest, the extent to which corporations should be allowed to hold long-term interests in land, and other specific matters arising from the Covenant's general prohibition. Resolution of these issues by the Convention requires objective and careful evaluation of the probable economic impact of such restrictions on land transfers in the Northern Marianas, and the consequences with respect to the economic development of the Commonwealth. The implementation of section 805 also raises many difficult legal and enforcement issues that must also be assessed by the delegates in deciding what specific restrictions should be imposed upon the sale or long-term leasing of land within the Commonwealth through the Constitution or laws of the Northern Marianas.

Briefing Paper No. 13: Education

This paper discusses whether the Constitution should include an article on education. Although such an article is not necessary, many states have deemed education to be of such public importance so as to warrant constitutional treatment. If the Convention elects to deal with this subject, the paper outlines some of the specific alternatives or provisions which might be considered. The paper discusses, for example, possible constitutional provisions expressing a commitment to public education, designating an official agency of government for fulfilling this commitment, ensuring equal education opportunity, and financing educational institutions within the Commonwealth. Resolution of such questions requires consideration of the resources available to the Commonwealth and the limitations resulting from the Commonwealth's small population and geographical dispersion.

Briefing Paper No. 14: Corporations

This briefing paper discusses whether the Constitution should include an article on business corporations. Although most experts believe that such an article is not necessary or desirable, the paper reviews for the delegates the issues relating to business corporations that might be treated in a constitutional provision on the subject.

If the Convention elects not to consider this matter in the Constitution, the regulation of business corporations would be left completely (along with all similar matters) to the legislature for its action during its first session under the new Constitution.

Conclusion

The briefing papers that follow provide an agenda for the orderly consideration of issues that must be resolved by the delegates. To the extent possible, the briefing papers are arranged in an order that will permit the primary issues to be decided first so that the delegates may complete their work efficiently. Although the papers consider discrete subjects that might be treated in separate constitutional articles, they attempt to identify the relationships among the issues and to suggest the impact of particular decisions made by the delegates on the whole system of government being defined in the Constitution.