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NORTH CAROLINA LAW REVIEW

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Volume 70 | Number 6

Article 3

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9-1-1992

## Foreword: The Law of Land

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### Recommended Citation

William J. Brennan Jr., *Foreword: The Law of Land*, 70 N.C. L. REV. 1701 (1992).

Available at: <http://scholarship.law.unc.edu/nclr/vol70/iss6/3>

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# FOREWORD

WILLIAM J. BRENNAN, JR.\*

I am pleased that the *North Carolina Law Review* has chosen to devote this issue to a symposium on the North Carolina Constitution and state constitutional law. The relation between state constitutional interpretation and civil liberties has long been of great interest to me. Fifteen years ago, in an essay I wrote for the *Harvard Law Review*,<sup>1</sup> I urged state courts to look to their own constitutions as a source of protection for individual liberties; six years ago, in my James Madison Lecture at New York University,<sup>2</sup> I renewed this plea.

I was hardly the first to recommend that state constitutional law be revitalized,<sup>3</sup> and a whole host of scholars and judges have since offered similar advice.<sup>4</sup> These efforts have borne fruit: In more than four hundred decisions, state courts have relied upon their own state constitutions to provide greater protection than is available under the United States Supreme Court's interpretation of the Federal Constitution.<sup>5</sup> This "new federalism," which takes seriously the obligation of state courts to safeguard our liberties, is all the more necessary in an era when the federal courts' commitment to civil liberties seems to be at least temporarily on the wane.

Critics have argued that in many of these state constitutional decisions the courts have been unnecessarily terse or obscure, sometimes failing to explain why a phrase in the state constitution should be interpreted differently from its federal counterpart.<sup>6</sup> As compared with the language of federal constitutional interpretation, these critics have suggested, the language of state constitutional interpretation remains rudimentary and derivative.

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1. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977).

2. William J. Brennan, Jr., *The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 N.Y.U. L. REV. 535 (1986).

3. See, e.g., Hans A. Linde, *Without "Due Process": Unconstitutional Law in Oregon*, 49 OR. L. REV. 125, 133-35, 181-87 (1970).

4. For a bibliographic guide to the extensive literature, see TIM J. WATTS, *STATE CONSTITUTIONAL LAW DEVELOPMENT: A BIBLIOGRAPHY* (1991).

5. See David Schuman, *The Right to "Equal Privileges and Immunities": A State's Version of Equal Protection*, 13 VT. L. REV. 221, 221 (1988).

6. See, e.g., James A. Gardner, *The Failed Discourse of State Constitutionalism*, 90 MICH. L. REV. 761, 778-94 (1992).

There is certainly some degree of truth in this criticism. But it is precisely for that reason that the present symposium seems to me particularly valuable. Gathered here are the contributions of two distinguished justices of the North Carolina Supreme Court, two professors expert in North Carolina constitutional law and history, and members of the *North Carolina Law Review*. Each essay casts light on a different facet of North Carolina's constitutional law and history, and several provide useful comparisons to similar provisions of the Federal Constitution or the constitutions of other states. One can only hope that other law reviews will provide similar discussions of their own states' constitutions.

I am honored to participate in this occasion for yet another reason: This issue marks the retirement of Professor Dan Pollitt, an eminent scholar in the fields of constitutional and labor law, and mentor to three decades of students at the University of North Carolina's School of Law. From his early days with the prominent labor law and civil rights firm headed by my dear friend Joe Rauh, through his work with the Labor Board and the House Committee on Labor and Education, to his presidency of the North Carolina Civil Liberties Union, the distinguishing feature of Professor Pollitt's career has been his abiding commitment to civil liberties and social justice. Professor Pollitt is most remarkable for having pursued this commitment both in the classroom, where he inspired a generation of students, and in the world of social and political affairs as well.

As one who shares Professor Pollitt's belief in the principles of liberty and justice stated so eloquently in the United States Constitution—and in the constitutions of the several states—I wish him all the best in his retirement.