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## Sturm & Whitaker: Implementing a New Constitution: The Michigan Experience

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IMPLEMENTING A NEW CONSTITUTION: THE MICHIGAN EXPERIENCE. By *Albert L. Sturm* and *Margaret Whitaker*. Ann Arbor: Institute of Public Administration, University of Michigan, 1968. Pp. xiii, 239. \$5.

This book follows an earlier volume written by Albert L. Sturm, entitled *Constitution-Making in Michigan, 1961-1962*.<sup>1</sup> The earlier work dealt with the three previous Michigan constitutional conventions; the organization, political forces, and events which shaped the 1961-1962 convention; and the post-adjournment activities related to the new constitution's adoption. In *Implementing a New Constitution: The Michigan Experience*, Professor Sturm and Mrs. Whitaker continue the chronicle of events which led to the adoption of the new constitution on April 1, 1963. The principal task of their most recent book, however, is describing the implementation of this constitution during the first three years of its operation. It is difficult to make comparative judgments about this volume because, as the authors point out in the preface, there is practically no other literature on constitutional implementation. The book does provide an accurate and detailed description of the implementation procedures and formal actions but it is less satisfactory in explaining the politics of implementation.

One of the most important effects of the 1961-1962 constitutional

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1. *Michigan Governmental Studies*, No. 43, 1963.

convention has been overlooked by most of the journalists who covered it and by all the scholars who have studied it: the "con con," its delegates, and the new constitution radically altered Michigan politics and government. The convention itself, with its quality delegates, completely public decision-making, and competent staff, had a substantial impact on legislative bodies throughout the state. It was also the political springboard for Governor Romney, several members of his personal staff, numerous departmental officials in the Romney Administration, many new state legislators, several congressmen, and some judges. For the Republicans it was the single largest infusion of new blood that the party had seen in decades; for the Democrats the impact was not as great, but con con certainly brought out more new talent than the party had seen since the early days of Governor G. Mennen Williams' Administration. Former con con delegates and staff members have in the past six years assumed positions on state and local political committees throughout Michigan. The quality of leadership that came from the convention certainly deserves more emphasis than the authors give it. Indeed, one can argue that if Romney had not appointed four former convention delegates as his top executive aides, and if ten per cent of the former delegates had not been elected to the state legislature, constitutional implementation would have sagged if not collapsed.

In short, the authors have understated the political importance of the passage of the new constitution. Governor Romney, only three months into his administration, put his newly won prestige—and that of the Michigan Republican Party—on the line to support the new constitution. At that time, those of us reading the public opinion polls and drafting the administration's strategy knew that the precarious one- or two-point lead which the new constitution maintained throughout the three-month campaign could be preserved only through an immense effort by the governor and the supporting groups. During the entire adoption campaign there was an abnormally high undecided vote (about forty per cent) most of which voted "no" at the election. The result, therefore, was very close, and the new constitution was accepted by a margin of only 50.2 per cent. In tracing the voting patterns, the authors conclude that party identification was the determining factor in the constitutional referendum. Indeed, as might be expected, the patterns of opposition beyond pure partisanship were visible only in those areas and groups that had something to lose in the change of the constitutional status quo.

One of the difficulties in reading this book arises from its choppy and somewhat repetitive format. This is one result of the artificial structure which the authors imposed upon the implementation process. First, they discuss the legal basis for implementation, the

political setting, and the major developments from 1963 to 1966; then, they treat the implementation of each of the eleven constitutional articles in separate chapters. Reading the book in this form gives one the erroneous impression that those in the executive and legislative branches considered the implementation of the constitution article by article. Despite this structural problem, however, the reporting in these chapters is accurate and detailed. Moreover, the final chapter provides a short but effective summary of some of the most significant lessons of the Michigan implementation experience.

One of the more important findings in the book is that those who opposed adoption of the new constitution did not give up when it was ratified. Indeed, the character of their opposition remained the same—only the tactics and the arena for the disagreement shifted. These opponents led the fight against implementation—primarily in the legislature—throughout the three-year period covered by this study. This continued struggle was possible because a large number of the controversial provisions in the new constitution were not self-executing; in fact, many of the controversial passages were spelled out in statutory language precisely because the delegates believed that if this were not done, the legislature would not act. Implementation of the provisions that were self-executing, such as the section creating the state civil rights commission,<sup>2</sup> went quite smoothly. Those with time deadlines for legislative approval, such as the executive branch reorganization,<sup>3</sup> caused more difficulty, but in most cases the legislature met the deadline. The non-self-executing provisions, which included the most complex and controversial provisions, such as county home rule,<sup>4</sup> had the least success; and the convention might well have followed the authors' suggestion that time limits for implementation should have been used on those provisions as well.

Professor Sturm and Mrs. Whitaker see two stages in constitutional implementation—the convention period and the post-adoption period, and suggest several pitfalls that the draftsmen of constitutions should avoid during those periods. In the convention stage, they warn, a constitutional convention needs to “beware of ambiguity that leaves basic policy unclear and creates difficulties in carrying out constitutional mandates” (p. 228). Although this argument for precise language is a valid one, it is clear that the Michigan convention sometimes wrote in ambiguous and imprecise language in order to accommodate and neutralize the opposition and in order to insert basic policy statements into the document. Generally, it

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2. MICH. CONST. art. V, § 29.

3. *Id.* art. V, § 2; *Id.* Schedule and Temporary Provisions, § 12.

4. *Id.* art. VII, § 2.

seems accurate to conclude that the greater the opposition to a specific provision both within the convention and later in the legislature, the more the Michigan draftsmen tended to write in rather vague language that could attract a majority of votes. One example of imprecision cited by the authors is the section in the education article which provides that the state board of education "shall serve as the general planning and coordinating body for all public education, including higher education" (p. 229).<sup>5</sup> This phrasing may seem imprecise to Professor Sturm and Mrs. Whitaker, but Michigan college and university administrators, the appropriations committees of the legislature, and most of the delegates who voted for it knew very well what it meant since the debates on this language had been exhaustive, articulate, and clear.

The authors score a telling point when they criticize the convention's failure to interrelate and synchronize those parts of the document that are affected by the manner of implementation. They offer the meritorious suggestion that in the future there should be an interim period between the drafting of a proposed constitution and final action by the convention. During this interval experts could look for technical deficiencies that can be removed before approval and referendum. This procedure, of course, would cost a good deal of money, particularly for personnel, and therefore would require wholehearted legislative approval and support. Another recommendation to handle the problem of imprecision is the proposal that constitutional conventions seek more testimony and advice from legislators and executive officials. This idea is obviously impractical, however, when the executive and legislative branches are unwilling to assist the convention. For example, while the Michigan convention was meeting in 1962, Governor Swainson was in the forefront of the opposition to con con, and the legislature could be described as at best mildly suspicious of all the proceedings.

In describing the post-adoption phase of implementation, the authors assert that "the principal responsibility rests with the legislature" (p. 230). Although this may be true, the *initiative* for implementation of the Michigan constitution certainly did not come from the legislature. If the governor had not made positive and specific recommendations, and if he had not changed legislative actions by threatening and using his veto, the implementation might not have satisfied so many of the constitutional convention's policy mandates and intentions. One can only speculate what the implementation of the new constitution would have been like if it had been placed completely in the hands of its most intense political opponents—the legislature. The authors of this book, with some

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5. *Id.* art. VIII, § 3.

validity, deplore the lack of central planning and coordination. If, however, Governor Romney had not taken the original leadership and secured the cooperation of the attorney general, there would have been little coordination among the executive office, the attorney general's office, and the legislature.

Ever since the implementation of the new constitution, the legislature's attitude toward it has been mixed, if not openly hostile. The legislators have ignored the attorney general's repeated requests for funds to procure the staff needed to survey the whole body of statutory law and to bring it into conformity with the new constitution. They have also attempted to avoid the convention's intent with respect to the control of their own affairs. In this regard they have not defined "substantial conflict of interest" as it applies to themselves; nor have they set up a legislative council in keeping with the convention's mandate. Moreover, they have attempted to place administrative and executive functions in their own hands; for instance, in 1965 in clear violation of the constitution's intent they rejected all of the governor's budget bills and then introduced their own.

This history suggests that attention to constitutional reform must extend beyond the convention and even beyond the approval of the document. Although, as the authors point out, public interest is far greater in constitution-making than in constitutional implementation (p. 1), the concern and activities of the opponents of a new constitution generally do not decline after its acceptance. Perhaps, suggest the authors, the news media and the constitutional reform groups should be most active during the implementation period in order to counteract this threat. Professor Sturm and Mrs. Whitaker recommend the inclusion in the document itself of a definite schedule for implementation and the designation of a commission to make sure that mandates of the convention are met.

The role of governors' commissions and citizen advisory groups in the implementation of state constitutions is little known and probably should be the focus of a special study. The principal danger is that these groups will be controlled either by too many technical experts or by representatives of special interest groups who will draft enabling legislation which meets their own interests rather than the intent of the convention. Perhaps strong executive leadership and participation in these groups can effectively monitor such tendencies.

As the authors point out, constitutional implementation is a continuous process. In Michigan it has been going on for more than five years and it will continue as long as there is leadership from the executive branch and action in the legislature. But it is natural to expect that the governor's and the legislature's interest in imple-

menting the mandates of the convention will gradually slacken, and, in fact, the Michigan experience already confirms this observation. For example, although the first phase of executive branch reorganization—combining more than 140 agencies, boards, and commissions into nineteen principal departments—was completed in early 1966, the second phase—in which the governor can make internal changes in organization and function subject to legislative veto—has not been pursued by Governor Romney or by his successor, and the reorganization is still unfinished. Unless this second stage is completed, the opportunity to establish the strong gubernatorial control of policy and administration envisioned by the convention will be lost. The delegates to the convention also believed that reorganization of the executive branch into twenty or fewer departments would result in better coordination and planning through regular meetings between the department heads and the governor. However, although some meetings were held in 1966 and a few in 1967, to the best of my knowledge they were discontinued in 1968.

Nonetheless, Michigan is fortunate to have implemented the major provisions of its new constitution with some speed and with a minimum of political discomfort and governmental dislocation. On the whole, I think it is a record of which we can be proud, and Professor Sturm and Mrs. Whitaker have covered the story well.

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