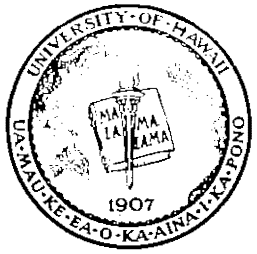
A CONSTITUTION FOR HAWAII



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Legislative Reference Bureau
University of Hawaii

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Norman Meller, Director
Legislative Reference Bureau
University of Hawaii

TABLE OF CONTENTS

F O R E W O R D

Faced with the prospect of drafting a constitution for Hawaii we are at once confronted with the question, "What should the constitution for Hawaii contain?" Unfortunately, there is no ready answer. There is no tailor-made constitution either proposed[1] or in effect which we can transplant to Hawaii and adopt in its entirety.

Some guide posts are furnished by the Enabling Act, H. R. 49 of the Eightieth Congress. Hawaii's constitution must be republican[2] in form and must make no distinction in civil or political rights on account of race, color, or sex. Repugnance to the Constitution of the United States and the principles of the Declaration of Independence is prohibited. The constitution must secure perfect tolerance of religious sentiment. Provision must be

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[1]Even the Model State Constitution originally published in 1921 and last partially revised in 1946 was not so considered. As stated after the fourth edition was published, "The committee quickly realized it would be impossible to devise a constitutional form or mold into which the needs and requirements of all the states could be poured. The committee never conceived of its work as providing a plan applicable in its entirety to conditions in any one state; it hoped, rather, that its work might be viewed as charting the way, as indicating the desirable lines of development in state institutions. It expected that states holding constitutional conventions would make such modifications as local conditions might require." Graves, W. Brooke. "Writing A New Constitution," National Municipal Review, Vol. XXXI No. 2 (February, 1942), p. 92.

[2]The distinguishing feature of a republican form is the right of the people to choose their own officers for governmental administration and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves; but while the people are thus the source of political power, their governments have been limited by written constitutions and they have themselves thereby set bounds to their own power, as against the sudden impulses of mere majorities. Duncan v. Wall (1891) 139 U. S. 449. Apparently Congress has concluded since the decision of this case that the exercise of the legislative power need not be limited to representative bodies; in any event the question is a political one, which the courts will not decide.

made for the establishment and maintenance of a system of public schools, free from sectarian control, and open to all. The State of Hawaii must assume territorial debts and liabilities. Property belonging to citizens of the United States residing outside of Hawaii may not be taxed at a higher rate than properties of Hawaiian residents. Finally, certain provision must be made with reference to property set aside for the United States and the Hawaiian home lands.

But all of these compulsory requirements suggest only a few of the topics which must be considered in drafting the constitution for Hawaii. We must independently plan and erect our own constitutional structure, referring to the experience of other states as well as taking cognizance of Hawaii's own requirements and shaping our constitution to conform to these indigenous needs.

Today, in California, Louisiana, Minnesota, Oklahoma and Tennessee, this same problem is confronting groups actively engaged in considering revision of their respective constitutions. In Illinois and Texas, where strong movements appear to be seeking revision of their state constitutions, the same question must be faced. Each of these groups will initially turn to its own constitution, for many of the existing provisions will be readopted verbatim or in essence, and even those which are rejected or extensively remolded will have served the purpose of focusing attention on the subjects with which they are concerned. Here in Hawaii, the Organic Act will provide the same function, but to a more limited extent. Its brevity and its failure to treat matters adequately covered by the United States Constitution or other federal statutes while Hawaii remains a Territory[3] preclude sole re-

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[3]For example, the Organic Act fails to incorporate a bill of rights because the guarantees contained in the Federal Constitution suffice so long as Hawaii remains a Territory.

liance upon the Organic Act as furnishing the entire gamut of subjects for consideration in shaping Hawaii's constitution.

As a result, we must of necessity look to the constitutions of the various states; we must also weigh the recommendations of recognized authorities in the field of government, such as those found incorporated in the Model State Constitution. Particularly, the constitutions of Georgia and Missouri, adopted in 1945, and of New Jersey, which the people of that State adopted only last month, will prove to be of great assistance. All three of these most recent instruments evidence the trend towards a shorter, less restrictive constitution; all three embody significant changes which reflect many years of academic consideration. A study of their contents, as well as the former provisions deleted in the course of revision, will furnish a panorama of subjects for discussion.

However, all of these are merely mechanical aids serving to suggest both comprehensive constitutional structure and particular items for consideration. Because a provision is found incorporated in a number of constitutions does not necessarily indicate it likewise should be included in Hawaii's constitution. The reasons for the adoption of the provision may have long since disappeared; its effects may be too limiting; our needs may be different. Precisely what should be contained in the constitution for Hawaii can be answered only after mature deliberation. It will be a composite decision slowly built after long consideration of each of the matters a constitution might contain. Perhaps we may return to our point of departure - the Organic Act - and the final decision may be that the Organic Act, with its brevity, broad grants of power, and relative absence of restrictive provisions presents a model to be duplicated in large part by Hawaii's constitution.

Following are four articles which attempt in part to aid in reaching an answer to the question initially raised in the first paragraph of this foreword. The first two articles discuss generally the elements of a good constitution in the light of modern concepts of government; the latter two outline the significant details of the new constitutions of Georgia, Missouri, and New Jersey.

Norman Meller, Director
Legislative Reference Bureau

WHAT SHOULD A CONSTITUTION CONTAIN?*

by
Dr. W. Brooke Graves
Chief, State Law Section,
Legislative Reference Service, Library of Congress
Chairman, Committee on State Government, National Municipal League

A constitution is a body of fundamental law. It is established for the purpose of providing a set of governmental machinery, on the one hand, and of protecting the citizen from an unfair or improper use of governmental authority, on the other. When we say that the provisions of a constitution are fundamental, we imply that they are relatively more permanent, more stable, and less subject to the need for frequent change, than are the provisions of statutory law. Statutory law, on the other hand, is regarded as being more or less transitory in character, as being more concerned with current policies and practices, and less with those "eternal verities" of government which have been handed down, generation after generation, from the past. A constitution is supposed to represent an attempt at stating the accumulated wisdom of the ages, on the subject of government, while statutes are a contemporary effort to deal with problems of a current nature.

While this distinction is time-honored, and firmly imbedded in the thought of this country on the subject of government, we have often failed to keep it clearly in mind. The result has been the incorporation in numerous state constitutions of provisions that are definitely statutory in character. This has been due in part to a distrust of the legislature, and in part to a somewhat naive idea on the part of various interest and pressure groups, that

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*A monograph prepared for The Governor's Committee on Preparatory Research for the New Jersey Constitutional Convention, May 1947.

if they could only get into the constitution a statement of some principle or idea dear to them, it would be safely and securely fixed. Thus the Commissioner of Highways in a mid-western state in 1921, appealed to the people to write into their fundamental law, in the form of amendment, a detailed description of the various routes in the highways system of the state. It is thus possible to change these routes, no matter how much the changes may be needed, only by amending the constitution. It is doubtful whether this was a good thing for the roads, and it is certain that it was a bad thing for the constitution - the length of which is increased by several pages of fine print. While this is an extreme case, the underlying philosophy is typical of that in many others.

Other things being equal, the shorter the constitution is, the better it is. The Federal Constitution has endured as long as it has, and it has continued to be a satisfactory instrument of government, because it was well drafted. Quite in contrast to the constitutions of many of our states, its provisions were confined to matters that were and are, essential; emphasis upon this point recurs frequently in the paragraphs which follow. There are in all of American state constitutions - old and new alike - certain essential features which must be included if the constitution is to meet in a satisfactory manner the needs which led to its adoption. These fundamentals may be grouped, for purposes of discussion, under four headings: the bill of rights, the framework of government, its powers, and provisions for piecemeal amendment.

Bill of Rights

In all democratic countries, important personal and civil rights of citizens are recognized. The sphere thus established may not be invaded or violated by the public authority. In England, where the constitution is in

the main unwritten, these rights have become a part of the "law of the land"; in the United States, on the other hand, where written constitutions are everywhere in use, the protection of these rights is guaranteed by a written statement known as a bill of rights. This practice has been general in the states since the Virginia bill of rights was adopted in 1776. While there is a good deal of similarity in the provisions of the statements found in the various state constitutions, the particular expression of these ideas found in the constitution of any given state is likely to be vigorously defended by its citizens. It has the strength which comes from long usage, the clarity which comes from its having been judicially interpreted, and the veneration and respect which people give to institutions tried and proved.

The provisions of a bill of rights may be variously classified. From one point of view, they protect the rights of persons on the one hand, and the rights of property on the other. The rights of persons include those of a civil character, and those that relate to persons accused of crime. The civil rights include the right to freedom of speech and of assembly, freedom of the press, and freedom of conscience, the inviolability of the home from searches and seizures without warrant and the quartering of troops in time of peace. The rights of persons accused of crime include guarantees of freedom from false arrest, guarantees of indictment by grand jury and trial by jury, freedom of the necessity of giving testimony which might be self-incriminating in character, and guarantee of a fair trial, under due process of law. It includes, for those under indictment, freedom from the enforcement of ex post facto laws; and for those who have been convicted, freedom from cruel and unusual punishments. These lists might be extended, but the items mentioned are sufficient to indicate the character of the provisions in question. The right to the enjoyment of the privileges associated with

the ownership and control of property are protected by provisions governing the taking of private property for public use under eminent domain, freedom from the enforcement of confiscatory taxes, from arbitrary and discriminatory legislation - these latter under due process and equal protection clauses of state constitutions which antedate by many years the similar provisions of the Fourteenth Amendment, inserted in the Federal Constitution in 1868. Both, of course, are applicable.

In nearly every state, some of the provisions of the existing bills of rights have long since passed the stage at which they have any relation to present-day conditions. While practical minded people might wish to eliminate these provisions, more conservatively minded persons, particularly members of the bar, are likely to resist any effort to eliminate or modify these provisions. Since they do no great harm, perhaps the energy expended in the effort to remove them might better be applied to more vital matters. Even though the wording may be stilted and archaic, lawyers will often contend for its preservation, since the meaning of the existing provision has been adjudicated and established. This does not mean, however, that new material may not be added to the bill of rights. Even though the older provisions are permitted to remain unchanged, provision should be made for the protection of the newer rights, more recently acquired, and most likely to be called into question. Bills of rights have grown through the years in exactly this way; men have sought to preserve the rights that they have already won, and to secure guarantees in their fundamental law of those rights which, at the time, seem vital, but which have not, heretofore, been so generally recognized or so commonly observed.

The Framework of the Government

In our American constitutions, we have uniformly professed the idea

of the separation of powers, as a result of which we have three separate and distinct branches of government - the executive, legislative, and judicial - each of which has its peculiar function to perform, and no one of which is supposed to invade the prerogative of either of the other two. While this principle of organization is not always applied consistently, and does not conform to that existing in other democratic countries, or for that matter, to that used in the conduct of private business in this country, it is so well established by long usage that any effort to abandon it would likely meet with overwhelming opposition.

Whatever the form of organization agreed upon, the basis for its establishment must be provided for in the constitution. There must be provision for the executive, his qualifications, the manner of his election, his term, etc. The legislature must be established, in one house, or in two, as has heretofore been the practice. The election, qualifications, and term of legislators must be provided for, and there must be provision for a system of courts. If the constitution is to endure, and remain satisfactory over a long period of time, these provisions should be brief. If they are brief, they will be flexible and elastic, susceptible of adaptation to the changing needs of the people in a rapidly changing society; if they are too long, and cluttered up with great masses of detail, they will be inflexible and inelastic, and will cause it to be difficult, if not impossible, to make desired changes.

To be specific, it is a mistake to put into the constitution the amount of the governor's salary. The purchasing power of the dollar has changed considerably over the years; a salary that was once ample may, under different conditions, be wholly inadequate, quite out of keeping with the importance of the position and the calibre of individual desired to fill

it. The constitution should provide for adequate compensation, and should prohibit changes in the amount of compensation during the incumbent's term of office, but the amount should be left to legislative determination. Once the exact amount is specified in the constitution, it becomes difficult to change, and can be changed only by amending the constitution. If the amending process is a difficult one, the increasing of the salary becomes an even more formidable undertaking.

Again, many of the state constitutions go into great detail regarding the organization of the courts, providing the number and names of all judicial tribunals from the magistrates to the supreme court. This, too, is a great mistake. As the population grows, or population density shifts from one part of the state to another, as new types of business or industry develop, the character and the quantity of judicial business changes. The judicial set-up that is suitable in one situation may be quite ill adapted to another. The legislature ought to be free to make such changes as the exigencies of the situation require, in order to secure the prompt and efficient handling of the judicial business. If such a suggestion seems to anyone to be a shocking departure from established practice, let it be remembered that the judicial clause of the Federal Constitution is very simple and direct:

> "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

The Powers of Government

The constitution must either enumerate the powers which may be exercised by the various branches of the government, or else establish some rule upon the basis of which these powers may be determined. The possible

scope of state power is indicated in a general way by the provisions of the Tenth Amendment to the Federal Constitution, which says that all powers not delegated by it to the Federal Government, nor denied by it to the states, are reserved to the states respectively or to the people. Within the limits of this framework, it is not only within the province of the state constitution, but it is its special function to establish, in language as clear as possible - language that has a general rather than a too specific application - the limits of the authority to be exercised by the executive, legislative and judicial branches of the government. And if the separation of powers system is to work satisfactorily, each department must be assured powers adequate to its peculiar responsibilities.

Students of government are practically unanimous in recommending broad grants of power, with a minimum of provisions of a limiting or restrictive character. In the early days of the Republic, there was a widespread distrust of the executive power; while this was natural at that time, it has now largely disappeared. The governor is, in fact, commonly regarded as a popular leader, but we have rarely changed our law to conform to our changed attitude toward the executive. The governor is a responsible elected official; if we expect him to control his administration, and secure definite results, we must not withhold from him the powers that are essential to the discharge of his responsibility. To do so is not only unfair to the man we have entrusted with the direction of the state government, but it imposes a handicap upon his success that is well nigh insuperable.

Similarly, with the legislature, we have imposed every kind of restrictive provision, so that our lawmaking bodies find themselves frequently lacking the power to deal effectively with pressing situations that confront them. Most of these restrictions originated in the reconstruction period,

following the Civil War, and have no conceivable relation to present-day legislatures, or legislators. While every legislature has its quota of incompetents, there are regularly considerable numbers of men of ability and integrity, who give of their time and effort without reservation, in their anxiety to do a good job. With the techni-services that are now available for their assistance, in the form of legislative councils, reference bureaus, and bill drafting facilities, they should be freed from hampering restrictions, and given the opportunity to perform the task for which they were elected.

Provision for Amendment

The provisions for amendment and revision are among the most important to be found in any constitution. No group of men in a convention, no matter how wise or how devoted to the public interest, can foresee the problems which changed conditions may bring about in the future. They should not seek to impose their will and their judgment, based upon existing conditions, upon generations yet to come - generations which may find themselves living under conditions that are wholly different. These generations will of right demand the same privilege of changing their fundamental law that their forefathers exercised, and in all probability, they will be quite as competent to handle the problems confronting them.

It has - as has already been noted - been well established in the United States that a distinction should be made between fundamental or constitutional law on the one hand, and ordinary statutory law on the other. We have consistently regarded our constitutions as a kind of "higher law," and have consequently sought to make it more difficult to modify them than to change a statute. This attitude, which has much justification, should not be permitted to extend to the extreme position that constitutions are

sacred, and that they ought not to be changed at all. In a dynamic society, they must be changed from time to time, and they will be changed. The Federal Constitution has been amended 21 times, and literally hundreds of amendments to it have been proposed. The temper of the American people is such that they prefer to make needed changes by orderly processes, but if no procedure were offered by which they could be made by orderly means, they might be obliged to resort to the methods used by the founders of the Republic.

The provisions for amendment and revision should be as liberal as is consistent with the American doctrine of constitutional supremacy. The provision for a popular referendum every 20 years, on the question of a convention for general revision, as in Missouri and New York, is a good one and should be included; but the provision for "piecemeal amendment" should also be liberal enough to permit the people to adopt from time to time such changes in their fundamental law as they may desire, without too many difficulties and obstructions. This is not the place to present the specifications of such a procedure; it is the purpose merely to present clearly the tests by which any procedure which might be contemplated, should be measured.

General Comment

We have tried to define a constitution, and to indicate the nature of that distinction, so deeply imbedded in American law, between a constitution and a statute; we have noted the different types of material, the inclusion of which is essential to the drawing up of a complete constitution. It now remains simply to observe that a constitution, like the government that operates under it, is a very human thing. There is no such thing as an ideal constitution, or a perfect constitution. A given constitution is good or bad,

according to whether it encourages or impedes the body politic in its efforts to make those adjustments to changing social, economic, and political conditions, which are indicated by the application of reason and intelligence to the problems of modern society. A constitution should, as Mr. Justice Cardozo said on one occasion, attempt to state principles of government for an expanding future.

WHAT A CONSTITUTION SHOULD CONTAIN *

by
Dr. H. V. Thornton
Government Department, University of Oklahoma,
Research Consultant, State Legislative Council

A constitution is a system of fundamental law. Its primary purposes are the creation of governmental machinery, and the establishment of safeguards which will prevent unfair or improper exercise of governmental authority. "Fundamental law" defies accurate definition. But if doubt prevails concerning its nature, it may be removed by reading the Constitution of the United States, or the Model State Constitution. Woodrow Wilson, in his classic volume, The State, reminds us that "Constitutions are in their nature bodies of law by which the government is constituted, by which, that is, government is given its organization and functions."

Fundamental, or constitutional law is superior and less subject to the demands of change. It is, so to speak, the "Governmental wisdom of the ages". Statutory law, on the contrary, is concerned with temporary or current policies and practices, with subject-matter largely of a transitory nature.

The distinction between fundamental law and statutory law is uniformly accepted in this country. But this distinction has not always been respected, particularly in the preparation of those constitutions which have been adopted since 1900. These documents show a tendency toward great length, due mainly to the practice of including in constitutions subject-matter which is not of the nature of fundamental law. They become, so most observers maintain,

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*Publication No. 1 of the Legislative Council of Oklahoma, being Part 1 of the survey of "What a Constitution Should Contain," November 1947.

an unfortunate mixture of statutory law and basic legal principles.

Why Constitutions are Long

John Marshall significantly remarked, in the case of McCullough v. Maryland, 1819, that

> A constitution, to contain an accurate detail of all subdivisions of which its great powers will admit, and all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind...

Why has this warning against wordiness and detail been forgotten by the framers of recent state constitutions? The answer to this question is found not in one, but in several developments in American politics.

First. State constitutions have grown longer because of the decline of public confidence in legislative bodies. Severe restrictions have been imposed upon the exercise of such traditional powers as the power to tax, to create public debts, to regulate the expenditure of public funds, despite the historic fact that free government came into being only after these powers were firmly lodged in legislative bodies.

The prerogatives of the law-making branch have been further reduced, and the volume of constitutions expanded, by the establishment of numerous constitutional administrative departments and agencies, whose powers, organization and procedures are carefully prescribed. Terms of general meaning, which might give to constitutions some measure of flexibility, are held suspect. When Oklahoma's Constitutional Convention, in 1907, came to consider the corporation commission and its functions, it was not content merely to declare that its powers should extend to the regulation of such private enterprises as "transportation companies" and "transmission companies". The meaning of the latter term, for example, was defined to mean and include companies or persons which operate for hire telephone and telegraph systems - no more,

no less. Want of confidence in legislative bodies, in their motives as well as their competence, has probably contributed most to the excessive length of state constitutions.

Second. State courts, too, have not always fulfilled the expectations of the public. The extent and complexity of state constitutions is due in part to detailed provisions which govern the organization and procedures of courts, the selection of judges, and in some instances their recall from office. Perhaps the extent of judicial articles reflects less upon public confidence in the courts than in the legislature. But aside from this possibility, much that is unusual in state constitutions, particularly in those adopted since 1900, may be accounted for by the hostility which the courts have commonly manifested toward new types of social legislation.

During two or three decades preceding the adoption of Oklahoma's constitution, judges, unable to discover what they regarded as sufficient restraints upon legislative action in either state or federal constitutions, frequently found limitations elsewhere, in the uncertain, ill-defined concepts of natural law. Certain types of public policy, judges sometimes reasoned, must be forbidden, the absence of constitutional limitations notwithstanding. By way of overcoming this manner of judicial opposition, or dictation, new social policies were directly and positively sanctioned by constitutional provision.

The efforts of state courts to discover extra-constitutional limitations on the powers of government explain, in part, why framers of recent state constitutions tend to disregard a fundamental principle of our constitutional system: All powers of government inhere, or reside, in the state unless limited by the Federal Constitution. For this reason, perhaps,

Oklahoma's legislature is twice authorized to establish a "state printing plant", once in the general grant of power to the lawmaking branch, and again by specific grant.

Third. With the addition of new functions of government, and the more extensive exercise of the old, it might be concluded that the volume of state constitutions would necessarily expand. Such conclusion, however, cannot justify some of the remarkable provisions which have found their way into the basic laws of the states. A few examples will suffice. Minnesota, by amendment, has incorporated into its constitution a detailed description of the various routes of the state highway system. Oklahoma, by constitutional mandate, requires that home economics be taught in public schools. California's "fundamental law" thoughtfully guarantees to its citizens "the right to fish", although, as Dr. Munro remarks, it probably means little against the right of private ownership, and in this age of closed seasons.

It might have been taken for granted by the framers of Oklahoma's constitution, that "The State of Oklahoma is an inseparable part of the Federal Union, and the constitution of the United States is the Supreme Law of the land". Furthermore, so are the laws and treaties of the United States, regardless of their omission from this declaration. Perhaps many of the unusual, or unnecessary provisions found in state constitutions are harmless. Nevertheless they may prove, under some unforeseen circumstance, serious obstacles in the adjustment of constitutions in a changing world.

Why Long Constitutions are Objectionable

Long constitutions are not objectionable simply because they are long. Arguments against them must rest on other grounds. One of the great functions of a constitution is the creation of a legal framework within which change can proceed in an orderly manner. A good constitution will be

rigid enough to avoid change inspired by temporary or passing considerations; it will be flexible enough that, without frequent amendment, the stable progress of a people will not be restrained. Tested by these standards, most authorities conclude, long constitutions reveal major weaknesses.

First. Long constitutions interfere with the normal functions of the legislature. Measures of temporary or transitory importance, such as those dealing with the salaries of officials, length of legislative sessions, pensions, lobbying, even duels, are given permanent form. Oklahoma's constitution devotes more than three hundred words to the matter of free transportation of persons by railroads. A legal essay of comparable length prescribes the amount, and the manner in which the ad valorem tax may be levied. And even greater space is devoted in constitutions, many observers conclude, to tie the hands of the legislature.

Forms of taxation, for example, must be altered as forms of property and ways of doing business are altered by the introduction of new practices and new technologies in the industrial life of the people. Causes of economic maladjustment may be traced, in some instances, to the rigid tax limitations. It is sometimes maintained that land, particularly agricultural land, has borne in this country an undue share of the costs of government because of the inflexibility of established revenue systems.

In other respects, detail in constitutions may be held to interfere with the normal functions of the legislative branch. For example, since Oklahoma's constitution provides specifically that "transmission companies" are companies or persons engaged in the operation of telephone and telegraph systems, the question might be asked: Is a radio broadcasting company a transmission company in the constitutional sense of this term? And since "transportation companies" are defined to include specifically all known

forms of private enterprise engaged in transportation at the time the constitution was written, is an air line company a transportation company within the meaning of Oklahoma's basic law? Radio broadcasting, and transportation by air,* could not have entered into the careful calculations of the framers of the constitution forty years ago. The careful manner in which these terms are defined makes debatable at least the right of the legislature or the courts to identify either of these new public utilities properly.

Not many thoughtful observers will deny that state legislatures have often failed to meet reasonable expectations of the public. But in one respect the public may be at fault. The embittered, disillusioned voter has thought more about preventing his legislature from legislating badly; he has thought little about modernizing the organization and procedures of this branch of the government so that it might legislate well.

Second. Long constitutions impose excessive and unnecessary burdens on the courts. Contrary to popular expectations, constitutions drawn up in great detail and incorporating new types of social legislation have not taken the courts out of "politics". Constitutions, written in this manner, simply multiply the prospects that any legislative act may run counter to their numerous provisions. The courts, obliged to pass with increasing frequency on the validity of legislative acts, are often subjected to undue and unfair criticism by the public which finds in courts, rather than in complex constitutions, the chief hindrance to modern legislative programs.

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* Ed. N.: The Supreme Court of Oklahoma has just recently ruled that the restrictive language incorporated in the Oklahoma Constitution precludes aircraft transportation from being included within the jurisdiction of the Corporation Commission.

Third. Detailed constitutions almost invariably provide a long ballot. A great many observers maintain that a ballot of this nature imposes unnecessary burdens upon the voter, and at the same time renders government less responsive. Primary and general elections in Oklahoma have produced some amusing, and some almost alarming results, which cannot be accounted for entirely by voter indifference. The selection of thirty or thirty-five nominees, for as many state and local offices, out of some 175 candidates is a task which can rarely be performed well.

Furthermore, the election of a large number of independent executive and administrative officers divides responsibility, and mocks, in important respects, constitutional clauses which declare that the governor shall see that the laws of the state are faithfully executed. This is an example of a common tendency to impose responsibility without power. The demands of democratic government, so far as the ballot is concerned, are met when major policy-forming officers -- governors and legislators -- are chosen by the people. These demands do not require popular choice of those officers whose duties are primarily administrative or ministerial.

Fourth. Long constitutions require frequent amendment. The constitutions of some states are extremely difficult to amend. But a good many observers hold that there are objections to this practice, even though the amending process may be employed under favorable conditions. In the first place, the average citizen is too busy trying to make a living to take an active intelligent, and sustained interest in routine changes which long constitutions frequently require in a changing society. Unless proposed amendments involve controversial matters his interest lags, if it exists at all; while most of the changes which long constitutions must undergo are not exciting in their nature.

In the second place, amending of constitutions once begun tends simply to accelerate the need for additional amendments. In the past forty years, more than seventy amendments to Oklahoma's constitution have been submitted to the voters, twenty-four of which have been approved. Seven amendments were adopted before 1931; seventeen have been adopted since, while thirteen, or more than half of all amendments to the state constitution, have won approval since 1941. Oklahoma is rapidly approaching that condition, already attained in some states, wherein the question may not be that of amending the constitution, but rather that of amending the amendments to the constitution.

Finally, frequent changes may tend to reduce respect for constitutions. Amendments appear less as efforts to modify the fundamental law than as mere legislative acts. The distinction between fundamental and statutory law is completely lost, and an attitude among voters is created which facilitates incorporating in constitutions subject-matter of distinctly transitory nature. The experience of all states considered, it seems doubtful that "piecemeal" amendment, particularly of long constitutions, has served to keep these documents abreast of the times.

Framework of Government

The foregoing arguments lead most observers, men versed in the practical affairs of government as well as academicians, to urge return to fundamentals in the writing of constitutions. These fundamentals or essentials, may be variously classified, but for the purposes of this report only the framework of government and amendments and revision will be emphasized.

Separation of powers. Common to all American constitutions is the principle of separation of powers, from which is derived the three great

branches of government -- the legislative, executive and judicial. To each branch is assigned powers and prerogatives which cannot be invaded by either of the others. Legislative powers shall not be exercised by the executive or the judiciary, executive powers shall not be exercised by the judiciary or the legislature, and judicial powers shall not be exercised by the legislature or the executive.

There is, of course, considerable deviation from strict application of this principle. This is apparent in the veto powers of the governor, in the power of the legislature to impeach, and to confirm executive appointments, and in the power of the judicial branch to pass on the validity of acts of the legislature or of the chief executive. These exceptions, or checks and balances, however, have been accorded full recognition since the origin of our constitutional system.

Greater significance attaches to the new types of checks, commonly found in state constitutions, which go beyond those recognized as essential by the men who framed the Constitution of the United States. For example, executive powers have been widely dispersed among a large number of independently elected executives and administrators. Appropriating powers, traditionally associated with the legislature, are sometimes in important respects vested in administrative boards and in the governor by virtue of his "contingency" fund. And while the governor, for the reason stated above, has never actually attained the stature of a chief executive, he is rapidly acquiring recognition as the "chief" law-maker. Developments of this nature might suggest that the principle of separation of powers has lost its validity, that although the words remain in the text of constitutions, the substance of the principle has vanished. Some reputable students of American government insist that separation of powers has served

its historic purpose -- as a defense against arbitrary power -- and that it might well be abandoned.

Such outcome, however, is most unlikely. In the first place, the principle is firmly established by long usage, and opposition to its removal would be overwhelming. In the second place, recent developments in parts of the western world do not indicate that traditional defenses against arbitrary government can lightly be put aside. If the principle of separation of powers seems to have fallen short of fulfilling the needs of modern government, the failure may better be accounted for in the excessive and illogical checks and balances which have brought about a confusion of the functions of the three great branches of government. Effective constitutional revision calls for a clear restatement of this principle minus most of the checks, exceptions and restrictions which fill the pages of long constitutions.

The Executive Branch. Provisions organizing the branches of government must be included in the constitution; but if this document shall endure, these provisions will be brief and, therefore, flexible. Oklahoma's basic law goes to the opposite extreme. Perhaps in no instance in American experience has constitutional departmentalization of the executive branch been carried quite so far. As pointed out above, this arrangement not only imposes an unnecessarily burdensome task upon the voter, but brings about a dispersion of executive power to such degree that only with great difficulty can unity of purpose be achieved or responsibility for the acts of administration be fixed.

The inadequacy of this method of establishing departments within the executive branch is widely recognized. A logical result is that some agencies, boards, or offices created by act of the Legislature, have outstripped in importance several of the departments which enjoy constitutional

status. A current example of the tendency of legislative agencies to be expanded at the expense of constitutionally created departments is found in legislation which reorganizes and enlarges the functions of the budget officer. This illustrates how exigencies of modern times may bring out the by-passing of a constitutionally created executive office by act of the Legislature.

It is highly probable, also, that departmentalization as established in the constitution of Oklahoma accounts for the creation of a large number of legislative agencies, many of which are performing aspects of the same general function of government. Thus, the purchasing powers of the State Board of Public Affairs and of the Highway Commission, along with the powers of the Tax Commission, State Treasurer, and the Budget Officer belong logically in a well integrated department of finance and revenue. Various agencies, constitutional and legislative, participate more or less independently in the administration of welfare, banking, and health legislation. The practice of vesting major aspects of administrative power in legislative agencies represents an attempt to restore to the office of the governor some measure of the authority of a chief executive and to secure an improvement in important functions of government. He is given the power, ordinarily to appoint and remove the personnel of these boards and by such means to control their administration.

If our system of separation of powers is to work satisfactorily in this dynamic age, each branch must be given powers adequate to its peculiar responsibilities. The restrictions which are commonly imposed upon the governor are of colonial origin, born of a period when widespread fear of executive power was fully justified. The governor has long since become a responsible leader. The public expects him to control his administration

and to secure definite results as chief executive. The fundamental law ought to be changed, and made to conform to the public's conception of this office.

The Legislature. Frequent reference has been made, here, to the numerous restrictive provisions which long constitutions have imposed upon the legislative body. This branch is often found without power sufficient to meet pressing problems, a situation which may be intensified as the demands for public services increase. Some matters of state can ill afford to wait upon statewide referenda. Let it be admitted that most legislatures have all the weaknesses of their constituencies; nevertheless, a good majority of members are men of more than ordinary ability and integrity. If given proper organization, and technical assistance in the form of independent fact-finding agencies, reference bureaus, and bill-drafting facilities, the legislature can fulfill its obligations. Furthermore, in this troubled world, it is most important that the legislature be restored to the confidence of the people.

The point has been made by many observers: The dictator must first control and then destroy the legislature. The law-making branch, the newer devices of direct democracy notwithstanding, remains the foundation of responsible government, which in the years immediately ahead must meet its most crucial tests. Yet perhaps less constructive thought has been given to the legislature, its organization and procedures, and its modern problems, than to either of the other branches, executive and judicial. The limited session, for example, was established at a time when the duties of state government were relatively few, when the vast majority of public services were rendered by local governments. In those days, the legislative per diem of $6.00, now wholly insufficient, might have been adequate.

Not so many years ago, public health, care for dependents, construction and maintenance of roads, licensing and inspection, and education were public services performed largely on a local or neighborhood level. Today these services, in major respects, have become the responsibilities of the state, and make the greatest demands upon its resources. The increased volume and complexity of legislative problems are obvious, a condition which strongly recommends thoroughgoing reconsideration of the traditional principles of legislative organization as well as legislative procedures.

The Judiciary. The judicial article of the Federal Constitution simply declares that "The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish". A few more words are devoted to defining the jurisdiction of the Supreme Court, and to appointment and terms of justices, by way of concluding comment on this branch of the central government. State constitutions, no doubt, must devote more space to the organization of courts and to the manner of selecting their personnel. But it is generally agreed that recent state constitutions include too much detail regarding the organization of the judicial system. In this age when population shifts rapidly, and when social relations are constantly changing, the legislature should retain reasonable freedom to organize or reorganize inferior tribunals, and to create special courts designed to serve special purposes.

Reorganization of the state judiciary presents two major problems. In the first place, many of the leading members of bar associations insist, better means of selecting court personnel must be found. While judges must not be relieved of all accountability or responsibility to the public, they

must, if their services shall result in the impartial administration of justice, be freed from the capricious aspects of politics. A plan designed to serve this end has long been advocated by the American Judicature Society. The details of this plan will be presented in later reports. Here need only be stated that it provides for appointment of judges for a definite term by the governor who must make his appointment from a panel of qualified persons prepared and presented to him by a judicial council. At the end of his term the judge must run for election on his record. If he fails to win majority approval, his office is held vacant, and the governor must appoint, in the original manner, some other person qualified to fill the post vacated by the electorate. This plan is in operation in Missouri.

In the second place, the state courts should be organized into an integrated system in order to equalize and facilitate their work. In Oklahoma, each court comes close to being a province unto itself. Some judges are overworked; others have little to do. Furthermore, the administrative work of courts in these days is of great volume. For these reasons, jurists and informed laymen propose the coordination of the functions and activities of the several courts in the judicial branch, and the appointment of an administrative officer, under the chief justice.

Amendment and Revision. Any constitution, however well it may be adapted to the times and to the needs of a people, must include provisions for amendment and revision. Conditions change, often with marked rapidity. It is important to the stability of society that such changes will be met within the framework of the constitution. The Supreme Court, speaking directly upon the nature of constitutions in the case of Marbury v. Madison, had this to say: "That the people have an original right to establish, for

their future government, such principles as, in their opinion shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected". Once well and intelligently established, these principles should not be changed often. Moderate imperfections had better be borne with, but as Thomas Jefferson observes, "...I know also that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed,...institutions must advance also, and keep pace with the times."

It would be inconsistent with democratic principles to deny, or make excessively difficult, the right of a people to amend or revise their fundamental law. Provisions should be reasonable and clear, and as nearly possible mandatory in nature, particularly those provisions which would give to the people the right to decide whether their constitution should be generally revised.

RECENT CONSTITUTIONAL CHANGES IN STATE GOVERNMENTS *

by
Dr. Kimbrough Owen,
Director of Research,
Constitution Projet,
Louisiana State Law Institute

The most important single characteristic of the modern state constitution is its excessive length. This excessive length is indicative of four important developments in the years since our independence: (1) a shift has occurred from mistrust of the governor characterizing the early constitutions to a mistrust of the legislature evident in later ones. This is the most important, the fundamental cause of the long constitution. The people wish to protect their interests against the legislature so all manner of minutiae are frozen into the constitution. (2) A second reason for the growth of the constitution has been the shift from the limited conception of the state to the present attitude of the state as a necessary regulator in the public interest. (3) Less important is the expansion of the conception of Jacksonian democracy. One form in which this has affected the length of the constitution has been in the increase in the number of public officers popularly elected. The long ballot at an election is generally a reflection of long constitutional provisions for these officers. (4) Another cause for lengthening the constitution has been the growth in provisions concerning local government units. Consider New Orleans in the constitution, for example, and the creation of special districts of every variety.

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*From "The Projet of a Constitution for the State of Louisiana - Expose de Motifs," being a collection of materials showing the progress made by the Louisiana Law Institute in complying with the legislative mandate to prepare a draft of a new constitution.

These four considerations are important, because they indicate the possibilities for shortening the constitution and the possible effects thereof, including the strengthening of the legislature, the reduction in constitutional administrative provisions and number of popularly elected officials, and the reworking of the relationship between the state and its subordinate units.

With these general considerations in mind, it may be helpful if we turn to the actual experiences of Missouri[1]. . . (and) Georgia. . . as examples of . . . recent attempts at constitutional revision.

The Missouri constitution adopted by the voters in February of 1945 involved some changes that would appear significant in our own state. In the first place, the length of the constitution was reduced by 11,000 words or reduced by a third. In the Bill of Rights, freedom of speech and press were extended to the radio[2] and rights of employees to organize and bargain collectively were recognized.[3] In the legislature the bicameral form was retained[4], but legislative procedures were speeded up and made more democratic by providing for a means of forcing bills from the committees onto the floor of the House by a third of the members.[5] Committees were required to keep a

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[1]Ed. Note: This article includes references to New Jersey's ill-fated constitutional revision of 1944. As New Jersey just adopted a new constitution on November 4, 1947, all references to the 1944 proposed constitution have been eliminated except where the generalizations apply equally as well to the 1947 constitution.

[2]Proposed New Constitution adopted by the 1943-1944 Constitutional Convention of Missouri, hereinafter referred to as Missouri Constitution, Art. I, Sec. 8.

[3]Missouri Constitution, Article I, Section 29.

[4]Missouri Constitution, Article III, Section 2.

[5]Missouri Constitution, Article III, Section 22.

public record of the vote on every bill before them.[6] A provision was written which it is believed will require senatorial reapportionment every ten years.[7] An effective administration was made possible by the provision that the seventy odd independent establishments must be reduced to no more than fourteen.[8] The merit system was extended.[9] Provision was made for an integrated department of revenue to collect all state taxes except those collected by local officials.[10]

The article on the judiciary vested a rule-making power in the Supreme Court of the state[11] and allowed the Supreme Court to transfer judges temporarily from one court to another.[12] Justices of the peace were replaced by a series of magistrates courts.[13] The famous nonpartisan court plan was retained.[14]

The problem of the metropolitan area was met by allowing any county with a population of over 85,000 to draft a charter for its own government.[15] The General Assembly was authorized to divide counties into not more than

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[6]Ibid.

[7]Missouri Constitution, Article III, Section 7.

[8]Missouri Constitution, Article IV, Section 12.

[9]Missouri Constitution, Article IV, Section 19.

[10]Missouri Constitution, Article IV, Section 22.

[11]Missouri Constitution, Article V, Section 5.

[12]Missouri Constitution, Article V, Section 6.

[13]Missouri Constitution, Article V, Sections 18 and 20.

[14]Missouri Constitution, Article V, Section 29.

[15]Missouri Constitution, Article VI, Section 18 (a).

four classes[16] and to provide alternative forms of government for the counties of each class.[17] Two or more counties, but not in excess of ten, may cooperate in the performance of any governmental functions in connection with hospitals and roads or other services.[18] Home rule for cities was extended to permit municipalities with a population of 10,000 or more to frame and adopt their own charters.[19] In the field of education, the most significant change was that from an elective state superintendent of schools to the establishment of a bi-partisan board of education appointed by the governor for overlapping terms. The board selects the state commissioner of education.[20]

With regard to taxation, the general property tax as such was removed from the constitution, and all property is classified into three groups: real property, tangible personal property, and intangible personal property. Intangibles are to be taxed on their yield at a rate not to exceed 8% of the yield. Taxes on intangibles are to be assessed and collected by the state and returned, less 2% of collection costs to the counties and other political subdivisions of their origin.[21] Rigid constitutional tax limits for local government were modified in favor of flexible limits that may be exceeded by two-thirds vote of the local voters.[22]

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[16]Missouri Constitution, Article VI, Section 8.

[17]Missouri Constitution, Article VI, Section 9.

[18]Missouri Constitution, Article VI, Section 14.

[19]Missouri Constitution, Article VI, Section 19.

[20]Missouri Constitution, Article IX, Section 2.

[21]Missouri Constitution, Article X, Section 4.

[22]Missouri Constitution, Article X, Section 11.

The Georgia constitution represented a problem similar to the one we now face; it had been amended 301 times since its adoption in 1877.[23] The new constitution represented important changes over the one of 1877. In the Bill of Rights, previous tax exemptions guaranteed corporations in their charters were rendered null and void.[24] Regarding elections, the age limit for suffrage was reduced to 18,[25] and all regulation of primaries was omitted. Per diem compensation of the legislators was increased,[26] and limitations were placed on local legislation.[27] Regarding the executive, the governor's salary was increased and the term increased from two to four years.[28] A merit system was introduced,[29] and retirement provision was made.[30] State budget system was provided.[31] Regarding the judiciary, the chief justice of the supreme court was made the administrative head of the court.[32] The legislature was authorized to require jury service of women.[33] Under taxation and

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[23] Handbook on the Constitutions of the United States and Georgia by Merritt B. Pound and Albert B. Saye. Athens: The University of Georgia Press, 1946, p. 41.

[24] Georgia Constitution, Article I, Section III, Paragraph III.

[25] Georgia Constitution, Article II, Section I, Paragraph II.

[26] Georgia Constitution, Article III, Section IX, Paragraph I.

[27] Georgia Constitution, Article III, Section VII, Paragraph XV.

[28] Georgia Constitution, Article V, Section I, Paragraph I, Constitution of 1877, Article V, Section I, Paragraph II.

[29] Georgia Constitution, Article XIV, Section I, Paragraph I.

[30] Georgia Constitution, Article XIV, Section I, Paragraph II.

[31] Georgia Constitution, Article VII, Section IX, Paragraph I.

[32] Georgia Constitution, Article VI, Section II, Paragraph I.

[33] Georgia Constitution, Article VI, Section XVI, Paragraph II.

finance, allocations were forbidden.[34] Under education, the state board of education was appointed by the governor.[35] The superintendent was elected in the same manner as the governor.[36] County wide school systems were provided.[37] In the field of local government, no new counties may be made except by consolidation.[38] Localities were authorized to select their form of government from the alternate forms specified by the legislature.[39]. . . . .

The procedure for revision provided in the case of each of these. . . states is interesting. In Missouri a constitutional convention was called consisting of two delegates from each of the thirty-four senatorial districts. No two of these delegates from a district could be the representative of a single party. . . In Georgia, a commission of 23 persons was appointed to study the problem and prepare a document. The General Assembly debated the proposals, made some changes, and then submitted the text to the voters.

It is significant that each of the three states (Missouri, Georgia, New Jersey) in which constitutional changes have been recently undertaken has indicated a decided trend back to the principles of the early state constitutions in two important respects. Each reflected a recognition of the necessity of increasing the responsibility of the legislature, and each represented a shorter constitution than the one in effect. These consti-

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[34]Georgia Constitution, Article VII, Section IX, Paragraph IV.

[35]Georgia Constitution, Article VIII, Section II, Paragraph I.

[36]Georgia Constitution, Article VIII, Section III, Paragraph I.

[37]Georgia Constitution, Article VIII, Section V, Paragraph I.

[38]Georgia Constitution, Article XI, Section I, Paragraph III.

[39]Georgia Constitution, Article XV, Section I, Paragraph I.

tutions did not represent a return to the Revolutionary constitutions in their treatment of the executive, however. The increasing power of the legislature reflected no decrease in the governor's position, and constitutional revision had, in general, as one of its aims rendering executive leadership more, rather than less, effective. With that in mind executive reorganization was called for with a reduction in the number of independent establishments. A new emphasis of these constitutions has been that concerning the administrative problems of the judiciary, rules of procedure have been removed from the constitution in two of the constitutions, a rule-making power is vested in the courts themselves, and the responsibility for judicial administration placed in the Supreme Court of the state. A further characteristic of these constitutions, most completely recognized in Missouri, is their extension of the principle of home rule to both cities and counties. Home rule represents a delegation of authority to the citizens of a county or municipality to draft their own charter for their own government. This removes from both the constitution and the legislature the necessity of providing specifically for the government of each local unit, removes many of the evils of special legislation and allows for a desirable flexibility in adapting governmental structures to local needs.

If any general conclusions may be drawn from these three examples, they are that reducing the length of constitutions apparently involves: (1) strengthening the power of the legislature; (2) a reduction in the number of administrative offices and elected officers provided for by the constitution; (3) working out home rule arrangements for both counties and municipalities.

THE NEW CONSTITUTION OF NEW JERSEY[1]

The delegates to the New Jersey State Constitutional Convention took as their objective the drafting of a constitution which would make possible a more efficient, more economic, and more democratic state government. To accomplish this the new constitution provides: "(1) a more liberal 'bill of rights,' (2) better defined legislative power, (3) a stronger, more responsible executive, (4) a simple, unified system of courts, (5) a sounder basis for taxation and finance, /and/ (6) a simplified, less expensive method of amendment."

In the revised bill of rights of the new constitution, women are given equal constitutional rights by a provision prohibiting denial of the enjoyment of civil or military rights of any person or discrimination against any person in the exercise of such rights.[2] Segregation in public schools or in the militia by race, color, ancestry or national origin is forbidden.[2] Labor's right to organize and bargain collectively is guaranteed to those in private employment, and persons in public employment are given the right to organize and present their grievances and proposals through representatives of their own choosing.[3] The right of trial by jury remains inviolate, but in civil causes involving less than $50 the Legislature may authorize trial by a jury of six persons and, in any civil

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[1]Based upon the summary and explanation adopted by the Constitutional Convention of New Jersey to present the basic facts about the proposed New Jersey Constitution subsequently enacted November 4, 1947.

[2]Article 1, paragraph 5.

[3]Article 1, paragraph 19.

case, may eliminate "hung juries" by providing for a verdict by not less than five-sixths of the jury.[4]

With regard to the legislative department, the new constitution incorporates many of the tenets long advocated by authorities in the field of government. The terms of Assemblymen are lengthened from one to two years and of Senators from two to four years.[5] Salaries for both Assemblymen and Senators will be determined by the Legislature instead of being constitutionally limited to $500.00; however, increases in legislators' salaries cannot become effective until the year following the next election for the General Assembly.[6] The Legislature is prohibited from electing or appointing any executive officer except the State Auditor.[7] Because control of public funds is considered to be a legislative function, the Legislature will elect the State Auditor. To prevent the passing of bills without time for adequate consideration, one full calendar day must intervene between the second and the third readings in each House.[8] Finally, the power of the Legislature is increased by abolishing the "pocket veto"; forty-five days after adjournment the Legislature will again meet in special session solely to consider vetoed bills, and all those which the Governor has not returned to the Legislature will become law.[9] In this

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[4]Article 1, paragraph 9.

[5]Article 4, sections 2 and 3.

[6]Article 4, section 4, paragraph 8.

[7]Article 4, section 5, paragraph 5.

[8]Article 4, section 4, paragraph 6. Emergency measures, so resolved by three-fourths vote, may be considered on third reading without the lapse of a day.

[9]Article 5, section 1, paragraph 14(b)

manner the strengthening of the Governor's veto power commented on below is balanced by giving the Legislature an opportunity to reconsider all vetoed bills.

The executive authority is augmented by the provision previously referred to prohibiting the Legislature from selecting state officers; in place of legislative election the Governor will be required to fill such offices with the advice and consent of the Senate.[10] Executive departments are limited to twenty, thus replacing eighty departments, agencies and commissions functioning prior to the revision of the constitution.[11] With the exception of the State Auditor, the Governor is given executive supervision over all executive heads; single executives, including the Attorney General and the Secretary of State, will serve at his pleasure. The Civil Service is given constitutional status.[11a] The veto power of the Governor is strengthened by substituting a two-thirds majority for a simple majority formerly necessary to override the Governor's veto.[12] In appropriation bills the Governor will now be able to reduce, as well as eliminate, any item by veto.[13] Finally, the Governor's term is increased from three to four years and in place of the prohibition against a Governor succeeding himself, it will now be possible to reelect him for one additional term.[14]

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[10]Article 5, section 4, paragraph 2, 3, and 4.

[11]Article 5, section 4, paragraph 1.

[11a]Article 7, section 1, paragraph 2.

[12]Article 5, section 1, paragraph 14(a).

[13]Article 5, section 1, paragraph 15.

[14]Article 5, section 1, paragraph 5.

To insure New Jersey against suffering from the confusion that recently troubled the states of Georgia and Wisconsin, more adequate provision is made for filling a vacancy in the office of the Governor. The former succession of the President of the Senate and Speaker of the Assembly is retained, and the Legislature is given the power to establish additional lines of succession. If the Governor or Governor-elect becomes permanently unable to perform the duties of his office, the state Supreme Court may, upon presentment by the Legislature, declare the office vacant.[15]

The new constitution establishes a simple, unified system of courts. The Supreme Court, with a Chief Justice and six Associate Justices, replaces the old sixteen member Court of Errors and Appeals.[16] In place of separate courts of law and equity, a new Superior Court, with law, chancery, and appellant divisions, is established with the former two divisions permitted to exercise each other's powers when necessary.[17] In each county there will be a single County Court, which in general will be the court of first instance.[18] Existing inferior courts below the County Court level may be established, altered, or abolished by law.[19] Justices of the Supreme Court and Judges of the Superior Court are appointed for an initial term of seven years, with the advice and consent of the Senate, and may then be reappointed to hold their offices during good behavior.[20] Under the new con-

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[15]Article 5, section 1, paragraphs 6, 7, and 8.

[16]Article 6, section 1.

[17]Article 6, section 3, paragraphs 1, 3, and 4.

[18]Article 6, section 4, paragraph 1.

[19]Article 6, section 1, paragraph 1.

[20]Article 6, section 6, paragraphs 1 and 3.

stitution the Chief Justice of the Supreme Court is declared to be the administrative head of all the courts in the state, and is given full administrative power over them.[21]

The control of taxation by the Legislature is continued. However, the former "true value" standard for property tax assessment is eliminated due to the variability in its interpretation by the local assessors; in place of this former standard all real property is required to be assessed according to "the same standard of value."[22] Existing statutory tax exemptions are given constitutional recognition.[23] A property tax exemption of $500.00 for veterans also becomes part of the constitution.[24] Under the new constitution, slum clearance projects may receive limited tax relief; in addition, the taking of private property for such projects is authorized.[25] Finally, in phrasing the limitation on the maximum debt of the state, in place of a fixed sum of $100,000.00, the terminology is changed so as to fix the maximum at one per cent of the total current state budget.[26]

The provisions for amending the constitution are simplified and a less expensive method adopted. Under the old constitution, an amendment had to be passed by a majority vote at two consecutive sessions and then

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[21]Article 6, section 7, paragraphs 1, 2, and 3.

[22]Article 8, section 1, paragraph 1.

[23]Article 8, section 1, paragraph 2.

[24]Article 8, section 1, paragraph 3.

[25]Article 8, section 3, paragraph 1.

[26]Article 8, section 2, paragraph 3. Additional debt may be incurred upon approval of the voters.

submitted at a special election, the special election costing the state about $750,000.00. Under the new constitution, after an amendment has been passed by a three-fifths vote of the Legislature at one session, or by a majority vote at two consecutive sessions, it will be submitted to the voters at a general election, where an approval by a majority of the voters voting thereon is sufficient to adopt the proposed amendment.[27]

[27]Article 9, paragraphs 1, 4, and 6.