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STATE CONSTITUTION REVISION: THE ILLINOIS OPPORTUNITY

Jefferson B. Fordham

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GEORGE A. MILLER LECTURES

Edited by Samuel K. Gove



THE UNIVERSITY OF ILLINOIS

AND PUBLIC AFFAIRS

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INSTITUTE OF GOVERNMENT AND PUBLIC AFFAIRS
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FOREWORD

On December 10 and 11, 1969, the George A. Miller Lecture Committee of the University of Illinois at Urbana-Champaign sponsored a two-part lecture-discussion series on problems of state constitutional revision. The timing of the lectures was particularly appropriate because earlier in that week on December 8, the sixth Illinois Constitutional Convention had convened in Springfield.

There is much interest in state constitutional change across the country. Many claim that shortcomings in state constitutions have hindered state governments from coping with their many problems, including those associated with our urban crises. Some states have gone, and others are going, the route of Illinois and convening a constitutional convention to provide a complete review of their constitution. Others are using approaches that provide less extensive reviews.

The lecture-discussion series was aimed at putting the Illinois situation in the national context. Some of the discussion was directed specifically toward Illinois problems, while other parts of it looked at the general picture.

The Institute of Government and Public Affairs wishes to thank the speakers for participating in this important series. Also thanks are extended to Dean John Cribbet of the University of Illinois College of Law who presided at the first night's lecture delivered by Jefferson B. Fordham. The undersigned moderated the second night's panel discussion by George D. Braden, William N. Cassella, Jr., and Milton Rakove.

In publishing these lectures, the Institute hopes that it may present some new insights into the problems facing the delegates to the Illinois Constitutional Convention.

SAMUEL K. GOVE
Director

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LECTURE

STATE CONSTITUTIONALISM IN AMERICA

JEFFERSON B. FORDHAM

I congratulate the people of Illinois upon the opportunity their open constitutional convention affords them for achieving a grand design in the state constitutional order. During the century that has passed since Illinois and other states adopted post-Civil War constitutions, experience has confirmed strongly that, to be viable, a state organic law must be broadly conceived and highly flexible. The role of a state constitution is to provide the basic governmental framework and make the distribution of responsibility and authority for decision-making, which will enable the state to deal, not simply with the perceived problems of today, but also with the as yet undisclosed problems of the future. Surely it is not the office of a state constitution to commit the future by hardening particular policy decisions of the present.

It is rather incongruous, as a matter of political theory, to have, as we do, a national constitution, which is brief and largely general in character, and lengthy state constitutions fraught with policy determinations. I say this because the federal government is one of delegated powers, which, of necessity, must be identified in the organic instrument, whereas residual powers abide in the states. You do not have to spell out the powers of a state legislature; it is enough to say in a constitution that the legislative power is vested in the legislative branch. The power of a state legislature is plenary except as restricted by the federal Constitution, the state constitution, and limitations implicit in the federal system.

In my perspective, it would be difficult to exaggerate the importance of the charge of the Illinois Constitutional Convention of 1969. This statement is premised upon the belief that the states—far from finding themselves well along the road to limbo—have and will continue to bear major responsibilities in the total governmental scheme of things.

A few years ago there was much serious talk to the effect that practically all important decision-making in this country, then and thenceforth, was and would be done at the national level. In this view the states and their legislatures were relegated to a subordinate, insignificant level. Things have changed; such talk is seldom heard these days. There is fresh awareness that, in a huge and complex country such as ours, the responsibilities of government have to be distributed among different levels of government if the total job is to be

manageable. I mean by this, of course, something much more substantial than administrative decentralization. I am referring to distribution of responsibility for policy-making. Beyond this, of course, is the store laid in a democratic society by citizen participation. We are engaged right now in carrying this to the subcommunity level in large urban centers.¹

We have found that decentralization in the governmental scheme as a whole does not erect jurisdictional barriers. In a given problem area governmental units standing in horizontal, as well as vertical, relationships may have interests which bespeak cooperation. Intergovernmental relations are an important factor in responding to problems which do not respect jurisdictional lines.

That the federal government has immense influence over our lives in the spheres both of external affairs and domestic concerns is obvious, but it is no less clear to me that state responsibilities with respect to a congeries of human affairs are of first-rank importance and pervasive influence.

State responsibility for so-called law and order is primary. The principal body of private law is state law. The basic system of criminal justice and law enforcement is the state system. This is emphasized by the Federal Assimilative Crimes Act, through which Congress has borrowed state criminal law for Federal enclaves. It is still true that the responsibility for public education is that of the state. State responsibilities for both utilization and conservation of natural resources are large. Local government is the creature of the state; surely the problems of urban life in this highly urban civilization are of first-rank importance. This is but a start on the list. Local government, in particular, may touch upon the life of the citizen from start to finish. The functions of local units run into the hundreds. To say that these things are relatively inconsequential is to fail to see the woods at all.²

What are the basic components of a state constitution? Some years ago in speaking of constitutions more broadly, I said:

A written constitution for a democratic society, which pursues its political ends through representative government, needs but four elements: (1) provision of the basic framework of government; (2) distribution broadly of governmental powers within the designed framework, with secondary power-devolution left to the legislative arm; (3) substantive and procedural guaranties to the individual against the arbitrary exercise of governmental authority—a bill of rights; and (4) provision of machinery for change in the constitution.³

I hardly need add that I would apply this to a state constitution.

One is aware, of course, that the way we have been acting over a long period as to state constitutional development tends to condition what we can do; we are somewhat habituated to constitutional specificity, to trying to

¹ See the New York statute with respect to decentralization as to public education in New York City, *New York Laws of 1969*, c. 330.

² Jefferson B. Fordham, "The States in the Federal System—Vital Role or Limbo?" *Virginia Law Review* 49(1963): 666, 668.

³ Jefferson B. Fordham, "The Legal Profession and American Constitutionalism," *The Record of the Association of the Bar of the City of New York* 12 (1957): 518, 519.

perpetuate particular policies by embodying them in state constitutions. I, however, am free to speak with as great detachment as I may choose; and it pleases me to say that any departure, in current state constitutional revision, from the four basic elements mentioned should be grounded upon the most compelling considerations.

I would not suppose, for example, that Reconstruction-Era constitutional provisions on corporations and railroads have any place in the 1970 scheme of things. About all that can be said of them is that they restrict the range of legislative policy-making, thus limiting the freedom of the lawmakers to respond with sensitivity to social need as conditions change.⁴

Human Rights

In 1970 terms, the treatment of human rights in a state constitution is to be undertaken in a very different federal constitutional setting from that of 1870. The pertinent provisions of the Constitution of the United States, as amended, were pretty much the same in 1870 as 1970, with the notable exception of the provisions of the Nineteenth Amendment for woman suffrage, but judicial exegesis during the past sixty years has carried us far.

While the first ten amendments to the federal Constitution, familiarly called the Bill of Rights, were designed as safeguards against action by the national government,⁵ the force of nearly all of their safeguards has been rendered effective against state and local governments through interpretation of the due process of law clause of the Fourteenth Amendment. This is true as to substantive matters, such as freedom of speech and assembly, as well as procedural safeguards, such as protection against unreasonable searches and seizures.⁶ Whether we explain this on the basis that Fourteenth Amendment due process broadly guarantees fundamental rights as to life, liberty, and property which are more particularly safeguarded against action by the federal government or that Fourteenth Amendment due process incorporates the guaranties of the Bill of Rights, the result, to the extent of the coverage, is the same.

It will be borne in mind that the federal constitutional safeguards of human rights are enforceable in the state, as well as the federal courts, or as Article VI of the federal Constitution lays it down, the state courts are bound by the provisions of that instrument.⁷

⁴ In the recent revision of the Constitution of Pennsylvania, such provisions were eliminated.

⁵ *Barron v. Mayor, etc., of Baltimore* 7 Pat. 243 (1833).

⁶ Most recently the Supreme Court has held that the provision of the Fifth Amendment against double jeopardy "represents a fundamental ideal in our constitutional heritage, and it should apply to the States through the Fourteenth Amendment." *Benton v. State of Maryland*, 89 S. Ct. 2056, 2062 (1969).

⁷ Of course, a state court ruling against constitutionality rested upon an adequate independent state (nonfederal) ground obviates federal court review on federal grounds.

I believe it fair to say that there has been much greater sensitivity to human rights in the federal courts than in the state courts. What has been done under Fourteenth Amendment due process makes this so perspicuous as to render substantial extrapolation a bore. I will add that the courts of the Union—with their greater detachment from the state governmental establishment and interests and their national orientation—were the obvious recourse of the aggrieved citizen.

What the Supreme Court has done with respect to fairness in legislative representation is the most conspicuous example of federal judicial interposition in default of state action, whether by the state legislature or the state courts.⁸ One recalls the frustrations of John B. Fergus, who, back in the twenties, tried in vain to get the Illinois courts to act on malapportionment in the legislature. He sought a writ of mandamus to compel the legislature to reapportion.⁹ He sought a writ of quo warranto by way of challenge to the very legal standing of a malapportioned legislature.¹⁰ He was much too far ahead of his time and was bounced unceremoniously out of court.

In these circumstances—marked by broad federal protection—why bother with a declaration or bill of rights in a state constitution? There are several things to be said in response to this question:

1. It may be desired to cover in a state instrument more ground than in the federal. A right to collective bargaining in private employment, recognized by the New Jersey Constitution of 1947, is one example.¹¹ Pennsylvania, by the way, recently adopted a constitutional amendment, which provides for collective bargaining between policemen or firemen and their public employers and for compulsory arbitration in case of an impasse in negotiations.¹² I must say that I am not persuaded of the wisdom of constitutional provisions on employer-employee relations; I prefer to leave the legislature with wider range in policy-making in this field.

There are those who may wish to have a woman's rights provision in a state constitution.

Then, there are the so-called right-to-revolution clauses, which go back to the days of Madison and Jefferson and which are to be found in a number of state constitutions, including the Illinois Constitution of 1870. What they have added has not been altogether clear. It is noteworthy that, in 1966, the Kentucky Court of Appeals relied upon such a clause to uphold resort to a constitutional revision assembly, established by statute, to put forward for

⁸ *Reynolds v. Sims*, 377 U.S. 533 (1964) and companion cases. For general information, see Robert G. Dixon, Jr., *Democratic Representation* (New York: Oxford University Press, 1968).

⁹ *Fergus v. Marks*, 321 Ill. 510, 152 N.E. 557 (1926).

¹⁰ *People ex rel. Fergus v. Blackwell*, 342 Ill. 223, 173 N.E. 750 (1930). See also *Fergus v. Kinney*, 331 Ill. 437, 164 N.E. 665 (1929).

¹¹ *Constitution of New Jersey*, Art. I, Par. 19.

¹² *Constitution of Pennsylvania*, Art. III, Section 31.

electoral approval proposed amendments to or revisions of the state constitution, even though the constitution expressly provided a convention method of revision.¹³ The convention method was slow and depended upon electoral approval.¹⁴ The majority opinion exalted the state bill of rights as something supreme and inviolate, while all else was considered transitory and changeable.

Should a state constitution respond expressly to the widely-asserted need of better recourse for the common man against unfairness and abuse of power in public administration? Does the ombudsman idea deserve constitutional recognition?¹⁵ It seems to me that the importance of the subject gives it a claim to consideration in a state constitutional convention. This is not to say that I am fully persuaded. But constitutional status would accord notable recognition to this special officer, which should fortify him in standing up to all and sundry in the administrative establishment.

Should there be express constitutional recognition of so-called welfare rights? In my view, human interests call strongly for action by organized society; but we are dealing here with positive social policy as to distribution or redistribution of goods and services, or the means to acquire them, and I doubt that we could enunciate a viable constitutional principle on the subject. Thus, I do not suggest that a state go beyond an equal rights provision at this time.

2. As a matter of internal completeness and symmetry, an organic instrument for a major political entity, even a unit in a federal system, calls for declared safeguards of human rights, especially in a system in which there were states before there was a federation or union. The tradition involves a commitment of large psychological value, I suggest, and I favor following it, even though provisions of state bills of rights have not always been liberally interpreted in favor of human rights.

3. As to some matters affecting human rights, it might be desired in a particular state to be more restrictive of government than is the federal Bill of Rights. This could be the case as to aspects of separation of church and state and religious liberty. A state could take a position in the declaration of rights which would not allow of shared time, that is, a program in which pupils in church-related schools would get part of their educational experience in classes on secular subjects in public schools. It is my guess that the Supreme Court of the United States would hold, as has the Supreme Court of Illinois,¹⁶ that shared-time programs are constitutional. But such policies do not relieve the pressure; the cost of education has grown so great that the

¹³ *Gatewood v. Matthews*, 403 S.W. 2d 716 (Kentucky 1966).

¹⁴ *Constitution of Kentucky*, Section 258.

¹⁵ It was first articulated, as a legal matter, in the Swedish Constitution of 1809. The Swedish experience is examined in Walter Gellho, *Ombudsman and Other Citizens' Protectors in Nine Countries* (Cambridge: Harvard University Press, 1966).

¹⁶ *Morton v. Board of Education*, 69 Ill. 2d 38 (1966).

push is toward direct public subsidy of church-related schools, which are carrying part of the responsibility for primary and secondary education.¹⁷

It is noteworthy that a three-judge federal court, by a two-to-one decision, rendered less than two weeks ago, upheld a Pennsylvania statute which provided for state payment — from an earmarked tax on horse racing — of the actual cost of teachers' service, textbooks, and instructional materials in certain secular courses in nonpublic schools.¹⁸ The majority concluded that the purpose and primary effect of the statute was secular in nature and that incidental benefits to sectarian schools were not enough to violate the establishment clause. Chief Judge Hastie, of the United States Court of Appeals for the Third Circuit, the dissenter, saw the arrangement as a subsidy rather than a genuine purchase of educational services and concluded that the state was supporting a religious enterprise of which secular courses were a part. Beyond that, as he saw it, the state was both inviting political activity by religious groups and state intrusion into the affairs of religious institutions. Review by the Supreme Court is being sought. Meanwhile, the Hastie position is sound, in my opinion, and I make bold to predict that it will prevail. Obviously, if it does, Illinois will be bound by it.

Does the establishment clause of the First Amendment proscribe tax exemption of property used for religious purposes? I mean here property used directly for religious activities as distinguished from business or charitable properties of a religious organization. Bear in mind, of course, that the establishment clause, by interpretation of Fourteenth Amendment due process, is a limitation upon state action. There is an historical argument grounded in general practice from the beginning of the Republic, which substantially supports the exemption. But the evolution of thought in the ongoing business of filling in the content of broad constitutional principles runs the other way. A direct cash subsidy of religion would not stand up. Tax-free provision of governmental services to religion is, in plain economic terms, just as real a subsidy. A test case is pending in the Supreme Court.¹⁹

Meanwhile, it is clear that exemption is a matter of state choice; a state may tax religious property if it sees fit. With respect to constitutional revision, my suggestion is that a state constitution should permit classification of property for ad valorem tax purposes. This suggestion calls for qualification of the traditional uniformity clause. The policy thrust is along the line that religious property ought to be taxed on a basis that bears some relation to governmental services received, which might well be less burdensome than

¹⁷ See the free school book case, *Board of Education v. Allen*, 392 U.S. 236 (1968). (Provides for the loan, mandated by statute, of school books, free of charge to all children in grades seven through twelve upheld as to parochial school pupils.)

¹⁸ *Lemon v. Kurtzman*, USDC E. Pa. (38 LW 2329).

¹⁹ *Welz v. Tax Commission*, 24 N.Y. 2d 30 (1960); probable jurisdiction noted, 395 U.S. 957 (1969).

taxes on property devoted to other types of uses. Obviously government — the organized public sector — is providing many of the services necessary or desirable to meet human needs, and it is entirely rational to expect payment for what is rendered, apart from welfare considerations and policy.

Equal rights provisions in a state constitution plainly cover some of the same ground as related federal constitutional provisions, such as the equal protection clause of the Fourteenth Amendment. State commitment to equal rights is, nonetheless, of concern to a state constitutional convention. The principle is too important as a matter of the basic integrity of the social order.

In some states, notably Louisiana, it has been a commonplace to engage in a kind of popular legislation by writing a congeries of policy determinations into the constitution by frequent and often detailed amendments. This is a grave offense to my notions of state constitutionalism in general. I make particular reference to it here because I see a kind of parallel in what is taking place today in the federal courts. Reform in the interest of human welfare is being sought vigorously in the judicial forum. I hardly need say that I believe deeply in liberal interpretation of federal and state constitutions in favor of human rights. What concerns me is something that I expect to explore more fully in a separate published paper. I refer to the great pressure for judicial decision at the constitutional level in default of legislative reform at the statutory level. The ardent advocate is a pragmatist; even if the point I am making occurred to him, it is not likely that he would be deterred by it. My point, of course, is that judicial reform at the constitutional level necessarily constricts the range of legislative choice and decision in the ongoing business of policy-making in a changing social condition. It bypasses, moreover, deliberative processes in policy-making.

The Legislature

Central to state constitutional reform is the legislative institution. I have in mind, you can be sure, the lively contemporary interest in one form or another of participatory democracy, but it is evident enough to me that in large community units there is no effective escape from recourse to representative government. Even New England towns have had to acknowledge this. In populous towns, representative town meetings have replaced the traditional town meeting.

The state legislature — a body with plenary powers — should be seen both as a policy-making organ and as a power-distribution or devolution arm of government. This is patently so as to delegation of authority to local government, absent an expansive constitutional grant of home rule. It is, in fact, true as well of structural arrangements and delegation of authority in the state government.

It does not take a numerous body to do a legislative job. The most

populous state, California, has a bicameral legislature of 120 members, and I have heard the chairman of the state's constitutional revision commission proudly proclaim it to be the best of the state legislatures. What is needed is a substantial representative assembly, which is entrusted with responsibility for policy-making unhampered by rigid time or procedural limitations and which has the freedom to mobilize the staff and other resources it takes to do the job well. If we are to confide broad substantive powers to a legislature, we should not hesitate to accord it autonomy as to internal organization and procedure and treat it as a continuing arm of government working regularly in annual sessions not subject to any limitation as to length of session.

It is my notion that the unicameral structure is better designed for responsible action and genuine political accountability. Now that we are guided by the one-man, one-vote principle for both houses of a bicameral legislature, the permissible range of differences in the representative systems for two houses is considerably narrowed. Some differences can be worked into a unicameral system, in any event, as by having the state covered by single-member districts over which is laid a layer of larger regional districts. Such an arrangement would be calculated to afford regional as well as more local perspective.

The unicameral form is simpler, more visible to the citizen. It fixes institutional and political responsibility. It avoids that third-house mechanism, the conference committee. In contrast, an impasse in the two politically-divided chambers in Pennsylvania has the state in a fiscal crisis at this very moment. It is true that a second house may serve as a brake upon hasty, ill-considered action, but the brake might be applied as well to thoroughly-considered reform measures. The unicameral form is calculated to facilitate a more positive, decisive legislative process, while still subject to ultimate political accountability.

I add only that the matter of structure is not of the highest order of importance. Representatives of character and ability can work well in the bicameral framework, given the scope to which I have already referred.

Apart from the bill or declaration of rights, a state constitution should contain a minimum of limitations upon the legislative power or how that power may be exercised. A traditional type of limitation upon the "how" of legislating, as distinguished from substantive jurisdiction, is the constitutional ban upon special or local legislation. Commonly, such provisions have spelled out a whole list of subjects as to which special or local legislation is proscribed and have ended with a catch-all clause. I would eschew such listing and simply articulate a general prohibition. Local legislation is, of course, one type of special legislation — in practical terms, the most important part of the problem area. It is appropriate to deal with that type in the state constitutional article on local government.

It may be desired to direct a few constitutional mandates to the legisla-

ture. The Illinois Constitution of 1870 ordains that the legislature shall provide a thorough and efficient system of free schools. This establishes the basic policy for the state. Why say more in the organic law?

If legislative redistricting and reapportionment are to be left to the legislature, there should be a constitutional command that the legislature act. I suggest, however, that it would be better to establish intelligible constitutional policies as to redistricting and reapportionment and place their execution in nonlegislative hands. There is an inescapable element of conflict of interest in legislative performance of the function.

I anticipate that there will be laid before the Illinois Constitutional Convention proposals for the initiative and referendum. Recent experience affords no basis for expecting them to originate in civil rights circles. Certainly, not if California's initiated anti-fair-housing constitutional amendment, Proposition XIV,²⁰ or Akron's compulsory referendum on fair housing measures²¹ are any indication. Over time, however, this could be a passing matter; at a later juncture, it might be human rights forces seeking to get adoption by initiative of the policy they espouse. I say "it might," but who knows, for are we not talking about the "great silent majority"?

One recognizes that the initiative affords a means of bringing into decision-focus policy ideas to which a legislature appears insensitive. Likewise, the referendum, as available independently of the initiative, is a means of rejecting a legislative policy determination that does not have sustaining popular support. But neither affords any institutionalized means of gathering facts and opinions, deliberation, and debate. Thus, the indirect initiative, which affords opportunity for legislative consideration, has some appeal.

The Executive

There is a widely-held opinion among students of state government that there should be centralized responsibility and accountability in the executive branch. I embrace this view. It exacts a short ballot calling for the election of a governor and lieutenant governor. It allows, in addition, for an official charged with post-audit, who might be chosen either by popular election or by the legislature.

The logic of this view is that the department heads should be appointed by the governor, without any requirement of advice and consent by a legislative body, and should be removable by him. The advice and consent qualification of executive authority exacts a large price in restriction of executive freedom of action in order to assure some check on unwise appointments.

A limitation upon the successive terms that one may serve as governor

²⁰ Held invalid in *Reitman v. Mulkey*, 387 U.S. 369 (1967).

²¹ Held invalid in *Hunter v. Erickson*, 89 S. Ct. 557 (1969).

is a declaration of distrust of the democratic process and a built-in scheme for lame-duck leadership. I do not recommend it.

In fiscal matters, planning and execution of both capital and operating budgets are executive functions and include the responsible estimate of revenues against which appropriations are made. On the appropriation side, a governor needs the leverage of the item veto, not just the power to reject an item outright but authority, as well, to reduce it. This power is particularly important under a system of lump-sum or performance budgeting, as distinguished from the old line-item type, since a veto of a lump-sum appropriation for a department or a program would leave no provision for the purpose and would entail further legislative consideration regardless of the timing.

The Judiciary

Illinois achieved judicial reform in 1962 by constitutional amendment. This development was notable; there was brought into being a simple, three-level system of constitutional courts, with centralized administrative authority in the state supreme court. The reform is widely regarded in legal circles as very advanced and constructive. I do not suggest that the amendment is beyond review in the Illinois Convention; some changes may be proposed. But in my overview of constitutional revision, I regard the judicial posture in Illinois to be so well-considered that I am refraining from talking about the judicial branch.

Finance

Since a state legislature has the nonfederal residuum of legislative power in our system, its taxing power, absent express limitations, is sweeping. Why impose limitations? I do not know.

Taxation is not simply a means of raising funds for the support of government. It serves, at the same time, to distribute the burden. More than that, taxation and appropriation together perform a function of redistributing economic substance to advance the objects of public policy. In the light of all this and in the face of critical need of public revenue for education and whatnot, the case for unfettered legislative power with respect to taxation is a strong one. I have a notion that, before long, federal leverage may be applied to influence state tax policy and that it may be toward an income tax keyed to the federal levy. If Congress is to begin sharing revenues with the states and the local units, it would be rational to move toward coordination of tax policy.

So long as local government is dependent, in large part, upon ad valorem property taxation, a constitutional requirement as to uniformity in assessment and levy is in order, subject to such degree of legislative classification as may well be desired. I certainly would not recommend a uniformity clause applicable to all forms of taxation. I can testify that such a clause

has been an instrument of regression in Pennsylvania and an obstacle to the raising of adequate public revenue.

I would abandon constitutional debt limitations for state and local government. Let the legislature bear the responsibility for the needed prudence exercised by adoption of statutory policies and by subsequent legislative oversight.

There are to be found in a number of state constitutions provisions dedicating particular revenues to particular purposes. Especially noteworthy, at this time, are constitutional dedications of gasoline and motor vehicle license tax revenues to highway — and, in some instances, airport — purposes. Simply from the standpoint of fiscal decision-making, such a commitment denies the legislature the discretion to allocate revenues both with a broad overview and with sensitivity to developing needs. It is extremely bad constitutionalism; it is, moreover, a conspicuously objectionable example of dedication. It favors the private automobile willy-nilly with all the enormous public outlay it takes for operating surfaces for motor vehicles and all the ecological and other problems generated in the use of trucks and automobiles. It seems plain enough that public revenue should be left open to appropriation by the legislature to serve the public interest, broadly perceived, to the best advantage. Highways are but one component of the social circulatory system; other elements, such as mass transit, must be considered in the planning and achieving of a sound, balanced system.

The Suffrage

I imagine that the Illinois Convention's most lively concern with respect to the suffrage will relate to the voting age. The question of whether the age should be lowered is a serious one. This is a new era. Young people, many of whom are under twenty-one, the traditional age of majority, are exerting an active voice in a great range of public issues at all levels of community. And, of course, young males under twenty-one, in large numbers, have been in active military service.

Speaking generally, I have a notion that state reduction of the voting age will be gaining in acceptance in the years ahead. Meanwhile, I am not convinced that it will be wise.

The contention that a person who is old enough to be required to serve in the military forces is old enough to vote is something short of compelling. Of course, males in their late teens provide a pool of persons generally qualified physically and mentally for military duty. Experience validates this. Their capacity to bear political responsibilities is hardly to be determined by the same standards. Justice Holmes said that the life of the law is experience. He might have said with equal force that it is experience which enables the individual to achieve maturity as a social being. I do not recall

having seen an infant prodigy in the social sciences. Experience and maturation vary with the individual, but, in general terms, it cannot be said that an eighteen-year-old — who may still be in high school, who in many states at least cannot even make an irrevocable contract, and who is not ready to bear adult economic and social responsibilities — is yet mature enough to vote.

The more weighty consideration on the side of a lower voting age is the demonstrated concern and involvement of youth in this troubled period. They are better informed about public affairs than earlier student generations, and they are participating in the actions and passions of their times in ways other than voting. I grant that these things are not to be taken lightly.

Local Government

Let me conclude with but a brief reference to my area of special concern as a student of law and public affairs — local government. I defer to others, yet to speak under these auspices, for treatment which is adequate in reach and depth.

I do commend for constitutional articulation a broad grant of home rule powers to counties and to cities of substantial population. My approach to home rule is to give the affected local units, those which adopt home rule charters, the full sweep of authority a state legislature might devolve upon them, subject to the overriding authority of the legislature to be exercised by general law. Constitutional provision for a real and regional governmental jurisdiction and arrangements for intergovernmental cooperation are desirable to afford maximum flexibility in fitting responsibility to changing community configurations and needs. My views on home rule are articulated more fully in the *Model Constitutional Provisions for Municipal Home Rule*, put forward by the American Municipal Association some years ago.

In this area of concern I renew the suggestion, of general application, that the dynamics of our society urgently call for organic political instruments that afford great flexibility in policy development and execution.

PANEL DISCUSSION

THE 1870 ILLINOIS CONSTITUTION DISSECTED

GEORGE D. BRADEN

My assignment for this part of the panel discussion is to tell you what I found upon dissection of the present Illinois Constitution. I must first enter two caveats to what follows. First, I did not in fact dissect all of the Illinois Constitution. My coauthor, Professor Rubin G. Cohn, dissected the bill of rights, the judicial article, and the revenue article. Second, I cannot tell you in fifteen or twenty minutes all that I found. For the complete autopsy, I must refer you to our analysis.²²

Upon dissection of the Illinois Constitution I found a mess. It must be conceded, of course, that once I have said that the Illinois Constitution is a mess, I have made a value judgment. Unless, that is, I mean that the Constitution is incomprehensible and unreadable. Except for that drafting monstrosity, Section 34, Article IV, "Special Laws for City of Chicago," this is not the case. What then is the value structure that I use in asserting that the Illinois Constitution is a mess? I would argue that a state constitution is a mess if (1) it unnecessarily and improperly limits the government; (2) it contains statutory material; and (3) it unnecessarily freezes the structure of local government. I hasten to point out that two of my three value judgments have subsidiary values — *unnecessarily and improperly* — expressed, and thus we are off and running on a mighty slippery road. But since, for the moment, I am in the groves of academe, and logical positivism is dead anyway — or is not "in" these days — I assume we can all slip and slide along together.

Now, in what way does the Illinois Constitution improperly or unnecessarily limit the government? First, and foremost, there are improper fiscal limitations on the government. There are absolute limitations on the incurring of local debt and conditional limitations on the incurring of state debt. In 1870 in Illinois, there was undoubtedly a felt need for these restrictions because of the internal improvement scandals of the preceding two or three generations. Today, these restrictions are not only unnecessary, they are actually counterproductive, to use one of the newer bits of bureaucratese. The fact is that the limitations do not prevent the incurring of debt; they simply

²² George D. Braden and Rubin G. Cohn, *The Illinois Constitution: An Annotated and Comparative Analysis* (Urbana: Institute of Government and Public Affairs, University of Illinois, 1969).

force the use of devices that are either expensive or inefficient, or both. On the state level, authorities proliferate. They borrow money to build buildings, toll roads, recreational facilities, and the like. These authorities do not enjoy the credit rating of the state, and the result is that they have to pay a higher rate of interest than the state would have to pay on full faith and credit bonds. On the local level, special districts, each with borrowing power, proliferate and jobs proliferate. This is both inefficient and expensive.

The other type of fiscal limitation is in the taxing power. Here, I am tempted to say, after the tenth reading of the tax sections of the Illinois Constitution, "it's spinach, and the hell with it." My best guess is that the 1870 drafters really were not trying to impose improper limitations on the government. I suspect that they were trying to do two things: assure fairness in taxation and cure some procedural abuses that had crept into the system. The latter is more legislative than constitutional and it became an improper limitation only because it is so difficult to amend the Constitution. (Let me note, parenthetically, that I am referring not to the specific difficulty of obtaining the vote of a majority of those voting in a general election or two-thirds of those voting on an amendment, but to the difficulty of getting the legislature or the public interested in technical amendments to technical constitutional provisions.)

As to fairness in taxation, the 1870 drafters used such words as a "tax in proportion to the value" of property, and, as to franchise and privilege taxes, "uniform as to the class upon which it operates." This was all right then, for they were thinking of the types of tax with which they were familiar. Unfortunately, they were too specific, for clever lawyers and judges, clever or not so clever, carried the words over to other taxes and created unnecessary limitations which the drafters probably had not envisioned. The recent Illinois supreme court opinion upholding the income tax, is, I might say with my tongue just barely touching my cheek, a brilliant example of strict construction of the Constitution. The justices have, in effect, gone back to the beginning and read the language in accordance with the true principles that guided the 1870 drafters.²³ Of course, the Convention could go the supreme court one better and simply drop all reference to state taxing power and rely on the courts to use the due process clause to preserve fairness in taxation. That, however, is not the type of convention action that some are worried about.

The other major type of improper limitation on government is by way of excessive control over the legislative process. The debates of the 1870 Convention reveal a great distrust of the legislature. In general, the delegates believed that the legislature was corrupt in several respects. It feathered its own nest and that of local officials; and it granted special privileges and

²³ *Thorpe et al. v. Mahin*, 43 Ill. 2d 36, 250 N.E. 2d 633 (1969).

immunities. Out of this generally held opinion came several restrictions. There was the extensive prohibition on special legislation, principally embodied in Section 22 of Article IV, but sprinkled also here and there throughout the Constitution. There were various attempts to assure honesty and integrity, such as the oath required of legislators, prohibitions on dual-office holding, conflict of interest provisions, restrictions on compensation via the fee system, and even some general restrictions that do not appear on their face to be related to the integrity of the legislative process.²⁴

Finally, there were several restrictions added to the rules for the enactment of legislation. These include the bill-reading requirement, the limiting of a bill to a single subject, the prohibition on revision or amendment by reference, and some of the restrictions on the appropriations process. These are all examples of naive do-gooders trying to prevent legislative skullduggery. It is my guess that none of these restrictions ever prevented any skullduggery. I know that they provided lawyers with lovely devices for attacking legislation and that, over the years, the courts aided and abetted lawyers in what I call an irrelevant exercise in limiting government. It is irrelevant because the person attacking the legislation couldn't care less about the legislative process—he simply does not like the substance of the legislation.

In all fairness to the 1870 drafters, I should note that most of these restrictions on the legislative process produce a judicially enforceable limitation on government only if the courts follow the "journal entry rule." Under this rule, the courts will examine the legislative journals to see if the constitutional procedure has been followed. Under what is called the "enrolled bill rule," the legislature alone enforces the rule, for the courts accept as conclusive a certification by the proper legislative officers that a bill was duly passed. I am not sure that the Illinois courts had decided prior to 1870 which rule they would follow. I strongly suspect that the 1870 delegates would have opted for the journal entry rule, so strong was their disapproval of the legislature. In any event, the Illinois courts have followed that rule. I should also note that the most mischievous of these restrictions are the one subject to a bill requirement and the amendment by reference prohibition, and both of them are operative without reference to the legislative journals.

My second characterization of a constitutional mess, the one without a subsidiary value judgment, is the inclusion of statutory material. Need I say more? Well, yes, I think I should note that there are two types of statutory material—that which everybody concedes is statutory and that which is statutory because one thinks that it is really not appropriate to limit the government in this way. (Thus, another subsidiary value judgment has

²⁴ For examples of general restrictions, see Braden and Cohn, *op. cit.*, pp. 226-27, 454-55, and 457.

crept in.) The first type is exemplified by Article XIII on warehouses. Even the 1870 delegates themselves recognized this.

Just before the Committee rose, a delegate offered an additional section, as follows: "This act shall be deemed a public act and shall be in force from and after its passage." (Debates 1627.)

The proposal was voted down. As the convention proper was subsequently about to refer the Warehouse Article to the Committee on Revision and Adjustment, another delegate offered an additional section, reading: "Be it enacted by the people of the State of Illinois, in Convention assembled." The proposal was ruled out of order.²⁵

The second type is exemplified by most of the sections in Article XI on corporations. I personally do not think that the legislature should be prohibited from allowing noncumulative voting for corporate directors, or creating a state bank, or allowing less than double liability for bank stockholders, or requiring banks to publish only annual statements, and so on. Nor, for that matter, do I think there is any need to prohibit lotteries or the employment of convict labor in a constitution. Thus, at some point a limitation on government becomes "statutory" only because in someone's judgment it ought not be a constitutional limitation at all, which is to say that the matter ought to be left to the legislature. The Illinois Constitution has several provisions that approach the true statute, several that are sort of in the middle, and several, such as those on lotteries and convict labor, that are "statutory" by subjective fiat.

My third characterization of a constitutional mess is the unnecessary freezing of the structure of local government. I do not propose at this point to enter into an extensive discussion of home rule. The essence of the home rule debate turns on whether or not local units should have a constitutionally protected power to set up their own forms of government. In the absence of a home rule provision, the legislature can provide for complete home rule or limited home rule, or, in the absence of a prohibition of local legislation, it can theoretically deny any home rule. I wish simply to note that, except for the geography of counties and the choice of having or not having township government, the structure of county government is fairly well frozen in the 1870 Constitution. Obviously, the structure of the state government, within fairly narrow limits, must be frozen. In the case of local governments, I see no good reason for freezing the structure. The key issue to be decided is who *controls* structure — the state or the people of the local units, or both in some combination. The extent to which home rule ought to be constitutionally guaranteed is debatable, and reasonable people can disagree on that extent. My point about a mess is that, under the existing Constitution, no one except the people of the whole state by constitutional amendment

²⁵ Braden and Cohn, *op. cit.*, p. 555.

or convention can do much about county government. Without passing judgment on the vision of the delegates to the 1870 Convention, I would say the result has been a mess.

Having covered my three elements of messiness, I should stop. But, I would not want to leave the impression that I think everything else in the Constitution is "hunky dory." Since I am a student and not a practitioner of government, I am naturally "gung-ho" for the short ballot — the shorter the better — for statewide executive officers. Indeed, for years I had been touting the Connecticut Constitution as the best in the country, but last July "Mr. State Constitution," that is, John Bebout, turned on me and muttered that Connecticut still had a long ballot including, particularly, an elected comptroller with pre-audit powers. I now bow to John and his favorite constitution — New Jersey's — for which, as a matter of fact, he personally can take a great deal of credit.

It seems appropriate, also, to note that, by virtue of the adoption of a new article in 1962, Illinois has just the opposite of a mess insofar as the judicial system is concerned. Nevertheless, since I have carefully pointed out the value judgments involved in passing on the merits of a constitution, I must note that I do not favor the election of judges, particularly by partisan elections.

Finally, I must concede that in characterizing various constitutional provisions as "bad" and in setting forth what I think is "good," I am exercising a freedom that delegates to a constitutional convention do not possess. Constitution-making is part of the process of government, and government is the art of the possible. For a variety of reasons, it is not possible to change everything for the good, to say nothing of the best. It is possible, however, for the 1970 Convention to propose a constitution that will be accepted by the people and that, when next dissected, will surely not be called a "mess."

STATE CONSTITUTIONAL REFORM: TRENDS AND COUNTERTRENDS

WILLIAM N. CASSELLA, JR.

"Removing specific constitutional obstacles to state action" was cited by the recent American Assembly on "The States and the Urban Crisis" as the primary objective of constitutional reform today. This purpose is very different, indeed, from that which motivated most state constitutional reformers during the greater part of our history. Their goal more often than not was to place restriction on action by agencies of state government.

In 1776 the Continental Congress urged each colony to adopt a constitution where there was "no government sufficient to the exigency of their affairs." Whether framed and proclaimed by Revolutionary conventions or Colonial legislatures, the peculiar circumstances of the American Revolution were responsible for the negative preoccupation reflected in the original constitutions. This point was emphasized in an early twentieth century appraisal which said:

... American state government, in its essential principles, was not originally designed for efficient, constructive public work, but was the product of temporary and peculiar conditions growing out of revolt against Great Britain. In their natural antipathy to leadership by a royal agent, the revolutionists rejected leadership altogether. In their fear of the British crown and the royal governor, they came to fear all power, even if exercised by their own agents. Instead of making the executive authority responsible, therefore, they shackled it. Knowing that royal agents could not be entrusted with authority, they came to the conclusion that no one could be entrusted with authority. Their ideal of government was a negative one and in seeking after a government powerless to do harm they set up one weak in power for good. This principle of negation, of preventing evil by dividing the powers of government into numerous parts is the chief source of the wastefulness, irresponsibility, and inefficiency which characterize the present system of government.²⁶

The division of powers was professed in virtually all original state constitutions, but with few exceptions in practice they followed a system of near legislative supremacy. The pre-Revolutionary legislatures had been seen as the people's bulwark against royal and proprietary tyranny and thus retained an undue share of popular confidence as the first constitutions were framed.

As the original draftsmen of state charters concentrated their fire on

²⁶ *The Constitution and Government of the State of New York: An Appraisal*, transmitted to the New York State Constitutional Convention by the New York State Constitutional Convention Commission (Albany: Bureau of Municipal Research, 1915), p. 2.

executive tyranny, the first wave of reform was an attack on legislative supremacy. Jefferson was a most articulate spokesman of that point of view.

All the powers of government, legislative, executive and judiciary, result to the legislative body. The concentrating of these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. 173 despots i.e., legislators would surely be as oppressive as one.²⁷

Jefferson became the first serious advocate of constitutional reform when he drafted a model constitution for Virginia in 1783. His draft stressed broadening the electorate and an effective division of powers — the two tenets of positive reform — but his recommendations were unheeded and the original constitution endured until 1830.

The strain upon state governments in wartime, the interstate bickering during the period of the Confederation, and the ineffectiveness of legislatures in dealing with state problems caused a rapid decline in public confidence in the legislature as the supreme instrument of state government. Individual legislators as the determined representatives of local or private interests against dominant colonial executives had served a most useful role. However, this extreme localism continued when the executive was all but nonexistent. The result was a neglect of the general interests of the state. Logrolling for local favors and legislating for private benefit of land speculators were common. Taxation was highly discriminatory and the public credit was extended for speculative purposes.

The Executive Veto

Reaction against the abuses of legislative supremacy was generally in the form of restricting legislative power. Suggestions that this be done by a more effective system of checks and balances met with but limited enthusiasm. In New York there had been a popularly elected governor since the time of independence. However, his powers were diluted by a council of appointments, which shared the appointing power, and a council of revision, which shared the veto power.

Massachusetts governors from the start had the veto which could be overridden by a two-thirds vote of the legislature. Gradually, as other original states made their governors popularly elected and new states were admitted, the executive veto was adopted primarily as a negative device to check the legislature rather than as a positive instrument to strengthen the hand of the governor.

Limiting Legislative Powers

Although state constitutional reform efforts were mainly focused upon

²⁷ Thomas Jefferson, *Notes on the State of Virginia*, edited by William Peden (Chapel Hill: University of North Carolina Press, 1955), p. 120.

preventing the abuses of legislative power, they were also motivated by a general distrust of government. Indeed, practices of the late eighteenth and early nineteenth centuries were so blatantly corrupt that the demand for restraint is certainly understandable.

With the gradual decline . . . in the prestige of state legislatures, the constitutional limitation[s] upon their powers were steadily increased. . . . The record of legislative folly and corruption in the American states is spread upon their constitutions in the form of a stream of amendments designed to check the abuse of legislative powers. The power to pass special and local acts, the power to tax and to grant tax exemptions, the power to invest the public money, loan the public credit, and dispose of the public resources in general, all were subjected to a series of restrictions ever increasing in number and stringency.²⁸

The outrageous discrimination in the granting of early nineteenth century bank charters by the New York legislature was the cause of increasingly rigid constitutional limitations. First in the Constitution of 1621 an extraordinary majority in each house was required to grant a charter, but one commentator relates: "The only effect of the restrictive clause in the constitution has been to increase the evil by rendering necessary a more extensive system of corruption. . . ."²⁹

The obvious next step came in the 1846 Constitution, which prohibited outright the granting of special charters and the requirement that corporations and associations must be formed under general law. For every abuse, the remedy seemed to be a constitutional restriction or prohibition.

Procedural Limitations

Reformers were not content to restrict the substantive powers of the legislature; they also injected procedural limitations which were motivated by the feeling that the less time the legislature was in session the less harm it would do. They tried to give a positive twist to the argument, for example, "With less frequent legislative sessions, the more important matters will occupy the attention of the legislators, and individual members will recognize the futility of advancing pet schemes of a merely personal or local interest."³⁰

The original almost universal practice of holding annual sessions was replaced by constitutional provisions permitting only biennial regular sessions frequently limited to a specific number of days.

This development illustrates how yesterday's reforms have become the target of today's reformers who are advocating unlimited annual sessions.

²⁸ Arthur N. Holcombe, *State Government in the United States* (New York: The Macmillan Company, 1916), p. 119.

²⁹ Jabez D. Hammond, *History of Political Parties in New York* (Syracuse: Hall, Mills and Co., 1852), Vol. I, p. 337.

³⁰ Paul S. Reinsch, *American Legislatures and Legislative Methods* (New York: The Century Co., 1913), p. 132.

A Popularly Elected Governor, but a Plural Executive

The ambivalence of reformers has been particularly apparent in the constitutional role of the executive. A rational method of checking legislative supremacy would be to strengthen the executive. To an extent, the adoption of the executive veto with the requirement of extraordinary legislative majorities to set it aside strengthened the executive's position. Certainly, the most significant reform during the nineteenth century was making the governor popularly elected. Popular election was provided in only 5 of the original 13 states. In the others he was chosen by the legislature. But popular control of the executive went much further. Indeed, the plural executive in fact was the result, with a total of 435 executive officers—by the most recent count—elected in the 50 states, or an average of 8.8 per state.

The evolution of reform dogma on executive selection can be illustrated by successive constitutional changes made in New York. In its first constitution, only the governor was popularly elected, with his appointing powers shared with a council of appointment composed of four senators. This was originally proposed by John Jay who considered the council as a device for approving or rejecting gubernatorial appointments. Legislators did not see it that way. The legislative members individually were to have equal status with the governor and thus be in a position to dictate appointments. This thinly veiled mechanism of legislative domination was replaced in the Constitution of 1821 by straight legislative appointment, which in turn was shortly subjected to bitter attack. It was contended that the "bosses" known as the "Albany Regency" had practically taken out of the hands of the legislature and the governor the selection of high public officers. . . .³¹

Control of patronage by this "invisible" government led to demands for a new constitution in 1846.

It was the clamor for the abolition of the Albany Regency and the widespread agitation against official despotism of European monarchs which reached our shores that the convention of 1846 made the secretary of state, comptroller, treasurer, attorney general, state engineer, and the judges elective by popular vote. The one was aimed at the abuse of legislative power, the other aimed at the abuse of executive power. Both sought to accomplish their ends by giving to the electorate a larger share of power.³²

This position came under vigorous attack almost seventy years later as New York prepared for its 1915 Constitutional Convention:

It is true, the proceedings of the convention of 1846 record a demand that these high officers be made responsible to the people by the establishment of popular election, but it is likewise true that abolition of certain evils was uppermost in the minds of the delegates. They evidently assumed that by transferring the right of election from the legislature to the people the irresponsible and unofficial boss system, which had hitherto controlled the choice in fact, would disappear, on the

³¹ New York State Constitutional Convention Commission, *op. cit.*, p. 30.

³² *Ibid.*

general theory that leadership is not essential to intelligent operations in such matters. That which was a historical accident then became a dogma, namely, that all high officers, no matter what their duties, must on democratic principles, be elected by popular vote. And the theory has been carried to such a great length that a governor of a western state solemnly declared not long ago that the appointment of the state veterinarian by the chief executive savored of monarchy.³³

A proposal to shorten the ballot won approval in the 1915 Convention but was rejected by the voters. Ten years later, following the recommendation of a special commission headed by former Governor Charles Evans Hughes and supported by the then Governor Alfred E. Smith, the secretary of state, treasurer, and state engineer were made appointive, leaving only the attorney general and the controller, as well as the governor and lieutenant governor, elected. Proposals in the 1938 and 1967 Constitutional Conventions to take these two officers off the ballot met with little support. Actually, New York has gone further than most states in reversing the nineteenth century "reform" which had so drastically lengthened the ballot.

Three constitutions adopted since World War II are the "short ballot" models. The only state executive officer elected in New Jersey is the governor; in Alaska, the governor and the secretary of state, who is the constitutional stand-in for the governor; in Hawaii, the governor and the lieutenant governor.

An Elected Judiciary

Popular election was also the nineteenth century reform prescription for judicial selection. It was in keeping with the prevailing view that the judiciary, as well as the legislative and executive branches, should be accountable to the people. No doubt popular election was an improvement over the original practice of a judiciary chosen by and therefore dependent upon the legislature. However, unlike legislative or executive elections, the election of judges has seldom evoked significant popular interest and has generally been characterized by voter indifference which has permitted almost complete partisan domination of the judiciary in many states.

Twentieth century judicial reform has called for an appointed judiciary. Most reform proposals have been variations of the Missouri Plan, which provides for gubernatorial appointment from nominations made by a nonpartisan selection commission composed of laymen and lawyers. Upon the expiration of his first term, the judge then runs for election without opposition, providing the electorate with an opportunity to remove him. It is said that he runs against his record rather than against a political opponent. The American Judicature Society and the American Bar Association have strongly advocated this method of judicial selection and it is gaining acceptance.

³³ *Ibid.*, p. 31.

Direct Legislation and the Recall

The early twentieth century reforms which most explicitly expressed dissatisfaction with the operation of representative government at the state level were the initiative and referendum first adopted in South Dakota in 1898 and now included in the constitutions of twenty-three states.

The advocates of these reforms were careful to assert, as did Charles A. Beard in 1912, that "it is the practice of representative government as it now prevails in the United States, rather than its theory" which should be considered when the initiative and referendum are appraised.³⁴

The third member of this popular reform triumvirate was the recall of elected officers in a special election initiated by popular petition, but it has gained considerably less acceptance.

Broadening the Franchise

Although for more than 150 years the thrust of most state constitutional reform has been to prevent or correct some abuse, the positive rationale was almost always expressed in terms of making government truly responsible to the electorate. Thus reformers have justified popular election of a whole retinue of executive officers, the major and minor judiciary, direct legislation, and popular recall of unpopular officials. The emphasis upon the role of the electorate did come at a time when the franchise was being greatly broadened. Indeed, this was the most significant series of constitutional reforms which extended from the time of independence into the twentieth century with the gradual elimination of property qualifications and restriction because of sex or color.

Urban-Rural Conflict and Home Rule

Since 1850, intense urban-rural conflict has been a fact of life in the American states. One reform which grew directly out of this conflict was constitutional home rule. The cities, particularly the larger ones, resented domination by rurally controlled legislatures. Prohibition of local legislation was the first constitutional measure to prevent some of the more blatant abuses such as "ripper" bills which abolished existing local governments for purely partisan purposes. However, the more drastic reform was to give municipalities substantial control of their own "property affairs and government." The first constitutional home rule provision was included in the Missouri Constitution of 1875 and applicable only to the city of St. Louis. Shortly, this became standard reform dogma and has been adopted in various forms in well over half the states. Like so many reform measures, it has had consequences unforeseen by its originators and is presently in the

³⁴ Charles A. Beard and Birl E. Shulta, *Documents on the Statewide Initiative, Referendum, and Recall* (New York: The Macmillan Company, 1912), p. 33.

process of reappraisal as new patterns of intergovernmental relations are emerging.

Frequency of Change

The foregoing panorama of state constitutional reform only shows the more conspicuous objects in a very detailed and complicated picture. In fact, it is more ambitious than wise for one to attempt such a portrayal, but any consideration of future reform needs to be placed in the perspective of almost two centuries of constitution-making, an art which generally has not improved with age. The reformers of each generation have contributed to the ever growing corpus of state constitutional law the legal prescriptions to right the wrongs of their predecessors and prevent transgressions by their successors. Jefferson thought that governments tend to grow away from the needs and wishes of the people and therefore advocated frequent revision of constitutions. He was the originator of the provision which at regular intervals automatically submits to the voters the question of calling a constitutional convention. This provision now exists in eleven states.

During the nineteenth century there was a much greater willingness on the part of the states to call conventions and adopt the new documents proposed by them. The results showed marked similarities to the reconstruction of eighteenth century houses in the Victorian era. Simple, classic lines were obscured by the addition of elaborate adornments — heavy cornices, gables, cupolas, and so on.

It is significant that the 1965 Connecticut Constitution is very similar in form and substance to its 1818 predecessor and is one of the shortest in the nation. The Connecticut Constitution, in both the old and the new version, is distinguished for the fact that it has avoided adding various new provisions which to many seemed meritorious at the moment but which in time have proved otherwise. Actually, the most unfortunate aspect of constitutional revision experience has been the willingness to add new provisions and the unwillingness to remove outdated sections. Many of the latter were adopted as important reforms to meet problems of another generation. Frequently, some special interest for good or ill has developed a special attachment to these provisions, making it extremely difficult to remove them even though now they may obstruct the operation of the state in meeting current problems. It is problems of this sort that require the most careful scrutiny of those who have revision responsibilities.

An illustration of the problem is provided by the prohibitions against gifts or loans to private persons or corporations by the state or its subdivisions in the New York Constitution (Article VII, Section 8, and Article VIII, Section 1). The prohibitions were inserted in the last half of the nineteenth century to guard against overexpansion of public credit for railroad develop-

ment, especially subsidies by local governments to promote the building of spur lines, many of which were never warranted by economic considerations. Now these provisions present a very real problem as the state endeavors to cooperate with the private sector to continue faltering rail passenger service, particularly within the greater New York region. The legal restrictions have necessitated the outright purchase of the Long Island Railroad by the state and a long-term lease arrangement with the Penn Central for improvement of the New Haven line.

Protection Dies Hard

Among perennial opponents of constitutional reform are the elected local officers who are named in constitutions: assessors, attorneys, auditors, clerks, commissioners, constables, coroners, elisors, public weighers, jailors, marshals, ordinaries, superintendents of the poor, rangers, recorders, registers of deeds, registrars of voters, registers of wills, road commissioners, sheriffs, surveyors, tax collectors, and treasurers. It is understandable that they oppose giving up this protection, which found its way into constitutions as part of the early and mid-nineteenth century preoccupation with keeping government responsible to the people by having executive and judicial officers of state and local government directly elected. Thus, again, it can be seen that the reform of an early era has become a stumbling block in meeting organizational and operational needs of today.

The Changing Agenda of Reform: Fewer Dogmas

For those of us who are involved in organizations which help set the agenda of reform by publication of model constitutions, charters, and laws, it is a sobering thought to realize that some of our most cherished reform prescriptions may within a generation become an impediment rather than an aid to making government more responsible and responsive.

For example, the dogmatic civil service provision, an essential of the reform agenda of only a few years ago, was not endorsed in the latest edition of the *Model State Constitution*²⁵ as it was in the previous one.

Drastic changes in the provisions for state-local relations were labeled by some as a repudiation of "home rule," a fundamental part of the traditional reform creed. The new edition endorses a formula which encourages maximum initiative at both the state and local levels but recognizes that in the last analysis the broader interests of the state must take precedence.

The initiative and referendum are no longer considered as priority items of a reform program and are now included only as an appendix to the *Model State Constitution*.

Model-building is characterized by some of the same restraints as the actual

²⁵ National Municipal League, *Model State Constitution* (New York: National Municipal League, 1963).

process of constitutional revision. In both endeavors it is much more difficult to take something out of a constitution than it is to put something in. The obstacles presented by vested interests in existing constitutional language are not easily overcome. Today's reformers must be very sure to heed the words of the late Justice Benjamin Cardozo: "A constitution states, or ought to state, not rules for the passing hour, but principles for an expanding future."³⁶

If we believe that states do have a significant role in an "expanding future," the direction of constitutional reform should be obvious. We must be wary of measures whose purpose is simply to correct abuses. Their potential for ultimate harm may outweigh their immediate benefits. Each reform measure must be judged as to whether or not it enhances the capacity of the state to act.

³⁶ Benjamin N. Cardozo, *The Nature of the Judicial Process* (New Haven: Yale University Press, 1921), p. 24.

POLITICS AND CONSTITUTION-MAKING IN ILLINOIS

MILTON L. RAKOVE

Long before the 116 delegates, who were elected by a small percentage of the mostly disinterested sovereign voters of the State of Illinois, met in Springfield to write a new constitution for the state, they had already become the recipients of a great deal of well-meaning advice as to how they should conduct themselves in their deliberations.

The newly elected Founding Fathers of Illinois have been told to be vigorously virtuous, eminently above board, always open, conscientiously representative, completely nonpartisan, and above all totally nonpolitical. They have been advised that their sole concern should be the interests of all the people of Illinois without regard to local, sectional, regional, ethnic, racial, religious, or economic concerns. And they have been warned that the watchdogs of the public interest, the representatives of the mass media, would be hovering over their shoulders as they met in open convention, in the full glare of the public eye, ready to expose to a concerned electorate any violation of their public trust.

It should be said publicly, what most of the delegates must know privately, that most of this well-meaning advice should be discounted and ignored by the delegates if they have any hope of writing a constitution that has any chance of being adopted by the sovereign voters of the State of Illinois. If the Founding Fathers of this country—or their descendants down to the fifth generation—had followed such advice they would still be sitting in Independence Hall in Philadelphia, trying to write a workable constitution for the new republic they were founding. We can all be thankful that those Founding Fathers locked the doors and windows; posted a guard outside to keep busybodies away; and bargained, wheeled, dealt, and horsetraded with each other. In general, they conducted themselves as practical politicians who had to write a political document that could be accepted by, or at least put over on, a divided, selfish, and generally apathetic and uninformed populace.

The delegates in Springfield surely must recognize, too, that Illinois is not one state made up of a homogeneous mass of public-spirited, concerned citizens. Illinois is at least three states—the City of Chicago, the suburbs of Chicago ranging into some of the communities in Cook County's neighboring counties, and the rest of Illinois, Downstate.

Indeed, if one is to be realistic about the makeup of Illinois, the state is divided into much more than three separate parts. For the facts of life are that each of these separate parts of the state are fragmented into numerous subdivisions, divided along racial, ethnic, religious, economic, and political lines.

There is no such entity as the City of Chicago; neither is there an area called the suburbs, nor a subdivision of Illinois called Downstate, except in the most vague and general sense. The City of Chicago is a kaleidoscope of separate communities inhabited by diverse peoples ranging from the high-rise Gold Coast fringe along Lake Michigan, through the deteriorating neighborhoods, into the black belts of the inner city's West and South Sides, to the middle-class white neighborhoods of the Northwest and Southwest Sides. Chicago's suburbs encompass a spectrum of communities from Kenilworth to Hometown, with the Skokies, Park Forests, Streamwoods, Park Ridges, Glencoes, and Hazelcrests in between these two economic and social extremes. What is called "Downstate" ranges geographically from the towns on the Wisconsin border to the communities south of the Mason-Dixon line to the Tri-Cities on the Iowa border, and encompasses a social, cultural, and economic potpourri that includes the microcosm of Chicago that is East St. Louis, the southern town of Cairo, and the prosperous farm communities of central Illinois.

All of these peoples and all of these diverse communities have different interests, aspirations, and needs. The divergent interests of these groups sometimes coincide as members of the body politic of the State of Illinois, but they more often serve to divide and fragment the people of the state. A close look at the character of each of the three major subdivisions of the State of Illinois would document the social, cultural, and political differences that differentiate these three areas from each other.

Chicago

Chicago, with three and a half million people, about one-third of the population of the state, is Catholic, nationality-ethnic, and black.

Settled originally by the Catholic Irish and Germans; inundated by successive waves of Poles, Bohemians, Italians, Lithuanians, and Jews; and overwhelmed since 1940 by a massive migration of southern blacks; Chicago might have been a classic example of the melting pot that is America in the twentieth century.

It might have been an example, except for the fact that the cliché is not very relevant for Chicago. For in Chicago and its environs the "melting pot" has not "melted." The ethnic, racial, and religious divisions among the polyglot population of the city have remained fairly rigid and have perpetuated themselves into the second and third generations of the children of the original immigrants.

Chicago developed as a city of nationality neighborhoods and has remained so until this very day. The sons of the Irish tavern-owners, policemen, and firemen have segregated themselves from their Polish neighbors even as they moved up into the upper economic and social echelons of the practice of law and medicine. Their fathers remained aloof from the non-Irish immigrants, and the sons and daughters have separated themselves, not only from the East Europeans, but also from the Irish who have not made it in the new world. The Poles and Italians, the Bohemians and Lithuanians, and the Germans and the Jews have all maintained their social and cultural distances from each other. And all of these groups have maintained a rigid wall between themselves and the exploding black population and the less important Puerto Rican-Mexican elements of the city.

Politics in Chicago today remains, to a considerable extent, a bargaining process among the leaders of these fairly self-contained and self-directed ethnic communities. Chicagoans do not identify themselves with their city as an ancient Athenian would with his *polis*, an imperial Roman with his world capital, or even a modern Parisian, Londoner, Florentine, or Berliner with his community. Chicagoans think socially, culturally, economically, and, as a consequence, politically, in terms of their neighborhoods or the ethnic groups rather than in terms of their city.

The political leadership of the city is drawn from these ethnic, parochially oriented neighborhoods. Those political leaders reflect and represent the local prejudices, narrow outlooks, and indigenous aspirations of their home bases. The Anglo-Saxon, white Protestant, Western European, middle-class ethos and concept of government has little or no meaning to the lower-class, peasant-descended, East and South European, heavily Catholic population of the city. Good government means services, favors, and concessions on a local basis rather than fiscally conservative, nonpartisan, normally righteous, community-oriented, city-wide concern.

The influx of a million blacks into the city has fragmented the population even more deeply than the ethnic divisions. The division between two and a half million whites and one million blacks has added another dimension to the ethnically separated city. In one sense, it has unified the ethnic whites on a single political issue: blocking the movement of the blacks into white neighborhoods. But, at another level, the rapid growth of the black population and the steady spread of the black ghetto has opened a wide chasm within the city's body politic between the nonwhite and white populations of the city. Race has begun to replace nationality as the major factor in the politics of the city. And the blacks, even more than the ethnic whites, refuse to identify themselves socially, culturally, or politically on a communal basis with a city which keeps them penned in a ghetto and forces them into a separate but not equal life within the city.

A third factor in Chicago's politics is religion. In the largest Roman Catholic diocese in North America, no political decision can be made without due consideration for the feelings and aspirations of the majority Catholic population of the city. It is with good reason that the State of Illinois annually awards license plate Number 1, not to the Governor, but to the Roman Catholic Archbishop of Chicago. The influence of the hierarchy and the many parishioners of the Church of Rome is always present in decision-making in the politics, law, educational policy, and cultural life of the city.

This is not to say that that influence is necessarily bad or necessarily good — merely that it is so. Roman Catholic power in Chicago has contributed mightily to the growth and development of the city and to its problems. If, as Christ told his people, his Father's house has many rooms, so does his Roman Catholic Church in Chicago have many factions. Some of the most liberal as well as some of the most conservative proposals and pressures in the life of Chicago have emanated from the many-splendored, broad-based, variegated Roman Catholic clergy and laity of the city.

In contrast to the dominant Catholic religious community, the Protestant and Jewish communities, with the exception of powerful business leaders, are weak and ineffectual. This is not to say that they are ignored or are not consulted, but that their political influence is nowhere near so great as that of the Roman Catholic community. Since most of the Protestants in the city are now the blacks, they can be dealt with politically on the basis of race rather than religion. Since most of the Jews have fled the city for the suburbs, except for residence in a few fringe areas, they can be easily ignored, although recognized and tolerated in the political decision-making in the city.

To sum up, the politics of Chicago is affected most by three major factors — the nationality makeup of its white population, the race issue stimulated by the exploding black population, and the religious dominance of the city's life by the Roman Catholic leadership and population.

Suburbia

Chicago's suburbs, like the city, are also undergoing radical change. The black migration into Chicago has stimulated a massive exodus of white middle-class and working-class citizens. While the black population of the city doubled between 1950 and 1960 — going from 400,000 to 800,000 — the total population dropped 2 percent. In the same period, the population of the suburban area of Cook County increased by 71 percent.

The face of the suburban area of Cook County is being altered in two major ways. First, many new development suburbs have sprung up where farmers' fields once graced the landscape. Second, the old, established, close-in suburban cities and villages are undergoing a transformation.

Chicago's working-class and lower middle-class, ethnic, heavily Catholic,

white population is leaving the city for new tract-development suburbs. New, fairly homogeneous population centers are being established by the fleeing working class and lower middle-class white Democrats from the city.

Contrary to popular mythology, these fleeing Democrats are not becoming Republicans in their new communities. Isolated from surrounding established towns, in close proximity physically to other emigrant Democrats like themselves, and relatively untouched by established Republican-dominated suburban organizations, most of the former city Democrats are retaining their traditional affiliation with the Democratic Party nationally.

However, on local issues they have tended to become relatively non-partisan, as homeowners and taxpayers without regard to any formal party affiliation or doctrine. Traditional Democratic New Deal liberalism or Republican hostility to welfare-state measures and governmental activity in a broad range of programs are both relatively meaningless to these new suburbanites. Their primary concerns are with administrative, not political, matters at the local level. Taxes, sanitation, flood control, schools, zoning, and property values occupy whatever time they have to devote to public affairs. Appeals to their civic-mindedness on an ideological basis fall on deaf ears. They are practical, pragmatic, self-centered, narrowly oriented and concerned, and nonideological politically insofar as local problems and issues are concerned. As for the city which they left, the county of which they are a part, the state which spawned them legally, and the nation which guides their ultimate destinies—those are matters of relatively little concern in comparison to their immediate local problems. Their major interests are to make sure that blacks do not follow them into their new communities, and to keep their taxes down even if it means unsatisfactory and inadequate local services and facilities.

These are not Jeffersonian New England town-meeting communities governed by Anglo-Saxon ideas of what the good society should be. They are, rather, first- and second-generation Eastern and Southern Europeans, influenced by their peasant and proletarian backgrounds and dominated by still-retained prejudices and fears of the strangers beyond the fence.

In contrast, the old established cities and villages of Chicago's suburban hinterland are undergoing a significant political transformation. These communities are attracting upper-middle-class city Democrats moving in search of good schools, safe streets, clean government, and all the other trappings of the middle-class American dream.

Most of these new suburbanites are the newly-arrived middle class in America. Their fathers were laborers, small businessmen, and skilled tradesmen. They are doctors, lawyers, teachers, corporations junior executives, and successful businessmen. Their wives are college graduates and their children are born to the upper middle class. The Catholics and Jews among

them have assimilated as much as possible the dominant Protestant middle-class values of white America, in the pattern described by Will Herberg in *Protestant, Catholic, Jew*. They have not left their faiths, but they have adapted socially, culturally, and often politically to what they believe are American traditions.

Unlike the city emigrants to the development suburbs, they have retained their Democratic liberalism, applied it to local community problems, and combined it with their new-found Anglo-Saxon Protestant concepts of conservative, antimachine, nonpartisan, well-run local government. They are hybrids, fusing the old with the new, the untried with the true, that which they are with that which they would like to be. They are Ortega y Gasset's revolting twentieth century masses who pursue culture, politics, recreation, and community life with a passion not seen in their newly discovered conservative communities for many years.

They have left the city behind, but most of them work there, have attachments there, and are concerned with its problems, unlike the old settlers in the new communities. They will probably never go back, but they think they will. In the meantime, they are in the process of urbanizing their new communities, even while they are adapting to them. They are a disturbing force in these old communities, partially adaptive, partially disruptive, accepting the values but challenging them at the same time. They are in the process of creating a new, more partisan politics in the once tranquil, administratively oriented, nonpartisan Republican-established suburbia of Chicago. They are Democrats who have half-adopted some of the better tenets of Republicanism and are forcing their neighbor Republicans to rethink and reevaluate their own party principles and their communal values.

These suburban communities are the opposite of the development suburbs, where politics is negligible and administration is all important. In the old suburban communities, nonpartisan administrative matters are becoming increasingly political and intertwined with county, state, and national political directions and ideologies.

Downstate

Illinois, like many other American states, has traditionally been divided between a major industrial city and a rural hinterland. Like most other such American states, the marriage of the two parts has not been a union of compatible partners, but rather a shotgun wedding of contending parties.

In contrast to Catholic, ethnic, black Chicago, Downstate has traditionally been white, Protestant, small-town, Republican, and conservative. It is the land of the Lions, the home of the Kiwanis, the territory of the Elks. The sanctity and validity of traditional white, Protestant, conservative rural America guides the outlook and the aspirations of the majority of its population, except for a few industrialized small cities.

The state government at Springfield has been the private province of this part of Illinois. Chicago, the colossus of the North, with its blacks, Catholics, Jews, crime, delinquency, and corruption, has always been regarded as the Babylon of Illinois, a place to visit but not to live. In truth, there has usually been as much crime, delinquency, and corruption proportionately in the towns of downstate Illinois as in Chicago, but this fact has been conveniently overlooked by the local citizenry.

Castigating the Northern colossus has been a way of life for generations in rural Illinois. Protecting the state government from undue influence by the big city slickers has been a self-appointed holy mission. Exploiting the urban masses financially and politically in the interests of the rural section of the state has been regarded as proper. If this differentiation violated the state constitution, deprived Chicago's citizens of a fair share of the state's revenues, discriminated against Chicago's children in providing equal educational opportunity, and denied equal representation or consideration for their interests to Chicago's population, it was all being done in the name of the sanctity of the real American values which happened to coincide with the interests of the economic and political leadership of the downstate areas.

The major problem in this struggle has been a steady growth of population and political and economic power in Cook County, in Chicago, and in its suburban ring. Cook County, with over 5 million people, has a population equal to all the other 101 counties and a disproportionate share of the industry and wealth. Keeping some balance in the state's politics and economics against the growing power of the giant northern county is, of necessity, a major political consideration. The success with which downstate Illinois has accomplished this task is a testament to the tenacity, ingenuity, and dedication of downstate Illinois' political leadership.

Downstate Illinois has many problems of its own, some similar to those in Cook County and many different. Saving the towns from deterioration, keeping industry from leaving, bringing in new industry, offering young people adequate opportunity at home, trying to compete culturally with the big urban area, and maintaining and protecting a way of life and traditional values are of major concern to the residents of downstate Illinois. Like their northern counterparts in Chicago, downstate politicians not only represent but also reflect the aspirations, needs, and values of their constituents. Like their big-city counterparts, their behavior and policies are based on a mixture of self-interest and honest belief in the value of what they defend. And who is to say that they are not partially correct in what they do, if at what they strive to maintain is not in the best interests of their constituents and of the state?

Conclusion

We live, in the state of Illinois, in a political community of over 10 million heterogeneous people, organized in racial, religious, ethnic, economic, and po-

SPEAKERS

SPEAKERS

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**PROPOSED CONSTITUTION
OF
ALABAMA**

Report of the Constitutional Commission



MAY 1, 1973

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FINAL REPORT OF THE ALABAMA CONSTITUTIONAL COMMISSION

**TO: His Excellency, George C. Wallace, Governor of Alabama;
The Honorable Jere Beasley, President of the Senate; and
The Honorable G. Sage Lyons, Speaker of the House of
Representatives:**

The Alabama Constitutional Commission submits herewith its final report.

The Commission was created by Act No. 753, approved September 12, 1969 (Acts 1969-70, Vol. II, p. 1330) and continued by Act No. 95, approved May 11, 1971 (Acts 1971, Vol. I, p. 165). The original members were appointed in January, 1970. M. Leigh Harrison, former Dean, now Professor, at the University of Alabama Law School, was retained as Research Director. Other staff assistants and expert consultants have been employed from time to time.

The Commission and its staff have worked continuously since its organization. It has held regular and numerous working meetings, all of which were open to the public. Advertised public hearings were held in Decatur, Birmingham, Montgomery and Mobile. Citizen participation at those meetings has been of important assistance to the Commission.

The members of the Commission are representative of the state and its various political and economic interests. Differences among members have often been great and vigorously expressed. This report reflects, in some instances, a close majority vote, but many important decisions were reached by unanimous vote. The Commission has concluded that the 1901 constitution, with its 327 amendments, is obsolete and should be replaced with a constitution that is more adequate for the citizens of the state and for their government, both state and local.

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An interim report was made by the Commission to the Governor and the Legislature on May 4, 1971. Amendments were recommended in five general areas, embodied in ten separate bills. The Senate Committee on Constitution and Elections favorably reported all of the proposed bills, some with minor amendments. The House Committee was unable to complete hearings and consideration of all of the bills, but reported the amendment providing for annual sessions of the legislature. This was passed by the legislature (Act No. 1264, Regular Session 1971), but was defeated at the general election in November 1972. The Commission renews its recommendation for annual sessions of the legislature in this report.

The Commission's statutory mission was broadly defined (Sec. 2, Acts 1969, p. 1330) :

"The Commission shall consider and investigate the necessity for and the extent and nature of desirable amendments to or general revision of the Constitution of 1901 of Alabama, and the appropriate procedures for submission and adoption of such amendments or revisions."

The Commission carefully considered both the extent of the revisions needed, and the various ways in which the changes might be accomplished.

The present constitution provides several choices with respect to the manner of accomplishing a general revision of the constitution :

1. A Constitutional Convention could be called to do the work. This is recognized as a cumbersome and expensive method. Two, possibly three, elections would be involved; one for a vote as to whether there shall be a convention; the second, an election of delegates to the convention; and third, a vote by the people on the proposals of the convention. Under the 1901 constitution this last step is not required, but it would be desirable. Other variations of the convention method would be possible. Media coverage of a convention would provide a more adequate "public education process" and therein lies an advantage of the convention method over the other options available.

TRANSMITTAL

2. A Commission, with the assistance of qualified consultants could propose a new constitution and submit it to a convention. The convention could make a final judgment or could submit it to the people for ratification.

3. A Commission can do the research, study and drafting, and submit its product to the legislature for its determination as to what further steps should be taken. The legislature is free to adopt all or any part of the proposed revision for direct submission as amendments; it could submit the entire draft of the revised constitution for ratification; or it may call a convention to review the draft with whatever changes the legislature may make.

4. A combination of the legislative and convention methods is currently being used in Texas in redrafting their constitution. A constitutional amendment was adopted, providing that a constitutional revision commission be created, which would report to the legislature, after which the members of the legislature are to be convened as a constitutional convention, which will submit a revised constitution for ratification.

The third method is the one followed by this Commission. A vast amount of research of relevant publications has been accomplished. Members of the Commission have studied the issues and debated the questions. Proposed drafts have been written and re-written. The final report, a complete revision of the 1901 constitution with its amendments, is herewith submitted to the Alabama legislature. The legislature has several choices. The Commission's proposal may be approved, altered or rejected. The results of the study and deliberations of the legislature may be submitted to the voters of Alabama for approval in its entirety, or on an article by article basis.

The nature of the proposed constitution is such that each of the principal articles is self-contained, and therefore could be adopted separately without affecting other articles of the present constitution.

The Commission believes that there may be doubts under Article XVIII of the present constitution whether more than

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one article could properly be submitted directly by the legislature, as one amendment, or at least whether an entire new constitution could be so submitted. Any doubts as to this might be resolved by an advisory opinion of the Supreme Court, or the Commission's revision of the amending article could be submitted first as a separate amendment.

In view of the fact that a complete revision of the constitution is proposed, consideration of the proposed changes by the legislature will necessarily require a substantial amount of the time of committees and of each house. The Commission therefore suggests that a more thorough consideration could be given, without distraction from important regular legislative matters, if the draft could be considered by the legislature at a special session called solely for that purpose. The necessary amendment to the amending article, and possibly one or two independent articles, such as the judicial article, could, in the meantime, be submitted by the regular session, thus paving the way for submission of the rest of the revised constitution in whatever manner the legislature may decide.

Respectfully,

CONRAD M. FOWLER

May 1, 1973

Chairman

REASONS FOR REVISION

BASIC REASONS WHY THE CONSTITUTION OF 1901 SHOULD BE COMPLETELY REVISED

Alabama Governor, Emmet O'Neal, in an address to the Legislature on January 15, 1915, said: "Many of the provisions of our present antiquated fundamental law constitute insuperable barriers to most of the important reforms necessary to meet modern conditions and to secure greater economy and efficiency in the administration of every department of the state government.

"At that time (1901) the necessity of reforming the suffrage was the paramount issue which engaged the attention of our people and hence when the constitutional convention of 1901 assembled, little consideration was given to other matters of reform. This is conclusively shown by the fact that the Constitution of 1875, which had been framed to meet conditions which can never again recur, was practically re-adopted. No real or permanent progress is possible in Alabama, until the present fundamental law is thoroughly revised and adapted to meet present conditions."

Subsequent events have established the accuracy of the analysis by Governor O'Neal. The Alabama Constitution is the second longest in the nation. It contains in excess of ninety-five thousand words. It has been amended three hundred twenty seven times. Its terms provide undue constraints upon each of the three branches of state government and upon local government.

State legislatures were still electing United States Senators in 1901. Not until 1912 and the adoption of the 17th Amendment did voters begin the popular election of U. S. Senators. Women were not accepted into full citizenship and given the right to vote until nineteen years after the Constitution was ratified. The Model-T Ford was not yet on the drawing board when this constitution was approved.

One hundred forty amendments were adopted between 1901 and 1960. From 1960 until present date one hundred eighty

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seven amendments have been approved by the voters of Alabama. That 57% of the amendments have been approved in the past thirteen years is substantial evidence that the restraints of the '01 document have become an intolerable obstruction to the operation of a modern state.

Voters of Alabama, in increasing numbers, question the logic of expensive state wide elections on amendments of purely local interest. One hundred three amendments providing for local tax increases for schools, hospitals, public buildings and other purposes have been approved. Thirty amendments provide for the utilization of county or municipal funds and credit for economic development. Thirty four amendments deal with the transition of county officials from a fee system to a salary arrangement. There are fifty eight additional amendments of local significance. Only ninety nine of the three hundred twenty seven amendments have state wide importance.

Seventeen amendment elections have been held since January, 1960. Elections are costly. The amendment election held January, 1972 cost the state and the counties \$411,108.08. The election in December, 1939 cost \$438,612. Had the draft now proposed by the Constitutional Commission been adopted in 1901 there would be one hundred sixty seven fewer local amendments to the Constitution and at least one half of the amendments of state wide significance would have been unnecessary.

A state constitution should set forth the limitations on and the separation of the powers of the three branches of government. Provision should be made for the appropriate distribution of authority and responsibility between the state and local government. It is evident that the 1901 Constitution reflects a distrust felt by citizens of that era. As a consequence the '01 document has many inadequacies. The Constitutional Commission proposes a document that is much more appropriate for the times in which we live.

Tremendous social, political, population, and economic changes are abroad in the land. These changes have fostered constitutional revision efforts in many states over the past three decades. Complete new constitutions have been adopted since

REASONS FOR REVISION

World War II in twelve states: Missouri, Georgia, New Jersey, Alaska, Hawaii, Michigan, Connecticut, Florida, Illinois, North Carolina, Virginia, and Montana. Maryland and Pennsylvania are in process of adopting complete revisions, article by article. Similar revisions have been proposed or are under study in Louisiana and Texas.

THE PRINCIPLES ON WHICH THE PROPOSED REVISION ARE BASED

The Commission has approached the recognized necessity for a general revision of the constitution with some basic principles in mind.

First, the fundamental and historic assurances of individual liberty and limitations on state power reflected in the Bill of Rights should be preserved, and in places strengthened.

Second, the basic structure of the state government, embodying the principle of separation of powers, should be preserved.

Third, undue and unnecessary restrictions on the power and discretion of the legislature to deal with changing conditions and needs should be removed.

Fourth, the greatly increased responsibilities of the governor as chief executive of the administrative branch should be recognized and supported by adequate authority.

Fifth, the responsibility and authority of the courts, constituting one of the three independent branches of government, must be restated and strengthened.

Sixth, more authority, flexibility and initiative should be granted to local government. Home rule should be encouraged under the general control of the legislature.

Seventh, detailed provisions, legislative in character, should be omitted. The constitution should be limited to a declaration in plain and simple language providing for the basic principles and the structure of state and local governments.

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Mr. Goodwyn, as President of the Senate, and Mr. Fite, as Speaker of the House, served until January 12, 1971 on which date they were succeeded by Lieutenant Governor Beasley and Speaker Lyons.

Mr. Stakely resigned from the Commission on March 22, 1971, Judge Hand on September 27, 1971. Representative Ellis was appointed to succeed Mr. Stakely on August 1, 1972 and Judge Hodnette was appointed to succeed Judge Hand on August 15, 1972.

CONSTITUTIONAL COMMISSION ACKNOWLEDGEMENTS

The following were appointed to the Commission in June of 1971: Senator Pierce, Senator Foshee, Representative O'Daniel and Representative St. John.

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CONSTITUTION OF ALABAMA

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Joseph F. Johnston has performed service above and beyond the call of duty. He has spent many hours in the preparation of this final report. He deserves a particular expression of thanks.

SUMMARY OF CHANGES

SUMMARY OF PRINCIPAL CHANGES EMBODIED IN THE PROPOSED CONSTITUTION

This summary points out in brief and non-technical terms the important changes and new provisions included in the revised constitution. It will not attempt to describe every change in language, nor the numerous relatively unimportant or essentially legislative provisions of the present constitution which would be deleted. These will be discussed in the commentaries on the draft of the revised constitution.

ARTICLE I

DECLARATION OF RIGHTS

This part of the 1901 Constitution has been generally regarded as unduly verbose, containing many things not properly a part of a Bill of Rights. The Article has been considerably shortened, and a number of unnecessary sections are deleted. All of the historic and basic rights of individuals and limitations on governmental power are retained and several relatively substantial new protections and safeguards are proposed.

The due process clause (present Sec. 6) is now applicable by its terms only to defendants in criminal prosecutions. The draft broadens this to say that "no person" shall be deprived of life, liberty or property without due process of law, adopting the phraseology of the United States Constitution, with its substantive as well as procedural applications.

The present constitution prohibits waiver of indictment by a person charged with crime, except by a plea of guilty. The draft would authorize the legislature to permit waiver of grand jury action.

Another change is the addition of an equal protection clause, not contained in the present constitution.

The provisions of present section 6 as to venue in criminal

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cases have been eliminated as unnecessary. The legislature may provide by law for a change of venue on motion of the state or the defendant.

The provision for mandatory bail in present section 16 has been broadened to allow courts to dispense with bail if reasonably satisfied that the defendant will appear.

A new provision has been added, conforming to the holding of recent U. S. Supreme Court decisions, requiring jury trials in all cases where imprisonment for more than six months may be imposed.

The legislature is authorized to provide for six-man juries in both civil and criminal cases and to provide for less than unanimous verdicts in civil cases.

The present prohibition of suits against the state is dropped, and the legislature is authorized to provide for suits against the state and its political subdivisions.

The eminent domain provisions are revised. The right of property owners to collect consequential damages from municipalities and corporations having the power of eminent domain, now recognized under present section 235, is extended to provide for such recovery from the state.

ARTICLE II

DISTRIBUTION OF POWERS OF GOVERNMENT

The substance of the present provisions for separation of powers into legislative, executive and judicial branches is retained.

ARTICLE III

LEGISLATIVE DEPARTMENT

Several substantial changes are proposed with respect to the legislature.

SUMMARY OF CHANGES

The most fundamental change, providing for regular annual sessions, was recommended by the Commission in its 1971 interim report, and approved by the legislature (Act No. 1264). This proposal was rejected by the voters at the general election in November 1972. After full and careful consideration of the arguments advanced against this amendment, the Commission decided to renew its recommendation. It is confident that upon reconsideration, especially in the light of the entire revised legislative article, which was not presented with the narrow proposal for annual sessions and a legislative salary commission, the people of Alabama will recognize the desirability, even the necessity, of the change.

It is proposed that regular sessions be held annually. These sessions would be limited to thirty legislative days, instead of the present thirty-six, within ninety calendar days. Special sessions would be reduced from thirty to twenty days within forty-five calendar days. The beginning date of regular sessions would be moved up from May to the first Tuesday in February.

With annual sessions it is proposed that members of the legislature be placed on an annual salary, to be recommended by an independent commission, eliminating the present unsatisfactory system which imposes on the legislature the burden of fixing its own compensation in the form of per diem, travel and expense allowance. The commission's recommendations would be effective unless changed or rejected by the legislature. Changes in pay could not apply to any legislator during the term for which he was elected.

Several revisions are proposed in the procedures for enactment of bills, in the interest of efficiency and expedition. The requirement that the presiding officer of each house sign all bills, after they have been read at length, is eliminated, and the secretary or clerk of the originating house would certify bills to the governor. New provisions are added prohibiting the passage of any other legislation in the last three days of a session until the general appropriation bill has been enacted, and for carry-over of general appropriation acts if new ones are not enacted.

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An important technical change is proposed in the definition of general laws, which would be defined as laws applicable to the whole state or to all counties, municipalities or other units in a class. The legislature would be authorized to classify areas or districts including at least two counties or municipalities, but could not establish more than eight classes based on population.

The purpose of this is to eliminate the use of so-called general laws of local application for the purpose of avoiding the notice and other requirements for local legislation. Local acts would be facilitated by reducing the required publication of notice from four weeks to two.

A related change is designed to prevent the enactment of local laws dealing with a subject covered by a general law, with the resulting confusion and uncertainty as to legislative policy.

The legislature would be required to adopt a code of ethics governing conflicts of interest for legislators, state employees and non-judicial officers.

ARTICLE IV

REPRESENTATION

Important changes are proposed as to apportionment for election of the legislature, and as to congressional redistricting. The state would be divided into districts for both the House and Senate, and each district would have to consist of "compact and adjoining" territory, with the ratio of the number of legislators to population as nearly equal as practicable.

A commission on reapportionment is established and directed to submit plans for both reapportionment and redistricting to the legislature promptly after each decennial census. These plans would automatically become law if the legislature fails to adopt a plan at its next session. The supreme court would be authorized to review the reapportionment or redistricting plan on the petition of any voter.

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ARTICLE V

EXECUTIVE DEPARTMENT

There is a considerable stream-lining and updating of this article, including a number of changes in the procedures of the governor's office.

The non-policy making offices (state auditor, secretary of state, state treasurer, commissioner of agriculture and industries, and sheriffs) are eliminated from constitutional status, but no change is automatically made in their method of election or functions, which are fixed by statute. The constitutional officers in the executive department would consist only of the governor, the lieutenant governor and the attorney general. Each would be allowed to succeed himself for one term.

Qualifications for the three executive officers are changed from seven years residence to three years as qualified voters, and the minimum age lowered from thirty to twenty-five.

The governor is given authority to reorganize executive departments and agencies whose heads are appointed by him, subject to legislative rejection or modification. He is also given new authority to bring actions for judicial enforcement of compliance with the constitution and laws, and to fill vacancies in state offices when not otherwise provided by law.

A provision, now contained in a statute, is added requiring the governor to submit a budget at the beginning of each regular session of the legislature.

Changes are made in the times for executive consideration of bills. The governor would have seven calendar days to act, while the legislature is in session, and twenty days if the legislature adjourns within the seven days.

Pocket vetoes are eliminated.

If an executive amendment is rejected, instead of the present resulting veto, the bill would go back to the governor for approval or veto, but no further executive amendments would be permitted.

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Substantial changes are made in the provisions for succession of governor and lieutenant governor. Non-policy making officers are eliminated from the line of succession. The automatic succession upon twenty days' absence is eliminated, and a procedure established for determining the inability of the governor to perform his duties because of physical or mental disability or absence from the state. It is provided that the governor may himself declare his physical disability.

ARTICLE VI

JUDICIAL DEPARTMENT

The proposed judicial article makes substantial changes in the field of court administration, the selection and tenure of judges, and in the system of inferior courts.

The article gives constitutional sanction and permanence to the actions of the 1971 legislature in authorizing the Supreme Court to make rules for appellate and trial courts in civil cases, and in providing for centralized court administration. The article would extend the Court's rule making power to criminal procedure.

The article provides for a unified judicial system in line with most recent constitutions, but retains the present system of probate courts.

No material changes are made in the present jurisdiction of the Supreme Court and Court of Appeals as now constituted. The original jurisdiction of the Supreme Court is enlarged to include questions of state law certified by federal courts.

A substantial change is proposed with respect to inferior courts. The article would abolish all inferior and special courts after a period of three years, and substitute one unified court of limited jurisdiction to be known as the District Court. The legislature is authorized to designate the geographical and substantive jurisdiction of this court on a uniform basis. It is prohibited from the exercise of equity jurisdiction.

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In addition to the abolition of Justices of the Peace effected by Amendment No. 323 (January 1972), the new article would transfer and absorb into the unified system all the various special and limited jurisdiction courts which have been created by local acts, including Juvenile Courts. The Commission concluded that where there is a need for a specialized court such as Juvenile or Family, it would be better to establish it as a department or division of either the District or Circuit Court, keeping it within the unified system for all purposes.

New administrative provisions would prohibit the judges of any court in the state, including the inferior (district) judges from engaging in the practice of law; establish a judicial compensation commission to recommend compensation of all judges to the legislature, and provide for the administration of the system by the Chief Justice.

Judges would continue to be elected. The Commission submits an alternative proposal which would require that all judicial elections be on a non-partisan basis. Incumbent judges would be permitted to go on the ballot by filing a declaration of candidacy.

Vacancies in all courts would be filled by appointment from panels selected by independent commissions. Judicial nominating commissions are established for the appellate courts and in each circuit for the circuit and district courts. Probate Judges are not affected. A judge appointed to fill a vacancy would serve until the January following the next general election held after he has completed one year in office. At that time there would be an open election for a full term.

The term of office for all judges is fixed at six years.

The article directs the legislature to provide a retirement and pension system for judges, and prohibits the election or appointment of any person to judicial office after reaching the age of seventy, except supernumerary judges who are not entitled to a pension.

Finally, a system for determining questions of disability, violation of canons of ethics, or other disqualification is estab-

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lished with a Judicial Inquiry Commission to conduct investigations and a special "Court of the Judiciary" to hear complaints filed by the Commission. This procedure was established by Amendment No. 317, adopted in January 1972. The draft would revise that amendment so as to separate the investigatory and prosecuting functions from the adjudicatory responsibilities.

ARTICLE VII

SUFFRAGE AND ELECTIONS

The lengthy, involved and largely obsolete provisions of this article of the 1901 constitution (many have been held to be in violation of the U. S. Constitution) have been greatly reduced and simplified. The voting age is fixed at eighteen, and residence and registration requirements, spelled out at great length in the present constitution, would be left up to the legislature. The present list of thirty-three disqualifying crimes is eliminated for every "felony involving moral turpitude," or mental incompetence. The right to vote would be restored upon restoration of civil and political rights.

ARTICLE VIII

TAXATION AND DEBT LIMITATION

Extensive changes are proposed both as to state and local taxes and debts.

The present prohibition against the use of taxes by state and local governments for "works of internal improvement" is abolished, and the state and its subdivisions would be authorized to use the taxing and borrowing power for public purposes. Their use for industrial development would be subject to special limitations.

"Earmarking" or permanent appropriation of new or increased state taxes for any purpose would be prohibited, and the legislature authorized to terminate existing earmarkings.

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The provisions of the ad valorem tax amendment (No. 325) adopted in May 1972 are carried forward, except the limitation of all ad valorem taxes to one and one-half percent of the market value of property taxed, which would be repealed. The Commission concluded that this limitation is impractical. The provision of present section 214, limiting state ad valorem taxes to 6.5 mills, would be retained.

The 1972 changes provide for classification of property for ad valorem taxation into three classes (1) utilities, (2) unclassified, and (3) agricultural, forest and residential. Tax rates are required to be uniform in each county and municipality, but the ratio of assessed to market value is fixed at 30% for utilities, 25% for property generally and 15% for agricultural, forest and residential property. The legislature is authorized to change these ratios for any class and for any county, within the range of 15% to 35%.

In order to simplify income tax returns, the legislature would be authorized to define income by reference to Federal tax laws.

Constitutional limits on the rate of local taxes would be abolished. All authorizations of tax rates allowed to local governments by the 1901 constitution and its amendments would be continued. Local taxes in excess of present authorizations would be permitted without limit, provided that a four step procedure is followed:

- (1) A public hearing must first be held,
- (2) followed by proposal of the tax by the local governments,
- (3) which would be approved by an act of the legislature, and
- (4) finally approved by the voters in the area. This provision was a part of the 1972 Amendment.

The present debt limitation provisions are substantially changed.

So-called special revenue bonds are eliminated and the full

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faith and credit of the state required to be committed to all state debts.

Temporary borrowing by the state in anticipation of current revenues is permitted, not to exceed one-tenth of five-year average tax receipts.

The legislature could authorize bonds to finance capital projects or to refund obligations, not exceeding a total of 1% times the five-year average tax receipts. In addition, the legislature could authorize bonds, to which the full faith and credit of the state would be committed, for revenue producing capital projects up to the amount of five-year average annual tax receipts, provided that the revenues are pledged, and that prior to enactment the governor file with the legislature engineering estimates that revenues will be sufficient to amortize the debt. Such acts would require a two-thirds vote of each house.

The legislature would be authorized, by a 60% vote of all members, to create debt in excess of the normal limit of 1% times annual tax revenue, subject to approval by the voters of the state.

All bonds would be required to be retired on a schedule not exceeding thirty years beginning not later than three years after issue.

These provisions are designed not only to eliminate the necessity for frequent constitutional amendments but to strengthen materially the state's credit.

The present county debt limitation of $3\frac{1}{2}\%$ of assessed value, and the municipal limit of 20%, would be eliminated. Counties and municipalities would be allowed to incur debts which are general obligations or are payable in whole or in part from taxes only for capital purposes. The debts would have to be payable in not over 30 years, and be approved by the voters. This provision is designed to prevent the present practice of financing by warrants without a vote of the people.

The legislature would, however, retain its present authority to permit counties and cities to borrow up to the anticipated

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annual revenues without a vote for current operating expenses in anticipation of current taxes, and a vote is not required in specified cases, viz., loans payable within a year in an amount not exceeding one-fourth of five year average revenues, refunding bonds, special assessment bonds, and special revenue bonds payable solely from an industrial project.

All present amendments permitting the pledge of the public credit of particular counties or municipalities to industrial development bonds would be repealed at the end of five years, to avoid preferring one locality over another. Further constitutional amendments for this purpose would be eliminated and the legislature empowered to authorize counties and municipalities to incur debt in aid of industrial or commercial development subject to these safeguards:

1. The bond issue must be approved by a vote of its qualified electors; and

2. At the same time the voters must approve a special tax reasonably estimated to be sufficient to pay the principal and interest on the bonds in the event that the proceeds of the industrial project are insufficient.

A special exception from the election requirement would be provided in the case of relatively small bond issues by a county or a municipality for particular capital improvements subject to these safeguards:

- (a) The issue shall not exceed one-fifth of the five year average annual tax revenue of the county or municipality;

- (b) The bond issue shall have been approved by a three-fifths vote of the governing body after a public hearing, of which notice shall have been published;

- (c) After the publication of an additional notice that the bond issue has been approved, the voters shall have a limited time (30 days) within which to file a petition asking for an election. If as many as five percent of the qualified electors sign the petition, then the bond issue would require the approval of the qualified electors;

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(d) The total limit on bonds issued without an election under this amendment would be one percent of the assessed value of taxable property.

ARTICLE IX

LOCAL GOVERNMENT

In this article, as in other parts of the draft, substantial changes are proposed in the direction of more authority and responsibility in local government.

The present procedures for changing county boundaries would be modified to require the legislature to provide uniform procedures for such changes with the consent of the people involved, and for changes by local law published in each county affected.

The legislature is directed to provide optional plans of local government for both counties and municipalities.

Home rule charters could be adopted by counties and cities after two years from the adoption of the article, in accordance with procedures established in the article.

Under the present constitution counties and cities have only the powers and functions specifically allowed them by legislative act. It is proposed to reverse this as to local governments which adopt a home rule charter or other plan of local government prescribed by the legislature. Under these conditions, those local governments would be allowed to exercise full legislative power to the extent permitted by their charters and not inconsistent with the general law of the state.

ARTICLE X

EDUCATION

The present general mandate to the legislature to provide for public schools and institutions of higher learning is con-

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tinued. A state board of education is given general supervision of public schools. The board is to be elected as the legislature determines. The board is to appoint the superintendent and may be authorized by the legislature to fix his compensation.

A new section is added, prohibiting members of the legislature from serving on the board of trustees of any state college or university.

It is proposed to give constitutional status to the Commission on Higher Education, which was established by statute in 1969. It would be responsible for advising the governor and the legislature on all education beyond the secondary level. The composition of the Commission, and its functions and authority, would be left to the legislature.

ARTICLE XI

PUBLIC OFFICERS

Several changes are proposed in the provisions as to public officers.

Present Section 280, prohibiting dual office holding, is revised to omit the exemptions for postmasters, justices of the peace, constables, and commissioners of deeds. Exemption is added for delegates to constitutional conventions and members of statutory bodies having only advisory powers. The legislature would be authorized also to exempt military personnel from the prohibition.

The present list of disqualifying crimes (Section 60) is replaced by a general disqualification of these convicted of a felony involving moral turpitude.

The prohibition against changes in compensation during term of office is retained, but an exception is allowed for provision by general law for adjustments based on cost of living.

The legislature would be authorized to change the basis of compensation of county officers from fees to salary, with the approval of the voters in the county.

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ARTICLE XII

IMPEACHMENTS

Several changes are made in the procedures for impeachment of public officers. Judges are exempted from legislative impeachment because they are subject to removal under the judicial article. A two-thirds vote of the Senate would be required for conviction. Only a majority is now required. The legislature would be authorized to provide for the trial of impeachments by a special tribunal. Officers impeached by the House would be disqualified from acting until acquitted. The disqualification from office upon impeachment, now limited to the term for which the officer was serving, would be broadened to prohibit the person convicted from ever holding any public office.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

This article carries forward, in revised and simplified language, the present provisions as to condemnation of property, and a much shortened version of the homestead exemption provisions.

A new section is added, declaring that it is the policy of the state to conserve and protect its "natural resources and scenic beauty." It directs the legislature to provide for the abatement of air and water pollution, and unnecessary noise.

ARTICLE XIV

AMENDMENTS

Substantial changes are proposed in the machinery for constitutional amendments.

The present requirements of a three-fifths vote of the members of each house is retained, but the requirement of

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reading at length on three separate days in each house is reduced to one.

In order to avoid the heavy cost of special elections, amendments would be required to be submitted at general elections, unless the legislature by separate bill declares that an emergency requires a special election.

Ballots on amendments would be required to contain a short statement of the effect of the amendment, to be prepared by the attorney general, instead of the present requirement that ballots contain statements of the "substance or subject matter."

The notice requirement is shortened from four weeks to one publication in a newspaper of general circulation in each county, and, in addition, the short ballot statement would be published once in every newspaper in the state. The legislature is authorized also to provide for publications of proposed amendments or summaries by radio and television.

The procedures for constitutional conventions would be radically revised. The legislature would be authorized to limit a convention to specific sections or subjects, and to limit the duration of a convention. A convention's proposals would have to be approved by the voters.

SECTIONS OF 1901 CONSTITUTION OMITTED

A large number of provisions in the 1901 Constitution have been omitted from the revision. The substance of many other sections has been carried forward in modified or amended form. Provisions which have been left out entirely are either clearly obsolete, essentially legislative in character, or both, and serve only as obstacles to the ability of the legislature to deal with new problems and changing conditions. Practically all of these legislative or regulatory provisions are duplicated by Code provisions, so that omission from the new constitution would not leave any important regulatory gaps requiring immediate attention.

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PREAMBLE

We, the people of the State of Alabama, in order to establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God do ordain and establish the following Constitution and form of government for the State of Alabama.

ARTICLE I

Declaration of Rights

That the great, general, and essential principles of liberty and free government may be recognized and established, we declare that:

Section 1.01. The Equality and Rights of Man.

All men are equally free and independent; they are endowed by their Creator with certain inalienable rights; among these are life, liberty and the pursuit of happiness.

Section 1.02 Freedoms of Religion, Speech, Press, Assembly and Petition.

No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for redress of grievance.

Section 1.03 Due Process and Equal Protection.

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws.

Section 1.04 Searches and Seizures.

The people shall be secure in their persons, houses, papers,

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and possessions from unreasonable seizure or searches, and no warrants shall be issued to search any place or to seize any person or thing without probable cause, supported by oath or affirmation.

Section 1.05 Rights of the Accused.

(a) **In general.** In all criminal prosecutions the accused has a right to be heard by himself and counsel, or either; to be informed of the accusation, and to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have a speedy, public trial; to testify in all cases, on his own behalf, if he elects to do so; and he shall not be compelled to give evidence against himself.

(b) **Indictment.** No person shall be held to answer for a felony unless on the presentment or indictment of a grand jury, provided, however, that the legislature may by law dispense with a grand jury in any but offenses punishable by death or life imprisonment, if the defendant waives his right to an indictment.

(c) **Bail.** Excessive bail shall not be required and all persons before conviction shall be bailable by sufficient sureties, except for offenses punishable by death or life imprisonment in which the proof is evident or the presumption great. The court may dispense with bail and prescribe other reasonable conditions for release pending trial, if reasonably satisfied that the defendant will appear when directed.

(d) **Trial by Jury.** A right of trial by an impartial jury of the county or district in which the offense was committed shall exist in all cases of felony and offenses punishable by imprisonment for more than six months, provided the legislature may provide for a change of venue on motion of the state or the defendant. The accused may expressly waive his right to trial by jury with the consent of the state and the court.

(e) **Punishment.** Excessive fines shall not be imposed, nor cruel or unusual punishment inflicted.

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(f) Former Jeopardy. No person shall, for the same offense, be twice put in jeopardy of conviction; but courts may, for reasons fixed by law, discharge juries from consideration of any case, and no person shall gain an advantage by reason of such discharge of the jury.

Section 1.06. Right of Trial by Jury.

The right of trial by jury as heretofore enjoyed in civil cases shall remain inviolate. In both civil and criminal cases, qualifications and number of jurors, not fewer than six, shall be fixed by law. In civil cases, the legislature may provide by law for a less than unanimous verdict.

Section 1.07 Habeas Corpus.

The privilege of the writ of habeas corpus shall not be suspended.

Section 1.08 Imprisonment for Debt.

No person shall be imprisoned for debt.

Section 1.09 Treason.

Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or his own confession in open court.

Section 1.10 Civil Actions.

(1) No person shall be barred from prosecuting or defending before any tribunal in this state, by himself or counsel, any civil cause to which he is a party.

(2) All courts shall be open; and every person, for any injury done him, in his lands, goods, person or reputation, shall have a remedy by due process of law, and right and justice shall be administered without sale, denial or delay.

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Section 1.11. Right to Sue the State.

The legislature may by law direct in what manner, in what courts, and in what cases suits may be brought against the state and its political subdivisions.

Section 1.12 Right to Bear Arms.

Every citizen has a right to bear arms in defense of himself and the state.

Section 1.13 Forbidden Legislation.

No ex post facto law, nor any law impairing the obligations of contracts, or making any irrevocable or exclusive grants of special privileges or immunities, shall be passed by the legislature.

Section 1.14 Eminent Domain.

Private property shall not be taken or damaged except for public use, or to secure to persons or corporations the right of way over the lands of others pursuant to general law, and unless just compensation is first made therefor.

Section 1.15 Suspension of Laws.

No power of suspending laws shall be exercised except by the legislature.

Section 1.16 Subordination of Military Power.

The military shall be held in strict subordination to the civil power.

ARTICLE II

Distribution of Powers of Government

Section 2.01. Powers of Government.

The powers of the government of the state shall be divided

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into three departments: the legislative, the executive, and the judicial. No department shall exercise powers properly belonging to another.

ARTICLE III

The Legislative Department

Section 3.01. Legislative Power.

The legislative power of this state shall be vested in a legislature, which shall consist of a senate and a house of representatives.

Section 3.02. Election and Terms of Office of Senators and Representatives.

Senators and representatives shall be elected for a four-year term on the Tuesday succeeding the first Monday in November. The legislature may change the time of holding elections. The terms of office of the senators and representatives shall commence on the day after their election.

Section 3.03. Election to Fill Vacancy in Senate or House of Representatives.

Whenever a vacancy occurs in either house of the legislature the governor shall issue a writ of election to fill such vacancy for the remainder of the term. All expenses of the election shall be paid by the state. If a legally qualified candidate for election to the vacancy is unopposed when the last date for filing for places on the ballot has passed, the election shall not be held, and a certificate of election shall be issued in the manner provided by law.

Section 3.04. Qualifications of Senators and Representatives.

Senators shall be at least twenty-five years of age, and representatives twenty-one years of age at the time of their election. They shall have been citizens of this state and resi-

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dents of their respective districts for one year next before their election. They shall reside in their respective districts during their terms of office.

Section 3.05. Appointment to Office of Profit.

No senator or representative shall, during the term for which he shall have been elected, be appointed to any office of profit under this state, which shall have been created or the emoluments of which shall have been increased by the legislature during such term. A cost of living adjustment of the salary attached to an office, permitted by the provisions of this constitution, shall not be considered an increase in the emoluments of such office.

Section 3.06. Organizational Session.

The legislature shall convene on the second Tuesday in January next succeeding their election and shall remain in session for not longer than ten consecutive days, unless a longer period is required for the determination of contested elections. No business shall be transacted at such sessions except the organization of the legislature, the election of officers, the appointment of committees, the introduction of bills, the ascertainment and declaration of the results of the election of state officers, the determination of contested elections for such offices, and the judging of the election and qualifications of the members of the legislature.

Section 3.07. Election of Presiding Officers and Determination of Qualification of Members.

The senate, at the beginning of each organizational session, and at such other times as may be necessary, shall elect one of its members president pro tempore thereof, to preside over its deliberations in the absence of the lieutenant-governor; and the house of representatives, at the beginning of each organizational session, and at such other times as may be necessary, shall elect one of its members as speaker; and the president pro tempore of the senate and the speaker of the house of representatives shall hold their offices respectively until their successors are elected

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and qualified. Each house shall choose its own officers and shall judge of the election and qualification of its members.

Section 3.08. Procedure for Election by Legislature.

In all elections by the legislature the members shall vote publicly, and the votes shall be entered on the journal.

Section 3.09. Time and Length of Legislative Sessions.

Regular sessions of the legislature shall be held annually and shall be limited to thirty legislative days within a period of ninety calendar days. The legislature shall convene in regular sessions on the first Tuesday in February, unless the day of meeting is changed by law. Special sessions of the legislature convened in the manner provided by this Constitution shall be limited to twenty legislative days within a period of not more than forty-five calendar days.

Section 3.10. Legislation in Special Session.

When the legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session, except by a vote of two-thirds of each house.

Section 3.11. Compensation Commission for the Members of the Legislature.

(a) Members of the legislature shall receive an annual salary to be determined in accordance with the provisions of this section. No change in the compensation or expense allowance of members of the legislature shall be made except in accordance with the provisions of this section.

(b) A state compensation commission is hereby created which shall recommend the salary, expense allowance, and other compensation of the members of the legislature. The commission shall consist of five members. The governor, president of the senate, speaker of the house, attorney general, and chief justice of the supreme court shall each appoint one member.

(c) The terms of the commissioners shall be five years. Of

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the initial appointees, the governor and attorney general shall each appoint one for two years; the president of the senate and speaker of the house shall each appoint one for four years; and the chief justice shall appoint one for five years. No member of the commission shall hold any other public office.

(d) The members of the commission shall elect one of their number as chairman at their first meeting and every four years thereafter. Any vacancy on the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(e) The commission shall submit a report to the legislature on the first day of the regular session which convenes in the odd-numbered years preceding the quadrennial election of members of the legislature. The recommendations of the commission shall become law unless rejected or altered by act of the legislature within fifteen legislative days after submission.

(f) No change in salary, expense allowance or other compensation shall apply to any legislator during the term for which he was elected.

Section 3.12. Compensation of Officers and Employees.

The legislature shall prescribe by law the number, duties, and compensation of the officers and employees of each house, and no payment shall be made from the state treasury or be in any way authorized to any person except to an acting officer or employee elected or appointed in pursuance of law.

Section 3.13. Quorum and Adjournment.

A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as each house may provide. Neither house shall, without the consent of the other, adjourn for more than three days.

Section 3.14. Powers of Each House to Make Rules.

Each house shall have power to determine the rules of its

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proceedings and to punish its members and other persons for contempt or disorderly behavior in its presence; to enforce obedience to its rules and processes; to protect its members against violence or offers of bribes or corrupt solicitation; and with the concurrence of two-thirds of the house, to expel a member, but not a second time for the same offense. A member expelled for corruption shall not thereafter be eligible to either house, and punishment for contempt or disorderly behavior shall not bar prosecution for the same offense.

Section 3.15. Privileges of Members of Legislature.

Members of the legislature shall, in all cases except treason, felony, violation of their oath of office, or breach of peace be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house shall not be questioned in any other place.

Section 3.16. Form of Bills.

(a) Every bill, except general appropriation bills, general revenue bills, and bills adopting a code or revision of statutes, shall be confined to one subject and matter properly connected therewith, and the subject shall be briefly and clearly expressed in the title.

(b) No law shall be revived or amended by reference to its title only, but the act revived or the section amended shall be re-enacted and published at length.

Section 3.17. Journal of Proceedings.

Each house shall keep a journal of its proceedings and cause the same to be published as soon as practicable. A record vote, with the yeas and nays entered on the journal, shall be taken on any question on the demand of one-tenth of the members present. Any member of either house shall have the right to protest against any act or resolution and have the reason for his protest entered on the journal.

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Section 3.18. Enactment of Laws.

No law shall be enacted except by bill, and no bill shall become a law unless, prior to its passage:

(a) It has been referred to a standing committee of each house, acted upon by such committee in session, and reported, which facts shall affirmatively appear upon the journal of each house. A majority of either house may discharge a committee from the consideration of a bill and consider the same as if reported.

(b) It has been read by its title on three different days in each house and on its final passage it has been read at length in each house.

(c) A vote has been taken on it in each house, the name of each member voting for and against recorded in the journal, and except as otherwise provided in this Constitution, a majority of each house be recorded as voting in its favor.

Section 3.19. Amendments and Conference Reports.

No bill shall be so altered or amended on its passage through either house as to change its original purpose. No amendment to a bill or report of a committee of conference, shall be adopted by either house, except in the manner required in subparagraph (c) of section 3.18.

Section 3.20. Duty to Deliver Bills.

When a bill has been passed by the house in which it originated, it shall be the duty of the secretary or clerk of that house to deliver such bill immediately, and in no case later than twenty-four hours, to the other house where it shall receive first reading not later than the next legislative day after delivery. When a bill has been passed by both houses, it shall be returned immediately by the secretary or the clerk of the originating house. The secretary or clerk of the house in which the bill originated shall attest its passage and forthwith, and in no case later than six days, deliver the bill to the governor and enter the fact upon the journal.

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Section 3.21. Revenue Bills.

All bills for raising revenue shall originate in the house of representatives, but may be altered, amended, or rejected by the senate.

Section 3.22. Appropriation Bills.

(a) The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the state, for the public debt, and for the public schools and educational institutions. The salary of no officer or employee shall be increased in any such bill, nor shall any appropriations be made therein for any officer or employee unless his employment and the amount of his salary have already been provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject.

(b) If general appropriation bills for each of the expenses stated in paragraph (a) of this section have not been passed before the last three legislative days of a regular session, no other legislation shall be finally passed until such appropriation bills have been passed.

(c) If the legislature at any regular session fails to pass general appropriation bills as defined in paragraph (a), the appropriations for the next succeeding fiscal year for such expenses shall be the same as the appropriations in effect at the end of the legislative session, unless thereafter changed by act of the legislature.

Section 3.23. Payment of Appropriations.

No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in the manner provided by law.

Section 3.24. Appropriations to Charitable Institutions.

No appropriations shall be made to any charitable or educa-

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tional institution not under the absolute control of the state, except by a vote of two-thirds of all members elected to each house.

Section 3.25. Private Pension Laws.

The legislature shall not enact any special or private law granting any pension.

Section 3.26. Releasing Obligation Owed to State, County or Municipality.

No obligation or liability of any person, association, or corporation held or owned by this state or by any county or other municipality thereof, shall ever be remitted, released, or postponed or in any way diminished, by the legislature; nor shall such liability or obligation be extinguished except by payment thereof; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; provided that this section shall not prevent the legislature from providing by general law for the compromise of doubtful claims.

Section 3.27. Corporations.

Corporate charters shall be granted, amended, dissolved, or extended only pursuant to general laws, provided, however, that public corporations wholly owned and controlled by the state may be created and dissolved, or their charter amended, by special act.

Section 3.28. General Laws Defined.

A general law within the meaning of this constitution is a law which in its terms and effect applies either to the whole state, without excepting any county, political subdivision or geographical district, or to all such subdivisions of the state in a class. In the enactment of general laws, the legislature may classify geographical areas or districts involving two or more counties or municipalities on the basis of criteria reasonably related to the subject of the law. The legislature shall establish classes of counties and municipalities based on population, but

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not more than eight classes of each shall be in effect at any one time. No county or municipality shall be exempt from any general law applicable to counties or municipalities in its class.

Section 3.29. Limitation on Enactment of Local Laws.

No special, private, or local law shall be enacted concerning any matter when a general act deals with the same subject matter and is applicable, even though such special, private, or local law may differ from the applicable general law. No special, private or local law shall be enacted in any case when the relief sought can be given by any court of this state. The courts, and not the legislature, shall judge whether the matter of such law is dealt with by an applicable general act, or whether the relief sought can be given by any court. The legislature shall not indirectly enact any such special, private, or local law by the partial repeal of a general law.

Section 3.30. Procedure for Enacting Local Laws.

No special, private, or local law shall be enacted unless a notice setting forth the intention to introduce it and the substance of the contemplated law shall have been published once a week for two weeks in the county or counties where the law is to be applicable in the manner provided by law prior to the introduction of the bill. Proof by affidavit of publication of such notice with a copy of the text thereof shall be filed with the legislature upon the introduction of the bill and, after passage of the bill, set forth in the journal.

Section 3.31. Conflict of Interest.

A code of ethics, which shall include penalties for violation, prohibiting conflict between public duty and private interest, shall be prescribed by law for all members of the legislature, state employees and non-judicial officers.

Section 3.32. Continuity of Government in Emergencies.

In order to insure continuity of state and local government operations in periods of emergency only, resulting from disasters occurring in this state, the legislature may provide by law for

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prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices; and enact other laws necessary and proper for insuring the continuity of governmental operations. Notwithstanding the power conferred by this section, elections shall always be called as soon as possible to fill any vacancies in elective offices temporarily occupied under any legislation enacted pursuant to the provisions of this section.

ARTICLE IV

Representation

Section 4.01. Composition of Senate and House of Representatives.

The number of senators shall be not more than thirty-five and the number of representatives shall be not more than one hundred six.

Section 4.02. Legislative Districts.

The state shall be divided by law into districts for the election of members of the Senate and into districts for the election of members of the House of Representatives. Each district shall consist of compact and adjoining territory, and the ratio of the number of legislators in each district to the population of such district shall be as nearly equal among districts as practicable.

Section 4.03. Legislative Reapportionment Procedure.

() Reapportionment of senatorial and house of representative districts shall be accomplished as soon as practical after official publication of each decennial census of the United States. A commission on legislative reapportionment, consisting of five members, shall be established no later than the first day of February in each year following the year in which the decennial census of the United States is officially reported. The lieutenant

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governor, attorney general, and chief justice of the Alabama Supreme Court shall, by a majority vote, appoint all members of the commission and shall certify their names to the officer designated by law.

(b) No commission member shall hold an elected office in the state. Not more than one member of the commission shall be appointed from any congressional district. The members of the commission shall select one of their number as chairman. Any vacancy on the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(c) It shall be the duty of the legislature to appropriate sufficient funds for the compensation and expenses of the commission and staff appointed by the Commission.

(d) No later than ninety days after the commission has been certified, or the population data for the state as determined by the census has become available, whichever is later, the commission, by a majority vote of its membership, shall adopt a reapportionment plan for the senate and house and shall submit it to the governor, the lieutenant governor and speaker of the house. If the commission plan is reported to such officials before the expiration of the first ten legislative days of the first regular session of the legislature held after the appointment of the commission, such plan shall become law if the legislature does not adopt a reapportionment plan at such session. If the commission plan is not reported until after the expiration of the first ten legislative days of such legislative session, and if the legislature does not adopt a reapportionment plan at such session, the governor shall, as soon as practicable after the commission plan has been reported, call a special session of the legislature to adopt a reapportionment plan. If the legislature does not adopt a reapportionment plan at such special session, the commission plan shall become law.

(e) The supreme court shall have original jurisdiction, upon the petition of any qualified voter of the state, to review the new reapportionment law. If the supreme court holds invalid a reapportionment plan enacted by the legislature, then the com-

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mission plan shall become law if it complies with the requirements of this constitution. If the supreme court finds the commission plan invalid, the court shall issue an order remanding the plan to the commission and directing the commission to reapportion the state in a manner not inconsistent with such order. When the court finally approves a reapportionment plan, such plan shall remain in effect until the adoption under this section of a reapportionment plan after the next United States decennial census.

Section 4.04. Congressional Redistricting.

The state shall be divided by law into congressional districts for the election of the members of the United States House of Representatives under the same procedure, under the same commission, and according to the mandate of the preceding section prescribing the manner of reapportioning senate and house representative districts.

ARTICLE V

Executive Department

Section 5.01. Executive Power and the Executive Department.

The principal executive power of this state shall be vested in a governor. The executive department shall include the governor, a lieutenant governor and an attorney general.

Section 5.02. Election and Term of Office of Executive Officers.

The governor, lieutenant governor and attorney general shall be elected by the electors of the state at the same time and places appointed for the election of members of the legislature. The governor, lieutenant governor, and attorney general shall hold their respective offices for a term of four years, commencing on the first Monday after the second Tuesday in January next succeeding their election and until their successors

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shall be elected and qualified. Each of said officers shall be eligible to succeed himself in office, but no person shall be eligible to succeed himself for more than one additional term.

Section 5.03. Election Returns.

The returns of every election for governor, lieutenant governor and attorney general shall be sealed and transmitted by the returning officers to the seat of government and directed to the speaker of the house of representatives, who shall open and publish the votes in the manner prescribed by law. The person having the highest number of votes for any one of said offices shall be declared elected; but if two or more shall have the highest and an equal number of votes, the legislature by joint vote shall choose one of said persons without delay. Contested elections shall be determined by both houses in the manner prescribed by law.

Section 5.04. Qualifications of Governor and Lieutenant Governor.

The governor and lieutenant governor shall be at least twenty-five years of age when elected and shall have been qualified voters in this state for three years prior to their election.

Section 5.05. Compensation and Place of Residence of Governor.

The governor shall receive a salary to be prescribed by law and shall reside in the state capital.

Section 5.06. Legislative Responsibilities of Governor.

(a) **Special sessions.** The governor may by proclamation on extraordinary occasions convene the legislature at the seat of government or at a different place if the seat of government shall become dangerous. He shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary.

(b) **Messages to the Legislature.** The governor shall from time to time give to the legislature information of the state

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of the government. Within five days after the convening of each regular session of the legislature, he shall transmit to it a budget setting forth his financial program for each of the fiscal years which will have begun before the next regular session. The governor shall also account to the legislature, as may be prescribed by law, for all money received and paid out by him or by his order; and at the commencement of each regular session he shall present to the legislature estimates of the amount of money required to be raised by taxation for all purposes.

(c) **Veto.** Every bill passed by the legislature shall, before it becomes a law, be presented to the governor unless otherwise provided by this Constitution. If the legislature is in session the bill shall become law if the governor signs or fails to veto it within seven calendar days of presentation. If the legislature adjourns sine die before presentation or during such seven day period, the bill shall become law if the governor signs or fails to veto it within twenty calendar days of presentation. When the governor vetoes a bill, he shall, within seven calendar days of presentation, return it to the secretary or clerk of the house in which the bill originated, unless the legislature shall, by final adjournment, prevent such return. The bill shall be reconsidered and if a majority of the members elected to each house vote for the passage of the bill it shall become law.

(d) **Executive amendments.** The governor may, within seven calendar days after a bill has been presented to him return such bill to the house in which it originated, with recommendations for its amendment. If both houses approve such amendment, the bill as amended shall become law. If either house refuses to approve such amendment, or fails to act thereon before the end of the session, then the bill shall again be sent to the governor and acted on by him as if it were before him for the first time, but no further amendment to such bill can be recommended by the governor. In all cases above set forth, the names of the members voting for and against the bill, or amendments thereto, shall be entered on the journal.

(e) **Appropriation bills.** The governor shall have power to approve or disapprove any item or items of any appro-

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priation bill embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of bills over the executive veto; and he shall in writing state specifically the item or items he disapproves, setting the same out in full in his message, but in such case the enrolled bill shall not be returned with the governor's objection.

Section 5.07. Executive and Administrative Powers of the Governor.

(a) **Execution of laws.** The governor shall be responsible for the faithful execution of the laws. He may by appropriate action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate or restrain violation of any constitutional or legislative power, duty or right by an officer, department or agency of the state or any of its civil divisions. This authority shall not authorize any action or proceeding against the legislature.

(b) **Information.** The governor may require information in writing, under oath, from the officers of the executive department, and all officers and managers of state institutions, on any subject relating to the duties of their respective offices or the condition, management and expenses of their respective departments or institutions. Any such officer or manager who makes a wilfully false report or fails without sufficient excuse to make a required report on demand, is guilty of an offense for which he may be removed.

(c) **Executive reorganization.** Except for organizational arrangements specified in this Constitution, the governor may make such changes in the organization of the executive department or in the assignment of functions among its units as he considers necessary for efficient administration. If such changes affect existing statutory law, they shall be set forth in executive orders, which must be submitted to the legislature within the first ten calendar days of a regular or special session, and shall become effective, and shall have the force of law at the end of such regular or special session unless specifically modified

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or disapproved by a majority elected to each house. The governor shall not, however, make changes which would become effective later than ninety days before the end of his administration. For the purpose of this subsection the term "executive department" shall include only those departments, bureaus, and agencies whose director or head is appointed by, and serves at the pleasure of, the governor.

(d) **Commander-in-chief.** The governor shall be commander-in-chief of the armed forces of this state, except when they are called into the service of the United States, and may call them out to execute the laws, to preserve order, to suppress insurrection or to repel invasion.

(e) **Power to fill vacancies.** The governor shall have power to fill vacancies in all offices of the state for the filling of which the Constitution or laws make no other provision.

Section 5.08. Executive Clemency.

The governor shall have power to grant reprieves and commutations to persons under sentence of death. The legislature may provide for and regulate the administration of pardons, paroles, remission of fines and forfeitures, and may authorize the courts having criminal jurisdiction to suspend sentence and to order probation. A pardon shall relieve from civil and political disabilities unless specifically provided otherwise therein.

Section 5.09. Succession to the Office of Governor.

(a) **Removal, death or resignation of governor.** In case of the governor's removal from office, death, or resignation, the lieutenant governor shall become governor.

(b) **Removal, death, or resignation of governor and lieutenant governor.** If both the governor and lieutenant governor be removed from office, die or resign, the unexpired term of the governor and lieutenant governor shall be filled by a special election, except when such unexpired term is less than one year in which case a new governor and lieutenant governor shall not be elected until the next regular gubernatorial election. In the event of such vacancy the office of governor shall be held and

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administered by the speaker of the house of representatives, the president pro tempore of the senate or the attorney general, in that order, until the new governor is elected and qualified.

(c) **Vacancies due to disability or absence.** When the governor is unable to discharge the duties of his office by reason of physical or mental disability, or when the duties are not being discharged by reason of his absence from the state, the power and authority of the office shall, until the governor returns to the state or is restored to his mind, or relieved from other disability, devolve in the order herein named upon the lieutenant governor, the speaker of the house of representatives, the president pro tempore of the senate or the attorney general. If any of the officers in the line of succession be under any of the disabilities herein specified, the office of the governor shall be administered in the order named by such of these officers as may be free from such disability. If the governor's disability or absence does not terminate within six months the office of governor shall be vacant as if the governor had died.

(d) **Failure of governor to qualify.** If the governor-elect fails to qualify, the lieutenant governor-elect shall qualify and exercise the duties of governor until the governor-elect qualifies. In the event that both the governor-elect and the lieutenant governor-elect fail to qualify, the speaker of the house, the president pro tempore of the senate or the attorney general shall, in the order named, administer the office until the governor-elect or the lieutenant governor-elect qualifies, or until the office of governor has been filled by an election and the newly elected governor has qualified. If both the governor-elect and the lieutenant governor-elect fail to qualify within six months of the beginning of their terms of office, the unexpired terms of the governor-elect and the lieutenant governor-elect shall be filled by a special election.

Section 5.10. Procedure for Determination of Incapacity of Governor.

(a) If the governor or acting governor shall appear to be unable to perform his duties because of physical or mental disability, or absence from the state, it shall be the duty of the

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supreme court upon the request in writing by the attorney general, the president pro tempore of the senate, and the speaker of the house, or any one of them, not next in succession to the office of governor, to ascertain the truth of the charges. If he is adjudged to be unable to perform his duties because of physical or mental disability, or absence from the state, it shall be the duty of the officer next in succession to perform the duties of the office until the disability is removed or until the governor returns to state. If the incumbent denies that the disability of the governor, or other person entitled to administer the office, has been removed, the supreme court shall ascertain the truth concerning the same. If the disability has not continued for more than six months, and has been removed, the court shall so decree, and the office shall be restored to him. The supreme court shall prescribe the method of taking testimony and the rules of practice in such proceedings.

(b) The physical disability of the governor to perform his his duties may also be established by his written declaration to that effect transmitted to the officer next in line of succession and to the attorney general. If the physical disability of the governor is removed within six months, he may resume his office by notifying the acting governor and the attorney general. Any question concerning the governor's ability to resume his office shall be decided by the supreme court.

Section 5.11. Compensation of Acting Governor.

The lieutenant governor, speaker of the house, president pro tempore of the senate or attorney general, while administering the office of governor, shall receive the same compensation as that prescribed by law for the governor and no other.

Section 5.12. Lieutenant Governor.

(a) **Duties.** Lieutenant Governor shall be ex officio president of the senate, but shall have no right to vote except in case of a tie.

(b) **Salary.** The salary of the lieutenant governor shall be as prescribed by law.

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(c) **Removal for insanity.** In case the lieutenant governor shall become of unsound mind, such unsoundness shall be ascertained by the supreme court upon the suggestion of the governor, and if found to be insane, his office shall be vacant.

Section 5.13. Attorney General.

(a) **Qualifications.** The attorney general shall be at least twenty-five years of age. He shall have been a qualified voter, and licensed to practice law, in this state for three years prior to his election.

(b) **Removal for insanity.** In case the attorney general shall become of unsound mind, such unsoundness shall be ascertained by the supreme court upon the suggestion of the governor, and if found to be insane, his office shall be vacant.

Section 5.14. State Seal.

There shall be a seal of the state, which shall be used officially by the governor, and the seal now in use shall continue to be used until another shall have been adopted by the legislature. The seal shall be called, "The Great Seal of the State of Alabama."

ARTICLE VI

The Judicial Department

Section 6.01. Judicial Power.

(a) Except as otherwise provided by this constitution, the judicial power of the state shall be vested exclusively in a unified judicial system which shall consist of a supreme court, a court of appeals, a trial court of general jurisdiction known as the circuit court, a trial court of limited jurisdiction known as the district court, and a probate court.

(b) The legislature may create judicial officers with authority to issue warrants and may vest in administrative agencies established by law such judicial powers as may be reasonably

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necessary as an incident to the accomplishment of the purposes for which the agencies are created.

Section 6.02. The Supreme Court.

(a) The supreme court shall be the highest court of the state and shall consist of one chief justice and such number of associate justices as may be prescribed by law.

(b) The supreme court shall have original jurisdiction (1) of cases and controversies as provided by this Constitution, (2) to issue such remedial writs or orders as may be necessary to give it general supervision and control of courts of inferior jurisdiction, and (3) to answer questions of state law certified by a court of the United States.

(c) The supreme court shall have such appellate jurisdiction as may be provided by law.

Section 6.03. Court of Appeals.

The court of appeals shall consist of such number of judges and division as may be provided by law. It shall exercise appellate jurisdiction under such terms and conditions as shall be provided by law and by rules of the supreme court. The court of appeals shall have no original jurisdiction except that it shall have power to issue all writs necessary or appropriate in aid of its appellate jurisdiction.

Section 6.04. Circuit Court.

(a) The state shall be divided into judicial circuits. For each circuit, there shall be one circuit court having such divisions and consisting of such number of judges as shall be provided by law.

(b) The circuit court shall exercise original general jurisdiction in all cases except as may otherwise be provided by law. The circuit court may be authorized by law to review decisions of state administrative agencies and decisions of inferior courts. It shall have authority to issue such writs as may be necessary or appropriate to effectuate its powers, and shall have such other powers as may be provided by law.

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Section 6.05. District Courts.

The district court shall be a court of limited jurisdiction and shall exercise uniform original jurisdiction in such cases, and within such geographical boundaries, as shall be prescribed by law.

Section 6.06. Probate Court.

There shall be a probate court in each county which shall have such jurisdiction as may be provided by law.

Section 6.07. Qualifications of Judges.

Judges of the supreme court, court of appeals, circuit court and district court shall be licensed to practice law in this state and have such other qualifications as the legislature may prescribe. Judges of the probate court shall have such qualifications as may be provided by law.

Section 6.08. Prohibited Activities.

(a) No judge of any court of this state shall, during his continuance in office, engage in the practice of law or receive any remuneration for his judicial service except the salary and allowances authorized by law.

(b) No judge, except a judge of a probate court, shall seek or accept any non-judicial elective office, or hold any other office of public trust, or make any contribution to or hold any office in a political party or organization, or campaign for any candidate, except himself, for political office.

(c) The supreme court shall adopt rules of conduct and canons of ethics, not inconsistent with the provisions of this constitution, for the judges of all courts of this state.

Section 6.09. Judicial Compensation.

(a) A state judicial compensation commission is hereby created which shall recommend the salary and expense allowances for all the judges of this state except for judges of the probate court. The commission shall consist of five members;

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one shall be appointed by the governor, one by the president of the senate, one by the speaker of the house, and two by the governing body of the Alabama state bar.

(b) Members of the judicial compensation commission shall serve for terms of four years. Any vacancy on the commission shall be filled in the same manner in which such position was originally filled. The legislature shall appropriate sufficient funds for the expenses of the Commission.

(c) No member of the commission shall hold any other public office, or office in any political party, and no member of the commission shall be eligible for appointment to a state judicial office so long as he is a member of the commission and for two years thereafter.

(d) The commission may submit a report to the legislature at any time within the first five calendar days of a regular session. The recommendations of the commission shall become law unless rejected by a joint resolution or altered by act of the legislature at the session to which the report is submitted. No change in salary or expense allowance shall apply to any judge during the term for which he was elected or appointed except as permitted by this constitution.

Section 6.10. Administration.

The chief justice of the supreme court shall be the administrative head of the judicial system. He shall submit budget recommendations to the governor and the legislature for state appropriations for the entire unified judicial system, exclusive of the probate courts. He may appoint an administrative director to serve at his pleasure and to supervise the administrative operation of the judicial system. The chief justice may assign appellate and trial judges for temporary service in any court.

Section 6.11. Power to Make Rules.

The supreme court shall make and promulgate rules governing the administration of all courts and rules governing practice and procedure in all courts. These rules may be changed by an

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act of the legislature adopted by a two-thirds vote of each house.

Section 6.12. Number of Circuit and District Judges.

(a) The supreme court shall establish criteria for determining the number and boundaries of judicial circuits and districts, and the number of judges needed in each circuit and district. If the supreme court finds that a need exists for increasing or decreasing the number of circuit or district judges, or for changing the boundaries of judicial circuits or districts, it shall, at the beginning of any session of the legislature, certify its findings and recommendations to the legislature.

(b) If a bill is introduced at any session of the legislature to increase or decrease the number of circuit or district judges, or to change the boundaries of any judicial circuit or district, the supreme court shall, within three weeks, report to the legislature its recommendations on the proposed change. No change shall be made in the number of circuit or district judges, or the boundaries of any judicial circuit or district unless authorized by an act adopted after the recommendation of the supreme court on such proposal has been filed with the legislature.

(c) An act decreasing the number of circuit or district judges shall not affect the right of any judge to hold his office for his full term.

Section 6.13. Selection of Judges.

(a) All judges shall be elected by vote of the electors within the territorial jurisdiction of their respective courts.

Alternative Subsection (a):

All judges shall be elected by vote of the electors within the territorial jurisdiction of their respective courts. The legislature shall provide for the election of all judges except probate judges on a non-partisan basis, without designation of any political affiliation. Nominations for judicial office shall be in the manner prescribed by law. Any incumbent judge may become a candidate for re-election by filing a declaration of candidacy at the time and in the manner prescribed by law.

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(b) The office of a judge shall be vacant if he dies, resigns, retires, or is removed. Vacancies in any judicial office except probate judge shall be filled by appointment by the governor from a list of three nominees submitted by the appropriate judicial nominating commission. If the governor fails to appoint any of the nominees within thirty days after the list of nominees is submitted, the commission which selected the nominees shall appoint one of the nominees to fill the vacancy. Vacancies occurring in the office of judge of the probate court shall be filled by appointment or election as provided by law.

Section 6.14. Judicial Nominating Commissions.

(a) An appellate court nominating commission is hereby established to nominate and submit to the governor names of persons for appointment to vacancies in the supreme court and court of appeals. The commission shall consist of seven members, one of whom shall be the chief justice or acting chief justice of the supreme court, who shall serve as chairman, three shall be members of the state bar appointed by the governing body of the Alabama State Bar, two shall be citizens who are not lawyers appointed by the governor, and one a citizen who is not a lawyer appointed by the attorney general.

(b) There shall be one nominating commission for each judicial circuit. In circuits consisting of one county, the commission shall consist of five members, two of whom shall be appointed by the members of the bar residing in the county, two by the governing body of the county, and one who shall be the chairman, by the chief justice or acting chief justice of the supreme court. In circuits consisting of more than one county, the commission shall consist of five or more members, the chairman of which shall be appointed by the chief justice or acting chief justice of the supreme court, and one member of which shall be appointed by the governing body of each county and one member by the bar of each county in the circuit.

(c) The terms of the members of the judicial nominating commission shall be concurrent with the term of the chief justice of the supreme court. Any vacancy on a commission shall be filled in the same manner in which the position was

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originally filled Members of all judicial nominating commissions shall be appointed within ninety days after the adoption of this section of the constitution.

(d) No member of any nominating commission shall receive any compensation for his services, but shall be allowed necessary travel expenses incurred in the performance of duty. No member of any commission except the chief justice shall hold any other public office, or office in any political party, and no member of any commission shall be a nominee of a commission so long as he is a member and for two years thereafter.

Section 6.15. Tenure of Office.

(a) The term of office of each judge of a court of the judicial system of this state shall be six years.

(b) A judge appointed to fill a vacancy under the provisions of Section 6.13(b) shall serve an initial term lasting until the first Monday after the second Tuesday in January following the next general election held after he has completed one year in office. At such election such judicial office shall be filled for a full term of office beginning at the end of the appointed term.

(c) A law reducing the number of judges of the supreme court or court of appeals shall be without prejudice to the right of the judges affected to seek retention in office. The reduction shall become effective when a vacancy in the affected court occurs.

Section 6.16. Retirement.

The legislature shall provide by law for the retirement of judges, including supernumerary judges, with such conditions, retirement benefits, and pensions for them and their dependents as it may prescribe. No person shall be elected or appointed to a judicial office after reaching the age of seventy years, provided that a judge over the age of seventy may be appointed to the office of supernumerary judge if he is not eligible to receive state judicial retirement benefits.

Section 6.17. Judicial Inquiry Commission.

(a) A judicial inquiry commission is created consisting of

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seven members. The supreme court shall appoint one supreme court or court of appeals judge and two judges of the circuit court as members of the commission. The governor shall appoint two persons who are not lawyers and the governing body of the Alabama state bar shall appoint two members of the state bar to serve as members of the commission. The commission shall select its own chairman. The terms of the members of the commission shall be four years. A vacancy on the commission shall be filled for a full term in the manner the original appointment was made.

(b) The commission shall be convened permanently with authority to conduct investigations, receive or initiate complaints concerning any judge of a court of the judicial system of this state. The commission shall file a complaint with the court of the judiciary in the event that a majority of the members of the commission decide that a reasonable basis exists, (1) to charge a judge with violation of any canon of judicial ethics, misconduct in office, failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to charge that the judge is physically or mentally unable to perform his duties. All proceedings of the commission shall be confidential except the filing of a complaint with the court of the judiciary. The commission shall prosecute the complaints.

(c) The supreme court shall adopt rules governing the procedures of the commission.

(d) The commission shall have subpoena power and authority to appoint and direct its staff. Members of the commission who are not judges shall receive per diem compensation and necessary expenses only. The legislature shall appropriate funds for the operation of the commission.

Section 6.18. Court of the Judiciary.

(a) The court of the judiciary is created consisting of one judge of the supreme court or court of appeals, who shall be selected by the supreme court, and shall serve as chief judge of the court of the judiciary, two judges of the circuit court, who shall be selected by the supreme court, and two members of the

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state bar, who shall be selected by the governing body of the Alabama state bar. The court shall be convened to hear complaints filed by the judicial inquiry commission. The court shall have authority, after notice and public hearing (1) to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may be prescribed by law, for violation of a canon of judicial ethics, misconduct in office, failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend with or without pay, or to retire a judge who is physically or mentally unable to perform his duties.

(b) A judge aggrieved by a decision of the court of the judiciary may appeal to the supreme court. The supreme court shall review the record of the proceedings on the law and the facts.

(c) The supreme court shall adopt rules governing the procedures of the court of the judiciary.

(d) The court of the judiciary shall have power to issue subpoenas. The legislature shall provide by law for the expenses of the court.

Section 6.19. Disqualification.

A judge shall be disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him filed by the judicial inquiry commission with the court of the judiciary.

Section 6.20. Continuation of Courts.

All courts in existence at the time this article of the constitution becomes effective shall retain their powers for three years, unless sooner terminated by act of the legislature.

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ARTICLE VII

Suffrage and Elections

Section 7.01. Qualifications for Voting.

Every citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his residence. The legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting.

Section 7.02. Disqualifications.

No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.

Section 7.03. Regulation of Elections.

The legislature shall by law provide for the registration of voters, absentee voting, secrecy in voting, the administration of elections, and the nomination of candidates.

ARTICLE VIII

Taxation and Debt Limitation

Section 8.01. Limit on Powers to Tax and Lend Credit.

The State of Alabama and its political subdivisions shall use their power to tax and lend their credit only for public purposes, except as otherwise permitted by amendments to the Constitution of 1901 at the time this section is adopted or as herein otherwise permitted.

Section 8.02. Delegation of Taxing Power.

The power to levy taxes shall not be delegated to individuals or private corporations or associations.

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state bar, who shall be selected by the governing body of the Alabama state bar. The court shall be convened to hear complaints filed by the judicial inquiry commission. The court shall have authority, after notice and public hearing (1) to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may be prescribed by law, for violation of a canon of judicial ethics, misconduct in office, failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend with or without pay, or to retire a judge who is physically or mentally unable to perform his duties.

(b) A judge aggrieved by a decision of the court of the judiciary may appeal to the supreme court. The supreme court shall review the record of the proceedings on the law and the facts.

(c) The supreme court shall adopt rules governing the procedures of the court of the judiciary.

(d) The court of the judiciary shall have power to issue subpoenas. The legislature shall provide by law for the expenses of the court.

Section 6.19. Disqualification.

A judge shall be disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him filed by the judicial inquiry commission with the court of the judiciary.

Section 6.20. Continuation of Courts.

All courts in existence at the time this article of the constitution becomes effective shall retain their powers for three years, unless sooner terminated by act of the legislature.

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Section 8.03. State Taxes on Income.

(a) A state tax on income shall be levied only on net income and shall not exceed the rate of five per cent.

(b) A resident individual or a corporation organized under the law of this state shall be allowed to deduct from gross income the amount of federal income tax paid or accrued within the taxable year. A nonresident individual or foreign corporation shall be allowed to deduct only that amount of federal income tax paid or accrued in the taxable year on income received from sources within the state to be determined in accordance with such laws as the legislature may enact.

Section 8.04. Imposition of Income Tax with Reference to Federal Law.

Except as prohibited by this Constitution, the legislature in enacting laws taxing income, may define income by reference to provisions of the laws of the United States as they then exist or may prospectively be enacted, with such modification as may be prescribed by the law of this state.

Section 8.05. State Inheritance and Estate Taxes.

The legislature may provide for the assessment, levy and collection of a tax upon inheritances and for the levying of estate taxes not to exceed in the aggregate the amounts which may by any law of the United States be allowed to be created against or deducted from any similar tax upon inheritances or taxes on estates assessed or levied by the United States on the same subject.

Section 8.06. Dedicated Funds.

No proceeds of any state tax hereafter levied by the legislature, or derived from an increase in the rate of taxes now imposed, shall be dedicated to any special purpose, except when required by the federal government for state participation in federal programs. Any dedication of taxes for special purposes existing at the time of the ratification of this section shall continue until terminated by act of the legislature.

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Section 8.07. Limitation on State Ad Valorem Taxation.

State ad valorem taxes shall not be levied in excess of six and one-half mills on the assessed value of property in any one taxable year, except for taxes required to pay bonds issued after the ratification of section 8.11 of this article.

Section 8.08. Assessment and Classification of Property for Ad Valorem Taxation.

(a) All taxable property within this state, not exempt by law, shall be divided into the following classes for the purposes of ad valorem taxation:

Class I. All property of utilities used in the business of such utilities.

Class II. All property not otherwise classified.

Class III. All agricultural, forest and residential property.

(b) With respect to ad valorem taxes levied by the state, all taxable property shall be forever taxed at the same rate, and such property shall be assessed for ad valorem tax purposes according to the classes thereof as herein defined at the following ratios of assessed value to the fair and reasonable market value of such property:

Class I. 30 percentum.

Class II. 25 percentum.

Class III. 15 percentum.

(c) With respect to ad valorem taxes levied by counties, incorporated cities or towns, or other taxing authority, all taxable property shall be forever taxed at the same rate, and such property shall be assessed for ad valorem tax purposes according to the classes of property defined in paragraph (a) herein and at the same ratios of assessed value to the fair and reasonable market value thereof as fixed in paragraph (b) herein, provided, however, that the legislature may vary the ratio of assessed value to the fair and reasonable market value as to any class of property as defined in paragraph (b) herein, and provided, further, that the legislature may fix a uniform ratio of assessment

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of all property within a county defined in paragraph (a) herein as Class II and III and may fix a different ratio of assessment for property defined in paragraph (a) as Class I. Such ratios as herein authorized may vary among counties so long as each such ratio is uniform within a county.

No class of property shall have a ratio of assessed value to fair and reasonable market value of less than 15 percentum nor more than 35 percentum.

(d) Wherever any constitutional provision or statute provides for, limits or measures the power or authority of any county, incorporated city or town, or other taxing authority to levy taxes, borrow money, or incur indebtedness in relation to the assessment of property therein for state taxes or for state and county taxes such provision shall mean as assessed for county or incorporated city or town taxes as the case may be.

Section 8.09 Exemptions from Ad Valorem Taxation.

(a) The following property shall be exempt from all ad valorem taxation: the real and personal property of the state, counties, incorporated cities or towns, and property devoted exclusively to religious, educational or charitable purposes.

(b) The legislature may provide for other exemptions from ad valorem taxation.

Section 8.10. Taxation.

Except for taxes levied by the States, taxes presently permitted by the constitution of 1901 as amended, and taxes required for the payment of bonds issued after the ratification of section 8.12 of this article, no ad valorem taxes on real or personal property shall be levied unless the tax shall have been (1) approved by the authority having power to levy the tax after a public hearing on the proposal, (2) thereafter approved by an act of the legislature, and (3) subsequently approved by a majority of the electors of the area in which the tax is to be levied who vote on the proposal.

Section 8.11. State Debt Limitation.

No debt or other obligation payable in whole or in part from

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taxes shall be contracted by or in behalf of the state except as provided herein and the full faith and credit of the state shall be pledged to all debt incurred under this section.

(a) Temporary borrowing. The legislature may authorize debts to be contracted to meet deficits in the revenue in anticipation of the collection during the then current fiscal year of state taxes and within appropriations for such fiscal year in an amount not exceeding one-tenth of the average annual tax receipts of the state for the five fiscal years immediately preceding. Such debt shall mature and be paid from such tax collections within the current fiscal year.

(b) Debts to finance capital projects or to refund previous obligations. The legislature may authorize debts to be contracted: (1) to finance a capital project which is to be specified in the authorizing act, or (2) to refund a previous obligation of the state. The total principal amount of debts so authorized together with all debts or obligations of the state, payable in whole or in part from taxes, shall not exceed one and three-fourths times the average annual revenue receipts of the state for the immediately preceding five fiscal years. An act authorizing such debt shall require for its passage a vote of three-fifths of the members elected to each house.

(c) Additional debt. The legislature may authorize debt in excess of the limit provided in paragraph (b) by an act passed by a vote of three-fifths of the members elected to each house and approved by a majority of the electors of the state voting on the question.

(d) Bonds to finance revenue producing capital projects. The legislature may authorize the issuance of general obligation bonds of the state to finance or refinance specified revenue producing projects (including the enlargement or improvement thereof), which are owned and controlled by the state or by one of its institutions or agencies, to an amount not exceeding the average annual tax revenues of the state for the immediately preceding five fiscal years; and such bonds shall not be included in determining the limitation on debt contained in paragraph (b), provided that:

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- (1) the bonds shall be secured by a pledge of the net revenues derived from rates, fees or other charges of the projects;
 - (2) before any such bonds shall be authorized, the governor shall file with the clerk of the house and secretary of the senate his opinion, based on responsible engineering and economic estimates attached thereto, that the anticipated net revenues to be pledged to the payment of the principal and interest on such bonds will be sufficient to meet such payments and to provide such reserves as the act authorizing such bonds may require; and
 - (3) the act authorizing such bonds shall be adopted by a vote of two-thirds of the members elected to each house.
- (e) **Retiring debt.** All bonds authorized under paragraphs (b), (c), or (d) above shall mature serially in annual or more frequent installments, beginning not later than three years from the date of issue and ending within the estimated useful life of the project as stated in the authorizing act or thirty years from date of issue, whichever is shorter. The principal and interest on all such bonds shall be a first charge on the general revenues of the state and, unless sufficient funds are appropriated in each fiscal year for the payment of such principal and interest, there shall be set aside from the first tax revenues received during each fiscal year and each succeeding fiscal year a sum sufficient to pay such principal and interest.

Section 8.12. Procedure for Incurring County and Municipal Debt

(a) Except as hereinafter permitted, no county or incorporated city or town shall contract or incur any debt or obligation pledging its full faith and credit, or payable in whole or part from taxes unless (1) such debt or obligation shall be incurred or contracted for the purpose of making one or more capital improvements, (2) shall mature within the estimated useful life of such capital improvements or thirty years whichever is the shorter and (3) shall have been approved by a majority vote of

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the electors of such county or incorporated city or town voting at an election held in the manner prescribed by law.

(b) The limitation on incurring a debt or obligation provided by subdivision (a) hereof shall not apply to the following:

(1) Obligations incurred for current operating expenses in any fiscal year which do not exceed the anticipated income of that year available for such purposes.

(2) Temporary loans to be paid within one year, made in anticipation of the collection of taxes, not exceeding one-fourth of the average annual general revenues (excluding state and federal grants) of such county, incorporated city or town, for the preceding five fiscal years.

(3) The renewal, refunding or reissue of obligations lawfully issued.

(4) Obligation to procure funds to pay for public improvements, the cost of which is to be assessed, in whole or in part, against the property abutting on or served by such improvements.

(5) Obligations of a public corporation created by any county or incorporated city or town, even though property, whether or not capable of producing income, may have been transferred to such public corporation by a county or an incorporated city or town with or without consideration.

Section 8.13. Exception to Election Requirements for Obligations to Finance Small Capital Projects.

(a) Notwithstanding the provisions of the constitution requiring an election for incurring debts or obligations, a county or an incorporated city or town may incur a debt or obligation without an election in an amount not exceeding one-fifth of its average annual tax revenue paid into its general fund, and, in the case of a county, also its public building, road and bridge fund, for the last five preceding fiscal years, to finance a capital project, if approved by three-fifths of the members of its governing body after a public hearing, of which at least ten days notice has been given by publication. Notice of approval by the

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governing body shall be published within seven days after approval.

(b) In the event that five percent of the number of electors who were qualified to vote in such county in the last general election, or in such incorporated city or town in the last municipal election, within thirty days following publication of the notice of approval, file a written petition with the governing body for an election, the debt or obligation shall not be incurred unless approved by a majority of the electors voting on the question at an election.

(c) The total principal amount of all debts or obligations incurred without an election and outstanding under this section shall never exceed one percent of the assessed value of taxable property in the county or incorporated city or town.

Section 8.14. General Obligation Indebtedness of Counties and Municipalities for Industrial Development.

(a) No county or incorporated city or town authorized by any amendment to the constitution of 1901 to incur obligations, payable in whole or in part from taxes, for industrial or commercial development shall incur obligations under such authority later than five years after the adoption of this amendment.

(b) The legislature may authorize any county, incorporated city or town, or other subdivision to incur obligations, payable in whole or in part from taxes, for industrial or commercial development, provided that: (1) the obligations shall be approved by a vote of a majority of the electors of the county, incorporated city or town, or other subdivision voting in on election thereon; and (2) the electors simultaneously authorize the levying of a special tax reasonably estimated to be sufficient to pay the obligations if revenues pledged are insufficient. The type of tax, its possible duration and maximum rate shall be set out on the ballot to be used at such election.

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ARTICLE IX

Local Government

Section 9.01. Counties.

(a) The state shall be divided into political subdivisions called counties; and the present boundaries of the several counties shall continue until changed in accordance with the provisions of this article.

(b) The legislature shall by general law prescribe procedures for the creation, abolition, consolidation, merger, and change of boundaries of counties, and shall provide for payment or appointment of the public debt of each county affected by a change, provided that no such change shall be made without consent of a majority of the electors voting on the proposal within each county affected.

(c) The legislature may, by local law adopted by a vote of two-thirds of each house, change the boundary between adjoining counties, provided that the change shall have been approved by the governing bodies of each county prior to the enactment of such law.

(d) No new county shall be formed with an area of less than six hundred square miles, and no county shall be reduced below that area by a change of boundaries.

(e) No courthouse or county site shall be removed, nor shall any branch courthouse be established or abolished, unless such proposal is first submitted to a vote of the electors of the county or counties to be affected and is approved by a majority of those voting upon such proposal. An election under this section on the issue of moving, establishing or abolishing a courthouse or branch courthouse shall not be held at more frequent intervals than every four years.

Section 9.02. Municipalities

The legislature shall provide by general law for the incorporation, government, merger and change of boundaries of cities and towns, and for the annexation of unincorporated territory to

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incorporated cities and towns, which are referred to as municipalities in this article. When any municipality is abolished, provisions shall be made for the protection of its creditors.

Section 9.03. Optional Plans of Government for Counties and Municipalities.

The legislature shall provide by general law optional plans of local government for counties and municipalities. A county or municipality may adopt or repeal a prescribed plan of local government by referendum in accordance with such conditions and procedures as the legislature shall provide by general law.

Section 9.04. County and Municipal Home Rule Charters.

Upon the expiration of two years following the adoption of this article, a county or municipality shall have the right and power to frame, adopt, amend or repeal a home rule charter by the following procedure:

1. Upon resolution approved by the governing body of a county or municipality, or upon petition of ten per cent of the number of electors who were qualified to vote in such county in the last general election, or in such municipality in the last municipal election, filed with the governing body and a copy filed with the probate judge, the question of the creation of a commission to frame a home rule charter, or charter amendments, shall be submitted to the electorate not less than forty-five days nor more than ninety days after the filing of the petition at a general election, if one is to be held during such period but if not, at a special election. An affirmative vote of a majority of the electors voting on the question shall authorize the creation of the commission.

2. The resolution or petition to have a charter commission may include the names of seven commissioners, to be listed at the end of the ballot, so that an affirmative vote on the question is a vote to elect the persons named. Otherwise, the resolution or petition shall designate the method by which the members of the charter commission shall be chosen.

3. Any proposed charter, or charter amendment, shall be

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published by the commission and submitted to the electorate not less than forty-five days nor more than ninety days after publication at a general election, if one is to be held during such period, but if not, at a special election. The procedure for publication shall be prescribed by resolution of the charter commission. The governing body of the county or municipality shall appropriate money to provide for the reasonable expenses of the commission and for the publication of its proposals.

4. Any election pursuant to the provisions of this section shall be conducted in the manner provided by law for holding other county and municipal elections. The cost of any such election shall be paid out of the general funds of the county or municipality.

5. A home rule charter or charter amendment shall become effective if approved by a majority of the electors voting thereon. The charter may provide for direct submission of charter revisions or amendments initiated by petition or by resolution of the governing body of a county or municipality.

6. An election on the issue of the creation of a charter commission shall not be held at more frequent intervals than every two years.

Section 9.05 County and Municipal Powers of Government.

Any county or municipality which adopts a home rule charter, or plan of local government prescribed by the legislature, after the ratification of this article of the constitution, may exercise all legislative power of government not inconsistent with its charter, this constitution, or the general law of the state.

Section 9.06. Conflicting County and Municipal Ordinances.

In the event of conflict between a municipal ordinance and a county ordinance, the municipal ordinance shall prevail within the municipality, unless otherwise provided by a county charter or general law.

Section 9.07. Municipal Franchises.

No franchise or license shall be granted by any municipality

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for a period longer than thirty years.

Section 9.08. Responsibility for County Roads.

The county's responsibility for the construction and maintenance of county roads shall not hereafter be delegated to a state agency unless the delegation is approved by a vote of the electors of the county.

Section 9.09. Municipal Streets.

No person, firm, association, or corporation shall be authorized or permitted to use the streets, avenues, alleys, or public places of any municipality for the construction or operation of any public utility or private enterprise, without first obtaining the consent of the proper authorities of the municipality.

ARTICLE X

Education

Section 10.01. Maintenance and Support of Public Schools and Educational Institutions.

The legislature shall provide for the maintenance and support of public schools open to all children in the state and shall establish, organize and support such other public educational institutions, including public institutions of higher learning, as may be desirable.

Section 10.02 State Board and Superintendent of Education.

(a) General supervision of the public schools in Alabama shall be vested in a state board of education, which shall be elected in such manner as the legislature may provide.

(b) The chief state school officer shall be the state superintendent of education, who shall be appointed by the state board of education and serve at its pleasure. The authority and duties of the superintendent of education shall be determined by the

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state board of education according to such regulations as the legislature may prescribe.

Section 10.03. Board of Trustees for the University of Alabama.

(a) The state university shall be under the management and control of a board of trustees which shall consist of two members from the congressional district in which the university is located, one from each of the other congressional districts in the state, the superintendent of education, and the governor, who shall be ex officio president of the board. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be elected and confirmed as hereinafter required. Each elected member shall hold office for a term of twelve years.

(b) When the term of any member of such board shall expire, the remaining members of the board shall, by secret ballot, elect his successor; provided, that any trustee so elected shall hold office from the date of his election until his confirmation or rejection by the senate, and, if confirmed, until the expiration of the term for which he was elected, and until his successor is elected.

(c) At every meeting of the legislature the superintendent of education shall certify to the senate the names of all who have been so elected since the last session of the legislature, and the senate shall confirm or reject them, as it shall determine is for the best interest of the university. If it rejects the names of any members it shall thereupon elect trustees in the stead of those rejected.

(d) In case of a vacancy on said board by death or resignation of a member, or from any cause other than the expiration of his term of office, the board shall elect his successor, who shall hold office until the next session of the legislature.

(e) No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

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Section 10.04. Board of Trustees for Auburn University.

(a) Auburn University shall be under the management and control of a board of trustees. The board shall consist of two members from the congressional district in which the institution is located, one from each of the other congressional districts in the state as the same were constituted on the first day of January, 1961, the state superintendent of education, and the governor, who shall be ex officio president of the board.

(b) The trustees shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold office for a term of twelve years, and until their successors be appointed and qualified. The board shall be divided into three classes, as nearly equal as may be, so that one-third may be chosen quadrennially.

(c) Vacancies occurring in the office of trustees from death or resignation shall be filled by the governor, and such appointee shall hold office until the next meeting of the legislature. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be appointed as herein required.

(d) No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such. No employee of Auburn University shall be eligible to serve on its board of trustees.

Section 10.05. Members of Legislature Ineligible to Serve on Board of Trustees.

No member of the legislature shall be eligible to serve as a member of the board of trustees of any state college or university.

Section 10.06. Commission on Higher Education.

There shall be a Commission on Higher Education which shall have the responsibility of advising the governor and the legislature on education beyond the secondary level. The membership, duties, and procedures of the Commission shall be provided for by law.

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Section 10.07. Exemption of Mobile County.

The provisions of this article and of any act of the legislature passed in pursuance thereof for educational purposes, shall apply to Mobile county only so far as to authorize and require the authorities designated by law to draw portions of the funds to which said county shall be entitled for school purposes and to make reports to the superintendent of education as may be prescribed by law; and all special incomes and powers of taxation as now authorized by law for the benefit of public schools in said county shall remain undisturbed until otherwise provided by the legislature.

ARTICLE XI

Public Officers

Section 11.01. Dual Officeholding.

No person holding an office of profit under the United States shall, during his continuance in such office, hold any office of profit under this state; nor shall any person, except a notary public, hold two offices of profit at one and the same time under this state. Service of a delegate to a constitutional convention or as a member of a statutory body having only advisory powers shall not be considered an office of profit as the term is used in this constitution. The legislature may by general law exempt persons in the state military forces or in the military service of the United States from the provisions of this section.

Section 11.02. Disqualification by Conviction of Crime.

No person convicted of a felony involving moral turpitude whose civil and political rights have not been restored shall be eligible to hold any office of trust or profit in this state.

Section 11.03. Compensation of Public Officers.

(a) The rate of compensation of any officer holding any civil office of profit under this state, or any county or municipality thereof, who is elected or appointed for a fixed term, whether

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such officer may be removed at the pleasure of the authority electing or appointing him or only upon impeachment, shall not be increased or diminished, during the term for which he shall have been elected or appointed, either by the imposition of new, different, and additional duties, or otherwise.

(b) Nor shall the expense allowance of any such officer be increased or decreased during his term except by general law applying to all similar public officers.

(c) Any increase or decrease in the compensation of officers who are members of any court, board, commission, or similar body, whose terms do not run concurrently, shall become effective as to all such members thereof immediately after the expiration of the term or terms of office of the member or members whose term or terms first expire.

(d) Notwithstanding the provisions of this section, the legislature may by general law provide for adjustments, up or down, in the compensation of such officers based on the United States Bureau of Labor Statistics Consumer Price Index or other appropriate cost-of-living criteria.

Section 11.04. Method of Changing the Basis of Compensating County Officials.

The legislature may, by general or local law, change the method or basis of compensating any officer of a county, including the judge of probate, sheriff, tax assessor, tax collector, clerk of the circuit court, and register, and may place such officers on a salary. In the event that a county officer is placed on a salary, all fees, allowances, and commissions collected by him shall be paid into the county treasury. No law shall be effective to change the method of compensating any county officer during the term for which he shall have been elected or appointed, nor shall any such law become effective in a county until it has been approved by a majority of the electors of the county who vote thereon at a referendum election held for such purpose.

Section 11.05. Civil Service.

(a) The legislature shall provide by law for appointments