THE ARTICLE ON THE LEGISLATURE
IN THE MISSOURI CONSTITUTION OF 1875

by

Morris Ensley Dry, A. B.

SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS

in the
GRADUATE SCHOOL
of the
UNIVERSITY OF MISSOURI

1919

378.7 M71

X 84

378.7 M71

X D84

TABLE OF CONTENTS

Chapter		Page
I	Introduction - - - - -	1
II	The Convention of 1875 -- Article	
	~~III~~ ^{IV} -- Legislative Department - -	4
III	Representation and Apportionment - - -	9
IV	Legislative Proceedings - - - - -	83
V	Limitations on Legislative Powers - -	119
VI	Sections Enumerating Legislative	
	Functions in Other Articles - - -	156
VII	Conclusion - - - - -	194
	Appendix	
	(A) Bibliography	
	(B) Explanation of References	
	(C) Table of State Constitutions	
	in Existence in 1875	
	(D) Members of the Convention of	
	1875, by Counties	
	(E) Table showing number of sections	
	influenced by other state	
	constitutions	

CHAPTER I

Introduction

The purpose of this paper is to determine so far as possible the influences responsible for the provisions in the Missouri Constitution of 1875 dealing with the organization and functions of the legislative branch of the state government.

In order to accomplish this it has been necessary to use several methods for obtaining information. The first of these is a comparison between the specific sections in the existing Missouri Constitution that deal with the legislature and similar sections in the Missouri Constitutions of 1865 and 1820, and the thirty-six other state constitutions in existence in the United States in 1875.¹ The second of these methods is a study of the Journal and Debates of the Convention² from which is derived the history of each proposal, including recommendations made to the committees having the different matters in hand, the form in which it was recommended by the committee, the modifications that were

¹See Appendix - Table of State Constitutions in existence in 1875.

²Journal and Debates found in State Archives, Secretary of State, Jefferson City, Missouri.

made or proposed, and the form in which it was finally adopted. Where there is any advantage in interpretation in doing so, the name and local constituency of the member making the proposal are also determined.

By this study of the Journal and the Debates the relative importance of the sections and the difference of opinion regarding the same is obtained, as well as the reasons that prompted the adoption and rejection of the various proposals.

From the other constitutions, the Journal, and the Debates, connected with any information that may be had of the general tendencies of the times and deductions that may be made from implied hypotheses, this paper is derived.

The plan of the paper will be to take up Article IV of the Constitution, dealing with the legislative department, section by section. First, the section will be quoted as it stands in the Constitution. Then, a brief account will be given of its form as reported by the committee, with any previous recommendations made by members, its progress through the convention, and its final adoption. Then, where references to the debates are possible, they will be made. Following that will be a citation of the similar section or sections in the Missouri Constitutions of 1865 and 1820, if there were

such. Lastly, there will be a comparison with sections in the constitutions of the thirty-six other states.

Sections in articles in the Constitution other than Article IV, which are concerned with the legislature, but often only in an indirect or incidental way, will be treated in less detail. Only that part of the section will be quoted which bears on the legislative branch, and the further steps will be carried out, according to the importance and bearing of the section, as in the sections in the legislative article proper.

CHAPTER II

The Convention of 1875

The Act of the General Assembly of Missouri of 1873 preliminary to the Convention of 1875 was entitled "An act to authorize a vote of the people to be taken upon the question whether a convention shall be held for the purpose of revising and amending the Constitution of this State."¹ A vote of the people was taken on March 25th, 1874, by which the electors decided to call a convention for the purpose mentioned.² Following the provisions then operative in the Constitution of 1865,³ sixty-eight delegates were elected from the thirty-four senatorial districts to attend the Constitutional Convention, which met at Jefferson City, May 5th, 1875.⁴

A committee on rules, of five members, was appointed by the President on Thursday, May 6th.⁵ On that day the Convention decided to adopt the committee system in the formulating of articles and sections for

¹Journal, Missouri Legislature - 27th G. A. 1873 - House, p. 221.

²Encyclopedia of the History of Missouri, Vol. II, p. 113.

³Art. XII, Sec. 3.

⁴Poore: The Federal and State Constitutions of the U. S., Vol. II, p. 1165.

⁵J. 26.

discussion, rather than to formulate them at first within the Convention as a whole.¹ Accordingly, the President of the Convention delegated members to serve on the following committees:² Committee on the executive and administrative department of the state government, on the executive and administrative offices of county and municipal government, on the legislative department, on the judiciary, on the preamble and bill of rights, on electors and elections, on military affairs, on banks and corporations, on miscellaneous affairs, on mode of amending the Constitution, on education, on boundaries and subdivisions of the state, and on revision.

Since the committee on the legislative department is the only one of these committees with which this paper is directly concerned, it will be the only one whose activities will be considered in a detailed way.

The Journal for Thursday, May 6th, records that it was "moved that a 'Committee on the legislative department' be appointed to report what changes or amendments they deem necessary in that part of the Constitution of the state which relates to the legisla-

¹ D. May sixth.
² J. 23.

tive department".¹ On the same day it was proposed that thirteen members should constitute its quota, which was agreed to.² On Friday, May 7th, a "Committee on Representative Representation and Senatorial Districts"³ was agreed upon, and thirteen members were appointed to it by the President.⁴ They were:- E. H. Norton, J. O. Broadhead, Albert Todd, H. J. Spaunhorst, N. W. Watkins, G. W. Bradfield, R. W. Fyan, A. M. Lay, H. Boone, W. Halliburton, H. C. Wallace, Levi J. Wagner, Wm. Priest.⁴

The thirteen members appointed to the Committee on the Legislative Department were:- H. C. Brockmeyer, T. T. Gantt, L. Gottschalk, E. A. Nickerson, A. M. Lay, G. W. Carleton, J. Hyen, J. A. Holliday, J. W. Ross, D. C. Allen, P. Pipkin, J. H. Shanklin, J. A. Rippey.⁴

In the intervening time between the appointment of these two committees and their reports numerous resolutions were proposed to the Convention to be referred to the committees. These resolutions contained matters that individual members desired the committees to incorporate within the Articles which they were delegated to make and report upon. These

¹J. 23

²J. 31.

³Hereafter called the "Committee on Representation".

⁴J. 42.

resolutions rarely proposed anything new or novel, and were largely adopted in the Committees' reports.

On May 19th the Committee on Representation submitted its report.¹ The Committee on the Legislative Department reported on June 24th.² These reports overlapped in their provisions on the subject of representation and apportionment. The reports of the committees were discussed and acted upon separately, principally on June 30th, July 6th, and July 17th,³ and were separately referred to the Committee on Revision,⁴ When they came back from the Committee on Revision on July 28th⁵ they came back under one head, as the "Article on the Legislative Department", containing three subdivisions, namely, "Representation and Apportionment", "Legislative Proceedings", and "Limitations on Legislative Powers". On July 29th the Article was adopted and ordered enrolled as a part of the Constitution.⁶

The other committees of the Convention reported in their order, and their reports were disposed of after the same fashion.

¹J. 113.

²J. 296.

³J. 342.

⁴J. 531.

⁵J. 614

⁶J. 638 and J. S. (118.

On August 2nd¹ the entire Constitution was unanimously adopted by the sixty members in attendance at the Convention. Their signatures were affixed to the document, and the eight members that were absent gave a power of attorney to substitutes to sign the Constitution for them.

The Convention adjourned sine die on August 2nd, 1875, after having been in session for three days less than three months.

The constitution was submitted to the people on the third of October, and adopted by a vote of 91,205 for, to 14,517 against, -- a majority of 76,688 for it. It went into effect on the thirtieth of November, 1875.²

¹J. S. (s19

²Encyclopedia of the History of Missouri, Vol. II, p. 114.

CHAPTER III

Article IV -- The Legislative Department

(A) Representation and Apportionment

Section 1. The Legislative Power, subject to the limitations herein contained shall be vested in a Senate and House of Representatives, to be styled "The General Assembly of the State of Missouri".

This section was reported by the committee in exactly the same form as the above.¹ There was no proposal for amendment, and apparently no discussion. This point cannot be absolutely determined, however, since the debates for June 28th, one of the days on which this section came up, are missing in part, and on that subject. It is reasonable to assume, however, that there would be no contest made of the section or proposed, since its provisions were in all constitutions, in almost identical form. The only departure might have been a proposal for a unicameral organization, but the silence of the Journal evidences that no such proposal was made.

The Missouri Constitution of 1865 contains substantially the same section², affixing the same name

¹J. 296.
²Art. IV, Sec. 1.

to the body, and dividing it into two houses with the same names. The phrase "subject to the limitations herein contained" is not present in the Constitution of 1865. The Constitution of 1820 contains identically the same section as that of 1865.¹

Sixteen states had provided in the constitutions they possessed at the time for exactly the same houses and the same names as did this section.² Twelve states provided for the two named houses, but applied no name to the body as a whole.³ Six states provided for the two named houses, but called them together the "legislature" instead of the "general assembly".⁴ One state provided for the two named houses, but called the body as a whole the "general court".⁵ One state called the lower house the "house of delegates", but was like Missouri in other respects.⁶

¹Art. III, Sec. 1.

²Ala. 1867, IV-1; Ark. 1874, V-1; Conn. 1818, III-1; Del. 1831, II-1; Ga. 1868, III-1 (a); Ill. 1870, IV-1; Ind. 1851, IV-1; Ia. 1857, III-1; Ky. 1850, II-1; La. 1868, II-15; Nebr. 1875, II-1; Pa. 1873, II-1; R. I. 1842, IV-2; S. C. 1868, II-1; Vt. 1793, II-2; Va. 1870, V-1.

³Kan. 1859, II-1; Mich. 1850, V-1; Minn. 1858, IV-1; Miss. 1868, IV-1; N. H. 1792, II-2; N. J. 1844, I-1; N. Y. 1846, III-1; 1868, II-1; O. 1851, II-1; Ore. 1859, IV-1; Tenn. 1870, II-3; Wis. 1848, IV-1.

⁴Cal. 1849, IV-1; Fla. 1868, V-1; Me. 1820, IV-1; Nev. 1864, IV-1; Tex. 1868, III-3; W. Va. 1872, IV-1.

⁵Mass. 1780, Ch. I, Sec. I-1.

⁶Md. 1867, III-1.

The section in the Constitution of 1865 was undoubtedly the immediate model for this section. All state constitutions of the time, however, were uniform in content on the subject. The section was consequently accepted in a matter-of-fact way, without debate.

Section 2. The House of Representatives shall consist of members to be chosen every second year by the qualified voters of the several counties, and apportioned in the following manner: The ratio of representation shall be ascertained at each apportioning session of the general assembly by dividing the whole number of inhabitants of the state, as ascertained by the last decennial census of the United States by the number two hundred. Each county having one ratio, or less, shall be entitled to one representative; each county having two and a half times said ratio shall be entitled to two representatives; each county having four times said ratio shall be entitled to three representatives; each county having six times such ratio shall be entitled to four representatives, and so on above that number, giving one additional member for every two and a half additional ratios.

This section, as finally adopted, was, like section 1, identical with the section proposed by the Committee.¹ But, unlike section 1, it was not adopted without debate. In fact, it was the most contested section dealing with the legislature, and there was much pulling and hauling among the members of the Convention in attempting to arrive at a definite arrangement that would suit each one's personal ideas.

¹D. May 19, p. 113.

Before the report of the Committee was made numerous resolutions were proposed and referred to the Committee. A resolution was proposed¹ by Mr. Johnston, of Saint Louis, that the House consist of three times the number of members in the Senate, to serve for two years, and that three representatives be chosen from each senatorial district.

A resolution was proposed² by Mr. Halliburton, of Sullivan County, that members of the House of Representatives be chosen every two years, that the divisor of two hundred be used to secure the ratio of representation, that each county having one ratio or less be entitled to one representative, each county having two and a half, two representatives, each county having five, three representatives, each county having six, four representatives, each county having nine, five representatives, each county having twelve, six representatives, and above twelve ratios four representatives were to be given for each three additional ratios.

A proposal was made by Mr. Hale, of Carroll County, that each county having over five thousand in population should have at least one representative in the House.³

¹J. 59
²J. 75.
³J. 75-80

A proposal was made by Mr. Maxey, of Howell, that the Convention adopt section 2 of the 1865 Constitution and, in addition, entitle each county to at least one representative.¹

A proposal was made by Mr. Dysart, of Macon, to limit the number of representatives to sixty.¹

Mr. Pulitzer, of Saint Louis, offered a resolution that "when any county is entitled to more than one representative, all such representatives shall be elected in the county at large and not in special districts or subdivisions."²

Mr. Crockett, of Vernon, introduced a resolution providing for one representative from each county, regardless of size.³

Each of the above resolutions was referred by the Convention to the Committee on Representative Representation and Senatorial Districts.

The Committee reported the Section as quoted above, along with the material that is now Section 3.⁴ A minority report was made by members of the Committee at the same time.⁵ This report provided a different

¹

J. 76.

²J. 94.

³J. 107.

⁴J. 113. See below, p.

⁵D. May 19.

numerical arrangement of ratios required to entitle counties to successive numbers of representatives. The two hundred divisor was to be used, and for each ratio or less there was to be one representative, but there were to be two representatives for each two ratios instead of two and a half, three representatives for each three and a half ratios instead of four, four representatives for each six ratios, and four additional representatives for each six ratios, instead of one for each two and a half.

A number of amendments to the section were proposed in the Convention.

Mr. Gantt, of Saint Louis, proposed to amend the section by providing that the number of representatives should not exceed one hundred and fourteen.¹ He later proposed that the term of representatives be four years, and that the counties having two ratios should have one representative, those having three two representatives, those having six, three representatives, and then one additional representative was to be allowed for each three ratios. These amendments were rejected.

Mr. Broadhead, of Saint Louis, offered an amendment which provided for one representative for one ratio, two for two ratios, three for three and a half

¹J. 196.

ratios, four for six ratios, and one for each one and a half additional ratio.¹

Mr. Hale, of Chariton, offered an amendment to the amendment of Mr. Broadhead allowing one representative for two ratios instead of one ratio.² The amendment and the amendment to the amendment were rejected.

Mr. Switzler, of Boone, proposed an amendment to the effect that the choice of two plans be submitted to the people at the time of the ratification of the Constitution.³ These two plans were the county and district plans. His county plan was the same as the plan proposed by the Committee. His district plan provided for thirty-four legislative districts; each district, besides electing one senator was to elect three representatives, the population was to be divided by thirty-four to obtain the quotient, and then the districts were to be formed of as nearly an equal population as possible. Single counties were to be considered districts when expedient; with populations up to one and four fifths of a ratio, but not

¹J. 242.

²J. 248.

³J. 250.

more, and not less than four fifths of a ratio. This amendment was referred to the Committee on special propositions to be submitted to the people, but was never reported back to the Convention.

Mr. Lackland, of Saint Charles, offered an amendment that there be one representative for each two ratios, instead of two and a half, which was rejected.¹

Mr. Shields, of Saint Louis, offered an amendment that there be one representative for one ratio, two for two, three for three and a half, four for six, and one for each two additional ratios up to twenty-one, and then one representative for each two and a half ratios.¹ Mr. Chrisman, of Jackson, proposed to amend the amendment of Mr. Shields to the effect that there be one representative for each two additional ratios above six, and up to twenty ratios, and that above that there be one representative for each three ratios.² The amendment to the amendment was adopted, but the amendment was rejected.³

Mr. Hale, of Jackson, proposed to amend the section by striking out "each county having one ratio

¹

²J. 253.

³J. 255.

J. 257.

or less, one representative" and inserting "each county having one ratio or less over five thousand, one representative. Each county having less than five thousand population shall be attached to the county adjacent having the smallest population, and shall form a district. But when the smaller county attached acquires a population of five thousand it shall be entitled to one representative and shall separately form a district."¹ This amendment was rejected.

Mr. Switzler, of Boone, proposed one representative for each two ratios, two for each three, three for six, and one for each three additional, but this was rejected.²

Mr. Mudd, of Saint Louis, proposed a rather unique amendment providing a divisor of one hundred and fifty instead of two hundred.³ His scheme further provided for one representative for three-fifths of a ratio or more, two for one and three-fifths, and one for each additional ratio. If a county should be possessed of less than three-fifths of a ratio it should be attached to an adjacent county or counties to form one

¹J. 257.
²J. 258.
³J. 260.

ratio. The county courts were to have the power to divide the counties into representative districts and each district was to have the power to elect one representative. The districts were to be of "compact and contiguous territory". Further, if any county should be entitled to one representative and have one fifth of a ratio more than enough to secure it, it was to be entitled to one extra representative during the second and fourth terms of the decade in which, by the census, it possessed that population, and if it had two fifths of a ratio over it was to have an extra representative in the first, third, and fifth terms. This amendment was rejected.

Mr. Letcher, of Saline, introduced an amendment providing for one representative for one ratio or less, two for two ratios, three for three ratios, and one for each two and a half additional ratios, which was rejected.¹

Mr. Gantt, of Saint Louis, introduced an amendment providing that the number of representatives should never be more than eighty four, that the quotient should be obtained by dividing the state's population by twenty-eight, and that twenty-eight districts of as nearly the quotient in population be formed of compact, contiguous territory, observing county lines as nearly

¹J. 260.

possible, except that in districts within cities of over two hundred thousand inhabitants the population should be one and one third the quotient. Three representatives were to be elected from each district for two year terms.¹ This amendment was rejected.

An amendment was proposed that every voter in the state be permitted to vote for the same number of persons to the House, as is allowed in Saint Louis, or any other county.² This amendment was rejected.

On June 18th³, after all the preceding resolutions and amendments had been disposed of, the original section, as reported by the Committee, was adopted.

From the Journal alone it can be seen that this section was the subject of an extraordinary amount of debate. This debate more or less took the form of a contest between the rural and smaller county delegates and the delegates from the urban counties, particularly Saint Louis. The reason for this was the jealousy of the one against the other, aroused by their difference in interests, and the unwillingness of the one to see the other obtain any larger share of representatives in the House than could be prevented. In the systems of

¹J. 260.

²J. 270.

³J. 271.

representation in vogue under previous Missouri Constitutions the cities, particularly Saint Louis, had really been allowed less than their proportional share of representatives in the House. This was explained, at the outset, by Mr. Broadhead.¹ In the Constitution of 1820 one representative was provided for each county, and the whole number of representatives in the state was limited to one hundred. As population increased and the number of counties increased, he said, the overweight of small counties in the House against the cities became enormous. The Convention of 1845 was called, he said, for the express purpose of remedying this evil, whereby "one-third of the population of the state controlled the legislation of the whole state". According to Mr. Broadhead, the Constitution of 1845 failed of ratification because it changed the inequality mentioned. "The small counties had the power," he said, "and hence the power to hold the power, and they did it. Man everywhere will hold on to power when he has it with a death-like grasp," he added, "and it is that power which now today, on the floor of this Convention, small counties of this state are asking may be retained in their hands." He argued that the then existing arrangement amounted to practically disfranchisement of large numbers of voters in Saint Louis that were not represented.

¹D. June 14, p. 28.

"The right to vote," he said, "should not be hampered.

If the vote of one man in Douglas County is equal to the vote of five men in Saint Louis County then four men in Saint Louis County are disfranchised, because it takes only one man to offset the vote of the man who lives in Douglas County."

The contention was largely true that the Constitution of 1865 discriminated against Saint Louis, taking into consideration the size to which it had grown. Each county was entitled to at least one representative which made quite a line-up of men from country counties to face the representatives from Saint Louis, and the arrangement for increasing the number above one did not provide for great increases. The intervals between the numbers of ratios required for one, two, three, or more representatives were too large for that. They were one for one representative, three for two representatives, six for three representatives, and three additional ratios for one additional representative.

At the same time, however, each individual rural county felt its own paucity of representatives in comparison with the city counties, and felt enough jealousy toward the larger urban centers to want to unite with other counties in limiting the representation of the urban districts. It was only natural then that extensive, and often very heated and animated debates

should occur on the subject of this section.

A glance at the Journal and at the nature of the proposals made by various delegates, taking into consideration the counties they represented, shows the local character of their motives.

For instance, Mr. Crockett, of Vernon County, a comparatively small county at that time,¹ proposed first the idea of one representative per county.² Mr. Massey, of Newton, put the matter in a rather more pertinent form when he moved that "every voter in the state be permitted to vote for the same number of persons in the House, as is allowed in Saint Louis - - -."³

The proposal of Mr. Gantt,⁴ of Saint Louis, was, on the other hand, evidently a bid for the support of the medium sized counties in order to successfully combat the schemes presented by the smaller counties in the state. This proposal required two ratios for one representative, which would obviously strike at the smaller counties, and yet allow the moderate sized counties a representative, then, three ratios for two representatives, which would give the majority of moderate sized counties another representative. At the same time, Saint Louis, having more than six ratios,

¹ 11,000, U. S. Census 1870.

² Above, p.

³ Above, p.

⁴ Above, p.

would be entitled to three representatives, as well as one additional representative for each three additional ratios.

Mr. Broadhead's proposal¹ for three representatives for three and a half ratios, four for six ratios, and one for each one and a half ratios above six reduced materially the numerical interval between numbers of ratios above six ratios, for which successive numbers of representatives were allowed, to the benefit of Saint Louis and Jackson Counties. Mr. Hale, of Jackson County, in which Kansas City is located, in his proposal² that counties with less than five thousand inhabitants should be attached to adjacent counties to form districts, proposed to eliminate a number of small county representatives that would obtain seats by the "one ratio or less, one representative" rule, and to thus increase the proportion of urban county representatives.

From the Journal it can be seen that there were three plans of representation proposed. The first was the county plan, by which each county was entitled to one representative. The second was the district plan, by which districts containing approximately an equal population elected the same number of representatives each. The third was a compromise plan, by which representatives

¹Above, p.

²Above, p.

were chosen from the counties, but with a regard for population, since different numbers of representatives were provided for counties of different population. The latter was the plan of the majority and minority reports, and the only means of combining the wishes of the small counties, which wanted one representative per county regularly, and the larger counties, which wanted a division into districts within which the larger counties could predominate. The principal advocates of the county plan were Fyan, of Webster (pop. 1870 10,434), Johnson, of Cole (pop. 10,292), and Faris, of Ray (pop. 18,700), while the principal advocates of the district plan were Mudd, of Saint Louis, Gantt, of Saint Louis, and Dysart, of Macon (pop. 23,230).

So much, then, for the evidence in the Journal that local considerations were the great influence. The evidence in the Debates is conclusive, and in them we obtain some idea of the bitterness that often characterized discussion. The peroration to Mr. Broadhead's arguments has already been quoted¹ to establish their local character.

Hardly a delegate failed, in his arguments, to show the injustice to his own county of one or another of the systems advocated. For example, Mr. Switzler, of

¹Above, p. 20.

Boone, threw out a remark that "If the majority report is adopted I cannot say but what the people of Boone will vote down the Constitution as a whole."¹ For this statement he received the wrath of his opponents upon his head, because they considered it a threat and an ungentlemanly and unstatesmanlike means of representing his county. Because, in debate with a gentleman from one of the southern counties, he contrasted Carter County as a small, sparsely settled "Ozark" county to Boone as a large, dense, and agricultural county, he received all manner of thrusts and gibes at his supposed bigotry and conceit.¹

The fight made by the minority upon the Committee's plan was a fight for the interests of Saint Louis.¹ The minority plan was designed to secure, under the estimated population of 1880 of 2, 500,000, thirty-two representatives for Saint Louis and one hundred and twenty representatives for the rest of the state, while the majority plan would secure twenty-one representatives for Saint Louis and one hundred and forty-eight for the rest of the State.¹ Mr. Taylor, of Saint Louis,² fought the majority plan because he said "Under it, Saint Louis, with one sixth of the population

¹D. May 19.

²D. June 28, 76.

of the state, receives only one ninth of the representatives."

Opponents of the minority plan, on the other hand, stated their opposition as an opposition to Saint Louis, and the cities. For instance, Mr. Conway, of Saint Francois, asked "Will you adopt the minority report which gives an excess of representation and undue power to our large and populous cities and counties, which may be exercised disastrously to the greatest interests of the state?"¹

In numerous cases the fear of Saint Louis and of the larger cities obtaining too much power was openly expressed. Delegates from Saint Louis in turn, disclaimed the necessity for this fear. "Culture and learning always started in cities, -- Babylon, Rome, Athens, Vienna, Genoa, Florence, Heidelberg, Amsterdam, Antwerp, -- all have been centers of learning and culture," they said. "Italy at the present time suffers because her cities have been robbed of their autonomy." To crush Missouri cities would likewise injure our state.²

And so the fight went on, in some cases orderly, and in some cases evidently violent and bitter, and it is certain that local considerations were predominant. But it would be unfair not to state that much of the argument

¹D. June 15.

²D. May 19, Broadhead.

on the floor on this section was ostensibly, at least, impersonal and designed to show a general inequality of representation rather than the inadequate representation of any particular counties. The minority report¹ pointed out that under the Committee report there were forty counties entitled to forty representatives, or one representative per 5,719; that there were eleven counties with forty representatives, or one representative per 15,799; and that there were sixty-three counties entitled to sixty-three representatives, or one representative per 13,677. Thus, the average inequality between the largest class of counties and the smallest was about three to one, and between the medium ones and the smallest was two and a half to one, and between some individual counties it was as much as ten to one.

The argument of a single delegate that may be considered a type is that of Mr. Mudd,² of Saint Louis, who, while having the dominant interests of his own county in mind, still talked rather generally when he showed that Carter, Pemiscott, Shannon, Oregon, Stone, Ozark, and Ripley counties, under the Committee's plan, with a population of 18,931, received an aggregate of seven representatives, while Saint Charles County alone, with a population of 21,304 received only one. Forty

¹J. May 19.

²D. May 19.

counties with a population of 228,794 received forty representatives while the six counties of Saint Charles, Boone, Callaway, Cass, Chariton, and Marion, with a population of 121,000 only received six. Twelve counties with a population of 288,000 received twelve representatives, while forty counties with the same population received forty representatives. This system he called a "burlesque on representation".

Many of the arguments in the Debates were based ostensibly on political theory, though apparently the references to political theory were made to bolster up their particular local schemes. There were four principles of representation mentioned. These were the principles of community, of population, of wealth, and of occupations, or interests.

The principle of representation of community was, of course, embodied in the county system. The system of checks and balances was mentioned in connection with this plan, -- and the analogy of the two houses of Congress was made. Mr. Conway, for instance,¹ said, "This system preserves the grand old system of checks and balances" by which the "universe is held in place", and he gave a detailed illustration of the beneficial prevalence of the system in the vegetable and animal

¹D. June 15.

kingdoms, in the temperatures of ocean streams flowing through tropical or arctic zones, and in the laws of physics. It was necessary, he held, that "that inestimable privilege", that "darling civil boon of being represented in legislative halls in persona, as it were", should be given the counties, -- just as much so as that the states should be represented as units in the Senate of the United States. On the other hand, he said, population, as such, could be represented in the State Senate just as it is represented in the House in Congress-- thus preserving the system of checks and balances.

Mr. Todd criticized the Congressional analogy by the contrast that while the State made the counties and could abolish them, the Union did not make the states, and could not abolish them, but that the states could abolish the Union.¹

Mr. Priest argued against county representation on the grounds that in a house comprised in such way, local issues would function largely, and that bargains and sales and special, local legislation would be the result.²

One of the big objections raised to the county plan was that it would make a too unwieldy house,³ in

¹D. May 28.

²D. May 28, p. 35.

³D. May 28, p. 193.

answer to which citation was made to Massachusetts, Connecticut, Delaware, and New Hampshire which possessed extremely large houses, and yet which were well satisfied with them. The size of the House of Commons at seven hundred and of the General Assembly of France at eight hundred was also pointed out.¹

The principle of representation of population was embodied in the district idea. Mr. Dysart, as chief spokesman for the theory² professed an intent of fairness for each locality, and a desire to obtain a smaller and more wieldy body, involving less expenditure of money, of time, and of useless legislation.³ Representatives should represent the state as a whole, he said, and not special territorial organizations.²

Mr. Broadhead,⁴ in favoring the population theory, cited other constitutions. He said "In nine-tenths of the constitutions of the different states of the Union, population is declared to be the basis of representation, and not territory or wealth." He quoted from the constitutions of Illinois, Alabama, Arkansas, California, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, and Nebraska, mostly to the effect

¹D. May 28, p. 360.

²D. May 28, p. 114.

³D. May 28, p. 202.

⁴D. June 28, p. 28.

that "Representation shall be according to the number of inhabitants," or "Each representative district shall contain as nearly as may be an equal number of inhabitants." He said, "The doctrine which has prevailed in this country from the foundation of the government to the present time is that the people should be represented, and not territory. Later he said "The representative is direct from the people. He is the representative of the people, and should represent population."

The principle of the representation of wealth was advanced by several members. Capital needed protection, they contended. Investments should be made safe. Mr. Spaunhorst, of Saint Louis,¹ thought that representation should be based on population in connection with taxable wealth, or the amount contributed to the revenues of the State. North Carolina was cited as a precedent² for this system, wherein a system of representation in the Senate according to the amount of taxes paid into the State treasury obtained. The plan of representation of wealth, however, was not seriously considered, in general, it being agreed that it would "throw the entire power of the State into the hands of the monied classes."³

¹

D. June 15, p. 72.

²

D. May 28, p. 134.

³D. May 28, p. 35, Mr. Priest.

The principle of representation of interests was not proposed as a pure basis of representation, but it was hinted at several times as an incidental consideration. Mr. Shanklin¹ said "There is a city with twenty thousand inhabitants, one half interested in commerce, and one half in manufacturing on a square mile of ground. They get one representative. There is a county of five hundred square miles with a population of ten thousand, devoted exclusively to agriculture. It gets one representative. How is agriculture represented there?" Mr. Shanklin, thus, doesn't advocate a scheme for representation of interests. He merely admits the principle. Mr. Todd thought a system for the representation of interests would be "excellent", but he didn't propose a plan.² Mr. Conway advocated the county system as a method of representing interests. He said,³ "The majority and minority reports would give undue powers to the cities which would be exercised disastrously to the greatest interests of the State, -- the agricultural interests, whenever the interests in the metropolis appear to come in contact with the farmer." Not to recognize the county system, he said, "Would be to have the county's peculiar and individual interests set aside and ignored by being thrown into a kind

¹D. June 14, p. 20.

²D. June 14, p. 82.

³D. June 15, p. 3.

of hodge-podge representation with a number of her sister counties, all of whose individual and peculiar interests may be as diverse as their names."

From the above, then, we can get some idea of the political theory advanced in discussing this section in the Convention. We have presupposed to the extent of cataloging all of their sections on the legislative article, that the provisions in other state constitutions, then existing, influenced the Constitution of 1875. It might be well to test this presumption by indicating the references made to them in the debates. Mr. Broadhead's references in support of the district plan are given above.¹ The North Carolina precedent for representation of wealth has been quoted.² Mr. Johnson³ cited Delaware, Maryland, Florida, Maine, New Hampshire, Ohio, South Carolina, Kansas, Alabama, Georgia, Connecticut, Rhode Island, Vermont, Virginia, and Pennsylvania as precedents for the county plan.³ Mr. Hardin cited Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin as precedents for the population plan.⁴ These references

¹

²P. 30.

³Above, P. 31.

⁴D. June 15, p. 72.

D. June 15.

were mostly afterthoughts, however, and did not cut much figure in the debates.

Turning to the actual provisions in the constitutions that might have influenced the Convention, we find that twenty-eight other constitutions provided for the two-year term.¹ Three other constitutions provided for the same system of apportionment, with the exception of different divisors and a different sequence of ratios.² One of these states³, however, had several additional provisions. The Constitution of 1820 provided for a total of one hundred representatives to be chosen by the counties, and for each county's having at least one representative. Five constitutions had the plan of apportionment among counties according to ratios; but defined the number of representatives allowed in total.⁴ Five constitutions had the plan of county apportionment, according to ratios, but left it to the legislature to fix the divisor, instead of defining it.⁵

¹Mo. 1865, IV, 2; Mo. 1820, III, 2; Ala. 1867, IV, 3; Ark. 1874, V, 2; Del. 1831, II, 2; Fla. 1868, V, 3; Ga. 1868, III, 1(b); Ill. 1870, IV, 2; Ia. 1857, III, 3; Ky. 1850, II, 2; La. 1868, II, 16; Kan. 1859, II, 29 (amd't.); Md. 1867, III, 6; Mich. 1850, IV, 3; Miss. 1868, IV, 2; Minn. 1857, IV, 2; Nebr. 1867, II, 4; Nev. 1864, IV, 3; N.H. 1792, II, 11; N.Y. 1846, III, 2; N. C. 1868, II, 6; O. 1851, II, 2; Ore. 1857, IV, 4; Pa. 1873, II, 3; S.C. 1868, II, 2; Tex. 1868, III, 4; Vt. 1793, II, 38; W.Va. 1872, VI, 3.

²Mo. 1865, IV, 2; Ohio, 1851, II, 12; Pa. 1873, II, 17.

³O. 1851, II, 3, 4, 5.

⁴Ala. 1867, VIII, 1; Ark. 1874, VIII, 1; Ill. 1870, IV, 7, 8; Ind. 1851, IV, 2; La. 1868, II, 21.

⁵Cal. 1849, IV, 29; Me. 1820, IV, 21; Miss. 1868, IV, 34; N.C. 1868, II, 6, 7; Tenn. 1870, II, 5.

One state had a sort of county ratio system by stating a population of eighteen thousand as necessary for ever one representative, twenty-eight thousand for two, and so forth.¹ Three constitutions had a graduated system among counties, cities, or towns, naming the number of inhabitants or voters necessary for different units of representation.² Two constitutions had a ratio system among counties, cities, or towns.³

It is safe to say that our constitution makers got their immediate inspiration from the almost identical provision in the Constitution of 1865. At the time it was made, there were only three constitutions in existence that had provisions like it.⁴

Section 3. When any county shall be entitled to more than one representative, the county court shall cause such county to be subdivided into districts of compact and contiguous territory, corresponding in number to the representatives to which such county is entitled, and in population as nearly equal as may be in each of which the qualified voters shall elect one representative, who shall be a resident of such district: Provided, that when any county shall be entitled to more than ten representatives the circuit court shall cause such county to be subdivided into districts, so as to give each district not less than two or more than four representatives who shall be residents of such district -- the population of the districts to be proportioned to the number of representatives to be elected therefrom.

¹Md. 1867, III, 4.

²Me. 1820, IV, 3; Mass. 1780, I-II, 1, 2; N. H. 1792, II, 9.

³Ky. 1850, II, 13, 6; R. I. 1842, V, 1.

⁴Cal. 1849, Md. 1851, Ohio 1851.

This section was reported by the Committee on Representation¹ as a part of the section preceding. There was no provision for the division of any county by the circuit court. It was not required that the districts be compact and contiguous, nor that they have a population proportionate to the number of members therein elected.

Before this section was reported, a plan of cumulative voting, modelled on the system in vogue in Illinois, by which the voter is given as many votes as there are representatives to be chosen, with the privilege of casting more than one vote for one candidate, and obviating the need for districts within counties, was proposed.² A resolution was made³ that the similar section in the Constitution of 1865⁴ be adopted. A resolution was also proposed that in counties entitled to more than one representative, the representatives should be elected at large, and not in districts.⁵

Among the amendments offered to the section as submitted by the Committee, one was designed to provide cumulative voting⁶, two to change "county court" to "circuit court" as the dividing agency⁷, and one to

¹

²J. 114.

³J. 76.

⁴Art. IV, Sec. 2.

⁵J. 262, 264.

⁶J. 94.

⁷J. 264.

J. 269.

insert the provision that no voter should be allowed to vote for but one representative at the same election.¹

The Convention agreed to substitute "circuit court" for "county court" where the county was entitled to more than ten representatives and to require the districts to be "of compact and contiguous territory" and to require them to possess a "population proportionate to the number of members to be therein elected". The other amendments were rejected.

The Debates are practically silent on the section, with the exception of a reference on the part of Mr. Letcher, of Saline,² and Mr. Todd, of Saint Louis,³ to the cumulative system of voting in Illinois.

As has been stated above, the preceding section, (2), in the Constitution of 1865 was practically identical with this section except that the circuit court was not given any power to divide any county. There was no such section in the Constitution of 1820 because it provided for only one representative per county.

Five other state constitutions⁴ provided for the division of counties into districts; three of them were in existence in 1865⁵ and possibly influenced the

¹J. 269.

²J. 57.

³J. 76.

⁴N. Y. III, 5, 1846; Ill. 1870, IV, 7; Ky. 1850, II, 5;

⁵Mich. 1850, IV, 3; Pa. 1873, II, 17.

Ky. 1850, N. Y. 1846, Mich. 1850.

provision in that constitution from which this section is derived. In this section the single member district plan was adopted exclusively in all counties but Saint Louis, instead of the general ticket plan. The district system was adopted in Saint Louis, but more than one member was elected from each district. The single member plan had begun to be recognized in new state constitutions by 1865, was more common in 1875, and since then had become a definite tendency in constitution making.¹

Section 4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-four years, who shall not be a male citizen of the United States, who shall not have been a qualified voter of this state two years, and an inhabitant of the county or district which he may be chosen to represent one year next before the day of his election, if such county or district shall have been so long established, but if not, then of the county or district from which the same shall have been taken, and who shall not have paid a state and county tax within one year next preceding the election.

This section was reported by the Committee on Representation in the above form.² The Committee on the Legislative Department³ reported exactly the same section, except that taxpaying, as a qualification was necessary for two years instead of one.

¹

²Dodds, W. F.: Notes on State Government.

³J. 114.

J. 297.

Before these reports came in, a resolution was made and referred to the Committees that the parallel section¹ in the Constitution of 1865 be adopted without change.²

The section reported by the Committee on the Legislative Department was rejected.³ The one reported by the other committee was adopted.⁴

As the section stands at present, it is an exact duplicate of the section in the Constitution of 1865, except that the former specifies "within one year preceding the election" as the period during which the candidate must have paid a state and county tax. The Constitution of 1820, which existed under the slave regime specified "free white" male citizen, and required the representative to be only an "inhabitant" rather than a "voter" for two years preceding the election. The one year period was not specified within which a member must be a tax payer.

Of the other state constitutions in 1875 we find that two⁵ required the twenty-four year age qualification, while eleven⁶ specified some age, all of

¹Art. IV, Sec. 3.

²J. 76

³J. 425.

⁴J. 235.

⁵Del. 1831, II, 2; Ky. 1850, II, 4.

⁶Ga. 1868, III, 3(c); Ill. 1870, IV, 3; Ind. 1851, IV, 7; Ia. 1857, III, 4; Me. 1820, IV, 4; N. J. 1844, I, 2; Ore. 1857, IV, 8; Pa. 1873, II, 5; S. C. 1868, II, 10; Tenn. 1870, II, 9; Tex. 1868, III, 5;

which, but one¹, specified twenty-one. Four² required the representative to be a male citizen, or a "free" male citizen. One³ specified "white" male citizen. Eight⁴ merely stated that he should be a citizen. Ten⁵ required him to be a voter, but did not require him to be a voter of the state for any specified length of time. Thirty-two⁵ possessed the requirement that he be an inhabitant of his county or district. While other constitutions had a property qualification, none besides the previous Missouri Constitutions required him to have paid a state and county tax.

It is clear, evidently, that the model for section 4 was the similar section in the Constitution of 1865, which, in turn, was derived from the section in the Constitution of 1820. The Constitutions of

¹S. C. 1868, specified 22.

²Ark. 1874,V,4; Del. 1831,II,2; Ia. 1857,III,4; Ky. 1850, II, 4.

³Nebr. 1869, II, 6.

⁴Ga.1868,III,3(c); Ill.1870,IV,3; Ind.1851,IV,7; Me.1820,IV,4; Mich.1850,IV,5; Ore.1857,IV,8; S.C.1868,II,10; Tex.1868,III,5.

⁵Kan.1859,II,4; La.1868,II,18; Minn.1857,IV,25; Miss. 1868,IV,3; N.C.1868,II,10; Wis.1848,IV,6; Cal.1849, IV,5; Fla.1868,V,5; Nebr.1867,II,6; Nev.1864,IV,5.

⁶Ark.1874,V,4; Cal.1849,IV,5; Conn.1818,III,3; Del. 1831,II,2; Ga.1868,III,3(c); Ill.1870,IV,3; Ind.1851, IV,7; Ia.1857,III,4; Kan.1859,II,4; Ky.1850,II,4; La. 1868,II,18; Me.1820,IV,4; Mass.1780,I-III,3; Md. 1867, III,9; Mich.1850,IV,5; Minn.1857,IV,25; Miss.1868,IV, 3; Nebr.1867,II,6; Nev.1864,IV,5; N.H.1792,II,13; N.J.1844,I,2; N.C.1868,II,10; O. 1851,II,3; Ore.1857, IV,8; Pa.1873,II,5; S.C.1868,II,10; Tenn.1870,II,9; Tex.1868,III,5; Va.1870,V,5; Vt. 1793,II,36; W. Va. 1872,IVI,12; Wis.1848,IV,6.

Kentucky and Illinois were probably most influential in the framing of the section in 1820¹. The states of Massachusetts and New Hampshire also had similar sections.

Section 5. The Senate shall consist of thirty-four members, to be chosen by the qualified voters of their respective districts for four years. For the election of Senators the State shall be divided into convenient districts as nearly equal in population as may be, the same to be ascertained by the last decennial census taken by the United States.

This section was reported in practically the same form as the above by the Committee on Representation.² The substance was exactly the same. It was also reported in the same form by the Committee on the Legislative Department.³

Before either committee reported, however, a resolution was proposed to limit the number of Senators to twenty.⁴ Another resolution petitioned for a provision that one senator be elected from each district provided for in the Constitution.⁵ Both of these were referred to the Committee on Representation.

An amendment⁶ was offered to the section as

¹Shoemaker: The First Constitution of Mo., p. 28

²J. 114.

³J. 296.

⁴J. 76.

⁵J. 107.

⁶J. 196.

reported by the Committee, which was intended to establish thirty-eight districts, to be made by the General Assembly and to provide for the election of one senator from each district. This amendment was rejected.

Another amendment contained the requirement that senators should not number more than twenty-eight, and that they be elected, one each, from "compact and contiguous districts" of approximately equal population, formed by the General Assembly at their first meeting after the Constitution was adopted.¹ The amendment also prescribed that the districts should observe county lines, and that in counties forming a district containing cities of a population exceeding two hundred thousand, the district should be one-third larger than one-twenty-eighth of the population of the state. This amendment was rejected.

The section, as first reported, was adopted.² A substitute was adopted later, however, which changed the wording, but not the meaning.³ The wording, as it stands in the Constitution today is that formulated by the Committee on Revision.

An amendment providing for thirty-eight

¹J. 260.

²J. 264.

³D. June 19 -- The section was made one sentence. Instead of "For the election of Senators" in 1.3, it was "--for the election of whom."

districts was rejected.¹

The section proposed by the Committee on the Legislative Department was rejected.²

This section was not debated extensively in the Convention. The district system for the Senate was evidently an accepted plan at the outset. No resolutions or amendments proposed different plans, although several proposed differences in the manner of applying the plan. The conflict for representation between the urban and rural communities did not manifest itself in the discussion of this section, except perhaps in the one instance of the proposal that districts containing cities larger than two hundred thousand should contain one and one-third the ratio that other districts were required to have³, -- which was made by Mr. Gantt, who represented a rural section of Saint Louis County, and who was not from the city proper.

The Missouri Constitution of 1865 contained the section as adopted in 1875, except that the provision that the districts be "as nearly equal in population as may be, the same to be ascertained by the decennial census of the United States", was absent. The Consti-

¹

²J. 290.

³Above, p. 41.

Above, p. 42.

tution of 1820¹ provided for a minimum of fourteen and a maximum of thirty-three members, and for a district system, but not for a "one senator per district" system. The districts were to be made "as public convenience may require" and the senators were to be apportioned among the districts "according to the number of free white male inhabitants in each."

Among the other state constitutions, there were twenty-nine that embodied the district feature², but only nine in which one senator was regularly elected from a district³. There were twenty-seven Constitutions⁴ in which the number of senators was specified

¹Art. III, Sec. 6.

²Ala. 1867, VIII, 3; Ark. 1874, VIII, 2; Cal. 1849, IV, 29; Conn. Art. Am. II, 1818; Fla. 1868, V, 4; Ga. 1868, III, 2; Ill. 1870, IV, 2; Ind. 1851, IV, 2; Ia. 1857, III, 35; Kan. 1859, X, 3; Ky. 1850, II, 11, 14; La. 1868, II, 28; Mass. 1780, I, II, 1; Me. 1820, IV, 2; Minn. 1857, IV, 24; Mich. 1850, IV, 2; Miss. 1868, IV, 4; Nebr. 1867, II, 5; Nev. 1864, IV, 4; N. H. 1792, II, 23; N.Y. 1846, III, 3; N. C. 1868, II, 4; O. 1851, III, 6; Ore. 1857, IV, 3; Pa. 1873, II, 16; Tenn. 1870, II, 6; Tex. 1868, III, 11; W. Va. 1872, VI, 4; Wis. 1848, IV, 5.

³Ga. 1868, III, 2; Ill. 1870, IV, 7; Ky. 1850, II, 15; Minn. 1857, IV, 24; Mich. 1850, IV, 2; N. H. 1792, II, 25; N. Y. 1846, III, 3; Pa. 1873, II, 10; Wis. 1848, IV, 5.

⁴Ala. 1867, VIII, 3; Cal. 1849, IV, 7; Conn. 1818, III, 4; Ga. 1868, III, 2; Ind. 1851, IV, 2; Ia. 1857, III, 35; Kan. 1859, II, 2; Ky. 1850, II, 13; La. 1868, II, 29; Me. 1820, IV, 2; Mass. 1780, I-II, 1; Mich. 1850, IV, 2; Miss. 1868, IV, 4; Nebr. 1867, II, 8; Nev. 1864, IV, 5; N. H. 1792, II, 24; N.Y. 1846, III, 2; N.C. 1868, II, 3; O. 1851, III, 6; Ore. 1857, IV, 2; Pa. 1872, II, 16; Tenn. 1870, II, 6; Tex. 1868, III, 10; Vt. 1793, II, 18; Va. 1870, V, 3; W. Va. 1872, VI, 2; Wis. 1848, IV, 2.

though in four of these¹ it was stated as a maximum; in five² it was stated as a certain fraction of what was usually a fixed number of representatives, and in one the number of "counsellors" and senators was stated together as one unit.³ Eighteen constitutions provided for the four year term for senators.⁴ The remainder provided for two year terms, except in the case of one three-year term.⁵

The constitutions of Kentucky, Michigan, New Hampshire, New York, and Wisconsin, which were in existence in 1865 were most similar to that of Missouri in the provision regarding districting, and can be pointed to as the most logical sources for it. They contained the idea of single member districts. The constitutions of Delaware, Indiana, Iowa, Kentucky, Minnesota, Nevada, and Oregon provided for four-year terms, and were perhaps influential in that provision. The provision in the Missouri Constitution of 1875 was derived from that of the Constitution of 1865, which possessed the above possible sources.

¹Ind., Ia., Kan., Me.

²Ala., Miss., Nev., Tenn., Wis.

³Mass.

⁴Ala. 1867, IV, 3; Ark. 1874, V, 3; Del. 1831, III, 3; Fla. 1868, V, 4; Ga. 1868, III, 1(b); Ind. 1851, IV, 3; Ia. 1857, III, 5; Ky. 1850, II, 16; La. 1868, II, 27; Minn. 1857, IV, 24; Md. 1867, III, 2; Miss. 1868, IV, 4; Nev. 1864, IV, 4; Ore. 1857, IV, 4; Pa. 1873, II, 3;

⁵S.C. 1868, II, 18; Va. 1870, V, 3; W.Va. 1872, VI, 3.
New Jersey.

Section 6. No person shall be a Senator who shall not have attained the age of thirty years, who shall not be a male citizen of the United States, who shall not have been a qualified voter of this State three years, and an inhabitant of the district which he may be chosen to represent one year next before the day of his election, if such district shall have been so long established, but if not, then of the district or districts from which the same shall have been taken, and who shall not have paid a state and county tax within one year next preceding the election. When any county shall be entitled to more than one senator the circuit court shall cause such county to be subdivided into districts of compact and contiguous territory, and of population as nearly equal as may be, corresponding in number with the Senators to which such county may be entitled; and in each of these one Senator, who shall be a resident of such district, shall be elected by the qualified voters thereof.

The section reported by the Committee on Representation¹ in this case was substantially the same as that finally adopted, except for the fact that the county court was designated to subdivide the counties into districts instead of the circuit court. The report of the Committee on the Legislative Department² specified the age of thirty years, male citizenship, that the senator be a qualified inhabitant of the district three years before election and payment of a county and state tax.

There was little or no debate on this subject. One resolution was made, previous to the report of either committee, that the parallel section, (5), of the Constitution of 1865 be adopted without change.³ It

¹

²J. 115.

³J. 296.

J. 76.

was referred to the Committee. One amendment was made to the report of the Committee on Representation, - that "circuit" be supplemented for "county" before "court" so that the circuit court would divide the counties into districts.¹ It was adopted¹, and the section, as amended, was adopted. The section recommended by the other committee was rejected.²

The provision in the Constitution of 1865 was practically the same as the one adopted in 1875.³ "White" was specified as qualifying "male citizen", and no duration of time was expressed for the paying of the state and county tax. The county court divided the county into districts. The Constitution of 1820 contained substantially the same section.⁴ In it, however, "free white" qualified "male citizen"; he must have been an inhabitant of the state four years, instead of three; and no provision was included for the division of the counties into districts. Of the thirty-six other state constitutions at the time thirty-three had substantially similar sections.⁵ Of these, twenty-one were distinctly

¹J. 290.

²J. 425.

³Art. IV, Sec. 5.

⁴Art. III, Sec. 5.

⁵Ala. 1867, IV, 5; Ark. 1874, V, 4; Cal. 1849, IV, 4; Del. 1831, II, 3; Fla. 1868, V, 5; Ga. 1868, III, 2(b); Ill. 1870, IV, 3; Ind. 1851, IV, 7; Ia. 1857, III, 5; Kan. 1859, II, 4; Ky. 1850, II, 16; La. 1868, II, 18; Me. 1820, IV, 6, 4; Md. 1867, III, 9; Mass. 1780, I-II, 5; Mich. 1850, IV, 5; Minn. 1857, IV, 25; Miss. 1868, IV, 5; Nebr. 1867, II, 6; Nev. 1864, IV, 5; N.H. 1792, II, 28; N. J. 1844, I, 2; N.C. 1868, II, 9; O. 1851, II, 3; Ore. 1857, IV, 8; Pa. 1873, II, 5; S.C. 1868, II, 10; Tenn. 1870, II, 10; Tex. 1868, III, 13; Vt. 1793, II, 18; Va. 1870, V, 5; W.Va. 1872, VI, 12; Wis. 1848, IV, 6.

similar¹, and twelve were similar in a limited way.²

Taking them up in reference to the different qualifications, only five³ constitutions had the thirty year age qualification, fourteen⁴ had a twenty-five year qualification, one⁵ required twenty-seven years, and one⁶ twenty-one. Fifteen had no age qualification whatever. In only ten⁷ was citizenship in the United States required. Only three⁸ required the senator to have been a voter in the state three years previous to election, although nineteen⁹ either required him to be

¹ Ala., Ark., Ga., Ill., Ind., Ia., Ky., La., Me., Md., Miss., N. H.,

² N. J., N. C., Ore., Pa., S. C., Tenn., Tex., Va., W. Va.

³ Cal., Del., Fla., Kan., Mass., Mich., Minn., Nebr., Nev., O.,
Vt., Wis.

⁴ Ky. 1850, II, 16; N. H. 1792, II, 28; N. J. 1844, I, 2; Tenn. 1870,
II, 10; Vt. 1793, II, 18.

⁵ Ark. 1874, V, 4; Ga. 1868, III, 2(b); Ia. 1857, III, 5; Del. 1831,
II, 3; La. 1868, II, 18; Me. 1820, IV, 6; Md. 1851, III, 9; Miss.
1868, IV, 5; N. C. 1868, II, 9; Pa. 1873, II, 5; S. C. 1868, II, 10;
Tex. 1868, III, 13.

⁶ Ala. 1867, IV, 5.

⁷ Ore. 1857, IV, 8.

⁸ Ark. 1874, V, 4; Ill. 1870, IV, 3; Ind. 1851, IV, 7; Ia. 1857, III,
4; Ky. 1850, II, 16; Me. 1820, IV, 4; Mich. 1850, IV, 5; Ore. 1857,
IV, 8; S. C. 1868, II, 10; Tex. 1868, III, 13.

⁹ Del. 1831, II, 3; Md. 1867, III, 9; Tex. 1868, III, 13.

Ala. 1867, IV, 5, Resident; Ark. 1874, V, 4, Resident 2 years;
Ga. 1868, III, 2(b), citizen 2 years; Ill. 1870, IV, 3; resi-
dent 5 years; Ind. 1851, Resident 7 years; Ia. 1857, Resi-
dent 1 year; Ky. 1850, II, 16, Resident 6 years; Me. 1820,
IV, 4, Resident 1 year; Mass. 1780, I-II, 5, Resident 5 years;
Minn. 1857, IV, 25, voter at time of election; Miss. 1868,
IV, 5, Resident 1 year; N. H. 1792, II, 28, Resident 7 years;
N. J. 1844, I, 2, citizen 4 years; N. C. 1868, voter 2 years,
Pa. 1873, II, 5, voter 4 years; S. C. 1868, II, 10, resident 1
year; Tenn. 1870, II, 10, Resident; Wis. 1848, IV, 6, Resident
1 year.

an inhabitant of the state or a citizen of it for some other stated length of time. Seventeen¹ states possessed the qualification that he must have been an inhabitant of the district from which he was elected for one year previous to election, and sixteen² specified that he should be an inhabitant of the district for some other period. No other state constitutions besides that of Missouri, 1865, required the payment of a state and county tax, but in two³ cases property requirements were made.

Only two⁴ states had any provision for dividing the county into districts in case a county should be entitled to more than one Senator. In each of these,

¹Ala. 1867, IV, 5; Ark. 1874, V, 4; Ga. 1868, III, 2(b); Ky. 1850, II, 16; Del. 1831, II, 3; Fla. 1868, V, 5; Cal. 1849, IV, 4; Kan. 1859, II, 4; La. 1868, II, 18; N. J. 1844, I, 2; N. C. 1868, II, 9; O. 1851, II, 3; Ore. 1857, IV, 8; Pa. 1873, II, 5; Tenn. 1870, II, 10; Tex. 1868, III, 13; W. Va. 1872, VI, 12;

²Ill. 1870, IV, 3, 2 years; Ind. 1851, IV, 7, at election; Ia. 1857, III, 4, 60 days; Me. 1820, IV, 4, 3 months; Md. 1867, II, 9, 3 months; Mass. 1780, I-II, 5, at election; Mich. 1850, 5, at election; Minn. 1857, IV, 25, 6 months; Miss. 1868, IV, 5, at election; Nebr. 1867, II, 6, at election; Nevada 1864, IV, 5, at election; N. H. 1792, II, 28, at election; S. C. 1868, II, 10, one year; Va. 1870, V, 5, at election; Wis. 1848, IV, 6, at election.

³Del. 1831, II, 3, freehold in 200 a. or 1,000 in r. c. or personal property in county from which elected. Mass. 1780, I-II, 15, freehold in 300 or equivalent in the county.

⁴Ky. 1850, II, 14; Mich. 1850, IV, 2.

the legislature was specified as the body to effect the division.

In a section of this kind involving so many provisions it is hard to determine just what constitutions were most specifically similar. It can be said, however, that the sections in the Constitutions of Indiana, Iowa, Kentucky, South Carolina, and Texas possessed more provisions in common with the Missouri section than the remainder. Of these, Indiana, Iowa, and Kentucky possessed the sections in 1865, which were probably influential in the framing of the section in the Missouri Constitution of that year, which acted as a model for this parallel section in the present constitution of Missouri. The Constitutions of Alabama, Georgia, Arkansas, Illinois, Delaware, New Hampshire, New Jersey, North Carolina, and Tennessee were only slightly more different from the section as included in the present Missouri Constitution.

Section 7. Senators and Representatives shall be chosen according to the rule of apportionment established in this Constitution, until the next decennial census by the United States shall have been taken, and the result thereof as to this state ascertained, when the apportionment shall be revised and adjusted on the basis of that census, and every ten years thereafter upon the basis of a United States census; or if such census be not taken, or is delayed, then on the basis of a State census; such apportionment to be made at the first session of the General Assembly after such census: Provided, That if at any time, or from any cause, the General Assembly shall fail or refuse to district the State for Senators, as

required in this section, it shall be the duty of the Governor, Secretary of State and Attorney-General, within thirty days after the adjournment of the General Assembly on which such duty devolved, to perform said duty, and to file in the office of the Secretary of State a full statement of the districts formed by them, including the names of the counties embraced in each district, and the numbers thereof; said statement to be signed by them, and attested by the great seal of the State, and upon the proclamation of the Governor, the same shall be as binding and as effectual as if done by the General Assembly.

The portion of this section relating to apportionment was introduced by the Committee on Representation in exactly the same form as was finally adopted.¹ The latter part, having to do with steps taken in case of failure of the legislature to apportion was submitted as an amendment later, and adopted.² The only other amendment offered was one presenting the provision that the number of districts should never be more than thirty-eight, but that it might be made less.³ It was rejected.

The Constitutions of 1865⁴ and 1820⁵ contained sections similar to this. In the former, provision was made for apportioning after each decennial United States census, and for a state census during the fifth year of each decade, after which another apportionment should be made. The Constitution of 1820 provided for a state census every fourth year and an apportionment in the first

¹J. 115.

²J. 265.

³J. 262.

⁴Art. IV, Sec. 7.

⁵Art. III, Sec. 4.

session after each. In neither of the two was precaution taken for a failure of the legislature to apportion.

Of the thirty-six other state constitutions in existence in 1875, twenty-four¹ had provisions substantially similar to this section. None of them contained the provision by which the executive officers made the apportionment in event of failure of the legislature.

The reason for the addition of this latter provision was the failure of the legislature to perform its duty in 1870². The Constitution of Ohio provided that the members of the executive departments should make the apportionment in the first place.³ Considerable debate hinged upon this provision in the Missouri Constitution of 1875.⁴ The danger of submitting the state to the gerrymander in the hands of a few executive officials, more than likely to be of one party, was pointed out. It was also indicated that the plan would place an "irksome

¹ Ark. 1874, VIII, 4; Cal. 1849, IV, 28; Conn. 1818, Art. Am. II; Ga. 1868, III, 3(b), II, 2(a); Md. 1851, IV, 4; Ia. 1857, III, 33, 34; Kan. 1859, II, 26; X, 2; Ky. 1850, II, 6; La. 1868, II, 20; Mich. 1850, IV, 4; Minn. 1857, IV, 23; Miss. 1868, IV, 33; Nebr. 1867, II, 3; N. J. 1844, III, 1; N. Y. 1846, III, 4; N. C. 1868, II, 5; O. 1851, II, 11; Ore. 1857, IV, 6, 5; Pa. 1873, II, 18; Tenn. 1870, II, 4, 6; Tex. 1868, III, 11; Vt. 1793, II, 18; Va. 1870, V, 4; W. Va. 1872, VI, 7; Wis. 1848, IV,

² 3.

³ J. S. (5) 26.

⁴ 1851, Art. II, Sec. 11.

D. June 23.

and disagreeable task" upon a few officials. The possibility was more than likely pointed out, although the notes on the Debates from which this paper is written are not sufficiently complete to show it, that the legislature would purposely fail to redistrict the state, and so leave it to the administrative officers. The purpose in this would be to avoid the publicity to which the actions of the General Assembly are always subjected, and which would prove a great annoyance in case anything in the nature of a gerrymander were attempted. The administrative officers could meet quietly and redistrict the state and the public need know nothing of their work until the Governor's proclamation announced it.

All evidence points to the conclusion that a number of the delegates to the Convention recognized the superior facilities offered to the gerrymander under this provision. It is interesting also to note that these facilities were put to use in later years. The legislature has districted the State only once since 1875. That was in 1881. In 1891, 1901, and 1911 the task was left to the officers of the executive department, and in 1911 the gerrymander was so apparent and extreme in the districting done by the executive officials that, in an action brought before the Supreme Court of Missouri, the districting arrangement was declared unconstitutional as violating the provisions in the Constitution that

districts shall be "as nearly equal in population as may be", "as compact as may be", and that when districts are composed of more than one county the counties shall be "contiguous".¹

In 1911 the legislature failed to district the state, leaving the work to be done by the executive officials. It happened that the Secretary of State,² and Attorney-General³ were democratic, while the Governor³ was republican. The Secretary of State and Attorney-General, thus in the majority within the Committee to redistrict, arranged a scheme, which, because he considered it manifestly unfair, the Governor would neither accept nor proclaim as the new districting scheme for the state. Certain citizens of Saint Louis petitioned for a mandamus from the Supreme Court of Missouri compelling the Circuit Court of Saint Louis County to divide the County into the districts provided for under this new scheme. The court refused to issue the mandamus on the grounds that the districting system had never been proclaimed by the Governor, as the Constitution required, and that the apportionment had been made in violation of those clauses in the Constitution mentioned above. During the proceedings in the case it was pointed out that according

¹State ex rel Barret v. Hitchcock, 241 Mo.433; 146 S.W.40.

²Cornelius Roach.

³Elliott W. Major.

⁴Herbert S. Hadley.

to the ratio of 96,862, Saint Louis with a population of 687,029 should have seven districts instead of six, that under the scheme the difference between the population of the largest district (21) and that of the smallest (4) was 52,534, that twenty out of thirty-four districts varied from the senatorial ratio over 10,000 in population, of which two varied over 25,000, one between 20,000 and 25,000, seven between 15,000 and 20,000, and six between 10,000 and 15,000, and that the seventeen largest districts contained 412,229 more people than the seventeen smallest, that many of the districts were not compact in shape, and that the districts least compact varied most in population, and vice versa.¹

It happened that because this districting in 1911 was condemned, that of 1901, which was very similar and just as objectionable, especially because of the change in population within the decade, was retained.

It is apparent, then, that the gerrymander did operate under this section.

Section 8. Until an apportionment of Representatives can be made in accordance with the provisions of this Article, the House of Representatives shall consist of one hundred and forty three members, which shall be divided among the several counties of the State as follows: The county of Saint Louis shall have seventeen; the county of Jackson four; the county of Buchanan three; the counties of Franklin, Greene, Johnson, Lafayette, Macon, Marion, Pike, and Saline, each two, and each of the other counties in the state one.

¹From the reply of the Circuit Court

This section is exactly the same as was reported by the Committee on Representation¹, except that the County of Morgan was included in the list of counties having two representatives. That change and one other of the same character were the only ones that were proposed. The latter was proposed under very interesting circumstances,² which continues to show the animosity between the delegates of Saint Louis and the small counties. Mr. Pulitzer, of Saint Louis, had previously in the Convention been engaged in rather heated argument with Mr. McAfee³, of Greene County, against the proposal of the latter gentleman that the principle of "one representative per county" be followed. Accordingly, when this section on temporary apportionment came up, Mr. Pulitzer moved to strike out "Greene" as having two representatives and place it in the list of counties having one. "I am sure", he said, "Mr. McAfee won't object, since that is his principle (one representative per county) and it is doubtless only his gentleness that keeps him from proposing the reduction from two to one himself." Mr. McAfee replied in no better spirit with a personal retort by saying "If I knew the character of the representatives that come from

¹J. 115.

²D. June 12.

³See discussion of Section 2 above.

Saint Louis and were satisfied that all the wards were to be represented as a certain one is that I know, I certainly would think that one from Greene County is a plenty."

No similar sections existed in the Constitutions of 1865 or 1820.

In the constitutions of nine other states in 1875 there were sections of similar content.¹

Since one of the biggest items of business for the Convention was to arrange the system of representation, and since a census (on which to base the new scheme,) would not be taken for five years this temporary arrangement was made.

Section 9. Senatorial and Representative districts may be altered, from time to time, as public convenience may require. When any Senatorial district shall be composed of two or more counties, they shall be contiguous; such districts to be as compact as may be, and in the formation of the same no county shall be divided.

This section is identical in form to that proposed by the Committee on Representation,² no change having been proposed. The section proposed by the Committee on the Legislative Department³ was substantially the same, but was worded differently. It was rejected.⁴

¹ Ala. 1867, VIII, 2; Ga. 1868, III, 3(a); Kan. 1859, X, 3; La. 1868, II, 22; Md. 1867, III, 3; N.C. 1868, II, 8; S.C. 1868, II, 4; Tex. 1868, III, 39; W. Va. 1872, VI, 8, 9.

² J. 115.

³ J. 296.

⁴ J. 425.

The only other constitution possessing a section of this kind in 1875 was the Missouri Constitution of 1865, which was identical, except that there was no requirement that districts should be compact, nor that no county could be divided.¹

The new provisions in the section were added to place more restrictions upon the legislature in the formation of districts and to reduce the facilities for the operation of the gerrymander.

Section 10. The first election of Senators and Representatives under this Constitution, shall be held at the general election in the year one thousand eight hundred and seventy-six, when the whole number of Representatives, and the Senators from the districts having odd numbers, who shall compose the first class, shall be chosen; and in one thousand eight hundred and seventy-eight, the Senators from the districts having even numbers who shall compose the second class, and so on at each succeeding general election, half the Senators provided for by this Constitution, shall be chosen.

This is the form, verbatim, in which the section was reported by the Committee on Representation.² The section proposed by the Committee on Legislature provided for the election of all the Senators and Representatives within a year³ after the adoption of the Constitution.

¹Art. IV, Sec. 8.

²J. 116.

³J. 296.

The only resolution proposed previous to the Committees' reports included the provisions adopted, and none other.¹ Only one amendment was offered. It proposed that Senators from odd districts serve two years in the first term and those from even districts, four years, but that the seat of every senator be vacant at the end of the session next after each federal census.² This amendment was rejected.

The Constitution of 1865 provided for the division of senators into two classes,-- one of Senators from odd-numbered districts and one of those from even-numbered ones. The division was to be made in the first General Assembly after the Constitution went into effect,³ members from districts receiving odd numbers serving two years in that first term, and those from even ones, four years. The first election of Senators and Representatives was set for the general election in 1866.⁴ The Constitution of 1820 provided for the division by lot of the Senators into two classes at the first session under the Constitution, the seats of the first class being vacated in two years, and of the second in four.⁵

¹J. 105.

²J. 262.

³Art. IV, Sec. 10.

⁴Art. IV, Sec. 9.

⁵Art. III, Sec. 7.

Practically every constitution named the time for the election of the first Senators and Representatives. Twenty-one¹ constitutions provided for the division of Senators into two classes, and their rotation in office. Of this number, sixteen provided that the division be made within the first Senate under the Constitution, "by lot", the first class going out at the end of half a regular Senatorial term.² Four of them provided for the election of all of the Senators at the first general election, but the senators from odd-numbered districts were to serve only half a term.³ No constitution provided for the election of only half a senate or did the section of the present Missouri Constitution under discussion.

The first Senate under the present Constitution, however, was not half a Senate as might be at first thought. The districts were the same as under the previous constitution, until the next census (1880). Senators had been elected in the even districts to serve for four years in 1874.⁴ They merely held over until

¹ Ala. 1867, VIII, 4; Ark. 1874, V, 3; Cal. 1849, IV, 6; Ind. 1851, IV, 3; Ia. 1857, III, 6; Ky. 1850, II, 12; La. 1868, II, 31; Md. 1867, 8; Minn. 1857, 24; Miss. 1868, IV, 36; N. J. 1844, II, 2; Ore. 1857, IV, 4; S. C. 1868, II, 9; Tex. 1868, III, 8; W. Va. 1872, VI, 3; Fla. 1868, V, 4; Ill. 1870, 6; Va. 1870, V, 3; Wis. 1848, IV, 5.

² These were the constitutions in the footnote above, down to Texas.

³ These were the constitutions from Florida on in footnote

⁴ above.
Official Manual of the State of Missouri, 1911-12, p. 177.

the election in 1878, while from the odd districts, which were due new Senators in 1876, new ones under the new constitution were elected.

The constitutions that perhaps influenced most in the framing of this Section, besides the Missouri Constitution of 1865, were those of Florida, Illinois, Maryland, Virginia, and Wisconsin.

Section 11. Until the State shall be divided into Senatorial districts in accordance with the provisions of this article, said districts shall be constituted and numbered as follows:

The First District shall be composed of the counties of Andrew, Holt, Nodaway and Atchison.

Second District -- The counties of Buchanan, DeKalb, Gentry and Worth.

Third District-- The counties of Clay, Clinton, and Platte.

Fourth District -- The counties of Caldwell, Ray, Daviess and Harrison.

Fifth District -- The counties of Livingston, Grundy, Mercer and Carroll.

Sixth District -- The counties of Linn, Sullivan, Putnam and Chariton.

Seventh District -- The counties of Randolph, Howard and Monroe.

Eighth District -- The counties of Adair, Macon, and Schuyler.

Ninth District -- The counties of Audrain, Boone and Callaway.

Tenth District -- The counties of St. Charles, and Warren.

Eleventh District -- The counties of Pike, Lincoln and Montgomery.

Twelfth District -- The counties of Lewis, Clark, Scotland and Knox.

Thirteenth District-- The counties of Marion, Shelby and Ralls.

Fourteenth District -- The counties of Bates, Cass and Henry.

Fifteenth District -- The county of Jackson.

Sixteenth District -- The counties of Vernon, Barton, Jasper, Newton and McDonald.

Seventeenth District -- The counties of

Lafayette and Johnson.

Eighteenth District -- The counties of Greene, Lawrence, Barry, Stone and Christian.

Nineteenth District -- The counties of Saline, Pettis and Benton.

Twentieth District -- The counties of Polk, Hickory, Dallas, Dade, Cedar and St. Clair.

Twenty-first District -- The counties of Laclede, Webster, Wright, Texas, Douglas, Taney, Ozark and Howell.

Twenty-second District -- The counties of Phelps, Miller, Maries, Camden, Pulaski, Crawford and Dent.

Twenty-third District -- The counties of Cape Girardeau, Mississippi, New Madrid, Pemiscot, Dunklin, Stoddard and Scott.

Twenty-fourth District -- The counties of Iron, Madison, Bollinger, Wayne, Butler, Reynolds, Carter, Ripley, Oregon and Shannon.

Twenty-fifth District -- The counties of Franklin, Gasconade and Osage.

Twenty-sixth District -- The counties of Washington, Jefferson, St. Francois, Ste. Genevieve and Perry.

Twenty-eighth District -- The counties of Cooper, Moniteau, Morgan and Cole.

St. Louis county shall be divided into seven districts, numbered respectively as follows:

Twenty-seventh, Twenty-ninth, Thirtieth, Thirty-first, Thirty-second, Thirty-third and Thirty-fourth.

This section was reported in an entirely different form by the Committee on Representation.¹ No temporary districts were enumerated, but it was provided that the first general assembly after the Constitution was framed should divide the State into Senatorial

¹J. 116.

districts and number the districts so as to classify them. The section as it stands in the Constitution today was modelled after a resolution proposed subsequent to the report of the Committee¹, which made practically the same division of counties into districts as was finally adopted.

The Debates are missing on this section, but the arguments were not extensive.

Neither the Constitution of 1865 nor of 1820 possessed a similar section. Twelve of the other state constitutions possessed similar sections.²

The only question of policy involved in this Section was evidently that of whether to allow the legislature to temporarily district the state until it could be done on the basis of the census of 1880, or whether the Convention itself should do it. The latter policy was adopted, and an important function was removed from the hands of the legislature. This was entirely in line with the tendency of the times,³ to allow less power to rest in the hands of the legislature.

Section 12. No senator or representative shall, during the term for which he shall have been elected, be

¹

J. 265.

² Ala. 1867, VIII, 5; Ark. 1874, VIII, 2; Ga. 1868, III, 2; Ia. 1857, III, 4; Kan. 1859, X, 3; Ky. 1850, II, 3; La. 1868, II, 22; Mass. 1786, I-II, 1; Miss. 1868, XI, 2; O. 1851, 7; Tex. 1868, III, 40;

³ W. Va. 1872, VI, 5.

See below, p.

appointed to any office under this State, or any municipality thereof; and no member of Congress or person holding any lucrative office under the United States, or this State, or any municipality thereof (militia officers, justices of the peace and notaries public excepted), shall be eligible to either house of the General Assembly, or remain a member thereof, after having accepted any such office or seat in either house of Congress.

This section, as submitted by the Committee on the Legislative Department¹ was adopted verbatim² without debate or proposal to change. There was a similar section in the Constitution of 1865³, with the exception of the first clause disbarring Senators and Representatives from accepting other state or city offices, and the words "or any municipality thereof" in the second clause. There was a section somewhat like the first clause, prescribing that no senator or representative should accept any office under the State in which the emoluments had been increased during his term, except offices to which he might be elected by the people.⁴ The Constitution of 1820 contained this latter provision⁵ and also a provision disbarring persons holding lucrative offices under the United States or this State, excepting militia officers, Justices of the Peace, and Postmasters.

Among the thirty-six other state constitutions,

¹J. 296.

²J. 343.

³Art. IV, Sec. 2.

⁴Art. IV, Sec. 15.

⁵Art. III, Sec. 16.

twenty-two¹ contained provisions distinctly similar to this one, disbarring other office holders from the general assembly and forbidding members to accept other offices. All of these twenty-two, but Arkansas, Illinois, Michigan, New York, Pennsylvania, and Tennessee stipulated that the kind of offices members could not accept were those which had been created, or the emoluments of which had been created or increased during their term of office. In six constitutions there was the single provision that members should not accept certain mentioned offices under the state and Nation.²

Other disqualifications besides office-holding were mentioned in the other constitutions.³ Among them were conviction of bribery, embezzlement, defalcation of public funds, forgery, perjury, or other infamous crimes, failure to account for public money, being a clergyman, priest, or teacher of any religious persuasion.

¹Ga. 1868, III, 1(a); Md. 1867, III, 10, 11, 17; Ala. 1867, IV, 19, 20; Ark. 1874, V, 7, 10; Cal. 1849, IV, 20; Ill. 1870, IV, 15, 3; Ia. 1857, III, 21, 22; Ky. 1850, II, 26, 27; Me. 1820, IV, 10, 11; Mich. 1850, IV, 6, 18; Miss. 1868, IV, 37, 38; Nebr. 1867, II, 13, 14; Nev. 1864, IV, 8, 9; N. J. 1844, V, 1, 2, 3; N. Y. 1846, III, 7, 8; O. 1851, II, 41, 9; Pa. 1873, II, 6; Tenn. 1870, II, 26; Tex. 1868, III, 29, 30; W. Va. 1872, VI, 13, 15; Wis. 1848, IV, 12, 13.

²Del. 1831, II, 12; Ind. 1851, IV, 30; La. 1868, II, 41; Minn. 1857, IV, 9; Ore. 1857, IV, 30; Va. 1870, V, 8.

³Mo. 1865, III, 13, 15, 12, 14; Ark. 1874, V, 35, 8, 9; Cal. 1849, IV, 21, 22; Ala. 1867, IV, 20; Ky. 1850, II, 27, 28; Md. 1867, III, 11, 12; Miss. 1868, IV, 16, 17, 18; Fla. 1868, V, 9; Ill. 1870, IV, 4; Ia. 1857, III, 23; Kan. 1859, II, 6, 5; Mich. 1850, IV, 30; Nev. 1864, IV, 10; N. H. 1792, II, 96, 7; O. 1851, II, 5; Pa. 1873, III, 29, 30, 31, 32, 7; S. C. 1868, II, 28; Tenn. 1870, II, 26; Tex. 1868, III, 14, 31, 32; Vt. 1793, II, 12, 26; W. Va. 1872, VI, 14.

The state constitutions which probably influenced in the framing of the section in 1865, which, in turn, served as the model for the present section were those of California, Iowa, Kentucky, Maine, Nevada, New Jersey, Ohio, and Wisconsin.

It was evidently the purpose of this section to prevent men with other interests under the government from coming into the legislature and having a chance to increase the pay or decrease the burdens of the other office, or to prevent legislators from creating other offices or attaching remuneration to them and then securing those offices for themselves. Again, the distrust of the legislature enters in.

Section 13. If any Senator or Representative remove his residence from the district or county for which he was elected, his office shall thereby be vacated.

This section was adopted verbatim¹, as submitted by the Committee², there being no proposal for change. There was an identical section in the Missouri Constitution of 1865, but no similar provision existed in the constitution of any other state, except Georgia.³

There seems to be no special policy involved here. The provision was merely thought to be a necessary

¹J. 343.

²J. 296.

³1868, III, 1(e).

complement to the requirements of the districting system, and to the qualification of being a resident of the district set up thereunder.

Section 14. Writs of election to fill such vacancies as may occur in either house of the General Assembly shall be issued by the Governor.

This section was also adopted¹, without debate, in the exact form presented by the Committee.² Exactly the same sections existed in the Constitutions of 1865³ and 1820⁴, as well as in about half of the constitutions of the time.⁵ The other states provided either for writs of election issued by the Speakers of the respective houses, or by the houses themselves, or left it to the legislature to determine how vacancies should be filled.

The least possible amount of legislative discretion in this matter, namely - none at all, was allowed by the Constitution framers of 1875. This, however, was not a departure from previous practice.

¹J. 296.

³J. 343.

⁴Art. IV, Sec. 14.

⁵Art. III, Sec. 9.

Ala. 1867, IV, 12; Ark. 1874, V, 6; Cal. 1849, IV, 13; Ill. 1870, IV, 2; Ia. 1857, III, 12; Minn. 1857, IV, 17; Md. 1867, III, 13; Miss. 1868, IV, 9; Nebr. 1867, II, 15; Nev. 1864, IV, 12; N. J. 1844, IV, 1; N. C. 1868, II, 15; N. H. 1792, II, 33; Tenn. 1870, II, 15; Tex. 1868, III, 19; Wis. 1848, IV, 14; Va. 1870, V, 7, in case legislature not in session.

Section 15. Every Senator and Representative elect, before entering upon the duties of his office, shall take and subscribe the following oath or affirmation: "I do solemnly swear, or affirm, that I will support the Constitution of the United States and of the State of Missouri and faithfully perform the duties of my office; and that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law." The oath shall be administered in the halls of their respective houses to the members thereof, by some Judge of the Supreme Court or the Circuit Court, or the County Court of Cole County, or, after organization by the presiding officer of either house, and shall be filed in the office of the Secretary of State. Any member of either house refusing to take said oath or affirmation shall be deemed to have thereby vacated his office, and any member convicted of having violated his oath or affirmation shall be deemed guilty of perjury, and be forever thereafter disqualified from holding any office of trust or profit in this state.

This section is almost identical with the one proposed by the legislative committee.¹ Previous to the report of the Committee a resolution was made proposing some such section.² The only amendment offered was one changing the wording³ slightly.

The Constitution of 1865 was unique in its oath requirement in that it was adopted at the end of the Civil War at the time when the oath of allegiance was being required of citizens. No vote was allowed to be cast by the people in any election⁴ for any person who had not taken the oath that he had never opposed the

¹J. 297.

²J. 95.

³J. 343.

⁴Art. II, Sec. 8.

United States in any way in any armed conflict, that he would bear true allegiance in the future to them, and that he would support the Constitutions of the United States and of the State of Missouri.¹ An amendment in 1870, however, removed the requirement of the oath of loyalty, and merely required an oath to support the Constitutions of the United States and State of Missouri.²

In the Constitution of 1820 an oath was required of members to support the Constitutions of the United States and of Missouri and to "demean themselves faithfully in office."³

Oaths were required in twenty-three states in 1875⁴. On the whole, the content and obligations of these oaths were the same as the present Missouri oath. Among the miscellaneous requirements were sworn statements not to have paid money for votes (Georgia), nor to have violated any election laws (Pennsylvania), that the member is qualified under the Constitution to accept the office (South Carolina), that he will not propose or assent to any bill which shall appear injurious to the

¹

²Art. II, Sec. 6.

³Art. Am. II, - 2.

⁴Art. III, Sec. 32.

Cal. 1849, XI, 3; Del. 1831, VIII, 1; Ky. 1850, VIII, 1;
Ga. 1868, III, 4(j); Ill. 1870, IV, 5; Ia. 1857, III, 32;
Kan. 1859, II, 7; La. 1868, VI, 100; Minn. 1857, IV, 29;
Miss. 1868, XII, 26; Nebr. 1867, II, 25; Nev. 1864, XV, 1;
N. J. 1844, VIII, 1; N. Y. 1846, XII, 1; N. C. 1868, II, 26;
Ore. 1857, IV, 31; Pa. 1873, VII, 1; R. I. 1842, IX, 3;
S. C. 1868, II, 30; Vt. 1793, 16; Tex. 1868, XII, 1;
W. Va. 1872, VI, 16; Wis. 1848, IV, 28.

People (Vermont), that he will recognize the political equality of all men, despite race or color (Louisiana), and that he has not fought a duel (Nevada).

Of these constitutions only Iowa, Illinois, New Jersey, Oregon, and West Virginia designated the receiver of the oath. In Iowa and New Jersey he was a member of the Assembly. In the remainder he was a Judicial authority. Only West Virginia and Illinois mentioned the place (the hall of the member's house) wherein the oath should be taken. It is probable that the provision in the constitution of Illinois was most influential in the framing of this section.

Section 16. The members of the General Assembly shall severally receive from the public treasury such compensation for their services as may, from time to time, be provided by law, not to exceed five dollars per day for the first seventy days of each session, and after that not to exceed one dollar per day for the remainder of the session, except the first session held under this constitution, and during revising sessions, when they may receive five dollars per day for one hundred and twenty days, and one dollar per day for the remainder of such sessions. In addition to per diem, the members shall be entitled to receive travelling expenses or mileage, for any regular and extra session not greater than now provided by law; but no member shall be entitled to travelling expenses or mileage for any extra session that may be called within one day after an adjournment of a regular session. Committees of either house or joint committees of both houses, appointed to examine the institutions of the state, other than those at the seat of government, may receive their actual expenses necessarily incurred while in the performance of such duty; the items of such expenses to be returned to the chairman of such committee, and by him certified to the State Auditor, before the same, or any part thereof, can be paid. Each member may receive at each regular session an additional sum of

thirty dollars, which shall be in full for all stationery used in his official capacity, and all postage, and all other incidental expenses and perquisites; and no allowance or emoluments, for any purpose whatever, shall be made to or received by the contingent fund or otherwise, except as herein expressly provided; and no allowance or emoluments, for any purpose whatever, shall be made to the members or any member of either house, or for their use, out of the contingent fund or otherwise, except as herein expressly provided; and no allowance or emolument, for any purpose whatever, shall ever be paid to any officer, agent, servant or employe of either house of the General Assembly, or of any committee thereof, except such per diem as may be provided for by law, not to exceed five dollars.

The section as introduced¹ possessed a blank in the number of days in the regular session for which five dollars was to be received, and a blank after "one hundred and - " in the number of days for which it was to be received in the first and revising sessions. Fifty dollars was allowed for stationery, and the provision was absent cutting off travelling expenses in case the special session was called within one day after the adjournment of the regular session.

To fill in the first blank, seventy, sixty, and ninety were suggested. Seventy was agreed upon.² Twenty and eighty were suggested for the second blank, the former being agreed upon.³ Two dollars was proposed in place of one as additional pay after seventy days, but the proposal was rejected.⁴ Thirty dollars, twenty-five

¹J. 298.

²J. 343.

³J. 346.

⁴J. 344.

dollars and forty dollars were offered as substitutes for fifty dollars for stationery. Thirty dollars was accepted.¹ Motions to cut out travelling expenses² and additional pay after seventy days³ were both rejected. The provision was added that there be no pay for travelling expenses in case of a special session called one day after adjournment.⁴ Several other small provisions were added.⁵

Two resolutions were offered prior to the report of the Committee. One was that an annual instead of a per diem salary be paid.⁶ The other⁷ was that members receive per diem and mileage, as agreed upon by law, and incidentals up to thirty dollars.

The Constitution of 1865 allowed members such compensation as might be provided by law, except that no law increasing the same could take effect during the session in which it was passed.⁸ The same provision existed in the Constitution of 1820.⁹ The present constitution possesses several provisions in this section that have never been in Missouri constitutions before.

¹J. 345.

²J. 347.

³J. 348.

⁴J. 349.

⁵J. 348.

⁶J. 71.

⁷J. 69.

⁸Art. IV, Sec. 17.

⁹Art. III, Sec. 24.

The Convention evidently had two ideas in mind. The one was to provide a general compensation, at the same time limiting legislative discretion by expressing a maximum per diem salary. The other was to limit the length of sessions of the legislature by cutting off the pay after the session had lasted a certain period of days. The supposed existence of the former idea is substantiated by the fact that previous Missouri constitutions left salaries to the law of the legislature and that the Convention refused a proposal to again adopt that system.¹ The latter idea was expressed significantly by Mr. Gottschalk, who was a member of the Convention, in a statement that reflects the dominant sentiment of the Convention, as it is recorded in the Debates and as indicated by the results of deliberations on the legislative body as a whole. He said, "Now we all know the fact to be that the people of the state are pretty much tired of these frequent meetings of the General Assembly and their long sessions."²

Among the other state constitutions in 1875, fifteen provided that members of the General Assembly should receive compensations as granted by law.³

¹See above, p.

²D. June 7, p. 217.

³Ala.1867, IV, 18; Ark.1874,V,16; Cal.1849,IV,24; Del.1831,II,11; Ind.1851,IV,29; Ia.1857,III,25; Me.1820,IV,7; Minn.1857,IV,7; Miss.1868,IV,20; Nev.1864,IV,33; O.1851,II,20; Pa.1873, II,8; R.I.1842,IV,11; Tex.1868, III,35;38; Va.1870, V, 8.

Eighteen provided for a per diem allowance, usually lower than five dollars.¹ Tennessee was the only other state that cut off the pay after a certain length of session.² Twelve states, however, possessed separate sections defining the maximum length of a session.³ Tennessee did not provide for less pay after the time was up, but cut off the pay entirely. Two states with the per diem stipend limited the length of session by stating the maximum lump sum that could be paid to a member during a session.⁴ Three constitutions provided an annual salary.⁵

No constitution contained the provision that members should be fully paid for a longer period at a revising session, nor provided for the financial support of committees.

¹ Ill. 1870, IV, 21, \$5.00; Ia. 1857, III, 25, \$3.00; Kan. 1859, II, 3, \$3.00; Ky. 1850, II, 24, \$3.00; La. 1868, II, 39, \$8.00; Md. 1867, 15, \$5.00; Mich. 1850, IV, 15, \$5.00; Minn. 1857, 7, \$3.00; Nebr. 1867, II, 21, \$3.00; N.H. 1792, 14 (special sessions) \$3.00; N.Y. 1846, III, 6 (Extraordinary sessions) \$10.00; Ore. 1857, IV, 29, \$3.00; R.I. 1842, IV, 11, \$1.00; S.C. 1868, II, 23, \$6.00; Tex. 1868, III, 35, \$8.00; Tenn. 1870, II, 23, \$4.00; W. Va. 1872, VI, 33, \$4.00; Wis. 1848, IV, 21, \$3.50.

² Seventy-five days regular, twenty days special sessions.
³ II, 23.

⁴ Ala. 1867, IV, 21; Ark. 1874, V, 17; Fla. 1868, V, 24; Ga. 1868, III, 1 (c); Ind. 1851, IV, 29; Md. 1867, 15; La. 1868, II, 39; Ky. 1850, II, 24; Nev. 1864, IV, 29; Va. 1870, V, 6; W. Va. 1872, VI, 22.

⁵ Kan. 1859, II, 3; Ore. 1857, IV, 29.

N. J. 1844, IV, 7; N. H. 1792, 14; N. Y. 1846, III, 6.

Eighteen¹ specified that salaries could not be increased to take effect during the same session. Sixteen² allowed travelling expenses, usually expressed in mileage. Six³ allowed a certain sum for stationery, postage, etc. Six⁴ provided that there should be "no other allowance".

The constitutions most similar in respect to all these provisions were those of Illinois, Iowa, Kentucky, Maryland, Oregon, Kansas, South Carolina, Texas, West Virginia, and Wisconsin. Whether it is fair to say that these few influenced the framing of the Missouri section more than any others, or whether the Convention picked the desirable parts out of every state constitution, it is hard to say. The latter is more apt to be true.

Section 17. Each house shall appoint its own officers; shall be the sole judge of the qualifications, elections, and returns of its own members, may determine the rules of its own proceedings, except as herein provided; may arrest and punish by fine not exceeding three hundred dollars

¹Ala.1867,IV,18; Ark.1874,V,16; Cal.1849,IV,24; Del.1831,II,11; Ill.1870,IV,21; Ind.1851,IV,29; Ia.1857,III,25; Ky.1850,II,24; La.1868,II,39; Me.1820,IV,7; Minn.1857,IV,7; Miss.1868,IV,20; Nev.1864,V,33; O.1851,II,20,31; Pa.1873,II,8; S.C.1868,II,23; Va.1870,V,8; W.Va.1872,VI,37.

²Ill.1870,IV,21; Ia.1857,III,25; Kan.1859,II,3; Ky.1850,II,24; Me.1820,IV,7; Md.1867,III,5; Mich.1850,IV,15; Nebr.1867,II,21; N.H.1792,14; N.Y.1846,IV,6; Ore.1857,IV,29; S.C.1868,II,23; Tenn.1870,II,23; Tex.1868,III,35; W.Va.1872,VI,33; Wis.1848,IV,21.

³Ill.1870,IV,21; Nev.1864,IV,33; Mich.1850,IV,6; Pa.1873,III,12; W.Va.1872,VI,34; Wis.1848,IV,25.

⁴Ill.1870,IV,21; N.J.1844,IV,7; Ohio 1851,II,3; Pa.1873,II,8; Mich.1850,IV,15; W.Va.VI,33,1872.

or imprisonment in a county jail not exceeding ten days, or both, any person, not a member, who shall be guilty of disrespect to the house by any disorderly or contemptuous behavior in its presence during its sessions; may punish its members for disorderly conduct, and, with the concurrence of two-thirds of all members-elect, may expel a member, but no member shall be expelled a second time for the same cause.

The form in which this section was reported by the committee¹ is identical to that in which it now stands in the constitution. A proposal to amend² by striking out "returns" in line two and inserting "numbers", and adding after "members", "but contested elections for members of either house shall be determined by the circuit court of the county in which the contest arises", was rejected.

The exact prototype of this section existed in the Constitution of 1865³, as well as in the Constitution of 1820⁴, except that the provision, in the latter case, for the punishment of non-members, was in a separate section.⁵

Practically every state constitution contained exactly these provisions in 1875. Every one contained the provision regarding the election

¹J. 299.

²J. 349.

³Art. IV, Sec. 19.

⁴Art. III, Secs. 18, 19.

⁵Art. III, Sec. 19.

of officers¹; thirty-three provided for the judging of elections of its own members²; twenty-six for the punishing of members³; thirty-three for determining rules of procedure⁴; and thirty for expelling a member by two-thirds majority⁵. Only eighteen provided for punishing non-members.⁶

- 1, 2, 3, 4, 5, 6. - All states will be cited as having first provision. Those having second, will have "(2)" after section reference to first provision, followed by section reference to second provision -- and so on: Ala. 1867, IV, 6 (2), IV, 6 (3), IV, 8 (4), IV, 8 (5), IV, 8; Ark. 1874, V, 11 (2), V, 11 (3), V, 12 (4), V, 12 (5), V, 12 (6), V, 12; Cal. 1849, IV, 8 (2), IV, 8 (4), IV, 10 (5), IV, 10; Conn. 1818, III, 7 (2), III, 8 (4), III, 8 (5), III, 8; Del. 1831, II, 5 (2), II, 6 (3), II, 7 (4), II, 7 (5), II, 7; Fla. 1868, V, 7 (2), V, 6, 7 (3), V, 6, 7 (4), V, 6, (5), V, 6, 7; Ga. 1868, III, 3, 12 (c) (2), III, 4 (a) (3), III, 4 (a) (5), III, 4 (a) (6), III, 4 (b); Ill. 1870, all provisions IV, 9; Ind. all provisions 1851, IV, 10, 14; Ia. 1857, (1) III, 7 (2), III, 7 (3), III, 9 (4), III, 9 (5), III, 9; Ky. 1850, II, 7 (2), II, 20, (3), II, 21 (4), II, 21 (5), II, 21; La. 1868, II, 23, 27 (2), II, 24; Maine 1820 all provisions 1820, 3, 7, 8, 6, 4; Md. 1867 all provisions 19, 23; Mass. 1780, I, II, 7, I, III, 10, (2), I, II, 4 (4), I, III, 10 (6), I, III, 10; Mich. 1850, II, 15 (2), IV, 15, (4), IV, 15 (5), IV, 15; Minn. 1857 all provisions IV, 3, 5, 18, 4; Miss. 1868 all provisions IV, 10, 15, 4; Nebr. 1867, all provisions II, 10, 7; Nev. 1864, all provisions IV, 6; N.H. 1792, II, 21 (2), II, 21, (4), II, 21, 36, (6), II, 21, 22; N. J. 1844, IV, 3, (2), IV, 2, (3), IV, 3, (4), IV, 3, (5), IV, 3; N.Y. 1846, III, 10, (2), III, 10; N. C. 1868, II, 20, 22, (2), II, 24; Ohio, 1851, II, 8, (2), II, 8, (3), II, 8, (3), II, 8, (4), II, 8, (5), II, 8; Ore. 1857, all provisions, IV, 11, 16, 15; Pa. 1873, II, 9, (3), II, 11, (4), II, 11, (5), II, 11; Tex. 1868, all provisions VIII, 15, 16; Tenn. 1870, all provisions II, 11, 12; R. I. 1842, IV, 6, V, 2, (2), IV, 6, (3), IV, 7, (4), IV, 7, (5), IV, 7; S. C. 1868, II, 15, (2), II, 14, (3), II, 15, (4), II, 15, (5), II, 15, (6), II, 16; Va. 1870, V, 7, (2), V, 7, (3), V, 7, (4), V, 7, (5), V, 7; W. Va. all provisions, 1872, VI, 24, 25; Wis. 1848, IV, 9, (2), IV, 7, (3), IV, 8, (5), IV, 8.

Section 18. A majority of the whole number of members of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

This section was adopted¹ exactly as recommended,² there being no proposal to change. The section is the same as is found in the Constitutions of 1865³ and 1820⁴, and similar sections existed in every other state constitution in 1875.⁵ In four states, two-thirds was a quorum,⁶ and in one, an exact number, instead of a proportion, was stated as a quorum.⁷

Section 19. The sessions of each house shall be held with open doors, except in cases which may require secrecy.

This section was adopted⁸ exactly as recommended,⁹ without debate. The same section was in

¹J. 349.

²J. 299.

³Art. IV, 18.

⁴Art. III, 17.

⁵Ala. 1867, IV, 7; Ark. 1874, V, 11; Cal. 1849, IV, 9; Conn. 1818, III, 7; Del. 1831, II, 6; Fla. 1868, V, 8; Ga. 1868, III, 1(c); Ia. 1857, IV, 8; Ill. 1870, 9; Kan. 1859, II, 8; Ky. 1850, II, 19; La. 1868, II, 33; Me. 1820, 3; Md. 1867, 20; Minn. 1857, 3; Mich. 1850, 14; Miss. 1868, IV, 12; Nebr. 1867, II, 7; Nev. 1864, IV, 13; N. H. 1792, 19, 36; N. J. 1844, IV, 2; N. Y. 1846, III, 10; O. 1851, II, 6; Pa. 1873, II, 10; R. I. 1842, IV, 6; S. C. 1868, II, 14; Vt. 1793, IX, 14; Va. 1870, V, 6; W. Va. 1872, VI, 24; Wis. 1848, IV, 7; Ind. 1851, IV, 11; Ore. 1857, IV, 12; Tenn. 1870, II, 11; Tex. 1868, III, 15; Mass. 1780, I, III, 9, I, II, 9.

⁶Ind., Ore., Tenn., Tex.

⁷Mass.

⁸J. 349.

⁹J. 299.

the Constitutions of 1865¹ and 1820², and in those of twenty-five other states.³ It was accepted as a necessary means toward the end of open and honest legislation.

Section 20. The General Assembly elected in the year one thousand eight hundred and seventy-six shall meet on the first Wednesday after the first day of January, one thousand eight hundred and seventy-seven; and thereafter the General Assembly shall meet in regular session once only in every two years; and such meeting shall be on the first Wednesday after the first day of January next after the elections of the members thereof.

This section was reported by the committee with a blank after 187_, which became 1876, and 187_, which became 1877, with the phrase "first Wednesday in January" instead of "first Wednesday after the first day of January", and "after their election" instead of "after the elections of the members thereof". These changes were made by amendments.⁴ Amendments rejected were one offering quadrennial sessions and one substituting "December" for "January".⁵ One resolution was offered previous to the

¹Art. IV, Sec. 21.

²Art. III, Sec. 19.

³Ala. 1867, IV, 13; Ark. 1874, V, 13; Cal. 1849, IV, 14; Conn. 1818, III, 11; Del. 1831, II, 9; Ill. 1870, IV, 10; Ind. 1851, 13; Ia. 1857, III, 13; Md. 1867, III, 21; Fla. 1868, V, 11; Mich. 1850, 18; Minn. 1857, IV, 19; Miss. 1868, IV, 15; N.H. 1792, 8; Nev. 1864, IV, 15; N.Y. 1846, III, 11; O. 1851, II, 13; Ore. 1857, IV, 14; Pa. 1873, II, 13; S.C. 1868, II, 27; Tenn. 1870, II, 22; Tex. 1868, III, 22; Vt. 1793, 8; Wis. 1848, IV, 10.

⁴J. 425.

⁵J. 425.

committees report for biennial sessions,¹ and a petition was presented from the citizens of Daviess County asking that the legislature be prohibited from meeting more than once in four years.²

This section is similar to those in the Missouri Constitutions of 1865³ and 1820⁴, except that in those constitutions the provision was for a meeting once every two years, and not once "only" every two years. Under the provision "once every two years", no prohibition existed against meeting more than once every two years. Consequently, in 1863, the practice began of holding every other year an "adjourned session" of the legislature, thus affecting, with the regular session, a meeting every year. The regular session preceding "adjourned to meet again" upon some date several months later. When they met later, they met "pursuant to adjournment".

The provision in 1875, was designed to prevent the holding of more than one session every two years. Similar sections existed in all other constitutions in 1875. Of the thirty-six then existing, seventeen provided for

¹

²J. 49.

³J. 189.

⁴Art. IV, Sec. 35.

Art. III, Sec. 33.

biennial sessions;¹ seventeen for annual sessions;² and two left the matter to be decided by law.³ The tendency towards biennial in place of annual sessions had begun long before 1875, but had not worked its way into a majority of the state constitutions at that time.

Section 21. Every adjournment or recess taken by the General Assembly for more than three days shall have the effect of and be an adjournment sine die.

Section 22. Every adjournment or recess taken by the General Assembly for three days or less shall be construed as not interrupting the session at which they are had or taken, but as continuing the session for all the purposes mentioned in section sixteen⁴ of this article.

These sections were adopted⁵ exactly as reported by the committee,⁶ without debate. No counterparts existed in previous Missouri constitutions, nor in the constitutions of other states. One purpose of these provisions probably was to delimit the powers of the legislature in declaring recesses, thus saving expense and at the same time providing more working days in the session. The main purpose was

¹ Ark. 1874, V, 5; Del. 1831, II, 4; Ill. 1870, 9; Ind. 1851, IV, 9; Ia. 1857, III, 2; Ky. 1850, II, 18; Md. 1867, 14; Mich. 1850, IV, 33; Nebr. 1867, II, 12; Nev. 1864, IV, 2; N. H. 1792, 32; O. 1851, 25; Ore. 1857, IV, 10; Pa. II, 4, 1873; Tenn. 1870, II, 8; Vt. 1793, 7; W. Va. 1872, VI, 18.

² Ala. 1867, IV, 21; Cal. 1849, IV, 2; Conn. 1818, 2; Fla. 1868, V, 2; Ga. 1868, III, 1 (c); Kan. 1859, II, 25; Mass. 1780, I-II, 3; La. 1868, II, 17; Me. 1820, 1; Miss. 1868, IV, 6; N. J. 1844, I, 3; N. C. 1868, II, 2; R. I. 1842, IV, 3; S. C. 1868, II, 12; Tex. 1868, III, 7; Va. 1870, V, 6; Wis. 1848, IV, 11.

³ Minn. 1857, IV, 1; N. Y. 1846. No mention made in Cons.

⁴ Above, p. 71. Section relating to pay per diem.

⁵ J. 349.

⁶ J. 299.

probably to prevent the holding of "adjourned sessions", mentioned above. They furnish further evidence of the application of the principle in the constitution of restrictions upon legislative power.

Section 23. Neither house shall, without the consent of the other, adjourn for more than two days at any one time, nor to any other place than that in which the two houses may be sitting.

This section is exactly the same as when submitted by the committee¹, there having been no proposal to change. The same section existed in the constitutions of 1865² and 1820³. Practically every other state constitution in 1875 contained the same section, except that three days was usually mentioned instead of two.⁴

This provision insures the best facilities for the coordinate workings of the two houses under the bicameral principle. It was not contested or debated in any way.

¹J. 299, 350.

²Art. IV, Sec. 22.

³Art. III, Sec. 20.

⁴Ala. 1867, IV, 4; Ark. 1874, V, 28; Cal. 1849, IV, 15; Del. 1831, II, 10; Fla. 1868, V, 11; Ga. 1868, III, 4(g); Ill. 1870, IV, 10; Ind. 1851, IV, 10; Ia. 1857, III, 14; Ky. 1850, II, 23; La. 1868, II, 38; Mass. 1780, I-II, 6, I-II, 8; Me. 1820, IV, 12; Md. 1867, III, 25; Mich. 1850, IV, 18; Minn. 1857, IV, 6; Miss. 1868, IV, 13; Nev. 1864, IV, 15; N. H. 1792, 18; N. J. 1844, IV, 5; N. Y. 1846, III, 11; O. 1851, II, 14; Ore. 1857, IV, 11; Pa. 1873, II, 14; R. I. 1842, IV, 9; S. C. 1868, II, 25; Tenn. 1870, II, 16; Tex. 1868, III, 23; Vt. 1793, 6; Va. 1870, V, 6; W. Va. 1872, VI, 23; Wis. 1848, IV, 10.

CHAPTER IV

Article IV -- The Legislative Department

(B) Legislative Proceedings

Section 24. The style of the laws of this State shall be: "Be it enacted by the General Assembly of the State of Missouri, as follows."

This section was adopted exactly as proposed, without discussion.¹ It is the same as was in the Constitutions of 1865² and 1820³, and the majority of the other state constitutions.⁴ In some constitutions, however, it existed in the form: "The people of the State of _____ do enact as follows."⁵

Section 25. No law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose.

This section was also adopted, without discussion, in the form proposed by the Committee.¹ No similar section existed in previous Missouri Constitutions.

¹J. 229, 350.

²Art. IV, Sec. 26.

³Art. III, Sec. 36.

⁴Ala. 1867, IV, 2; Ark. 1874, V, 19; Fla. 1868, V, 13; Ill. 1870, IV, 11; Kan. 1859, II, 20; Md. 1867, III, 29; Mich. 1850, IV, 20; Minn. 1857, IV, 13; Miss. 1868, IV, 32; Nev. 1864, IV, 23; N.H. 1792, II, 92; N.J. 1844, III, 5; N.Y. 1846, III, 14; N.C. 1868, II, 23; O. 1851, II, 18; S.C. 1868, II, 19; Tenn. 1870, II, 20; Vt. 1793, II, 10; Wis. 1848, IV, 17.

⁵Fla., Ill., Mich., Nev., N. Y., Wis.

It was found in two other state constitutions¹ in 1875, and in four others² the single provision existed that no law should be enacted except by bill.

Section 26. Bills may originate in either house, and may be amended or rejected by the other; and every bill shall be read on three different days in each house.

This is the identical form in which the section was proposed.³ There was no discussion.⁴ The provisions in the Constitutions of 1865⁵ and 1820⁶ were substantially the same, with the added clause that two-thirds of the house could dispense with the three readings rule.

In eighteen state constitutions in 1875, the provision that bills could be introduced in either house existed.⁷ In fourteen, the provision was that revenue bills must originate in the lower house.⁸ Twenty-five

¹ Ark. 1874, V, 21; Pa. 1873, III, 1.

² Kan. 1859, II, 20; Nev. 1864, IV, 23; N.Y. 1846, III, 14;

³ Wis. 1848, IV, 17.

⁴ J. 300.

⁵ J. 350.

⁶ Art. IV, Sec. 23.

⁷ Art. III, Sec. 21.

⁸ Ala. 1857, IV, 15; Cal. 1849, IV, 16; Fla. 1868, V, 12; Ill. 1870, IV, 12; Ia. 1857, III, 15; Kan. 1859, Amd't. II, 12; Md. 1867, III, 27; Mich. 1850, 13; Miss. 1868, IV, 23; Nebr. 1867, II, 18; Nev. 1864, IV, 16; N.Y. 1846, III, 13; O. 1851, II, 15; Tenn. 1870, II, 17; Tex. 1868, III, 24; Va. 1876, V, 9;

W. Va. 1872, VI, 28; Wis. 1848, IV, 19.
Del. 1831, II, 14; Ga. 1868, III (3)(f); Ind. 1851, IV, 17; Ky. 1850, II, 30; La. 1868, II, 43; Me. 1820, 9; Mass. 1780, I-III, 7; Minn. 1857, IV, 10; N.H. 1792, 17; N.J. 1844, VI, 1; Ore. 1857, 18; Pa. 1873, III, 14; S.C. 1863, II, 18; Vt. 1793, 6.

constitutions possessed the three readings provision¹, although seventeen of that number allowed suspension of that rule on the vote of two thirds, three-fourths or four-fifths.²

General custom provided the sources for the provisions in this section with the exception of the absence of the power to suspend the three readings rule. In this the present Missouri Constitution departed from the custom in previous Missouri constitutions and in seventeen others, and accepted the custom in eight state constitutions, namely, Georgia, Illinois, Michigan, New Jersey, North Carolina, Pennsylvania, South Carolina, and Tennessee. This departure was consistent with the tendency repeatedly mentioned previously and later in this paper, of defining and delimiting more closely the powers and activities of the legislature.

Section 27. No bill shall be considered for final passage unless the same has been reported upon by a committee and printed for the use of the members.

¹ Ala. 1867, IV, 15; Ark. 1874, V, 22; Fla. 1868, V, 15; Ga. 1868, III, 4(e); Ill. 1870, IV, 13; Ind. 1851, IV, 18; Kan. 1859, II, 15; Ky. 1850, II, 29; La. 1868, II, 42; Md. 1867, III, 27; Mich. 1850, IV, 19; Minn. 1857, IV, 20; Miss. 1868, IV, 23; Nebr. 1867, III, 19; Nev. 1864, IV, 18; N. J. 1844, IV, 6; N. C. 1868, II, 25; O. 1851, II, 16; Ore. 1857, 19; Pa. 1873, III, 4; S. C. 1868, II, 21; Tenn. 1870, II, 18; Tex. 1868, III, 24; Va. 1870, V, 10; W. Va. 1872, VI, 29.

² Ala., Ark., Fla., Ind., Kan., Ky., La., Md., Minn., Miss., Nebr., Nev., Ohio, Ore., Tex., Va., W. Va.

This section was reported in exactly the above form by the committee¹-- and was adopted without proposal to change.² No similar section existed in the Constitution of 1865 or 1820. The only other state constitution possessing the section was that of Pennsylvania³, and it is reasonable to presume that the Pennsylvania Constitution was influential in the framing of this section, in view of the fact that the same constitution furnished solitary and identical precedents for a number of other sections in the legislative article of the present Missouri Constitution.⁴

Section 28. No bill (except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated, and except bills passed under the third subdivision of section forty-four⁵ of this article) shall contain more than one subject, which shall be clearly expressed in its title.

This section stands just as proposed⁶ by the committee, with the exception of one slight change in wording.⁷ The Constitution of 1865 contained a similar section, except that the exception of general appropriation acts and acts issuing emergency bonds was not

¹J. 299.

²J. 350.

³1873, Art. III, Sec. 2.

⁴Notably Secs. 32 and 53 below.

⁵See below p.

⁶J. 300.

⁷J. 350.

made, and further, it was stated that the act was not invalid as a whole if it contained provisions not expressed in the title, but only as to the part so unexpressed. The term, "law enacted by the General Assembly" was used instead of "bill". "Clearly" was not present before "expressed", and "relate to" was used instead of "contain". The Constitution of 1820 contained no parallel provision.

Twenty-two state constitutions in 1875 contained the provision, although in none of them were the exceptions made.¹ In five it was provided, as in Missouri, 1865, that the act should be void only as to the part undefined in the title.² Indiana³ and Oregon⁴ possessed the provision that "Every act and joint resolution shall be plainly worded, avoiding as far as practicable, the use of technical words".

The sole evident purpose of this section in the Missouri Constitution was to prevent fraud. Misleading titles might tend to deceive legislators as to the content of bills, and at the same time circumvent popular

¹ Ala. 1857, IV, 2; Cal. 1849, IV, 25; Fla. 1868, V, 14; Kan. 1859, II, 16; Ky. 1850, II, 37; Md. 1867, III, 29; Mich. 1850, 4; Minn. 1857, 27; Nebr. 1867, II, 19; N. J. 1844, 4; N. Y. 1846, III, 16; O. 1851, II, 16; Pa. 1873, III, 3; S. C. 1868, II, 20; Tenn. 1870, II, 17; Va. 1870, V, 15; Wis. 1848, IV, 18; Ill. 1870, IV, 13; Ind. 1851, IV, 19; Ia. 1857, III, 29; Ore. 1857, IV, 20; W. Va. 1872, VI, 30.

² Illinois, Indiana, Iowa, Oregon, West Virginia.

³ Article IV, Sec. 20.

⁴ Art. IV, Sec. 21.

attention and criticism. A clear expression of the subject matter would enable anyone to know the whole plan of the bill at a glance. Furthermore, -- if bills were of one subject, -- objectionable riders could not be attached to mar the bill or to gain support from the bill's popularity.

It is interesting to note in passing how the courts have interpreted the purpose of the Convention in adopting this section and the meaning they have attached to it. The courts state, at the outset, that the purpose of the provision is to exclude "incongruous matter", but they do not point out any past acute need for the provision. Their standard, as to the clearness or sufficiency of the title, is a purely subjective one, based upon whether the provisions fairly relate to and have a natural connection with it. Similarly, if all provisions fairly relate to one subject, the bill has a single subject, according to the courts, whether that subject is expressed or not. The courts also tend to judge each case by its own particular facts.¹ Taking into consideration the wording of the section and the general policy of the courts, it may be said that this section exercises a very salutary control over legislation, at once neither too petty nor drastic. It

¹Journey, R.C.: "Title Requirements in Missouri" -- A survey of court decisions.

constitutes another safeguard against injurious and ill-considered legislative action.

Section 29. All amendments adopted by either house to a bill pending and originating in the same shall be incorporated with the bill by engrossment, and the bill as thus engrossed shall be printed for the use of the members before its final passage. The engrossing and printing shall be under the supervision of a committee, whose report to the house shall set forth in writing, that they find the bill truly engrossed, and that the printed copy furnished to the members is correct.

This section was adopted¹ exactly as referred² to the Convention by the committee. The only amendment offered proposed to strike out all after "engrossment",³ but it was rejected.

There was no parallel section in the Constitution of 1865, or in that of 1820. No similar provisions existed in the constitutions of any of the thirty-six states in 1875.

The section, as might be said of all sections in the division on legislative procedure, is a very good example of the inclusion of statutory matter or matter formerly left to the discretion of the legislature within the constitution. This provision might easily be a part of the rules of the houses themselves. This new inclusion of detailed regulatory matter that was formerly left to the discretion of the legislature is becoming a prevalent means of limiting the powers of the legislature.

¹
²J. 350.
³J. 300.
³J. 350.

and conforms to the natural tendency of the times.

Section 30. If a bill passed by either house be returned thereto amended by the other, the house to which the same is returned shall cause the amendment or amendments so received to be printed under the same supervision as provided in the next preceding section, for the use of the members before final action on such amendments.

This section was adopted¹ identically as recommended² by the committee, without proposal to change. There were no precedents for it in any Missouri or other previous state constitutions. It is another typical example of the inclusion of the more extreme legislative detail in the constitution.

Section 31. No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal, and a majority of the members elected to each house be recorded thereon as voting in its favor.

This section was adopted³ as recommended⁴ without proposal to change. It is substantially the same as its parallel in the Constitution of 1865⁵, in which the "majority of members elected", "yeas and nays", "entered upon the Journal", and "upon the final passage", were mentioned. "Immediately upon the last reading" was a

¹J. 350.

²J. 300.

³J. 350.

⁴J. 300.

⁵Art. IV, Sec. 24.

further requirement in 1865. There was no counterpart in the Constitution of 1820, except the provision that "every bill, having passed both houses" should be signed by the Speaker and President of each respectively.¹ Evidently only a simple majority was thus required.

Similar passages, in most cases identical in meaning, existed in fifteen constitutions in 1875.²

Section 32. No amendment to bills by one house shall be concurred in by the other, except by a vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the journal thereof, and reports of committees of conference shall be adopted in either house only by a vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting recorded upon the journal.

This section was adopted³ exactly as reported⁴ without proposal to change. Previous to the report of the committee a resolution was presented and referred to it that a section be adopted embodying all of the provisions mentioned above, except that of recording the names of those voting upon the Journal.⁵

¹Art. III, Sec. 21.

²Ark.1874,V,22; Fla.1868,V,15; Ind.1851,IV,18,25; Ia. 1857,III,17; Kan.1859,II,13; Md.1867,III,28; Mich. 1850,IV,19,45; Minn.1857,IV,13; Nev.1864,IV,18; N.J. 1844,II,6; N.Y.1846,III,15; Ore.1857,IV,19,25; Pa.1873, III,4; Tenn.1870,II,18; Ill.1820,IV,12.

³J. 350.

⁴J. 300.

⁵J. 65.

There were no similar sections in the Constitutions of 1865 and 1820. The Constitution of Pennsylvania contained an identical section.¹ That of West Virginia contained a section similar to the first clause.²

Section 33. No act shall be revived or re-enacted by mere reference to the title thereof, but the same shall be set forth at length, as if it were an original act.

There was no alteration of this section from the form in which it was originally presented.³ The identical section was contained in the Missouri Constitution of 1865.⁴ Eighteen of the thirty-six other state constitutions in 1875 contained parallel sections.⁵ The previous Missouri section was no doubt the immediate source.

Section 34. No act shall be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out and others inserted in lieu thereof; but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full as amended.

¹Art. III, Sec. 5.

²Art. VI, Sec. 31.

³J. 300. 350.

⁴Art. IV, Sec. 25.

⁵Ala. 1867, IV, 2; Ark. 1874, V, 23; Cal. 1849, IV, 25; Fla. 1868, V, 14; Ill. 1870, IV, 3; Ind. 1851, IV, 21; Kan. 1859, II, 16; Mich. 1850, IV, 21; Md. 1867, III, 29; Nebr. 1867, II, 19; Nev. 1864, IV, 17; N.J. 1844, 4; Ore. 1857, IV, 22; Ohio, 1851, II, 16; Pa. 1873, III, 6; Tenn. 1870, II, 17; Va. 1870, V, 15; W.Va. 1872, VI, 30.

This section was adopted¹ as reported² without proposal to change. The substance of the section was contained in the Constitution of 1865³, with the exception of "or that designated words be inserted", (L. 2) and "or the words to be inserted", (L. 4). Among the thirty-six other state constitutions, nineteen possessed parallel sections.⁴

Section 35. When a bill is put upon its final passage in either house, and failing to pass, a motion is made to reconsider the vote by which it was defeated, the vote upon such motion to reconsider shall be immediately taken, and the subject finally disposed of before the house proceeds to any other business.

This section was adopted⁵, without proposal to change its form from that recommended by the committee.⁶ There was no counterpart in previous Missouri Constitutions or in the constitutions of other states existent in 1875. The Debates are missing on the section. The Journal indicates no discussion of this section. It probably was the purpose of the provision to prevent a bill of this

¹

²J. 350.

³J. 300.

Art. IV, Sec. 25.

⁴Ala. 1867, IV, 2; Ark. 1874, V, 23; Cal. 1849, IV, 25; Fla. 1868, V, 14; Ga. 1868, III, 6(c); Ill. 1870, IV, 13; Ind. 1851, IV, 21; Kan. 1859, II, 16; Mich. 1850, IV, 25; Nev. 1864, IV, 17; Md. 1867, III, 29; Nebr. 1867, II, 19; N.J. 1844, 4; Ore. 1857, IV, 22; Pa. 1873, III, 6; Tenn. 1870, II, 17; Va. 1870, V, 15; W. Va. 1872, VI, 30; Ohio, 1851, II, 16.

⁵Ga., Ill., Md., Pa.

⁶J. 350.

nature from being brought up for consideration at a time when most of its opponents might be absent.

Section 36. No law passed by the General Assembly, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency (which emergency must be expressed in the preamble or in the body of the act) the General Assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journal.

This section was accepted¹ without question, as recommended by the Committee.² One resolution was presented to the Convention and referred to the Committee previous to its report. This resolution contained the proposal that no act of the General Assembly should go into effect until July first after its passage unless, in case of emergency, two-thirds of the members of both houses should direct otherwise.³

No similar section was in force in any previous Missouri Constitution. Seven other state constitutions in 1875, however, possessed provisions indicating the minimum time in which a law should go into effect. Two provided ninety days after the end of the session;⁴ one,

¹

²J. 350.

³J. 300.

⁴J. 87.

⁴Mich. 1850, IV, 21; Ore. 1857, IV, 28.

ninety days after passage of the bill;¹ one, forty days after its passage;² one, ninety days after the adjournment of a special session in which the bill was passed, or July fourth after the adjournment of a regular session;³ one, on July first next after the passage of the bill;⁴ and one on July first "after the session" in which the bill was passed.⁵ One stated that the legislature should declare when a law should take effect;⁶ and two stated that the law was not in force until it was published.⁷ Three contained the emergency provision, made operative by three-fourths vote,⁸ and three contained it without the three-fourths requirement.⁹

Of the two provisions, the one that a law should go into effect after a certain period after passage, and the other, after the termination of the session, the latter is undoubtedly the best. It was the one adopted in the Missouri Constitution. The reason it is the best is that all acts passed during a given session go into effect uniformly, and on the same day. Such a system is easier for the people to conform to because of its uniformity.

One constitution stated that ^{in case of} an emergency the

¹W. Va. 1872, VI, 30.

²Tenn. 1870, II, 20.

³Ia. 1857, III, 26.

⁴Ill. 1870, IV, 13.

⁵Md. 1867, III, 31.

⁶Kan. 1859, II, 19.

⁷Kan. 1859, II, 19; Md. 1867, III, 31.

⁸Ill. 1870, IV, 13; Mich. 1850, IV, 21; W. Va. 1872, VI, 30.

⁹Ind. 1851, IV, 28; Ore. 1857, IV, 28; Tenn. 1870, II, 20.

law could take effect earlier than the constitution prescribed if it were published along with the date of its application in the newspapers of the state;¹ and one provided that a majority could simply "otherwise decide" if it were thought best to put the bill into effect at an earlier time than that stated in the constitution.² Two contained the provision that the emergency must be stated in the preamble or body of the bill.³

The constitutions of Illinois, Michigan and West Virginia contained the most provisions in common with this section. The Constitution of Illinois was almost identical in wording, except for the absence of the "yeas and nays". "July first" was also specified instead of "ninety days". The resolution referred to the committee previous to its report⁴ suggested "July first". The Convention adopted the better scheme, however, of the two, because the session of the legislature might conceivably run until after July first under the constitutional provision previously adopted,⁵ and thus ^athe laws enacted during the session might not go into effect for nearly a year after the close of the session, unless it was pronounced an emergency by a two-thirds vote of all the members in each house. In Illinois, the three-fourths emergency vote provision

¹
²Ia. 1857, III, 26.

³Md. 1867, III, 31.

⁴Ill. 1870, IV, 13; Ore. 1857, IV, 28.

⁵Above, p.94.

Art. IV, Sec. 16.

obtained. In view of this existing identity and further proposed identity to the section in the Illinois Constitution, and also in view of the fact that the Illinois Constitution is prevalently mentioned above and below as a precedent for sections in the Missouri Constitution of 1875, it is fair to assume that the Illinois Constitution was most influential here.

Section 37. No bill shall become a law until the same shall have been signed by the presiding officer of each of the two houses in open session; and before such officer shall affix his signature to any bill, he shall suspend all other business, declare that such bill will now be read, and that, if no objections be made, he will sign the same to the end that it may become a law. The bill shall then be read at length, and if no objection be made, he shall, in the presence of the house, in open session, and before any other business is entertained, affix his signature, which fact shall be noted on the journal, and the bill immediately sent to the other house. When it reaches the other house, the presiding officer thereof shall immediately suspend all other business, announce the reception of the bill, and the same proceedings shall thereupon be observed, in every respect, as in the house in which it was first signed. If in either house any member shall object that any substitution, omission or insertion has occurred, so that the bill proposed to be signed is not the same in substance and form as when considered and passed by the house, or that any particular clause of this article of the Constitution has been violated in its passage, such objection shall be passed upon by the house, and if sustained, the presiding officer shall withhold his signature; but if such objection shall not be sustained, then any five members may embody the same, over their signatures, in a written protest, under oath, against the signing of the bill. Said protest, when offered in the house, shall be noted upon the journal, and the original shall be annexed to the bill to be considered by the Governor in connection therewith.

This section, as reported by the Committee,¹

¹J. 301.

provided that all bills should be signed by the presiding officer of each house in open session, in which case he should say, "If there are no objections, the bill will be signed", and in the absence of objections the bill should be signed and note of it made in the journal. Objection might be made, however, by a member, as to the identity of the bill with its previous form, or its constitutionality, which should be passed upon by the house. If the objection be not sustained, two members might protest, said protest to go to the Governor with the bill, and if the bill became a law it should be referred to the Supreme Court to test its constitutionality, if such was protested, within ninety days after his signing. In case the court decided the law unconstitutional the cost of proceedings should be levied upon the state. If it decided otherwise the costs might be levied on the state or on the individuals protesting, as the court might direct.

This section was subject to an unusual amount of discussion and change in the Convention.

The first amendment offered proposed that five men should be required to make the signed protest instead of two and that the protest should be made under oath, which was adopted.¹ The second proposed that the protested law go to the Supreme Court for adjudication within thirty days instead of ninety, and that there be inserted "and without delay" regarding the making of the protest, which was adopted.¹

¹J. 351.

Another amendment, adopted, added the provision that if the Supreme Court be not in session it should immediately convene to consider the protested law.¹

There were a number of amendments aimed at the privilege of protest and of referring the law to the courts. The first of these proposed to strike out all in the section pertaining to objection on the part of one member, protest by five, and reference to the Governor and Supreme Court. It was rejected.¹

The next one only proposed to strike out the signed protest by five members and reference to the Governor and Supreme Court. It was rejected.² The next one left provision in the constitution for objection by one member, protest by five, and reference to the Governor, but cut out all reference to the court. It was rejected.²

An amendment was proposed placing the whole costs of the Judicial proceeding in case of protest, in every case, upon the informants.³ It was adopted.

An amendment proposed to insert provision that every bill which the journal does not show affirmatively to have been passed in accordance with the forms prescribed by the Constitution shall be void. This proposal was made undoubtedly in view of court decisions that a bill is

¹J. 351
²J. 352.
³J. 353.

presumed to have been passed in legal manner in absence of indication otherwise in the journal.¹

An amendment was offered to give right of objection and protest to a bill if it is claimed "that the passage thereof has been procured by bribery or corrupt influence", -- which was rejected.²

At this stage the section went to the Committee on Revision. While this committee had it in hand, motion was offered that the committee cut out all provision for reference of a protested law to the courts.³ The motion was declared out of order.⁴

When the section came back from the committee, a motion to reconsider it was adopted.⁵ Then, the motion offered above was offered as an amendment, and the amendment was adopted.⁵ An amendment was made to strike out "in substance and form" as describing the identity of a bill, but was rejected⁶; and another was made to cut out protest by five members, and reference to the Governor. The latter was also rejected.⁶

The last amendment proposed to "strike out" the whole section. It was rejected.⁷ After that, the section was adopted.⁸

¹State ex rel v. Field, 119 Mo. 593.

²J. 354.

³J. 590.

⁴J. 597.

⁵J. 634.

⁶J. 635.

⁷J. 636, 7.

⁸J. 637.

The section, as it stands, presents another instance of the inclusion of statutory matter within the Constitution for regulative purposes. The purpose of the provision for objection and protest and reference to the courts, as it was expressed in the Debates, was "to protect the state against the ill-advised action of a few crooked legislators."¹ Mr. Brockmeyer, Chairman of the Committee on the Legislative Department, cited corrupt acts of past legislatures, passed by trickery in changing the form of bills as they progressed through the two houses, and unconstitutional acts passed that gave special individuals or corporations advantages under the law until test cases could be made in the Supreme Court,

These provisions, however, and especially the one providing for the reference of protested laws to the court before they could go into effect, provoked great antagonism and considerable excitement among certain delegates, whose arguments showed that not every delegate was in sympathy with a conscious movement to divest the legislature of any great number of powers.

Mr. Holliday¹, for instance, labelled any movement as a mistake which distrusted the legislature and assumed "all virtue to lie in the Supreme Court". "There can be no doubt," he said, "that this section is one

¹D. June 29.

coming out of the current distrust of the legislature of the day. If I wanted to give away the legislative power of the state, and to make it a mere thing, I would do it boldly and so abolish the legislature and so do away with it altogether. I would not attempt to cut off its powers by innuendo and insinuations like these." Why not also doubt and safeguard the actions of the Governor, Secretary of State, and those who carry and administer the bill, he asked.

Mr. Norton¹, in his arguments, said "I am not prepared to say that the legislative department of the state government which more closely represents the people than either of the other departments is totally depraved. All corruption is not in that department."

Mr. McCabe² branded the proposal to refer bills to the courts as an "indignity proposed to be inflicted by a recommendation of this Convention upon the supreme and coordinate departments of our government, -- an attempt to take away by constitutional law from the legislative power the right to judge as to whether a fraud has been perpetrated or not." Then he asked, -- "Is the Judicial Department of your state government immeasurably above the legislative power? What is it? What air do they breathe; what meat do they eat which makes them better Judges to pronounce

¹

²D. June 29.

D. June 29, pp. 85-8.

upon a question of fact?"

The above quotations from the arguments of members gives some idea as to the political theory involved in their defense of the legislature as opposed to the courts. No recognition was made of the more professional attitude of the courts, of the greater prestige of its members, built upon long-standing tradition, - in fact, none of the subjective attributes of the courts and of the legislature were compared. A strong plea for the maintenance of the separation of powers doctrine was made by each side of the controversy, by the one to prevent the courts from interfering with a bill of the legislature, and by the other to prevent the legislature's passing a bill, as constitutional, when the courts were the sole body capable of deciding that question.

It is clear to be seen that there was a considerable contingent in the Convention the members of which were unalterably opposed to knowingly cutting down the powers of the legislature with the result of expressly building up the powers of the other departments. Just as large, or a larger group, however, as will be seen later,¹ were set upon a manifest policy of limitation. The Missouri Constitutions of 1865² and 1820³ contained provisions requiring bills to be signed by the Speaker of

¹Below, p.
²Art. IV, Sec. 23.
³Art. III, Sec. 20.

the House and the President of the Senate, as did the Constitutions of fifteen states¹ in 1875. No precedents seem to exist for the further provisions of this section.

Section 38. When the bill has been signed as provided for in the preceding section, it shall be the duty of the Secretary of the Senate, if the bill originated in the Senate, and of the Chief Clerk of the House of Representatives, if the bill originated in the House, to present the same in person, on the same day on which it was signed as aforesaid to the Governor, and enter the fact upon the journal. Every bill presented to the Governor, and returned within ten days to the house in which the same originated, with the approval of the Governor, shall become a law unless in violation of some provision of this constitution.

The section, as reported, was exactly the same as the above except that it read "shall be a law in this state" in the next to the last line. It was changed by amendment. An amendment was rejected to strike out reference to the Secretary of the Senate and Chief Clerk of the House.² One other amendment to strike out "unless it be in violation of some provision of the Constitution", was rejected.²

No parallel sections existed in the Missouri Constitutions of 1865 or 1820 except so far as relates to the ten day period. Thirty-two constitutions in 1875 ordered bills to be presented to the Gover-

¹ Ala. 1867, IV, 15; Fla. 1868, V, 15; Ga. 1868, III, 4(f); Ill. 1870, 13; Ia. 1857, III, 15; Ind. 1851, 25; Minn. 1857, 21; Nev. 1864, IV, 18; Nebr. 1867, II, 20; O. 1851, II, 17; Ore. 1857, IV, 25; Pa. 1873, III, 9; S.C. 1868, II, 21; Tenn. 1870, II, 18; Tex. 1868, III, 24.
² J. 355.

nor.¹ The Constitution of Rhode Island² stated that any law inconsistent with the constitution should be void.

Section 39. Every bill presented as aforesaid, but returned without the approval of the Governor, and with his objections thereto, shall stand as reconsidered in the house to which it is returned. The house shall cause the objections of the Governor to be entered at large upon the journal and proceed, at its convenience, to consider the question pending, which shall be in this form: "Shall the bill pass, the objections of the Governor thereto notwithstanding?" The vote upon this question shall be taken by yeas and nays, and the names entered upon the journal, and if two-thirds of all the members elected to the house vote in the affirmative, the presiding officer of that house shall certify that fact on the roll, attesting the same by his signature, and send the bill, with the objections of the Governor, to the other house, in which like proceedings shall be had in relation thereto; and if the bill receive a like majority of the votes of all the members elected to that house, the vote being taken by yeas and nays, the presiding officer thereof shall in like manner, certify the fact upon the bill. The bill thus certified shall be deposited in the office of the Secretary of State, as an authentic act, and shall become a law in the same manner and with like effect as if it had received the approval of the Governor.

This section was adopted³ in exactly the form presented by the committee.⁴ Two amendments were

¹Ala. 1867, IV, 16; Ark. 1874, IV, 15; Cal. 1849, IV, 17; Conn. 1818, IV, 12; Fla. 1868, V, 27; Ga. 1868, IV, 2(f); Ill. 1870, V, 16; Ind. 1851, V, 14; Ia. 1857, III, 16; Kan. 1859, II, 14; Ky. 1850, III, 22; La. 1868, III, 66; Mass. 1780, I-I, 2; Me. 1820, 2; Md. 1867, II, 17; Mich. 1850, IV, 14; Minn. 1857, IV, 11; Miss. 1868, IV, 24, 25; Nebr. 1867, III, 19; Nev. 1864, IV, 35; N.H. 1792, II, 44, 45; N.J. 1844, V, 7; N.Y. 1846, IV, 9; Ore. 1857, V, 15; Pa. 1873, III, 26; S.C. 1868, III, 22; Tenn. 1870, III, 18; Tex. 1868, III, 25; Vt. 1836, Am. XI; Va. 1870, IV, 8;

²W. Va. 1872, VII, 14; Wis. 1848, V, 10.

³1842, Art. IV, Sec. 1.

⁴J. 356.

J. 303.

proposed and rejected.¹ One proposed to substitute a mere "majority" for "two-thirds" as the necessary number to pass a bill over the governor's veto. The other proposed to require two-thirds of those present in the house, rather than two-thirds of those "elected to that house" to so pass the bill.

Both of these amendments aimed to strengthen the legislature as over and against the Executive Head of the government and make it easier to pass a bill over his veto. Mr. Lay, who offered the former amendment said,² "My own judgment is that the great danger in this country now to the liberties of the people lies in the executive power of the government." Mr. Cotty, who proposed the latter stated as his reason for it his assurance that such was the provision in a large majority of the Constitutions of the United States. He also, was jealous of the Governor's powers in legislation.

For the sake of convenience and coherence, the sections dealing with the veto in Article V on The Executive Department will be dealt with conjointly with this section, as well as the following section, (40), in Article IV.

¹

²J. 356.

D. June 29, p. 39.

Article V, Section 12. The governor shall consider all bills and joint resolutions which having been passed by both houses of the General Assembly, shall be presented to him. He shall, within ten days after the same shall have been presented to him, return to the house in which they respectively originated all such bills and joint resolutions, with his approval endorsed thereon or accompanied by his objections: Provided, That if the General Assembly shall finally adjourn within ten days after such presentation, the Governor may within thirty days thereafter return such bills and resolutions to the office of the Secretary of State, with his approval or the reasons for his disapproval.

The section as introduced by the committee¹, was alike in substance with the above except that the provision for returning the bill to the Secretary of State in case of adjournment of the legislature, was not included, and the material within Section 39 of Article III regarding passage over the veto by a two-thirds vote was included. The section (13) following was not separate but was included within Section 12. An amendment was rejected that twenty days be inserted in place of thirty days.² A motion was carried to refer these sections to the joint action of the Committees on Executive and Ministerial Departments of the State Government and on the Legislative Department, with the view of separating the sections for distribution under their appropriate heads.² By the authority of these committees the division as it now occurs in the Constitution was made.³

¹J. 127.

²J. 212.

³J. 230.

By amendment the provision for returning bills to the Secretary of State was added.¹ Likewise "General Assembly" was substituted for "Legislature".¹ In that amended form the section was adopted.¹ Section 13, which was split off from it² follows:--

Article V, Section 13. If any bill presented to the Governor contains several items of appropriation of money he may object to one or more items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the appropriations so objected to shall not take effect. If the General Assembly be in session he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If it be not in session, then he shall transmit the same within thirty days to the office of the Secretary of State, with his approval or reasons for disapproval.

This section was adopted in the form recommended by the Joint Committee, without proposal to change.¹

Article V, Section 14. Every resolution to which the concurrence of the Senate and House of Representatives may be necessary, except on questions of adjournment, of going into joint session, and of amending this constitution, shall be presented to the Governor and before the same shall take effect, shall be proceeded upon in the same manner as in case of a bill; Provided, that no resolution shall have the effect to repeal, extend, alter, or amend any law.

This section was adopted¹ as recommended² by the Joint Committee, without proposal to change.

¹J. 241.
²J. 230.

The Constitution of 1865 contained a veto provision,¹ but it allowed a majority in each house to pass the bill over the Governor's disapproval. It was provided that ten days be allowed the Governor to return the bill, at the end of which time, if the Governor had not returned it, it should become a law, unless the legislature had adjourned, in which case it should not become a law unless the Governor signed it within the ten day period. The Constitution of 1820 contained the same provisions² except the clause empowering the Governor to sign the bill after the legislature had adjourned. All concurrent resolutions except on the question of adjournment were subject to the approval or veto of the Governor.³ The Committee on the Executive and Ministerial departments of the State Government in presenting the sections relating to the veto explained that "conceding the veto power a proper one to vest in the Governor," the "two-thirds" provision was inserted in place of the "majority" obtaining in the Constitution of 1865, "to make the veto effectual", and that there was no division among the members of the committee on that point.⁴

¹Art. V, Section 9.

²Art. IV, Section 10.

³Art. IV, Section 11.

⁴D. May 21, p. 4.

It also stated that the provision giving the Governor power to veto one or more items in appropriation bills was intended to avoid "sticking improper items into appropriation bills". "It has come to be a common practice," the committee said, "in the legislature, to stop the wheels of government and keep back the pay of members by putting in a bill items which the Governor cannot approve in all respects, but is compelled to approve, thus carrying the bad with the good."¹

It was explained that the prevention of joint resolutions from reenacting or extending a law was new.¹

Considerable argument was advanced for increasing the power of the Governor in this matter. In opposition to the amendment allowing only twenty instead of thirty days for the Governor to return bills after adjournment, which was rejected, it was said that the Governor of New York had been busy day and night since the adjournment of the legislature considering bills left for his consideration. The Governor of New York had thirty days in which to return bills after adjournment. Under the Missouri Constitution the Governor would have additional work in vetoing separate items. He should have the longest time compatible with dispatch.²

¹D. May 21, p. 5.

²D. June 12, p. 20.

It was said that previous constitutions did not all require the Governor to act in ten days time upon bills. He was sworn by oath to obey the constitution and hence to return the bills. It was thought that that was restriction enough.¹

In discussing the veto, however, the question was raised as to what would happen if the Governor "pocketed" a bill while the legislature was in session, and did not return it in ten days. One view taken was that he had taken an oath to support the Constitution, and in so breaking it would be subject to impeachment by the legislature. The other was that he vetoed the measure by pocketing it, without giving the legislature a chance to pass it over his disapproval, and hence that he had an absolute veto in the case.² Mr. Johnson added, "In all constitutions that I have examined there is a provision that if the Governor pockets a bill while the legislature is in session and retains it ten days it becomes a law, and he cannot defeat the will of the legislature."³

As a result of this consideration, when the Committee on the Legislative Department reported later, it recommended the section following:⁴--

¹D. June 12, p. 48.

²D. June 12, p. 50.

³D. June 12, p. 52.

⁴J. 303.

Section 40. Whenever the Governor shall fail to perform his duty as prescribed in section 12, Article V of this Constitution, in relation to any bill presented to him for his approval, the General Assembly may, by joint resolution, reciting the fact of such failure and the bill at length, direct the Secretary of State to enroll the same as an authentic act, in the archives of the State, and such enrollment shall have the same effect as an approval by the Governor: Provided that such joint resolution shall not be submitted to the Governor for his approval.

This section was adopted without debate or change, except in formal wording.¹

As regards other constitutions in 1875, thirty-two included the veto.² Among these, enrollment of the Governor's objections on the journals, voting by yeas and nays, and such minor provisions were practically universal.³ All constitutions⁴ but eight⁵ applied the veto to "all bills and resolutions". These eight applied it to "all bills". Ten constitutions had separate sections assigning veto power to all concurrent resolutions, except in case of resolution to adjourn.⁶

Every constitution containing veto provisions gave the legislature power to pass a bill over the veto,--

¹

²J. 356.

³Those without it--Del.1831; Ohio 1851; N.C.1868; R.I.1842.

⁴Tennessee did not have the former.

⁵For section reference to these constitutions see f. p.

Cal.1849,IV,17; Fla.1868,V,27; Ga.1868,IV,2(f); Ky.1850,III,22; Minn.1857,IV,11; Miss.1868,IV,24; Tenn.1870,III,18; W. Va. 1872, VII, 14.

⁶Ala.1867,IV,16; Ky.1850,III,22; La.1868,III,66; Me.1820,IV,2; Mich.1850,IV,17; Miss.1868,IV,25; N.H.1792,II,45; Pa.1873,IV,26; Tenn.1870,III,18; Tex.1868,III,25.

nine¹ by a majority of the "members" or "members elected" to each house, sixteen² by a two-thirds majority of the members or members elected, six³ by a two-thirds majority of the "members present", and one⁴ by a three-fifths majority of the members elected to each house. Each constitution also set a time limit upon the Governor's returning the bill, the bill becoming a law in case he did not return it by the end of the time. The limit was ten days in three states⁵, ten days (Sundays excepted) in four⁶, five days in three⁷, five days (Sundays excepted) in thirteen⁸, three days (Sundays excepted) in eight⁹,

¹Ala. 1867, IV, 16; Ark. 1874, VI, 15; Conn. 1818, IV, 12; Ind. 1851, V, 14; Ky. 1850, III, 22; N. J. 1844, V, 7; Tenn. 1870, III, 18;

²Vt. 1793, Am. XI; W. Va. 1872, VII, 14.

³Cal. 1849, IV, 17; Fla. 1868, B, 27; Ga. 1868, IV, 2(f); Ill. 1870, IV, 16; Ia. 1851, III, 16; Kan. 1859, II, 14; La. 1868, III, 66; Mich. 1850, IV, 4; Miss. 1868, IV, 24; Nev. 1864, IV, 35; N. H. 1792, II, 44, 45; N. Y. 1846, IV, 9; Pa. 1873, IV, 15; S. C. 1868, III, 22; Tex. 1868, III, 25; Va. 1870, IX, 8.

⁴Mass. 1788, I, 1, 2; Me. 1820, IV, 2; Minn. 1857, IV, 11; Nebr. 1867, III, 19; Ore. 1857, V, 15; Wis. 1848, V, 10.

⁵Md. 1867, II, 17.

⁶Ky. 1850, III, 22; Pa. 1873, IV, 15; Va. 1870, IV, 8.

⁷Cal. 1849, IV, 17; Ill. 1870, IV, 16; Mich. 1850, IV, 4;

⁸N. Y. 1846, IV, 9.

⁹Ga. 1868, IV, 2 (f); W. Va. 1872, VII, 14; Mass. 1820, I, 1, 2.

¹⁰Ala. 1867, IV, 16; Ark. 1874, VI, 15; Fla. 1868, V, 27; La. 1868, III, 66; Me. 1820, IV, 2; Miss. 1868, IV, 24; Nev. 1864, IV, 35; N. H. 1792, II, 44, 45; N. J. 1844, V, 7; Ore. 1857, V, 15; Tenn. 1870, III, 18; Tex. 1868, III, 25; Vt. 1793, Am. XI.

¹¹Conn. 1818, IV, 12; Ind. 1851, V, 14; Ia. 1857, III, 16; Kan. 1859, II, 14; Minn. 1857, IV, 11; Nebr. 1867, III, 19; S. C. 1868, III, 22; Wis. 1848, V, 10.

and six days (Sundays excepted) in one.¹

In case the legislature had adjourned, however, twelve states provided that the bill should not be a law if he had not returned it.² Seven provided the same except that the Governor had means at his disposal to make it become a law in the case. Of these, three provided for its deposit, with approval, with the Secretary of State in thirty days³, one for the same in five days⁴, one in three days⁵, one for his sending it back within three days after the opening of the next session⁶, and one the same in two days.⁷

Three states provided that if the legislature had adjourned the bill should be a law.⁸ Nine provided the same, except that the Governor still possessed means of nullifying it. He might lay the bill, with his objections before the Assembly within one⁹, or three¹⁰, days after the opening of its next session, or he might file the same with the Secretary of State five¹¹, ten¹²,

¹Md. 1867, II, 17.

²Ala. 1867, IV, 16; Cal. 1849, IV, 17; Conn. 1818, IV, 12; Ga. 1868, IV, 2(f); Kan. 1859, II, 14; Md. 1867, II, 17; Nebr. 1867, III, 19; N.H. 1792, II, 44; N.J. 1844, V, 7; Tenn. 1870, IV, 18;

³Vt. 1793, Am. XI; Va. 1870, IV, 8.

⁴Ia. 1857, III, 16; Pa. 1873, IV, 15; N.Y. 1846, IV, 9.

⁵Mich. 1850, IV, 4.

⁶Minn. 1857, IV, 11.

⁷Ky. 1850, III, 22.

⁸S. C. 1868, III, 22.

⁹Ill. 1870, IV, 16; Tex. 1868, III, 25; Wis. 1848, V, 10.

¹⁰La. 1868, III, 66.

¹¹Me. 1820, IV, 22; Miss. 1868, IV, 24.

¹²Ore. 1857, V, 15; W. Va. 1872, VII, 14; Ind. 1851, V, 14.

Nev. 1864, IV, 35; Fla. 1868, V, 27.

or twenty¹ days after the adjournment, in which case the Secretary would refer the bill to the reconsideration of the next Assembly.

Seven constitutions gave the Governor power to veto separate items in appropriation bills.²

The veto provisions in the Missouri Constitution were copied from the constitution of 1865, with the exception of the "two-thirds" vote, veto of individual items, and the "no resolution altering laws" provision. Each of these new provisions detracted from the powers of the legislature. Georgia, New York, and Tennessee held them most in common. Under the provisions regarding the veto more powers were given the Governor as over and against the legislature in Missouri than obtained in the majority of constitutions in 1875. A longer time was allowed for the Governor to consider bills, both during and after sessions than in most states; in only a few states did the veto apply to concurrent resolutions, as in Missouri; the two-thirds majority provision was the largest majority required to pass over a veto, ~~except for three fifths in the case of Maryland.~~ No other state constitution possessed the clause that no resolution should have the effect to extend, amend, alter, or repeal

¹Ark. 1874, VI, 15.

²Ark. 1874, VI, 17; Ga. 1868, IV, 2 (f); N. J. 1844, V, 7; N. Y. 1846, IV, 9; Tex. 1868, III, 25; W. Va. 1872, II, 14; Pa. 1873, IV, 16.

any law.

Section 41. Within five years after the adoption of this constitution, all the statute laws of a general nature, both civil and criminal, shall be revised, digested and promulgated in such manner as the General Assembly shall direct and a like revision, digest and promulgation shall be made at the expiration of every subsequent period of ten years.

This section was not reported by any committee, but was proposed as a new section and adopted,¹ during the discussion of the division on the "Limitation of Legislative Powers".² Because it was considered by the Committee on Revision that this section related closer to "Legislative Proceedings" than "Limitations on Legislative Power" it was placed under that heading.³

One resolution was proposed, before the new section was proposed and adopted that the Governor, with the consent of the Senate, at the first session of the legislature, and every ten years thereafter, appoint three skilled persons to revise and codify the statute laws of this state.⁴

No similar section existed in the Missouri Constitution of 1865. The Constitution of Missouri of 1820⁵ and the Alabama constitution in force in 1875⁶

¹

²J. 369.

³Dealt with in Chap. V. of this paper.

⁴J. 625.

⁵J. 112.

⁶Art. III, Sec. 35.

1867, Art. IV, Sec. 27.

contained identically the same section.

Section 42. Each house shall, from time to time, publish a journal of its proceedings, and the yeas and nays on any question shall be taken and entered on the journal at the motion of any two members. Whenever the yeas and nays are demanded, the whole list of members shall be called, and the names of the absentees shall be noted and published in the journal.

This section was adopted¹, without discussion, as presented by the committee.² The Constitution of 1865 contained the same provision, with the added clause that such parts of the journal as in the opinion of the house required secrecy might not be printed.³ The Constitution of 1820 contained the same provision as that of 1865. All of the other state constitutions in 1875, provided for a journal in each house. Thirty-one provided for its publication, of which eighteen⁴ provided for its entire and automatic publication, twelve⁵ for all except those parts in the opinion of the house, or "for the welfare of the state", which required secrecy, and one⁶ for its

¹J. 356.

²J. 304.

³Art. IV, Sec. 20.

⁴Cal. 1849, IV, 11; Fla. 1868, V, 16; Ga. 1868, III, 4(d); Ia. 1857, III, 9; Ind. 1851, IV, 12; Ky. 1850, II, 22; La. 1868, II, 36; Md. 1867, III, 22; Minn. 1857, IV, 5; Nebr. 1867, II, 11; Nev. 1864, IV, 14; N.H. 1792, 23; N.J. 1844, IV, 4; N.C. 1868, II, 18; O. 1851, II, 9; Tex. 1868, III, 17; Va. 1870, V, 10; W. Va. 1872, VI, 41.

⁵Ala. 1867, IV, 10; Ark. 1874, V, 12; Conn. 1818, III, 9; Del. 1831, II, 8; Me. 1820, IV, 5; Mich. 1850, IV, 16; Miss. 1868, IV, 14; N. Y. 1846, III, 11; Pa. 1873, II, 12; S.C. 1868, II, 26; Tenn. 1870, II, 21; Wis. 1848, IV, 10.

⁶Vt. 1793, II, 9.

publication when one-third of the members of the house should think it necessary. Different numbers of members or proportions of the members present were required in the different constitutions to authorize recording the yeas and nays upon the journal. In two, the number was one¹, in seven, two², in four, three³, in one, three in the Senate and five in the House⁴, in four, five⁵. In eight the proportion was one-fifth⁶, in one, one-sixth⁷, in three, one-tenth⁸.

¹Del., N. H. (Section references above).

²Ind., Ky., La., O., Ore., Pa., S. C.

³Cal., Fla., Nev., Tex.

⁴Nebr.

⁵Md., Tenn., Vt., Ark.

⁶Conn., Ga., Me., Mich., N. J., N. C. II, 28, R. I., Va.

⁷Wis. IV, 20.

⁸Ala., Miss., W. Va.

CHAPTER V

Article IV -- The Legislative Department

(C) Limitation on Legislative Power

Numerous sections within the legislative article of the Constitution of 1875 have already been mentioned in this paper as placing limits upon the powers of the legislature that had not existed in Missouri Constitutions previously. In some instances the avowed intention to so limit those powers has been quoted in the words of the members of the Convention. It remains, however, to consider a whole group of sections, the purpose of which is not merely incidentally concerned with reducing the legislative prerogative, but whose sole "raison d'etre" is to accomplish that end.

The framers of the present Missouri Constitution exceeded the customary practice of their day in restricting the powers and operations of the legislative branch of the state government. From the sections that have been discussed previously in this paper evidence has been furnished that the present Missouri Constitution departs decidedly from previous Missouri Constitutional Documents by adding numerous limitations that did not exist in the latter. These limitations are always as

strict as were found in any of the state constitutions of 1875, are often more strict, and sometimes set up restrictions which, in 1875, were entirely new to State Constitutional law.

None of the other constitutions in 1875 contained a separate division called "Limitation on Legislative Power". Some of the sections under this division were scattered through them. But no state constitution announced in any open way the recognition of any such purpose in constitution making as limiting the powers of the legislature. The members of the Missouri Convention, however, were so absorbed with this purpose that they formulated a whole group of mostly new restrictions and labelled them "Limitations on Legislative Power".

So great was their zeal in this connection that many members presented resolutions proposing limitations that were found by the Committees later to be impossible. Two sections so iron-clad that in later years they had to be amended to allow for exceptions,¹ were adopted.

Several members desired to go farther than set up a group of restrictions and to expressly change the accepted rule as to the powers of the legislature. Under

¹Sections 45 and 47.

the prevailing interpretation in every state the legislative branch of the state government possessed all those powers not denied it expressly by the constitution or not granted to another department and so denied it by the Article on the Separation of Powers. This rule was, of course, supported by the enumeration of limitations, or of those powers forbidden the legislature by the constitution, rather than those granted thereby. Several members of the Convention desired the insertion of a clause in the Bill of Rights supplementing the one which stated that all powers lay with the people, with the provision that the legislature should only possess those powers expressly granted to it by the constitution. A resolution to that end was proposed in the Convention and referred to the Committee on Bill of Rights.¹

The arguments of the members on the proposal disclose a large amount of distrust of the legislative branch that had grown up. Mr. Todd, in favoring the measure said, "It seems to me that every one who has watched the legislation of this country 'by and large' during the last fifteen or twenty years by the states must have observed that the practice of special legislation has become more and more general until it has become

¹J. 76.

a terror to the country. Whenever the legislature of a state sits the people are in terror until it rises, for they don't know what they may do. Whenever even Congress sits under what is universally admitted as an express grant of power, the country is in terror, absolutely in terror, until it rises, on account of the practices of usurpation to which it has gradually become addicted during the last fifteen or sixteen years. Now to secure ourselves against that, in order that the people may know what their agents can't do as well as what they can, why trust to them any more power than you would to an agent in any other service concerning your vital interests. It is certain that it would be a most foolhardy thing to give another a universal power of attorney over his affairs."¹

Similarly, Mr. Lacland said, "The Judiciary and the Executive are never known to usurp. But who can say that he has never known a similar fault to be perpetrated by the General Assembly? Who can take a single volume of the session acts and not point to many such usurpations? It is suggested that if we confine the power of the government that we create too much, the government will not work -- but was such a thing ever heard of, especially on this side of the Atlantic? Mr. Chairman, I believe there is a world of wisdom in the old maxim that the world

¹D. May 19, p. 41.

is governed too much, and that there is hardly any evil which is greater than the perpetual intermeddling with private interest by means of laws which are enacted for the supposed promotion of public good. Everything of that kind I hope will be doubly difficult after this Constitution is adopted, and doubly difficult by the light of the rule of interpretation which we supply."¹

On the other hand, there were those that felt as did Mr. Holliday, when he said, "How can the government of the great State of Missouri be carried on without conferring vested powers upon its legislature, executive, and judicial departments? Why, sir, if it comes to this, that we are afraid to trust our representatives in power, then we are not fit to have a constitution as a free people. I hope the provision will not prevail."²

The argument against the proposal as well as against excessive limitation took the turn that the government of the state would be clogged and hampered by the necessity of an express grant of every power, or by excessive limitations. We have the system of checks and balances to check injurious legislation. The courts can best interpret the power of the legislature and hold it in leash in cases where it attempts to overstep its power. The constitution makers could not hope to foresee

¹D. May 19, p. 80.

²D. May 19, p. 78.

every contingency and provide for it in advance.

The proposal referred to was not adopted, but extensive limitations were made upon legislative power, especially in the field of special and financial legislation. The reasons for these particular provisions dated back to specific abuses which had been current in those fields under the Constitutions of 1820 and 1865.

The experience of the State in the lending of credit to railways between 1851 and 1860 and the subsequent difficulties arising from the debt so created has been notable.¹ At the beginning of the era of railroad building in Missouri the policy was adopted of issuing State bonds to railroad companies within the State, first on the basis of one dollar for every dollar raised by private means, and later on the basis of two to one. The reasons for State aid were, besides the general desire for state improvement, the more specific reason that private capital in Missouri was insufficient to build the roads. The State loaned very extensively. At the same time, the railroads, through the newness and complexity of their problem, resulting in poor management and financial stress, found it harder and harder to pay even the interest on their indebtedness to the State. In turn, the State, as early as 1855 found it next to impossible to secure loans

¹ The discussion following on Missouri's experience was derived from:- Million, J. W., State Aid to Railways in Missouri.

for governmental purposes because of its unpromising financial relationship to the railroads.

At the outbreak of the Civil War, both the railroad companies and the State had failed to pay the interest on the State bonds and "revenue bonds" were issued to secure funds to pay the interest on the railroad bonds. At this time the roads defaulted in favor of the first lien held on their property by the State. On January 1, 1867, the total indebtedness of the State on the railroads was \$ 31,735,840, or over \$35,000 per mile. Only \$6,131,496 was later realized from the sale of the railroads, so that the total net burden upon the State was \$ 25,604,344. This debt remained for fully half a century after the first aid to the railroads was extended.

Georgia, Tennessee, Virginia, South Carolina, North Carolina, Louisiana, Kentucky, Alabama, Arkansas, Texas, Florida, and Illinois, all had similar experiences, of which only Georgia and Illinois were able to retain any permanent lien upon the railroads or their profits. This experience, in itself, was sufficient to furnish stimulus for the framing of the most rigid restrictions upon the financial powers of the legislature.

There are only two sections in this division dealing with matters not expressly financial or not concerned with special and local legislation, namely,--

the one limiting legislative power in special sessions, and the one forbidding the removal of the State Capital from Jefferson City.

Section 43. All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury, and the General Assembly shall have no power to divert the same, or to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law. All appropriations of money by the successive General Assemblies shall be made in the following order:

First, For the payment of all interest upon the bonded debt of the state that may become due during the term for which each General Assembly is elected.

Second, For the benefit of the sinking fund, which shall not be less annually than two hundred and fifty thousand dollars.

Third, For free public school purposes.

Fourth, For the payment of the cost of assessing and collecting the revenue.

Fifth, For the payment of the civil list.

Sixth, For the support of the eleemosynary institutions of the State.

Seventh, For the pay of the General Assembly and such other purposes not herein prohibited as it may deem necessary; but no General Assembly shall have power to make any appropriation of money for any purpose whatsoever, until the respective sums necessary for the purposes in this section specified have been set apart and appropriated, or to give priority in its action to a succeeding over a preceding item as above enumerated.

This section as reported by the Committee on the Legislative Department¹ was exactly like the above in major provisions. The wording was changed slightly by amendment.² The original provision that not less than five per cent of the revenue should constitute the sinking

¹J. 304.

²J. 424.

fund was amended by substituting the definite sum of two hundred and fifty thousand dollars.¹ Ten and fifteen per cent were suggested as the proportion of the total appropriation to go to public schools, but no percentage regulation was adopted² in this part of the Constitution. "Public school purposes", was qualified by "Free".¹ A proposal to add "and educational" after "eleemosynary" under the sixth heading was rejected.¹

The Debates show very little discussion of this section, despite the fact that it was new to anything that was included in the Constitution of 1865. The advisability of the amendments proposed was discussed, but the policy of the section as a whole was generally accepted by the members of the Convention. There was no similar section in the Constitution of 1820.

Of the other state constitutions in 1875, twenty contained express provisions to the effect that no money could be drawn from the treasury, but in pursuance of an appropriation made by law.³

The provisions that all state revenues should go into the state treasury and that the General Assembly

¹J. 515.

²J. 424.

³Ala. 1867, IV, 31; Ark. 1874, V, 29; Cal. 1849, IV, 23; Del. 1818, II, 15; Fla. 1868, V, 16; Ga. 1868, III, 6(a); Ill. 1870, IV, 17; O. 1851, II, 22; Ia. 1857, III, 24; Kan. 1859, II, 24; Md. 1867, III, 32; Minn. 1857, 12; Miss. 1868, IV, 26; Nebr. 1867, II, 30; Nev. 1864, IV, 19; N. J. 1844, 2; Pa. 1873, III, 16; S. C. 1868, II, 22; Tenn. 1870, II, 24; Vt. 1793, II, 17.

could not divert them had no counterpart in other constitutions. Neither was there a section defining the order of appropriations. The Constitution of Pennsylvania¹ stated that the General Appropriation Bill should contain provision for the expenses of the legislative, executive, and judicial departments; for the interest on the public debt, and for the upkeep of public schools. All other appropriations were to be made by separate bills. The Arkansas Constitution had a section somewhat similar to this², which prescribed that the general appropriation bill should embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the state, and that all other appropriations should be made by separate bills, each embracing one subject. The Kentucky Constitution,³ forbade the legislature to pass laws diminishing the resources of the sinking fund, and required the fund to be set aside regularly year after year.

The placing of the provision for the pay of members of the legislature last on the list in Missouri was undoubtedly recognized as a means of assuring that those subjects mentioned previously would be provided for.

¹1873, Art. III, Sec. 15.

²1874, Art. V, Sec. 30.

³1850, Art. II, Sec. 34.

Section 44. The General Assembly shall have no power to contract or to authorize the contracting of any debt or liability on behalf of the State, or to issue bonds or other evidences of indebtedness thereof, except in the following cases:

First, In renewal of existing bonds, when they cannot be paid at maturity, out of the sinking fund or other resources.

Second, On the occurring of an unforeseen emergency, or casual deficiency of the revenue, when the temporary liability incurred, upon the recommendation of the Governor, first had, shall not exceed the sum of two hundred and fifty thousand dollars for any one year, to be paid in not more than two years from and after its creation.

Third, On the occurring of any unforeseen emergency, or casual deficiency of the revenue, when the temporary liability incurred or to be incurred shall exceed the sum of two hundred and fifty thousand dollars for any one year, the General Assembly may submit an act providing for the loan, or for the contracting of the liability, and containing a provision for levying a tax sufficient to pay the interest and principal when they become due (the latter in not more than thirteen years from the date of its creation), to the qualified voters of the State, and when the act so submitted shall have been ratified by a two-thirds majority, at an election held for that purpose, due publication having been made of the provisions of the act for at least three months before such election, the act thus ratified shall be irrevocable until the debt thereby incurred shall be paid, principal and interest.

The section as reported by the Committee¹ contained substantially the same material with some difference in detail, which was changed by amendment. In subdivision three the act was to be submitted to the "taxpayers" instead of "qualified voters".² Several changes in wording were made which did not affect the

¹J. 306.

²J. 357, 358.

meaning of the section.¹ A number of amendments were offered which were rejected. One of these proposed "In time of war or public calamity or" to be prefixed to the second subdivision.² Another proposed to strike out the clause under subdivision three referring the making of a debt to the people.³ Another proposed that the creation of the debt be referred to the "adult taxpayers residing in the state", to which another added "and no one shall be compelled to pay any part of said tax who voted against the law".⁴ Different minimum sums of emergency liability were offered for subdivision three,- namely, four hundred thousand dollars, five hundred thousand dollars, one million dollars, and five million dollars.⁵

From the Debates we find that the first amendment was rejected because it was considered that the state had no power to carry on war or support it by money.⁶ The change from "taxpayers" to "qualified voters" was made because "This is not strictly a taxpayers government" and the two-thirds majority required was sufficiently salutary.⁶ Mr. Priest expressed the sentiment of those of the other opinion by saying "Universal manhood suffrage is good

¹J. 359.

²J. 357.

³J. 359.

⁴J. 360.

⁵J. 366.

⁶D. June 29.

except in taxation. I deny the right of any man to vote a tax upon another against his will."¹ To exclude women, and children who were taxpayers the wording "qualified voters who are taxpayers" was proposed.¹ The wording "adult taxpayers" in another amendment was intended to include women.¹ The proposal of so many various amounts of emergency debt allowable was the result of a casting around to find the proper sum that might be considered enough of an emergency to require a vote of the people.

An amendment to the Missouri Constitution of 1820, ratified in 1859 provided that the public debt of the state should never exceed thirty million dollars, and that the legislature should have no power to create any state liability beyond that amount, except to repel invasion, or to suppress insurrection or civil war.²

Among the other state constitutions checking creation of debt, five fixed limits beyond which debts caused by ordinary deficits could not be made,³ six admitted of extraordinary debts for military defense in case of invasion, insurrection, or rebellion,⁴ five provided for the submitting of debts over a certain

¹D. June 29.

²Poore: Fed. and St. Consts., p. 1123.

³Ky. 1850, II, 35, \$500,000; Nebr. 1867, II, 32, \$50,000; N. J. 1844 II, 4, \$100,000; Ill. 1870, IV, 18, \$250,000; R. I. 1842, IV, 13, \$50,000.

⁴Ala. 1867, IV, 32; Ill. 1870, IV, 18; Ky. 1870, II, 35; Nebr. 1867, II, 32; N. J. 1844, II, 4; R. I. 1842, IV, 13.

limit to the voters to be voted upon at a general election,¹ and two made it necessary for a taxing law raising taxes sufficient to liquidate the debt within a prescribed period of years to accompany the law making the debt.²

Section 45. The General Assembly shall have no power to give or to lend or to authorize the giving or lending of the credit of the State in aiding of or to any person, association or corporation, whether municipal or other, or to pledge the credit of the state in any manner whatsoever for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever:

This section was accepted³ without proposal to change, as reported by the committee.⁴ A similar section existed in the Constitution of 1865,⁵ but none in that of 1820. Similar sections likewise existed in 1875 in the Constitutions of Illinois,⁶ Kentucky,⁷ Maryland,⁸ New Jersey,⁹ New York,¹⁰ and Tennessee.¹¹

Section 46. The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: Provided, That this shall not be so construed as to prevent the grant of aid in a case of public calamity.

¹ Ill. 1870, IV, 18, \$250,000; Ky. 1870, II, 36, \$500,000; Nebr. 1867, II, 32, \$50,000; N. J. 1844, II, 4, \$100,000; R. I. 1842, IV, 13, \$50,000.

² Md. 1867, III, 34; N. J. 1844, II, 4.

³ J. 305.

⁴ J. 367.

⁵ Art. XI, Sec. 13.

⁶ 1870, Art. IV, Sec. 20.

⁷ 1850, Art. II, Sec. 33.

⁸ 1867, Art. III, Sec. 34.

⁹ 1844, Art. II, Sec. 3.

¹⁰ 1846, Art. VII, Sec. 10 - (Amendment).

¹¹ 1870, Art. II, Sec. 31.

The section reported by the committee¹ contained the additional proviso that grants in aid of eleemosynary institutions should not be construed as prohibited. This was stricken out by amendment.² Amendments to allow grants to educational institutions and to strike out all provisions whatever were rejected.²

No similar sections existed in the Constitutions of 1865 or 1820. The Constitution of Georgia, alone, contained a similar section, except that by a two-thirds vote in each house a grant might be made, provided that by no vote should aid to a sectarian corporation or association be given.³

Section 47. The General Assembly shall have no power to authorize any county, city, town or township, or other political corporation or subdivision of the state now existing, or that may be hereafter established, to lend its credit, or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company.

Previous to the report of the Committee on the Legislative Department a resolution was proposed that the counties be forbidden the power to lend their credit or to grant money.⁴ The committee reported⁵ identically

¹J. 305.

²J. 367.

³1868, Art. III, Sec. 6 (b).

⁴J. 61.

⁵J. 305.

the section as accepted.¹

An amendment, changing the form to a prohibition upon towns, cities, counties and townships to lend their credit, or make grants rather than upon the legislature to authorize these subdivisions to do such was rejected,² because it was considered such wording did not fit in under express limitations upon the legislative power.³

The Missouri Constitution of 1865 possessed a section⁴ which provided for local option in the matter of lending credit and privilege to lend or grant on favorable two-thirds majority vote within the locality. No similar section existed in the Constitution of 1820. The Constitution of Tennessee contained a similar section, prohibiting counties, cities, and towns to give their credit except upon a three-fourths vote of the qualified electors of such units.⁵

Section 48. The General Assembly shall have no power to grant, or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract has been entered into and performed in whole and in part, nor pay nor authorize the payment of any claim hereafter created against the state, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements and contracts shall be null and void.

¹J. 368.

²J. 368.

³D. June 30.

⁴Art. XI, Sec. 14.

⁵1870, Art. II, Sec. 29.

The section was adopted¹ exactly as recommended² by the committee, without debate. No similar sections were present in previous Missouri Constitutions. They existed, however, in twelve contemporary constitutions,³ in three of which extra compensation might be granted on a two-thirds vote of both houses of the legislature.⁴

Section 49. The General Assembly shall have no power hereafter to subscribe or authorize the subscription of stock on behalf of the state, in any corporation or association, except for the purpose of securing loans heretofore extended to certain railroad corporations by the state.

The report of the committee on this section⁵ was accepted without offer to amend.⁶ The section is identical in meaning with a part of a section in the Constitution of 1865.⁷ No precedents were existent in the Constitution of 1820 or in the other state constitutions in force in 1875.

Section 50. The General Assembly shall have no power to release or alienate the lien held by the state upon any railroad, or in anywise change the tenor

¹J. 368.

²J. 306.

³Ark. 1874, V, 27; Ill. 1870, IV, 19; Ia. 1857, III, 31; Md. 1867, III, 35; Mich. 1850, IV, 21; Nebr. 1867, II, 24; Nev. 1864, IV, 28; N.Y. 1846, III, 24; O. 1851, II, 29; Pa. 1873, III, 11; W.Va. 1872, VI, 38; Wis. 1848, IV, 26.

⁴Ark. 1874, V, 27; Ia. 1857, III, 31; O. 1851, II, 29.

⁵J. 306.

⁶J. 368.

⁷Art. XI, Sec. 13.

or meaning, or pass any act explanatory thereof; but the same shall be enforced in accordance with the original terms upon which it was acquired.

This section was adopted¹ as recommended by the committee² without any proposal for alteration. It had a counterpart in the Constitution of 1865³ but none in that of 1820. The 1865 provision was not nearly so explicit; it simply stated that "The General Assembly shall have no power, for any purpose whatever, to release the lien held by the state upon any railroad." Similar provisions existed in the constitutions of Arkansas⁴ and Pennsylvania,⁵ while the Minnesota Constitution stated that a majority vote of the electors of the state was necessary to alter a state lien upon railroads.⁶

Section 51. The General Assembly shall have no power to release or extinguish, or authorize the releasing or extinguishing in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to this state, or to any county or other municipal corporation therein.

This section was not subjected to any revision⁷ after it was recommended by the committee.⁸ No similar sections existed in previous Missouri Constitutions.

¹J. 368.

²J. 306.

³Art. XI, Sec. 15.

⁴1874, Art. V, Sec. 33.

⁵1873, Art. III, Sec. 24.

⁶1857, Art. IV, Sec. 32 (a)

⁷J. 368.

⁸J. 306.

A single counterpart existed in the constitution of Illinois.¹

Section 52. The General Assembly shall have no power to make any appropriations of money, or to issue any bonds or other evidences of indebtedness for the payment, or on account or in recognition of any claims audited or that may hereafter be audited by virtue of an act entitled "An act to audit and adjust the war debt of this state," approved March 19, 1874, or any act of a similar nature, until after the claims so audited shall have been presented to and paid by the Government of the United States to the State of Missouri.

This section was adopted² without proposal to change from the form in which the committee reported it.³ The report of the committee was preceded by two resolutions⁴ containing practically the same substance as the section reported. No precedents existed in previous Missouri or other contemporary constitutions.

Section 53. The General Assembly shall not pass any local or special law:

(1) Authorizing the creation, extension or impairing of liens:

(2) Regulating the affairs of counties, cities, townships, wards or school districts:

(3) Changing the names of persons or places:

(4) Changing the venue in civil or criminal cases:

(5) Authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys:

(6) Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between

¹ 1870. Art. IV, Sec. 23.

² J. 369.

³ J. 306.

⁴ J. 61 and 72.

this and any other State:

(7) Vacating roads, town plats, streets or alleys:

(8) Relating to cemeteries, grave-yards or public grounds not of the State:

(9) Authorizing the adoption or legitimation of children:

(10) Locating or changing county seats:

(11) Incorporating cities, towns or villages, or changing their charters:

(12) For the opening and conducting of elections, or fixing or changing the places of voting:

(13) Granting divorces:

(14) Erecting new townships, or changing township lines, or the lines of school districts:

(15) Creating offices, or prescribing the powers and duties of officers in counties, cities, townships, election or school districts:

(16) Changing the law of descent or succession:

(17) Regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate:

(18) Regulating the fees or extending the powers and duties of aldermen, justices of the peace, magistrates or constables:

(19) Regulating the management of public schools, the building or repairing of school-houses, and the raising of money for such purposes:

(20) Fixing the rate of interest:

(21) Affecting the estates of minors or persons under disability:

(22) Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury:

(23) Exempting property from taxation:

(24) Regulating labor, trade, mining or manufacturing:

(25) Creating corporations, or amending, renewing, extending or explaining the charter thereof:

(26) Granting to any corporation, association or individual any special or exclusive right, privilege or immunity, or to any corporation, association or individual the right to lay down a railroad track:

(27) Declaring any named person of age:

(28) Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of their

duties, or their securities from liability:

(29) Giving effect to informal or invalid wills or deeds:

(30) Summoning or empaneling grand or petit juries:

(31) For limitation of civil actions:

(32) Legalizing the unauthorized or invalid acts of any officer or agent of the State, or of any county or municipality thereof. In all other cases where a general law can be made applicable, no local or special law shall be enacted; and whether a general law could have been made applicable in any case is hereby declared a judicial question, and as such shall be judicially determined, without regard to any legislative assertion on that subject.

(33) Nor shall the General Assembly indirectly enact such special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

Previous to the report of the Committee on this section a resolution was proposed and referred to it suggesting that local and special legislation be limited and that the Committee on the Legislative Department report in detail matters upon which, in their estimation, no special legislation should be enacted.¹ Another resolution enumerated a list of subjects with which the legislature should deal only generally, mentioning seventeen of the thirty-two subjects within the section as it now stands.² These related to changing the names of persons, changing venue in civil and criminal cases, authorizing laying out of roads and streets, maintenance

¹

J. 49.

²J. 61.

of ferries and bridges, locating or changing of county seats, incorporating cities, towns, or villages, conducting elections, granting divorces, creating offices within local subdivisions of the state, changing the law of descent or succession, regulating practice, jurisdiction, or rules of evidence in judicial proceedings, regulating the fees or extending the powers of local officials, regulating the management and affairs of public schools, fixing rates of interest, remitting fines, penalties, and forfeitures, granting privileges to corporations, and summoning or empaneling grand or petit juries. This resolution also included three subjects which were never included in the section, namely regulating boards to supervise elections, regulating the sale or mortgage of real estate, and protecting game and fish.

Another resolution proposed the inclusion of the subjects, appropriating money, and extending the debts of corporations, which were never included.¹ Another proposed the subjects incorporating villages, towns and cities, or changing their charters.²

Another resolution proposed that the legislature be prohibited from passing "any general law to take effect and be in force only in such counties as may adopt the same by vote of the qualified electors therein",-- in other words, local option laws.³

¹
²J. 62.
³J. 67.
 J. 99.

The section as reported by the Committee was in substance the same as it now stands except that the two subjects, -- "Summoning or empaneling of grand or petit juries" and "For limitation of civil actions" were absent.¹ These were added by two separate amendments.² The words "determination thereof" at the end of clause (32) were replaced by amendment by "assertion on that subject".³ Two amendments were rejected which proposed to strike out the clause stating that determination of the generality of a law was a judicial question and should be judicially determined. The author of this amendment stated that he was "opposed to the principle of this convention's declaring certain questions to be judicial questions and as such leaving them to determination by the Supreme Court."

An amendment was rejected which proposed to strike out the clause (33) relating to partial repeal of general laws and the repeal of special laws.⁴

A resolution was proposed⁵ to "prohibit the legislature from passing any general law to take effect and be in force only in such counties as may adopt the same by vote of the qualified electors therein." This

¹

²J. 307.

³J. 370.

⁴J. 370.

⁵J. 370.

J. 99.

resolution was adopted as an amendment to the section; acceptance of laws locally by a "majority vote of the qualified electors" was prohibited. A motion was later adopted to reconsider the amendment, whereupon it was withdrawn, and another amendment was offered to prohibit a vote of the "people" instead of that of the "qualified electors" in localities. This amendment was rejected.¹

The first of these last two amendments was proposed because of the knowledge of past abuses by the legislature in passing local option laws. The "stock law" and "fish law" were cited. The author of the amendment also thought that the legislature would be able to dodge the constitution under the wording "majority of voters" and might enact a law intended to go into effect in any locality when adopted by a "two thirds vote" or "taxpayers' vote" therein. Hence, he moved to reconsider, withdrew the amendment, and then offered a resolution which stated "vote of the people", which was rejected.²

A similar section existed in the Missouri Constitution of 1865,³ though not nearly so restrictive upon the legislature. There were only fifteen, as against thirty-two, subjects enumerated on which special acts were not permitted to be passed and the clauses

¹J. 371.

²D. June 30, p. 107.

³Art. IV, Sec. 27.

defining the question of whether a general law is applicable as a judicial question, and forbidding the legislature to enact special or local laws by the partial repeal of a general law, and the provision stating that the repeal of local or special acts was permitted, were not present.

It is interesting to note that the courts took the stand in Missouri, under the Constitution of 1865 and have been quoted elsewhere¹ as establishing the rule that where the question of whether a general law will apply is not defined as a judicial question, it is purely a matter for determination by the legislature. For instance the Supreme Court said², "But who is to decide when a general or special law will answer the best purpose? It strikes me that the rule in reference to general or special laws is laid down as a guide for the legislature and the legislature is to judge of the necessity of a particular case. The legislature is quite as able to do this as the courts. The legislature must, in the first instance, exercise this discretion as to the necessity of a special instead of a general act."

The significance of this interpretation of legislative powers is quite distinct, for under it the legislature has unlimited discretion to decide that a

¹
²Brown v. Denver, 3 Pac. 455, quoting Mo. Sup. Ct. Dec. State v. Co. Ct. of Boone Co., 50 Mo. 317.

general act is not applicable to a case and that only a special act will serve. Under such an interpretation, there is no control whatever upon the passage of special and local acts except upon those subjects upon which special legislation is expressly prohibited in the Constitution.

Even in the case of legislation upon subjects for which special legislation has been expressly prohibited, legislatures have often by subversive means been able to enact really special laws in the guise of laws of general application. The most notable field for such laws has been the one of incorporation of cities. The legislatures have often classified the cities of the states into classes on the basis of population and enacted laws specially applying to all cities of a class, and such procedure has been upheld by the courts,¹ even in cases where only one city has possessed the requisite population to be included within a class, if there appears to be a distinct difference between the problems of that city and the others in the state.² In case the classification appears to be established for the clear purpose of acting as a cover for special legislation, it has been held invalid.³

¹Eckerson v. Des Moines, 137 Ia. 452.

²Wheeler v. Philadelphia, 77 Pa. St. 383.

³Ayar's Appeal 122 Pa. St. 266
State v. Jones, 64 N. E. 424.

The State of Ohio has presented a notable example of discriminative classification. Under the Constitution of 1851, eleven classes of cities were created by the legislature, eight of which included only one city each. Such procedure led to the other extreme in the adoption in 1902 of a general code for all cities over five thousand in population. The inflexibility of this scheme led to the adoption of a constitutional amendment in 1912 allowing the framing of home rule charters¹ similar to the provision in the Missouri Constitution of 1875.²

The Supreme Court of Missouri has passed upon the question of classification beyond constitutional sanction in three cases. In 1895, it was held³ that a law applying separately to cities organized under the home rule provisions of the constitution was invalid as setting up a separate class of cities beyond the limit of four specified in the constitution.⁴ In 1899 this decision was over-ruled⁵ by a decision holding such a law valid. In 1898 it was held that Kansas City was not a city of the first class, and was not governed by statutes applying generally to class one, but was

¹Munro: Gov't. of Amer. Cities, p. 56.

²Art. IX, Sec. 16.

³K. C. ex rel N. Park Distr. v. Scarritt, 127 Mo. 642.

⁴Art. IX, Sec. 7.

⁵K. C. v. Steg Miller, 151 Mo. 189.

governed by a special charter.

It has been held that the city of Saint Louis is not in any class with other cities, and it is not affected by legislation applicable to cities of the first class as defined in the constitution because the Saint Louis charter is itself enacted in pursuance of a specific constitutional provision¹ and does not fall under any classification.²

Hence, it can be seen that in Missouri a constitutional sanction is obtained for the enactment of special and local acts regulating the affairs of cities.

The subjects upon which special legislation was forbidden in the Constitution of 1865 were granting divorces, declaring persons of age, authorizing a minor to sell, lease, or encumber his property, providing for the sale of real estate by any minor or legally disabled person, changing the name of any person, regulating the construction of roads, bridges, and streets, extending the time for the assessment and collection of taxes, legalizing invalid wills or deeds, or the invalid acts of any officer, granting to a company the right to lay down railroad tracks, and exempting the property of any person or corporation from taxation,-- all of which were copied in substance in the Constitution of 1875.

¹Art. IX, Secs. 20 and 25.

²St. ex rel Mason, 155 Mo. 486. State ex rel Hawes, 153 Mo. 23. St. Louis v. Bircher, 76 Mo. 431. State ex rel v. Clayton, 226 Mo. 292.

The Constitution of 1820 contained no similar section.

Among the thirty-six constitutions of other states in 1875, nineteen possessed some sort of prohibition upon the legislature to pass special or local laws.¹ Eighteen of them enumerated the particular subjects to which the section applied,² but none of them possessed as long a list of subjects as the Constitution of Missouri. The Constitution of Nevada enumerated thirteen subjects; the constitutions of Florida, Oregon and New York, fourteen; that of Indiana, seventeen; that of West Virginia, nineteen; and that of Pennsylvania, twenty-six. The lists in the other constitutions were much shorter. It is very noticeable, too, from a subject by subject comparison that the subjects upon which prohibition of special legislation was made were widely scattered among the states so that very few state constitutions furnished precedents on any one subject included within this section, unless it be that of divorce. The subject of granting divorce was included within very few sections enumerating subjects upon which special legislation was prohibited, but in a number of constitutions separate

¹Kan.1859,II,17 and those included in f. 2.
²Ark.1874,V,24; Fla.1868,V,17; Ill.1870,IV,22; Ind.1851,IV,22; Ia.1857,III,30; Ky.1850,II,32; Md.1867,III,33; Mich.1850,IV,23; Nev.1864,IV,20; N. C. 1868, II, 13; N. J. 1844, VII, 11; N. Y. 1846, III, 18; Ore. 1857, IV,23; Pa.1873,III,7; Tex.1868,XII,40,25; Va.1870,V,20; W. Va. 1872, VI, 39; Wis. 1848,IV,31.

sections stated that the legislature should grant no divorce.

The following is a subject by subject analysis of the number of precedents in other state constitutions for the section:- Extending or impairing liens, one¹; Regulating counties, cities, townships, et cetera, nine²; Changing names of persons or places, fourteen³; Changing venue, eleven⁴; Authorizing the laying out of streets, et cetera, nine⁵; Relating to ferries and bridges, five⁶; Vacating roads, town plats, streets or alleys, thirteen⁷; Relating to cemeteries and other (quasi-public) ground, one⁸;

¹Pa. 1873, III, 7.

²Fla. 1868, V, 17; Ill. 1870, IV, 22; Ind. 1851, IV, 22; Nev. 1864, IV, 20; N. J. 1844, IV, 7, 11; Pa. 1873, III, 7; Tex. 1868, XII, 40; W. Va. 1872, VI, 39; N. Y. 1846, III, 18.

³Ark. 1874, V, 24; Fla. 1868, V, 17; Ill. 1870, IV, 22; Ind. 1851, IV, 22; Ia. 1857, III, 30; Md. 1867, III, 33; Ky. 1850, II, 32; Nev. 1864, IV, 20; N. C. 1868, II, 13; N. Y. 1846, III, 18; Ore. 1857, IV, 23; Pa. 1873, III, 7; Va. 1870, V, 20; Wis. 1848, IV, 31.

⁴Ark. 1874, V, 24; Fla. 1868, V, 17; Ill. 1870, IV, 22; Ind. 1851, IV, 22; Ky. 1850, II, 38; Nev. 1864, IV, 20; N. J. 1844, IV, 7, 11; N. Y. 1846, III, 18; Ore. 1857, IV, 23; Pa. 1873, III, 7; Tex. 1868, XII, 40.

⁵Ill. 1870, IV, 22; Ind. 1851, IV, 22; Ia. 1857, III, 30; N. J. 1844, III, 7, 11; N. Y. 1846, III, 18; Ore. 1857, IV, 23; Pa. 1873, III, 7; W. Va. 1872, VI, 39; Wis. 1848, IV, 31;

⁶Ill. 1870, IV, 22; N. Y. 1846, III, 18; Pa. 1873, III, 7; W. Va. 1872, VI, 39; Wis. 1848, IV, 31;

⁷Ark. 1874, V, 24; Fla. 1868, V, 17; Ill. 1870, IV, 22; Ind. 1851, IV, 22; Ia. 1857, III, 30; Mich. 1850, IV, 23; Tex. 1868, III, 25; Nev. 1864, IV, 20; N. J. 1844, IV, 7, 11; N. Y. 1846, III, 18; Ore. 1857, IV, 23; Pa. 1873, III, 7; W. Va. 1872, VI, 39.

⁸Pa. 1873, III, 7.

Authorizing the adoption or legitimation of children, three¹; Locating or changing county seats, seven²; Incorporating cities, towns, or villages or changing their charters, eight³; Opening and conducting elections, eight⁴; Granting divorces, ten⁵, (Besides "Legislature shall grant no divorce", nine⁶; and "All power to grant divorces shall be vested in the courts", two⁷); Erecting new townships or changing lines, two⁸; Creating local offices or prescribing duties attached, one⁹; Changing the law of descent or succession, five¹⁰; Regulating

¹Ark. 1874, V, 24; N. C. 1868, II, 13; Pa. 1873, III, 7.

²Ill. 1870, IV, 22; Ia. 1857, III, 30; N. Y. 1846, III, 18; Pa. 1873, III, 7; Tex. 1868, XII, 40; W. Va. 1872, VI, 39; Wis. 1848, IV, 31.

³Fla. 1868, V, 17; Ill. 1870, IV, 22; Ia. 1857, III, 30; N. Y. 1846, III, 18; Pa. 1873, III, 7; Tex. 1868, XII, 40; W. Va. 1872, VI, 39; Wis. 1848, IV, 31.

⁴Fla. 1868, V, 17; Ill. 1870, IV, 22; Ind. 1851, IV, 22; Md. 1867, III, 33; Nev. 1864, IV, 20; N. Y. 1846, III, 18; Ore. 1857, IV, 23; Pa. 1873, III, 7.

⁵Ark. 1874, V, 24; Fla. 1868, V, 17; Ill. 1870, IV, 22; Ind. 1851, IV, 22; Ky. 1850, II, 32; Nev. 1864, IV, 20; Ore. 1851, IV, 23; Pa. 1873, III, 7; Va. 1870, V, 20; W. Va. 1872, VI, 39.

⁶Nebr. 1867, II, 22; Cal. 1849, IV, 26; Ia. 1857, III, 29; Mich. 1850, IV, 26; Minn. 1851, IV, 28; Miss. 1868, IV, 22; N. J. 1844, VII, 1; N. C. 1868, II, 12; O. 1851, II, 32.

⁷Ala. 1867, IV, 30; Kan. 1859, II, 18.

⁸Pa. 1873, III, 7; Ia. 1857, III, 30 (except by vote of voters of locality).

⁹Pa. 1873, III, 7.

¹⁰Ill. 1870, IV, 22; N. J. 1844, IV, 7, 11; Pa. 1873, III, 7; Tex. 1868, XII, 40; W. Va. 1872, VI, 39.

practice and jurisdiction in courts and other judicial matters, seven¹; Regulating the fees and powers of local officers, three²; Regulating the management and upkeep of public schools, six³; Fixing the rate of interest, seven⁴; Affecting the estates of minors or persons under legal disability, eleven⁵; Remitting fines and other moneys paid into the treasury, five⁶; Exempting property from taxation, two⁷; Regulating labor, trade, mining or manufacturing, one⁸; Creating corporations or affecting their charters, one⁹; Granting exclusive rights to lay down a railroad track, four¹⁰; Declaring any named person of age, none; Extending the time for the assessment of taxes, two¹¹; Giving effect to informal or invalid wills or deeds, one¹²; Summoning or empaneling grand or petit juries, eight¹³; Limiting civil actions, none; Legalizing

¹Fla.1868,V,17; Ill.1870,IV,22; Ind.1851,IV,22; Nev.1864, IV,20; Ore.1857,IV,23; Pa.1873,III,7; Tex.1868,XII,40.

²Fla.1868,V,17; Ind.1851,IV,22; Pa.1873,III,7.

³Ill.1870,IV,22; Ind.1851,IV,22; N. J.1844,IV,7,11; Ore.

⁴1857,IV,23; Pa.1873,III,7; Tex.1868,XII,40.

Ill.1870,IV,22; Ind.1851,IV,22; N. Y.1846,III,18; Ore.1857,

⁵IV,23; Pa.1873,III,7; Tex.1868,XII,40; W. Va.1872,VI,39.

Fla.1868,V,17; Ill.1870,IV,22; Ind.1851,IV,22; Ky.1850, II,32; Md.1867,III,33; Nev.1864,IV,20; Ore.1857,IV,23; Pa.1873,III,7; Va.1870,V,20; W. Va.1872,VI,39; Wis.1848,

⁶IV,31.

Md.1867,III,33; Ill.1870,IV,22; Pa.1873,III,7; Tex.1868, XII,40; W. Va.1872,VI,39.

⁷Pa.1873,III,7; W. Va.1872,VI,39.

⁸Pa.1873,III,7.

⁹Pa.1873,III,7.

¹⁰Pa.1873,III,7.
Ill.1870,IV,22; N. J.1844,IV,7,11; N. Y.1846,III,18; Pa.

¹¹1873,III,7.

¹²Md. 1867,III,33; Wis.1848,IV,31.

¹³Md. 1867,III,33.

Fla.1868,V,17; Ill.1870,IV,22; Ind.1851,IV,22; Nev.1864, IV,20; N. J.1844,IV,7,11; N. Y.1846,III,18; Ore.1857,IV, 23; W. Va. 1872,VI,39.

the invalid acts of officers, none.

The provision in this section that in all other cases where a general law can be made applicable, no local or special law shall be enacted, found precedents in four states¹, and in four others the statement, not quite so strong, that in such cases the laws "shall be general and uniform" obtained.²

The designation of the question, whether a general law could have been made applicable in any case, as a judicial question to be judicially determined did not occur in any other state constitution in 1875. The provision against special legislation by partial repeal of a general law existed in identical form in the Constitution of Pennsylvania.³

From the foregoing it can be seen that Missouri in the framing of her present constitution took every precaution then in use, and in the strictest forms, against special legislation. Besides these, she added a few precautions of her own special making. By forbidding special legislation upon enumerated subjects, which only half the states did; by enumerating far more subjects than did any other state; by enumerating subjects not

¹Ark. 1874, V, 25; Kan. 1859, II, 17; Tex. 1868, XII, 40; W. Va. 1872, VI, 39.

²Fla. 1868, V, 18; Ind. 1851, IV, 23; Ia. 1859, III, 30; Nev. 1864, IV, 21.

³1873, Art. III, Sec. 7.

mentioned in most of the states; by using the strongest language available where there was a choice; and by adding special clauses at the end of the section which were present in either only one or two or no other state constitutions, the framers of the constitution made by far the strongest section against special legislation that had ever been placed in a state constitution.

Almost the whole of the section was taken, verbatim, from the Constitution of Pennsylvania.¹ That constitution contained an enumeration of twenty-six subjects, which the Missouri section incorporates word for word, and in the same order. The clause relating to the partial repeal of laws was undoubtedly copied from the same constitution since it is a verbatim duplicate and since no other constitution possessed the clause.

Section 54. No local or special law shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law and shall be published at least thirty days prior to the introduction into the General Assembly of such bill, and in the manner to be provided by law. The evidence of such notice having been published shall be exhibited in the General Assembly before such act shall be passed, and the notice shall be recited in the act according to its tenor.

The section reported by the Committee on the Legislative Department² was the same as the above, save for

¹
21873, Art. III, Sec. 7.
J. 308.

the following differences, which were changed by amendment¹:-- "Other than those provided for in the preceding section" followed "bill", which existed, in place of "law" in the first line. "Shall be" took the place of "shall state the substance of the contemplated law and shall be", after "which notice". "And the notice shall be recited in the act according to its tenor" was not present as it now is at the end. An amendment was rejected to substitute "of the bill for such law" in place of "of such bill", but "of the contemplated law" was adopted.

No similar sections existed in the Missouri Constitution of 1865 or of 1820. Similar sections were contained in the Constitutions of Arkansas, Michigan, New Jersey, North Carolina, and Pennsylvania.² Those of Arkansas and Pennsylvania were identical with the Missouri section as proposed by the Committee. Probably the Pennsylvania Constitution was the principal influence here, since such was the case in the very closely related section (53) preceding. The Michigan Constitution contained the section as changed by amendment and as it now stands.

The purpose of this section was to allow the people of localities to know of and make complaints against

¹J. 372.

²Ark. 1874, V, 26; N. J. 1844, IV, 7, 9; N. C. 1868, II, 14; Pa. 1873, III, 8; Mich. 1850, IV, 15.

contemplated special legislation applying to their locality if they considered it objectionable.¹

Section 55. The General Assembly shall have no power, when convened in extra session by the Governor, to act upon subjects other than those specially designated in the proclamation by which the session is called, or recommended by special message to its consideration by the Governor, after it shall have been convened.

The section as reported by the Committee² did not contain the last clause "or recommended by special message" and the following, which was added by amendment.³ A section of similar content, except for the part added by amendment existed in the Constitution of 1865⁴, but none in the Constitution of 1820. Similar sections, with the same exception, were contained in the Constitutions of Nebraska and Pennsylvania.⁵ The Pennsylvania section was almost the exact counterpart, and evidently may be considered as the principal source.

Section 56. The General Assembly shall have no power to remove the seat of government of this state from the City of Jefferson.

This section was adopted³ exactly as reported by the Committee.² An amendment to strike out the whole section was rejected.²

¹D. June 30.

²J. 309.

³J. 373.

⁴Art. V, Sec. 7.

⁵Nebr. 1867, II, 12; Pa. 1873, Art. III, Sec. 25.

Substantially the same section existed in the Missouri Constitution of 1865¹, and in the Constitution of Pennsylvania in 1875.² It is safe to say, in view of conclusions in connection with the sections immediately preceding, that the Constitution of Pennsylvania along with the previous Missouri Constitution was responsible for this section.

¹Art. XI, Sec. 10.

²1873. Art. III, Sec. 28.

CHAPTER VI

Sections Enumerating Legislative
Functions in Other Articles

A number of sections are discussed in this chapter which are found scattered throughout the various articles of the constitution, all of which relate, though many only incidentally, to the legislature. In many cases legislative enactment is necessary to carry the section into effect; in others it is desired that legislative procedure be defined and limited in exercising the regular functions of the legislature. In the main, only those sections which mention "legislature", "General Assembly", "Senate", "House of Representatives" or "laws" are treated in this chapter. The Journal of the Convention shows very little discussion on these miscellaneous sections, and, except for the more important ones, references to the Journal will not be made in this paper. The consideration of these sections will necessarily be limited to those matters which affect the powers of the legislature.

The sections taken up in this chapter, except for the first three, are arranged in the order in which they appear in the constitution. Only that part of the

section which indicates clearly the relation to the legislature is quoted. Omissions from the text of the section are indicated.

Article III. The powers of government shall be divided into three distinct departments -- the legislative, executive and judicial, each of which shall be confided in a separate magistracy; and no person, or collection of persons, charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted.

This article was adopted in the form proposed by the Committee on Miscellaneous Affairs, without proposal to change.¹ The same article existed in substance in the Constitutions of 1865² and 1820³. In twenty-six states in 1875 the powers of government were divided by their constitutions into the three departments⁴, each of which, it was stated in six⁵, should be confided to a separate magistracy. In twenty-three of these, the fourth provision occurred that no authorities charged with the exercise of powers belonging to one of these depart-

¹J. 632.

²Article III.

³Article II.

⁴Ala. 1867, III; Ark. 1874, IV, 1, 2; Cal. 1849, III; Fla. 1868, IV; Ga. 1868, I, 31; Ill. 1870, III; Ind. 1851, III; Ia. 1857, III; Ky. 1850, I, 1, 3; Conn. 1818, II; Me. 1820, II, 1, 2; Mass. 1780, I, 30; Mich. 1850, II, 1, 2; Minn. 1857, III; Miss. 1868, III; Nev. 1864, III; N. H. 1792, I, 37; N. J. 1844, III; Ore. 1857, III; Tenn. 1870, II; R. I. 1842, III; Tex. 1868, II; Vt. 1793, II, 6; Va. 1870, II; W. Va. 1872, V.

⁵Ala. 1867, III; Ark. 1874, IV, 1, 2; Ga. 1868, I, 31; Ky. 1850, I, 1; Miss. 1868, III; Tex. 1868, II.

ments should exercise any powers belonging to either of the others.¹ The provision, "except in the instances in this Constitution directed or permitted" was added in eighteen constitutions.² In the remainder of the states the doctrine of the separation of Powers, while not expressed by a separate Article, was implied by the creation and enumeration of the three separate departments and vesting the legislative, executive and judicial powers separately in them.³

Article XV -- Section 2. The General Assembly may, at any time, propose such amendments to this constitution as a majority of the members elected to each house shall deem expedient: and the vote thereon shall be taken by yeas and nays, and entered in full on the journals. The proposed amendments shall be published with the laws of that session, and also shall be published weekly in some newspaper, if such there be, within each county in the state, for four consecutive weeks next preceding the general election then ensuing. The proposed amendments shall be submitted to a vote of the people, each amendment separately, at the next general election thereafter, in such manner as the General Assembly may provide. If a majority of the qualified voters of the state, voting for and against any one of said amendments, shall vote for

¹Ala. 1867, III; Ark. 1874, IV, 1, 2; Cal. 1849, III; Fla. 1868, IV; Ga. 1868, I, 31; Ill. 1870, III; Ind. 1851, III; Ia. 1857, III; Ky. 1850, I, 1, 3; Me. 1820, II, 1, 2; Mass. 1790, I, 30; Mich. 1850, II, 1, 2; Minn. 1857, III; Miss. 1868, III; Nev. 1864, III; N. J. 1844, III; Ore. 1857, III; Tenn. 1870, II; Tex. 1868, II; Vt. 1793, II, 6; Va. 1870, II; W. Va. 1872, V.

²Ala. 1867, III; Ark. 1874, IV, 2; Cal. 1849, III; Fla. 1868, IV; Ga. 1868, I, 31; Ia. 1857, III; Ind. 1851, III; Ill. 1870, III; Ky. 1850, I, 3; N. J. 1844, III; Ore. 1857, III; Me. 1820, II, 1, 2; Mich. 1850, II, 1, 2; Minn. 1857, III; Miss. 1868, III; Nev. 1864, III; Tenn. 1870, II; Tex. 1868, II; Va. 1870, II.

³Del., Kan., La., Nebr., N. Y., N. C., O., Pa., S. C., Wis.

such amendment, the same shall be deemed and taken to have been ratified by the people, and shall be valid and binding, to all intents and purposes, as a part of this constitution.

This section was adopted¹ in exactly the form presented² by the Committee on Mode of Amendment. An amendment to the effect that the proposed constitutional amendment be passed upon favorably by a majority in each house in two successive General Assemblies and then referred to the voters was rejected.³ The idea prompting this amendment, as expressed by its proponent was that a more difficult means of amending the constitution was advisable, to counteract the waves of popular passion. Further, under the amendment, candidates for the next legislature would have to make an issue out of the amendment pending, and take sides, insuring more thorough consideration and discussion of it. The candidates could help the voters to more thoroughly understand the amendment.

The provision in the Constitution of 1865⁴ was the same as the above except that the amendment before being voted upon by the people had to be published for four months instead of four weeks, and in two newspapers in each Congressional

¹

²J. 302.

³J. 508.

⁴J. 554.

Art. XII, Sec. 2.

District instead of in one in each county. The amendment provision in the Constitution of 1820¹ called for a two-thirds majority in each house, and for publication three times in each newspaper in the state within the twelve months next preceding the general election, and then a two-thirds vote of the members elected to each house in the next legislature was required. Three readings on three separate days in both houses was also stipulated.

Among the other State constitutions in 1875 six possessed the same amendment features as the Missouri Constitution framed in that year², save the minor detail of publication. Three contained the essential features of the Constitution of 1820.³ Among the others there was a wide range of variation. In seven the provision was adoption by two-thirds of each house and ratification by a majority of the qualified voters⁴; in two, adoption by three-fifths of each house and ratification by a majority of the voters⁵; in six, adoption by a majority of each house in one legislature, by a like majority in the next, and ratification by a majority of the voters⁶; in two, adoption by a majority in each house of one

¹Art. XII.

²Ark. 1874, XIX, 22; Cal. 1849, X, 1; Ind. 1851, XVI, 1; Ia. 1857, X, 1; Minn. 1857, XIV, 1; Nev. 1864, XVI, 1.

³Ala. 1867, XVI, 1; S. C. 1868, XIV, 1; Tex. 1868, XII.

⁴Ill. 1870, XVI, 1; Kan. 1859, XIV, 1; La. 1868, IX; Me. 1820, X, 2; Mich. 1850, XX; Miss. 1868, XIII; W. Va. 1870, XIV, 2.

⁵60. 1851, XVI, 2; N. C. 1868, XIII, 2.

⁶N. J. 1844, IX; N. Y. 1846, XIII, 1; Ore. 1857, XVII, 1; Pa. 1873, XVIII; Va. 1870, XII; Wis. 1848, XII, 1.

legislature, by two-thirds majority in each house in the next, and ratification by a majority of the voters¹; in two adoption by two-thirds majority in each house in two successive legislatures, and ratification by a majority of the voters²; in one proposal by two-thirds of each house, ratification by a majority of the voters, and adoption by three-fourths of each house of the succeeding legislature³; in one adoption by a majority of each house and ratification by three-fifths of the electors⁴; in one adoption by a majority of the senators and two-thirds of the house and ratification by a majority of the electors⁵; in two by convention authorized by a majority of each house, the amendments to be ratified by the voters⁶; in one by convention authorized by a majority in each house in two successive legislatures⁷; in one by a convention called by a majority of the voters⁸; and in one, at the end of every decade the adoption of amendments by a majority in each house in two successive legislatures, and ratification by a majority of the voters.⁹

The present Missouri Constitution, in the light of provisions in other state constitutions, is comparatively easy to amend.

¹Tenn. 1870, XI, 3; Conn. 1818, XI.

²Fla. 1868, XVIII; Ga. 1868, XII.

³Del. 1831, IX, 1.

⁴R. I. 1842, XIII.

⁵Mass. 1780, IX.

⁶Nebr. 1867, IX, 1.

⁷Ky. 1850, XII, 1.

⁸N. H. 1792, 99.

⁹Vt. 1793, XXV.

Article XV -- Section 3. The General Assembly may at any time authorize, by law, a vote of the people to be taken upon the question whether a convention shall be held for the purpose of revising and amending the constitution of this state;..... The General Assembly shall have no power, otherwise, than in this section specified, to authorize a convention for revising and amending the constitution.

This section was adopted¹ as recommended by its Committee.² An amendment was offered and rejected to the effect that after ten years a convention should automatically be called to revise the constitution.³ It was thought that the Constitution would be more sure of adoption if the voters considered they were only putting it on trial for ten years, and that it was a good principle to provide for a system of housecleaning and reform every ten years.⁴

The Constitution of 1865 included the same section.⁵ The Constitution of 1820 contained no similar section. In twenty-one state constitutions in 1875 there was provision for general revision by a convention initially proposed by the legislature, as follows: twelve by a majority of each house⁶; eight by two-thirds of each

¹J. 509.

²J. 557.

³J. 556.

⁴D. July 21.

⁵Art. XII, Sec. 2.

⁶Ala. 1867, XVI, 2; Del. 1831, IX, 2; Fla. 1868, XVIII, 2; Ga. 1868, XII; Ky. 1850, XII, 2; Mich. 1856, XX; Nebr. 1867, IX, 1; N. Y. 1846, XIII, 2; Tenn. 1870, XI, 2; Va. 1870, XII; W. Va. 1872, XIII, 1; Wis. 1848, XII, 2.

house¹; and one by three-fifths of each house.²

' Article I -- Section 1. That all political power is vested in and derived from the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

This section was adopted, without change, as proposed by the Committee on Bill of Rights³, and, according to the framers of the constitution⁴; has an important bearing upon the legislature and its powers. The question arose in the Convention whether, under the interpretation of this section the powers of the legislature were enumerated or residuary. There were supporters for each interpretation. Mr. Gantt, Chairman of the Committee, said the intention was to establish "a government with limited powers, -- not general, arbitrary, and vague powers,--that to each department of government would be assigned a measure of that general power which resided in the people", and that the power thus given and "no other power the measure and degree of which no one could tell would be lodged in any department of the government". He explained, however, that this section was intended as a basis, fixing the origin of the powers of government,

¹ Cal. 1849, X, 2; Ill. 1870, XIV, 2; Kan. 1859, XIV; Me. 1820, X, 1; Minn. 1857, XIV, 2; Nev. 1864, XVI, 2; O. 1851, XVI, 2; R. I. 1842, XIII.

² N. C. 1868, XIII, 1.

³ J. 604.

⁴ D. May 19, p. 47.

upon which another section, expressing the delegated character of the powers possessed by the departments could be worded. It was such a proposed delegating section, which was never adopted, that was spoken of at the beginning of the chapter preceding, under the head of limitations upon legislative power.¹

This section was the same as Article 1, Section 4, in the Constitution of 1865 and Article I, Section 13 in that of 1820, and it existed in the Bills of Rights of twenty-three state constitutions in 1875.² In all state constitutions, it is safe to say, the doctrine expressed in this section is implied.

Article I -- Section 14. That no law shall be passed impairing the freedom of speech.....

This section was adopted³ as recommended by the Committee⁴, without proposal to change. The same provision existed in the Constitution of 1865,⁵ and in three other state constitutions in 1875.⁶

¹Above, p.

²Ala. 1867, I, 3; Ark. 1874, II, 1; Cal. 1849, I, 2; Conn. 1818, I, 2; Fla. 1868, I, 2; Ia. 1857, I, 2; Kan. 1859, B. R. & S. 2; Ky. 1850, XIII, 4; Me. 1820, I, 2; Md. Deel R. & S. 1, 1867; Minn. 1857, I, 1; Nev. 1864, I, 2; N. H. 1792, I, 1; N. J. 1844, I, 2; N. C. 1868, I, 2; O. 1851, I, 2; Ore. 1857, I, 1; Pa. 1873, I, 2; S. C. 1868, I, 3; Tenn. 1870, I, 1; Vt. 1793, I, 6; Va. 1870, I, 4; W. Va. 1872, III, 2.

³J. 604.

⁴J. 91.

⁵Art. I, Sec. 27.

⁶Ind. 1859, I, 9; Ore. 1857, I, 8; W. Va. 1872, III, 7.

Article I -- Section 15. That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be passed by the General Assembly.

This section as proposed by the committee only included the prohibition of a retrospective law.¹ An amendment was adopted adding the additional provisions², and then a substitute was adopted, changing the wording.³ This change in wording was adopted in place of other methods of wording proposed because it resembled that of the similar section in the Constitution of the United States.⁴ The reason for the limited character of the Committee's report was the fact that ex post facto laws and laws impairing the obligation of contract were already prohibited to the states by the National Constitution. The changes were made because of the possibility of some future amendment of the National Constitution striking out those prohibitions.

The same section existed in the Constitutions of 1865⁵ and 1820⁶ save for "or making any irrevocable grant of special privileges or immunities" and "by the General Assembly". Sections prohibiting ex post facto laws and laws impairing the obligation of a contract

¹J. 91.

²J. 139.

³J. 159.

⁴D. May. 24.

⁵Art. I, Sec. 28.

⁶Art. XIII, Sec. 17.

existed in 1875 in twenty-five state constitutions¹. In one, ex post facto laws were expressed as "bad principle"². In two, retrospective laws were prohibited.³ In two, irrevocable grants of privileges were prohibited.⁴ The Constitutions of Pennsylvania and Illinois were probably most influential here.

Article I -- Section 20. .... the question whether the contemplated use [to which private property taken by eminent domain should be put] be really public shall be a judicial question ..... without regard to any legislative assertion that the use is public.

The section was adopted as proposed without change.⁵ No similar section existed in other constitutions. This was evidently intended to settle a mooted question as to just how far legislative discretion extended in the exercise of eminent domain, and of the finality of that discretion, and to furnish a safeguard to private property.

Article I -- Section 30. That no person shall be deprived of life, liberty, or property without due process of law.

¹Ala. 1857, I, 24; Ark. 1864, I, 17; Cal. 1849, I, 16; Fla. 1868, I, 16; Ga. 1868, I, 21; Ill. 1870, I, 14; Ind. 1851, I, 24; Ky. 1850, XIII, 20; La. 1868, VI, 11; Me. 1820, I, 11; Mich. 1850, IV, 43; Minn. 1857, I, 11; Miss. 1868, I, 9; Nebr. 1867, I, 12; Nev. 1864, I, 15; N. J. 1844, VII, 3; Ore. 1857, I, 22; O. 1851, II, 28; Pa. 1873, I, 17; R. I. 1842, I, 12; S. C. 1868, I, 21; Tex. 1868, I, 14; Va. 1820, V, 14; Wis. 1848, I, 12.

²Mass. 1780, I, 24.

³Md. 1867, I, 17; Tex. 1868, I, 14.

⁴Pa. 1873, I, 17; Ill. 1870, I, 14.

⁵J. 92.

This section was adopted¹, as reported², without change. The same section existed in the Missouri Constitution of 1865³ and in the majority of other state constitutions. This section, too, was a repetition of the same provision in the fourteenth amendment of the National Constitution. It was also adopted, perhaps, because of the possibility that the National Constitution might be amended by striking out the provision at some future time. Perhaps the section also owes its existence to a less substantial reason, as did others like it, that it is simply "a good section to have", whether its guarantees are found elsewhere or not. No harm could possibly come from its presence in the constitution; its substance was satisfying and popular; and its presence in the state constitution would insure its interpretation by the state courts as well as by the National courts in case of controversy.

Article II, Section 3. .... the Legislature is not authorized to adopt nor will the people of this state ever assent to any amendment or change of the Constitution of the United States which may in any wise impair the right of local self government belonging to the people of this State.

No section of similar content existed in previous Missouri Constitutions, or in any other state

¹J. 607.

²J. 92.

³Art. I, Sec. 18.

constitutions. The term, local self government, applies here in the sense of "states rights" rather than in the sense of complete local autonomy in city and county government. It came in under the older theory of "states rights", as absolute, which has been modified and largely abandoned. There is no indication that the Supreme Court has had to interpret the provision, but a fair statement of the nature of the section would seem to be that it is a more or less philosophical provision with little legal standing for the reason that the right to ratify amendments to the National Constitution is given to the state legislatures by that constitution, and they are subject only to the conditions therein expressed in ratifying national amendments.

It is interesting to note that during the discussion of the ratification of the National Prohibition Amendment in the last regular session of the Missouri Legislature¹, this section was cited as preventing such ratification.² The states rights theory, however, was not considered operative in the case, and there is no doubt that the courts would hold likewise.

Article V-- Section 3. The returns of every election (for executive officers) ... shall be .... directed to the Speaker of the House of Representatives.

¹1919.

²The proposition of popular referendum on the ratification of constitutional amendments gains support also from this section.

who shall, immediately after the organization of the House, and before proceeding to other business, open and publish the same in the presence of a majority in each House of the General Assembly, who shall for that purpose assemble in the hall of the House of Representatives. .... if two or more shall have an equal and the highest number of votes, the General Assembly shall, by joint vote, choose one of such persons for said office.

This section was adopted by the convention with no change, except the transference of a portion regarding contested elections to Section 25.¹ Similar sections existed in previous Missouri Constitutions.² Among the thirty-six state constitutions in 1875, thirty-two contained generally similar sections.³ Of these, the sections of California, Illinois, Mississippi, Nebraska, North Carolina, Virginia, and West Virginia were identical. The Constitution of Illinois contained this section at the time of the framing of the Missouri Constitution of 1820, and probably influenced the placing of the section in that constitution.⁴

Article V -- Section 8. .... He [the governor] shall, at each session of the General Assembly, communicate to that body each case of reprieve, commutation or pardon granted, ...

¹J. 202.

²1865. V, 3, 17, 18. 1820, IV, 20.

³Ark. 1874, VI, 4; Ala. 1867, V, 3; Cal. 1849, V, 4; Conn. 1818, IV, 2; Ga. 1868, IV, 2; Ill. 1870, V, 4; Ind. 1851, II, 5; Ia. 1852, IV, 3; Kan. 1859, I, 2; Ky. 1850, III, 24; La. 1848, 48; Me. 1820, V, 3; Md. 1867, II, 3; Mass. 1780, II, 3; Mich. 1850, VIII, 4; Minn. 1858, V, 2; Miss. 1868, V, 2; Nebr. 1875, V, 4; N. J. 1842, V, 2; N.Y. 1846, IV, 3; N.C. 1868, III, 3; O. 1851, III, 3; Ore. 1859, V, 5; Pa. 1873, IV, 2; R.I. 1842, VIII, 3; S. C. 1868, III, 4; Tenn. 1870, III, 2; Tex. 1868, IV, 3; Vt. 1793, II, 39; Va. 1870, IV, 2; W. Va. 1872, VII, 3; Wis. 1848, V, 3.

⁴Shoemaker: The First Constitution of Missouri, p. 77.

This section was adopted¹ as reported by the Committee.² The same section existed in the Constitution of 1865³, but in no other constitutions.

Article V -- Section 9. The Governor shall, from time to time, give to the General Assembly information relative to the state of the government and shall recommend to its consideration such measures as he shall deem necessary and expedient. On extraordinary occasions he may convene the General Assembly by proclamation, wherein he shall state specifically each matter concerning which the action of that body is deemed necessary.

This section was recommended in the above form by the committee⁴ except that a provision, which was cut out by amendment⁵, to the effect that, when so convened, the General Assembly should act only upon matters stated in the proclamation was included. This provision exists, however, in Article IV, Section 25. The Constitution of 1865 contained the section as first recommended.⁶ That of 1820 contained practically the same section.⁷ The constitutions of thirteen other states contained the provision regarding information⁸; those of thirty states

¹J. 208.

²J. 125.

³Art. V, Sec. 6.

⁴J. 126.

⁵J. 564.

⁶Art. V, Sec. 7.

⁷Art. IV, Sec. 7.

⁸Conn.1818,IV,8; Del.1831,III,2; Ind.1851,V,13; Me.1820,V,2; Md.1867,II,19; Miss.1868,V,8; O. 1857,III,7; Minn.1858,V,4; Ore. 1859,V,11; Tenn.1870,III,11; Va. 1870, IV, 5; Wis. 1848, V, 4.

contained the latter provision regarding convening.¹ A section akin to this one was proposed² by the committee, which provided that the governor should be empowered to adjourn the General Assembly in case the two houses could not agree upon a time to adjourn. Practically all state constitutions in 1875 possessed the provision.³ This section was rejected.

The adoption of the section was evidently mainly influenced by the Missouri sections of 1820 and 1865. The Constitutions of Connecticut (1818) and Maine (1820) possessed the provision, and may have been influential.

Article V -- Section 10. The Governor shall, at the commencement of each session of the General Assembly and at the close of his term of office, give information by message of the condition of the state and shall recommend such measures as he shall deem expedient. He shall account to the General Assembly, in such manner as may be prescribed by law, for all moneys received and paid out by him from any funds subject to his order, with vouchers; and at the commencement of each regular session present estimates of the amount of money required to be raised by taxation for all purposes.

¹ Ala. 1862, V, 8; Ark. 1874, VI, 19; Cal. 1849, V, 9; Del. 1831, III, 12; Fla. 1868, VI, 8; Ga. 1868, IV, 11, 3; Ill. 1870, V, 8; Ia. 1857, IV, 11; Kan. 1859, I, 5; Ky. 1850, III, 13; La. 1868, 64; Me. 1820, V, 13; Md. 1867, II, 6; Mass. 1780, II, 5; Mich. 1850, III, 9; Minn. 1857, V, 4; Miss. 1868, V, 7; Nebr. 1875, V, 8; Nev. 1864, V, 9; N. H. 1792, 51; N. J. 1844, V, 6; N. Y. 1846, IV, 4; N. C. 1868, III, 9; O. 1851, III, 8; Ore. 1857, V, 12; Pa. 1873, IV, 12; Tenn. 1870, III, 9; Va. 1870, IV, 5; W. Va. 1872, VI, 19; Wis. 1848, V, 4.

² J. 126.

³ J. 208.

This section was adopted¹ in exactly the form proposed by the Committee² except for the addition of "in such manner as may be prescribed by law" to qualify his accounting to the General Assembly.¹

No similar provisions were included in the Missouri Constitutions of 1865 and 1820. They occurred in the constitutions of nineteen other states in 1875.³ Of these, three were identical with the Missouri section,-- Illinois, Nebraska, and West Virginia. In the light of evidence as to precedents for other sections we may fairly assume that the Illinois section was the influential factor here.

Article V -- Section 15. The Lieutenant-Governor ..... by virtue of his office shall be President of the Senate. In committee of the whole he may debate all questions, and when there is an equal division he shall give the casting vote in the Senate, and also in joint vote of both houses.

This section was adopted⁴ as recommended⁵, without proposal to amend. Identical sections were present in the Constitutions of 1865⁶ and 1820⁷. Twenty-

¹

J. 213.

²

J. 126.

³

Ala. 1867, V. 7; Ark. 1874, VI, 8; Cal. 1849, V, 10; Fla. 1868, VI, 9; Ga. 1868, IV, II, 3; Ill. 1870, V, 7; Ia. 1857, IV, 12; Kan. 1859, I, 5; Mich. 1850, V, 8; Minn. 1858, V, 4; Nebr. 1867, V, 7; Nev. 1864, V, 10; N. Y. 1846, IV, 4; O. 1851, III, 7; Pa. 1873, IV, 11; S. C. 1868, III, 15; Tex. 1868, IV, 9; W. Va. 1872, VII, 6; Wis. 1848, V, 4.

⁴

J. S. 20.

⁵

J. 127.

⁶

Art. V, Sec. 12, 13.

⁷

Art. IV, Sec. 14, 15.

six state constitutions out of the thirty-six in 1875 stated that the lieutenant governor was president of the Senate.¹ Twenty-three gave him the casting vote.²

Previous Missouri Constitutions were probably influential alone here. The Constitutions of Connecticut, Illinois, Kentucky and Mississippi possessed the section in 1820.³

Article V -- Section 17. The Senate shall choose a president pro tempore to preside in cases of the absence or impeachment of the Lieutenant Governor, or when he shall hold the office of Governor. If there be no Lieutenant Governor, or the Lieutenant Governor shall, for any of the causes specified in section sixteen of this article, become incapable of performing the duties of the office, the President of the Senate shall act as Governor until the vacancy is filled or the disability removed; and if the President of the Senate, for any of the above named causes shall become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House of Representatives, in the same manner and with the same powers and compensation as are prescribed in the case of the office devolving upon the Lieutenant Governor.

This section was adopted⁴ exactly as reported⁵, without discussion. The Constitutions of 1865⁶ and 1820⁷ contained the section. Seven other constitutions also

¹ Ala. 1867, V, 16; Cal. 1849, V, 16; Conn. 1818, IV, 13; Fla. 1868, VI, 14; Ill. 1870, V, 18; Ind. 1851, V, 21; Ia. 1857, IV, 18; Kan. 1859, I, 12; Ky. 1850, III, 15; La. 1868, III, 55; Mich. 1850, V, 14; Miss. 1868, V, 14; Nebr. 1875, V, 17; Nev. 1864, V, 17; N.Y. 1846, IV, 7; N.C. 1868, II, 21; O. 1851, III, 16; Pa. 1873, IV, 4; R.I. 1842, VI, 2; S.C. 1868, III, 56; Tex. 1868, IV, 15; Va. 1870, IV, 9, 11; Wis. V, 2, 8; Mass. 1780, II, 1; Minn. 1852, V, 6; Vt. 1793, II, 19.

² All but Mass., Minn., Vt.

³ Shoemaker, F. G.: "First Constitution of Missouri", p. 73.

⁴ J. S. 20.

⁵ J. 127.

⁶ Art. V, Sec. 14.

⁷ Art. IV, Sec. 16.

contained it.¹ Fourteen constitutions provided for the succession of the President of the Senate and Speaker of the House to the governorship after the lieutenant governor.² Fourteen constitutions did not give the Speaker of the House a place in the succession, but gave the President of the Senate a place.³ It is probable that the seven first mentioned were the more influential here.

Article V -- Section 18. The Lieutenant-Governor or the President pro tempore of the Senate, while presiding in the Senate, shall receive the same compensation as shall be allowed to the Speaker of the House of Representatives.

This section was adopted⁴ without proposal to change from the committee's report.⁵ The same section was found in the Constitutions of 1865⁶ and 1820⁷. One other state constitution in 1875 included the provision in its entirety.⁸ Three contained it only with respect to the lieutenant-governor.⁹ The Kentucky Constitution

¹ Ala. 1867, V, 17; Ill. 1870, V, 19; Ia. 1857, IV, 19; Kan. 1859,

² I, 13; Miss. 1868, V, 17; Nebr. 1875, V, 18; O. 1851, III, 17.

³ The seven above and Ark. 1874, VI, 13; Ga. 1868, IV, 4; Me. 1820, V, 74; Md. 1867, II, 7; N. J. 1844, V, 14; Tenn. 1870, III, 12; W. Va. 1872, VII, 16.

⁴ Cal. 1849, V, 16; Conn. 1818, IV, 15; Fla. 1868, VI, 14; Ky. 1850, III, 18; Mich. 1850, V, 13; Minn. 1857, V, 6; Nev. 1864, V, 17; N. H. 1792, II, 48; N. Y. 1846, IV, 7; N. C. 1868, III, 12; Pa. 1873, IV, 14; R. I. 1842, VII, 10; S. C. 1868, III, 7; Tex. 1868, IV, 16.

⁵ J. 211.

⁶ J. 128.

⁷ Art. V, Sec. 15.

⁸ Art. IV, Sec. 18.

⁹ Ky. 1850, III, 19.

Ind. 1851, V, 23; N. C. 1868, III, 11; Va. 1870, IV, 11.

was probably most influential.

Article V -- Section 25. Contested elections of Governor and Lieutenant-Governor shall be decided by a joint vote of both houses of the General Assembly, in such manner as may be provided by law; and contested elections of Secretary of State, State Auditor, State Treasurer, Attorney-General, and Superintendent of Public Schools shall be decided before such tribunal and in such manner as may be provided by law.

This section was made a part of the article by the Convention after the committee reported.¹ It was not included in the report of the Committee on the Executive because of its inclusion within the report of the Committee on Elections and Suffrage.² The same provisions existed in the Constitutions of 1865³ and 1820⁴;-- in the 1865 Constitution, verbatim. Sixteen other constitutions contained the portion regarding the governor and lieutenant-governor.⁵ The Constitution of Maryland stated that the General Assembly should make provisions in all cases of contested elections of any of the officers not provided for in the constitution.⁶ The previous Missouri sections were responsible for this

¹

J. 202.

²J. 165, Sec. (10).

³Art. V, Sec. 18, 19.

⁴Art. IV, Sec. 20.

⁵Ark.1874,VI,4; Ga.1868,IV,2; Ill.1870,V,4; Ind.1851, V,6; Ia.1857,IV,5; Ky.1850,III,24; Miss.1868,V,2; Nebr.1875,V,4; N.J.1844,V,2; N.C.1868,III,3; Ore. 1859,V,6; S.C.1868,III,4; Tenn.1870,III,2; Tex.1868, IV,3; Va.1870,IV,2; W.Va.1872,VII,3.

⁶1867, III, 47.

section, no doubt. In 1820, the Constitution of Illinois possessed the provision.¹

Article VI -- Section 31. The General Assembly shall have no power to establish criminal courts, except in counties having a population exceeding fifty thousand.

This expresses one of many such general limitations upon the powers of the legislature. No similar sections existed in the Constitutions of 1865 and 1820, nor in other states.

Article VI -- Section 34. The General Assembly shall establish in every county a probate court, ...

This was adopted as a means of administering the new provision for probate courts. Under the Constitution of 1865, probate work was done by the County Court.² No similar section existed in the Constitution of 1865 or 1820. The Constitutions of Alabama and Illinois contained the provision.³

Article VI -- Section 40. In case there be a tie or a contested election between candidates for clerk of any court of record, the same shall be determined in such manner as may be directed by law.

No similar section existed in the Constitutions

¹Ill. 1818, III, 2.

²Art. VI, Sec. 23.

³Ala. 1857, VI, 9; Ill. 1870, VI, 20.

of 1865 and 1820, or in any other state constitutions in 1875. The Constitution of California gave the legislature power to provide for the election of clerks¹, and that of Mississippi to prescribe their duties.²

Article VI -- Section 41. In case of the inability of any judge of a court of record to discharge the duties of his office with efficiency, by reason of continued sickness, or physical or mental infirmity, it shall be in the power of the General Assembly, two-thirds of the members of each house concurring, with the approval of the Governor, to remove such judge from office; but each house shall state on its respective journal the cause for which it shall wish his removal, and give him notice thereof, and he shall have the right to be heard in his defense, in such manner as the General Assembly shall by law direct.

This section was adopted³, without proposal to change the form in which it was reported by its committee.⁴ No similar sections existed in the Constitutions of 1865 and 1820. The Constitution of Illinois gave the general assembly power to remove any judge "for cause, entered upon its journals," with due notice and opportunity for defense upon vote of three-fourths of each house.⁵ No other state constitution was similar.

Article VII -- Section 1. The Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Attorney-General, Superintendent of Public Schools and Judges of the Supreme, Circuit, and

¹1849, VI, 7.

²1868, VI, 7.

³J. S. 19.

⁴J. 226.

⁵1870, VI, 30.

Criminal Courts, and of the Saint Louis Court of Appeals, shall be liable to impeachment for high crimes or misdemeanors, and for misconduct, habits of drunkenness, or oppression in office.

Article VII -- Section 2. The House of Representatives shall have the sole power of impeachment. All impeachments shall be tried by the Senate, and, when sitting for that purpose, the Senators shall be sworn to do justice according to law and evidence. When the Governor of the State is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of two-thirds of the Senators present. But judgment in such cases shall not extend any further than removal from office, and disqualification to hold any office of honor, trust, or profit under this state. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law.

These sections were adopted¹, without the offer of amendment, in the form proposed by the Committee on Impeachments.² Before the report of the Committee a resolution was offered that a special commission of five eminent jurists be elected by the Senate to try each case of impeachment.³

Sections containing almost these exact provisions occurred in the Constitutions of 1865⁴ and 1820.⁵ Impeachment of the Superintendent of Schools was not included, and the causes of "misconducts, habits of drunkenness, or oppression in office" were not mentioned. The Constitutions of ^{1820 and} 1865 did not contain the sentence

¹

²J. S. (t) 20.

³J. 226.

⁴J. 111-112.

⁵Art. VII, Secs. 1 and 2.

Art. III, Secs. 29 and 30.

explaining that the party impeached should still be liable to indictment, trial, and punishment according to law, ~~as did that of 1820~~. Thirty of the thirty-six other state constitutions had substantially the same provisions.¹ Rhode Island and South Carolina provided that judgment should extend only to removal from office.

Article VIII -- Section 5. The General Assembly shall provide, by law, for the registration of all voters in cities and counties having a population of more than one hundred thousand inhabitants, and may provide for such registration in cities having a population exceeding twenty-five thousand inhabitants and not exceeding one hundred thousand inhabitants, but not otherwise.

This section was adopted², as recommended³, with the exception of a few changes as to the size of cities in which registration should take place. The Constitution of 1865, under the oath of allegiance requirements set up for voters, required complete registration of all voters in every election district.⁴ It was opposition to the Constitution of 1865, with its oath of allegiance provisions that was responsible for the limitation of registration to cities and counties of

¹ Ala. 1857, IV, 23, 24; Ark. 1864, XV, 2, V, 36; Conn. 1818, IX, 1, 2; Cal. 1849, IV, 18, 19; Fla. 1868, V, 28; Ga. III, 2(d), 3(e); Ia. 1857, III, 19, 20; Ill. 1870, IV, 24; Kan. 1859, 27, 28; La. 1868, V, 95, 96, 97; Me. 1820, IV, 7, 8; Md. 1867, III, 26; Mass. 1820, I, II, 6, 8; Mich. 1850, XII, 1, 2, 3; Minn. 1857, IV, 14; Miss. 1868, IV, 27, 28, 29, 30; Nebr. 1867, II, 28, 29; Nev. 1864, VII, 1, 2; N.H. 1792, II, 16, 38, 37, 39; N.Y. 1846, VI, 1; N.C. 1868, IV, 5; O. 1851, II, 23, 24; Pa. 1873, VI, 1, 2, 3; R.I. 1842, XI, 1, 2; S.C. 1846, VII, 1, 2; Tenn. 1870, V, 1, 2, 3, 4; Tex. VIII, 1, 2, 3, 4, 5, 6; Va. 1870, V, 16; W.Va. 1872, IV, 9; Wis.

² 1848, VII, 1;

³ J. 238.

⁴ J. 164¹⁶⁵.

Art. II, Sec. 4.

certain size, and it is probably still the effects of that same opposition that prevents the extension of registration to cities generally. There was no section providing for registration in the Constitution of 1820. Four constitutions in 1875 provided for the making of general registration laws by the legislature.¹

Article VIII.-- Section 9. .... The General Assembly shall, by general law, designate the court or judge by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incidental thereto; but no such law, assigning jurisdiction or regulating its exercises, shall apply to any contest arising out of any election held before said law shall take effect.

This section was adopted² as recommended by the committee.³ No similar section existed in the Constitution of 1865 or 1820. In the Constitution of West Virginia, operative in 1875, the legislature was given the power to make rules regulating contested elections.⁴

Article VIII -- Section 10. The General Assembly may enact laws excluding from the right of voting all persons convicted of felony or other infamous crime, or misdemeanors connected with the exercise of the right of suffrage.

¹Ala. 1857, VII, 3; Fla. 1868, XV, 6; Ga. 1868, II, 6;

N. C. 1868, VI, 2.

²J. 235.

³J. 165.

⁴1872, IV, 11.

The Constitution of 1865 contained substantially the same section,¹ as did the Constitutions of Florida² and Illinois³, operative in 1875. The Constitutions of Mississippi⁴ and Maine stipulated disqualifications in case of giving or receiving bribes.⁵

Article IX -- Section 2. The General Assembly shall have no power to remove the county seat of any county, but the removal of county seats shall be provided by general law;.....

This section was adopted, as reported⁶, without change. The Constitution of 1865 contained the same section.⁷ This same prohibition was included under Article IV, Section 53, subhead (10), discussed in the chapter preceding.⁸ In that discussion, it was seen that the Constitutions of Illinois, Iowa, New York, Pennsylvania, Texas, West Virginia, and Wisconsin possessed the same prohibition. This section in its entirety includes more than a prohibition, however, and explains the method by which the voters of a county may decide to move their county seat.

Article IX -- Section 3. The General Assembly shall have no power to establish any new county with a

¹Art. II, Sec. 26.

²1868, XV, 4.

³1870, III, 7.

⁴1868, XII, 2.

⁵Me. 1820, IX, 13.

⁶J. 271.

⁷Art. IV, Sec. 30.

P.

territory of less than four hundred and ten square miles, nor to reduce any county now established to a less area or less population than required for a ratio of representation existing at the time; but when a new county is formed having a population less than a ratio of representation it shall be attached for representative purposes to the county from which the greatest amount of territory is taken until such ratio shall be obtained. No county shall be divided or have any portion stricken therefrom without submitting the question to a vote of the people of the county .....; nor shall any new county be established, any line of which shall run within ten miles of the then existing county seat of any county. ....

This section stands substantially as reported except that the minimum area was five hundred square miles instead of four hundred and ten.¹ The Constitution of 1865 contained as much of the section as is included down to - "but when a new county is formed". Five hundred square miles was the minimum.² The Constitution of 1820 provided a minimum of four hundred square miles for new counties and twenty square miles for the reduction in size of counties already established.³ Similar sections were present in the Constitutions of Illinois,⁴ Ohio,⁵ Mississippi,⁶ and Virginia⁷ in 1875.

Article IX -- Section 7. The General Assembly shall provide, by general laws, for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the power of each class shall be defined by general laws, so that all such municipi-

¹J. 271.

²Art. IV, Sec. 31.

³Art. III, Sec. 34.

⁴Art. X, Sec. 1.

⁵Art. II, Sec. 30.

⁶1868, IV, 37.

⁷Art. V, Sec. 19.

pal corporations of the same class shall possess the same powers and be subject to the same restrictions. The General Assembly shall also make provisions, by general law, whereby any city, town, or village, existing by virtue of any special or local law, may elect to become subject to, and be governed by, the general laws relating to such corporations.

This section was adopted as reported.¹ A similar section was found in the Constitution of 1865.² Classification was not provided for, and the people of the city were required to vote upon the question of the incorporation of the city. Similar sections were found in six state constitutions in 1875.³

Article IX -- Section 8. The General Assembly may provide by general law for township organization, under which any county may organize whenever a majority of the legal voters of such county..... shall so determine..... and the local concerns of the several townships therein may be transacted in such manner as may be prescribed by law: Provided, that the justices of the county court in such case shall not exceed three in number.

This section was adopted as reported.⁴ No similar section existed in the Constitutions of 1865 or 1820. The Constitutions of Florida, Michigan, and Illinois defined the legislative power to organize townships.⁵ The township organization adopted under

¹J. 271.

²Art. VIII, Sec. 5.

³Cal. 1849, IV, 37; Fla. 1868, V, 21; Mich. 1850, IV, 38; Vt. 1793, VI, 9; Wis. 1848, IV, 23; O. 1851,

⁴XIII, 6.

⁵J. 477.

Fla. 1868, V, 21; Mich. 1850, IV, 38; Ill. 1870, X, 5.

the section before 1878 was a duplicate of that obtaining in Illinois.

Article IX,-- Section 12. The General Assembly shall, by a law uniform in its operation, provide for and regulate the fees of all county officers, and for this purpose may classify the counties by population.

This section was adopted as reported.¹ No similar section existed in previous Missouri constitutions. A similar section occurred in the Constitution of West Virginia.²

Article IX -- Section 14. Except as otherwise directed by the constitution, the General Assembly shall provide for the election or appointment of such other county, township and municipal officers as public convenience may require; and their terms of office and duties shall be prescribed by law; but no term of office shall exceed four years.

This section was proposed and adopted as a new section without going to a committee.³ The last clause was added as an amendment.³ No other constitutions apparently possessed the section.

Article X -- Section 1. The taxing power may be exercised by the General Assembly for state purposes, and by counties and other municipal corporations, under authority granted to them by the General Assembly for county and other corporate purposes.

No similar sections existed in the Constitutions

¹J. 477.

²1872, IX, 6.

³J. 552.

of 1865 and 1820. Substantially, the same section was present in nine other state constitutions.¹

Article X -- Section 2. The power to tax corporations and corporate property shall not be surrendered or suspended by act of the General Assembly.

No similar section existed in other constitutions.

Article X -- Section 6. ... exemptions [from taxation] shall be only by general law.

In this section certain classes of property are mentioned as being privileged to be exempted from taxation by general law. The section similar in the Constitution of 1865 did not include the "general law" provision.² There was no similar section in the Constitution of 1820. The Constitution of Illinois contained a parallel section.³

Article X -- Section 7. All laws exempting property from taxation, other than the property above enumerated, shall be void.

No similar section existed in any other constitution.

Article X -- Section 10. The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations or upon the inhabitants or property thereof, for county, city, town or other munici-

¹Ark.1864,XIII,1,6; Ill.1870,IX,1; Ind.1851,X,1; Kan.1859,XI,1; Minn.1857,IX,2; Nebr.1867,V,3; Nev.1864,IX,2; O.1851,XII,2; Pa.1873,IX,1.

²Art.XI, Sec. 16.

³1870, IX, 6.

pal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

This section was designed to free cities from being compelled by the legislature to levy taxes for local purposes without the use of their own discretion. It was probably the culmination of a desire to crystallize public policy and to get definite basis for the legality or illegality of such legislative action which at the time, was much mooted in the courts.¹

Article XI -- Section 1. ... the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty years.

Similar sections existed in previous Missouri constitutions², and in sixteen other state constitutions.³

Article XI -- Section 5. The General Assembly shall, whenever the public school fund will permit and the actual necessity of the same may require, aid and maintain the State University, now established, with its present departments. The government of the State University shall be vested in a Board of Curators, to consist of nine members, to be appointed by the Governor, by and with the advice and consent of the Senate.

The Constitution of 1865 contained a section

¹See: People v. Com. Counc. Detr. 28 Mich. 228.

Balto v. Reitz, 50 Md. 574.

²David v. Portland Water Commission, 14 Ore. 98.

³1865, Art. IX, Sec. 1; 1820, Art. VI, Secs. 1 and 2.

Cal.1849,IX,3; Fla.1868,IX,2; Ga.1868,VI,1; Ill.1870, VIII,1; Ind.1851,VIII,1; La.1868,VII,135; Mich.1850, XIII,1; Minn.1857,VIII,1; Nev.1864,XI,2; N.C.1868, IX,2; Ore.1857,VIII,3; Pa.1873,X,1; S.C.1868,X,3; Va.1870,VIII,3; W.Va.1872,XII,1; Wis.1848,X,3.

authorizing the legislature to establish and maintain the State University as soon as the school fund would permit.¹ Similar provisions existed in four state constitutions in 1875.²

Article XI -- Section 11. Neither the General Assembly nor any county, city, town, township, school district or other municipal corporation shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church, or sectarian purpose .....

No similar section existed in previous Missouri Constitutions. The Constitutions of Illinois and Pennsylvania contained similar sections.³

Article XII -- Section 2. No corporation, after the adoption of this Constitution, shall be created by special laws; nor shall any existing charter be extended, changed or amended by special laws except those for charitable, penal or reformatory purposes, which are under the patronage and control of the state.

This prohibition was expressed in a previous section of the constitution.⁴ The Constitution of 1865 contained the provision⁵, as did twelve other constitutions in 1875.⁶

The five sections following relating to corporations possess no counterparts in previous Missouri

¹Art. IX, Sec. 4.

²Minn.1857,VIII,4; Nev.1864,XI,4; S.C.1868,X,9; Wis.

³1848,X,6.

⁴Ill.1870,VIII,3; Pa.1873,X,1, III,18.

⁵Art. IV, Sec. 53, subhead (25).

⁶Art. VIII, Sec. 2.

Ark.1874,XII,2; Cal.1849,IV,3; Ia.1857,VIII,1; Ill.1870, XI,1; Kan.1870,XII,1; Me.1820,IV,14; Md.1867,III,48; Nebr.1867,VII,1; N.C.1868,VIII,1; O.1851,XIII,1; W.Va. 1872, XI, 1; Wis. 1848, XI, 1.

constitutions and none discoverable in other state constitutions in 1875. They apply to the powers of the legislature, however, and constitute limitations upon legislative powers, either by denying certain powers or by outlining a definite unvarying course of action for the legislature.

Article XII -- Section 3. The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend such forfeited charter, or pass any other general or special laws for the benefit of such corporation.

Article XII -- Section 12. It shall not be lawful in this state for any railway company to charge for freight or passengers a greater amount, for the transportation of the same, for a less distance than the amount charged for any greater distance; and suitable laws shall be passed by the General Assembly to enforce this provision; but excursion and commutation tickets may be issued at special rates.

Article XII -- Section 15. ... the General Assembly shall pass laws enforcing by suitable penalties, the provisions of this section. [Providing for openness and publicity in the conduct of corporate businesses.]

Article XII -- Section 16. ... and the General Assembly shall pass no law exempting any such property [rolling stock or other movable property belonging to railroads] from execution and sale.

Article XII -- Section 19. The General Assembly shall pass no law for the benefit of a railroad or other corporations, or any individual or association of individuals, retrospective in its operations, or which imposes on the people of any county or municipal subdivision of the state a new liability in respect to transactions or considerations already past.

Article XII -- Section 14. The General Assembly shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and shall from time to time pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties.

This section had no counterpart in previous Missouri constitutions, but a similar section prevailed in the Constitutions of Illinois¹ and Michigan².

Article XII -- Section 20. No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of local authorities.....

This section possessed no counterpart in previous Missouri Constitutions, but similar provisions were found in the Constitutions of Illinois and West Virginia.³

Article XII -- Section 26. No act of the General Assembly authorizing or creating corporations or associations with banking powers (except banks of deposit or discount) nor amendments thereto shall go into effect, or in any manner be enforced, unless the same shall be submitted to a vote of the qualified voters of the State, at the general election next succeeding the passage of the same, and be approved by a majority of the votes cast at such election.

¹1870, XI, 15.

²1850, Amd't. 29, Sec. 1.

³Ill. 1870, XI, 3; W. Va. 1872, XI, 5.

No counterpart to this section existed in previous Missouri constitutions, but the Constitutions of California, Indiana, Maryland, New York, Ohio, Oregon, South Carolina, and Wisconsin contained similar provisions.¹

Article XIII -- Section 2. The General Assembly, in providing for the organization, equipment, and discipline of the militia, shall conform, as nearly as practicable to the regulations for the government of the armies of the United States.

This section possessed no counterparts in the Constitutions of 1865 and 1820. The Constitution of Illinois possessed substantially the same section.² The Constitution of 1865 gave the General Assembly power to organize a militia, but did not prescribe the United States Army Regulations.³ The Constitutions of twelve states included the section as embodied in the Constitution of 1865.⁴

Article XIII -- Section 7. The General Assembly shall provide for the safe keeping of the public arms, military records, banners and relics of the State.

No similar section existed in previous Missouri constitutions. The Constitution of Florida included

¹Cal. 1849, IV, 34; Ind. 1851, XI, 1; Md. 1867, III, 39; N.Y. 1846, VIII, 4; O. 1851, XIII, 7; Ore. 1857, XI, 1; S.C. 1868, XII, 6; Wis. 1848, XI, 4, and 5.

²1870, XII, 1.

³Art. X, Sec. 1.

⁴Ala. 1867, X, 2; Cal. 1849, VII, 1; Fla. 1868, XII, 2; Kan. 1859, VIII, 2; La. 1868, VIII, 144; Mich. 1850, XVII, 2; Miss. 1868, IX, 2; Nev. 1864, XII, 1; N.J. 1844, VII, 1; N.C. 1868, XII, 2; Wis. 1848, IV, 29; Neb. 1867, II, 26.

substantially the same provision.¹

Article XIV -- Section 1. The General Assembly of this state shall never interfere with the primary disposal of the soil by the United States, nor with any regulation which Congress may find necessary for securing the title in such soil to bona fide purchasers. ....

The same section existed in both previous Missouri constitutions,² but in no other.

Article XIV -- Section 7. The General Assembly shall, in addition to other penalties, provide for the removal from office of county, city, town and township officers, on conviction of willful, corrupt, or fraudulent violation or neglect of official duty.

Article XIV -- Section 9. The appointment of all officers not otherwise directed by this Constitution shall be made in such manner as may be prescribed by law.

No precedents for the two sections above seem to have existed either in Missouri constitutions or the constitutions of other states. The one prescribes certain features to be incorporated within certain laws made by the legislature, and so limits legislative discretion. The other directs the legislature to make laws regulating the tenure of offices not provided for in the constitution.

Article XIV -- Section 10. The General Assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to

¹1868, XII, 2.

²1865, XI, 1. 1820, X, 1.

prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery, in this state; and all acts or parts of acts heretofore passed by the Legislature of this state, authorizing a lottery or lotteries, and all acts amendatory thereof, are hereby avoided.

A similar section was present in the Constitution of 1865, though not so elaborate.¹ Before the report of the Committee on Miscellaneous Provisions a communication was presented to the Convention by a member from "one William Goodwin" suggesting that a clause be put in the Constitution repealing all existing lottery charters and prohibiting the granting of any more, and prohibiting all gift concerns.² Similar sections were present in fifteen constitutions in 1875.³

Article XIV -- Section 12. Senators and Representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the General Assembly, and for fifteen days next before the commencement and after the termination of each session; and for any speech or debate in either house they shall not be questioned in any other place.

This section was proposed⁴ as a new section for the article on the Legislative Department after that article had been adopted. The section was referred to the Committee on Miscellaneous Provisions and was incorpo-

¹Art. IV, Sec. 10.

²J. 216.

³Cal. 1849, IV, 27; Fla. 1868, V, 20; Ill. 1870, IV, 27; Ia. 1857, III, 28; Mich. 1850, IV, 27; Md. 1867, III, 36; Minn. 1857, IV, 31; N. J. 1844, VII, 2; Ore. 1857, XV, 1; R. J. 1842, IV, 12; Tenn. 1870, XI, 5; Tex. 1868, III, 27; Va. 1870, V, 18; W. Va. 1872,

⁴VI, 36; Wis. 1848, IV, 24.

J. 638.

rated in the miscellaneous article by the report of that committee.¹ The same section, identically, existed in the Constitution of 1865² and in that of 1820³. Among the other state constitutions operative in 1875, it was generally provided that senators and representatives should be free from arrest during the session and for a specified number of days before and after the same⁴, or during the session and while going to and from it⁵, except in cases of treason, felony, breach of the peace⁶, and possibly larceny⁷, or violation of the oath of office⁸, and that members should not be questioned outside for statements made in either house.⁹

¹J. S. (t) 24.

²Art. IV, Sec. 16.

³Art. III, Sec. 23.

⁴Ala.1867,IV,11, 15 da.; Cal.1849,IV,12, 15da.; Conn.1818, VII,10, 4 da.; Mich.1850,IV,7, 15 da.; Miss.1868,IV,19, 15 da.; Nebr.1867,II,16, 15 da.; Nev.1864,IV,11, 15 da.; R. I.1842,IV,5, 2 da.; W.Va.1872,VI,17, 10 da.;

⁵Ark.1874,V,15;Ga.1868,III,4(c); Ill.1870,IV,14; Ind.1851, IV,8; Kan.1859,II,22; Ky.1850,II,25; La.1868,II,40; Me. 1820,IV,8; Minn.1857,IV,8; N.H.1792,II,20; N.J.1844,IV, 8; O.1851,II,12; Ore.1857,IV,9; Pa.1873,II,15; Tenn.1870, II,13; Tex.1868,III,20.

⁶Ala.1867,IV,11; Ark.1874,V,15; Cal.1849,IV,12; Ga.1868,III, 4(e); Ill.1870,IV,14; Ind.1851,IV,8; Kan.1859,II,22; Ky. 1850,II,25; La.1868,II,40; Me.1820,IV,8; Mich.1850,IV,7; Minn.1857,IV,8; Miss.1868,IV,19; Nebr.1867,II,16; N.J. 1844,IV,8; O.1851,II,12; Ore.1857,IV,9; Pa.1873,II,15; Tenn.1870,II,13; Tex.1868,III,20; Va.1870,V,11; W.Va. 1872, VI,17; Wis.1848,IV,15.

⁷Ga.1868,III,4 (c).

⁸Pa.1873,II,15.

⁹Ark.1874,V,15; Conn.1818,VII,10; Ill.1870,IV,14; Kan.1859, II,22; Ky.1850,II,25; La.1868,II,40; Me.1820,IV,8; Mich. 1850,IV,7; Minn.1870,IV,8; N.J.1842,IV,8; O.1851,II,12; Ore.1857,IV,9; Pa.1873,II,15; R.I.1842,IV,5; Tenn.1870, II,13; Va.1870,V,11; W.Va. 1872,VI,17.

CHAPTER VII

Conclusion

While the Constitution of 1875 was a quite different document in its references to the legislature from that of 1865, still the Constitution of 1865 undoubtedly furnished the background for the legislative provisions in its successor. This fact is indicated by the wording of a motion passed in the Convention on May 6, 1875, that "a committee on the Legislative Department be appointed to report what changes or amendments they deem necessary in that part of the constitution of the State which relates to the legislative department."¹ Sixty of the hundred and seven sections discussed in the chapters above possessed forerunners in the Constitution of 1865, whereas the nearest number of parallel sections in the Constitution of any other state was forty-seven, in the Constitution of Illinois.

Evidence does not seem to indicate that the Missouri Constitution of 1820 was highly influential, save in so far as it was responsible for certain sections within the Constitution of 1865, which, in turn, were used in the framing of sections within the Constitution of 1875.

¹J. 23.

²See table, Appendix, p.

A table is included within the Appendix to this paper which indicates the number of sections in each division of the legislative article that were influenced by the different state constitutions in force in 1875. The table is derived from the section by section discussion in the preceding chapters.

A digest of that table indicates that in the first division on Representation and Apportionment a group might be formed of those constitutions apparently the most influential in the framing of sections within it, to consist of the Constitutions of Missouri, 1865, Illinois, Iowa, Texas, West Virginia, Arkansas, and Kentucky. These constitutions are mentioned in the order of their apparent influence. In next order of importance might be placed Georgia, Alabama, Mississippi, California, Wisconsin, Pennsylvania, Louisiana, Michigan, New York, Oregon, South Carolina, Maryland, and Tennessee. In a third group might be placed New Hampshire, New Jersey, Ohio, Minnesota, Virginia, Delaware, Kansas, Nebraska, Nevada, North Carolina, and Vermont. Constitutions of practically no influence were those of Florida, Massachusetts, Rhode Island, and Connecticut.

In the division on Legislative Procedure the first class comprises evidently the constitutions of Tennessee, Pennsylvania, Missouri, 1865, Michigan, Illinois, Nevada, and Maryland. In the second group

might be placed Arkansas, Georgia, Kansas, New Jersey, New York, Oregon, Ohio, West Virginia, Indiana, and Nebraska. A third group of constitutions of doubtful influence might be made up of those of California, Iowa, Minnesota, South Carolina, Texas, Virginia, Wisconsin, Mississippi, Kentucky, Louisiana, Maine, New Hampshire, North Carolina, Rhode Island, and Vermont.

In the division on Limitation on Legislative Power the constitutions of Pennsylvania, Missouri, 1865, Illinois, Arkansas, and Michigan were undoubtedly the most influential. In a second group, slightly less influential, were New Jersey, Kentucky, Maryland, Nebraska, and New York. Constitutions only casually related to the Missouri sections were those of Iowa, Nevada, North Carolina, Tennessee, West Virginia, Wisconsin, Alabama, Florida, Georgia, Indiana, Kansas, Minnesota, Ohio, Oregon, Rhode Island, Texas, and Virginia.

The constitutions of influence in the framing of the various miscellaneous sections relating to the legislature might be divided into a first group consisting of those of Missouri, 1865, Illinois, West Virginia, California, Wisconsin, Florida, Mississippi, and Pennsylvania; a second group of those of Nebraska, North Carolina, Ohio, Michigan, Indiana, Virginia, Alabama, Iowa, Minnesota, Nevada, Kansas, and Oregon; and a third group consisting of the constitutions of

Kentucky, Georgia, Maine, Maryland, New Jersey, New York, South Carolina, Tennessee, Arkansas, Connecticut, Delaware, Louisiana, Massachusetts, New Hampshire, Rhode Island, Texas, and Vermont.

In making a summary of the Constitutions influencing all of the sections as a whole, dealing with the legislative department, the first class would include the four constitutions. Missouri, 1865, Illinois, Pennsylvania, and West Virginia. The second class would include the constitutions of Florida, Michigan, Arkansas, Alabama, Tennessee, California, Wisconsin, Indiana, Maryland, Nebraska, Iowa, Ohio, Mississippi, Kentucky, Georgia, and New York. The third class would consist of the constitutions of Nevada, New Hampshire, Oregon, Texas, Virginia, Kansas, Minnesota, North Carolina, New Jersey, and South Carolina. Among the constitutions practically insignificant in influence would be those of Connecticut, Delaware, Louisiana, Maine, Rhode Island, and Vermont.

It is noticeable that those constitutions framed nearest the date of the Missouri Constitution of 1875 were the most influential. The Constitutions of Illinois, West Virginia, and Pennsylvania were framed in 1870, 1872, and 1873 respectively. The only other constitutions in force in 1875 framed later than 1868 were those of Tennessee, 1870, and Arkansas, 1874, both

of which stand among the first five constitutions in the second group. The constitutions of the New England States, which were framed most remotely in point of territory and of time comprise almost exclusively the group of those least influential.

The Constitutions of Illinois and West Virginia, as well as of Kentucky, Alabama, and Mississippi were among the more influential ones in the framing of the sections relative to the Executive Department in the Constitution of 1875.¹ The constitutions of Illinois, Kentucky, Alabama, Ohio, Maryland, and Tennessee operative in 1820 were instrumental in the framing of the legislative sections in the Missouri Constitution of that year.² These are some of the same constitutions that were influential in the framing of the legislative sections in 1875.

The organization of the legislature and tenure of members in the Missouri Constitution of 1875 was practically the same as in every state constitution of the time, except perhaps in the case of the election of Senators and Representatives from the towns in the New England States. The major problems in connection with the legislature in the Convention were those of representation and apportionment and of the effective limitation of legislative powers, in the latter of which was

¹Howard: Exec'v. Art. Const. Mo. 1875, p.
²Shoemaker: First Const. Mo. p. 137.

involved the matter of preventing local and special legislation, of guarding against hasty and ill-considered action on the part of the legislature by the prescription of exact procedure and by the inclusion of statutory matter in the constitution, and of extensively limiting the legislature's power in a financial and contractual way.

In its "Article to the People",¹ intended to furnish information to voters as to the new constitution, the Convention of 1875 stated that in the matter of representation and apportionment no radical change was made. To remedy an inequality in the population of some of the Senatorial districts caused by failure of the legislature to redistrict the state in 1870, the state was in part redistricted in the constitution. Increased representation in the lower house for more populous counties was obtained without excessively increasing the number of representatives in the "House".

Wholesome limitations, according to the "Article", were placed upon the powers of the legislature, in "guarding against the possibility of bills becoming laws which have not been fairly considered" by requiring "great particularity" in the enactment of laws, in prescribing biennial sessions, in prescribing general

¹J. S. (a) 26.

legislation only, in prescribing a smaller allowance for members after seventy days, and "therefore shortening the sessions and making for a more satisfactory performance of business", in preventing the creation of debts over a certain limit, except by a two-thirds majority popular vote, and in requiring a two-thirds majority in each house to pass a bill over the Governor's veto.

The main general tendency in state constitution making at the time was the limitation of legislative powers. In this tendency the Missouri Constitution of 1875 has a prominent place. The preponderating amount of attention given to the legislative department was due to the effort to limit and define its powers within the narrowest compass possible. The Legislative Article in the Missouri Constitution of 1875 includes fifty-six sections as compared with twenty-five in the Executive Article and forty-four in the Judicial Article; and as compared with thirty-five sections in the legislative article of the constitution of 1865 and thirty-six in that of 1820. The nearest number of sections in the legislative article in any other state constitution was fifty in that of West Virginia (1872). The average among all the state constitutions, including Missouri, 1865 and 1820, was thirty-two. The miscellaneous sections, including mostly statutory matter in the constitution of 1875 numbered fifty-one, while the

nearest to that was forty-one in the Constitution of South Carolina (1868). The average was eighteen. The total of all sections dealing with the legislature in the Missouri constitution was one hundred and seven; the nearest number to that in other constitutions was seventy-four in South Carolina (1868) and West Virginia (1872); the average was fifty-one.

The above comparison furnishes a good notion of the detailed extent to which the Missouri Constitution limits legislative powers. It has been noted in Chapter V above that Missouri went farther in this matter than any other individual state and farther than the average of them all. The above comparison indicates how much farther the state has gone.

No other constitution in 1875 possessed separate divisions on the Limitation of Legislative Powers and on Legislative Procedure. The number of miscellaneous and statutory provisions in other constitutions was comparatively small. The Missouri Constitution of 1865 contained some limitations upon legislative powers because the tendency had already begun at that date, but the Constitution of 1875 included twenty-five sections taken mainly from the Constitution of 1865 in which the restrictions upon the legislature were increased¹ and twenty-three new sections not included in

¹Art. III, 5, 12, 16, 20, 23, 26, 28, 34, 39, 45, 47, 49, 50, 53, 55, 56.
Art. V, 12, 13, 9. Art. I, 15. Art. VII, 1, 2. Art. IX, 3.
Art. X, 6. Art. XIV, 10.

the Constitution of 1865 in which restrictions were placed upon the legislature.¹ Besides these, any number of new statutory or miscellaneous provisions were added in 1875.

In summary it might be said that approximately seventy-two sections in the present constitution of Missouri including ten within the division on Representation and Apportionment, and the Executive Article, the eighteen defining procedure, the fourteen within the division on the limitation of legislative powers, and at least thirty of the miscellaneous provisions, constitute limitations upon legislative powers.

W. F. Dodd, in his "The Revision and Amendment of State Constitutions"² indicates the following methods by which legislative powers may be limited in State constitutions:-- by defining procedure, e. g. title, readings, amendments, by substantive requirements prohibiting local, special, and certain financial legislation, by prescribing the relation of the executive and legislature in the general veto, veto of items, and budget procedure, by inclusion of initiative and referendum provision, statutory provisions and provisions for legislative reorganization of such nature as to

¹Art. III, 21, 22, 25, 27, 30, 32, 35, 43, 44, 46, 48, 51, 52, 54.
Art. IX, 12. Art. X, 7, 10. Art. XI, 5; Art. XII, 12, 3, 16,
19, 26.

²p.

limit legislative powers. The Missouri Constitution applied each of these methods in practically its fullest extent, except legislative reorganization, the initiative and referendum, and the defining of budget procedure. The latter two methods had not begun to be used in any states in 1875. Besides these methods mentioned by Mr. Dodds, the Missouri Constitution adopted others of similar nature, such as limiting the frequency and length of sessions.

A. N. Holcombe, in his "State Government in the United States," (1916)¹ indicates the extent to which Missouri has limited legislative powers in comparison with other states by saying "at the present time, the states fall into three groups with respect to the extent to which legislative powers have been restricted by the insertion of express limitations in the State constitutions ..... The third group" (those restricting legislative powers to the greatest extent) "comprises the greater number of states including almost all the states of the South and Far West, of which the most conspicuous representatives are California, Louisiana, and Missouri, and is characterized not only by the extensive limitation of legislative powers, but also by the regulation of the frequency and duration of the

¹p. 122.

legislative sessions."

It is not the purpose of this paper to discuss the wisdom of the policy of extreme limitation of legislative powers or to mention features that should accompany its application. It seems reasonable, however, that a constitution with strict limitations should be comparatively easy to amend. Such is the case in the Missouri Constitution. The legislative article may be too specific, the limitations included may be too strict and inconsistent with the free and best functioning of the legislature or the policy-forming agency in state government. There may be so many limitations that the constitution is reactionary. But those are not problems for this paper.

In conclusion, something might be said as to the general nature of discussion in the Convention. As indicated by the Journal and Debates, procedure was dignified and orderly, and matters were well considered. Remarks by members were oftentimes exceedingly interesting and quite brilliant, interspersed with literary, historical, and biblical references, as well as with appeals to patriotism and with reference to philosophical principles related to government. The large number of amendments offered to the various sections indicates the amount of thought and consideration that each section received. On the whole, the Convention was indeed noteworthy in the character of its membership, in the stimulating way in

which its work was done, and in the things which it accomplished.

BIBLIOGRAPHY

- Cooley, Thomas M.: A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union, Boston, Little, Brown and Co., 1868.
- Dealy,, James Quayle: Growth of American State Constitutions from 1776 to 1914, Boston, Ginn and Co., 1915.
- Dealy,, James Quayle: Our State Constitutions, Philadelphia, The American Academy of Political and Social Science, 1907.
- Debates of the Constitutional Convention of Missouri in 1875, State Archives, Jefferson City, Missouri.
- Dodd, Walter Fairleigh: Modern Constitutions, Chicago, The University of Chicago Press, 1909.
- Dodd, Walter Fairleigh: Notes on State Government, Unpublished. In possession of Mr. R. C. Journey, Columbia, Missouri.
- Dodd, Walter Fairleigh: The Revision and Amendment of State Constitutions, Baltimore, Johns Hopkins Press, 1910.
- Encyclopedia of the History of Missouri, New York, Louisville, Saint Louis, The Southern History Co., 1901.
- Holcombe, A. M.: State Government in the United States, New York, The Macmillan Co., 1916.

Howard, Robert Lorenzo: The Executive Article in the Missouri Constitution of 1875, Columbia, Missouri, Master's Thesis, 1918.

Jameson, John Alexander: A Treatise on Constitutional Conventions, Ed. 4., Chicago, Callaghan and Co., 1887.

Journal of the Constitutional Convention of Missouri of 1875, State Archives, Jefferson City, Missouri.

Journals of the Senate and House of Representatives of the State of Missouri, Jefferson City, Tribune Printing Co., 1881, 1891, 1901.

Journals of the Senate and House of Representatives of the State of Missouri, Jefferson City, The Hugh Stephens Printing Co., 1911.

Kettleborough, Charles: The State Constitutions, Indianapolis, B. F. Bower and Co., 1918.

Matthews, John Mosby: Principles of American State Administration, New York, D. Appleton and Co., 1917.

Million, John W.: State Aid to Railways in Missouri, Chicago, University of Chicago Press, 1896.

Morey, William C.: The First State Constitutions, Annals of the Academy of Political and Social Science, Vol. IV, Philadelphia, American Academy of Political and Social Science, 1894.

Munro, William Bennett: The Government of American Cities, New York, Rev. Ed., The Macmillan Co., 1916.

Official Manual of the State of Missouri, Jefferson City,
Missouri, The Hugh Stephens Printing Co., 1918.

Poore, Benjamin Perley: Federal and State Constitutions
and other Organic Laws of the United States,
Ed. 2, (Two volumes), Washington, D. C.
Government Printing Office, 1878.

Reinsch, P. S.: American Legislatures and Legislative
Methods, New York, The Century Co., 1907.

Shoemaker, Floyd Colvin: The First Constitution of
Missouri, Columbia, Missouri, Master's
Thesis, 1911.

Shoemaker, Floyd Colvin: Missouri's Struggle For Statehood,
Jefferson City, Missouri, The Hugh Stephens
Printing Company, 1916.

Stimson, Frederic Jesup: Federal and State Constitutions of
the United States, Boston, Boston Book Co., 1908.

Story, Joseph: Commentaries on the Constitution of the
United States, Ed. 5. (Two volumes), Boston,
Little, Brown and Co., 1891.

Thorpe, Francis Newton: American Charters, Constitutions
and Organic Laws (Seven volumes), Washington
D. C., Government Printing Office, 1909.

Webster, W. C.: A Comparative Study of the State Consti-
tutions of the American Revolution, Annals of
the American Academy of Political and Social
Science, Vol. IX, Philadelphia, American
Academy of Political Science, 1897.

EXPLANATION OF REFERENCES

All references to state constitutions are made after the following plan:-- First, the abbreviation for the name of the State; second, the date of the adoption of that state's constitution; third, the Roman numeral indicating the article; fourth, the figure indicating the section, -- e. g. Pa. 1873, IV, 1 means, the Constitution of Pennsylvania, adopted in 1873, Article four, Section one.

References to the Journal of the Constitutional Convention of Missouri, 1875, are made as follows: J. 97 means page 97 of the Journal; J. S. (t) 10 means page ten of that part of the supplement to the journal devoted to the proceedings on Thursday, July 29th. The (t) indicates Thursday. It happens that the supplement contains only the proceedings of the last three days of the Convention, Thursday, Friday, and Saturday, July 29th, 30th, and 31st, and the supplement is paged separately for each day.

References to the Debates of the Convention are made as follows: D. May 21st, meaning debates occurring on May 21st, 1875. The paging of the Debates is so unsatisfactory that it is not attempted to give the page number in every case here. The Debates are not divided into volumes, but are roughly divided according to days.

TABLE OF STATE CONSTITUTIONS EXISTING IN 1875,
WITH DATES OF THEIR ADOPTION.

Alabama.....	1867
Arkansas.....	1874
California.....	1849
Connecticut.....	1818
Delaware.....	1831
Florida.....	1868
Georgia.....	1868
Illinois.....	1870
Indiana.....	1851
Iowa.....	1857
Kansas.....	1859
Kentucky.....	1850
Louisiana.....	1868
Maine.....	1820
Maryland.....	1867
Massachusetts.....	1780
Michigan.....	1850
Minnesota.....	1857
Missouri.....	1875
Nebraska.....	1867
Nevada.....	1864
New Hampshire.....	1792
New Jersey.....	1844
New York.....	1846
North Carolina.....	1868
Ohio.....	1851
Oregon.....	1857
Pennsylvania.....	1873
Rhode Island.....	1842
South Carolina.....	1868
Tennessee.....	1870
Texas.....	1868
Vermont.....	1793
Virginia.....	1870
West Virginia.....	1872
Wisconsin.....	1848

NAMES OF THE MEMBERS OF THE MISSOURI CONSTITUTIONAL
CONVENTION -- 1875

Waldo P. Johnson, President, Saint Clair County

N. W. Watkins, Vice-President, Scott County

Atchison County

Malcolm McKillop

Bollinger County

J. H. Rider

Boone County

John Fleming Rucker

William F. Switzler

Buchanan County

James C. Roberts

Cape Girardeau County

Lowndes Henry Davis

Carroll County

John B. Hale

Chariton County

Charles Hammond

Clay County

DeWitt C. Allen

Cole County

Horrace B. Johnson

Alfred M. Lay

Cooper County

Washington Adams

DeKalb County

Henry Boone

Dent County

John Hyer

Franklin County

F. W. B. Crews

Gasconade County

Charles D. Eitzen

Greene County

Charles B. McAfee

Grundy County

John H. Shanklin

Howard County

Thomas Shackelford

Howell County

James Henry Maxey

Iron County

John F. T. Edwards

Jackson County

William Christman

Francis M. Black

Jasper County

John H. Taylor

Jefferson County

Phillip Pipkin

Johnson County

Edmund A. Nickerson

Knox County

Louis F. Cotty

Laclede County

George W. Bradfield

Lafayette County

Henry C. Wallace

Lincoln County

Archibald V. McKee

Macon County

Benjamin Robert Dysart

Marion County

Edward McCain

Monroe County

A. M. Alexander

Newton County

B. F. Massey

Pemiscott County

George W. Carleton

Pike County

Neil Cammeron Hardin

Platte County

Elijah Hise Norton

Polk County

John W. Ross

Ralls County

William Priest

Randolph County

John Ray

Ray County

James F. Farris

Ripley County

Pinckney Mabrey

Saint Charles County

Henry Clay Lockland

Saint Francois County

Edmund V. Conway

Saint Louis County

James O. Broadhead

Henry Thomas Mudd

Henry C. Brockmeyer

George H. Shields

James C. Edwards

Henry J. Spaunhorst

Thomas Tasker Gantt

Amos Riley Taylor

Louis Gottschalk

Albert Todd

Nicholas A. Morten

Saline County

William H. Letcher

Schuyler County

J. R. Rippey

Scotland County

L. J. Wagner

Sullivan County

W. Halliburton

Vernon County

Samuel R. Crockett

Webster County

Robert W. Fyan

TABLE SHOWING NUMBER OF SECTIONS INFLUENCED BY OTHER STATE CONSTITUTIONS

	Representation and Apportionment			Procedure			Limitations			Miscellaneous			Grand Total
	22 sections	19 sections	14 sections	51 sections									
State	1st.	2nd.	Total	1st.	2nd.	Total	1st.	2nd.	Total	1st.	2nd.	Total	
Ala.		9	9	1	6	7	1		1	2	5	7	24
Ark.		10	10	2	4	6	5		5		3	3	24
Cal.	1	7	8		4	4				4	7	11	23
Conn.		4	4							1	1	2	6
Del.	1	4	5								2	2	7
Fla.		3	3		7	7	1		1	4	6	10	21
Ga.	1	8	9	1	5	6	1		1	1	4	5	21
Ill.	4	9	13	2	5	7	4	1	5	15	7	22	47
Ind.	1	7	8		5	5	1		1	2	6	8	22
Ia.	2	10	12	1	3	4	2		2	2	5	7	25
Kan.	1	4	5		6	6		1	1		6	6	18
Ky.	4	6	10		2	2	3	1	4	2	3	5	21
La.		8	8		1	1					3	3	12
Me.	1	1	2		1	1				1	3	4	7
Ma.		7	7	1	6	7	3	1	4		4	4	22
Mass.	1	1	2								1	1	3
Mich.	2	5	7	2	6	8	3	2	5	3	5	8	28
Minn.	1	5	6		4	4	1		1	1	6	7	18
Miss.		9	9		3	3				5	5	10	22
Nebr.		5	5		5	5	3		3	2	7	9	22
Nev.		5	5	1	6	7	2		2	1	6	7	21
N. H.	2	4	6		2	2					1	1	9
N. J.	1	5	6		6	6	2	2	4		4	4	20
N. Y.	2	5	7	2	4	6	2	1	3	1	3	4	20
N. C.		5	5	1	1	2	1	1	2	2	7	9	18
O.	1	5	6		6	6	1		1	2	7	9	22
Ore.	2	5	7		6	6		1	1	1	5	6	20
Ra.	1	7	8	5	5	10	7	1	8	4	3	7	33
R. I.		2	2	1		1	1		1		2	2	6
S. C.	1	6	7	1	3	4					4	4	15
Tenn.		7	7	2	9	11	2		2		4	4	24
Tex.	1	10	11		4	4	1		1	1	2	3	19
Vt.		5	5	10	1	11				1		1	17
Va.		6	6		4	4		1	1	2	6	8	19
W. Va.	1	9	10	2	4	6	2		2	6	6	12	30
Wis.	1	7	8	1	3	4	2		2	2	9	11	25
Mo. 1865													81

"First" means number of sections in which the influence of the constitution in the cases appeared to be of first importance, it probably being one of a few constitutions influencing, or possessing an identical section, etc.

"Second" means cases in which the influence was of secondary importance.

"Total" is the sum, under each division of the "first" and "second" figures. The "Grand Total" is the sum of all "totals".

173943

University of Missouri - Columbia

010-100720105

Dry1919ScanSpecs. txt

MU Libraries
University of Missouri --Columbia

MU Theses and Dissertations (Pre-1920)

Local identifier   Dry1919

Capture information

Date captured	20160420
Scanner manufacturer	Zeutschel
Scanner model	OS 15000
Scanning system software	Omni scan v. 12.8 SR2 (2675)
Optical resolution	600 dpi
Color settings	grayscale, 8 bit
File types	tiff

Source information

Format	Book
Content type	Text
Source ID	010-100720105
Notes	Pages typed and single-sided. Title page has perforated property stamp. Some pages have handwritten marginalia and corrections. Page 99 has purple ink property stamp.

Derivatives - Access copy

Compression	Tiff compressed with LZW before conversion to pdf
Editing software	Adobe Photoshop CS5
Resolution	600 dpi
Color	Grayscale
File types	pdf
Notes	Pages cropped, canvassed, and images brightened. Blank pages removed. Canvas size: 7.75 x 10.75