THE FIRST CONSTITUTION OF MISSOURI.

A STUDY OF ITS ORIGIN.

by

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CONTENTS.

INTRODUCTION.

It is the purpose of this paper to give an account of the origin of the constitution of Missouri of 1820 by tracing its history in the constitutional convention and by comparing its several sections with similar provisions of the then existing state constitutions. Sections of the constitution will be taken up in regular order, each section being given as finally adopted, immediately following it will be found an account of its progress through the constitutional convention and a reference to the existing state constitutions which probably influenced its adoption.

No study of the constitution of 1820 would be complete without at least some general historical account of, first, the passage of the Enabling Act by Congress, usually known as the First Missouri Compromise, whereby, among other provisions, permission was given to Missouri to call a constitutional convention and frame a constitution, second, the convening

of such convention, its composition and work other than the detailed drawing up of the constitution, and third, the action taken by the National Government on this constitution, resulting in the Second Missouri Compromise and the execution of the same.

As early as 1817-1818 petitions from the people of Missouri praying for admission into the Union appeared in the House of Representatives.(1) These petitions although not ignored did not accomplish anything during that session of Congress. At the next session of Congress in pursuance of a petition of the Missouri Territorial Legislature of 1818-1819 presented to the House of Representatives, a bill was prepared by that body authorizing the people of the counties of Missouri to elect delegates to a convention with powers to frame a state constitution. This bill after much debate was amended by an anti-slavery restriction, known as the Talmadge Amendment. As thus modified it passed the House by a close vote on February 17, 1819. On the same day it was sent to the Senate where it

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(1) The original of one of these petitions of 1817, signed by sixty-nine inhabitants of Missouri Territory, some of whom were later delegates to the Missouri constitutional convention of 1820, is [redacted] in the vaults of the State Historical Society of Missouri. It is a very interesting document as regards the boundaries set forth for the new state, reasons assigned for a change of government, and the men signing same.

was under close consideration until March 2, when it passed with the Talmadge Amendment stricken out and was then sent back to the House. Both houses held to their original positions and the bill was lost for that Congress.

A few days after the assembling of the XVIth Congress, on December 6th, 1819, each house took up under separate consideration the Missouri question. The lower body had the memorials of the Missouri Territorial Legislature presented at the previous session, brought under consideration and lively debate ensued. While this subject was under discussion, the House passed a statehood bill for Maine and sent it to the Senate. This latter body had already been presented on December 29, 1819, with a memorial of the Missouri Territorial Legislature and so , when the Maine bill of the House came up, the Senate placed the two subjects in the hands of the same committee for report.(2) On January 6th, this committee reported the Maine bill with an amendment authorizing the people of Missouri to frame a constitution and state government but with no restriction attached regarding slavery. On February 16, 1820, the Senate voted to connect the Missouri bill with the Maine bill of the

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(2) A copy of the memorial of the Missouri Legislature of December 1819, which was printed by act of Congress, is ~~to be found~~ in the rooms of the State Historical Society of Missouri.

House and then proceeded to amend the same by adding a section known as the Thomas Amendment, which among other things prohibited slavery in Louisiana Territory north of 36 degrees 30 minutes, except in the proposed state of Missouri. As thus amended the bill passed the Senate February 18th, 1820, and was sent to the House.

The House refused to concur in the Maine bill as thus amended and sent the same , stripped of the Missouri bill and the Thomas amendment, back to the Senate. The two houses held to their original decisions and a joint conference committee was appointed. This committee agreed to let the Maine bill and the Missouri bill, with the Thomas Amendment attached to the latter, pass as separate bills. Congress acted on same as reported by the committee and the President of the United States signed the Missouri bill March 6th, 1820.

The title of this bill is, "An Act to Authorize the People of the Missouri Territory to Form a Constitution and State Government, and for the admission of such State into the Union on an Equal Footing with the Original States, and to Prohibit Slavery in certain Territories," and it consisted of eight sections. With the exception of section eight, which is the famous Thomas Amendment, it is similar to many of the former ordinary Enabling Acts passed by Congress.

By authority and in pursuance of this act, forty-one rep-

resentatives to a state convention were elected from fifteen counties in Missouri on the first Monday and the two succeeding days of May 1820. On June 12th, 1820, in accordance with the fourth section of the act, the representatives assembled at St.Louis, which was then the seat of government, and at once proceeded to the election of officers. The following officers were chosen, for President- David Barton, for Secretary - William G. Pettus, and for Door-keeper- George W. Ferguson.(3)

A resolution was then adopted requiring each member of the convention to take an oath to support the United States Constitution and to faithfully discharge the duties of his office. After the oath had been administered by Hon. Silas Bent, a Judge of the Superior Court, a resolution was unanimously adopted that it was expedient to form a constitution and state government for the people of Missouri Territory within the boundaries set forth in the act of Congress. A committee of five

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(3) Quite a dissertation could easily be written on the character of the personnel of this convention. It was a body representative of the best in Missouri. Among its members can be found some of Missouri's future state and national senators and representatives. On the whole it was conservative in tone, but, due partly to the fact that Missouri was on the frontier and also that so many of her inhabitants were from those centers of the lately born "New Democracy" i.e. Kentucky and Tennessee, which states were to give a new color to American politics, the members of this convention approached all questions relating to the machinery of government and the suffrage with a wonderfully fair and open mind.

members was appointed to draft and report rules for the government of the convention. This committee submitted a short report, which consisted of four parts, "The duties of the President", "Of Decorum in Debate", Duties of the Secretary", and "Duties of the Door-keeper", which report was adopted.(J.p. 5-7) Brevity, courtesy, and common sense are the distinguishing features of this report.

On June 13th, four committees were appointed to draft different parts of the proposed constitution. The work of these committees as well as of other committees which had to do with the forming of this constitution will be discussed below.(See p. 10)

On June 14th, a committee of three was appointed to consider the expediency of accepting or rejecting the five propositions of Congress relative to public lands &.(J.p.7-8) Two days later this last committee made its report which was favorable towards the propositions and also submitted an ordinance relating to same, both of which were unanimously accepted by the convention.(J.p.9-10)

On July 17th, the engrossed constitution was read and on the final passage was adopted by a vote of 39 to 1 - one member of the convention being unable to attend.(J.p.46) This constitution was never submitted to a popular vote.

On July 18th, a resolution was adopted whereby the consti-

tution was to be delivered to the president of the convention who should keep the same until a Secretary of State was appointed and duly qualified when he should deliver it to him to be filed and preserved among the archives of the state. A resolution was then passed authorizing the president of the convention to transmit a copy of the constitution to the President of the United States, heads of the departments of the Federal Government, and to the chief executive of each state and territory of the United States, and to deposit in the office of the Secretary of State of Missouri 100 copies of the constitution and the journal for the use and disposal of the General Assembly, and to distribute the remaining copies among the members of the convention. Also, the president of the convention was to transmit an authenticated copy of the constitution to the President of the Senate and to the Speaker of the House of Representatives of the United States.

On July 19th, the committee on enrollment reported that the constitution was truly enrolled. Mr. McFerron, the only member of the convention who had refused to vote for the constitution on its final passage, obtained leave to enter his objections to the same on the journal.(J.p.47. His objection was to sec.2., art.IV., of the constitution.)

The enrolled ordinance of the convention relating to the Act of Congress and the enrolled constitution were then signed

by the president and countersigned by the secretary, the latter document also being signed by all the delegates to the convention. A motion was passed instructing the sergeant-at-arms to deliver the furniture of the convention to Jubez Warner of St.Louis, subject to the order of the convention. The convention then adjourned without a day.(J.p.48)

According to the provisions of the constitution a general election was held the fourth Monday in August and on the third Monday in September the state government went into working order even though Missouri was not formally admitted for almost a year after the latter date.

On November 14th,1820, the Missouri constitution was presented to the Senate of the United States and on the 16th inst., tothe House. The committee to which it was referred in the House reported a bill admitting Missouri, but this was voted down. The opposition to the Missouri constitution which developed in both houses was centered on that part of section twenty six of article three of same, that made it imperative on the Missouri legislature to pass a law preventing free negroes and mulattoes from settling in Missouri. The Senates committee reported a bill admitting Missouri with a proviso attached which in effect was, that nothing in the Missouri constitution should be construed to contravene the clause in the United States constitution which declares that," the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states". As thus framed it passed the Senate and was sent to the House. The latter body tabled the Senate's bill

on the same day that it rejected the report of its own committee, December13th, 1820. On January 29th, 1821, the House again took up the consideration of the Senate's bill on which little progress was made. After numerous attempts at amendment and compromise, Mr.Clay on February 22nd, 1821, made a motion providing for a joint committee of twenty-three members of the two houses. The motion carried. The work of this committee is known as the Second Missouri Compromise, which was accepted by Congress in a "Resolution providing for the admission of the State of Missouri into the Union, on a certain condition", approved March 2nd, 1821.(Laws of Missouri, p.67-68)

The Legislature of Missouri complied with this condition by passing a "Solemn Public Act" which was approved by the Governor on June 26th of that year.(Laws of Missouri, p.68-69) On the 10th of August, 1821, President Monroe issued a proclamation declaring the admission of Missouri into the Union. (Laws of Missouri, p.69-70) Thus more than a year had elapsed from the adoption of Missouri's constitution to her final admission as a state and during ~~all~~ most of that time- lacking but a little over a month- her state governmental machinery had been in ~~full~~ partial operation. The foregoing proceedings have been succintly summarized by Professor Jonas Viles of the University of Missouri in his paper "The Story of the State" :" Missouri was to be admitted under her constitution, when she pledged herself by a solemn public act, never to construe certain specified clauses of it so as to authorize any law abridging

the rights of citizens of any other state. Missouri, with her state government fully organized, her Senators and Represenatives in Washington waiting for recognition, resented this seemingly treacherous delay of Congress. But the Legislature passed a resolution, which Monroe recognized as fulfilling the condition, and Missouri entered the Union. And, curiously enough, the articles of the Constitution, enumerated in the act of Congress and the resolution of the Legislature, cannot by any human ingenuity be identified with the clauses excluding free negroes." (State of Missouri,p.20)

Before taking up the history of the constitution section by section and comparing same with corresponding provisions in other state constitutions, a brief outline of first, the appointment and second, the general work of those committees directly influencing the formation of this document will be given.

On Tuesday, June 13th, the second day of the session of the convention, a resolution was made that one committee of ----- members be appointed by the president of the convention to draw up a constitution. This was lost.(J.p.5) A resolution was then proposed and carried that four committees, each consisting of three members, be appointed by the president of the convention to do the following work: one committee was to draft the legislative department, one the executive, one the judiciary and one the bill of rights and other parts not before mentioned. (J.p.5) These four committees reported to the convention on

Friday, June 16th. The journal reveals nothing regarding the contents of these reports.(J.p.10) All that is definitely known is that they were handed over to a select committee of four members, which had been appointed on this day, June 16th. The select committee made its report on June 17th.(J.p.10) The report of the select committee was considered and acted upon by the convention as indicated in the following paragraphs. As sections of the constitution so acted upon were not printed in the journal unless some amendment was proposed, it is difficult if not impossible to determine their substance. The provisions as adopted were then referred to a committee on style consisting of three members, appointed to revise, arrange, and whereever it was necessary transfer the section of the constitution without altering in any respect the substance thereof. This committee reported to the convention from time to time which in some cases made further changes in the section. On July 12th, a committee of enrollment of three members was appointed whose work has already been slightly touched upon and which will be further considered below.(J.p.39) The several actions of the convention and of its committees insofar as they relate to the constitution are set forth in a condensed form in the following paragraphs.

On June 20th, that part of the report of the select committee consisting of the preamble, distribution of the powers of government, and the legislative department was taken up and read a second time and committed to a committee of the

whole. (J.p.11) In the latter body this part of the report was considered from June 20th to June 23rd inclusive (J.p.11-12) and on June 30th , it was taken up on its third reading.(J.p.15) This third reading embraced the distribution of powers and the legislative department, arranged as Article I, sections 1 and 2, and Article II, sections 1-39, which then went to the committee on style.(J.p.15-19) The convention took up the report of this committee on these articles on July 11th, and disposed of the sections in the same manner as had been pursued with reference to the report of the select committee. (J.p.33) In this way the preamble, first and second and third articles of the constitution were agreed to.

On June 26th, that part of the report of the select committee which related to the executive department was taken up by the convention and read the second time and then committed to a committee of the whole.(J.p.13) In the latter body this part of the report was considered on June 27th and 28th. (J.p.14) On July 3rd, it was taken up on its third reading and was treated in the same manner as had been followed when the former articles were under review.(J.p.20-23) It contained twenty-three sections. It was referred to the committee on style which reported it on July 12th and on that day it was taken up and adopted, some changes being made, as Article IV, sections 1- 25.(J.p.38-39)

On June 28th, that part of the report of the select committee which related to the judicial department was taken

up by the convention on the second reading and committed to a committee of the whole.(J.p.14) Here it was considered on June 29th and, sundry amendments having been made, was reported back to the convention.(J.p.14) On July 3rd, this part of the report was taken up on its third reading and treated as former articles had been.(J.p.23) It was referred to the committee on style which reported it on July 13th and on that day it was taken up and adopted, some changes being made, as Article V, sections 1-19.(J.p.39-42. For history of Articles VI and VII, on Education and Internal Improvement, see these articles below.)

On July 6th, that part of the report of the select committee which related to " a bank and branches" was submitted to the convention,(J.p.37) and committed to a committee ~~to a committee~~ of the whole. The following day it was reported back to the convention.(J.p.28) On the same day a new section on banks was put before the convention by a member thereof.(J.p.28) The section after being amended several times was adopted by a close vote.(J.p.28) On Monday, July 10th, this adopted section was referred to a select committee of three members. (J.p.29) The section as given to this committee and the section as reported back are quite different. However, after further amendment the reported section was adopted.(J.p.30) On July 14th, the committee on style reported the article under the head of "Banks". It was adopted by the convention in the same form as reported and became Article VIII in the constitution. (J.p.42-43)

On July 14th, the committee on style reported the article on the militia.(J.p.42) This report was laid on the table. On July 15th, this article was read the third time and agreed to.(J.p.44) This became Article IX of the constitution.

Article X of the constitution, " Of Miscellaneous Provisions", which relates to United States lands and to navigation, was never reported by a committee. After the article on the militia had been read the third time and agreed to on July 15th, this article was submitted by a member of the convention. It consisted of two sections and was adopted in substantially the same form as submitted.(J.p.44)

On June 29th, that part of the report of the select committee relating to the schedule was read a second time.(J.p.14) On July 3rd, this part was referred to a newly created select committee. On July 6th, the report of this committee was read the first and second time, and committed to the committee of the whole. (J.p.27) On July 8th, the report of the committee of the whole on the " Schedule" was laid on the table.(J.p.39) Two days later the convention took up the consideration of the " Schedule".(J.p.31) The sixth section of this report with some changes became Article XI, " On Permanent Seat of Covernment". On July 13th, the committee on style reported the " Schedule", which report was laid on the table.(J.p.39) It cannot be determined when the original section six of the schedule became Article XI but possibly when it was in the hands of the committee on style and arrangement.

On June 29th, that part of the report of the select

committee relating to " Revising and Amending the Constitution" was read a second time and then committed to a committee of the whole where it was under consideration until July 3rd. (J.p.19-20) On July 6th, it was read a third time and agreed to .(J.p.27) It seems to have been referred to the committee on style, for on July 14th, it was again read a third time and agreed to.(J.p.43) It was finally inserted in the constitution as Article XII.

On June 29th, that part of the report of the select committee relating to " General Provisions" was read a second time.(J.p.14) It consisted of thirty-one sections and only here and there can one trace out the sources of the finally adopted twenty two sections of the " Declaration of Rights".(J.p.25-27) There were several sections that were entirely cut out.(J.p.26. For section 29 and section 30 see Journal, page 27) On July 5th, this article was read the third time and acted upon by the convention.(J.p.25-27) On July 11th, the committee on style reported the article on " General Provisions" which was later laid on the table. (J.p.33) Two days later the convention adopted sixteen sections without change. (J.p.42) The following day the term "General Provisions" was changed to "Declaration of Rights" by the convention.(J.p.42) After consideration by the convention twenty-three sections were adopted but that which was section 23 later appeared as a separate section under the article on education, thus leaving twenty-two sections under the head of "Declaration of Rights". (J.p.42-43)

The convention also adopted a " Schedule" but as this dealt with temporary matters it will not be considered in this paper.

As the different articles of the constitution were acted upon by the convention after having been reported by the committee on style, they were delivered to the committee on enrollment to be engrossed for a third reading.(J.p.39) The engrossed constitution was read and put upon its final passage on July 17th.(J.p.46) Some of the articles as they appear in the constitution are not identical with those adopted by the convention after the report of the committee on style. Changes must have been made before engrossment but no record of such changes appears in the journal. The convention passed an ordinance declaring assent to certain conditions and provisions in the " Enabling Act" and after signing the engrossed constitution finally adjourned July 19th, 1820.

PREAMBLE.

" We, the people of Missouri, inhabiting the limits hereinafter desiginated, by our representatives in convention assembled, at St.Louis, on Monday the 12th day of June, 1820, do mutually agree to form and establish a free and independent republic, by the name of " The State of Missouri". and for the government thereof, do ordain and establish this constitution."

This preamble was adopted without change by the convention.

No state constitution of this time contains an exact prototype of this paragraph. In no other preamble are to be found the words " a free and independent republic". The framing and adopting of state constitutions by representatives of the people in conventions assembled had become the general rule, while adoption or ratification by the people was the exception. In this respect Missouri followed the general rule. Some of the preambles attached to these constitutions were long, others short; some followed the pattern of the United States constitution, while others gave thanks to God or epitomized man's natural rights. The constitutions of Kentucky, South Carolina, Tennessee, and Virginia, bear the closest resemblance to the Missouri constitution on this point.(1)

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(1) Poore's: Ky.p.657; S.Ca.p.1628; Tenn.p.1667; Va.p.1910; All references to state constitutions are found in Poore's Constitutions and Charters. The plan being as follows: 1st,

the abbreviation of the state, 2nd, the first figure designates the article or main division of the constitution, 3rd, the second figure designates the section or subdivisdon under the main division, 4th, the figures in parenthesis always desiginate the page reference, e.g. Ky.I.3.(657) means, the Kentucky constitution, Article I, section 3, page 657, in Poore's Constitutions and Charters. Besides these abbreviations certain other ones were used, especially under the " Declaration of Rights", viz., D.R.-declaration of rights; G.P.- general provisions; Pt.- part.

ARTICLE I. " OF BOUNDARIES".

" We do declare, establish, ratify, and confirm, the following as the permanent boundaries of said state, that is to say: " Beginning in the middle of the Mississippi river, on the parallel of thirty-six degrees of north latitude; thence west, along the said parallel of latitude, to the St.Francois river; thence up, and following the course of that river, in the middle of the main channel thereof, to the parallel of thirty-six degrees and thirty minutes; thence west, along the same, to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river; thence, from the point aforesaid, north, along the same meridian line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, making the said line corresponding with the Indian boundary line; thence east, from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said river Des Moines; thence down along the middle of the main channel of the said river Des Moines to the mouth of the same, where it empties into the Mississippi river; thence down, and following the course of the Mississippi river, in the main channel thereof, to the place of beginning."

This article is a verbatim copy of section two of the " Enabling Act" of Congress of March 6th, 1820, which section defined the boundaries of the new state. All that the journal of the convention reveals on this provision is that on July 11th, the preamble, first and second articles were read and a agreed to, no change being made. J. P. 33.

ARTICLE II. " OF THE DISTRIBUTION OF POWERS."

" The powers of government shall be divided into three distinct departments, each of which shall be confided to a separate magistracy; and no person 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 hereinafter expressly directed or permitted."

The conception of a separation of the powers of government into three distinct departments had become so deeply imbedded in American political ideas by this time,1820, that it is not surprising to find this essential of our fundamental law in the Missouri constitution. As one authority has well said, " the classification of governmental powers into three is as old as Aristotle".(1) It was given a theoretical expression by Montesquieu and Blackstone in the eighteenth century.(2) Later it was incorporated and in a majority of cases concisely expressed in the early state constitutions of the Revolutionary Period, and of these instruments that of Massachusetts of 1780 is the most striking example.(3) Although omitted from the Articles of Confederation, it received added strength and greater authority by becomming one of the working principles of the national government as set forth in the Constitution of the United States.

~~The report of the select committee on this article was~~

~~agreed to without change by the convention.(J.p.15) The committee on style reported it as it now stands.(Jp.33)~~ ? X

The constitutions of Alabama, Georgia, Illinois, Indiana, Kentucky, Louisiana, and Mississippi bear the closest resemblance to the constitution of Missouri in this respect.(3) The report of the select committee appears to have been influenced by the lately constructed constitution of the neighboring state of Illinois in the matter of form, and by the constitutions of both Illinois and Kentucky as regards subject matter, while undoubtedly the constitution of Kentucky guided the action of the committee on style.

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(1) Foster on the Constitution.vol.I.p.289. For full account see chapter III.par. 42-45. Also, Dunning's, " Political Theories, Ancient and Mediaeval", p.96. The statement given above should be somewhat limited as it is not absolutely correct.

(2) Story on the Constitution, vol. I. chap.VII. p. 388-406. Dunning, " Political Theories from Luther to Montesquieu" p.412-415.

(3) Poore's: Ala.II.1&2.(34); Ga.I.1.p.(388); Ill.I.1&2.(440); Ind.II.(501); Ky.I.(657); La.I.1&3.(701); Miss.II.1&3.(1056).

ARTICLE III. " OF THE LEGISLATIVE POWER".

Section 1. (General Assembly)
" The legislative power shall be vested in a " General Assembly", which shall consist of a " Senate", and of a " House of Representatives".

Perhaps no principle of our government has received more general acceptance in the United States than that of a bicameral legislature. It had long been a fundamental rule of political science for the English people. It was carried over into the colonial governments more or less generally and, with the exception of Vermont, Pennsylnania, and Georgia, it was incorporated into all the constitutions of the Revolutionary Period. Like in many other ways, the Articles of Confederation proved an exception to this idea. However, it received recognition and became of more binding force by being plainly set forth in the United States constitution. Pennsylvania and Georgia soon adopted it and by 1830 only one state, Vermont, still retained the unicameral principle. Having such a strong foundation in practice as well as in theory, its expression in the Missouri constitution is easily accounted for. (1)

This section passed the convention without any change.

In its brevity and language it recalls the corresponding section in the United States constitution.(2) When compared with the other state constitutions, those of Alabama, Connecticut, Delaware, Georgia, Kentucky, Louisiana, Mississippi, Pennsyl-

vania, and South Carolina are substantially identical with Missouri's on this section.(3) The constitutions of Illinois, Indiana, Ohio, Tennessee, and Maine also bear a close resemblance to this section.(4)

The constitutions of Kentucky and Delaware were the most influential in the framing of this section as regards terms and general expression.

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(1)Story on the Constitution, ch. VIII.p.407-422.
(2) U.S. Constitution, I.1.
(3) Poore's: Ala.III.1.(34); Conn.III.(260); Del.II.1.(280); Ga.I.2.(388); Ky.II.1.(657); La.II.1.(701); Miss.III.4.(1057); Penn.I.1.(1548); S,Ca,I.1.(1628);
(4) Poore's: Ill.II.1.(440); Ind.III.1.(501); O.I.1.(1455); Tenn.I.1.(1667); Me.IV.Pt.First, sec. 1.(791)

Section 2.(Constitution of the House of Representatives) " The house of representatives shall consist of members to be chosen every second year by the qualified electors of the several counties. Each county shall have at least one representative, but the whole number of representatives shall never exceed one hundred."

There are four important points set forth in this section: tenure and term of members of the lower house, its maximum number, and a partial recognition of district representation. The ~~select committee~~ previded for only two of these, an elective tenure and a two year term.(J.p.15) An attempt was made in the convention to change the term to one year but this was lost by a vote of nearly four to one.(J.p.15) When this section was reported by the committee on style it was the same as finally adopted.(J..p.33-34) ~~However, another attempt was made to change the term but this was negatived by a large vote.(Ibid) Thus it is seen that both attempts to limit the term to one year were defeated by large majorities.~~

The constitutions that bear the closest resemblance to this one on this section are those of Alabama, Illinois, Kentucky, Louisiana, Pennsylvania, South Carolina, Tennessee, and the United States. The elective tenure was the rule in all the states for members of both houses. A two year term was provided for in only five constitutions at this time, those of Illinois, Louisiana, South Carolina, Tennessee, and the United States. (5) In the constitutions of only two states is to be found an express statement guaranteeing to each county at least one

representative, Alabama and Pennsylvania.(6) Nevertheless, the provision in the Federal Constitution respecting at least one representative fw each state might have had some influence.(7) A number of states had provisions relating to the maximum number of representatives but Kentucky alone fixed this number at one hundred.(8)

In all probability the state constitutions that were the most influential were thos e of Alabama, Illinois, Kentucky, and Tennessee.

Section 3. (Qualifications of Representatives)
" No person shall be a member of the house of representatives, who shall not have attained to the age of twenty-five years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state two years, and of the county which he represents one year next before his election, if such county shall have been so long established, but if not, then of the county or counties from which the same shall have been taken; and who shall not, moreover, have paid a state or county tax."

The select committee in its report, which was adopted by the convention, provided that a representative must be " a citizen of the United States", " have resided in the state at least six months previous to the adoption of this constitution", and " have attained to the age of twenty-five years".(J.p.15)An attempt was made to substitute simple resi-

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(5) Poore's: Ill.II.2.(440); La.II.2.(701); S.Ca.I.2.(1628); Tenn.I.5.(1668); U.S.I.2.par.1. A one year term was the rule in all the other states.
(6) Poore's: Ala.III.9.(35); Penn.I.4.(1549).
(7) U.S.I.2.par.3.
(8) Poore's: Ala.II.9.(35); Ky.I.6.(657); Alabama placed the maximum number at one hundred when the population of the state reached one hundred thousand.

dence at the time of the adoption of the constitution. This was lost by a decided vote.(J.p.15-16) A motion changing the age qualification to twenty-one was also lost.(J.p.16) Of the related constitutions only those of Illinois, Indiana, Kentucky, Mississippi, Ohio, and the United States make the simple statement that a representative shall be a citizen of the United States.(9) No similar residence qualification can be found elsewhere and in the very nature of things was illogical for in time it would have had to be modified. The age qualification as reported here was very high. Only the constitutions of the United States and Ohio equalled it.(10) The select committee was influenced by the constitutions of Illinois, ~~Kentuck~~ Kentucky, and the United States on this section.

All that can be learned of this section from the journal as reported by the committee on style is that it still contained the twenty-five year qualification. One's knowledge of the action taken by the convention is confined to the fact that the age qualification was reduced to twenty-four years. (J.p.34)

As included in the constitution this section contains five important points, which will be briefly considered in their order in that instrument. First, the age qualification

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(9) Poore's: Ill.II.3.(440); Ind.III.4.(502); Ky.II.4.(657); Miss.III.7.(1057); O.I.4.(1457); U.S.I.2.
(10) U.S.I.2. Poore's: O.I.4.(1455).

was twenty-four years. The only constitutions that agree with that of Missouri in this respect are those of Delaware and Kentucky.(11) With the exceptions noted above(note 10) and also Mississippi the other state constitutions either make no provision for this or placed it at twenty-one.(12) Second, the qualification that one must be a " free white male citizen of the United States" was taken from the constitutions of Alabama, Louisiana, or Kentucky as these alone contain such an expression and it is not directly but only impliedly expressed in the latter instrument.(13) However, the term " free white male" in practice was quite general. Third, a two years state residence qualification was followed in only five states, Alabama, Kentucky, Louisiana, Mississippi, and South Carolina. (14) Fourth, the one year county residence qualification was rather widespread in the southern states. Fifth, the paying of a state or county tax as a qualification was followed in only three states, Illinois, Indiana, and Ohio.(15)

The state constitutions of Kentucky and Illinois were probably the most influential in the framing of this section.

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(11) Poore's: Del.II.3.(280); Ky.II.4.(657).
(12) Poore's: Miss.III.7.(1057); -twenty_two years; Ala. III.4.(35); Ill.II.3.(440); Ind.III.4.(502); La.II.4.(701)
(13) Poore's: Ala.III.4.(35); Ky.II.4.(657); La.II.4. (701).
(14) Poore's: Ala.III.4.(35); Ky.II.4.(657); La.II.4. (701); Miss.III.7.(1057); S.ca.I.4.(1628); See Del.II.3.(280) where a three year state residence qualification was provided.
(15) Poore's: Ill., Ind., and O.,- same page references as above. Possibly S.Ca.I.4.(1628)

Section 4. (Enumeration of Inhabitants and Apportionment of Representatives)
" The general assembly, at their first session, and in the year one thousand eight hundred and twenty-two, and twenty-four, respectively, and every fourth year thereafter, shall cause an enumeration of the inhabitants of this state to be made; and at the first session after each enumeration, shall apportion the number of representatives among the several counties, according to the number of free white male inhabitants therein."

This section passed the convention without any change being made.

The constitutions of Kentucky, Louisiana, and Ohio had provisions practically identical with this one in the Missouri constitution.(16) The other state constitutions that approach nearest are those of Alabama, Illinois, Indiana, and Mississippi.(17)

The constitution of Kentucky was probably the most influential.

Section 5.(Term of Service and Qualifications of Senators)
" The senators shall be chosen by the qualified electors, for the term of four years. No person shall be a senator , who shall not have attained to the age of thirty years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state four years, and of the district which he may be chosen to represent, one year next before 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, moreover, have paid a state or county tax."

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(16) Poore's: Ky.II.6.(657) & II.8.(58); La.II.6.(701); O.I.3.(1455)
(17)Poore's: Ala.III.9.(35); Ill.II.31.(442) & II.5.(440); Ind.III.3.(501); Miss.III.9.(1057).

The select committee in its report provided the same qualifications for senators as for representatives, with but one exception - the age qualification was thirty years for the former.(J.p.16) This report was amended in the convention by adding thereto a provision making the tenure the same as that of representatives and the term four years. An attempt was made to change the age qualification to twenty-five years. This was lost by a vote of over four to one.(J.p.16) The final form of this section was given it by the committee on style and it then passed the convention without any further change.

The main points set forth in this section will be considered in their regular order. First, the tenure was elective for senators. This was the universal rule in all the states. Second, the term was four years. Seven state constitutions make the same provision, Illinois, Kentucky, Louisiana, South Carolina, New York, Virginia, and Pennsylvania.(18) Third, the age qualification was thirty years. The constitutions of Ohio, South Carolina, and the United States had the same provision.(19) Fourth, a senator must be a " free white male citizen of the United States". The state constitution of

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(18) Poore's: Ill.II.4.(440); Ky.II.9.(658); La.II.9.(701); SCa.I.7.(1629); N.Y.XI.(1334); Penn.I.5.(1549); Va. par.4.(1910). Only one state constitution provided for a longer term- five years-, see Md.XV.(823). The following four state constitutions provided for a three year tearm: Ala.III.12.36); Del.II.3.(380); Ind.III.5.(502); Miss.III.11.(1057). Two states had a two year term: O.I.5.(1455); Tenn.I.5.(1668). The remaining states provided for terms of one year.

(19) Poore's: O.I.7.(1455); S.Ca.I.8.(1629); Ky.II.15.(658); has a thirty-five year age qualification; U.S.I.3.par.3.

Alabama alone makes this statement. However, the constitution of Kentucky in reality has a similar provision.(20) Fifth, a state residence of four years was required. The constitutions of Pennsylvania, Mississippi, and Louisiana contain the same requirement.(21) Sixth, a district residence of one year was required. The constitutions of Illinois, Indiana, Louisiana, Mississippi, and Pennsylvania agree with the Missouri constitution on this point.(22) Seventh, the payment of a state or county tax was necessary. The state constitutions of Illinois, Indiana, and Ohio make the same provision.(23)

In all probability the constitutions that exerted the most influence were those of Kentucky, Illinois, Louisiana, and the United States.

Section 6. (Constitution of the Senate. Apportionment and Districts)
" The senate shall consist of not less than fourteen nor more than thirty-three members; for the election of whom the state shall be divided into convenient districts, which may be altered from time to time, and new districts established, as public convenience may require; and the senators shall be apportioned among the several districts, according to the number of free white male inhabitants in each: provided, that when a senatorial district shall be composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district, and no county shall be divided in forming a district".

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(20) Poore's: ALa.III.13.(36); see also Ky.II.15.(658) and S.Ca.I.8.(1629).
(21) Poore's: La.II.12.(702); Penn.I.8.(1549); see Ky.II.15.(658) where a six year residence qualification is provided; and Miss.III.14.(1058).
(22) Poore's: Ill.II.6.(440); Ind.II.7.(502); Ky.II.15.(658); La.II.12.(702); Miss.II.14.(1058); Penn.I.8.(1549).
(23) Poore's: Ill.II.6.(440); Ind.II.7.(502); O.I.7.(1455); La., Miss., and S.Ca., had a property qualification.

As reported by the select committee this section read the same as finally adopted down to the proviso, with the exception of leaving the minimum and maximum number of senators blank. An attempt was made to fix the minimum number at thirteen but this failed.(J.p.17) The section was then amended to read fourteen for the minimum and thirty-three for the maximum. After the report of the committee on style the proviso part of the section was added in the convention and as thus amended was adopted.

Compared with other state constitutions, the Missouri constitution approaches most nearly to that of Kentucky on this section. The only substantial difference being the number of senators provided for.(24) The constitutions of Alabama, Pennsylvania, and Tennessee are also very closely related to Missouri's constitution regarding this provision.(25) The only other constitutions that could have exerted any influence are those of Illinois, Indiana, Mississippi, New York, and Ohio.(26)

There is little doubt that the Kentucky constitution was the pattern.

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(24) Poore's: Ky.II.31.(658) The number of senators was set at twenty-four with one additional senator for every three representatives above fifty-eight.

(25) Poore's: Ala.III.10 & 11. (36) The two constitutions differ in the number of senators,and, also, the Alabama instrument gives the legislature less freedom in time of districting, making new districts, and altering old ones; Penn.I.6 & 7. (1549)- Here the difference is not in the number of senators but first, the Pennsylvania constitution apportions them according to the number of tax paying inhabitants, 2nd, each district is limited to four senators; Tenn.I.3&4.(1668)-1st, the number of senators is smaller, 2nd, same apportionment as

Section 7. (Senators to be classed)
" At the first session of the general assembly, the senators shall be divided by lot, as equally as may be, into two classes. The seats of the first class shall be vacated at the end of the second year, and the seats of the second class at the end of the fourth year; so that one half of the senators shall be chasen every second year."

This section passed the convention without any change being made in it.

The constitutions of Louisiana, Illinois, and South Carolina alone have practically the same provision.(27) The other states that had a four year term, Kentucky. New York, Pennsylvania, and Virginia, made provision for the rotation of one fourth of the senators annually instead of one half biennially.(28)

The constitution of Illinois was probably the most influential on this section.

Section 8.(Elections when held. Privileges of electors)
" After the first day of January, one thousand eight hundred and twenty-two, all general elections shall commence on the first Monday in August, and shall be held biennially; and the electors, in all cases, except of treason, felony, or breach of the peace, shall be privileged from arrest during their continuance at elections, and in going to, and in returning from the same."

(25 cont.) Pennsylvania, 3rd, each district limited to three senators.

(26) Poore's: Ill.II.5.(440); Ind.III.6.(502); Miss.II.10.(1057); N.Y.amend. of 1801, III & IV.(340); O.I.6.(1455).

(27) Poore's: Ill.II.4.(440); La.II.11.(702); S.Ca.I.9.(1729).

(28) Poore's: Ky.II.10.(658); N.Y.XI.(1334); Penn.1.9.(1549); Va.par.4.(1910). The constitutions of Alabama, Delaware, Indiana, and Mississippi provided for a rotation of one third the number annually; Ohio had rotation of one half

This section passed the convention without any change.

The contents of this section, however, had an interesting history as revealed in the former state constitutions. Of the state constitutions of the Revolutionary Period there is a general unanimity as regards annual elections and that " elections are to be free " or " ought to be free". But Georgia is the only state that makes a definite statement of the priviliges of electors.(29) Pennsylvania was the first state to set forth these privileges in a manner similar to the clause as incorporated in practically all the later state constitutions (30) The first state to provide for general biennial elections was South Carolina.(31) This was followed by only three states, Illinois, Louisiana, and Tennessee.(32) The first state to set the exact date of the general election on the first Monday in August was Kentucky.(33)

The only constitution that is exactly identical with the Missouri constitution as regards this section is that of

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(28 cont.) annually; Tennessee changed the entire composition of the senate biennially; Maryland every five years; and the other states annually; U.S.I.3.par.2., rotation of one third biennially. The article in Story on this is not to be considered as accurate,see art.720,p.534.vol.I.

(29) Poore's: Ga.,const.,1777.X.(379); This article gave to the elector absolute immunity from arrest at elections. Curiously enough ther is no mention at all of the privileges of electors in the constitution of either 1789 or of 1798 of this state.

(30) Poore's: Penn.III.3.(1553)- const., of 1792. The exact wording of this clause was given it by the constitution of Delaware of 1792, Del.IV.2.(283). The following states had such a provision in their constitutions : Ala.,Ind.,Ky.,La., Miss.,O.,Conn.,Me., and Tenn.

(31) Poore's: S.Ca.Const.1790.I.10.(1639).

(32) Poore's: Ill.II.2.(442); La.II.3.(701); Tenn.I.5.(1668

(33) Poore's: Ky.II.3.(657); Ind.III.3.(502); Ill.II.2.(440

Illinois.(34) Undoubtedly this section was taken from the constitution of that state.

Section 9. (Writs of Election to supply vacancies)
" The governor shall issue writs of election, to fill such vacancies as may occur in either house of the general assembly."

This section was adopted by the convention without any change being made.

The constitutions of Alabama, Georgia, Illinois, Indiana, Mississippi, Ohio, and Tennessee contain sections that are substantially identical with this one.(35)

It was probably copied from the constitution of Illinois.

Section 10. (Qualifications of Electors)
" Every free white male citizen of the United States who may have attained to the age of twenty-one years, and who shall have resided in this state one year before an election, the last three months whereof shall have been in the county or district in which he offers to vote, shall be deemed a qualified elector of all elective offices: provided that no soldier, seaman, or mariner, in the regular army or navy of the United States, shall be entitled to vote at any election in this state."

(33 cont.) Miss.III.6.(1057). All these provide for the same time.

(34) Poore's: Ill.II.2 & 29.(440 & 442); La.II.3 & 8.(701); Tenn.I&III.5&2.(1668&1671). These last two, Louisiana and Tennessee, are practically the same as Missouri and Illinois on this section. The difference is in the exact date set for the election: Louisiana provides for the first Monday in July; Tennessee for the first Thursday in August.

(35) Poore's: Ala.III.20.(36); Ga.II.8.(392); Ill.II.11.(441); Ind.III.13.(502); Miss.III.18.(1058); O.I.13.(1456); Tenn.I.13.(1668); see also U.S.I.2.par.4.

The committee on style reported this section as it was finally adopted, with the exception that the proviso clause was omitted. An attempt was amde to lower the age qualification to eighteen. This was lost by a very decided vote.(J.p.34) An attempt was then made to amend the section by requiring the payment of a state or county tax by the elector, or at least his having been assessed for same before being duly qualified. This was also lost.(36) The section was finally altered by adding the proviso clause.(J.p.35)

This section as it stands in the constitution provides for the following qualifications and disqualifications for electors. First, an elector must be " a free white male citizen of the United States". The constitutions of Alabama, Connecticut, Indiana, Louisiana, and Mississippi alone have an identical provision.(37) Second, the age qualification was twenty-one. This was the universal rule in all the states that had any age qualification at all expressed in their constitutions. Third, a state residence of one year is required. The constitutions of Alabama, Indiana, Maryland, Mississippi, and Ohio provided for the same.(38) Fourth, a county or district

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(36) J.p.34. The actual vote was twelve to twenty-six. The tax and property qualifications for voting were rapidly disappearing, especially in the new constitutions. Louisiana was an exception to this. Poore's: La.II.8.(701).

(37) Poore's: Ala.III.5.(35); Ind.VI.1.(507); La.II.8.(701) Conn.VI.2.(263); Miss.III.1.(1056); see also Ky.II.8.(658); Ill.II.27.(442); Me.II.1.(790); Md.amend.1810.XIV.(832); O.IV. 3.(1459); Del.IV.1.(383); Ga.IV.1.(394); S.Ca.I.4.(1638).

(38) Same reference as above. Some states had a two year state residence qualification, as, e.g. Ky.,Del.,S.Ca., while

residence of three months is necessary. The constitution of Alabama alone contains such a provision.(39) Fifth, " soldiers etc. in the United States army etc.," are disqualified as electors. The same provision is found in the constitutions of Alabama, Indiana, and Maine.(40)

The constitution of Alabama seems to have exerted the greatest influence on this section, since the two are identical. The constitution of Indiana approaches next in order of degree of similarity.(41)

Section 11. (Officers not eligible to the General Assembly) " No judge of any court of law or equity, secretary of state, attorney-general, state auditor, state or county treasurer, register or recorder, clerk of any court of record, sheriff, coroner, member of Congress, nor other person holding any lucrative office under the United States or this state, militia officers, justices of the peace and postmasters excepted, shall be eligible to either house of the general assembly."

It cannot be definitely determined what was the form of this section as reported by the select committee.(42) When

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(38 cont.) others had only a six months one, e.g., Ill., Conn.; Maine had a three months qualification; Tenn.,N.J., Mass., and N.Hamp., provided for no set time of residence.

(39) Same reference as above. The majority of the state constitutions required no definite county residence. Some states, e.g. Md.,Conn.,and Miss., required a six months county residence, while Kentucky and Louisiana required one year.

(40) Same reference as above.

(41) Poore's: Ind VI.1.(507); The same except that no county residence is required.

(42) ~~(1)~~ J.p.17. It was possibly reported by the select committee as section 25, which was amended by the addition of the following words," And no person who after the first day of January next, shall hold any office of honor, or profit under this state, or the United States, the office of commis-

reported by the committee on style it was adopted without change

Nearly all of the state constitutions contained a provision similar to this one. The constitutions of Alabama, Illinois, Indiana, Kentucky, Maine, Mississippi, Ohio, and Tennessee are practically identical with the Missouri constitution in this respect.(43)

The constitution of Kentucky or Illinois was likely the pattern followed.

nor any assistant or deputy of such collector or holder of public money,

Section 12.(Collectors not eligible to,General Assembly unless fully account)
" No person who is now, or who hereafter may be, a collector or holder of public money, shall be eligible to either house of the general assembly, nor to any office of profit or trust, until he shall have accounted for and paid all sums for which he may be accountable."

This section was adopted without any change. ?

About half of the state constitutions had a provision that was practically identical with this one in the Missouri constitution.(44)

(42 cont.) sioner for holding treaties with the Indians, excepted, and except, as hereinbefore excepted, shall be eligible to any office of honor, trust or profit, in this state, unless he shall have previously resigned the office he then hold, for at least fifteen days before the day of his election or appointment."

(43) Poore's: Ala.III.36.(37) & VI.12.(42); Ill.II.25.(441); Ind.III.30.(503); Ky.II.26.(659) & VI.17.(665); Me.IV. Part Third, sec.11.(794); Miss.III.27.(1059); O.I.36.(1457)- postmasters not excepted; Tenn.I.23.(1669)- like Ohio; see also U.S.I.6.par.2.

(44) Poore's: Ala.III.27.(37); Ind.III.26.(503); Ky.II. 27.(659); La.II.23.(702); Miss.III.28.(1059); N.Hamp.Part Second, sec.95.(1307); N.Ca. Form of Government, Art.XXV & XXVI.(1413); O.I.28.(1457); Tenn.I.23.(1669); Ga.I.11.(389); see Del.VIII.3.(286).

Section 13. (Clergymen & not eligible to the General Assembly)

" No person while he continues to exercise the functions of a bishop, priest, clergyman, or teacher of any religious persuasion, denomination, society or sect whatsoever, shall be eligible to either house of the general assembly; nor shall he be appointed to any office of profit within the state, the office of justice of the peace excepted."

This section was reported by the select committee verbatim as it was adopted by the convention.(Jp.16) Two attempts were made to strike out the entire section, one after the report of the select committee, the other following the report of the committee on style. Both attempts failed by a decisive vote.(J.p.16)

The disqualification expressed in this section resting on clergymen was first set forth in the constitution of Virginia of 1776. The author of this instrument was Thomas Jefferson and he purposely set this limitation on the political activity of ecclestiastics as a result partly of his ideas on religion as gathered from French philosophy and partly on account of the peculiar position occupied by the clergy in Virginia. The disqualification as therein expressed excepted no office. This provision was probably copied from the Virginia constitution by the people of Kentucky when they framed their fundamental law but they modified it so as not to include the office of justice of the peace. The constitution of Kentucky bears the closest resemblance to this section in the Missouri constitution.(45) The constitutions of Delaware and Louisiana

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(45) Poore's: Ky.II.26.(659).

are also very closely related to the Missouri constitution on this point.(46) The following constitutions contain similar provisions, Mississippi, New York. North Carolina, South Carolina, Tennessee, and Virginia.(47)

In all probability the constitution of Kentucky exerted the greatest influence.

Section 14. (Disqualification on account of crime)
" The general assembly shall have power to exclude from every office of honor, trust, or profit, within this state, and from the right of suffrage, all persons convicted of bribery, perjury, or other infamous crime."

This section was adopted by the convention without any change.

The constitutions of Alabama, Illinois, Kentucky, Louisiana and Mississippi are substantially identical as regards this provision.(48)

It is probable that the constitution of Illinois or Kentucky had the greatest influence.

Section 15.(Disqualification for Bribery)
" Every person who shall be convicted of having, directly or indirectly, given or offered any bribe to procure his election or appointment, shall be disqualified from any office of honor,

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(46) Poore's: Del.VIII.9.(287); La.II.22.(702).
(47) Poore's: Miss.VI.7.(1063); N.Y.XXXIX.(1338-1339); N.Ca.Form of Government, XXXI.(1413); S.Ca.I.23.(1630); Tenn. VIII.1.(1672); Va.(1911).
(48) Poore's: Ala.VI.5.(43); Ill.II.30.(442); Ky.VI.4. (664); La.VI.4.(706); Miss.VI.5.(1063).

trust, or profit, under this state; and any person who shall give or offer any bribe to procure the election or appointment of any other person, shall, on conviction thereof, be disqualified for an elector, or for any office of honor, trust, or profit, under this state, for ten years after such conviction."

The form of this section as reported by the select committee is not known. It was amended in the convention by making the offering, " either directly or indirectly ", of a bribe by one to secure his own election work as a disqualification for office holding.(49) This section as thus amended was reported by the committee on style and was adopted without any further alteration.

Twelve states at this time had included in their constitutions some kind of a corrupt practices act but few if any went as far in this matter as Missouri. The states that approach most nearly are Connecticut and Delaware.(50)

Section 1C, (Disqualification of Senators and Representatives for certain offices)
" No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased during his continuance in office, except to such offices as shall be filled by elections of the people."

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(49) J.p.19. Amended by inserting after the words "offered any bribe" the words " either directly or indirectly".

(50) Poore's: Conn.VI.3.(263); Md.Form of Govt.LIV. (827- 828). In Connecticut the privileges of elector were forfeited on conviction of bribery, forgery, perjury, duelling, fraudulent bankrupsy, theft & . In Maryland the disqualification extended only to holding offices of trust or profit under that state. However in the latter state it included both the person giving and the perdon receiving the bribe. See also Ala.VI.Gen.Prov.4.(42); Ga.I.18.(390); Ky.VI.3.(664);La.VI.3.

The committee on style reported this section as adopted. A motion was made to strike out the words " which shall have been created or the emoluments of which shall have been increased during his continuance in office". This was lost by a large vote.(J.p.35)

The constitutions of five states Alabama, Kentucky, Louisiana, Maine, and Mississippi are substantially identical with the Missouri constitution on this section.(51) The constitutions of Delaware, Illinois, Ohio, and Pennsylvania differ from the Missouri constitution on this point in not excepting elective offices.(52)

Section 17.(Each house appoints its officers,- Quorum) " Each house shall appoint its own officers, and shall judge of the qualifications, elections, and returns of its own members. A majority 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 penalities as each house may provide."

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(706); Mass.VI.art.II.(972); Miss.VI.Gen.Prov.4.(1063); N. Hamp.Part Second, Form of Govt., 96.(1307); O.VII.2.(1460); Tenn.IX.3.(1673); Vt.Form of Govt., 34.(1881).

(51) Poore's: Ala.III.25.(37); Ky.II.25.(659); In Kentucky the disqualification extended for one year after the expiration of the term; La.II.21.(702); Me.IV.Part Third,10.(794) In Maine the disqualification was not to include members of the forst legislature; Miss.III.26.(1058-1059).

(52) Poore's: Del.II.12.(381); Ill.II.19.(441); O.I.20. (1456); Penn.I.18.(1550). See also United States Constitution article I, section 6, paragraph 2.

This section was adopted by the convention without any change.

The contents embodied in this section had become a general rule of government in the United States. Of the twenty-three state constitutions under consideration only one was neither substantially identical nor similar to this section in the Missouri constitution. This was Rhode Island. The following constitutions were practically identical on this point, Alabama, Connecticut, Delaware, Georgia, Kentucky, Louisiana, Maine, Mississippi, Pennsylvania, South Carolina, and the United States (53)

Section 18.(Powers and Duties of each house. Rules. Expulsion. Journal.)
" Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause. They shall each, from time to time, publish a journal of their proceedings, except such parts as may, in their opinion, require secrecy; and the yeas and nays on any question shall be entered on the journal at the desire of any two members."

This section was agreed to by the convention without any change.

The constitutions of the following states are practically identical with the Missouri constitution on this point, Alabama,

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(53) Poore's: Ala.III.14.(36); Conn.III.6&7.(260); Del.II. 5&9.(280); Ga.I.5.(388) and 9,12,&13.(389); Ky.II.18.(658) & 19.(659); La.II.14&15.(702); Me.IV.Pt.First, 7.(792) and Pt.Second, 8.(793) and Pt.Third, 3.(793); Miss.III.15.(1058); Penn.I.11&12.(1549); S.Ca.I.11&12.(1629)&(1630); U.S.I.2.par, 5. and I.3.par.5.,and sec.5.par.,1.

Illinois, Indiana, Kentucky, Louisiana, Maine, Mississippi, Ohio, Pennsylvania, and Tennessee.(54) Also the influence of the constitution of the United States can be easily traced in all of these instruments.

Section 19.(Doors open. Power to Punish)
" The doors of each house, and of committees of the whole, shall be kept open, except in cases which may require secrecy; and each house may punish, by fine or imprisonment, any person not a member who shall be guilty of disrespect to the house by any disorderly or contemptuous behavior in their presence, during their session; provided, that such fines shall not exceed three hundred dollars, and such imprisonment shall not exceed forty-eight hours, for one offence."

This section was adopted by the convention without any change.

There are two distinct subjects considered in this provision. The first is regarding publicity of the legislature's proceedings. The same is to be found in the constitutions of Alabama, Delaware, Illinois, Indiana, Mississippi, Ohio, Pennsylvania, Tennessee, and Vermont.(55) It is probable that this part of this section was patterned after the Illinois constitution. The second part relates to the power possessed by

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(54) Poore's: Ala.III.16 & 18.(36); Ill.II.8.(440) & 10.(441); Ind.III.9 & 11.(502); Ky.II.20 & 21.(659); La.II.16 & 17.(702); Me.IV.Part Third, 4 & 5.(793); Miss.III.16 & 17.(1058); O.I.9 & 11.(1456); Penn.I.13 & 14.(1549-1550); Tenn. I.9.(1668) & 18.(1669). See also U.S.I.5.par.2&3; Conn.III.8.(360) & 9.(361); Del.II.7 & 8.(280); Ga.I.13 & 15.(389); S.Ca. I.12.(1629-1630).

(55)Poore's: Ala.III.17 & 21.(36); Del.II.9.(280); Ill. II.13 & 14.(441); Ind.III.14 & 15.(503); Miss.III.20 & 21.(1058)

each house to punish those, not members, for contempt of authority of the house. In this last respect the Missouri constitution goes farther than any other. This instrument alone among other constitutions gives the legislature the express power to " punish by fine or imprisonment". Many constitutions do not even go so far as to grant to the legislature the express power to " imprison"; while no state constitution besides that of Missouri grants the express power to " fine". The constitutions which most nearly resemble Missouri's on this point are those of Alabama, Georgia, Illinois, Indiana, Maine, Mississippi. Ohio, South Carolina, and Tennessee.(56) Of these named, South Carolina and Tennessee fall into a class that is least similar; Alabama, Mississippi, and Georgia into a class that is most similar; Indiana, Ohio, and Illinois into a class that is midway between the first two classes; while Maine is peculiar to herself.

The constitution of Illinois was again probably very influential.

Section 20.(Adjournment)
" 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 to that in which the two houses may be sitting."

This section passed the convention without any change.

There are four state constitutions that contain a pro-

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(55 cont.) O.I.14 & 15.(1456); Penn.I.15.(1550); Tenn.I.11 & 19.(1668&1669); Vt.II.13.(1879).

(56) For Alabama, Illinois, Indiana, Missisippi, Ohio, and Tennessee see note (55). Poore's: Ga.I.13.(389); Me.IV.

vision identical with this one, Illinois, Maine, Indiana, and Ohio.(57) Besides thede there are nine state constitutions that have a section substantially idehtical with this one.(58)

It is probable that the constitution of Illinois was the most influential in the framing of this section.

Section 21.(Bills- originate- readings)
" Bills may originate in either house, and may be altered, amended, or rejected, by the other; and every bill shall be read on three different days in each house, unless two thirds of the house where the same is depending shall dispense with this rule; and every bill having passed both houses, shall be signed by the speaker of the house of representatives, and by the president of the senate."

This section was adopted by the convention wothout any change.

The only state constitution that makes provision for a legislative process exactly like that described in this section is that of Indiana.(59) The other states that approach mast nearly are Illinois. Alabama, Mississippi, Ohio, and Tennessee. (60)

(56 cont.) Part Third, 6.(794); S.Ca.I.13.(1630).
(57)Poore's: Ill.II.14.(441); Ind.III.15.(503); Me.IV. Part Third, 12.(794); O.I.15.(1456).
(58) Poore's: Ala.III.22.(37); Del.II.10.(280) & 281); Ga.I.21.(390); Ky.II.22.(659); La.II.18.(702); Miss.III.22. (1058); Penn.I.16.(1550); S.Ca.I.19.(1630); Tenn.I.13.(1668). These all have a three day limit to adjournment on the part of a single house instead of a two day. See U.S.I.5.par.,4.
(59) Poore's: Ind.III.16 & 17.(503).
(60) Poore's: Ala.III.23.(37). Here it took four fifths of the members to dispense with three readings. Ill.I.15 & 16.(6 (441)- the fraction was three fourths; Miss.III.23 & 24.(1058) same as Alabama; O.I.16 & 17.(1456) same as Illinois; Tenn. I.14 & 15.(1668 & 1669)the three readings could not be suspended. See also Ga.I.16 & 17.(389); Ky.II.28 & 29.(659); La.II. 24 & 25.(702 & 703); S.Ca.I.15 & 16.(1650).

Section 22.(Appointment of officers viva voce)
" When any officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by the separate vote of ~~each~~ either house of the general assembly, the votes shall be publicly given viva voce, and entered on the journals. The whole list of members shall be called, and the names of absentees shall be noted and published with the journal."

This section was adopted by the convention without any change.

The constitutions of only three states contain a provision similar to this section in the Missouri constitution- Alabama, Kentucky, and Pennsylvania.(61)

This section was probably copied from the Kentucky constitution.

Section 23.(Privileges of Senators and Representatives)
" Senators and representatives shall, in all cases, except of 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 speach or debate in either house, they shall not be questioned in any other place."

This section was adopted without any change by the convention.

The privileges of senators and representatives contained in this section are similarly enumerated in at least twelve constitutions.(62) All of these show the influence of the

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(61) Poore's: Ala.VI.6.(42); Ky.VI.16.(664); Penn.III.3.(1552),

(62) Poore's: Ala.III.19.(36); Del.II.11.(281); Ga.I.14.(389); Ill.II.13.(441); Ind.III.13.(502); Ky.II.24.(659); La.II.20.(702); Me.IV.Part Third, 8.(794); O.I.13.(1456);Penn.I.17.(1550); Tenn.I.10.(1668); see also Conn.III.10.(261);

United States constitution and with the exception of two, are identical with the Federal Constitution on this point.(63)

Section 24.(Compensation)
" The members of the general assembly shall severally receive from the public treasury a compensation for their services, which may from time to time be increased or diminished by law, but no alteration, increasing or tending to increase the compensation of members, shall take effect during the session at which such alteration shall be made."

This section was submitted in and adopted by the convention to take the place of one reported by the committee on style and finally stricken out by the convention.(64)

The compensation of legislators is treated in a way almost identical as herein described by the constitutions of Alabama, Delaware, and Mississippi.(65)

Section 25.(Suits against State)
" The general assembly shall direct by law in what manner, and in what courts, suits may be brought against the state."

(62 cont.) Miss.III.19.(1058); N.Hamp.Part Second,21; U.S.I.6. par.1.

(63) Alabama provides that the privileges shall begin before and continue after the session as many days as the distance of a legislators residence from the seat of government may be divided by twenty i.e. 20 miles a day was allowed. Georgia makes the privileges begin ten days' before and continue ten days after the session.

(64) J.p.35 & 36. The section submitted by the committee on style, which was amended and then finally stricken out, was on the subject of duelling.

(65) Poore's: Ala.III.34.(37); Del.II.11.(281); Miss.III. 25.(1058); see also the following, Ky.II.23.(659)-$1.50 a day but subject to change; La.II.19.(702)-$.00 a day but subject to change; Me.IV.Part Third,7.(794)- a salary and traveling expenses; N.Hamp.Part Second,15.(1298)- simply provides for compensation; O.I.19.(1456)- $2.00 a day &; Penn.I.17.(1550)

This section was adopted by the convention without any change.(66)

In only four state constitutions is there to be found a provision identical with this section.(67) Considering all the constitutions of this period, there were but five altogether that made any reference at all to the principle contained in this section.(67)

Probably the constitution of Kentucky was the most influential in the framing of this section.

Section 26.(Power - Limited)
" The general assembly shall have no power to pass laws,
First. For the emancipation of slaves without the consent of their owners, or without paying them, before such emancipation, a full equivalent for such slaves so emancipated; and
Second. To prevent bona fide emigrants to this state, or actual settlers therein, from bringing from any of the United States, or from any of their territories, such persons as may be deemed to be slaves, so long as any persons of the same description are allowed to be held as slaves by the laws of this state.
They shall have power to pass laws,
First. To prohibit the introduction into this state of any slaves who may have committed any high crime in any other state or territory;
Second. To prohibit the introduction of any slave for the purpose of speculation, or as an article of trade or merchandize;
Third. To prohibit the introduction of any slave, or the offspring of any slave, who heretofore may have been, or who hereafter may be, imported from any foreign country into the United States, or any territory thereof, in contravention of

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(65 cont.) same as New Hampshire; S.Ca.I.18.(1630)- salary not over seven shillings a day & ; Tenn.I.30.(1669)- same as Ohio save salary was $1.75 a day.

(66) J.p.36. Section 25 as adopted by the convention after the report of the committee on style is an entirely different secrtdnn from the above section twenty-five.

(67) Poore's: Ala.VI.9.(42); Del.I.9.(279); Ky.VI.6.(664); Miss.VI.11.(1063); see also Tenn.XI.17.(1674) where the right of bringing suit was limited to the citizens of that state.

any existing statute of the United States, and
Fourth. To permit the owners of slaves to emancipate them, saving the rights of creditors, where the person so emancipating will give security that the slave so emancipated shall not become a public charge.

It shall be their duty, as soon as may be, to pass such laws as may be necessary,
First. To prevent free negroes and mulattoes from coming to, and settling in this state, under any pretext whatsoever; and
Second. To oblige the owners of slaves to treat them with humanity, and to abstain from all injuries to them extending to life and limb.

The select committee reported a section which is identicle with the above except in two particulars. First, the general assembly in passing laws permitting owners to emancipate their slaves under certain conditions also had the power to provide in such cases " that the slaves so emancipated, remove and remain outside the limits of the state". Second, in case the owners of slaves broke the humane slave laws passed by the legislature, the penalty was " to have such slaves sold for the benefit of their owner or owners".(J.p.18.) An attempt was made to strike out what has been termed exception one. This was lost by a decided vote. The whole section was then carried. As it then stood this section was more nearly like the corresponding section in the Alabama and Kentucky constitutions than later. In the report of the committee on style, that which is denoted as exception two above, was seems to have been omitted.(J..p.36) The report of this committee was amended by the convention by striking out what is the same as exception one above.(J.p.36) An attempt was made to strike out the entire provision relating to the power of the legislature to permit slave owners to emancipate their slaves. This was lost, however.

The constitutions of Alabama and Mississippi are the most nearly like the Missouri constitution on this point.(68) The provision on this subject in the Kentucky constitution is also very similar.(69) The only real important difference between the Missouri constitution and the Alabama constitution on this provision is that the former instrument makes it mandatory on the legislature to pass laws to prevent free negroes and mulattoes from coming into the state, while the latter omits this.

Section 27.(Rights of Slaves in trials for Crimes) " In prosecutions for crimes, slaves shall not be deprived of an impartial trial by jury, and a slave convicted of a capital offence shall suffer the same degree of punishment, and no other, that would be inflicted on a free white person for a like offence; and courts of justice before whom slaves shall be tried, shall assign them counsel for their defence."

This section as reported by the select committee differed but little from the section as finally adopted. One clause in the original section provided for the same punishments, and no other, to be inflicted on a slave convicted of any crime

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(68) Poore's: Ala.VI.Slaves.1.(44) The three following differences between the two states i.e.Mo., & Ala., are- 1st, the legislature in Alabama was not given express power to prevent the introduction of slaves or their offspring from foreign countries when such introduction was contrary to a United States statute, 2nd, it was not made the duty of the legislature in Alabama to pass laws preventing free negroes and mulattoes from immigrating into the state, and 3rd, the Alabama canstitution had what is called " exception two" above. Miss.VI., Slaves,1.(1064)- About the same as Alabama except that those slaves who had rendered some great service to the state could be emancipated but the owner was to be compensated.

(69) Poore's: Ky.VII.1.(665) About the same as Alabama except no mention is made of giving the legislature power to pass laws preventing the importation of criminal negroes.See also Ga.VI.11.(395).

as on a white man. This was amended by striking out the above clause and substituting a similar provision applying only to capital offences instead of to any crime.(J.p.19) The section as thus amended is substantially the same as adopted by the convention after the report of the committee on style.(Jp.36)

No other state constitution goes so far in protecting the rights of the slave as this one. In only three states did the constitution expressly give protection to a slave when prosecuted for crime. These three states are Kentucky, Alabama, and Mississippi.(70)

Section 38. (Crimes committed on slaves)
" Any person who shall maliciously deprive of life, or dismember a slave, shall suffer such punishment as would be inflicted for the like offence if it were committed on a free white person."

This section was adopted by the convention without any change.

The constitutions which most nearly resembles that of Missouri on this section is that of Alabama.(71) The difference between the two is very slight. In the order of similarity Georgia comes next, then Kentucky and Mississippi.(72)

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(70) Poore's: Ala.VI.3.(44); Ky.VII.2.(665); Miss.VI.2.(1064).
(71) Poore's: Ala.VI.3.(44). This section is not to apply"in case of insurrection of such slave".
(72) Poore's: Ga.VI.12.(395); Ky.VII.1.(665); Miss.VI.1.(1064).

Section 29.(Impeachment. Judgement)
" The governor, lieutenant governor, secretary of state, auditor, treasurer, attorney general, and all judges of the courts of law and equity, shall be liable to impeachment for any misdemeanor in office; but judgement in such case shall not extend farther than removal from office, and disqualification to hold any office of honor, trust, or profit, under this state."

This section was adopted by the convention without any change.

The contents of this section are practically the same as can be found in other state constitutions. This holds true whether the constitution is of the early type i.e. of the Revolutionary Period, or the new state constitutions of the first quarter of the ninteenth century.(73)

Section 30. (Impeachment to be made by house of Representatives and tried by Senate)
" 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 on oath or affirmation to do justice according to law and evidence. When the governor shall be tried, the presiding judge of the supreme court shall preside; and no person shall be convicted without the concurrence of two-thirds of the senators present."

This section was adopted by the convention without any change.

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(73) Poore's: Ala.V.3.(41); Conn.IX.3.(265); Del.V.3.(283); Ga.I.6 & 10.(389-388); Ill.II.33.(441); Ind.III.24.(503); Ky.V.3.(663); La.V.3.(705); Mass.I.1.(963); Miss.V.3.(1032); N.Hamp.Pt.Second,38 & 39.(1301); N.Y.XXXII&XXXIII.(1337); O.I.24.(1457); Penn.IV.3.(1552); S.Ca.V.3.(1632);Tenn.IV.4.(1671);see other state constitutions also.U.S.I.3.&II.4.

There are two constitutions that contain provisions practically identical with this one.(74) In all probability the constitution of the United States formed the pattern. The majority of the state constitutions contained sections quite similar but all except Connecticut varied more or less in some detail or other.(75)

Section 31.(Treasurer)
" A state treasurer shall be biennially appointed by joint vote of the two houses of the general assembly, who shall keep his office at the seat of government. No money shall be drawn from the treasury but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published."

The report of the select committee on this section was amended by the convention so as to read practically the same as finally adopted. There is one exception to this statement, namely, the treasurer was to give sufficient security for the faithful discharge of his office.(76) The report of the committee on style was adopted without change by the convention.

There are four main points set forth in this section and each will be taken up in its order. First, the term of the treasurer is two years. The constitutions of only Georgia, Illinois, and Tennessee provided for a similar term.(77)

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(74) U.S.I.2.par.5.& sec.3.par.6. Poore's: Conn.IX.1&3.(365).

(75) Poore's: Ala.V.1&2.(41); Del.V.1.(283); Ga.I.6&10.((388&389); Ill.II.22.(441); Ind.III.23.(503); Ky.V.1&2.(663); La.V.1&2.(705); Mass.I.2.(963); Miss.V.1&2.(1062); N.Hamp.Pt. Second, 38&39.(1301); N.Y.XXXII&XXXIII.(1337); O.I.23.(1456); Penn.IV.1&2.(1552); S.Ca.V.1&2.(1632); Tenn.IV.1&2&3.(1671).

(76) J.p.17. The exception noted above was omitted in the report of the committee on style.

(77) Poore's: Ga.II.12.(393);.Ill.III.21.(444); Tenn.VI.

Second, the tenure is appointive by the general assembly. This was the general rule in nearly all the states.(78) Third, no money was to be drawn from the treasury except in consequence of lawful appropriations. This provision is found in practically all the state constitutions. Fourth, there is to be an annual publication of the receipts and expenditures of the public money. A similar provision in nearly all the state constitutions of this time.

In all probability the constitution of Illinois was the most influential in the framing of this section and in fact the two constitutions, i.e. of Illinois and Missouri, are identical on this point.

Section 32.(Appointment of officers- Oath of office) " The appointment of all officers, not otherwise directed by this constitution, shall be made in such manner as may be prescribed by law; and all officers, both civil and military, under the authority of this state, shall, before entering on the duties of their respective offices, take an oath or affirmation to support the constitution of the United States, and of this state, and to demean themselves faithfully in office."

This section was adopted by the convention without any change.

The two main points set forth in this section will be considered in their order. First, the appointment of all officers, not otherwise directed by the constitution, is to be made according to the manner prescribed by law. A similar

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(77 cont.) 2.(1672);. The general rule was a one year term. Indiana and Ohio had a three year term, while South Carolina had a four year term.

(78) Connecticut and Vermont provided for an elective tenure, while Rhode Island had no provision on this point.

provision is found in the constitutions of Kentucky, Louisiana, Massachusetts, New Hampshire, Pennsylvania, Tennessee, Indiana, Mississippi, and Ohio.(79) In the other states either such appointment was left to the governor or no express mention was made regarding it. Second, all state officers are to take an oath or affirmation to support the constitution of the United States, of Missouri, and to demean themselves faithfully in office. The constitutions of the following states contain a similar provision, Alabama,Connecticut, Illinois, Miane, Indiana, Mississippi, and Ohio.(79) As is seen, all of these constitutions are of the ninteenth century. No state constitution of the eighteenth century required a state officer to take an oath to support the United States constitution but practically all required an oath to support the state constitution. (80) Ohio was the first stateto start this and with the single exception of Louisiana it was followed by all the other states that framed constitutions between 1802 and 1820.(79)

The state constitutions that are identical with this one on this section are those of Indiana, Mississippi, and Ohio.

(78 cont.) Maryland had two treasurers both appointed by the House of Delegates.

(79) Poore's: Ala.VI.1.(41&43); Conn.X.1.(365); Ill.II. 26.(442);Ky.III.9.(660); La.III.9.(703); Me.IX.1.(797); Mass. Pt.Second, 1.sec.1.art.IV.(961)&ch.VI.art.I.(791); N.Hamp. Pt.II.sec.5&84.(1297&1306); Penn.II.8.(1551)&VIII.(1554); Tenn.VI.3.(1672) & XI.1.(1672); Ind.IV.8.(504)& XI.1.(509); M Miss.IV.17.(1060) & VI.1.(1063); O.VI.4.(1460) & VII.1.(1460); see also Del.IX.(287); and Ga.II.5.(392); U.S.VI.3.

(80) Most of these constitutions were framed before 1789.

Section 33.(Meetings of General Assembly)
" The general assembly shall meet on the third Monday in September next; on the first Monday in November, eighteen hundred and twenty-one; on the first Monday in November, eighteen hundred and twenty-two; and thereafter the general assembly shall meet once in every two years, and such meeting shall be on the first Monday in November, unless a different day shall be appointed by law."

After the report of the committee on style, this section was amended, on motion of Mr. Ramsay and then adopted as it reads above. The original form cannot be determined.(J.p.37)

In all the states but two, Illinois and Tennessee, the legislature met in annual sessions.(81) The same time of meeting i.e.the first Monday in November, is provided for in the constitutions of Kentucky, Maryland, and Mississippi.(82)

The constitutions of Kentucky and Illinois were probably the most influential on this section.

Section 34.(Counties)
" No county now established by law shall ever be reduced by the establishment of new counties to less than twenty miles square; nor shall any county hereafter be established which shall contain less than four hundred square miles."

This section as reported by the select committee is a verbatim copy of the above with two exceptions: instead of twenty, the word twenty-five appears, and in place of four hundred is six hundred and twenty-five. An attempt was made to strike out the whole section. This failed , so the section was agreed to .(J.p.17) After the report of the committee on style

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(81) Poore's: Ill.II.34.(441); Tenn.I.6.(1668).
(82) Poore's: Ky.II.17.(658); Md.XXIII.(823); Miss.III. 30.(1059).

a motion was made and carried to strike out "625" and insert "400". A motion was then made to amend the section by inserting after the words " established by law" the words "east of the fifth principal meridian line", which motion was negatived. (J.p.37) An attempt was then made to strike out the entire section. This failed by a decisive vote. A motion was then made and carried whereby the word "twenty" was substituted for twenty-five.

The constitution of Ohio alone contains a section identical with this one.(83) A similar provision is found in the constitutions of Alabama, Indiana, Mississippi, and Tennessee.(84)

Section 35.(Revision of Laws)
" 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 e every subsequent period of ten years."

This section as reported by the committee on style was amended by the convention so as to provide for the first revision of the state's laws within five years instead of three. (J.p.38)

The constitution of only one state, Alabama, has a provision identical with this one.(85) In no other state consti-

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(83) Poore's: O.VII.3.(1460).
(84) Poore's: Ala.VI.16.(43); Ind.XI.13.(510); Miss.VI.19. (1064); Tenn.IX.4.(1673). In Alabama no old county was to be reduced below 900 square miles and the same was to apply regarding new counties; in Indiana the minimum limit was 400 square miles; in Mississippi, 576square miles; and in Tennessee, 625 square miles.
(85) Poore's: Ala.VI.2.(43).

tution can even a similar provision be found.

Section 36.(Style of Laws)
" The style of laws of this state shall be, " Be it enacted by the general assembly of the State of Missouri".

This section was adopted by the convention without any change.

The constitutions of Indiana, Maryland, Ohio, Tennessee, and Vermont contain a section identical with this one.(86)

Summary of Action Taken by the Convention Relating to this Article.(87)

The select committee submitted under the head of the legislative department thirty-nine sections. Of these thirty-nine sections, thirty-three were accepted by the convention without any change or amendment; one was stricken out; and five were amended. Of the thirty three that were accepted without change, one contained two blanks that were filled out by the convention i.e.for minimum and maximum number of senators.

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(86) Poore's: Ind.III.18.(503); Md.LVII.(828); O.I.18.(1456); Tenn.I.17.(1669); Vt.II.15.(1879). See also Ala.III.1.(34); Conn.III.1.(260); Ill.II.17.(441); Me.IV.Pt.I.1.(791); Mass.VI.art.VIII.(972); Miss.III.4.(1057); N.Hamp.Form of Govt.92.(1307); N.Y.XXXI.(1337).

(87) For summary of the influence exerted by other state constitutions see " Conclusion".

Of the five sections that were amended, one was on the qualifications of a senator, but this was not so much a change in the intent of the original section as to prefix to it a provision regarding who the electors of the senators should be and also the terms of senators, one was for making more inclusive the disqualifications for holding any office of honor, trust, or profit in the state, one was to give the general assembly greater power regarding the making of discriminating criminal laws against slaxes, one was to make more inclusive the section on bribery, and the last was regarding the treasurer and auditor, but it cannot be determined how this amendment affected the original section, as only the section after it was amended, is given.

The committee on style reported to the convention thirty-seven sections on this article. Of these thirty-seven sections, twenty-seven were agreed to by the convention without any change; two were stricken out and sections of entirely different purport inserted; and eight were amended. Of the eight sections that were amended, one changed the age of a representative from twenty-five to twenty-four years, one was a proviso regarding a senatorial district being contiguous and a county not to be divided, one limited the field of voters by disqualifying certain men in the employment of the United States , one cut down the power of the general assembly regarding the emancipation of slaves, one rendered easier the formation of new counties by reducing their minimum size, one changed the time of the first revision of the laws of the state from three to five years after the adoption of the constitution, and the

remaining two are given only in their amended form.

Altogether there were twenty-five motions made in the convention to change in some degree the thirty-seven sections submitted by the committee on style. Of these twenty-five proposed amendments, thirteen were adopted by the convention. The largest vote cast on any measure was thirty- nine, the smallest thirty-two.

ARTICLE IV." OF THE EXECUTIVE POWER ".

Section 1.(Governor)
" The supreme executive power shall be vested in a chief magistrate, who shall be styled " The Governor of the State of Missouri".

This section was adopted by the convention without any change.

In the framing of this section Missouri followed the general rule that obtained among the states in providing for a single head form of chief executive.

Section 2.(Qualifications)
" The Governor shall be at least thirty-five years of age, and a natural born citizen of the United States, or an inhabitant of that part of Louisiana now included in the state of Missouri at the time of the session thereof from France to the United States, and shall have been a resident of the same at least four years next before his election."

The select committee reported this section almost verbatim as finally adopted. A motion was made to strike out the words , "or a citizen at the adoption of the Federal Constitution", and in lieu thereof , to insert the words, "or a natural ~~born~~ citizen thereof". This was lost. (1) After the report of the committee on style, a motion was made to strike out the words, " natural born", which motion was lost.(J.p.38 & 39) A motion was then made to strike out the words, " or a citizen at the adoption of the Constitution of the United States", and in lieu thereof to insert, " a naturalized citizen

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(1) J.p.20. ~~There must have been some error in the printing of the journal here, as such an insertion was superfluous , being the same as the preceding clause.~~

of the United States at the time of the session of the province of Louisiana by France to the United States", which was lost.(2)

This section on the qualifications of the governor consists of three parts, which will be considered in their order. First, he must be at least thirty-five years of age. This was a high age qualification at that time and the constitutions of Kentucky, Louisiana, and the United States alone provided for the same.(3) Second,he must be a natural born citizen of the United States, or a citizen at the adoption of the United States constitution, or " an inhabitant of that part of Louisiana included in the state of Missouri at the time of the session thereof from France to the United States". This was also a high qualification. Besides the United States constitution, from which this section was obviously taken, the constitutions of Alabama, Illinois, and Maine alone make natural or native citizenship of the United States a necessary requisite.(4) Only seven other states make any kind of citizenship of the United States a requisite.(5) Third, he must

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(2) J.p.39. A protest was permitted to be inserted in the journal against this entire section. The protest is in substance, that this section is repugnant to the principles of the United States constitution, creates a distinction incompatible with the fact of citizenship, has a retrospective operation, and degrades the naturalized citizen.(J.p.47-48)

(3) U.S.II.1. Poore's: Ky.III.4.(660); La.III.4.(703). The majority of the states provided for a thirty year age qualification; e.g. Ala.,Conn.,Del.,Ga.,Ill.,Ind.,Me.,Miss., N.Hamp.,N.Ca.,O.,Penn.,S.Ca. Two states had a twenty- five year age qualification, e.g. Md.,Tenn. Six states had no provision on this, e.g.Mass.,N.J.,N.Y.,R.I.,Va., & Vt.

(4)U.S.II.1. Poore's: Ala.IV.4.(38); Me.V.Pt.First ,4.(794); Ill.IV.3.(442).

(5) Poore's: Del.III.4.(282); Ga.II.3.(392); Ind.IV.4.(504)

have resided in"same" for at least four years next before his election.(6) Of the twenty-three state constitutions under consideration, eighteen contained a state residence qualification ranging from ten years in South Carolina to two years in Illinois. The following states, Alabama, Ohio, Tennessee, and Vermont, provided for a four year state residence.(7)

It is probable that the constitutions of the United States, Kentucky, and Tennessee were the most influential on this section.

Section 3.(Term of Service and Election of Governor) " The Governor shall hold his office for four years, and until a successor be duly appointed and qualified. He shall be elected in the manner following: At the time and place of voting for members of the house of representatives, the qualified electors shall vote for a governor; and when two or more have an equal number of votes, and a higher number than any other person, the election shall be decided between them by a joint vote of both houses of the general assembly at their next session".

(5 cont.) Ky.III.4.(660); La.III.4.(703); Miss.IV.3.(1059); O.II.3.(1457).

(6) Although the wording of the section is such as to give rise to speculation regarding the word or words to which the word " same" refers, it is here assumed that it was intended to provide for a four years residence in Missouri next before election i.e. a state residence.

(7)Poore's: Ala.IV.4.(38); Conn.IV.1.(261); Del.III.4.(282); Ga.II.3.(392); Ill.III.3.(442); Ind.IV.4.(504); Ky. III.4.(660); La.III.4.(703); Me.V.Pt.First, 4.(794); Md.30.(824); Mass.II.1.art.II.(964); Miss.IV.3.(1059); N.Hamp.42.(1301); N.Ca.35.(1412); O.II.3.(1457); Penn.II.3.(1551); S.Ca.II.2.(1631); Tenn.III.3.(1670); Vt.30.(1881); As is seen above two states retained a religious qualification -Massachusetts and New Hampshire-, and nine states (really ten for New York provided he must be a free holder) had property qualifications ranging from New York with a minimum to Maryland with a five thousand pounds qualification.

This section was adopted by the convention without any change.

It provides for the term and tenure of the governor. The term is made four years. Kentucky, probably influenced by the United States constitution, was the first state to provide a similar term.(8) This was followed by Louisiana, Illinois, and Missouri.(9) Ten states still held to the early rule of a one year term, six to a two year term, and four to a three year term.(10) The tenure provided is elective by a plurality vote of the people and, when two or more have an equal number of votes and a higher number than any other person, the election is to be decided between them by a joint vote of both houses of the general assembly. Eleven state constitutions contained a similar provision.(11) Five states provided for an election by an absolute majority, while six states still retained the old method of appointment by the legislature, and one other combined the elective method by the people with appointment by the legislature.(12)

The influence of the constitution of Kentucky was proba-

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(8) U.S.II.1. Poore's: Ky.III.2.(660).

(9) Poore's: Ill.III.2.(442); La.III.3.(703).

(10) Poore's: Conn.(IV.1.(261); Me.V.Pt.First,1.(794); Md.35.(824); Mass.II.1.art.2.(964); N.Hamp.42.(1301); N.J.VII.(1312); N.Ca.XV.(1413); R.I.(1599); Vt.X.(1878); Va.(1910). The six states having a two year term are: Ala.IV.4.(38); Ga. II.1.(392); Miss.IV.1.(1059); O.II.3.(1457); S.Ca.II.2.(1631); Tenn.III.4.(1670). The four states having a three year term are: Del.III.3.(281-282); Ind.IV.3.(504); N.Y.17.(1335); Penn. II.3.(1551).

(11) Poore's: Ala.IV.2&3.(37); Del.III.2.(281); Ill.III. 2.(442); Ind.IV.2.(503&504); Ky.III.2.(660) ; Miss.IV.2. (1059); N.Y.17.(1335); O.II.2.(1457); Penn.II.2.(1550); Tenn. III.2.(1669&1670); R.I.(1599).

(12) Poore's: The five states that provided for election

bly very great.

Section 4.(Ineligible for four years)
" The governor shall be ineligible for four years after the expiration of his term of service."

This section was adopted by the convention without any change.

The constitutions of Illinois, Louisiana, and South Carolina alone contain a provision practically identical with this one.(13) Ten other state constitutions contain a section that is similar.

The constitution of Illinois was probably the most influential in the framing of this section.

Section 5.(Commander of militia and navy)
" The governor shall be commander in chief of the militia and navy of this state, except when they shall be called into the service of the United States; but he need not command in person, unless advised so to do by a resolution of the general assembly."

(12 cont.) by an absolute majority are: Me.V.Pt.First, 3.(794); Mass.II.1.art.II.(965); N.Hamp.42.(1301); Vt.10.(1878); Conn. IV.2.(261). The six states providing for appointment by the legislatures were: Ga.II.2.(392); Md.25.(824); N.J.VII.(1312); N.Ca.XV.(1413); S.Ca.II.2.(1631); Va.(1910); The state combining the elective and appointive tenure was La.III.2.(703).

(13) Poore's: Ill.III.2.(442); La.III.3.(703); Ala.IV.4.(38); Del.III.3.(281); Ind.IV.3.(504); Ky.III.3.(660); Md.31.(825); N.Ca.XV.(1412); O.II.3.(1457); Penn.II.3.(1551); S.Ca. II.2.(1631); Tenn.III.4.(1670); Va.1910).

This section was adopted by the convention without any change.

Some provision of a like nature is found in practically all the other constitutions. The constitutions of Indiana, Kentucky, Louisiana, Maryland, and Vermont are substantially identical with the Missouri constitution on this point.(14)

Section 6.(Remission of Fines &.-Pardons)
" The governor shall have power to remit fines and forfeitures, and, except in cases of impeachment, to grant reprieves and pardons."

This section was adopted by the convention without any change.

It enumerates the judicial powers of the governor. Practically all the states had a similar provision in their constitutions.(15) Seven states, Alabama, Delaware, Indiana, Kentucky, Mississippi, Pennsylvania, and South Carolina had a section substantially identical with this one.(16) The remaining state constitutions either provided that the judicial powers herein enumerated were to be exercised by the governor in conjunction with some other body or limited the scope of these powers, and sometimes both were done.

Probably Kentucky exerted a strong influence in the framing of this section.

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(14) Poore's: Ind.IV.7.(504); Ky.III.8.(660); La.III.8.(703); Md.33.(825); Vt.11.(1879). U.S.II.3.
(15)Rhode Island is purposely omitted from consideration.
(16) Poore's: Ala.IV.11.(38); Del.III.9.(282); Ind.IV.10.(504); Miss.IV.10.(1060); Ky.III.11.(660); Penn.II.9.(1551); S.Ca.II.7.(1631); La.III.11.(703); Me.V.Pt.First,11.(795);

Section 7.(Governor's message to the General Assembly and special sessions of General Assembly)
" The Governor shall, from time to time, give to the general assembly information relative to the state of the government, and shall recommend to their consideration such measures as he shall deem necessary and expedient. On extraordinary ~~sessions~~ occasions he may convene the general assembly by proclamation, and shall state to them the purposes for which they are convened."

This section was adopted by the convention without any change.

The contents of this section embraces the general legislative powers of the governor except his veto power. These powers were possessed by the chief executive in fourteen states. (17) In five states he was granted only the power to convene the legislature in special sessions and in four of these this was shared with the council, while in one state he was given power only of sending messages.(18) In three states he was ~~gr~~ granted neither power.(19)

Section 8. (To Distribute and Enforce Laws)
" The governor shall take care that the laws be distributed and faithfully executed; and he shall be a conservator of the peace throughout the state."

(16 cont.) N.J.IX.(1312); N.Y.18.(1335); Conn.IV.10.(362); Ga. II.7.(392); Ill.III.5.(442); Md.33.(825); Mass.II.1.art.VIII. (966); N.Hamp.52.(1303); N.Ca.19.(1412); O.II.5.(1459); Tenn. III.6.(1670); Vt.11.(1878); Va.(1910). U.S.II.2.

(17) Poore's: Ala.IV.8&9.(38); Del.III.11.(282); Ga.II. 8.(392); Ill.III.4&9.(442&443); Ind.IV.12&13.(504); Ky.III. 13&14.(660); La.III.13&14.(704); Me.V.Pt.First,9&13.(795); Miss.IV.7&8.(1059)&(1060); N.Y.18&19.(1335); O.II.4&9. (1457&1458); Penn.II.11&12.(1551); S.Ca.II.12&13.(1631); Tenn.III.9&11.(1670);. U.S.II.3.

(18) The five states are: first four- Md.29.(824); Mass. II.1.art.V.(965); N.Hamp.50.(1302); Va.(1911), the fifth was Vt.11.(1879); the one state- Conn.IV.8.(363).

(19) Poore'd: N.J.,N.Ca.,and R.I.

This section was adopted by the convention without any change.

The contents embraces the general executive powers of the governor. No other state constitution contains a section identical with this one. The majority simply give him the power and place on him the duty of seeing to the faithful execution of the laws, the distributing phrase being omitted, while some make him share this power with the council.(20)

Section 9. (Vacancies how supplied)
" When any offide shall become vacant, the governor shall appoint a person to fill such vacancy, who shall continue in office until a successor be duly appointed and qualified according to law."

This section was adopted by the convention without any change.

The contents embraces part of the civil administrative powers of the governor. The constitutions of Georgia, Kentucky. Louisiana, Mississippi, and Ohio contain a provision substantially identical with this one.(21) Most of the states had provisions in their constitutions more or less similar to this one.(22)

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(20) Poore's: Ala.IV.10.(38); Conn.IV.9.(262); Del.III.13.(282); Ga.II.5.(393); Ill.III.7.(442); Ind.IV.14.(504); Ky. III.15.(660); La.III.15.(704); Me.V.Pt.First,12.(795); Md.33.(825); Miss.IV.9.(1060); N.Y.19.(1335); N.J.8.(1312); N.Ca.19.(1412); O.II.7.(1457); Penn.II.13.(1551); S.Ca.II.8.(1631); Tenn.III.10.(1670); Vt.11.(1878); Va.(1910); U.S.II.1.

(21) Poore's: Ga.II.9.(392); Ky.III.10.(660); La.III.10.(703); Miss.IV.13.(1060); O.II.9.(1458); U.S.II.2.

(22) Poore's Ala.IV.15.(38); Del.III.8.(282)& VIII.4.(286); Ill.III.8.(443); Ind.IV.9.(504); N.Y.33.(1336); Me.V.Pt.First,8.

The influence of the constitutions of the United States and Kentucky were probably felt to a great extent in the framing of this section.

Section 10.(General Assembly to reconsider rejected bills) " Every bill which shall have been passed by both houses of the general assembly, shall, before it becomes a law, be presented to the governor for his approbation. If he approves it, he shall sign it; if not, he shall return it, with his objections, to the house in which it shall have originated, and the house shall cause the objections to be entered at large on its journals, and shall proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall in like manner be reconsidered, and if approved by a majority of all the members elected to that house, it shall become a law. In all such cases, the votes of both houses shall be taken by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if the governor had signed it, unless the general assembly by its adjournment shall prevents its return, in which case it shall not become a law."

This section as reported by the select committee was a verbatim copy of the section as finally adopted. A motion was made and carried to amend it by striking out, " a majority of all the members elected to " , and inserting in lieu thereof ," two thirds of all the members present in".(J.p.3ϕ) After the report of the committee on style the convention in the committee of the whole reversed itself by making an absolute majotity instead of two thirds the members present

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(32cont.) (795); Md.48.(827); Mass.II.1.IX.(966); N.Hamp.46. (1302); N.Ca.30.(1413); Penn.V.10.(1553)& VI.1.(1553); R.I.(1600 Tenn.III.4.(1670); Vt.11.(1878); Va.(1911).

necessary to overcome the governor's veto.(J.p.39)

This section deals with legislative process and the part taken by the governor in the same. Of the fourteen state constitutions that are more or less similar to the Missouri constitution as regards this section, only one , Kentucky, is identical.(23) Two states, Alabama and Indiana, are substantially identaical with the exception that a five day limit is provided for, while in the hands of the governor.(24) The remaining eleven state constitutions differ in regard to time limit, majority necessary to overcome the veto, or body exercising the veto power.(25)

The constitution of Kentucky was probably the most influential of all the state constitutions on this section.

Section 11.(Joint Resolution)
" Every resolution to which the concurrence of the senate and house of representatives may be necessary, except on cases of adjournment, shall be presented to the governor, and before the same shall take effect, shall be proceeded upon in the same manner as in the case of a bill."

This section was adopted by the convention without any change.

It is really a continuation of section ten on legislative

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(23) Poore's: Ky.III.25.(661).
(24) Poore's: Ala.IV.16.(38&39); Ind.IV,22.(505).
(25) Poore's: Conn.IV.13.(263);.Ga.II.10.(392); IllIII. 19.(443&444); La.III.20.(704); Me.IV.Pt.Third,3.(793); Mass. I.1.II.(960); Miss.IV.15.(1060);N.Hamp.44.(1302); N.Y.III. (1332&1333); Penn.I.22.(1550); Vt.16.(1879); U.S.I.7.

process. About half of the state constitutions contained a provision practically identical with this one, some of which wre absolutely identical.(26)

Section 12.(Auditor of Public Accounts)
" There shall be an auditor of public accounts, whom the governor, by and with the advice and consent of the senate, shall appoint. He shall continue in office four years, and shall perform such duties as may be prescribed by law. His office shall be kept at the seat of government."

The report of the select committee on this section was amended by the convention so as to read practically the same as finally adopted, with the exception, that the auditor was to give sufficient security for the faithful discharge of his office.(27) The report of the committee on style was adopted by the convention without any further change.

No other state constitution has a section identical with this one. Only three states provided for an auditor, and in al of these his temure is appointive by the general assembly, and term three years in two of these states and one year in the third.(28)

Section 13.(Compensation of Governor)
" The governor shall, at stated times, receive for his services an adequate salary, to be fixed by law, which shall neither be increased or diminished during his continuance in office, and which shall never be less than two thousand dollars annually."

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(26) Poore's: Ala.IV.17.(39); Ga.II.11.(392&393); Ind.IV. 25.(505); Ky.III.26.(661); La.III.21.(704); Me.IV.Pt.Third,2. (793); Mass.I.1.II.(960); Miss.IV.16.(1060); N.Hamp.45.(1302); Penn.I.23.(1550); Vt.16.(1879).

The report of the select committee on this section was the same as finally adopted. It was moved to strike out the words, "and which shall never be less than two thousand dollars per annum". This was lost.(J.p.20) A motion was then made to strike out the words," two thousand", and insert," one thousand five hundred". This was also lost.(J.p.20) So the section was agreed to without any change.

Eighteen states make some mention in their constitutions of the compensation of the governor.(29) These are nearly all similar in some respect to the Missouri constitution except that no minimum amount is mentioned in any of them. In fact one state places the maximum amount at $750.(30)

In no state constitution was there such a liberal provision relating to the salary of the governor.

Section 14. (Lieutenant Governor, election, and Qualification)
" There shall be a lieutenant governor, who shall be elected at the same time, in the same manner, for the same term, and shall possess the same qualifications as the governor. The electors shall distinguish for whom they vote as governor, and for whom as lieutenant governor."

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(27) J.p.17. The exception noted above was omitted in the report of the committee on style.

(28) Poore's: Ind.IV.24.(505); Miss.IV.25.(1061); O.VI. 2.(1460); Ala.IV.23.(39); Conn.IV.19.(363). In some states under different name.

(29) Poore's: Ala.IV.5.(38); Conn.IV.4.(261); Del.III. 6.(282); Ga.II.1.(392); Ill.III.6.(442); Ind.IV.6.(504); Ky. IIII7.(660); La.III.7.(703); Me.V.Pt.First,6.(795); Mass.II.1. XIII.(967); N.Hamp.58.(1303); Miss.IV.4.(1059); O.II.6.(1457); Penn.II.6.(1551); S.Ca.II.10.(1631); Tenn.I.20.(1669)& I.7.((1670); Va.(1910).

(30) Tennessee.

This section was adopted by the convention without any change.

Ten states make provision in their constitutions for a lieutenant governor in a manner substantially identically the same as found in the Missouri constitution.(31)

The constitutions of Illinois and Kentucky were probably the most influential in the framing of this section.

Section 15. (To be President of the Senate)
" The lieutenant governor shall by virtue of his office be president of the senate. In committee of the whole he may debate on all questions; and where there is an equal division, he shall give the casting vote in the senate, and also in joint vote of both houses."

The report of the select committee on this section is the same as finally adopted, with but one exception- the lieutenant governor was given the right to vote when the senate was in committee of the whole. A motion was made to take this privilege away from him but this was lost.(J.p.21) After the report of the committee on style the same motion to amendment was made as above and was carried, the convention sitting in committee of the whole.(J.p.39)

The constitutions of Connecticut, Illinois, Indiana, Kentucky, and Mississippi contain an identical provision.(32)

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(31) Poore's: Conn.IV.3.(261); Ill.III.13.(443); Ind.IV. 15.(504); Ky.III.16.(660); Mass.II.2.I.(967); Miss.IV.18.(1060); N.Y.20.(1336); S.Ca.II.3.(1631); Vt.10.(1878); Va.(1911).

(32) Poore's: Conn.IV.13.(362); Ill.III.14.(443); Ind. IV.16.(504); Ky.III.17.(661); Miss.IV.19.(1060); Va.(1911).

Section 16. (Who to Act as Governor in case of Vacancy) " When the office of governor shall become vacant, by death, resignation, absence from the state, removal from office, refusal to qualify, impeachment, or otherwise, the lieutenant governor, or in case of like diaability on his part, the president of the senate pro tempore, or if there be no president of the senate pro tempore, the speaker of the house of representatives, shall possess all the powers, and discharge all the duties of governor, and shall receive for his services the like compensation, until such vacance be filled, or the governor so absent or impeached shall return or be acquited."

The report of the select committee on this section was substantially the same as finally adopted. A motion was made which in effect would have eliminated the lieutenant governor from the succession to the office of governor. This was lost. A proviso was then introduced to give the general assembly power to abolish the office of lieutenant governor when the latter became inconvenient. This also failed to pass. The section was then agreed to .(J.p.21)

Practically all the states make some regulation on this point in their constitutions. However no state goes so far as Missouri in providing for future contingincies of vacancy in the office of governor. The constitutions of Connecticut, Indiana, Kentucky, Mississippi, and New York are all the same on this point and approach most nearly to the Missouri constitution.(33) Other state constitutions bear a greater or less resemblance to the Missouri constitution on this point, but in all probability the constitution of Kentucky was the most influential.(34)

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(33) Poore's: Conn.IV.14&15.(262); Ind.IV.17&18.(504-505); Ky.III.18&19.(661); Miss.IV.20&21.(1061); N.Y.20&21.(1336).
(34) Poore's: Ala.IV.18&19.(39); Del.III.14.(282); Me.V.

Section 17. (Election to Supply Vacancy, where to be ordered)
" Whenever the office of governor shall become vacant, by death, resignation, removal from office, or otherwise, the lieutenant governor, or other person exercising the power of governor for the time being, shall, as soon as may be, cause an election to be held to fill such vacancy, giving three monthe previous notice; and the person elected shall not there-by be rendered ineligible to the office of governor for the next succeeding term. Nevertheless, if such vacancy shall happen within eighteen months of the end of the term for which the late governor shall have elected, the same shall not be filled."

This section was adopted by the convention without any change.

Only two states, Alabama and Illinois, have provisions in their constitutions at all similar to this one in the Missouri constitution.(35)

Section 18. (Compensation of the Lieutenant Governor and President of the Senate.)
" The lieutenant governor, or president of the senate pro tempore, 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 adopted by the convention without any change.

The constitutions of Kentucky and Mississippi are identical with the Missouri constitution on this point.(36) Illinois and Indiana are substantially identical , and Alabama is

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(34 cont.) Pt.First,14.(795); N.Ca.19.(1413&1413);O.II.12.(1458) S.Ca.II.5.(1631); Ill.III.18.(443); Mass.II.2.III.(967); Vt.11. (1878); Va.(1921).
(35) Poore's: Ala.IV.18.(39); Ill.III.18.(443); Md.32.(825)
(36)Poore's: Ky.III.20.(661); Miss.IV.2.(1061).

quite similar.(37) The remaining states have no provision in their constitutions on this subject.

It is probable that the constitution of Kentucky formed the pattern for this section.

Section 19. (Returns of election of Governor and Lieutenant Governor)
" The returns of all elections of governor and lieutenant governor shall be made to the secretary of state, in such manner as may be prescribed by law."

This section was adopted by the convention without any change.

Fourteen states made some provision in their constitutions on this point. Five of these, Connecticut, Maine, Massachusetts, Mississippi, and New Hampshire, are identical with Missouri on this subject((38)

It is probable that the constitutions of Connecticut, Maine and Mississippi were very influential in the framing of this section.

Section 20. (Contested Elections to the General Assembly)
" Contested elections of governor and lieutenant governor shall be decided by joint vote of both houses of the general assembly, in such manner as may be prescribed by law."

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(37) Poore's: Ala.IV.20.(39); Ill.III.16.(443); Ind.IV. 18.(505).

(38)Poore's: Conn.IV.2.(261); Me.V.Pt.First,3.(794); Mass.II.1.III.(965); Miss.IV.2.(1059); N.Hamp.32.(1300); and Ala.IV.3.(37); Del.III.2.(282); Ill.III.2.(442); Ind.IV.2. (504); La.III.2.(703); O.II.2.(1457); Penn.II.2.(1550); Tenn. II.2.(1670); Vt.10.(1878).

This section was adopted by the convention without any change.

Ten states make some provision in their constitutions on this point. The constitutions of Alabama, Connecticut, Illinois, Mississippi, Ohio, and Tennessee are practically with the Missouri constitution on this subject.(39) The remaining states settled contested elections by a joint committee of the general assembly.(40)

It is probable that the constitution of Illinois was the most influential.

Section 21. (Secretary of State appointed and gives information on demand of General Assembly)
" There shall be a secretary of state, whom the governor by and with the advice and consent of the senate, shall appoint. He shall hold his office for four years unless sooner removed on impeachment. He shall keep a register of all the official acts and proceedings of the governor, and when necessary shall attest them; and he shall lay the same, together with all papers relative thereto, before either house of the general assembly whenever required to do so, and shall perform such other duties as may be enjoined on him by law."

This section was adopted by the convention without any change.

Eighteen states make provision for a secretary of state in their constitutions. Three of these, Kentucky, Louisiana, and Tennessee, are identical with the Missouri constitution. (41) Four other states made his tenure appointive by thegovernor.(42) The remaining states either made his tenure appoint-

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(39) Poore's: Ala.IV.3.(37); Conn.IV.3.(261); Ill.III.3.(443); Miss.IV.2.(1059); Tenn.II.3.(1670); O.II.3.(1457).
(40) Poore's; Del.III.2.(281); Ind.IV.3.(504); Ky.III.37.(661-663); Penn.II.3.(1551).

ive by the general assembly or elective by the people, which latter obtained in Connecticut and Maine.(43) Besides the above first three states, only two others made his term four years, Indiana and South Carolina.(44) With the exception of Virginia, which state made his term during good behavior, the remaining states were equally divided in providing a term of one, two, or three years.(45) All the eighteen states prescribed practically the same duties for the secretary.

The constitution of Kentucky was probably the most influential on this section.

Section 22. (Seal of State)

" The secretary of state shall, as soon as may be, procure a seal of state, with such emblems and devices as shall be directed by law, which shall not be subject to change, It shall be called the " Great Seal of the State of Missouri", shall be kept by the secretary of state, and all official acts of the governor, his approbation of the laws excerped, shall be thereby authenticated."

This section was adopted by the convention without any change.

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(41) Poore's: Ky.III.34.(861); La.III.19.(704); Tenn.II. 17.(1670).

(42) Poore's: Del.III.15.(282); Ill.III.20.(444); Miss. IV.14.(1060); Penn.II.15.(1551).

(43) Poore's: Conn.IV.18.(362&363); Me.V.Pt.Third, 1,2,3, 4.(796).

(44) Poore's: Ind.IV.3.(505); S.Ca.VI.1.(1632).

(45) Poore's: N.Ca.24.(1413); O.II.10.(1458); Penn.II.15. (1551); Del.III.15.(282)-all had a three year term; Ala.IV.14. (38); Ga.II.12.(393); Ill.III.20.(444); Miss.IV.14.(1060)- all had a two year term; Conn.IV.18.(362); Me.V.Pt.Third,1,2, 3,4.(796); Mass.II.4.I.(968); N.Hamp.67-70.(1304)- had a one year term.Va.(1911).

No constitution has a section identical with this one. However, practically all the states made some provision in their constitutions for a seal of state. The name applied to it varied in different in different states. In the majority of the state constitutions the custodian was the governor. The constitutions of Georgia and Connecticut give the custodianship of the great seal to a secretary of state.(46)

Section 23. (General Assembly to provide regarding sheriff and coroner)
" There shall be appointed in each county a sheriff and a coroner, who, until the general assembly shall otherwise provide, shall be elected by the qualified electors at the time and place of electing representatives. They shall serve for two years and until a successor be duly appointed and qualified, unless sooner removed for misdemeanor in office, and shall be ineligible four years in any period of eight years. The sheriff and coroner shall each give security for the faithful discharge of the duties of his office in such manner as shall be prescribed by law. Whenever a county shall hereafter established, the governor shall appoint a sheriff and coroner therein; who shall continue in office until the next succeeding general election, and until a successor shall be duly qualified."

The report of the select committee on this section was substantially the same, with slightly different wording, as finally adopted.(J.p.21&22) A motion was made to amend the section by requiring four years to intervene before a sheriff or deputy sheriff could be reelected.(J.p.21&22) This was lost. A motion was then made and carried which slightly changed the phraseology but not the sense of the first part of the section.(Ibid) A motion was made to amend the section by depriving the general assembly of its power to change the

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(46) Poore's: Conn.IV.11.(262)&IV.18.(263);Ga.II.13.(393).

tenure of the sheriff and coroner. This was lost.(Ibid) The section as amended was then adopted.

All the states made some provision for a sheriff in their constitutions and quite a number for a coroner.(47) However, no section in these instruments is identical with this section in the Missouri constitution. The contents of the latter will be considered in the order of points presented. First, each county is to have a sheriff and a coroner. Thirteen states provided for the same.(48) The remaining states either provided for a sheriff or sheriffs alone, or for two sheriffs and two coroners. Second, the tenure is elective but subject to change by the general assembly. About half of the states had the elective tenure as applied here and the remainder the appointive.(49) Third, the term is two years. Seven states followed this, six states provided for a one year term, five states for a three year, one for a four year, and the remainder left this open in their constitutions.(50) Fourth, they are ineligible four years in evry eight. No state constitution

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(47) All references in this section will be found in the following list: Poore's: Ala.IV.2.(39); Conn.IV.20.(263); Del.VIII.4.(286); Ga.III.11.(394); Ill.III.11.(443); Ind.IV. 25.(505); Ky.III.31.(662)&IV.7&8.(663); Me.V.Pt.First,8. (795); Md.42.(826); Mass.II.1.IX.(966); N.Hamp.46.(1302); La. III.9.(703); Miss.IV.24.(1061); N.J.XIII.(1312); N.Y.26.(1336); N.Ca.38.(1414); O.VI.1.(1460); Penn.VI.1.(1553); S.Ca.VI.3. (1632); Tenn.VI.1.(1672); Va.(1911); Vt.27.(1880)&11.(1878).

(48) Ill.,Ind.,Ky.,Mass.,Miss.,N.Hamp.,N.J.,N.Y.,N.Ca.,P Penn.,Tenn.,&Va.

(49) Ala.,Conn.,Del.,Ill.,Md.,N.J.,O.,Penn.,S.Ca.,Miss.,& Ind. All these had the elective tenure but in the case of Delaware the general assembly selected from those elected and the governor did the same in Pennsylvania. In the remaining states either the governor , or the governor and council or legislature or county court appointed the sheriffs.

(50) S.Ca.,4 yrs.; Ala.,Conn.,Del.,Md.,&Penn.,3 yrs.;

contains an identical provision on this point but a large majority contain a similar clause.(51) Fifth, they are to give security while in office. Only two state constitutions contain a similar provision, Connecticut and Vermont, however in Maryland the qualifications of a sheriff were placed very high. Sixth, in new counties the governor is to appoint the sheriff and coroner who hold office until the next general election. Although practically none of the states has a like provision in its constitution, this was in all probability the general rule since the majority of the constitutions give him power to fill all vacancies in a general way until the next election.

Probably the constitutions of Illinois , Kentucky, Georgia, and Connecticut were the most influential in the framing of this section.

Section 24. (Vacancies in office of sheriff and coroner) " When vacancies happen in the office of sheriff or coroner, they shall be filled by appointment of the governor; and the persons so appointed shall continue in office until successors shall be duly qualified, and shall not thereby rendered ineligible for the next succeeding term."

This section was adopted by the convention without any change.

Alabama, Connecticut, and Delaware alone in their constitution contain a provision on this point, but it was probably

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(50 cont.) Ill.,Ky.,O.,Tenn.,Ind.,& Miss.,3 yrs.; Me.,Mass., N.Hamp.,N.Y.,N.J.,&Vt., 1 yr.

(51) Ala.,3yrs. in 6; Ga.,2 yrs. in 4;Md., not eligible for next 4 yrs.; N.Y., not more than four terms; O.,not more than four years in six; Penn.,not more than three years in six;

followed in a majority of the states since a large number vested in the governor general power to fill vacancies and some others vested the original appointing power in him.(52)

In all probability the constitutions of Alabama, Connecticut, and Delaware were the most influential on this sectio.

Section 25. (Election of sheriff and coroner in cases of tie or contested election)
" In all elections of sheriff and coroner, when two or more persons have an equal number of votes, and a higher number than any other person, the circuit courts of the counties, respectively, shall give the casting vote, and all contested elections for the said office shall be decided by the circuit courts respectively, in such manner as the general assembly may by law prescribe."

This section was adopted by the convention without any chenge.

No state constitution has even a similar provision. However, in Kentucky, Tennessee, and Virginia the local courts i.e. of the counties, were the determining factors in the appointment of the sheriff and coroner and in Tennesse e they were the sole appointers, hence was more natural than that, when Missouri adopted the elective tenure for these offices, contested elections and ties were left to be determined by the old judicial bodies having such full power in the three

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(51 cont.) S.Ca.,(like Md.,); N.J.,three years must intervene after three terms; Ind., not more than four in six.

(52) Poore's: Ala.IV.24.(39); Conn.IV.20.(263); Del.III. 4.(386); Ga.II.9.(392); Ill.III.8.(443); Ind.IV.9.(504); Ky.III.10.(660); La.III.10.(703); Mass.II.1.IX.(966); Miss.IV. 13.(1060); Penn.VI.1.(1553); Md.42.(826); N.Ca.20.(1413)

kindred states.(53)

Summary of Action Taken by the Convention Relating to this Article.(54)

The select committee submitted under the head of the executive department twenty-three sections. Of these twenty-three sections, twenty-one were accepted by the convention without any change or amendment. However, one section reported by the select committee under the head of the legislative department was divided into two parts and one of the parts (relating to the appointment of the auditor by the governor) was amended and inserted under the head of the executive department. Of the two sections amended, one made a two thirds majority vote instead of an absolute majority necessary to overcome the governor's veto, and the other simply changed the phraseology relating to the election of sheriffs and coroners. It is worth noting that the first amendment i.e. regarding a two thirds majority to overcome the governor's veto, did not stand but was later reversed by the convention to an absolute majority. Although only two amendments carried on the report of the select committee, there were eleven proposed.

The committee on style reported to the convention twenty-five sections on the executive department. Of these twenty-five sections, twenty-two were agreed to by the convention

(53) Poore's: Ky.III.31.(662); Tenn.VI.1.(1672); Va.(1911)

without any change or amendment; one section was stricken out and an entirely new section was inserted; and two sections were amended. Of the two section that were amended, one changed the two thirds majority of the general assembly necessary to overcome the governor's veto to an absolute majority i.e. made it the same as reported by the select committee, and the other took away from the lieutenant governor the power to vote when the senate was in the committee of the whole. This last amendment had been attempted before in the convention but had failed. The section stricken out was regarding a state seal. This section had been regularly adopted by the convention after the report of the committee on style but later when the convention took up for consideration the " General Provisions", it was stricken out and the present section twenty-two inserted. There were four amendments proposed and two of these passed.

Altogether there were fifteen motions made in the convention to change in some degree the twenty-five sections adopted. Of these fifteen proposed amendments or alterations, only four were adopted,- one of these four was of no lasting effect being later nullified by the convention reversing itself, and one other simply changed the wording and not the sense of a section. So in reality only two amendments having force were adopted that changed the original sections submitted. This does not include the section substituted for the section entirely stricken out, i.e. on the state seal.

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(54) For summary of influence exerted by other state constitutions, see " Conclusion".

ARTICLE V. " OF THE JUDICIAL POWER".

Section 1. (Courts)
" The judicial power as to matters of law and equity, shall be vested in a " Supreme Court", in a " Chancellor", in " Circuit Courts", and in such inferior tribunals as the general assembly may, from time to time, ordain and establish".

This section as reported by the select committee was adopted by the convention without change.(J.p.23) It cannot be determined what was its wording. As reported by the committee on style this section differed somewhat from the final form it took.(1) After the report of this committee a motion was made and carried to amend the section by the inserting the words " in a chancellor" after the words, " supreme court". (J.p.39) A motion was then made and carried in convention to amend the section by inserting after the word " law" , the words, " and equity".(J.p.40) As thus amended the section was adopted.

It is hard to find the source of this section in any other state constitution. In fact the greatest diversity existed in the organization of the judiciary in the several states.(2) The constitution of Indiana seems to bear the closest

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(1) J.p.39-40. " The judicial power as to matters of law shall be vested in a supreme court, in circuit courts, and in such inferior tribunals as the general assembly may from time to time ordain and establish."

(2) This diversity manifested itself in the names, jurisdiction, and composition of the state courts.Again, some states e.g. R.I.,N.Hamp., left the organization of the judiciary entirely in the hands of the legislature, while other states e.g., Del., gave the legislature little or no discretion in this line. The general rule seems still to have been to leave the organization of the judiciary very largely in the hands of the legislature but not to such a great degree as in the constitutions of the Revolutionary Period.

resemblance to this section but even in that instrument no mention is made of a chancellor.(3) The majority of the states provided for a supreme court of some kind, although under various names, in their constitutions.(4) Only a small minority of the states made any express provision whatever in their constitutions for a chancellor or a court of chancery. (5) The name circuit court appears only in the constitutions of Illinois, Indiana, and Alabama. The functions of the circuit court were exercised in other states by like courts that simply differed in name alone.(6) In practically all the states the legislature was given express power to establish inferior tribunals.

Section 2. (Jurisdiction of Supreme Court)
" The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, under the restrictions and limitations, in this constitution provided."

This section was adopted by the convention without any change.

The constitutions of Alabama, Indiana, and Kentucky are

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(3) Ind.V.1.(506).
(4) Ind.V.1.(506); Ala.V.1.(40); Conn.V.1.(363); Del.VI. 1.(283); Ga.III.1.(393); Ill.IV.1.(444); Ky.IV.1.(662); La. IV.1.(704); Miss.V.1.(1061); O.III.1.(1458); Penn.V.1.(1552); S.Ca.III.1.(1631); Tenn.V.1.(1671); Vt.II.4.(1877); Md.LVI.(828) This high court went under the name of Supreme Court, Supreme Court of Errors, High Court of Errors and Appeals, Court of Appeals, General Court etc., in the differant states.
(5) Ala.V.8.(40); Del.VI.1.(283); N.J.VIII.(1312); Vt.II. 5.(1877); Md.LVI.(828); Penn.V.6.(1552-1553); Miss.V.6.(1062)
(6) Ind.V.1.(506); Ala.V.1.(40); Ill.IV.4.(444); Del.VI.

practically identical with the Missouri constitution as regards this section.(7) The other state constitutions that contain any provision on this point give original or original and appellate jurisdiction to this court, or give appellate jurisdiction to a separate court, or provide duties for its judges that differ in degree from giving advice to the legislature to serving as justices of the peace throughout the state.(8)

Section 3. (Control over inferior courts)
" The supreme court shall have a general superintending control over all inferior courts of law. It shall have power to issue writs of Habeas Corpus, Mandamus, Quo Warranto, Certiorari, and other original remedial writs; and to hear and determine the same."

This section was adopted by the convention without any change.

The constitutions of Alabama, Georgia, and Tennessee contain a provision practically identical with this one.(9) The constitution of Indiana is quite similar to the Missouri constitution in this respect but the former does not expressly give the Supreme Court power to issue remedial writs.(10)

(6 cont.) 1.(283); Ga.III.1.(393); Miss.V.1.(1061); O.III.1.(1458); S.Ca.III.1.(1631); Tenn.V.1.(1671); Penn.V.1.(1552)

(7) Ala.V.2.(40); Ind.V.2.(506); The legislature in Indiana could give the Supreme Court original jurisdiction in criminal and chancery cases where the president of the circuit court was prejudiced. Ky.IV.2.(662)

(8) Del.VI.3.(283) & VI.8.(284); Ga.III.1.(393); Ill.IV.3.(444); La.IV.2.(704); O.III.2.(1458); Penn.V.3.(1553); Md.IX.5.(amend.1805) p.(831); Mass.III.art.II.(968-969); N.Hamp.74.(1305); N.J.IX.(1312); Vt.III.4.(1877); Conn.V.1.(263)

(9) Ala.V.2.(40); Ga.III.1.(393); Tenn.V.7.(1671)

(10) Ind.V.5.(506); see also O.III.6.(1459)

Section 4. (Composition and Quorum)
" The supreme court shall consist of three judges, any two of whom shall be a quorum; and the said judges shall be conservators of the peace throughout the state."

This section was adopted by the convention without any change.

The constitutions of Indiana and Ohio are practically identical with the Missouri constitution as regards this section.(11) The constitutions of Delaware, Illinois, Louisiana, Mississippi, and Maryland are similar to the Missouri instrument in this respect.(12)

The influence of the constitution of Indiana was here probably very great.

Section 5. (Judicial districts by General Assembly)
" The state shall be divided into convenient districts, not to exceed four, in each of which the supreme court shall hold two sessions annually, at such place as the general assembly shall appoint; and when sitting in either district, it shall exercise jurisdiction over causes originating in that district only; provided however, that the general assembly may at any time hereafter direct by law, that the said court shall be held at one place only."

This section was adopted by the convention without any change.

The great majority of the state constitutions contain no provision on the subject matter in this section. Regarding

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(11) Ind.V.3&5.(506); O.III.2.(1458) & III.7.(1459)
(12) Del.VI.3.(283)- three to four judges; Ill.IV.3.(444)- four judges; La.IV.3&6.(705)- three to five judges; Miss.V.2.(1061)&V.12.(1061)- four to eight judges; Md.amend.IX.5.(831) &LVI.(828)- three judges. In all cases above either two or a majority of the judges constituted a quorum and in many of

the few states that do, their similarity to the Missouri constitution on this point is not very great. The constitution of Louisiana bears the nearest resemblance to this section.(13)

Section 6. (Circuit Court Jurisdiction)
" The circuit shall have jurisdiction over all criminal cases which shall not be otherwise provided for by law; and exclusive jurisdiction in all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the general assembly. It shall hold its terms in such place in each county as may be by law directed."

This section as it came from the hands of the select committee was the same as finally adopted except that the phrase " until otherwise directed by the general assembly" was left out. A motion was made and carried to insert a phrase which is substantially identical with the above one.(14) As thus amended the section was adopted.

The constitution of Alabama seems to bear the closest resemblance to the Missouri constitution as regards this section (15) The constitutions of Delaware, Indiana, Mississippi, Ohio, Georgia, and Maryland are also quite similar.(16)

(12 cont.) the states the constitution expressly made the judges conservators of the peace. See also Ky.IV.4.(662)

(13) La.IV.3.(705). See also Md.IX.1.(amend.1805)p. (830); O.III.10.(1459); Ind.V.6.(506); Ga.III.1.(393); Del. VI.3.(283); Ala.V.3&4.(40); S.Ca.amend.1816.(1635). In these latter states the supreme court usually held sessions in each county or its place of sitting was determined by the legislature.

(14) J.p.23. The phrase originally adopted by the convention was " until otherwise provided by law". The committee on style changed this so as to read " until otherwise directed by the general assembly".

(15) Ala,V.6&7.(40).

(16) The courts and especially what the Missouri constitution terms the " circuit court" went by various names in

Section 7.(Judicial Circuits)
" The state shall be divided into convenient circuits, for each of which a judge shall be appointed, who, after his appointment, shall reside, and be a conservator of the peace within the circuit for which he shall be appointed."

This section was adopted by the convention without any change.

The constitutions of Alabama, Illinois, and Indiana are substantially identical with the Missouri constitution as regards this section.(17) Although known by a different name, the constitutions of Delaware, Maryland, Ohio, and Pennsylvania make provision for a similar court.(18)

Section 8. (Control over Inferior Tribunals)
" The circuit court shall exercise a superintending control over all such inferior tribunals as the general assembly may establish, and over justices of the peace in each county in their respective circuit."

This section was adopted by the convention without any change.

(16 cont.) the several states, and also, the jurisdiction given these courts in the constitutions were sometimes the same as those assigned the circuit courts in Missouri even though differently named e.g. county courts, district courts, superior courts, court of common pleas, inferior courts etc. Del.VI.8.(284); Ind.V.3&6.(506); Miss.V.3.(1062); O.III.3&4.(1458)&III.10.(1459); Ga.III.1.(393); Md.IX.1.(amend.1805) p.(830).

(17) Ala.V.5.(40)&V.16.(41); Ill.IV.4.(444); Ind.V.3&5.(506)

(18) Del.VI.4.(283); O.III.3.(1458)&III.7.(1459), called courts of common pleas; Md.IX.1.amend.1805.(830), six district courts; Penn.V.4.(1552)&V.6.(1553&1553); see also Miss. V.3.(1062)&V.12.(1064); Tenn.V.4.(1671)

The constitutions of Ohio and Pennsylvania are the most nearly related to the Missouri constitution on this point.(19) Probably in all those states that provided in their constitutions for circuit or similar courts, this power of controlling inferior tribunals was exercised but it was not expressly set forth in their fundamental law.

Section 9. (Chancery Court Jurisdiction)
" The jurisdiction of the court of chancery shall be coextensive with the state, and the times and places of holding its sessions shall be regulated in the same manner as those of the supreme court."

This section is practically the same as reported to the convention by the select committee. A motion was made to strike out the entire section. This was lost.(J.p.23)

The constitution of Delaware id the most nearly related to the Missouri constitution as regards this section.(20)

Section 10. (Chancery Jurisdiction)
" The court of chancery shall have original and appellate jurisdiction in all matters of equity, and a general control over executors, administrators, guardians and minors, subject to appeal in all cases to the supreme court, under such limitations as the general assembly may by law provide."

It cannot be determined what was the original form of this section. All that can be ascertained is, that it was amended by the convention after having been reported by the committee on style so as to read the same as finally adopted.(J.p.40)

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(19) O.III.6.(1459); Penn.V.8.(1553); S.Ca.V.5&6.(1671)
(20)Del.VI.14.(284).See also Miss.V.6.(1062); Vt.II.5. (1877); & Ala.V.8.(40) where the legislature may establish same.

The constitution of Delaware is practically identical with the Missouri constitution on this section.(21) The constitutions of Alabama, Mississippi, and Vermont contain a similar provision.(22)

Like in several of the former provisions the constitution of Delaware seems to have been very influential in the framing of this section.

Section 11. (Inferior Courts of Chancery may be established)
" Until the general assembly shall deem it expedient to establish inferior courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the court of chancery, in such manner, and under such restrictions, as shall be prescribed by law."

This section was adopted by the convention without any change.

The constitution of Alabama is practically identical with the Missouri constitution as regards this section.(23) The constitution of Delaware also contains a provision quite similar to this one.(24)

(20 cont.) See also Md., LVI (828) & Penn.V.6.(1552&1553). In Pennsylvania the Supreme Court was expressly given chancery jurisdiction.

(21) Del.VI.14.(284)-Appeals were taken from the Court of Chancery to the High Court of Errors and Appeals.

(22) Ala.V.8.(40)- The legislature was to give the court original and appellate jurisdiction; Miss.V.6.(1062)- The court was to have exclusive original equity jurisdiction; Vt.II.5.(1877)- To have jurisdiction like ordinary equity courts

(23) Ala.V.8.(40)

(24) Del.VI.15.(285).

Sedtion 12. (Inferior Tribunals)
" Inferior tribunals shall be established in each county for the transaction of all county business, for appointing guardians, for granting letters testamentary, and of administration, and for settling accounts of executors, administrators and guardians."

The twelth section as reported by the committee on style related to the jurisdiction of the court of chancery.(J.p.40) It was moved and carried that the entire section be stricken out. As to when or how this section as finally adopted was inserted, it is impossible to say.

The constitution of Kentucky is practically identical with the Missouri constitution as regards this section and the same is true of the constitution of Mississippi.(25) Quite a number of the states have a provision more or less similar in their constitutions.(26)

It is probable that the constitution of Kentucky was the most influential in the framing of this section.

Section 13. (Appointment of Judges)
" The governor shall nominate, and by and with the advice and consent of the senate, appoint the judges of the supreme court, the judges of the circuit courts, and the chancellor, each of whom shall hold his office during good behavior; and shall receive for his services a compensation which shall not be diminished during his continuance in office, and which shall not be less than two thousand dollars annually."

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(25) Ky.IV.4&5.(662); Miss.V.7.(1062).
(26) Ala.V.9.(40); Del.VI.15,16,17,19.(285); Ga.III.1&4.(393)&III.6.(394); La.IV.4&6.(705); Md.IX.1.amend.1805.(830); Mass.III.IV.(969); N.H.46.(1302)&80.(1305); N.J.XII.(1312); N.Y.XXVIII.(1337); O.III.5.(1459); Pa.V.7.(1553); Vt.II.4.(1877)

This section as reported to the convention by the select committee, as section twelve, was substantially the same as it finally adopted. It had an interesting history in the convention after the report of both the select committee and the committee on style. Numerous attempts were made to amend it and several of these amendments carried but were later nullified by the convention reversing itself. However, with but two exceptions i.e. the minimum age qualification of judges which became part of section fourteen and an attempt to change the term from good behavior to six years, all these proposed changes were over the one question of the amount of the minimum compensation of judges.(27)

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(27) J.p.23-24. After the report of the select committee a motion was made to amend the section, by inserting after the word, " chancellor", the words, " none of whom shall be less than thirty years of age", which amendment was concurred in. A motion was then made to strike out the words, " two thousand dollars", with a view of inserting in lieu thereof, " one thousand six hundred dollars". The words were stricken out and motions were made and seconded to fill the blank with the following several sums,-" $2500,$2100,$1900,$1800, $1600,and $1500. The question was taken on filling the blank, with $2500, and was lost by a vote of six to twenty-seven. The question was then taken on filling the blank with $2100, which was lost by a vote of ten to twenty-four. The vote taken on filling the blank with $1900 was fourteen to twenty. The question was then taken on filling the blank with $1800, which was carried in the affirmative by a vote of ninteen to fifteen. A motion was then made to strike out the words," and which shall be not less than one thousand eight hundred dollars to each of them annually", which was negatived by a vote of twelve to twenty- two. So the section as amended was agreed to.

J.p.40. This section i.e., section 13, as reported to the convention by the committee on style was submitted as section 14 and was the same as had formerly been agreed to by the convention. A motion was made to strike out the $1800, which was carried, and the blank proposed to be filled with the several sums of $2500,$2000, $1600,$1500,$1200, and $300. The question being taken on filling the blank with $2500, was lost by a vote of nine to twenty-nine. The question being then

This section provides for the tenure, term, and compensation of the judges of the higher courts. Missouri in her constitution followed the general rule that obtained in nearly all the states as regards these three points. The constitutions of Delaware, Kentucky, Louisiana, Maine, Maryland, and Pennsylvania are the most nearly related to the Missouri constitution on this section.(38) The tenure was appointive by the governor and senate. All the states except Georgia, and in part Indiana, provided for an appointive tenure for the judges, about half confiding this power in the hands of the legislature and half in the governor and senate or council. The term was during good behavior. All of the states made the same provision except Georgia, Indiana, Ohio, and in part Connecticut. The salary was not to be below $2000. and not to be diminished during holding of the office. Practically all the states provided that either the salary was to be adequate or was not to be diminished during office. Missouri followed the general rule that obtained in all of these cases except that she stated definitely what the minimum salary was. Illinois was the only other state that did this, while Louisiana was the only state that put the salary at a definite figure.(39)

(37 cont.) taken on filling the blank with $2000. it was decided in the affirmative by a vote of twenty-three to fifteen. A motion was then made to strike out the words "during good behavior" with the view of inserting six years, which motion was lost by a large vote. The section as amended was then agreed to. It was practically the same with only one exception i.e. the thirty years age qualification, as when it had first been submitted by the select committee. And, as has been said, this exception was finally separated from this section and placed in section fourteen

(38) Del.VI.2.(383);&III.8.(382); Ky.III.9.(660)&IV.3.(662)

Section 14. (Judges Qualifications)
" No person shall be appointed a judge of the supreme court, nor of a circuit court, nor chancellor, before he shall have attained to the age of thirty years; nor shall any person continue to exercise the duties of any of said offices after he shall have attained to the age of sixty-five years."

This section was first introduced as an amendment to section thirteen after the report of the select committee.(J.p. 23-24) It was reported to the convention as section fifteen by the committee on style and was identical with section fourteen as finally adopted. A motion was made to strike out the words "thirty years" which motion was lost by a large vote.(J.p.44) A motion was then made to prefix the following words, "until the year 1824", which was also lost. The section was then agreed to.

No other state constitution contains a minimum age qualification for the judges and only five provide for a maximum one.These five are Alabama, Connecticut,Maine, Mississippi, and New Hampshire.(30) The qualifications of the judges during the early state period were uniformly high but this was due either to statutory provisions or custom.

(28 cont.) La.IV.3&5.(705)&III.9.(703); Me.VI.2.(796); Md.IX. 1.amend.1805.(830)&XLVIII.(827)&LI.(826); Penn.V.2.(1552)& II.8.(1551).

(29) Ala.V.11,12,13.(4041); Conn.V.3.(363); Del.supra; Ga.III.1&2.(393); Ill.IV.4&5.(444); Ind.V.4&7.(506);Ky.,La.,Me., Md.,see supra; Mass.III.1.(968); Miss.V.2&9.(1061&1062); N.H.73.(1305); N.J.XII.(1312); N.Y.23&28.(1336&1337); N.Ca. 13&21.(1413&1413); O.III.8.(1459); Penn.supra; S.Ca.VI.1.(1632) &III.1.(1632); Tenn.V.2.(1671)&V.3.(1671); Va.(1911). None of the above statements apply to Rhode Island nor do they necessarily apply to judges of the inferior courts.

(30) Ala.V.14.(41); Conn.V.3.(263); Me.VI.4.(796); N.H. 78.(1305)- all made it seventy years, while Miss.V.9.(1062) provided for seventy-five years as the age limit.

Section 15. (Clerks of Courts. Laws of General Assembly) " The courts respectively shall appoint their clerks, who shall hold their office, during good behavior. For any misdemeanor in office, they shall be liable to be tried and removed by the supreme court, in such manner as the general assembly shall by law provide."

This section was adopted by the convention without any change.

The constitutions of Georgia, Illinois, Kentucky, Louisiana, Mississippi, and Tennessee are practically identical with the Missouri constitution as regards this section.(31) The constitutions of New Hampshire, New York, Virginia, and Maryland are only slightly less similar.(32) Probably the constitutions of Illinois and Kentucky were the most influential on this section.

Section 16. (Judges removed by address.) " Any judge of the supreme court or the circuit court, or the chancellor, may be removed from office on the address of two thirds of each house of the general assembly to the governor for that purpose; but each house shall state on its respective journal the cause for which it shall wish the removal of such judge or chancellor, and shall give him notice thereof, and he shall have the right to be heard in his defence in such manner as the general assembly shall by law direct; but no judge nor chancellor shall be removed in this manner for any cause for which he might have been impeached."

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(31) Ga.III.10.(394); Ill.IV.6.(445); Ky.IV.10.(663); La.IV.3.&10.(705); Miss.V.11.(1062); Tenn.V.10.(1671)

(32) N.H.81.(1305); N.Y.XXVII.(1336); Va.(1911); Md. XLI & LVII.(826 & 827). See also Ala.V.15.(41); Ind.V.8.(506); O.III.9.(1459).

This section was agreed to by the convention without any change being made. After it had been reported by the committee on style a motion was made to strike out the section . This was lost.(J.p.41)

The constitutions of Alabama, Connecticut, Delaware, Georgia, Kentucky, Louisiana, Mississippi, Pennsylvania, and Illinois are substantially identical as regards this section. (33) Probably the constitution of Illinois formed the pattern for this provision.

Section 17. (Justices of Peace)
" In each county there shall be appointed as many justices of the peace as the public good may be thought to require. Their powers and duties, and their duration in office, shall be regulated by law."

This section was adopted by the convention without any change.

The constitutions of Alabama, Connecticut, Illinois, and Kentucky are substantially identical with the Missouri constitution as regards this section.(34) Quite a number of the state constitutions are similar on this point.(35) The majority of the states that provided for the tenure of the justices of the peace made it appointive, provided for a definite term varying from three to nine years, and left both the number of

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(33) Ala.V.13.(41); Conn.V.3.(263); Del.VI.2.(283); Ga. III.1.(393); Ky.IV.3.(662); La.IV.5.(705); Miss.V.9.(1062); Penn.V.2.(1552); Ill.IV.5.(444); see also Md.IX.1.amend.1805. (830)&XLI.(826); Mass.II.I.(968); N.H.73.(1305).

(34) Ala.V.10.(40); Ill.IV.8.(445); Ky.IV.6&7.(662&663); Conn.V.2.(263).

(35) Del.VI.20.(283); Ga.III.5.(394); Ind.V.13.(507);

of justices and their duties open to statutory regulation. The constitutions of Illinois and Kentucky seem to have been the most influential in the framing of this section.

Section 18. (Attorney-General)
" An attorney general shall be appointed by the governor, by and with the advice and consent of the senate. He shall remain in office four years, and shall perform such duties as shall be required of him by law."

This section was adopted by the convention without any change,

The constitution of Mississippi is practically identical with the Missouri constitution as regards this section and the same might be said of the constitutions of Alabama and Kentucky.(36) Where an attorney general was provided for in the state constitutions the general rule was appointive tenure. The term varied from three years to during good behavior. His duties were either not mentioned or left to statutory regulations.(37)

Section 19. (Style of Writs and Processes. Indictments)
" All writs and processes shall run, and all prosecutions shall be conducted, in the name of the " State of Missouri"; all writs shall be tested by the clerk of the court from which they shall be issued, and all indictments shall conclude, "against the peace and dignity of the state".

(35 cont.) Me.VI.5.(796); Mass.III.III.(969); Miss.V.8.(1062); N.H.75&77.(1305); N.J.XII.(1312); N.Y.28.(1337); N.Ca.33.(1413); O.III.11.(1459); Penn.V.10.(1553); Tenn.V.13.(1672); Va.(1911); Md.XLVIII.(827).

(36) Miss.V.14.(1062); Ala.V.18.(41); Ky.III.23.(661).

(37) Ga.III.3.(393); La.IV.7.(705); N.H.46.(1302); N.J.XII.(1312); N.Ca.13&21.(1412-1413); Tenn.V.2.(1671); Va.(1911); Me.V.pt.I.8.(795); Md.XL&LVIII.(826&827)

It cannot be determined when or where this section crept in. The original section nineteen as reported to the convention by the committee on style contained entirely different subject matter.(38) A motion was made to strike out the entire section. This was agreed to. It is possible that sections 20 and 21, which were adopted by the convention but the contents of which are unknown, were united to form the final section 19, or were dropped out, or were placed eldewhere in the constitution.

A similar provision is found in the majority of the state constitutions. Some use the word, "People", some "Commonwealth", but most use " State". It cannot be determined which state constitution exerted the most influence in the framing of this section.(39)

Summary of Action Taken by the Convention Relating to this Article.(40)

The select committee submitted under the head of the judiciary twenty sections. Of these twenty sections, eighteen were accepted by the convention without any change or amend-

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(38) J.p.42. " Judgements confessed for any debt or damages in any court of record, or before any clerk of such court in vacation, or before any justice of the peace for any sum w within his jurisdiction, shall be as valid in law and equity as judgements rendered in the ordinary course of legal proceedings."

(39) Ala.V.19.(41); Del.VI.21.(285); Ill.IV.7.(445); Ind.V.11.(507); Ky.IV.4.(662); La.IV.6.(705); Miss.V.13.(1062); O.III.12.(1459); Penn.V.12.(1553); S.Ca.III.2.(1632); Tenn.V. 9.(1671); Vt.II.32.(1881); Va.(1912).

(40) For summary of influence exerted by other state constitutions, see " Conclusion".

ment, while only two were amended. Of these two sections, one was altered but very slightly, and the other was amended in two respects by three amendments, 1st the age qualification for the higher judges was made thirty years, 2nd the minimum salary was changed from $2000 to $1800 per annum. This last sum was later changed to $2000 and the age qualification was set forth in a separate section. Thus although two sections were altered by four amendments, there was hardly a single important change made that stood. Again, while only four amendments carried on the report of the select committee, there were eleven proposed.

The committee on style reported to the convention twenty-one sections on the judiciary. Of these twenty-one sections, sixteen were agreed to without any change; one was entirely stricken out and nothing inserted in its place; one was stricken out and another sedtion inserted; and three sections were amended. Of the three sections which were amended, one was altered by extending the jurisdiction of the judiciary to matters of law and "equity" and by inserting the word " Chancellor", one was changed by making the minimum salary of judges $2000 instead of $1800, and it cannot be determined in what respect the other section was amended. The section that was entirely stricken out and nothing inserted in its place was section 19 which related to judgements for debt confessed in court. The other section that was stricken out was section 12 which related to the jurisdiction of the court of chancery, and the section inserted in its place related to inferior tribunals.

Although anly five motions carried amending altogether three sections, excepting the two sections stricken out, there were fifteen motions proposed as amendments to different sections.

Altogether there were twenty-eight motions made (including the sections stricken out) in the convention to change in some degree the ninteen sections finally adopted. Of these twenty-eight proposed amendments, eleven were adopted. As to how much or how little these eleven amendments altered the original sections reported by the select committee , can be judged from the above summary.

ARTICLE VI. " OF EDUCATION".(1)

Section 1. (Education to be encouraged and lands preserved) " Schools and the means of education shall forever be encouraged in this state; and the general assembly shall take measures to preserve from waste or damage such lands as have been, or hereafter may be granted by the United States for the use of schools within each township in this state, and shall apply the funds which may arise from such lands in strict conformity to the object of the grant; one school, or more, shall be established in each township as soon as practicable and necessary, where the poor shall be taught gratis".

Section 2. (University lands to be ~~ap~~improved and funds applied)
" The general assembly shall take measures for the improvement of such lands as have been, or hereafter may be granted by the United States to this state for the support of a seminary of learning; and the funds accruing from such lands by rent or lease, or in any other manner, or which may be obtained from any other source for the purposes aforesaid, shall be and remain a permanent fund to support a university for the promotion of literature, and of the arts and sciences; and it shall be the duty of the general assembly, as soon as may be, to provide effectual means for the improvement of such lands, and for the improvement and permanent security of the funds and endowments of such institution."

The contents of this article is with one exception, noted below, the same as section thirty-five of article III(on the executive department) which was submitted to the convention by a separate motion and adopted after the report of the ~~select~~ style committee.(J.p.37-38) It cannot be determined what the original section thirty-five was. There is a slight difference between section thirty-five as adopted then and the above two sections of article VI. The last clause of section one, relating to township schools, was lacking.(2) This clause

(1)The two sections ~~included~~ in this article will be considered jointly.
(2) "; one school, or more, shall be established in each township as soon as practicable and necessary, where the poor shall be taught gratis."

is contained in a section which was proposed to be inserted in lieu of section twenty-three under the head of " General Provisions".(3) This section was first amended by the convention and then by leave of that body withdrawn.(4) When and where the " township school clause" was inserted cannot be determined. After this, the sole information relating to education contained in the journal is confined to the statement " The several articles in relation to education, and mode of amending the constitution, were severally read the third time and agreed to".(J.p.43)

A majority of the states in their constitutions has some provisions relating to education. These differ greatly. The older states naturally said nothing of United States school lands and few said anything regarding a state University. In many of the newly created states such provisions are not found in the constitutions but in the Enabling Act of Congress or in the state"s acceptance of same. The state constitutions that seemed to have been the most influential in the framing of this section are those of Alabama and Indiana - both being

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(3) J.p.43. The motion proposing such section reads as follows, "that one or more schools shall be established in each township, as soon as practicable and necessary, under such rules and regulations as may be prescribed by law, and in such manner that the qualified electors shall have at all times the exclusive right of electing able teachers, and that the poor may be taught gratis, but no particular dogmas of religion shall be inculcated at such schools, unless the whole of the electors shall be of the same religious sect, or consent thereto; and provided that no person born hereafter who by the year 1841, may be unable to read or write the Anglo-Saxon or some other language, shall be allowed to elect or be elected to any office within this state, until he be so qualified."

(4) J.p.43. A motion was amde to strike out the proviso

practically identical with the Missouri constitution.(5) The constitutions of Mississippi, Ohio, Georgia. North Carolina, Pennsylvania, and the New England states are also quite similar.(6)

(4 cont.) relating to an elector's disqualification, which was carried by a vote of twenty-eight to eight. The section by leave of the convention was then withdrawn.

(5) Ala.Education.(43); Ind.IX.1&2.(508).

(6) Miss.VI.16&20.(1064); Conn.VIII.1&2.(264); Ga.IV.13.(395); Me.VIII.(79)&X.1.(802); Mass.V.1&2.I.(969-910); N.H. pt.II.83.(1305-1306); N.Ca.XLI.(1414); O.VIII.25.(1463); Penn. VII.1&2.(1553); Vt.II.41.(1882); R.I. not considered here. See also enabling acts of Alabama, Illinois, Indiana, and Ohio.

ARTICLE VII. " OF INTERNAL IMPROVEMENT".

" Internal improvement shall forever be encouraged by the government of this state; and it shall be the duty of the general assembly, as soon as may be, to make provision by law for ascertaining the most proper objects of improvement in relation both to roads and navigable waters; and it shall be their duty to provide by law for a systematic and economical application of the funds appropriated to these objects."

It cannot be determined when this article was agreed to. (1)

The constitution of Alabama contains a section practically identical with this provision in the Missouri constitution.(2) It is quite probable that the constitution of that state was the pattern followed in the framing of this article. (3)

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(1) J.p.42. Possible it came under the general head " General Provisions", and , when this was changed to the title " Declaration of Rights", it was taken out and made a separate article.

(2) Ala.VI.21.(43)

(3) Little or no data can be obtained from other constitutions relating to internal improvement. This was so distinctly an ordinary legislative power that perhaps this is the reason for its not being mentioned expressly in the fundamental law of the states. This must have been the case since in so many of the western states the national government in the enabling acts had granted a percentage of the proceeds of the sale of certain lands to the states for such purpose,e. g. Ala.,Ill.,&.

ARTICLE VIII. " OF BANKS".

" The general assembly may incorporate one banking company, and no more to be in operation at the same time.

The bank to be incorporated may have any number of branches not to exceed five, to be established by law; and not more than one branch shall be established at any one session of the general assembly. The capital stock of the bank to be incorporated shall never exceed five millions of dollars, at least one half of which shall be reserved for the use of the state."

The report of the (?) select committee on " A Bank and Branches" was given over to the committee of the whole which reported it to the convention. It cannot be determined what either of these reports was.(J.p.27-28) The original of the article finally adopted is a lengthy section submitted by an individual member of the convention.(1) After being amended three times, it was adopted by a close vote and then committed to a select committee of three.(2) This committee reported a section on banks quite different in some details from the section committed into its hands. This difference consisted mainly

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(1) J.p.28. " The general assembly shall have power by and with the concurrence of two thirds of both houses to incorporate one banking company and no more, the amount of whose capital shall never exceed ------ of which at least -------- shall be reserved to the state. The bank so established may have any number of branches not exceeding three, to be established by law; no bank shall commence operations until ----- of its capital stock shall have been subscribed, and one half thereof actually paid in gold or silver, and the stockholders shall be individually liable for all debts of the bank; the general assembly shall provide by law, what acts shall occasion a forfeiture of the charter of any bank, and how the same shall be ascertained and declared."

(2) J.p.28. A motion was made and carried to fill the

in giving the legislature greater latitude in creating a bank, in omitting all mention of personal liability of stockholders, in leaving blank the number of branches, the capital stock, and the state's share of the capital stock. The blanks were filled so that the section as then adopted was the same as the section as inserted in the constitution. An attempt was made to make the stockholders responsible for the bank's debts but this failed.(3) The committee on style reported it back as

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(2 cont.) first blank by inserting the words," five millions of dollars". Another motion was made to fill the second blank with " one half". This was carried by a vote of thirty to five. A motion was made to strike out the words " and the stockholders shall be individually liable for all the debts of the bank" and in lieu thereof to insert " and no charter of incorporation shall be granted to any banking company without making the stockholders severally and individually liable for all the debts of such bank or banks, in proportion to their stock therein, provided that the insolvency of individual stockholders shall not exempt the other stockholders from their liabilities for such proportion", which motion was negatived by a vote of ten to twenty-five.
(J.p.29) A motion was then made to strike out all the section except that part giving to the general assembly the power to establish a bank and branches, which was lost by a vote of sixteen to twenty. The third blank was filled with " three hundred thousand dollars" and the words " one half thereof" stricken out and the words " two thirds " inserted.

The question was then taken on agreeing to the section as amended, which was carried in the affirmative by a vote of ninteen to eighteen. The further consideration of the subject was then posponed.

On July 10th, the section was committed to a select committee of three members.

(3) J.p. 30. The committee reported the following section, " The general assembly may incorporate one banking company and no more, to be in operation at the same time; the bank so incorporated may have any number of branches not exceeding ------ to be established by law; and not more than one branch shall be established at any one session of the general assembly, the capital stock of the bank so to be incorporated, shall never exceed ------ at least-------- of which shall be reserved for the use of the state."

The first blank was filled with"five"; the second with " $5,000,000." ; and the third with " one - half".

committed under the head of " Banks".(4) Another attempt was made to secure payment of the bank's debts by property of the stockholders but this failed.(5)

The constitutions of Alabama and Indiana alone contain provisions similar to this article in the Missouri constitution. Of these former two, that of Alabama seems to have been the pattern followed in the framing of this paragraph.(6)

(3 cont.) A motion was ~~made to amend~~ the section by adding the following , " the state and individual stockholders shall be responsible for the payments of all the debts of the bank", which motion was lost by a vote of sixteen to twenty-one. The question recurring on adopting this section in lieu of the original section reported, which is in these words, " no bank shall be established in this state, nor the charter of any bank already established be extended, and the general assembly shall by law prevent the emission of bills of credit of any description by associations or individuals", the vote was twenty-three for and fifteen against. So the section as amended was adopted. This is the exact form and wording the section finally took.

(4) J.p.42.

(5) J.p.43. The following amendment was submitted," provided that any individual stockholder when he subscribed for any stock, shall mortgage to the bank real estate to twice the amount of the stock or shares subscribed for by him, which real estate shall form a security fund and be liable to the payment of any of the debts of the bank, and shall only be released on a transfer of stock by a pledge of other real estate of equal value". This was lost by a vote of nine to twenty-eight.

(6)Ala.Estab of Banks.1.(43). No limit was placed on the number of brahches, nor on capital stock, and the state was to reserve two thirds of the stock. Ind.X.1.(509).

ARTICLE IX. " OF THE MILITIA".

Section 1. (Militia Officers how appointed)
" Field officers and company officers shall be elected by the persons subject to military duty within their respective commands. Brigadiers general shall be elected by the field officers of their respective brigades; and majors general by the brigadiers and field officers of their respective divisions, until otherwise directed by law."

Section 2. (Staff)
" General and field officers shall appoint their officers of the staff."

Section 3. (Adjutant General)
" The governor shall appoint an adjutant general, and all other militia officers whose appointments are not otherwise provided for in this constitution."

This entire article was adopted by the convention without any change being made.

The constitutions of Indiana, Maine, Massachusetts, Ohio, and Tennessee contain provisions practically identical with this article.(1) Nearly all of the state constitutions contain sections more or less similar to these three.(2)

It is probable that the constitutions of Indiana and Tennessee were very influential in the framing of this section.

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(1) Ind.VII.3&4&5&7&8.(507-508); Me.VII.1,3,4.(797); O. V.1,2,3,4,6,7,.(1460). In Indiana the major general was appointed by the legislature. Tenn.VII.1,2,3,4,5,(1672); Mass.II.1. X.(966).

(2) Ala.Militia.4,5.(39); Ill.V.3,4.(445); Ky.III.29,30. (662); Md.23.(835)&47.(827); N.H.pt.second.54,55.(1302); N.J. X.(1312); Ga.IV.3.(395); La.III.33.(704); Miss.militia.1,2. (1061); Penn.VI.2.(1553); VT.II.9.(1878)&22.(1880); Va.(1911)

ARTICLE X. " OF MISCELLANEOUS PROVISIONS".

Section 1. (General Assembly not to interfere with the disposal of the soil)
" The general assembly of this state shall never interfere with the primary disposal of the soil of the United States, nor with any regulation Congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands the property of the United States, nor shall lands belonging to persons residing out of the limits of this state be taxed higher than the lands belonging to persons residing within the state."

Section 2. (Navigation)
" The state shall have concurrent jurisdiction on the river Mississippi, and on every other river bordering on the said state as far as the said river shall form a common boundary to the said state and any other state or states now, or hereafter to be formed, and bounded by the same; and the said river Mississippi, and the navigable rivers and waters leading into the same, whether bordering on or within this state, shall be common highways, and forever free to the citizens of this state and of the United States, without any tax, duty, impost or toll therefor imposed by the state."

This article was submitted by a member of the convention. The convention then resolved itself into a committee of the whole. The original form of the first section was verbatim the same as the above except that instead of the words, " nor shall lands belonging to persons", there were the words, " nor shall lands belonging to citizens of the United States". The section was adopted by a large majority.(J.p.44) The second section was unanimously agreed to .(J.p.45)

No state constitution contained an article identical with this one. The nearest approach being found in the constitution of Tennessee.(1) However, in most of the enabling acts of the

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(1) Tenn.I.26.(1669)&II.29.(1675); Ala.VI.8.(42).

western states, such a provision is found.(2) Its incorporation there probably accounted for its omission in their fundamental law.

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(2) Ala.enab.act.6.(31); Ill.enab.act.2.(436) & 6.(437); Ind.enab.act.2.(498); La.enab.act.3.(699&700); Miss.enab.act. 4.(1053).

ARTICLE XI. " OF THE PERMANENT SEAT OF GOVERNMENT".

Section 1. (Commissioners to be appointed)
" The general assembly at their first session shall appoint five commissioners for the purpose of selecting a place for the permanent seat of government, whose duty it shall be to select four sections of the land of the United States which shall not have been exposed to public sale."

Section 2. (A site to be selected. Within what limits)
" If the commissioners believe the four sections of land so by them to be selected be not a suitable and proper situation for the permanent seat of government, they shall select such other place as they deem most proper for that purpose, and report the same to the general assembly at the time of making their report provided for in the section of this article; provided, that no place shall be selected which is not situated on the bank of the Missouri river, and within forty miles of the mouth of the river Osage."

Section 3. (General Assembly to determine the location)
" If the general assembly determine that the four sections of land which may be selected by authority of the first section of this article, be a suitable and proper place for the permanent seat of government, the said commidsioners shall lay out a town thereon, under the direction of the general assembly; but if the general assembly deem it most expedient to fix the permanent seat of government at the place to be selected by authority of the second section of this article, they shall so determine, and in that event shall authorize the said commissioners to purchase any quantity of land, not exceeding six hundred and forty acres, which may be necessary for the purpose aforesaid; and the place so selected shall be the permanent seat of government of this state from and after the first day of October, one thousand eight hundred and twenty-six".

Section 4. (Selection of Commissioners)
" The general assembly, in selecting the above mentioned commissioners, shall choose one from each extreme part of the state, and one from the centre, and it shall require the concurrence of at least three of the commidsioners to decide upon any part of the duties assigned them."

9.

This article , which is divided into four sections, was first reported on 9/10 to the convention as section 6, under the head of " Schedule". It is practically the same as finally adopted except that a new commission was to be appointed in case the first one could not find a suitable tract of four sections of United States land.(1) This was changed by amendment so as to read the same as finally adopted.(2) A motion was made and to strike out that part of the section authorizing the commis-

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(1) J.p.31. The exact wording is as follows," The general assembly shall at the first session thereof appoint five commissioners for the purpose of fixing the permanent seat of the state government, that is to say, one from each extreme part of the state, and one from the centre, any three of whom may act, but it shall require the concurrence of at least three of the commissioners to fix the said seat of government, whose duty it shall be to select four sections of the land of the United States, which shall not have been exposed to public sale, if the same shall be found in a convenient and fit place for such seat of government, provided the same shall be on the Missouri river and within forty miles of the mouth of the Osage river; and if the said four sections of land dannot be found agreeable to the fourth proposition contained in the sixth section on the act of Congress, authorizing the people of Missouri to form a constitution; then it shall be the duty of the general assembly at the second session thereof, to appoint a like number of commissioners whose duty it shall be to select a convenient and proper place for the permanent seat of government, and they shall be authorized by law to purchase of the United States at private sale, or of any individual or individuals within the limits aforesaid, such quanity of land not exceeding six hundred and forty acres, as may be necessary for the seat of government; and the said commissioners so soon as they shall have procured such land either by selecting the said four sections, agreeable to the terms of the said fourth proposition of Congress, or by purchase of the United States, or of any individual or individuals, shall proceed to lay out a town thereon, which town shall be the seat of government of this state from and after the 1st day of October, 1826."

(2) J.p.31. A motion was made by Cook (2 St. L.) to strike out that part in relation to the appointment of commissioners at the second session of the general assembly, and to insert in lieu thereof the following words," the said commissioners to report to

sioners to purchase a tract of land from individuals.(3) A motion was then made to strike out the section and to insert one, which in effect was as follows, St. Louis was to be the permanent seat of government till 1870 provided she built a state house and prison by 1825.(4) This was lost by a large adverse vote.(4) The vote being taken on the section as amended, the section was adopted by a large majority.(4)

The constitution of no other state contains a similar provision. However, the onstitutions of Alabama, Kentucky, and Louisiana, expressly provide that the seat of government may be changed by the legislature.(5)

(2 cont.) the next general assembly the four sections which in their opinion is most eligible for such seat of government within the limits aforesaid, and it shall be their duty also to select a spot which in their opinion is most eligible within said limits, and to whom it belongs whether to the United States or to any individual" which motion was carried in the affirmative.

(3) A motion was made by Mr. Jones to strike out so much of the section as authorizes the commissioners to purchase of any individual or individuals, a tract of land for the seat of government, which motion was lost by a vote of five to thirty-one. (J.p.31)

(4) J.p.33. A motion was then made by Mr. Cupiss to strike out the whole of the section after the first word, and in lieu thereof to insert the following, " permanent seat of government shall be at the town of St. Louis, in the county of St.Louis, until the 1st day of October 1870, provided that there shall be built without expense to the state, a state house to be worth at least thirty thousand dollars, and in like manner a state prison, both of which buildings shall be built in a place to be hereafter adopted by the general assembly, and to be done and completed by the 1st day of October, 1825, provided also, that if the said state house and state prison be not completed as heretofore specified, the general assembly shall provide for the selecting an eligible site for the permanent seat of government, which site shall be on the Missouri river and within thirty miles of the mouth of the Osage river, and as soon as the said site for the permanent seat of government shall be ascertained and selected, the general assembly shall proceed to lay out a town thereon and provide for the

(4 cont.) erecting the necessary public buildings in such manner as they shall think expedient", which was negatived by yeas and nays by a vote of eight to twenty-eight.

The vote being taken on the section as amended, the result was twenty-eight yeas to nine nays.

(5) Ala.III.29.(37); Ky.VIII.1.(665); La.VI.24.(707).

ARTICLE XII. " MODE OF AMENDING THE CONSTITUTION".

" The general assembly may at any time propose such amendments to this constitution as two thirds of each house shall deem expedient, which shall be published in all the newspapers published in this state three several times, at least twelve months before the next general election; and if at the first session of the general assembly after such general election, two thirds of each house shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes as parts of this constitution; provided, that such proposed amendments shall be read on three several days, in each house, as well when the same are proposed, as when they are finally ratified."

This article was adopted by the convention without any change being made.(J.p.43)

Of the constitutions under consideration all but five provide some method of amendment.(1) In fourteen of these the legislature on its own initiative, either one or both houses of which, proposed the question of amendment.(2) The vote required differed from a majority of one house as in Connecticut to two thirds of both houses as in several states. (3) As regards the manner of ratification, no general rule obtained. Some states confided this power in the legislature alone after an intervening election had taken place (4), others in that body together with a popular vote (5), while

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(1) N.J.,N.Y.,N.Ca.,Penn.,&Va.

(2) In Indiana VIII.(508), the question of a convention was to submitted to the people every twelve years; N.H. did the same every seven years, see N.H.pt.second.99-100.(1307-1308); Vt.II.43.(1882), here the council of census by a two thirds vote proposed amendment or revision.

the greater number provided for the people voting on a convention which body had all power of amending and reviding the constitution (6), one state provided for a convention and ratification by the people (7), another ratification by a popular vote (8), and one left it to the legislature whose members were instructed.(9) Some states provided for so difficult a process as to render amendment highly improbable, and in fact some state constitutions of this time were never altered but were replaced with new ones. Only one state included in her constitution an easier amendment clause than Missouri, this was Maryland.(10) The constitutions of Georgia and South Caroline are practically identical with the Missouri constitution as regards amendment.(11) The constitution of Delaware is quite similar to the above three on this point except it was harder to amend than the former.(12)

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(3) Conn.XI.(866); 2/3 vote in Ala.(44); Del.X.(287); Ill.VII.1.(446); Me.X.4.(800); Miss.(1064); S.Ca.XI.(1633); Tenn.X.3.(1673); Ga.IV.15.(396); Ky.,La., by a majority; Md., Mass.,& O., do not state what vote is required.

(4) Del.X.(287); Ga.IV.15.(396); Md.59.(828); S.Ca.XI.(1633).

(5) Ala.(44); Conn.XI.(866).

(6) Ill.VII.1.(446); Ind.VIII.(508); Ky.IX.1.(665); La. VII.1.(707); Mass.VI.10.(972); Miss.(1064); O.VII.5.(1461); Tenn.X.3.(1673).

(7) N.H.pt.secpnd.99-100.(1307-1308).

(8) Me.X.4.(800).

(9) Vt.II.43.(1883).

(10) Maryland did not state the majority necessary to propose or ratify amendments excppt when the eastern district was concerned.

(11) S.Ca.- provided for a convention on question of revision only.

(12) Delaware also provided for a convention on the question of revision and 3/4 the legislature for,ratifying amendments.

ARTICLE XIII. " DECLARATION OF RIGHTS".

"That the general, great, and essential principles of liberty and free government may be recognized and established, We DEclare,

Section 1.
" That all political power is vested in and derived from the people."

The preamble and this first section were adopted by the convention without any change being made.

The constitutions of nine states had a preamble to their "Bills of Rights" substantially identical with this one.(1) All of these states except New Jersey, and New York provided for a bill of rights in their constitutions.(2) In nine states it was called a " Declaration of Rights" (3), in two "Bill of Rights" (4), in one "General Provisions"(5), and in the remainder had no name but was placed under a separate article in the constitution.

The constitutions of seven states are practically identical with the Missouri constitution as regards this section. (6) Ten other states have a similar provision in their con-

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(1) Ala.I.(32); Conn.I.(258); Del.(278)- not so similar as the others; Ill.VIII.(446); Ind.I.1.(500); Ky.X.(666); Miss.I.(1054); O.VIII.(1461); Penn.IX.(1554)
(2) Rhode Island was not considered.
(3) Ala.I.(32); Conn.I.(258); Me.I.(788); Md.(817); Mass.

stitutions.(7) Since this section was so widespread throughout the Union, it is difficult to say which constitution was the most influential.

Section 2.
" That the people of this state have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering their constitution and form of government, whenever it may be necessary to their safety and happiness."

It cannot be determined what was the form of this section as originally reported. An amendment was added which is quite similar to the section as finally adopted.(8) No further change was amde in the convention.

The constitutions of Maryland and Vermont contain a section practically identical with this one.(9) The constitutions of twelve other states also contain a provision very similar .(10)

(3 cont.) Part First.(957); Miss.I.(1054); N.Ca.(1409); Tenn. XI.(1673); Vt.I.(1875)

(4) N.H.Part One.(1294); Va.(1908)

(5) La.VI.(706-707)

(6) Del.(378); Ill.VIII.2.(446); N.H.pt.1.1.(1294); N.Ca.D.R.I.(1409); S.Ca.IX.1.(1633); Tenn.XI.1.(1673); Va. B.R.2.(1908)

(7) Ala.I.2.(32); Conn.I.2.(258); Ind.I.2.(500); Ky.X. 2.(666); Me.I.2.(788); Md.D.R.1.(817); Miss.I.2.(1055); O. VIII.1.(1461); Penn.IX.2.(1554); Vt.I.6.(1876)

(8) This section as first reported, was amended by adding, " that a frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty, and that the people have at all times the right and power to alter, reform or abolish their constitution and government, when their safety and happiness require it". (J.p.25) This amend. was offered by Mr. M'Kean.

(9) Md.D.R.3&4.(817); Vt.I.5&7.(1876)

(10) Ala.I.2.(32); Conn.I.2.(258); Del.(378); Ind.I.2.

Section 3.
" That the people have the right peaceably to assembly for their common good, and to apply to those vested with the powers of government for redress of grievances, by petition or remonstrance; and that their right to bear arms in defence of themselves and of the state cannot be questioned."

This section was adopted by the convention without any change.

The constitutions of twelve states contain sections practically identical with this one.(11) Four other states contain a similar provision in their constitutions.(12)

Section 4. (Rights of Conscience)
" That all men have a natural and indefeasible right to worship Almighty God according to,the dictates of their own consciences; that no man can be compelled to erect, support or attend any place of worship, or to maintain any minister of the gospel or teacher of religion; that no human authority can control or interfere with the rights of conscience; that no person can ever be hurt, molested or restrained in his religious professions or sentiments, if he do not disturb others in their religious worship."

This section was adopted by the convention without any change,

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(10 cont.) Ind.I.2.(500); ~~Ky.X.2.(666)~~; Me.I.2.(788); Mass. Part First.7.(958); Miss.I.2.(1055); N.Ca.D.R.2.(1409); O. VIII.1.(1461); Penn.IX.2.(1554); Tenn.XI.1.(1673).

(11) Ala.I.22&23.(34); Conn.I.16&17.(259); Ind.I.19&20. (501); Ky.X.22&23.(667); Me.I.15&16.(790); Mass.Part First. 17&19.(959); Miss.I.22&23.(1056); N.Ca.D.R.17&18.(1410); O.VIII.19&20.(1463); Penn.IX.20&21.(1555); Tenn.XI.22&26. (1675); Vt.I.16&20.(1877).

(12) Del.I.16.(279); Ill.VIII.19.(447); Md.D.R.10&11. (1818); N.H.Part I.32.(1296)

The constitutions of eleven states contain a section practically identical with this one.(13) Ten other states have a similar provision in their constitutions.(14)

Section 5. (Corporations)
" That no person, on account of his religious opinions, can be rendered ineligible to any office of trust or profit under this state; that no preference can ever be given by law to any sect or mode of worship; that no religious corporation can ever be established in this state."

This section was adopted by the convention as section twenty. Itcannot be determined what the original twentieth section was. A motion was made for the adoption, as a twentieth section, of a provision on gifts to ministers. This was lost. (15) The following was then submitted as the twentieth section, " No religious corporation shall ever be established in this state". This was adopted by a large vote.(16) As finally considered by the convention this section was adopted without any change being made.

The constitution of Alabama contains a provision practically identical with this one.(17) The constitutions of sixteen

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(13) Ala.I.3,4,5.(33); Del.I.1.(278); Ill.VIII.3.(447); Ind.I.3.(500); Ky.X.3.(966); Me.I.3.(788-789); Md.D.R.33. (819-820); N.J.18.(1313); O.VIII.3.(1461); Penn.IX.3.(1554); Vt.I.3.(1875-1876)

(14) Conn.I.3.(258); Ga.IV.10.(395); Mass.pt.I.3.(957); Miss.I.3&5.(1055); N.H.pt.I.5.(1294); N.Y.39.(1338); N.Ca.D.R. 19.(1410); S.Ca.VIII.1.(1632-1633); Tenn.XI.3.(1673-1674); Va.B.R.16.(1909)

(15) J.p.26.The proposed provision is quite long and related to gifts to ministers &, as such, being prohibited without consent of the legislature when such gifts were above

other states contain a section more or less similar to this one in the Missouri constitution.(18)

Section 6. (Elections)
" That all elections shall be free and equal."

This section was adopted by the convention without any change .

The constitutions of nine states contain a section practically identical with this one.(19) The constitutions of three other states have a provision that is similar.(20)

Section 7. (Administration of Justice)
" That courts of justice ought to be open to every person, and certain remedy afforded for every injury to person, property, or character; and that right and justice ought to be administered without sale, denial, or delay; and that no private property ought to be taken or applied to public use, without just compensation."

(15 cont.) a certain amount. The vote was eight to twenty-five.
(16) J.p.26. The vote was twenty-two to ten. It cannot be determined when the other part of the section crept in.
(17) Ala.V.6&7.(33)
(18) Conn.I.4.(259); Del.I.1.(278)&I.2.(278); Ga.IV.10.(295); Ill.VIII.3&4.(446); Ind.I.3.(500); Ky.X.3&4.(666); Me.I.3.(799); Md.D.R.35.(820)& amend.3.of 1810.(832); Mass. pt.I.3.(957&958); Miss.I.4&5.(1055); N.H.pt.I.6.(1294); N.J. 19.(1313); O.VIII.3.(1461); Penn.IX.3&4.(1554); Tenn.XI.3&4. (1674); Vt.I.3.(1876)
(19) Del.I.3.(278); Ill.VIII.5.(446); Ind.I.4.(500); Ky.X.5.(666); Md.D.R.5.(818); Mass.pt.I.9.(958); N.H.pt.I.11. (1295); Penn.IX.5.(1554); Tenn.XI.5.(1674)
(20) N.Ca.D.R.6.(1409)& 20.(1410); Vt.I.8.(1676); Va. B.R.6.(1909)

This section was adopted bythe convention without any change.

The constitutions twelve states contain a provision practically identical with this one.(21) Five other states have a similar provision in their constitutions.(22)

Section 8. (Trial by Jury)
" Thatthe right of trial by jury shall remain inviolate."

This section was adopted by the convention without any change.

The constitutions of fourteen states contain a section practically identical with this one.(23) Six other state constitutions contain a similar provision.(24)

Section 9. (Rights of Accused in Criminal Cases)
" That in all criminal prosecutions, the accused has the right to be heard by himself and his counsel; to demand the nature and cause of accusation; to have compulsory process for witnesses in his favor; to meet the witnesses against him face ro face; and, in prosecutions on presentment or indictment, to a speedy trial by an impartial jury of the vicinage; that the accused cannot be compelled to give evidence against himself, nor be deprived of life, liberty, or property, but by the judgement of his peers or the law of the land."

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(21) Ala.I.14&13.(33); Conn.I.11&13.(259); Del.I.8&9.(279); Ind.I.7&11.(500); Ky.X.12&13.(666-667); Me.I.19&21.(790); Mass.pt.I.10&11.(958); Miss.I.13&14.(1055); O.VIII.4&7.(1462); Penn.IX.10&11.(1555); Tenn.XI.8&17.(1674), XI.21.(1675); Vt.I.4.&3.(1875-1876)

(22) Ill.VIII.11&13.(447); Md.D.R.17&21.(818); N.H.pt.I.12&14.(1295); N.Ca.D.R.13&13.(1440); S.Ca.IX.2.(1633).

(23) Ala.I.28.(34); Conn.I.21.(259); Ga.IV.5.(395); Ill.VIII.6.(446); Ky.X.6.(666); Mass.pt.I.15.(959); Miss.I.28.

This section was adopted by the convention without any change.

The constitutions of fifteen states contain a provision practically identical with this one,(25) while three other state instruments have a similar section.(26)

Section X.(No Person to be twice tried for the same Offence)
" That no person, after having been acquitted by a jury, can, for the same offence, be again put in jeopardy of life or limb; but if in any criminal prosecution the jury be divided in opinion at the end of the term, the court before which the trial shall be had may, in its discretion, discharge the jury, and commit or bail the accused for trial at the next term of such court."

This section was adopted by the convention without any change.

The constitution of no state contains a provision identical with this one in the Missouri constitution. However, ten state constitutions contain a section similar to this one.(27) No state constitution contains that part of the section beginning with the words, "but if in any &". It cannot be determined why that part was inserted in the Missouri constitution.

(23 cont.) (1056); N.H.pt.I.20.(1296); N.Y.41.(1339); O.VIII. 8.(1462); Penn.IX.6.(1554); S.Ca.IX.6.(1633); Tenn.XI.6.(1674); Va.B.R.11.(1909).

(24) Del.I.4.(278); Ind.I.5.(500); Md.D.R.3.(817); N.J. 23.(1314); N.Ca.D.R.14.(1410); Vt.I.12.(1870)

(25) Ala.I.10.(33); Conn.I.9.(359); Del.I.7.(279); Ill. VIII.8&9.(446-447); Ind.I.13.(501); Ky.X.10.(666); La.VI.18. (707); Me.I.6.(789); Md.D.R.19&20.(818); Miss.I.10.(1055); O.VIII.11.(1462); Penn.IX.9.(1554); Tenn.XI.9.(1674); Vt.I.10.

Section.11. (Bail and Habeas Corpus)
" That all persons shall be bailable by sufficient surties, except for capital offences when the proof is evident or the presumption.great; and the privilege of the writ of habeas corpus cannot be suspended, unless when, in cases of rebellion or invasion, the public safety may require it."

This section wa adopted by the convention without any change.

Twelve state constitutions contain a section practically identical with this one (28) while three others contain a provision that is somewhat similar.(29)

Section 12. (Bail and Fines)
" That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

This section was adopted by the convention without any change.

Sixteen state constitutions contain a section practically identical with this one (30), while one other has a similar provision.(31)

(25 cont.) (1876); Va.B.R.8.(1909)
(26) Mass.pt.I.12&13.(958-959); N.H.pt.I.15.(1295); N.Ca. D.R.7&8&9.(1409)
(27) Ala.I.13.(33); Del.I.8.(279); Ind.I.14.(501); Ky.X. 12.(666); Me.I.8.(789); Miss.I.13.(1055); N.H.pt.I.16.(1295); O.VIII.11.(1462); Penn.IX.10.(1555); Tenn.XI.10.(1674)
(28) Ala.I.17.(33); Conn.I.14.(359); Del.I.13&13.(379); Ill.VIII.13.(447); Ind.I.14.(501); Ky.X.16.(666); La.VI.19. (707); Me.I.10.(789); Miss.I.17.(1055); O.VIII.12.(1462); Penn.IX.14.(1555); Tenn.XI.15.(1674)
(29) Ga.IV.9.(395); Mass.pt.II.VI.7.(972); N.H.pt.II.91. (1307).
(30) Ala.I.16.(33); Conn.I.13.(359); Del.I.11.(279); Ind. I.15.(501); Ky.X.15.(667); Me.I.9.(789); Md.D.R.23.(818);

Section 13. (No search except on Oath)
" That the people ought to be secure in their person, papers, houses, and effects, from unreasonable searches and seixures; and no warrant to search any place, or seize any person or thing, can issue, without describing the place to be searched, or the person or thing to be seized, as nearly as may be, nor without probable cause, supported by oath or affirmation."

This section was adopted by the convention without any change.

Thirteen state constitutions contain a provision practically identical with this one (32) and four other have a similar section.(33)

Section 14. (Prosecutions for Crimes by Indictment)
" That no person can, for an indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger, or by leave of the court, for oppression or misdemeanor in office."

This section was adopted by the convention without any change.

The constitutions of six states contain a section practically identical with this one (34) and five other state constitutions have a similar provision.(35)

(30 cont.) Mass.pt.I.26.(959); Miss.I.16.(1055); N.H.pt.I.33.(1296); N.Ca.D.R.10.(1409); O.VIII.13.(1462); Penn.IX.13.(1555); S.Ca.IX.4.(1633); Tenn.XI.16.(1674); Va.B.R.9.(1909)

(31) Ill.VIII.14.(447)

(32) Ala.I.9.(33); Conn.I.8.(259); Del.I.6.(278); Ind. I.8.(500); Ky.X.9.(666); Me.I.5.(789); Mass.pt.I.14.(959); Miss.I.9.(1055); N.H.pt.I.19.(1295-1296); O.VIII.5.(1462); Penn.IX.8.(1554); Vt.I.11.(1876); Tenn.XI.7.(1674)

(33) Ill.VIII.7.(446); Md.D.R.23.(819); N.Ca.D.R.11.(1409);

Section 15. (Treason, Evidence, Conviction)
" That treason against the state can consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; that no person can be convicted of treason unless on the testimony of two witnesses to the same overt act, or on his own confession in open court; that no person can be attainted of treason or felony by the general assembly; that no conviction can work corruption of blood or feiture of estate; that the estates of such persons as may destroy their own lives shall descend or vest as in cases of natural death; and when any person shall be killed by casualty, there ought to be no forfeiture by reason thereof."

This section was adopted by the convention without any change.

The constitutions of only three states contain a provision practically identical with this one.(36) The constitutions of four other states have a similar provision.(37)

This section was probably taken from the Kentucky constitution.

Section 16. (Freedom of Speech and of the Press)
" That the free communication of thought and opinion is one of the invaluable rights of man, and that every person may freely speak, write and print on any subject, being responsible for the abuse of that liberty; that in all prosecutions for libels, the truth thereof may be given in evidence, and the jury may determine the law and the facts under the direction of the court."

(33 cont.) Va.B.R.10.(1909)
(34) Ala.I.12.(33); Ill.VIII.10.(447); Ky.X.11.(666); Me.I.7.(789); Miss.I.12.(1055); Penn.IX.20.(1554)
(35) Conn.I.9.(259); Del.I.8.(279); N.Ca.D.R.8.(1409); O.VIII.10.(1462); Tenn.XI.14.(1674)
(36) Ala.VI.2.(42)& I.20&21.(34); Ky.VI.2.(664)&X.19&20&21.(667); Miss.I.20&21.(1056)&VI.2.(1063)
(37) Conn.I.15.(259)&IX.4.(265); Del.I.15.(279)&V.3.(283); Ind.I.18.(501)&XI.2&3.(509); Me.I.11&13.(789). See also La. VI.2.(706); Md.D.R.16.(818); Mass.pt.I.25.(959); N.H.pt.II. 89.(1307); Penn.IX.18&19.(1555); Tenn.XI.13.(1674); Vt.II.20. (1880)& 38.(1881).

This section was adopted by the convention without any change.

Ten state constitutions contain a provision practically identical with this one (38) while nine others have a section that is more or less similar.(39)

Section 17. (Ex Post Facto Laws &.)
" That no ex-post facto law, nor law imparing the obligation of contracts, or retrospective in its operation, can be passed, nor can the person of a debtor be imprisoned for debt after he shall have surrendered his property for the benefit of his creditors, in such manner as may be prescribed by law."

This section was first reported to the convention by the Com. of the Whole as in 3rd reading section 18, and was the same as finally adopted with but two exceptions, first, no law could be passed delaying the execution of judgements for a longer term than six months, secondly, no law could be passed compelling crediters to take property in satisfaction of such judgements when the same were rendered as money.(J.p.25) A motion was made to strike out the words, "for a longer term than six months". This was lost. (J.p.25)
A motion was made to strike out all of the section except, " that no expost facto law, nor law impairing the obligation of contracts or retrospective in its operation shall be passed". This seems to have failed to pass. A motion was then made and carried which

(38) Conn.I.5&7.(259); Del.I.5.(278); Ill.VIII.22&23.(447); Ind.I.9&10.(500); Ky.X.7&8.(666); Me.I.4.(789); Miss. I.6&7&8.(1055); O.VIII.6.(1462); Penn.IX.7.(1554); Tenn.XI. 19.(1674)

(39) Ala.I.8.(33); Ill.VIII.16.(447); La.VI.31.(707); Md.D.R.38.(820); N.H.pt.I.33.(1396); N.Ca.D.R.15.(1410); S.Ca. IX.6.(1633); Vt.I.13.(1876-1877); Va.B.R.13.(1909)

amended the section ~~so that it was the same as finally the same as inserted the constitution.~~(J.p.25) The question of stiiking out that part relating to debtors was then put and negatived by a unanimous vote. The section was adopted without change as it came from the hands of the committee on style.

The constitutions of nine states contain a provision practically identical with this one.(40) Seven other state constitutions have provisions similar in one or more delails to this section.(41)

Section 18. (Exempt from Military Duty)
" That no person who is religiously scrupulous of bearing arms, can be compelled to do so, but may be compelled to pay an equivalent for military service, in such manner as shall be prescribed by law; and that no priest, preacher of the gospel, or teacher of any religious persuasion or sect, regularly ordained as such, be subject to military, or compelled to bear arms."

This section as reported by the committee on style consisted of and read the same as the above down to and including the word, "service". Two motions were made and passed to amend the section. The section as amended id the same as finally inserted in the constitution.(J.p.42)

The constitution of Maine alone contains a section practically identical with the above.(42) Eight other state constitutions contain a provision quite similar to this one.(43)

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(40) Ala.I.18&19.(33); Ill.VIII.15&16.(447); Ind.I.17&18(501); Ky.X.17&18.(667); Miss.I.11&18&19.(1055); S.Ca.D.R.24.(1410), Form of Govt.39.(1414); O.VIII.15&16.(1462); Penn.IX.16&17.(1555); Tenn.XI.11&18&20.(1674-1675)

(41) Ga.IV.5&7.(395); La.VI.20.(707)-nothing said about

Section 19. (Taxation)
" That all property subject to taxation in this state, shall be taxed in proportion to its value."

This section was adopted by the convention without any change.

The constitutions of three states contain a section practically identical with this one.(44) one other state has a similar provision.(45)

Section 20. (Titles &.)
" That no title of nobility, hereditary emolument, privilege or distinction shall be granted, nor any office created the duration of which shall be longer than the good behavior of the officerappointed to fill the same."

This section was adopted by the convention without any change.

The constitutions of seven states contain a section practically identical with this one.(46) Six other state constitutions have a provision quite similar.(47)

(41 cont.) debtors;,Me.I.11.(789)- same as Louisiana; Md.D.R. 15.(818)same as La., and nothing on contracts; Mass.pt.I.24. (959)- no retrospective law to be passed; N.H.pt.I.23.(1296) - like Mass.; S.Ca.92.(1633)- like La.

(42) Me.VII.5.(797)

(43) Ala.Militia.3.(39); Ill.V.2.(445); Ind.VII.2.(507); uiss.Militia.3.(1061); N.H.pt.I.13.(1295); N.Y.40.(1839); Tenn.XI.28.(1675); Vt.I.9.(1876)

(44) Ala.VI.8.(43); Ill.VIII.20.(443); Md.D.R.13.(818)

(45) Md.D.R.40.(830)

(46) Ala.I.26.(34); Del.I.19.(279); Ind.I.23.(502); Ky. X.26.(667); Me.I.23.(790); Penn.IX.24.(1555); S.Ca.IX.5.(1633)

(47) Conn.I.20.(359); Mass.pt.I.6.(958); Miss.I.26.(1056); N.Ca.D.R.22.(1410); O.VIII.22.(1463); Tenn.XI.30.(1675)

Section 21. (Migration)
" That migration from this state cannot be prohibited."

This section was adopted by the convention without any change.

Seven state constitutions contain a provision practically identical with this one.(48)

Section 22. (Military subordinate to civil power)
" That the military is, and in all cases and at all times shall be, in strict subordination to the civil power; that no soldier can, in time of peace, be quartered in any house without the consent of the owner,nor in time of war, but in such manner as may be prescribed by law; nor can any appropriation for the support of an army be made for a longer period than two years."

This section was adopted by the convention without any change.

The constitutions of Alabama and Mississippi contain a provision practically identical with this one.(49) Fourteen other state constitutions contain provisions similar in one or more details to this section but all placing no express prohibition on the length of an appropriation for the military. (50)

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(48) Ala.I.27.(34); Ind.I.23.(501); Ky.X.27.(667); La.VI. 22.(707); Miss.I.27.(1056); Penn.IX.25.(1555); Vt.I.19.(1877)

(49) Ala.I.24&25.(34)- appropriation not to be for longer than one year; Miss.I.24&25.(1056)&VI.8.(1063)-like Alabama.

(50) Conn.I.18&19.(259); Del.I.17&18.(279); Ind.I.20&21. (501); Ky.X.24&25.(667); Me.I.17&18.(790); Md.D.R.25,26,27,28. (819); Mass.pt.I.17,27.(959); N.H.pt.I.26,27.(1296); O.VIII. 20,22.(1463); Penn.IX.22,23.(1555); S.Ca.IX.3.(1633); Tenn.XI. 24,27.(1675); Vt.D.16.(1877); Va.B.R.13.(1909)

CONCLUSION.

In this brief study of the Missouri constitution of 1820 several points stand out quite clearly: 1st, this constitution was fundamental as compared with the majority of later state instruments in setting forth in brief terms the organization and functions of the state government; and 2nd, its provisions differed in few respects from those to be found in some of the then existing state constitutions.

In the framing of some articles it appears as though one or two state constitutions were very largely the patterns followed, while as regards other parts of the constitution the sections seem to have been selected from first one and then another state's organic law. Naturally the very character of the inhabitants of Missouri predisposed them to follow the southern types of constitutions, especially those of Kentucky and Alabama in preference to those of the north, but this did not seemingly in the least hinder the convention from favoring and choosing a section from the constitution of Maine, Delaware, Connecticut, or Pennsylvania, or from Ohio and Indiana, and throughout the entire document can be seen the great influence exerted by the constitution of Illinois. In fact it appears that with the exception of Kentucky, the latest framed state constitutions e.g. Alabama, Illinois &., were more influential than

the others. It seems that the framers of this constitution strove conscientiously to incorporate therein those provisions, from whatever source they came, that were the best fitted for guiding this state in her developement. It speaks well for the convention that its work stood the test of nearly half a century and then was displaced by an instrument whose adoption was based on reasons other than merit, however great the latter was in itself.

It is now the purpose to summarize very briefly the influence exerted by other constitutions on the framing of the several articles of this one and to set forth any features in this document that are worthy of special notice. In trying to accomplish the first one can rarely be absolutely certain of his ground on account of several things: 1st, verbatim copies in this constitution of sections in other constitutions are the exception; 2nd, even when they do occur they are sometimes the common property of several states; 3rd, most of the sections in this constitution, although ~~either practically identical or at least~~ similar to sections in other constitutions, are rarely confined to any one state but appear here and there throughput the union and are frequently found in a majority of state constitutions. Because of this, it is extremely hazardous to say unqualifiedly that this or that state constitution was the source of a certain provision in the Missouri constitution, at least one might thereby sacrifice truth for the sake of

definiteness ~~in so doing.~~ So, whenever a statement is made that a certain section was taken from a certain state constitution, it should be interpreted to mean that, as far as it was possible to determine the probability is that in the framing of that section a certain state constitution seems to have exerted a great or perhaps preponderateing influence. Sometimes this "great influence" becomes a certainty and again it has only the weight of probability on its side.

The " Preamble" appears to have been copied from Kentucky's constitution, however, the constitutions of South Carolina, Tennessee, and Virginia contain a similar one.

Article I, on " Boundaries", is a verbatim copy of section two of the " Enabling Act" of Congress.

The wording of article II, on the " Distribution of Powers", seems to have been taken from the Kentucky and Illinois instruments. However, a similarily worded provision is found in the constitutions of Alabama, Georgia, Indiana, and Mississippi.

In considering article III with its thirty-six sections, on the " Legislative Powers", a number of state constitutions seem to have been consulted by the convention. Undoubtedly the constitutions of Kentucky, and Illinois exerted the greatest influence. Besides these, the constitutions of Alabama, Indiana, Delaware, Connecticut, Ohio, and perhaps Maryland, Maine, Tennessee, and the United States and others were more or less influential. Quite a number of provisions was inserted in this

article that were followed by very few states. The following are the most worthy of notice. A two year term for state representatives obtained in only four states; an age qualification of twenty-four years for the same was present in only two states- the other states placing it at twenty-one or making no mention of it; in only two states was an age qualification of thirty years provided for state senaters; biennial state elections were provided for im only four states; a corrupt practices act was here provided for that was equalled in worth by only two states; a provision empowering the legislature to punish by "fine or imprisonment" those (not members) for contempt of authority of the house obtained in no other state constitution; no other state constitution gave so much protection to the rights of the slave as this one although at the same time no other state made it mandatory on the legislature to prohibit free negroes from coming into the state; only five other state constitutions directed the legislature to make laws regulating the manner whereby suits might be b brought against the state; in only two other state constitutions were biennial sessions of the legislature provided for, the others having annual sessions; and finally, only one other state constitution provided for a revision of the state's laws at regular intervals of time.

In reviewing the article on the executive department it seems that the states whose constitutions apparently influenced

its framing the most fall into four classes: 1st, Kentucky and Illinois, of which the former state exerted the greater influence; 2nd, Mississippi, Indiana, Alabama, and Louisiana, whose influence although not nearly so great as that exerted by Kentucky and Illinois is still very clearly seen; 3rd, Connecticut, Ohio, Tennessee, Delaware, South Carolina, and Georgia, which seem to have furnished the pattern for several individual sections; 4th, Maryland, Vermont, Maine, Massachusetts, New Hampshire, and Pennsylvania, whose constitutions contained provisions that are quite similar to scattered clauses in the Missouri constitution. Quite a large number, in fact the majority of the twenty-one sections in this article, are quite like provisions to be found in a large number of other state instruments but there are some points set forth that were followed by very few states and in some cases were distinct departures from any existing constitutional provision. It might be of interest to note some of these more or less exceptional statements incorporated into this article.

Only two state constitutions required the chief executive i.e. the governer, to be thirty-five years old and only three states made the citizenship qualification of the governor so high. Again, in only three states was the term of the governor so long as in Missouri i.e. four years. With the single exception of Kentucky, Missouri was alone at this time in allowing the governer by constitutional provision ten days in which to pass on bills, the remaining states either placing a ~~lower~~ shorter time limit or making no mention of this. An officer called an

"Auditor" was provided for in only three other state constitutions and in no state was his term four years nor was his tenure appointive by the governor and senate- being usually left to the legislature. In no state constitution was there so liberal a provision for the salary of the governor, no state setting forth the minimum amount he should receive and one state had a maximum amount that was less than two-fifths of Missouri's minimum. Only two states provided for a four year term for the lieutenant-governor and only one of these required him to be thirty-five years old. At this time no other state constitution goes so far as Missouri's in providing for the succession in case of temporary vacancy in the office of governor and only two states had such a detailed provision on the election of a governor to fill the vacancy occuring during the unexpired term of the regular incumbent. With perhaps one or two exceptions, these provisions of the Missouri constitution which were original marked a distinct improvement over the other state constitutions of that day.

In the framing of the article on the judiciary, the convention was far more disposed to follow the provisions in other constitutions than was the case in either the article on the legislature or the one on the executive. This was entirely natural, for of all our departments of government that of the judiciary of the several states was the last to succumb to the leveling spirit of the new democracy. The peculiar conservatism that has for centuries attached itself in English

speaking countries to the law interpreting department of the state, the high regard in which it has been held, and the peculiar sanctity of stability which has surrounded both Bench and Bar and which has enabled them to follow precedent and custom instead of being subject to irregular and spasmotic changes, are all easily perceived by anyone who has traced in even an elementary way the institutional growth in English and American history.

These states that seem to have been the most influential in guiding the convention in the framing of this article can be conveniently divided into three classes: 1st, Alabama, whose constitution is most nearly identical with Missouri's; 2nd, Kentucky, Mississippi, Illinois, Delaware, Indiana, and Louisiana, whose constitutions are quite similar in many provisions with the sections in Missouri's constitution; 3rd, Georgia, Tennessee, Ohio, Maryland, Pennsylvania, Maine, and Connecticut, whose influence though slight cannot be eliminated from consideration. It is easily seen that the constitutions of the southern states again exerted the greatest force.

As was previously mentioned, this article reveals very few departures from what can be found in other state instruments. The following points are the most important: 1st, only one other state constitution provided for a minimum salary for the judges of the higher courts (however, one state constitution mentioned what the salary should be); and 2nd, no other state constitution provided for a minimum age qualification for the judges and only five states had a maximum age qualification.

In considering articles VI to XII inclusive, on Education, Internal Improvements, Banks, Militia, Miscellaneous Provisions, Seat of Government, and Mode of Amendment, the briefness of each article ranging from one to four sections and also the fact that each of the articles is considered above as a whole do not necessitate a detailed review here. In general it might be said that the constitutions of Alabama and Indiana were the most influential on these articles. In another class would appear Tennessee and perhaps Georgia, South Carolina, Delaware, Maine, and Ohio. It is worthy of mention that only one state constitution at this time provided an easier method of amendment, i.e., where an amending clause can be found.

The last article in the Missouri constitution of 1820, Article XIII on the " Declaration of Rights", is so uniformly similar to the corresponding articles in many other state constitutions that a very brief review will perhaps be quite sufficient. Although the different state instruments vary greatly as regards the detailed provisions relating to individual rights set forth and protected by prohibitions placed on the ordinary government, still, there is the same general spirit permeating practically every one. Few changes can be noticed in this field as incorporated in this constitution compared with other state constitutions. No other state constitution, however, expressly provides for the discharging of a jury in criminal cases when such jury is divided in opinion on a case at the

and of the term of court. Another feature in this instrument is that only three state constitutions besides it expressly provided that property was to be taxed in proportion to its value. It would be difficult to say which state constitutions were the most influential on this article, perhaps those of Kentucky, Alabama, Illinois, and Mississippi might be given. It would be more correct to say that the united influence of all the states' " Bills of Rights" was felt and recorded in this document.

APPENDIX.

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EXPLANATION of ABBREVIATIONS and REFERENCES.

All references to state constitutions are found in Poore's Constitutions and Charters. The plan being as follows: 1st, the abbreviation of the state, 2nd, the first figure designates the article or main division of the constitution, 3rd, the second figure designates the section or subdivision under the main division, 4th, the figures in parentheses always designate the page references, e.g. Ky.I.3.(657) means, the Kentucky constitution, article I, section 3, page 657, in Poore's Constitutions and Charters. Besides these abbreviations certain other ones are used, especially under the " Declaration of Rights". viz., D.R.- declaration of rights; G.P.- general provisions; Pt.- part.

TABLE and DATE of STATE CONSTITUTIONS EXISTING in 1820.

State.	Date of Adoption.
Alabama	1819.
Connecticut	1818.
Delaware	1792.
Georgia	1798.
Illinois	1818.
Indiana	1816.
Kentucky	1799.
Louisiana	~~1812.~~ 1813.

Maine----------:----------~~1820~~ 1819

Maryland----------1776

Massachusetts----------1780

Mississippi----------1817

Missouri----------1820

New Hampshire----------1792

New Jersey----------1776

New York----------~~1~~777

North Carolina----------1776

Ohio----------1802

Pennsylvania----------1790

Rhode Island----------1663(charter)

South Carolina----------1790

Tennessee----------1796

Vermont----------1793

Virginia----------1776

NAMES of FRAMERS of MISSOURI'S CONSTITUTION of 1820.

David Barton, President of the Convention, and Representative from the County of St.Louis.

William G.Pettus, Secretary of the Convention.

From the County of Cape Girardeau.

Stephen Byrd
Alexander Buckner
~~James~~ Joseph Evans
~~Joseph~~ James McFerron
Richard S.Thomas

From the County of Cooper.

Robert P.Clark
William Gillard
Robert Wallace

From the County of Franklin.

John G.Heath

From the County of Howard.

Nicholas S.Burckhartt
Jonathan Smith Findlay
Duff Green
Benjamin H.Reeves
John Ray

From the County of Jefferson.

S.Hammond

From the County of Lincoln.

Malcolm Henry

From the County of Montgomery.

Jonathan Ramsay
James Talbott

From the County of Madison.

Nathanial Cook

From the County of New Madrid.

Robert D.Dawson
Christo. G.Houts

From the County of Pike.

Stephen Cleaver

From the County of St.Charles.

Hiram H.Baber
Nathen Boone
Benjamin Emmons

From the County of St.Genevieve.

R.T.Brown
John D.Cook
H.Dodge
John Scott

From the County of St.Louis.

Edw. Bates.
Pr. Chouteau,jun.
A.M'Nair
Bernd. Pratte
Wm. Rector
Thos.F.Riddick
John C.Sullivan

From the County of Washington.

John Rice Jones
John Hutchings
Samuel Perry

From the County of Wayne.

Elijah Bettis

DUE	RETURNED
[illegible]	OCT 24 1966
[illegible]	JAN 14 [illegible]
FEB 27 1970	FEB 13 1970
MAY 20 1974	[illegible]
OCT 16 1981	[illegible]
FEB 12 1982	FEB 20 '82 MU
AUG 13 '82 MU	
DEC 17 '82 MU	
NOV 13 '83 MU	MAR 31 '83 MU
DEC 20 1985	
MAR 7 1986	DEC 19 1985

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