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COMPARATIVE STUDY OF STATE CONSTITUTIONS FOR PROVISIONS NOT FOUND IN OUR OWN*

In order to appreciate the study of other state constitutions by comparison, it will be necessary to first have some idea of what is contained in the Washington constitution. The Washington constitution, the same as most others, which have been adopted in the last fifty years, covers a comparatively broad field. It begins in the more or less generally accepted way by devoting the first article to the declaration of rights. This article has, perhaps, the most general provisions of any of the articles of the constitution and being thus general in its terms and broad in its scope, the question of its interpretation gives vent to many disputes or actions as to rights under it. The declaration of rights, generally speaking, enumerates the personal rights of the citizens and makes these rights secure. Their contents are usually very similar, so in the comparison, only the important or interesting differences will be mentioned.

Provisions¹ are then made for the respective departments of the government, viz.: legislative, executive and judicial, prescribing certain powers,

*The constitutions studied and their respective dates are as follows:

Alabama, 1819-1865-1867-1875-1901; Arkansas, 1836-1864-1868-1874; California, 1849-1879; Colorado, 1876; Connecticut, 1818; Delaware, 1792-1831-1897; Florida, 1838-1865-1868-1885; Georgia, 1777-1798-1865-1868-1877; Idaho, 1889; Illinois, 1818-1870; Indiana, 1816-1851; Iowa, 1846-1857; Kansas, 1855-1857-1858-1859; Kentucky, 1792-1799-1850-1890; Louisiana, 1812-1845-1852-1864-1868-1879-1898; Maine, 1819; Maryland, 1776-1851-1864-1867; Massachusetts, 1780; Michigan, 1835-1850; Minnesota, 1857; Mississippi, 1817-1832-1868-1890; Missouri, 1820-1863-1865-1875; Montana, 1889; Nebraska, 1866-1875; Nevada, 1864; New Hampshire, 1776-1784-1792-1902; New Jersey, 1776-1844; New York, 1777-1821-1846-1894; North Carolina, 1776-1868-1876; North Dakota, 1889; Ohio, 1802-1851; Oklahoma, 1907; Oregon, 1857; Pennsylvania, 1776-1790-1838-1873; Rhode Island, 1842; South Carolina, 1776-1778-1790-1865-1868-1895; South Dakota, 1889; Tennessee, 1796-1834-1870; Texas, 1845-1866-1868-1876; Utah, 1895; Vermont, 1777-1786-1793; Virginia, 1776-1830-1850-1865-1870-1902; Washington, 1889; West Virginia, 1863-1872; Wisconsin, 1848; Wyoming, 1889.

¹Art. 2, 3 and 4, Washington constitution.

duties and limitations of each department, as well as prescribing the method for creating said departments. This is followed by an article² providing for the removal of an officer for malfeasance, either by impeachment or otherwise. Article 6 then relates to the right of suffrage and the method of conducting elections. Article 7 relates to the method, forms and limits of taxation and raising revenue; article 8 to the public indebtedness.

We then have provisions concerning education,³ school lands,⁴ militia,⁵ and state institutions in general⁶; also provisions in regard to both municipal⁷ and private⁸ corporations. We have provisions with respect to harbors⁹ and tide lands,¹⁰ which, owing to the location, are of course not found in the constitution of inland states and while most states along the coasts have similar provisions, still even some of the coast states¹¹ do not make this a matter which is to be governed directly by the constitution. We also have a clause creating a public health department,¹² which is not found in many of the other state constitutions. While this outline is not very definite, we can at least more readily distinguish many of the more peculiar provisions found in the other constitutions.

While we are primarily interested in those provisions contained in other constitutions and not contained in our own, we incidentally notice that we also have many provisions which are not found in other constitutions. This is especially true with respect to some of the older constitutions¹³ which are still in force. Such a comparison shows the important part that the "Times" plays in the framing of a constitution. Many of the older constitutions are frame works for governing laws rather than the definite provisions themselves. Some states have left certain subjects for legislation, while others have included the same subjects in their constitutions, and it is primarily this difference that exists between the older and the more modern constitutions. We find that some of the states¹⁴ have framed new constitutions many times, each time making it a little broader in its scope, more of a building rather than a mere frame. At the same time some of the states still retain the same constitutions which have served them for many years. Here it is interesting to note that Massachusetts' original constitution of 1780 and Connecticut's original constitution of 1818 are still in

²Art. 5, Washington constitution.

³Art. 9, Washington constitution.

⁴Art. 16, Washington constitution.

⁵Art. 10, Washington constitution.

⁶Art. 13, Washington constitution.

⁷Art. 11, Washington constitution.

⁸Art. 12, Washington constitution.

⁹Art. 15, Washington constitution.

¹⁰Art. 17, Washington constitution.

¹¹Mass. 1780, Alabama 1901 and Virginia 1902.

¹²Art. 20, Washington constitution.

¹³Mass. 1780, Vermont 1793, Connecticut 1818 and Maine '19.

¹⁴Louisiana, 1812, 1845, 1852, 1864, 1868, 1879, 1898.

force¹⁵ and, while they have amendments, they have never been entirely revised or substituted. In fact, these constitutions don't seem to have as many amendments as most of the more modern constitutions which cover such broad fields. They pursue the method of legislation for many of the matters which others have incorporated in their constitutions. Hence in such constitutions, we do not find many provisions which are not contained in our own, but just the reverse.

One provision which is not in our own constitution, and which is more common in others than any which ours omits, is the one in regard to distribution of powers. The most common method of making this provision¹⁶ is by stating that the government shall consist of three departments, and that no officer of any one department shall exercise any functions or powers in any other department. Connecticut,¹⁷ Rhode Island¹⁸ and South Dakota¹⁹ only go so far as to say that there shall be the three departments named and omit the latter part of the provision. The constitutions of Georgia,²⁰ Maryland, North and South Carolina, Virginia²¹ and West Virginia each have provisions which imply the division by saying that they shall be forever separate and distinct. But Washington is among the states that omit it entirely. The others omitting it are a few eastern and southern states and North Dakota and Kansas. It is very peculiar to note that in the first three constitutions²² adopted in Kansas, the provision was included, but in their last and present constitution, which was adopted in 1859, it is entirely omitted. In this the Washington constitution makes no provision whatsoever, but merely prescribes in the respective articles²³ the duties, powers and jurisdiction of the respective departments.²⁴

Another matter which is almost universally provided for in the constitutions is the method of selecting a supreme court, not that Washington fails to have such a provision, but it is interesting to note the difference in the various states. The Washington constitution provides for five judges,²⁵ which has been changed to nine by the legislature, and they are elected by the voters for a period of six years. Supreme courts vary in their number of judges from three²⁶ to nine and in most states are elected as

¹⁵The following constitutions are also original ones: Maine 1819, Rhode Island 1842 and Wisconsin 1848.

¹⁶Art. 3, California constitution of 1879.

¹⁷Art. 2 of Connecticut constitution.

¹⁸Art. 3 of Rhode Island constitution.

¹⁹Art. 2, South Dakota constitution.

²⁰Art. 1, Sec. 1, Par. 23, Georgia constitution of 1877.

²¹Art. 1, Sec. 5, Virginia constitution.

²²Constitutions of 1855, 1857 and 1858.

²³Art. 2, 3 and 4, Washington constitution.

²⁴In the case of *Territory vs. Stuart* 1 Wash. 98, the Supreme Court has held that this limitation of the powers has been implied to some extent at least.

²⁵Art. 4, Sec. 2, Washington constitution.

²⁶The Supreme Courts of Mississippi, Wyoming, Texas, Arkansas, Colorado, Florida, Georgia, and Idaho still have only three judges.

here, but in Georgia²⁷ and South Carolina²⁸ they are elected by the General Assemblies. In Connecticut,²⁹ Delaware,³⁰ Massachusetts³¹ and Mississippi, they are appointed or nominated by the governor, which nominations are then ratified by the Senate. In Rhode Island the judges are appointed as in these states, but are appointed for life or until the office is declared vacant by the General Assembly.³² Mississippi has the very unusual provision³³ that though the judges are appointed, the clerk of the supreme court is elected by the people. In most states it is just the reverse. In many states the court selects its own clerk, which is the case in Washington.³⁴ Many states, for instance Wyoming,³⁵ include a provision that a judge shall not try a case in which he is personally interested.

Passing from these general surveys, we will take up some of the individual sections which, owing to their peculiarity, are more interesting and, owing to their field, are more important in that they are the sections which are more often the subject of controversies.

Article 1, Section 1, of the present constitution of Alabama, adopted in 1901, reads as follows: "Immigration shall be encouraged. Immigration shall not be prohibited, and no person shall be exiled." Several states have the latter part of this stating that no person shall be exiled, but the part stating that immigration shall be encouraged and shall never be prohibited is very unusual. In fact, some states have provisions which, if not entirely contradictory, at least tend to give the opposite effect. Many constitutions give the legislature power to restrict immigration.³⁶

The California constitution devotes an article³⁷ to matters which indirectly concern this same question, namely, that article which we frequently hear of as the "Chinese Article." Parts of it read as follows³⁸: "No corporation formed in this state shall employ Chinese or Mongolian labor," attaching a penalty for so doing. Also: "State shall not employ Chinese or Mongolian labor except for convict labor."³⁹ Still other constitutions, as Virginia,⁴⁰ create departments of immigration, giving them power to control this matter.

Right along with the question of immigration comes the question of

²⁷Art. 6, Sec. 2, Par. 4, Georgia constitution.

²⁸Art. 5, Sec. 2, South Carolina constitution.

²⁹Amendment 26, Connecticut constitution.

³⁰Art. 4, Sec. 3, Delaware constitution.

³¹Part 2, Chap. 2, Art. 9, Massachusetts constitution.

³²Art. 10, Sec. 4, Rhode Island constitution.

³³Art. 6, Sec. 168, Mississippi constitution.

³⁴Art. 4, Sec. 22, Washington constitution.

³⁵Art. 5, Sec. 6, Wyoming constitution.

³⁶Art. 19, Sec. 4, California constitution.

³⁷Art. 19, California constitution.

³⁸Art. 19, Sec. 2, California constitution.

³⁹Art. 19, Sec. 3, California constitution.

⁴⁰Art. 10, Virginia constitution.

an alien's right to hold property. The West Virginia constitution says on this point⁴¹: "There shall be no distinction between a resident alien and a citizen as to the acquisition or tenure, disposition or descent of property." This is also the rule in Wisconsin, Arkansas, Colorado, Kansas, Florida, Nebraska and a few other states. Others are silent on this matter, while still others have the provision that aliens can hold property if acquired in certain ways, for instance by inheritance or by foreclosure on a mortgage debt. Washington and Montana⁴² have this latter provision with the addition that aliens may hold land with valuable mineral deposits or land used for milling sites, irrespective of how it is acquired. California has the very unusual provision⁴³ that aliens of white or African descent may hold and enjoy property in that state. This is in effect another discrimination against the Chinese and Mongolian races.

Many of the states, especially those known as border states during the Civil War have constitutionally abolished or prohibited slavery, but these sections usually include the phrase, "Except for the punishment of crime."

Provisions which are more or less associated, not by law, but by circumstance, with the slavery question, are provisions of race distinction. According to the constitutions⁴⁴ of Kansas and Maryland, negroes are still denied the right of suffrage. These provisions have never been changed, but, of course, they are inoperative since the adoption of the fifteenth amendment to the constitution of the United States in 1870. Sections in the constitutions of Virginia, West Virginia and Missouri provide that white and colored children shall be taught in separate schools. Indiana had a provision reading: "No negro shall come into the state. Contracts with negroes are void and parties employing them or encouraging their stay are subject to a fine." This provision was taken out in 1881, but it is a good example for showing the trend of public opinion prior to that time. Florida⁴⁵ and Mississippi⁴⁶ have provisions declaring any marriage between a white person and a negro unlawful, null and void.

The Louisiana constitution, adopted in 1898, has the unusual provision⁴⁷ that no law shall be passed fixing the price to be paid for manual labor. Some constitutions provide for this rather than stating that even the legislature cannot regulate it.

⁴¹Art. 2, Sec. 5, West Virginia constitution of 1872.

⁴²Art. 2, Sec. 33, of the Washington constitution and Art. 3, Sec. 25, of the Montana constitution.

⁴³Art. 1, Sec. 17, California constitution.

⁴⁴Art. 5, Sec. 1, of the Kansas constitution, and Art. 1, Sec. 1, of the Declaration of Rights of the Maryland constitution.

⁴⁵Art. 16, Sec. 24, Florida constitution.

⁴⁶Art. 14, Sec. 263, Mississippi constitution.

⁴⁷Art. 51, Louisiana constitution.

A very important section⁴⁸ of the Wisconsin constitution is: "Fines or restraints on alienation of any kind shall be void." This question is very important in the law of property and in the question of determining titles, but is very seldom a matter of constitutional provision, and even where it is mentioned in the constitution, it is not so sweeping as in the Wisconsin constitution.

The West Virginia constitution provides⁴⁹ that no session of the General Assembly shall exceed forty-five days. The Washington constitution makes the limit sixty days.⁵⁰ This is a matter that is usually left for a legislature to control for itself. Another matter which is usually left for the legislature is a section⁵¹ in the Alabama constitution providing that cities of over six thousand population cannot grant a franchise to any corporation for a period of over thirty years. While some constitutions have general provisions on this, most of them are not so definite.

In the manner and the methods of raising revenues, there are some very interesting differences. In Montana⁵² and in Delaware⁵³ any bills for raising revenues or for levying taxes must originate in the House of Representatives, whereas most states allow them to originate in either house.⁵⁴ A section⁵⁵ of the Mississippi constitution reads as follows: "No revenue bill nor any bill providing for assessments of property for taxation, shall become a law, except by a vote of at least three-fifths of the members of each house present and voting." Requiring a three-fifths vote on revenue bills is very unusual, as in most states the usual majority controls this bill the same as any other bill. The Alabama constitution⁵⁶ gives its legislature power to levy an inheritance tax not exceeding two and one-half mills and only on property passing to any one except lineal descendants. A franchise tax provided for in the Virginia constitution⁵⁷ put a one per cent tax on the gross transportation receipts of all railroads. The Florida constitution⁵⁸ limits the capitation tax to one dollar per person. In California a section⁵⁹ provides that fruit and nut trees are exempt from taxation for the first four years, and any vines are exempt for the first three years, except that this shall not include nursery stocks. Such tax provisions as the above are very unusual for constitutional provisions, but

⁴⁸Art. 1, Sec. 14, Wisconsin constitution.

⁴⁹Art. 6, Sec. 22, West Virginia constitution.

⁵⁰Art. 2, Sec. 12, Washington constitution.

⁵¹Art. 12, Sec. 228, Alabama constitution.

⁵²Art. 5, Sec. 32, Montana constitution.

⁵³Art. 8, Sec. 2, Delaware constitution.

⁵⁴Art. 2, Sec. 20, Washington constitution.

⁵⁵Art. 4, Sec. 70, Mississippi constitution.

⁵⁶Art. 11, Sec. 219, Alabama constitution.

⁵⁷Art. 13, Sec. 178, Virginia constitution.

⁵⁸Art. 19, Sec. 5, Florida constitution.

⁵⁹Art. 13, Sec. 12 3-4, of the amendments to the constitution of California.

of the respective states, while some of them are peculiar in that they are not found in other states at all.

A few of the states⁶⁰ have provisions that taxes must be fully paid before the citizen is entitled to vote and a few more of the states⁶¹ have the provision that all capitation taxes must be paid before the right of suffrage can be exercised. And on this question of suffrage, some states have even gone so far as to put a property qualification on a voter. In South Carolina,⁶² for instance, the voter must show that he has paid taxes on at least three hundred dollars worth of property. In Rhode Island⁶³ the voter must have paid taxes on one hundred and thirty-four dollars worth of property before he can vote on any tax question or bond issue. The Virginia constitution⁶⁴ gives the General Assembly power to enact a law providing that voters at any county elections must have a property qualification not exceeding two hundred and fifty dollars. Texas also has a provision⁶⁵ that no one but a taxpayer can vote on a tax question. On the contrary, the Idaho constitution⁶⁶ states specifically that there shall never be any property qualification for a voter in that state.

Other qualifications for a voter also differ in the various states, for instance the time which they must reside in the state, county and precinct. The South Carolina and Wyoming constitutions⁶⁷ provide that a voter must be able to read the constitution, unless he be physically unable to do so, while the Maine and Louisiana constitutions,⁶⁸ like our own,⁶⁹ provide that a voter must be able to read and write the English language. In Wisconsin⁷⁰ the fighting of a duel will disfranchise a voter. Provisions similar to this are found in many of the older constitutions which have been replaced now, omitting that provision. Many provisions of which this is a good example still exist, but are relics of bygone days rather than provisions which we ever have any occasion to use today. Nevertheless, they still exist and would still be operative if the occasion ever arose to call them into use. They were formed in times when such clauses were essential and now that they are not essential they have never been repealed. They continue to be the supreme law the same now as then.

⁶⁰Among these are Connecticut, Florida, Texas, etc.

⁶¹Art. 1, Sec. 4, South Carolina constitution, and Art. 2, Sec. 18, Virginia constitution.

⁶²Art. 2, Sec. 4, Par. D, South Carolina constitution.

⁶³Art. 2, Sec. 1, Rhode Island constitution.

⁶⁴Art. 2, Sec. 30, Virginia constitution.

⁶⁵Art. 6, Sec. 3, Texas constitution.

⁶⁶Art. 1, Sec. 20, Idaho constitution.

⁶⁷Art. 2, Sec. 4 (d) of the South Carolina constitution, and Art. 6, Sec. 9, of the Wyoming constitution.

⁶⁸Amendment 29 to the constitution of Maine and Art. 197, Sec. 3, of the Louisiana constitution.

⁶⁹Amendment 2 to Art. 6, Sec. 1, of the Washington constitution.

⁷⁰Wisconsin constitution was adopted in 1848.

The rights of voters to control legislation or rather to legislate, is brought out in its most reformed condition in the Oklahoma constitution of 1907, which has the Initiative and Referendum article.⁷¹ A petition from seven per cent of the voters will require a proposed statute to be put to a vote of the people, which, when carried, then becomes a law the same as one passed by the legislature. To amend the constitution the same result is obtained by a petition from fifteen per cent of the voters and an election of the people. A law which has been passed by the legislature must be put to a vote of the people if five per cent of the voters so petition within ninety days after its passage, thus giving the people the power to override the acts of the legislature. However, if at either the Initiative or Referendum election, the proposition is defeated, then any time within the next three years, it will take a petition from twenty-five per cent of the voters to again put the same proposition before the people by such a method.

Oklahoma has a provision⁷² saying that no city council shall grant any franchise for a period of more than twenty-five years, and that upon a petition from twenty-five per cent of the voters, the granting of a franchise must be submitted to a vote of the people. Utah also has the Initiative clause⁷³ giving the people the power to enact laws when petitioned by a certain per cent, which per cent is governed by law. In regard to the enacting of laws by the legislature, the constitutions of Texas, Wyoming, Oklahoma and Montana have provisions stating that members of the legislature cannot vote on any bill in which they have a personal interest, which is also the case in Washington. In most states, as we know, the lieutenant governor presides over the senate, but neither Georgia, Arkansas nor Wyoming has a lieutenant governor, their constitutions providing that some member of the senate shall preside. In this way the president of the senate is not elected directly from the state at large, as he is in most states, but he is the representative from some particular district.

The powers of the legislature are usually defined in the constitution, most constitutions⁷⁴ enumerating a certain class of cases in which there shall be no special legislation. The Washington constitution,⁷⁵ for instance, provides that the legislature shall create no corporation, either private or municipal, by a special act. The Minnesota constitution differs from this in a very important way. The Minnesota section⁷⁶ reads as follows: "No corporation shall be formed under special acts, except for

⁷¹Art. 5, Oklahoma constitution, adopted in 1907.

⁷²Art. 18, Sec. 4, Oklahoma constitution.

⁷³Art. 6, as amended in 1900, of the Utah constitution.

⁷⁴Art. 2, Sec. 28, Washington constitution.

⁷⁵Art. 2, Sec. 28, and Art. 12, Sec. 1, of the Washington constitution.

⁷⁶Art. 10, Sec. 2, Minnesota constitution.

municipal purposes." This very question of the method of creating a municipal corporation has arisen many times in our own supreme court.⁷⁷

Some of the other powers given to, and the limitations set upon legislatures, are as follows: In Florida⁷⁸ the legislature shall create no office with a term of more than four years, while the Mississippi constitution⁷⁹ provides that there shall be no elective nor appointive office for life nor for good behavior. In Arkansas⁸⁰ and Florida⁸¹ the legislature may deduct from the salary of any state officer for any neglect of duty. A section of the Michigan constitution⁸² of 1850 provides that the legislature shall never establish a state paper. In California⁸³ the legislature has the power of pardon or reprieve when the governor has reported the case to the legislature. The enumeration of the powers of, and the limitations on legislatures, are so numerous that it is impossible to give all of them here, but those named are some of the more interesting ones.

Every state constitution⁸⁴ secures the right of religious freedom to its citizens, but nevertheless there are some very peculiar provisions which relate to this question indirectly. Article 19, Section 1, of the Arkansas constitution reads: "No person who denies the being of a God shall hold any office in the civil department of the state, nor be competent to testify as a witness in any court." The Tennessee constitution⁸⁵ also states that no person denying God shall ever hold any office in the civil department of the state. The constitutions of Mississippi,⁸⁶ and North⁸⁷ and South Carolina⁸⁸ all make their provisions broader by saying that "No person denying the existence of a Supreme Being shall ever hold any office in the state." The Tennessee constitution has a very peculiar provision⁸⁹ which denies any minister the right to ever hold a seat in the legislature, saying that their duties are such that they should not be allowed to divert any of their time to any other kind of work; that their duties are in their profession. In South Carolina⁹⁰ and Mississippi⁹¹ a minister is given the right of suffrage after residing in the state six months, although no other person acquires the elective franchise in either state until he has resided there two years. The Mississippi constitution also has a very interesting

⁷⁷1 Wash. 18 and cases cited there.

⁷⁸Art. 16, Sec. 7, Florida constitution.

⁷⁹Art. 3, Sec. 20, Mississippi constitution.

⁸⁰Art. 19, Sec. 8, Arkansas constitution.

⁸¹Art. 16, Sec. 18, Florida constitution.

⁸²Art. 4, Sec. 35, Michigan constitution of 1850.

⁸³Art. 7, California constitution.

⁸⁴Art. 1, Sec. 11, Washington constitution.

⁸⁵Art. 9, Sec. 2, Tennessee constitution.

⁸⁶Art. 14, Sec. 265, Mississippi constitution.

⁸⁷Art. 6, Sec. 8, North Carolina constitution.

⁸⁸Art. 17, Sec. 4, South Carolina constitution.

⁸⁹Art. 9, Sec. 1, Tennessee constitution.

⁹⁰Art. 2, Sec. 4 (a), South Carolina constitution.

⁹¹Art. 12, Sec. 241, Mississippi constitution, and also Art. 3, Sec. 11, Maryland constitution.

provision prohibiting charitable bequests. The section is⁹²: "Every legacy, gift or bequest of money or personal property or of any interest, benefit or use therein, either direct or indirect,—in any will and testament or codicil in favor of any religious or ecclesiastical society, denomination, association, or corporation, either for its own use or to be appropriated to charitable uses, shall be null and void and the distributees shall take the same as though no such testamentary disposition had been made."

Article 1, Section 17, of our own constitution reads: "There shall be no imprisonment for debt except in case of absconding debtors." A few of the states omit the qualifying phrase to similar sections. The constitutions of Florida, Wyoming and Idaho use the phrase, "except in case of fraud." The North Dakota section⁹³ reads: "No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors in such a manner as shall be prescribed by law; or in case of tort; or where there is strong presumption of fraud." The Kentucky sections says⁹⁴: "The person of a debtor, where there is no strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such a manner as shall be prescribed by law."

Nearly all constitutions⁹⁵ have some constitutional provisions in regard to the regulation of private corporations, some of which are nearly universal, but a few of them are exceptional for being constitutional provisions. The North Dakota constitution⁹⁶ prohibits the exchange of black lists between corporations. South Dakota, Montana and Michigan constitutions have provisions providing that parallel railroad lines shall not consolidate. Texas has the provision⁹⁷ that no railroad company organized under the laws of that state shall consolidate with any railroad company organized under the laws of any other state or under the laws of the United States. Most constitutions prohibit the giving of railroad passes to officials of the state, but in Virginia⁹⁸ the roads are required to furnish free transportation to the railroad commissioners while they are on their official duty. The same section also states that at least one of the three commissioners must have the same qualifications as a judge of the Supreme Court of Appeal. The Oklahoma constitution⁹⁹ prohibits any railroad, except street railways, from charging more than two cents per mile for passenger fare. An Idaho section¹⁰⁰ says that corporations shall not agree to fix a price of

⁹²Art. 14, Sec. 269, Mississippi constitution.

⁹³Art. 1, Sec. 15, North Dakota constitution.

⁹⁴Par. 18, Kentucky constitution.

⁹⁵Art. 12, Washington constitution.

⁹⁶Art. 17, Sec. 212, North Dakota constitution.

⁹⁷Art. 10, Sec. 6, Texas constitution.

⁹⁸Art. 12, Sec. 155, Virginia constitution.

⁹⁹Art. 9, Sec. 37, Oklahoma constitution.

¹⁰⁰Art. 11, Sec. 18, Idaho constitution.

any commodity or privilege sold to the public in general. A section¹⁰¹ of the Indiana constitution says: "Every bank shall be required to cease all banking operations within twenty years from the time of organizing and promptly thereafter to close its business." The Texas constitution¹⁰² says that in that state there shall be no foreign banks exercising banking or discounting privileges except such National banks as are organized under the federal laws. In regard to the creditors of a bank, the Alabama constitution has the following provision¹⁰³: "Holders of bank notes and depositors not getting interest shall have preference over other depositors in case of insolvency of a bank." The New York constitution also has a provision¹⁰⁴ stating that bill holders shall be preferred in case of the insolvency of a bank. The same is true in Michigan.¹⁰⁵ According to the Oklahoma constitution, Article Nine, Section Forty, no corporation organized or doing business in that state shall be permitted to influence elections nor officers in their official duty, by contributions of money or anything of value. The same constitution also provides¹⁰⁶ that there shall be no corporation formed in that state for the purpose of dealing in land, except such land as is situated in incorporated cities or towns. The Michigan constitution of 1850 says¹⁰⁷: "No corporation shall hold any real estate hereafter acquired for a longer period than ten years, except such real estate as shall be actually occupied by such corporation in the exercise of its franchise."

Labor provisions are also very common, but like the corporation provisions, some of them are more interesting than others because of their scarcity. Many constitutions, like our own,¹⁰⁸ provide that convict labor shall not be let out by contract, but we know that this is still the practice in states where the law is silent on that point. The Michigan constitution of 1850 has a very interesting provision¹⁰⁹ in regard to convict labor: "No mechanical trade shall hereafter be taught to convicts in the state prison of this state, except the manufacture of those articles of which the chief supply for home consumption is imported from other states or countries." This, as we see, protects the home producers and laborers in that it does not make them compete with convict labor. A section in the Kentucky constitution¹¹⁰ says: "All wage earners in this state employed in factories, mines or work shops or by corporations shall be paid for their labor

¹⁰¹Art. 11, Sec. 10, Indiana constitution.

¹⁰²Texas constitution, Art. 16, Sec. 16, as amended in 1904.

¹⁰³Art. 13, Sec. 250, Alabama constitution.

¹⁰⁴Art. 8, Sec. 1, Par. 8, New York constitution.

¹⁰⁵Art. 15, Sec. 5, Michigan constitution of 1850.

¹⁰⁶Art. 22, Sec. 2, Oklahoma constitution.

¹⁰⁷Art. 15, Sec. 12, Michigan constitution of 1850.

¹⁰⁸Art. 23, Sec. 2, Oklahoma constitution.

¹⁰⁹Art. 18, Sec. 3, Michigan constitution of 1850.

tration commissions to decide any disputes between labor and capital, and the Idaho constitution also gives the legislature the power to establish such a commission.¹¹¹ Various constitutions prohibit child labor in certain kinds of work,¹¹² and likewise a per diem minimum is frequently named as the amount of wages to be paid to laborers.

From a political standpoint, the question of prohibition has been the cause of many heated campaigns, of which the 1911 Maine election is a very good instance. As a result of this election, Maine still retains the prohibition article¹¹³ in its constitution. Prohibition articles are also contained in the constitutions of North¹¹⁴ and South Dakota¹¹⁵ and Rhode Island.¹¹⁶ The Virginia, Florida and Delaware constitutions have provisions for local option, and of course several of the states have provided for local option by statutes, though it may not be contained in their constitution.

By many of the constitutions lottery is absolutely prohibited. Article 2, Section 24, of our own constitution provides that the legislature shall never authorize any lottery. A section¹¹⁷ of the Rhode Island constitution, which is practically the opposite, says: "All lotteries shall be prohibited except those authorized by the legislature."

The Oklahoma constitution has a very important provision¹¹⁸ in regard to legislation, which states that repealing a statute does not put a previous statute into effect. Under the common law¹¹⁹ as it prevails in nearly all jurisdictions this is not the case, so necessarily this provision would be quite a factor in determining many controversies. Under this provision there would be no statute on such a point unless enacted later.

Several of the constitutions provide that no law shall be passed limiting the amount of damages to be recovered for the causing of injury or death. The Wyoming constitution gives this provision, but also adds another important feature, as follows¹²⁰: "Any agreement waiving or limiting the recovery of damages for the causing of injury or death shall be null and void."

¹¹⁰Sec. 244, Kentucky constitution.

¹¹¹Art. 13, Sec. 1, Idaho constitution.

¹¹²Art. 17, Sec. 209, of the North Dakota constitution and Art. 23, Sec. 3, of the Oklahoma constitution.

¹¹³Art. 26, adopted as an amendment to the Maine constitution in 1880.

¹¹⁴Art. 20, Sec. 217, North Dakota constitution.

¹¹⁵Art. 24, South Dakota constitution.

¹¹⁶Art. 5 of the amendments to the Rhode Island constitution.

¹¹⁷Art. 4, Sec. 12, Rhode Island constitution.

¹¹⁸Art. 5, Sec. 54, Oklahoma constitution.

¹¹⁹120 U. S. 52; 47 Ind. 283; 43 Mass. 118; 15 Ill. 233; 14 Wis. 252; 66 N. Y. 1.

¹²⁰Art. 19, Sec. 1, Wyoming constitution.

An amendment¹²¹ adopted in 1903 to the Rhode Island constitution provides that: "Judges of the Supreme Court shall give their written opinions on points of law when requested so to do by the governor or by either house of the legislature." Article 1 in the original and present constitution of Massachusetts adopted in 1780, in the chapter on judicial powers, provides: "Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the Supreme Judicial Court, upon important questions of law, and upon solemn occasions." The New Hampshire constitution has the provision¹²² that "No person shall hold the office of judge or sheriff after he has attained the age of seventy years."

Very unusual divorce laws are found in the Georgia and South Carolina constitutions. The section in the Georgia constitution¹²³ reads: "No total divorce shall be granted except on the concurrent verdicts of two juries at different terms of court." And the South Carolina section reads¹²⁴: "Divorces from the bonds of matrimony shall not be allowed."

Vermont and a few of the other older constitutions¹²⁵ provide that the estate of a suicide shall no longer escheat to the state, as in the case at common law¹²⁶ in those states, but that it shall be subject to distribution the same as the property of any other deceased person.

Maryland has a very interesting provision respecting criminal trials, something that is not found in any other jurisdiction and is certainly a very radical departure from the generally accepted method of procedure. It reads¹²⁷: "In all trials of criminal cases the jury shall be the judges of law as well as of facts."

In Colorado¹²⁸ neither the state treasurer nor the state auditor are permitted to be their own immediate successors, that is they cannot hold two terms in succession. In Maryland¹²⁹ the office of secretary is made appointive, giving the governor this power, and in New Hampshire¹³⁰ both the secretary of state and the treasurer of state are elected by the general assembly.

The Iowa constitution provides¹³¹ that there shall be no lease of agricultural lands for a period longer than twenty years.

The Georgia constitution still retains a relic of former days in the provision¹³² which states: "Whipping as a punishment for crime shall

¹²¹Art. 12, Sec. 2, Rhode Island constitution, amendment of 1903.

¹²²Part 2, Art. 75, New Hampshire constitution.

¹²³Art. 6, Sec. 15, Par. 1, Georgia constitution.

¹²⁴Art. 17, Sec. 3, South Carolina constitution.

¹²⁵Sec. 38, Vermont constitution.

¹²⁶123 Mass. 422.

¹²⁷Art. 15, Sec. 5, Maryland constitution.

¹²⁸Art. 4, Sec. 21, Colorado constitution.

¹²⁹Art. 2, Sec. 22, Maryland constitution.

¹³⁰Sec. 67, constitution of New Hampshire.

¹³¹Art. 1, Sec. 20, Iowa constitution.

not be allowed." The same constitution also has another unusual provision¹³² on a more modern and very important matter. The provision is: "Where a county line divides any tract of land, the court of either county shall have jurisdiction over the entire tract."

In the article¹³³ on Water and Water Rights in the Idaho constitution, we find a section on the rights of riparian owners and giving the order of preference where the stream is not large enough for all the owners. The preference is as follows:

1. Those using for domestic purposes;
2. Those using for mining purposes;
3. Those using for agriculture purposes;
4. Those using for manufacturing purposes.

According to the Wisconsin¹³⁵ and New York¹³⁶ constitutions, betting on an election disqualifies a voter for that election. The absence of the provision that all political power is inherent in the people is noticeable in the Michigan and New York constitutions, as these are the only two state constitutions that omit the provision.

In regard to the method of amending a constitution the following are some of the interesting provisions. The most common method is by either a majority or two-thirds vote of the legislature and then a majority of the people. The Alabama constitution provides that the proposed amendment must pass the legislature by a three-fifths vote before it be submitted to the people. The Wisconsin, Indiana, Iowa and Virginia constitutions provide that the proposed amendment must pass two sessions of the legislature before it be submitted to the people. The Rhode Island constitution also provides for this and then states that the vote of the people must be by a three-fifths majority, while the Connecticut constitution provides that the second vote of the legislature must be a two-thirds majority in order to have it submitted. The Arkansas constitution provides that not more than three amendments shall be proposed at a time, and the Illinois constitution provides that not more than one amendment shall be voted on at any one session of the legislature.

A thorough study of the history and framing of constitutions, as well as of the provisions, as they are now found, is indeed interesting. Some of the states have had several constitutions,¹³⁷ and to study the changes in the successive ones discloses the important part that public opinion of the

¹³²Art. 1, Sec. 1, Par. 7, Georgia constitution.

¹³³Art. 6, Sec. 16, Par. 2, Georgia constitution.

¹³⁴Art. 15, Idaho constitution.

¹³⁵Art. 3, Sec. 6, Wisconsin constitution.

¹³⁶Art. 2, Sec. 2, New York constitution.

¹³⁷Louisiana has the record with seven constitutions, while South Carolina and Virginia are both close seconds with six each.

different times plays in the framing. In a speech at the Washington State Bar Association's meeting of 1911, this remark was made about the United States constitution: "The constitution speaks as of the age in which it was written, more than a century ago. The court expounds it in the language of its own age, holding fast to the old words and powers, but expanding them to keep pace with the expansion of our country, our people, our enterprises, industries and civilization." And the same might be said of the state constitutions where they have been revised or changed. They have been made broader to keep up with the pace of our civilization, and wherever we do not find a provision in a constitution, we frequently find that provision in a statute of that state.

The mission of a constitution has been very well summed up in a paragraph by Stimson in his book entitled "Federal and State Constitutions."

"The object of government is declared to be for the security, benefit and protection of the people, for the preservation and protection of our liberties; to protect the citizen in the enjoyment of life, liberty and property and to secure to them their individual rights." Stimson suggests a division of rights into civil and criminal, but this is merely for convenience. We are assured many rights which might be classed as secondary, among which would come religious freedom, freedom of speech, right to petition, etc., but above these the prime motive of every constitution is to secure to its citizens the four cardinal rights, the right of property, the right of labor and trade, the right to law and the right to liberty, and failing in these, the cardinal rights, a constitution has failed in its real purpose.

BEN DRIFTMIER.