THE CONSTITUTION OF THE STATE AND ITS EFFECTS UPON PUBLIC INTERESTS*

The feature of the constitution of Washington which was most frequently criticised at the time of its adoption was its length, but time and experience has shown that its principal fault is that it is really not long enough.

The American people have become so used to living under written constitutions that a sort of constitutional common law has come to exist, which enforces an unconscious uniformity in the substantial provisions of all them.

Each state is under obligation to its people to afford them republican form of government, and our ideas of such an institution are so fixed by usage and judicial interpretation that the constitution of each new state, in all the essentials, is but a copy of some older one.

Certain questions, as, for instance, the right of the people to take or injure property of individuals only upon making compensation therefor, the imperative necessity of guaranteeing the absolute secrecy of the ballot, the evils attending the public contributions to the building of railroads, and others, became so well settled in the public mind many years ago, that the people in remodeling old constitutions and in enacting new ones, insisted upon withdrawing them from possible legislative disturbances.

There is no reason why firmly settled principles or policies of government should not be expressed in written and unalterable law, even if the expression of them requires more words than were used in an older constitution. The Constitution of the United States and the constitutions of many of the older states were framed by men who had the benefit of sufficient experience or sufficient foresight to anticipate what the demands of the future would be. Yet it required twelve amendments to the federal constitution to put that instrument into satisfactory operation.

The constitution of Washington, therefore, contained little that was new, or that was not, in substance, expressed in some preceding document of like character or, at any rate, in well considered and long enacted legislation. The difficulty which most greatly embarrassed the convention, as it turns out, was in expressing definitely and certainly the meaning of many of the important acts framed and proposed by it. I doubt whether a majority of the people of the state would think it worth while

*This article appears as Appendix 2 of Mr. Knapp's thesis published in this issue. Mr. Stiles was a member of the Constitutional Convention and was later elected a Justice of the first Supreme Court of the State.

to change the plan and scope of their constitution, though they might desire to state more clearly some of its provisions, and thereby cause the course of interpertation to be changed or reversed. In its operation upon the executive, and especially upon the legislative branches of the state government, the constitution is an instrument of limitation, and both of these departments have been pressed hard upon, and as many people believe, over, the lines laid down by their fundamental law, without being checked by the judicial department, which is always slow to exercise control over a coordinate branch of government, unless compelled to do so by unmistakably binding statute. A few more words or some different words, had they been employed by the constitution, would, in every instance which now occurs to me, have served to express a meaning which would have been more satisfactory to the people, and which, I am convinced, was the understanding and intention of that body.

But the convention did its best. It worked honestly and earnestly to accomplish, in the short time allotted to it, the highest good to the incoming state. There were no cranks, and very few politicians in it, and I verily believe that in no body of like character has politics been more completely subservient to the public welfare. Its weakness was that it had to be chosen from the common people of the territory, who were not numerous, and who had not had the training in schools of the lucid and comprehensive statement. Its members had ideas enough, and they knew well what they wanted, but when it came to setting it down in precise and unmistakable language, they lacked the necessary experience. More things were taken for granted or left to implication than should have been, as the sequel proves.

One instance of oversight of this kind may be mentioned for illustration. Section 22 of the second article declares that no bill shall become a law unless on its final passage the vote is taken by yeas and nays and a majority of the members elected to each house be recorded as voting in its favor. Yet section 22 is practically a dead letter, and not a session of the legislature has been had where numerous bills did not go through and become law, without even a substantial compliance with this requirement, and the practice will continue simply because the constitution provides no way by which the question of the actual passage of a bill may be tested, the supreme court holding that there can be no inquiry into the history of a law beyond the enrolled bill.

Section 16 of the first article on the subject of compensation of property taken for the use of the public was a very clear proposition, until a member who thought that municipal corporations should be allowed to take possession of lands condemned for streets as soon as the damages

had been ascertained without actual payment into the court caused the words "other than municipal" to be inserted in it by amendment. The convention was satisfied to adopt the suggestion, but the only result of the amendment was to bring on a conflict between the property owners and the cities, in which the latter were worsted, because the words above quoted, in the place where they were found, did not have force enough to overcome the flat declaration contained elsewhere in the same section, that no private property should be taken until compensation had first been made or paid into court for the owner. The ablest man in the convention proposed the amendment, and no one was more surprised than himself at the outcome of it. A few words more or perhaps the same words set in a different place, might have made the exception intended clear, instead of merely confusing the whole section.

Among the meritorious provisions of our constitution which had any degree of novelty at all, I pronounce the judicial system first. Not many of the states have constitutional courts, and still fewer of them have undertaken to define the jurisdiction of their courts by the higher law. We have an appellate court, with a slight measure of original jurisdiction, whose powers are broad and universal for the correction of all errors of the inferior courts, and yet whose interference stops at the line where cases are small and concern mere questions of money. No legislative whim can ditsurb or destroy the steady course of judicial decision. The judges are numerous enough to secure the deliberate investigation, and the length of term and rotation of office are well adapted to secure the dignified but not servile response to the popular will.

Every county has its superior court with almost universal original jurisdiction and with judges enough to keep abreast of the business. The hard times and great unexpected falling off of all commercial enterprises caused some of us to say that we had more courts than we needed, but it is noticeable that no county has yet voluntarily offered to surrender the advantage it has in having a court always open at the service of its citizens. There is less complaint in Washington than in any other state in the Union growing out of crowded calendars and delays in the administration of justice. Such complaints as justly exist here are due to the forms of practice prescribed by the statutes, and not to the courts or the system under which they exist.

In the matter of the elective franchise Washington took an advanced position. None but citizens of the United States can vote; the ballot must be absolutely secret, and registration is compulsory, in all but purely rural communities, where everybody is known. The consequence of these

provisions has been that election scandals are almost unknown here, and there is nowhere a more independent body of voters.

By prescribing limitations to the power of creating public indebtedness and restricting the objects for which indebtedness might be created the constitution has doubtless served a valuable purpose. Its framers certainly expected that it would be more literally construed, than it has been; but the peculiar exigencies of the times have caused the provisions on this subject to be more hardly pressed than any others. Unfortunately there was no definition of indebtedness in the constitution and the legislature has never supplied the deficiency. Reckless assessments in the earlier years deceived the people and encouraged them to extravagance; and when the borrowed money was spent there were presented two miserable alternatives of repudiation or stoppage of government unless the letter of the law could be made to give way in some measure to its supposable spirit.

No other state has placed the common school on so high a pedestal. One who carefully reads Article IX. might also wonder whether, after giving to the school fund all that is here required to be given, anything would be left for other purposes. But the convention was familiar with the history of school funds in the older states, and the attempt was made to avoid the possibility of repeating the tale of dissipation and utter loss. At the minimum rate at which school lands can be sold, the state will, sometime, have an irreducible fund for its common schools of more than $25,000,000, an endowment greater than that of any other educational system now existing.

In a few of its features, mostly original ones, the constitution has, in my judgment, not worked well. It was a good thing to do away with the old plan of granting special charters to cities and towns by special act of the legislature. Two hundred and eighty-six pages of the laws of 1896 were taken up with enactments of this kind, which, it was notorious, were passed without any consideration of the legislature; and, doubtless, by this time that record would have been distanced but for the prohibition contained in Article IX. But the concession which followed, that cities of 20,000 inhabitants and upwards might make their own charters, was a melancholy mistake. It has cost the cities capable of availing themselves of this privilege more than $50,000 to get themselves under the provision of their present charters and there is scarcely an important provision in any of them that does not require an opinion of the supreme court to determine whether it is not in conflict with the "general law" before it can be enforced. This is one of the few instances where special interests got control of the convention. The county members did

not care to oppose their city brethren, and the latter, spurred by their ambitious constituents at home, really thought that nothing the legislature ever would, or could do, would be large enough to meet the requirements of the growing metropolises. The committee report on this subject favored 75,000 as the minimum population, but the convention got hold of it and ran the figures down by successive amendments to 1,500, where a halt was called by killing the whole proposition. It would have been well if it had remained in that condition, but a compromise was effected, a reconsideration had, and the result is the article named.

Article XV. has been a failure and probably always will be. It was an attempt to legislate about a subject upon which the convention had little or no information, and one, the treatment of which, must necessarily depend upon the circumstances of each particular case. Harbors are built and maintained for the benefit of commerce, and the contour of the land and the depth of water where it is proposed to establish a harbor necessarily determine the best form for its construction. There may be some places on the face of the earth, or even within the state of Washington, where an arbitrary fixed line laid out on navigable waters, with a 600-foot reserved area behind it, will serve as a safe plan for a harbor, but there are not many such. Commerce has not yet felt the effects of this article, because it has not been put into operation beyond the wholesale selling out of tideflats, and because the surveys have been so made, in most instances, that vessels do not use the harbor areas at all.

The article on impeachments is inadequate, and every attempt to follow it has proved to be a farce. The legislature has not the time, in the course of its short sessions, to lay aside its other business and attend to the details of a trial; besides, partizanship is always too rife in such bodies to enable them to act with the judicial fairness which ought to characterize such a proceeding.

The constitution ought to have destroyed the warrant system as a means of paying public obligations. The public ought to pay money to its creditors whenever their demands are due and, if necessary, it ought to borrow the money outright from those who have it to lend, instead of putting off claimants with paper redeemable at no fixed time, and at extravagant rates of interest. This state need never have been paid more than four per cent for all the money required, and the counties and cities would have done nearly as well, if all had been on a cash basis. What sort of credit would a business man have who paid for his goods only in non-negotiable notes not due until he got the money? The cash system would have checked extravagance; it would have lowered the price of supplies, and it would have prevented the loss of hundreds of

thousands of dollars in broken banks, and, perhaps, saved the banks themselves from insolvency.

There have been some excellent provisions in the constitution from which the people have had no benefit, because they depend for operation upon action by the legislature, and that body has neglected to do its duty in the premises. Considering that by section 29 of the first article every direction contained in the constitution is mandatory unless expressly declared to be otherwise, it is at least surprising that in some instances no attempt has been made whatever to set these provisions at their legitimate work. The first of these provisions which occurs is that contained in section 30, Article II., where it was prescribed that the offense of corrupt solicitation of members of the legislature and other public officers should be defined by law and appropriately punished, and witnesses were denied the privilege of refusing to testify to matters incriminating themselves. Several cases have occurred where lack of legislation on this subject has been severely felt in cases arising within the legislature itself.

Section 18, Article XII., requires the passage of laws establishing a reasonable rate for the transportation of freight and passengers by all common carriers, and no honest effort has been made to give the public the relief provided for. All that has been done for the benefit of a single interest, and applies only to certain classes of freight.

I am sure the author of section 22, Article XII., never thought that many legislatures would come and go without the introduction of a single bill to carry out his prohibitions against monopolies and trusts; yet the section ends with these words, "The legislature shall pass laws for the enforcement of this section." Just what must be the form of the laws necessary in this instance is more than I know; but I believe we are suffering from the want of them. With almost everything in the way of raw materials at our hands, we manufacture almost nothing that can be shipped from the great trust neighborhoods, because our business men dare not undertake manufacturing for fear of being crushed by the foreign octopi. There should be at least an investigation to see what effect these combinations, unlawful everywhere, are having upon our prosperity, and, if it is true that they are preying on our very vitals, whatever may be done under the section mentioned should be done with the utmost vigor.

Through obvious neglect in not prescribing regulations supplementary to Article XIII., the legislature has allowed the provisions of that article to have no practical force, so far as the appointment of boards for the control of the public institutions of the state is concerned. The senate does not, in practice, concur in the appointment of any of these officials, but

the whole matter is left to the discretion of the governor, who appoints and removes them at his pleasure. From the system into which we have fallen it results that there is not an independent appointive officer in the state, whose continuation in office is certain even for a day.

Wherever our constitution is self-executing, it has been found in the main satisfactory, but these portions which require to be supplemented by statute have met with little intelligent interpretation and much neglect. It deserves to be given a full trial and when it arrives at that state I believe it will be found to be an efficient guiding instrument, unnecessary to be materially altered for years to come.

THEODORE L. STILES.