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The Legislature

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EDITOR'S NOTE: A forceful movement for revision of the New Mexico Constitution exists in the state today. Official action includes work of the Constitutional Revision Commission. The following Article is the third of a series on revisions of the New Mexico Constitution.

THE LEGISLATURE

DENNY O. INGRAM, JR.*

A prior article[1] serves as a companion to this article in that the philosophical basis discussed therein serves herein. A quick review by the reader of the early portion of the prior article would be helpful.[2]

Once again, the author's purpose in large part is a review of the proposals of the New Mexico Constitutional Revision Commission.[3] And, again, their work product is praiseworthy.

I

THE FUNDAMENTAL PROBLEMS

Two great errors mark state legislatures. *First,* power which should be assigned to the legislature rests within the sovereignty of the people. *Second,* legislatures are degraded by restrictions evidencing public disrespect and distrust.

The two great errors not only utterly smash the ability of the legislatures to enact certain needed legislation but they also supply the catalysts for irresponsibility and for abuse of trust.

As for irresponsibility: If power is denied in some important areas to the extent that approval of the electorate must be sought, the responsibility for the matter can be shifted to the people. This shift can be based upon actual votes on matters presented to the people and upon supposition as to their votes if a matter had been presented to them. In addition, the referral of some non-basic matters to the people because of specific requirements therefor will lead to referral of other non-basic matters though not required. The result

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1. Ingram, *The Executive,* 7 Natural Resources J. 267 (1967).

2. The gist of the philosophical-governmental principle is: Two axioms underlie good American government. First, the power to act vigorously is indispensable to effective government. Second, governmental power should not be concentrated in one person or body of persons. The second axiom is the synthesis of a congeries of doctrines and theories, the cardinal ones being separation of powers, checks and balances, the federal system, sovereignty of the people or government of laws, and republican form of government.

3. The Commission has published two reports, one in 1964 and the other in 1967.

is an element of irresponsibility in the legislature. Accordingly, effective use of a republican form of government is minimized; and the sovereignty of the people is exerted upon non-basic matters. These are non-basic matters which the electorate as a group often cannot adequately judge and certainly can never judge in any sort of a vigorous manner, thus providing a direct onslaught against the axiom that governmental power to act vigorously is indispensable to effective government.

As for abuse of trust: Lengthy and detailed constitutions "show distrust by the people of their own Legislatures; but such distrust will breed unworthiness. Of such nature . . . are the curious restrictions upon the passage of bills, and the elaborate constitutional provisions against corruption or abuse of official power."[4] The picayunish limitation on pay,[5] the limitation as to days in a session,[6] and the limitation to biannual and special sessions,[7] even though admittedly the preference of many legislators because of the part-time nature of their offices, do reflect largely the electorate distrust of the legislature and do create abuse of trust. The abuse of trust is a result of the degradation some legislators feel imposed upon them and a result of the difficult financial circumstances and time pressures under which service must be rendered.

At the nation's birth, the power of the state legislatures was immense.[8] Since then, erosions of the power have occurred,[9] often as justifiable rebellion against the quality of personnel the offices attracted. Sometimes, the erosions were merely the result of the political philosophy of the times, e.g., the long-lived era of Jacksonian democracy. It seems logical also that the various causes and the results thereof fed upon one another until the present plight evolved.

Disregarding the cause, the continuance of the matter is insupportable if state government is to progress; for the legislature, perhaps second only to the present status of the executive, is at a low ebb of respect, efficiency, and effective power.

The two great errors respecting legislatures create fundamental problems repeated throughout state government. Vigor is reduced unnecessarily by misapplications and overapplications of the doc-

4. F. Stimson, Federal and State Constitutions of the United States 70 (1908).
5. N.M. Const. art. 4, § 10.
6. N.M. Const. art. 4, § 5.
7. Since 1964, the New Mexico constitution has provided annual sessions of a limited nature, N.M. Const. art. 4 § 5.
8. *See,* W. Graves, American State Government 188 (4th ed. 1953).
9. *Id* at 189.

trines and theories underlying the axiom that power should not be concentrated. Surely, the sovereignty of the people is nowhere so overexercised than it is with respect to legislative power; this results in constant referral of questions to the people because of constitutional provisions. A republican form of government seems more avoided than sought. A weakened legislature means a weakened government and hence ineffectiveness in the state's role in federalism, ineffectiveness in the application of the doctrine of separation of powers, and ineffectiveness in the application of the theory of checks and balances.

The two great errors probably could be accompanied by a third great error—poor organization of the legislature. However, since it appears that the first two errors lead to the third, they are considered dominant and should be considered the great errors creating the fundamental problems.

II

THE IMPACT OF THE REAPPORTIONMENT DECISIONS

The reapportionment decisions[10] espousing the rule of equality in legislative representation of the vote marked for obliteration one of the greatest barriers to governmental progress—legislative apportionment weighted toward the population status of far earlier years and toward representation of aged election districts such as counties or groups of counties having a community of interests. Prior to those decisions and the sequential statutes, New Mexico was no exception to malapportionment.[11] Details of the local situation will be left to the cited publications and the reader's recall of the matter as reported by news agencies in recent times.

Prior to the recent remedial legislation, all state legislative apportionment provisions contained a common fault: the rural areas received greater representation per voter than did the urban areas. In each state, less than a majority of the voters could elect a ma-

10. Lucas v. Forty-Fourth General Assembly of Colorado, 377 U.S. 713 (1964) (Colorado); Davis v. Mann, 377 U.S. 678 (1964) (Virginia); Maryland Committee for Fair Representation v. Tawes, 377 U.S. 656 (1964) (Maryland); WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964) (New York); and Reynolds v. Sims, 377 U.S. 533 (1964) (Alabama).

11. A complete story of the matter and a record of the enactment of the remedy, together with extensive statistical material, appears in R. Folmar, New Mexico Legislative Council Service, Legislative Apportionment in New Mexico 1844-1966, August 1, 1966. See also, R. McKay, Reapportionment: The Law and Politics of Equal Representation 377 (1965). See also the citations in McKay at p. 380.

jority of the legislators.[12] *During 1961 in New Mexico 14% of the population could elect a majority of the senate; and 27% of the population could elect a majority of the house of representatives.*[13] In a report covering 47 of the state senates and 46 of the state houses, there were only three state senates and seven state houses with more disproportionate representation than New Mexico.[14] Presently, a majority in the New Mexico senate can be elected by 45.7% of the population; and a majority in the New Mexico house can be elected by 46.3% of the population.[15] Since exact mathematical equality is impossible, a reasonable solution seems to have occurred; certainly, fantastic progress has been made in comparison to the 1961 figures.

There is patent injustice in a minority consisting of rural inhabitants imposing its will upon a majority consisting of urban inhabitants. Perhaps there is also an element of injustice in an urban majority imposing its will upon the rural minority, but there is at least a lessened magnitude in the injustice and an observance of the fundamental democratic principle of equality of representation on the basis of individual vote power. No one has yet conceived a system whereby a democratic society can avoid some neglect of minority groups no matter how strong the constitutional protections may be. The answer lies only in such realms as education, persuasion, and civilized recognition of fair play; a mathematical guide for achievement appears impossible in the light of present knowledge.

Rural and urban communities have diverse interests, needs, problems, and standards as well as the customary tendencies to preserve self-interests. These divergencies coupled with malapportionment in favor of the rural community resulted in ignoring some of the critical urban needs. Rural legislators were either ill-equipped to meet the urban problems or were too selfish to meet the urban problems. Hence, the cities could not look to the state government to answer needs the cities could not answer alone. This disregard for urban needs meant the worst kind of lack of vigor in the exercise of governmental power. The cities thus had to take, in varying degrees, two simultaneous routes: the up-grading of municipal government and the obtaining of federal aid directly without first asking state

12. See Advisory Commission on Intergovernmental Relations, Apportionment of State Legislatures A-7 (1962).

13. *Ibid.*

14. *Ibid.*

15. R. Folmar, New Mexico Legislative Council Service, Legislative Apportionment in New Mexico 1844-1966 137 (1966).

aid and without the use of the state government as a medium. Accordingly, the states were weakened because the cities and the national government served part of what should have been, or at least might have been, state functions. Obviously, the iniquitous effects of the rural dominated legislatures are not limited to localized effects of friction between the rural and urban communities. Federalism also took a shuddering assault. The doctrine of separation of powers and the theory of checks and balances suffered in operation because of a poorly constituted and prejudiced legislature which was either too weak or too strong, depending upon the voter's view. Certainly, the republican form of government became the vehicle for violating democratic precepts of equality in voting power. Even legislative appeals to the sovereignty of the people in the form of constitutional amendments were unrepresentative requests because of the legislative constituency.

The impact of reapportionment is simply this: All the foregoing mischiefs of malapportionment are subject to elimination or minimization within a reasonable time. Some matters, for example, the basic injustice of unequal representation, already have been cured as completely as is likely. Other matters will require gradual erosion of the product of years of errors.[16] But, the agent for change exists.

One writer since the reapportionment decisions declares:

> It has been the theme of this volume that the *Reapportionment Cases* have opened the way for revitalization of representative democracy in the United States at the national, state, and even local levels. The requirement of substantial equality among election districts is a matter of the first importance. . . .[17]

Although reapportioned fairly at present, the issue of malapportionment is not thereby silenced forever. Reapportionment should be made anew following each decennial census. A framework must be provided so that the matter is not attended by court action in order to compel legislative action. If the legislature fails to act, there must be some other authority responsible to the people of the entire state so that fairness promptly can prevail. In addition, the equality of representation must not be tainted by gerrymandering. Apparently the Constitutional Revision Commission of New Mexico has foreseen these problems; for it proposes Article IV., Section 3:

16. See Graves, *supra* note 8, at 197; and R. Connery and R. Leach, The Federal Government and Metropolitan Areas 199 (1960) for discussions of the posture of the matter prior to reapportionment.

17. McKay, *supra* note 11, at 269.

For the purpose of electing members of the legislature, and subject to such limitations as are set out in this article, the state shall be divided into as many senatorial districts and representative districts as may be provided by legislative enactment. Each district shall consist of compact and contiguous territory.

Each representative district and each senatorial district shall be substantially equal in population to the population of other districts for the same respective houses of the legislature. In determining the population of each district, inmates of such public or private institutions as prisons or other places of correction, hospitals for the insane or other institutions housing persons who are disqualified from voting by law shall not be counted.

At the regular session next succeeding each decennial census the legislature shall reapportion the senate and the house of representatives giving due regard to affording each citizen of this state with a vote substantially equal in voting strength of that of every other citizen of the state.

If the legislature at the next regular session following a decennial census fails to enact a reapportionment plan as provided herein, or should such a plan be found invalid by the state supreme court, the governor shall immediately appoint a reapportionment commission consisting of five members, not more than three of whom shall be members of the same political party. Within ninety days following its appointment, the commission shall submit its reapportionment plan, prepared in accordance with this article, to the state supreme court for its approval as to legal sufficiency and compliance with this article. Such plan as finally prepared by the commission and finally approved by the supreme court shall become law immediately upon being filed by the commission with the officer prescribed by law. If any such reapportionment plan shall be found to be invalid by the state supreme court, the reapportionment commission shall be directed to prepare a new plan meeting the requirements of this article. The state supreme court shall have original and exclusive jurisdiction in reapportionment controversies. (See *American Bar Association Journal,* September 1964, "Reapportionment of State Legislatures," R. W. Nahstoll, Pages 842-847.)[18]

Note that the instigator of the remedy if the legislature fails is the governor, an official elected by and responsible to the statewide electorate. Note too the requirement of "compact and contiguous territory." This provision, coupled with the customary constitu-

18. 1964 Report of the Constitutional Revision Commission of New Mexico 7 (1964). See also McKay, *supra* note 11, at 270.

tional safeguards should plainly bar gerrymandering. The gerrymandering evil has produced this comment:

> The unprecedentedly large amount of redistricting has given rise to charges of gerrymandering for partisan advantage. In Delaware, Michigan and New York suits were brought on these grounds in 1964-65. On November 2, 1965, the Michigan Supreme Court upheld the complaint, ruled the existing apportionment invalid, and directed the state apportionment commission to submit a new measure in early 1966. No court, it appears, had ruled previously on this question, although the U. S. Supreme Court in *Gomillion* v. *Lightfoot* (364 U.S. 399) in the early 1960's indicated a willingness to set aside a districting which denied voting rights to minorities.[19]

III

REAPPORTIONMENT AND THE FUNDAMENTAL PROBLEMS

The impact of reapportionment upon the fundamental problems discussed above deserves particular mention. Recall the asserted two great errors marking state legislatures: *First,* power which should be assigned to the legislature rests within the sovereignty of the people. *Second,* legislatures are degraded by restrictions evidencing public disrespect and distrust. Obviously, the remedy of these two great errors will be hastened by reapportionment although certainly not solved thereby. The legislature now having a fairer apportionment, the people, particularly urbanites, should be more willing to unleash retained powers and confer greater respect. Clearly, partial remedy of these two great errors should be expected as a concomitant of the elevated quality of the legislature expected to result from reapportionment. Necessarily, the change will be not only partial but also will be slow, even imperceptible in the early stages.

IV

RECOMMENDED CONSTITUTIONAL PROVISIONS OF LEGISLATIVE POWER

The constitutional provisions for an excellent legislative branch of state government are:

A. Either unicameralism or bicameralism.

B. Annual sessions of reasonable length.

19. The Council of State Governments, The Book of the States 1966-1967 39 (1966).

C. Attention to the following items with respect to the membership:
   1. Election in such a manner that important issues are emphasized and that there is fair representation of the electorate.
   2. A total number of legislators based upon such considerations as efficiency, economy, manageability of the house size, and size of the electorate represented.
   3. A reasonable term in office, giving due consideration to the terms of other officials and the need for periodic expressions of the electorate's will.
   4. Privileges and immunities sufficient to insure fearless conduct by legislators.
   5. Adequate compensation.

D. Broadly outlined legislative procedure.

E. Legislative powers of broad magnitude without recourse to electorate approval.

F. Particularized roles designed, at least in large part, to implement the theory of checks and balances. Such roles to include:
   1. A major and informed role in adoption of the budget.
   2. A powerful investigative role with respect to executive conduct.
   3. Post audit authority well implemented.
   4. Overriding the gubernatorial veto by a process which duly regards the veto.

V

DETAIL OF THE RECOMMENDED LEGISLATIVE PROVISIONS AND SUPPORT THEREFOR

A. Either Unicameralism or Bicameralism

Unicameralism is the equal of bicameralism, if not the superior.

Past criteria for comparing the two legislative forms must be modified in view of the recent apportionment decisions and statutes. Primarily, one no longer can point to different bases for determining the membership of the house and senate as a method of assuring representation of regional interests and representation of sheer numbers. The reapportionment decisions and statutes declare that numbers alone is the base permitted. Hence, if heretofore equilib-

rium in merit existed between unicameralism and bicameralism, as some argue, there is now a preponderance on the side of unicameralism. However, substantial doubt can be raised as to the prior existence of such an equilibrium. The true state of the matter most often has been a division in the sense of many favoring unicameralism and many favoring bicameralism, with a shift in favoritism perhaps needing more impetus than that produced by the reapportionment event. The state of the matter prior to reapportionment has been summarized as follows:

> The opinions of the people who ought to know vary widely; in fact, they are often diametrically opposed. A large majority of political scientists favor unicameralism, while an overwhelming majority of persons with actual legislative experience are opposed to it.[20]

Accordingly, it seems inappropriate to argue that there has been a recognized position which reapportionment has clearly changed; for there have been varying positions probably for varying reasons which may or may not have included two bases of representation. The matter simply must be discussed anew with the argument of two bases for computing representation being eliminated as an argument supporting bicameralism.

A compendium of the most important arguments[21] favoring one or the other legislative systems, giving due regard to the reapportionment decisions, is now in order.

Points favoring bicameralism:

1. Two houses provide an internal check upon the use of the legislative power and thus help assure impassioned, thorough action.

2. Bicameralism has withstood the test of time in 49 state governments and in the national government.

3. It is more difficult to corrupt two houses than one; hence, lobbies will find it more difficult to obtain enactment of desired legislation.

4. Departure from the traditional bicameral legislature would entail numerous new laws or amendments to old laws grounded upon

20. Graves, *supra* note 8, at 193.

21. For some other possible arguments see Public Administration Service, 3 Constitutional Studies (Alaska) Ch. X (1955); Zeller, American State Legislatures 50 (1954); and Willoughby, Principles of Legislative Organization and Administration 213 (1934). See also these discussions written since the reapportionment decisions: Note, *Unicameralism and Bicameralism: History and Tradition,* 45 B.U.L. Rev. 250 (1965); D'Alemberte and Fishburne, *The Unicameral Legislature,* 17 U. of Fla. L. Rev. 355 (1965).

bicameralism and would entail a re-education of the electorate. These matters would create expense and confusion.

5. There is less chance that a bicameral legislature tyrannically can expand its power because it is more difficult to concentrate power divided between two houses.

6. Bicameralism permits the use of different office terms, thus providing an upper chamber which has more experience and a lower chamber which is more attuned to the electorate's desires.

7. Bicameral legislatures offer good training grounds for politicians in that more diverse situations arise and larger numbers of legislators are generally employed.

8. Specialized functions with accompanying expertise and tradition can be accorded each of two houses.

Points favoring unicameralism:

1. A single chamber can act more vigorously.

2. The single chamber works successfully. For example: in Nebraska; in 17,995 out of 17,997 municipalities in the United States;[22] in innumerable state and federal agencies exercising legislative functions; and in analogous business governing bodies such as corporate boards of directors.

3. Two houses provide camouflage of responsibility for failure, delay, misrepresentation, and other fault; one house does not provide such a camouflage.

4. There is no need for the secretive, powerful, small, and sometimes easily controlled conference committee to resolve differences between two houses on legislation.

5. A unicameral legislature is easier to follow in its operations than is the complex bicameral legislature; this means that the press can make better information available to the public.

6. A unicameral legislature is more efficient than a bicameral legislature because of its simpler organization and of the depth to which its members may consider legislation because there is no urgency to pass the matter to another house for its consideration.

7. A unicameral body is more economical to staff and operate than is a bicameral body.

22. Note, Unicameralism and Bicameralism: History and Tradition, 45 B.U.L. Rev. 267 (1965).

8. The friction produced by rivalry between two houses does not exist.

9. The prestige of the legislative office is enhanced.

10. It is easier to control one house of a bicameral legislature and thus prevent good legislation than it is to control the entire legislature represented by a single house.

There are many other arguments on the subject, but most are refinements, details, or subsidiaries of the foregoing.

Logically, unicameralism presents a better case for good government than does bicameralism. On the other hand, the tradition of bicameralism is so well formed that a change indeed would be difficult to achieve. As noted, most legislators oppose unicameralism;[23] and such opposition is probably more emphatic in legislatures which have just weathered the problems of redistricting malapportioned legislatures and necessarily combining districts of some incumbents. To further eliminate legislators as a result of unicameralism would be a difficult chore to perform. Hence, the members of the legislature pose a probable formidable force against unicameralism. That is to be expected not only for the obvious reason of a threat to office existence but also because of the required learning of new ways, the loss of the camaraderie and esprit of the individual houses generated in part by the good-hearted rivalry between them, the customary fear of the unknown, and the usual apathy toward institutional change, particularly if there be no great demand therefor or overwhelming case therefor. The reaction of the voters is apt to be somewhat like that of the legislators unless there is a strong educational campaign. Various pressure and lobby groups will certainly resist change and doubtless will exert great effort to prevent any change.

So, the added problem of selling unicameralism detracts from its preferred position. Nevertheless, at this point of consideration in New Mexico, the matter should not be concluded against anything apparently so meritorious as unicameralism. The matter should be submitted alternatively for consideration by the prospective constitutional convention. There, unicameralism can be presented more publicly and either could be eliminated if unfavored or if deemed detrimental to the passage of the new constitution as a whole or could be proposed to the electorate as the proper enactment. At the least, the Constitutional Revision Commission should have by com-

23. See Graves, *supra* note 8, at 193.

ment recognized that the merits of unicameralism and bicameralism are approximately equal.

B. Sessions

Presently, in New Mexico, regular legislative sessions are held annually with the sessions in odd-numbered years being 60 days long and the sessions in even-numbered years being 30 days long.[24] The shorter sessions are limited to consideration of financial matters, bills answering special requests of the governor, and bills vetoed in the last regular session. Special sessions not to exceed 30 days may be called by the governor, and he must call such a session upon three-fifths of the legislators certifying as to the need therefor.[25] If the governor alone calls the session, the subject matter is limited to objects specified in the call.[26] *The proposed constitution* provides regular sessions of 60 days in odd-numbered years with power in the legislature by two-thirds vote to provide for annual sessions not to exceed 60 days.[27]

What then should the Commission recommend?

The sessions should be of reasonable length with some discretion as to the time being vested in the legislature itself. Short limits on the session length assumes at the outset that the legislature will waste time unless given a definite ending time. Of course, this just creates another problem—ill considered legislation because of too short a time limit. In fact, many legislation problems will never be considered because of the time limitations. Thirty days certainly seems too short for an outer limit; 60 days would seem to be the shortest time worthy of any consideration. The trend is toward no limits or limits of 120 days or more. Considering the time required to organize the houses, particularly since the president pro tempore of the senate will serve the role formerly held by the lieutenant governor, the case for a longer limit becomes obvious. Furthermore, most legislators will have just been elected in even-numbered years and, like the governor, need time to organize their plans. Part of this problem can be cured by commencing the sessions later, such as in early March, but the new legislators still need to meet and become acquainted with one another and the procedures involved. It should

24. N.M. Const. art. 4, § 5.
25. N.M. Const. art. 4, § 6.
26. *Id.*
27. 1967 Report of the Constitutional Revision Commission, Proposed N.M. Const. art. 4, § 5.

be kept in mind that the turn-over in legislators is very high in most states and New Mexico is typical. It would seem that an unlimited session or a session of not more than 120 days would be reasonable. If less time is needed, the session can adjourn earlier. To place a more confining restriction on the legislature would be an expression of distrust and would jeopardize chances for calm legislative organization and deliberation. Much of the objection to long sessions can be found among legislators themselves who desire to shorten services being performed at pauper's rates.[28] New Mexico is one of the nation's lowest paying states with respect to legislators.[29] This objection can be remedied by the payment of at least a moderately adequate compensation as discussed below.

The legislature should convene annually. The legislature is the equivalent of a board of directors or municipal council. One cannot imagine a major corporation or a city of any size convening its governing body once every two years or as emergency special sessions are deemed necessary. State government in New Mexico is New Mexico's biggest business, a business in which all are concerned; and it is folly to believe that there is either efficiency or economy involved in failing to permit legislative action annually. Needed reforms, budgetary investigations, exchange of ideas, amendments of outmoded laws, and many other such matters need attention to the extent that annual sessions are absolutely necessary to excellence in state government. New Mexico is a small state, but it has most of the problems of larger states—each set of uniform laws can be utilized by New Mexicans, each new tax or expenditure in any state requires about the same consideration, and continual attention to these and related matters is essential to maintaining a high level of state government. Furthermore, each annual session of the legislature should not be limited in what it considers except as the legislature shall determine. If the legislature is to be effective, it must have the power that comes with freedom of action.

Of course, there will be an occasional need for special sessions despite the fact that the legislature meets annually. A provision essentially like the present one should suffice.

Accordingly, the legislature should meet annually in early March for a session not to exceed 120 days with the legislature being free

28. N.M. Const. art 4, § 10 provides compensation of $20.00 per diem while in session.

29. See n. 19, *supra* at 48.

to consider such matters as it deems fit. Provision much like the present one should be made for the calling of special sessions.

Such provisions would go far toward correcting the two great errors in state government as discussed above and hence serving in a better manner the two axioms underlying the structure of state governments.

C. *Membership*

1. Election

The major question concerning election of legislators has been resolved by the apportionment provisions discussed heretofore. Perhaps only one other point deserves consideration. As with most state offices, the constitution presently and as proposed provides that the office holder must be a qualified voter. Voting qualifications however, are rather severe—residence in the state one year, the county 90 days, and the voting district 30 days.[30] This is almost an absurd requirement, particularly since it also applies to other state offices. To assume that a person should be ineligible to be a legislator because he has moved, perhaps just across the street, from one of many voting districts in his county to another is consummate error. In multi-county districts, moving from one county to another should impose no barrier to legislative or other state office. Of course, some prerequisites to qualified voting status must not be ignored, such as felony status. But, the proposed procedure should be avoided despite the ease and simplicity of its use. The voting requirement should be modernized. This is particularly true in view of the great mobility of the nation as a whole not only in communication of views but in constant shifting of families from one locality to another, and without the loss of intellect.

2. Number

The number of legislators in each house should be large enough to provide close contact with the electorate and should also be small enough to provide for ease of organization and operation. An inspection of the proposed constitution demonstrates that these *principles?* are well served.[31] Especially is this true when one considers the size and population of the state and the numbers in other state

30. N.M. Const. art. 7, § 1.

31. 1967 Report of the Constitutional Revision Commission, Proposed N.M. Const. art. 4, § 2.

legislatures. The proposed constitution calls for a senate of from 32 to 40 members and a house of from 72 to 100 members. Since the reapportionment legislation of 1966 used 42 senators[32] and the increase is very little, the Constitutional Revision Commission should revise its 1964 and 1967 recommendations to fit the existing facts. There appears to be no reason why it should not do so. Furthermore, similar considerations are due the house size which is now 70 members pursuant to the 1965 house reapportionment legislation.[33] In any event, the matter should be set forth in constitutional form rather than continuing to rely upon statutory reform brought about by the apparent federal unconstitutionality of the existing state constitutional provisions. If a unicameral legislature is chosen, the matter must be re-examined. There are 43 legislators in the Nebraska single chamber.[34]

3. Term

The *present*[35] two-year term for representatives and the present six-year term for senators is retained in the *proposed* constitution,[36] and there seems no reason for any change in the bicameral legislature. However, if a unicameral legislature is utilized, the problem of terms will arise. Although some continuity might be interrupted, it appears that the electorate will insist upon two-year terms for the traditional reason of close control over legislative conduct. In view of this, there seems little need to discuss the matter further.

4. Privileges and Immunities

Various legislative prerogatives are often criticized, particularly with respect to immunity from suit or prosecution for floor or committee conduct. Of course, these prerogatives can be abused and are sometimes abused for purely personal advantage or protection. Nevertheless, the Constitutional Revision Commission wisely retains the basic provisions.[37] The legislators must be free to act naturally in pursuit of the common good, and the possibility of error must be recognized and taken in stride. However, it would seem that the

32. N.M. Stat. Ann. §§ 2-9-13 to 2-9-63 (Supp. 1967).
33. N.M. Stat. Ann. §§ 2-7-14 to 2-7-37 (Supp. 1967).
34. Neb. Const. art. 3, § 1.
35. N.M. Const. art. 4, § 4.
36. 1967 Report of the Constitutional Revision Commission, Proposed N.M. Const. art. 4, § 2.
37. 1967 Report of the Constitutional Revision Commission, Proposed N.M. Const. art. 4, § 12.

legislature, perhaps even pursuant to constitutional authorization, should be free to provide compensation to any individual unjustly damaged by remarks or other conduct rendered immune by the constitutional protection of legislators. Any wrong suffered in this manner should be borne by society as a whole and not by a haphazardly injured party.

5. Salaries

The legislature has often sought an increase in the $20.00 per diem provision of the New Mexico constitution, the latest defeat being on September 28, 1965, by a vote of 39,922 to 13,087.[38] It provided:

> Each member of the legislature shall receive as per diem expense the sum of not more than twenty dollars ($20.00) for each day's attendance during each session, and ten cents ($.10) for each mile traveled in going to and returning from the seat of the government by the usual traveled route, once each session as defined by Section 5, Article IV of this Constitution, and in addition, two hundred dollars ($200.00) a month for each month he is a member of the legislature.[39]

If New Mexicans have any complaints about their legislature after that parsimonious measure was defeated by their degrading vote, then they should be answered that they receive better government than they deserve. Such a vote reflects no appreciation of the economic facts, of the effort and time spent by most legislators, and of the importance of the office. General Motors Corporation pays its office boys more than members of the New Mexico legislature are paid. No union employee in America would stand for such treatment. True, people resent legislators voting themselves raises. Also true, people think that part-time jobs deserve small pay. However, the machinery is established in such a manner that only legislators can initiate raises for legislators; and those part-time legislative jobs consume more time and interrupt more personally productive effort than the average voter can conceive. Furthermore, any legislator should be paid enough so that he can and will devote the needed time to the matter.

The Constitutional Revision Commission recommends that the constitutional restrictions on pay be removed and that the matter

38. N.M. Const. art. 4, § 10 (Supp. 1967).
39. N.M. Stat. Ann. (Supp. 1965) at p. 14.

be resolved by statute.[40] This is admirable and is essential to excellent state government. However, there should be consideration given to the setting of the compensation by the constitution until the legislature has had time to act. The discouragement of good men by lack of compensation for even one term is a damaging event. In view of the responsibility, time, expense, and related matters involved plus the compensation paid in progressive states, a minimum compensation of $5,000.00 per year should be enacted. Bear in mind that the lobby and pressure groups willing to use ulterior devices more readily can corrupt legislators who are underpaid and bearing the direct and indirect degradation resulting therefrom.

D. Procedure

Although certain basic protections against abuse of legislative procedure should be engrafted in the constitution, the legislature should be left free to name the requisite details. Otherwise, the electorate will not have delegated sufficient power to effectuate fully the republican form of government or to express respect and trust of the legislators.

The *present* New Mexico constitution is so restrictive in what may be termed the procedural aspects of the legislature, that it would be a fair waste just to enumerate the restrictions. They vary from a provision on the exact number of such inferior officers as sergeant-at-arms and the authority to hire such employees as janitors and stenographers[41] to provisions on more important subjects as contempt of the legislature,[42] the manner of passing bills,[43] and the form of bills.[44]

The *proposed* New Mexico constitution couples the procedural and related matters to the fundamentals properly belonging within a constitution. Proposed Article IV., Section 7 is the cardinal provision:

> Each house shall be the judge of the election and qualifications of its own members. A majority of either house shall constitute a quorum to do business in that house, but a lesser number may effect a temporary organization, adjourn from day to day, and compel the attendance of absent members.

40. 1967 Report of the Constitutional Revision Commission, Proposed N.M. Const. art. 4, § 10.
41. N.M. Const. art. 4, § 9.
42. N.M. Const. art. 4, § 11.
43. N.M. Const. art. 4, § 17.
44. N.M. Const. art. 4, §§ 15 and 16.

> Each house may determine the rules of its procedure, punish its members for contempt or disorderly behavior in its presence, and protect its members against violence. Each house may, with the concurrence of two-thirds of its members, expel a member, but not a second time for the same act. Punishment for contempt or disorderly behavior or by expulsion shall not be a bar to criminal prosecution.

Continuing, there is a provision for a call to order by some statutorily designated officer until the speaker is elected;[45] a brief but broad provision for the selection "of its own officers and employees . . ." and the fixing of their compensation;[46] simple provisions for the traditional keeping of records,[47] establishing committees,[48] preparing bills according to a prescribed form,[49] and passing bills.[50]

The *proposed* provisions omit a mass of detail which could only interfere with honest legislative effort and which evidences a distinct distrust of the legislature. The only thing remaining for the legislature to be in top order after the enactment of the proposed provisions is the adoption of statutes and rules.[51]

E. Legislative Powers

The *present* New Mexico constitution, not only in the legislative article but also elsewhere, like most state constitutions, impresses fantastically detailed restrictions upon legislative action. So, many governmental decisions that could be made in a competent exercise of the republican form of government must be made instead by constitutional amendment or by following rigid guidelines. Often, surely, some needed legislation is simply ignored because of the problems attending enactment. There is simple and fundamental language in the first sentence of Article IV., Section 1: "The legislative power shall be vested in a senate and house of representatives which shall be designated the legislature of the state of New Mexico, and shall hold its sessions at the seat of government." Nevertheless, a 500-word, more or less, paragraph follows in the same section and

45. 1967 Report of the Constitutional Revision Commission, Proposed N.M. Const. art. 4, § 8.
46. *Id.* § 9.
47. *Id.* § 14.
48. *Id.* § 16.
49. *Id.* § 17.
50. *Id.* § 18.
51. Detailed recommendations can be found in W. Willoughby, Principles of Legislative Organization and Administration (1934), an older but thorough book sponsored by the Institute for Government Research of the Brookings Institution.

provides a referendum procedure for the nullification of certain types of legislation. Then, in Article IV., Section 2 as originally enacted: "In addition to the powers herein enumerated, the legislature shall have all powers necessary to the legislature of a free state." It would seem that Section 1 would have sufficed, but at least Section 2 as originally enacted was a simple restatement of the general legislative power. However, in 1960, Section 2 was amended by a 150-word plus amendment to provide an express constitutional provision to the effect that the legislature had the power to enact laws to guarantee the continuance of the government in a "disaster emergency" and the continuous meeting of the legislature during the same. Thenceforward in the legislative article, minute detail creating rigidity in the laws is the decided theme. The major prejudices of various groups or times are fundamentally asserted. There is also an abundance of other articles bearing upon legislative power, particularly in a restraining manner or in a usurping manner. It appears plausible that not even municipal governments are so confined as is the New Mexico legislature by the present constitution. If the United States had taken such an attitude toward its constitution, the Mexican flag probably would fly over New Mexico to this day.

The Constitutional Revision Commission's curative work on the legislative article and other provisions bearing upon legislative power will have an enormously helpful effect if enacted. The Commission's theme is direct; the broad statement of legislative power is employed and most all other statements are dropped. In the main, the statement of the power is reduced in proposed Article IV., Section 1, to this:

> The legislative power shall be vested in a legislature which shall consist of a senate and house of representatives and which shall hold its sessions at the seat of government.
>
> The legislative power shall extend to all rightful subjects of legislation not inconsistent with this constitution or the constitution of the United States.

A state's constitution should be an instrument from which the legislature can find power to attain the ideas of its members, to realize aspirations founded upon desires to serve and govern well, and to give the vigor government needs. It should not be a series or conglomeration of needless restraints or violations of the sound principles of republicanism. The protective devices of separation of powers, checks and balances, ultimate sovereignty within the people

at the polls, and the constitutional protection of due process and its requirement of reasonableness along with many other protective measures, including the honesty of capable men attracted to office by the respect and trust of their fellows, serve well to protect the populace. So, the legislature should be unchained as the Commission effectively recommends.[52]

F. Particularized Roles (Checks and Balances)

1. Budget

The legislature must have a most thoughtful role in the state budget. However, the matter should not be covered by specific constitutional provisions; and the Constitutional Revision Commission wisely has not so done. The governor formulates and proposes the budget; the legislature analyses it, exposes it to public view, and acts thereon. To do this it needs nothing other than the general and broad legislative powers already discussed.

2. Investigation

An uninformed legislature is avoided by use of legislative aids provided by statute and by the constitutional power of investigation. The constitutional power is implicit in the legislative power, and the Constitutional Revision Commission's elimination of much of the deadwood and rigidness of the constitution with respect to the legislature has made certain that there is nothing to hamper this important legislative role. Weakness in this legislative power would greatly detract from the ability of the legislature to act its part in the application of the theory of checks and balances, for this is an effective weapon against overstepping of any other branch, particularly the executive, in interims between legislative action on appropriations.

52. One could consume bales of paper writing on inadequate delegation, initiative, referendum, and related matters; but it would be a repeat or summary of writings and speeches of the past. Let references suffice: See the argument of U.S. Rep. Charles F. Scott of Kansas in 1911 wherein he argues for representative government and against direct legislation of the electorate through initiative and referendum. He made a great speech, and it is recorded in IX. Great Debates in American History 489 (1913). At p. 482 of the same work see a contrary argument by Senator Jonathan Bourne of Oregon made in 1910. The general subject is discussed in C. Beard, American Government and Politics 506, 515, 517 (5th ed. 1929); Fairchild and Seibold, *Constitutional Revision in Wisconsin,* 1950 Wis. L. Rev. 201, 223 (1950); and in W. Graves, American State Government 142 (4th ed. 1953).

3. Audit

Presently, there is no post audit provision in the New Mexico constitution. The Constitutional Revision Commission recommends: "The legislature shall, by joint resolution, appoint an auditor to serve at its pleasure. The auditor shall conduct post-audits as prescribed by law, and shall report to the legislature and to the governor."[53]

Fifteen states have a similar provision.[54] If the legislature is to be responsible for the investigation of financial fault and proper protection of the state's funds which will be paid out largely by the executive department, it must be in a position to audit the accounts of these persons and agencies handling the money. This necessitates an auditor owing his allegiance to the legislative branch.

4. Overriding the Veto

The veto should be duly regarded as a voice from one who represents the state-wide interest. Therefore, overriding the veto should occur in a manner giving due regard to the veto's meaning. Such due regard first results from the nature of the veto. That has been discussed earlier,[55] and it should be recalled that the line veto does exist. The line veto, when used, focuses attention well. A blanket veto carries usually a greater impact but not one so incisive as the line veto. Due regard of the veto also results from the required legislative action needed to override the veto. Generally, something other than a simple repassing of the measure seems called in answer. The *present* constitution requires a two-thirds vote to override the veto:[56] and the *proposed* constitution wisely contains a similar provision,[57] thus assuring due legislative regard for the veto.

53. 1967 Report of the Constitutional Revision Commission, Proposed N.M. Const. art. 4, § 21.

54. See 1967 Report of the Constitutional Revision Commission 43 (1966).

55. Ingram, *The Executive,* 7 Natural Resources J. 268, 289 (1967).

56. N.M. Const. art. 4, § 22.

57. 1967 Report of the Constitutional Revision Commission, Proposed N.M. Const. art. 4, § 20(c).