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THE PROBLEM OF LEGISLATIVE ORGANIZATION AND PROCEDURE IN MISSOURI

PAUL G. STEINBICKER†

In any consideration of constitutional revision, the provisions dealing with the legislature merit primary attention. In our age as never before, democracy itself is on trial; and democracy is above all else a matter of *legislative* organization and operation. For whatever the arrangements for the other functions of government, the question of its being democratic or undemocratic is essentially to be determined by the character of its policy-forming, or legislative agencies. It would appear, therefore, that if the people of Missouri are to fulfill their opportunity, indeed, their responsibility, to contribute to the future of democratic government, they must give serious thought to the problem of bringing the principles of democracy more completely into operation, as regards both the organization and the operation of their state legislature. The analysis which follows is intended primarily as a foundation, to encourage and to promote such serious thought.

1. BICAMERALISM VERSUS UNICAMERALISM

The outstanding feature of the present structure of Missouri's legislature is its bicameral character. Missouri is not, of course, unique in this respect. The fact that the legislatures of forty-six of the other forty-seven states in the union, as well as the national legislature, exhibit the same characteristic, indicates that bicameralism enjoys a well-nigh universal acceptance throughout the United States. But this has not always been the case. While it is true that the bicameral system has always been in the ascendancy in the United States, there has been, nevertheless, considerable experience in unicameralism. The colonial legislatures of Delaware and of Pennsylvania included but one chamber; and after the Declaration of Independence, three states (Georgia, Pennsylvania and Vermont) adopted the same type of organization, retaining it for thirteen, fourteen and forty-eight years respectively.¹ The best evidence available indicates that the experi-

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1. Graves, W. B., *State Government* (Rev. ed. 1941) 213.

ence of these jurisdictions with unicameral legislatures was at least as satisfactory as that of the others with the bicameral principle.²

Furthermore, since the advent of the twentieth century, the merits of bicameralism have been more and more seriously disputed. Prior to 1925, the proposition of adopting a unicameral legislature was submitted to the voters at least twenty-three times in eleven states, but it was defeated in every case. Then, in 1934, the electorate of Nebraska, under the leadership of United States Senator George W. Norris, voted in favor of such a change, to take effect in 1937. Since this initial success, proposals for unicameralism have been introduced, and in many cases were given serious consideration, in sixteen states in 1935, twenty-three states in 1937, and seven states in 1939.³ It is still true, of course, that the movement has succeeded only in Nebraska; but the fact that so many states have given, and are giving, attention to the problem, seems to justify the conclusion that the principle of bicameralism is no longer regarded as sacred and indisputable. More and more the relative merits of bicameralism and unicameralism are being freely and objectively discussed, and the results cannot but be wholly beneficial.

The widespread original acceptance of the bicameral plan has been based upon three propositions, all of which are now being subjected to keen criticism. First of all, it has been argued, the superiority of the bicameral system is proved by the experience of all ages; and what has worked well for centuries can be expected to go on working well. While this has been a very interesting contention, it has very little, if any validity, for the objective student of political institutions. To the latter, it appears to be merely a *statement* of superiority, offering no real supporting evidence. Essentially, this argument seems to rest upon the conviction that what is old must be good; that any institution which can survive the test of time must have merit. Actually, however, none of the proponents of bicameralism who accept this argument is willing to carry it to its logical conclusion. For if age is the test, despotism would appear to be a better form of government than democracy; certainly it is centuries older. Like-

2. Carroll, D. B., *The Unicameral Legislature in Vermont* (1933).

3. See Senning, J. P., *The One-House Legislature* (1937) and Graves, *op. cit. supra*, note 1, at 215.

wise, universal suffrage would have to be abandoned, in favor of a restored property qualification, on the basis of use throughout many centuries. Age, in and of itself, obviously offers no guarantee of superiority.

The second basic contention offered in support of bicameralism can be characterized as a form of the check-and-balance theory. It rests upon the belief that in a two-chamber system, one house would act as a check upon, and would correct the mistakes of, the other. While such a belief appears at first glance to be reasonable and logical, the practice of the bicameral system has contributed little or no actual evidence in its support. On the contrary, what objective evidence is available is mostly in the opposite direction. One study of the data in a single case, a session of the New York Legislature, made some years ago, disclosed little evidence of any checks imposed upon legislation by the double review of bills. The study revealed that only nineteen per cent of the bills passing one house were killed in the other, and only fifteen per cent of all bills were amended after passing from the house of origin to the other chamber. The measures killed or amended, moreover, did not deal with matters of great moment; on the contrary, they were in general relatively insignificant proposals. Besides, a large number of them would never have been initiated had the chamber in which they originated known that in the end it would have to accept full responsibility for them.⁴ A later study of the bicameral principle in operation, this time in Illinois, and covering four sessions of the legislature, led to similar conclusions. Only about one-fifth of the bills passed by the one house were defeated or amended in the other.⁵ A third inquiry, based on a single session of the Ohio General Assembly, showed that "the senate passed eighty-two per cent of the bills referred from the house, while the house passed only fifty-four per cent of the bills which it received from the senate."⁶ In this case it would seem that the chamber designed to do the checking was itself more often being checked.

4. Colvin, D. L., *The Bicameral Principle in the New York Legislature* (1913), cited in Beard, C. A., *American Government and Politics* (8th ed. 1939) 547.

5. Dodd, W. F., *State Government* (2d ed. 1928) 146.

6. Fletcher, *Bicameralism as Illustrated by the Ninetieth General Assembly of Ohio; A Technique for Studying the Legislative Process* (1938) 32 Am. Pol. Sci. Rev. 80.

In any case, all the evidence available fails to reach the heart of the problem. Even if it were admitted that one body checked the other in a bicameral system, the question should still remain as to whether the restraints were in every case in the public interest. With respect to this question, there is no evidence whatever to prove the superiority of the bicameral principle.

The third basic argument advanced by the proponents of the bicameral system can be dismissed briefly as no longer pertinent. The second chamber, it was alleged, was necessary to protect some minority, usually the minority of property owners, against the onslaughts of the masses, who would naturally be in control of the primary house. Thus, the two houses would necessarily represent different elements of the population. With the acceptance of the principles of democracy, however, this argument has lost all of its weight. No such difference does or should exist today; the members of both houses are everywhere selected by popular vote. Certainly neither house in any bicameral legislature is today willing to admit that it represents anything less than the whole people. The only differences actually are that the districts are usually larger and the terms frequently longer in the case of the so-called "upper house."

Surely, in view of these considerations, the possibilities of the unicameral plan deserve serious study in every state. It is not alleged that the plan will solve all the problems of state legislative organization or function. But it can no longer be denied that real weaknesses have developed in the operation of the bicameral system, the most important one being the dissipation of legislative responsibility to a point where the electorate is helpless to locate blameworthiness when and where it belongs. In fact, under the bicameral system, it is quite possible for practically all the members of both legislative chambers to "go on record" as being in favor of a particular bill, and yet to have no such bill enacted into law. The opportunities for "passing the buck" are almost unlimited under a bicameral organization, with consequences in the direction of public scepticism, cynicism and apathy that bode no good for the future of democratic institutions. Moreover, there is no truth in the contention that unicameralism is something new and untried. In our large cities, many of which exceed in size over half our states, the substitu-

tion of unicameralism for bicameralism has been productive of much good.⁷ The experience of other governments with unicameralism is also quite reassuring.⁸ It should therefore occasion no surprise that the expert political scientists who drafted the first Model State Constitution in 1921 recommended the unicameral plan, and that the same recommendation has been carried in each succeeding draft, the most recent of which was published in 1941.⁹ At the very least, it appears fair to state that the bicameral plan for legislative organization is on the defensive; and the acceptance of this fact in Missouri would of itself promise well for the future.

2. REPRESENTATION AND APPORTIONMENT

Aside from its establishment of bicameralism, the constitution of Missouri seems subject to considerable improvement in its other arrangements for the organization and structure of the general assembly. Its deficiencies are those of omission as well as commission; most of them are to be found in connection with the provisions for representation and apportionment.¹⁰

Perhaps the most essential principle of the democratic ideal is that which requires the election of policy-forming officials in free and equal elections by all normally functioning adults. In Missouri, two of the three elements contained in this principle have been realized: elections to our general assembly are free (since the adoption of a truly secret ballot law in 1941),¹¹ and the franchise is practically universal. But in the arrangements found in the state constitution for apportionment, there is unquestionably a serious violation of the third element in this basic principle: the element of *equality* of voting power. Clearly, the existing practices, even though they are given constitutional authorization, fail to give equal and adequate representation to urban communities. Clearly too, they fail to reflect the partisan preference of the state's voters as a whole. Some analysis of the present constitutional arrangements is therefore very much in order.

7. For a discussion of the "buck-passing" and other evils of the former two-chambered council for the City of St. Louis, see Carlos Hurd in *St. Louis Post-Dispatch*, Aug. 17, 1941, p. 1B: 3.

8. Cf., e. g., the Canadian provinces, which, except for Quebec and Nova Scotia, have unicameral legislatures.

9. See *Model State Constitution* (4th rev. ed. 1941) 5.

10. *Mo. Const.* (1875) art. IV, §§2-23.

11. *Mo. Laws* of 1941, 363, §1.

In so far as the house of representatives is concerned, the Constitution of 1875 definitely grants to the electors in the smaller, rural counties of the state, more representation per capita than it allows to the city-dwellers. The rule of apportionment is as follows:¹²

The ratio of representation shall be ascertained at each apportioning session of the General Assembly, by dividing the whole number of inhabitants of the State, as ascertained by the last decennial census of the United States, by the number two hundred. Each county having one ratio, or less, shall be entitled to one Representative; each county having two and a half times said ratio shall be entitled to two Representatives; each county having four times said ratio shall be entitled to three Representatives; each county having six times such ratio shall be entitled to four Representatives, and so on above that number, giving one additional member for every two and a half additional ratios.

Under this constitutional provision, the City of St. Louis, containing approximately twenty-one per cent of the state's total population, receives less than thirteen per cent of the membership in the lower house of the state's general assembly. The other counties of the state containing large urban areas are proportionately under-represented. Surely, such an arrangement can hardly merit praise as being in conformity with the fundamental principles of democracy.

What of the senate? By constitutional mandate, the size of the state senate is fixed at thirty-four members, to be elected from "convenient districts, as nearly equal in population as may be." When any county is entitled to more than one senator the circuit court of such county is empowered to subdivide the county into districts of compact and contiguous territory, and of population as nearly equal as may be, and corresponding in number with the senators to which such county may be entitled. Otherwise, the districts are to be drawn by the general assembly itself, at the first session after each United States decennial census (or a state census, if for some reason no federal census is taken). It is further provided that "if at any time, or from any cause, the General Assembly shall fail or refuse to district the State for Senators, * * * it shall be the duty of the Governor, Secretary

12. Mo. Const. (1875) art. IV, §2 .

of State and Attorney General, within thirty days after the adjournment of the General Assembly on which such duty devolved, to perform such duty, and to file in the office of the Secretary of State a full statement of the districts formed by them * * *." It would appear from these detailed arrangements that adequate precautions have been taken in our constitutional system against the long-continued existence of senatorial rotten boroughs. The fact is otherwise. The Forty-Sixth General Assembly adjourned in 1911 without having redistricted the state into senatorial districts. That duty thereupon devolved upon the governor, the secretary of state and the attorney general, in accordance with the constitutional mandate recited above. On April 8th, 1911, these officials did formally announce the new districts. In 1912, however, the Missouri Supreme Court declared this redistricting invalid.¹³ As a consequence, from that time to the present, in view of the failure of every general assembly to redistrict, there has been no re-arrangement of the senatorial districts since 1901. (Even the districting of 1901 was accomplished, not by the general assembly, but by the governor, the secretary of state and the attorney general). The resulting disparity in population among various senatorial districts leaves the state of Missouri unquestionably in the position of tolerating, under its present constitution, a real rotten-borough system of representation. For the City of St. Louis, mainly because of its slow growth in recent years, the situation in respect to the senate is not so unsatisfactory as it is with reference to the house of representatives. St. Louis is allotted seventeen and a half per cent of the membership of the senate, and it has, as already indicated, approximately twenty-one per cent of the state's population. But a few other glaring examples will serve to demonstrate the serious lack of conformity between the principles of democracy and the practice in constructing the Missouri senate. The twenty-fifth senatorial district, including the counties of Franklin, Gasconade and St. Louis, had in 1940, according to the United States Census Bureau, a population of 320,512. The ninth senatorial district, including the counties of Adair, Macon and Shelby, had in the same year, according to the same source, a population of 53,750.

13. State ex rel. Barrett v. Hitchcock (1911) 241 Mo. 433, 146 S. W. 40, for failure to conform to procedural requirements, *inter alia*, "the proclamation of the Governor."

Each district, of course, is still entitled to elect one senator. Jackson County, with a population of 477,828, is awarded, under the districting of 1901, two seats in the senate; the sixteenth and seventeenth senatorial districts, with a combined population of 135,694, likewise send two.¹⁴

In view of these basic deficiencies in the existing constitutional arrangements for apportionment of representation for both houses of the Missouri general assembly, some improvement appears to be imperative. At the very least, a more effective constitutional mandate must be provided, to insure regular and periodic reapportionment, in accordance with current shifts in population; obviously, too, something additional must supplement the existing constitutional provisions requiring districts to be "as nearly equal in population as may be." In this connection, it is noteworthy that the fourth edition of the National Municipal League's Model State Constitution offers Proportional Representation¹⁵ as the method for electing the members of its model state legislature. Of course, even with the system of Proportional Representation, the authors of the Model Constitution recognize the necessity of dividing the typical American state into districts. But they wisely minimize the danger of gerrymandering and of the perpetuation of rotten boroughs by the following provisions:¹⁶

For the purpose of electing members of the legislature, the state shall be divided into districts, composed of contiguous and compact territory, from each of which there shall be elected from three to seven members, in accordance with the population of the respective districts. * * * After each decennial census, the secretary of the legislature shall reallocate the number of members assigned to each district, in accordance with the changes in the population of the several districts. The boundaries of the districts and the total number of members may be altered only by law and not more frequently than once in each census period.

14. All these population figures are taken from the *Sixteenth Census of the United States, Population, First Series, Missouri* (1940).

15. I. e., the Hare System of the Single Transferable Vote, popularly known as "P. R." That there are other, simpler, but somewhat less accurate systems of election that will provide proportional representation, see Hoag, C. G., and Hallett, G. H. Jr., *Proportional Representation* (1926); Gosnell, A List System with Single Candidate Preference (1939) 33 Am. Pol. Sci. Rev. 645; Hilpert, Making Representative Government Representative (1938) 13 Ohio L. Rep. 481.

16. *Model State Constitution* (4th rev. ed. 1941) 6.

Certainly the problem of apportionment is one that, in the face of existing conditions, merits immediate attention in Missouri. Another aspect of the same problem relates to the political complexion that results from the prevailing practices. On this latter problem, the general conclusion of those familiar with the subject is well expressed in the following quotation:¹⁷

It cannot be said, however, that all currents of political opinion find representation in legislative bodies. This defect is due mainly to the fact that, with few exceptions, both senators and members of the lower house are chosen in small, single-member districts, and the candidate who obtains a simple plurality of the popular vote, however small, wins. This means that large minorities—even majorities, when the voters are divided among the candidates of three or more parties—are left with no spokesman in either house. A remedy for this condition would be some scheme of comparatively large electoral districts, each returning not less than three or five representatives, all elected under an arrangement which will yield each considerable political element representation in fair proportion to its voting strength, (such as might be obtained under a system of proportional representation).

3. OTHER STRUCTURAL FEATURES

(a) *Size*

In so far as the other structural features of the Missouri general assembly are concerned, some appear to be quite satisfactory, others just the opposite. As to size, it is of course impossible to set up any thoroughly scientific standards. The prevailing trend, however, is certainly in the direction of smaller legislative bodies. As early as 1912, a legislature of sixty was proposed in Oregon. In Kansas, in 1913, Governor Hodges advocated a total of less than thirty. In the following year, the legislature of California considered (but did not accept) a reduction to fifty. In 1934, when Nebraska's voters adopted unicameralism, the size of the legislature was fixed at not less than thirty nor more than fifty. In 1935, the Governor of Michigan proposed cutting the size of each house of that state's legislature in half, the senate from thirty-two to sixteen, the house from one hundred to fifty. It was his expressed conviction that such a reduction in the size

17. Ogg, F. A., and Ray, P. O., *Introduction to American Government* (6th ed. 1938) 676-677.

of the legislature would result in substantial economy as well as in increased legislative efficiency.¹⁸ If these proposals can be accepted as indicative of the modern point of view, it would appear that Missouri, with a house of representatives of one hundred and fifty, and a senate of thirty-four, has an unnecessarily large general assembly. Most American citizens feel that the United States Congress, with a total of five hundred and thirty-one members, does represent quite adequately the one hundred and thirty-five million in the American population. At the other extreme, the population of the city of Detroit, in the neighborhood of one and a half millions, finds no lack of representation in a city council of nine. There is, then, some reason to question the necessity of having one hundred and eighty-four members in the general assembly, to represent the three and three-quarter million population of the state of Missouri. In the interests both of economy and efficiency, some reduction in this figure might well be contemplated.

(b) *Qualifications of Members*

With reference to the constitutional provisions fixing the qualifications and terms of members of the general assembly, there seems to be no real ground for criticism. The age limits, citizenship, residence and tax-paying requirements are found in practically all state constitutions, and American experience with them is ample justification for their continuance. The same seems to be true in regard to the terms of office. Two year terms for members of the house and four year terms for members of the senate, are found to be established in the constitutions of over half the states in the union, and appear on the basis of actual experience to be practical and generally satisfactory. If any change might be suggested, it would be merely in the direction of lengthening the term for members of the house to four years also. Four states have already provided a four year term for both houses, and find no reason to question the wisdom of such an arrangement.

(c) *Compensation*

Our constitutional arrangements concerning the compensation of our legislators, however, are subject to criticism. Apparently, these provisions indicate a firm belief in the possibility of get-

18. Bromage, A. W., *State Government and Administration in the United States* (1936) 200-201.

ting something for nothing. In the first place, they make it impossible for the legislator to receive "directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to [his] office, other than the compensation allowed by law."¹⁹ In the second place, the traveling, postage, stationery and other expenses incidental to the office are provided for only in very miserly fashion. Finally, the salary provisions themselves reach a real low in niggardliness. The compensation for functioning as a legislator in Missouri may "not exceed five dollars per day for the first seventy days of each session, and after that not to exceed one dollar per day for the remainder of the session, except * * * during revising sessions, when they may receive five dollars per day for one hundred and twenty days, and one dollar per day for the remainder of such sessions."²⁰ Such compensation arrangements, when considered in connection with the fact that regular sessions of the legislature occur only once every two years, leads inevitably to the conclusion that our legislators must literally *contribute* their services; even more, they must to a certain extent actually pay out of their own pockets for the doubtful privilege of serving as members of the Missouri general assembly. The compensation is not even adequate to pay ordinary living expenses during sessions. In a word, the typical state senator or representative in Missouri, who devotes almost his entire time during the sessions, and a great deal of time during the other months of his term, to his legislative work, receives only part of his living expenses, and nothing at all for his time and his services.²¹ With the position of state legislator being made so thoroughly unattractive, and even expensive, it should occasion no surprise that the best-qualified citizens of Missouri rarely contemplate the possibility of standing for election to either house of the general assembly. It is therefore imperative that the present salary arrangements in respect to the legislature be altered. Under these present arrangements, the annual salary of our legislators must be somewhere in the neighborhood of two hundred and fifty dollars. At such a rate of compensation the

19. As to complications resulting under modern legislative techniques from such an otherwise apparently desirable provision, see Comment (1942) 27 WASHINGTON U. LAW QUARTERLY 452.

20. Mo. Const. (1875) art. IV, §§15, 16.

21. See Toll, Should We Pay Law Makers? (Feb. 1931) 4 State Government 10-13.

people of Missouri have no right to expect able and qualified men to serve. By and large, the rule that we get what we pay for still holds good. At the very least, in a state which annually expends over one hundred million dollars, a constitutional guarantee providing an annual living wage for the members of the general assembly, could hardly throw the state into bankruptcy.

(d) *Length of Regular Sessions*

There is another defect in our basic legislative arrangements, that is connected with this matter of compensation. The present constitution allows regular sessions of the assembly only once in each biennium, and then, by reason of the compensation arrangements (five dollars per day for the first seventy days, and one dollar per day thereafter) clearly attempts to discourage the continuation of any session beyond seventy days. In the light of modern conditions confronting the average state legislature, such provisions are extremely unwise. In the first place, they clearly indicate an acceptance of the theory that legislatures are necessary evils, and that therefore they should be allowed as little time as possible in which to do their work. Such a theory may have been more or less acceptable in the horse and buggy days, when there was little or nothing for legislatures to do. But under the conditions which prevail in our contemporary civilization, the application of such a theory misses by far the factual needs of the situation. The process of legislation in modern society is very nearly a continuous process. The need for legislation is not a need that arises only once in every two years, from January to May or June in odd-numbered years. Ordinarily legislative problems ought to be met when the need arises, not in periodic spasms nor as emergencies in special sessions. As a matter of fact, the business of being a state legislator under modern conditions is practically a full-time occupation. It is high time that this fact be recognized, and that therefore, full time compensation be provided, and all constitutional attempts, direct or indirect, to limit the length of legislative sessions be removed. Only by some such improvement can we avoid the periodic piling high of the legislative hopper, the great waste of legislative time waiting for committees to digest hundreds of bills, and the frantic congestion of the closing days of the session.²²

22. On this problem, see the very interesting solution proposed in the *Model State Constitution* (4th rev. ed. 1941) 31.

An important improvement might be suggested at this point. It has often been said that one of the most important developments of recent years, with respect to legislative bodies, has been the expansion, both in volume and in complexity, of the work confronting them. Obviously, if proper consideration is to be given to an ever-increasing number of increasingly difficult questions, more is necessary than merely increasing the time at the disposal of the legislators. Of even greater importance in this connection than efforts to provide more time (and as already indicated, such efforts are important), are the attempts to develop legislative planning. A recent statement to this effect, by a well-qualified authority, deserves quotation:²³

It has become evident to all students of legislation that a considerable part of the difficulty experienced with legislative machinery grows out of the lack of planning which is largely responsible for the rush at the end of the session and for many other legislative abuses. It takes so long to decide what kinds of legislation are needed, and to revise and perfect the necessary bills and get them through the preliminary stages, that, especially in those states which impose a definite limit upon the length of sessions, no adequate opportunity remains for the proper discussion and consideration of these measures. It is reasoned that if a plan for the session could be worked out before the legislature convenes, a large part of the time now lost in the early weeks or months of the session could be saved.

To meet this new need, various devices, including the split session in California,²⁴ and the executive council in Wisconsin,²⁵ have been attempted. But the most successful has undoubtedly been the legislative council. The council idea has now spread to about a dozen states. It involves, essentially, an arrangement whereby responsible members of the legislature, together with, in some cases, responsible non-legislators, form a council, to arrange a more or less complete and authoritative legislative program, prior to the opening of the session. While it is true that more than one of the governors of Missouri have suggested the desirability of such a reform, the state has not yet joined the progressive ranks in this respect. It should be emphasized, moreover, that

23. Graves, *op. cit. supra*, note 1, at 329-330.

24. See *id.* at 249.

25. See *id.* at 330-331.

if a legislative council is really to function, it must be given constitutional status. Such, at any rate, is the view of most authorities on the subject; and Missouri might well devote serious attention to that view.

4. PROCEDURAL LIMITATIONS

The procedural limitations imposed upon the general assembly by the present Constitution of Missouri are generally adequate and satisfactory. Each house is left essentially free to determine its own rules of procedure, the exceptions being those usually recognized as legitimately finding a place in the fundamental law. A quorum to do business is defined as a majority of the whole membership of each house. Sessions must normally be public. Laws may be passed only by bill. Bills may originate in either house, and every bill must be read on three different days in each house before final passage. No bill may be considered for final passage unless it has been reported by a committee and previously printed for the use of the members. Neither may any bill, except appropriation bills, contain more than one subject, which must be clearly expressed in its title. A record vote is required on final passage of all bills. Conference committees are provided to resolve disagreements between the two houses. Precautions are taken to prevent "shot-gun" re-enactment or amendment of laws. The usual provisions are made concerning the gubernatorial veto, with a two-thirds vote in each house being required to override such veto.

Adequate arrangements for direct legislation, through the initiative and the referendum, are likewise provided.²⁶ The validity and justification for these procedural limitations is too obvious to require comment. As a matter of fact, in these respects the constitution of Missouri approaches quite closely the ideal, at least as defined by the authors of the Model State Constitution.

For the rest, while undoubtedly it is true that legislative procedure in the general assembly of Missouri is capable of improvement in many directions, for example, mechanical voting devices, fuller use of expert legislative drafting services, *etc.*, it is generally felt that such reforms should be achieved by ordinary legislative action. If the essentials are provided for in the

26. See Faust, *Popular Sovereignty in Missouri* (1942) 27 WASHINGTON U. LAW QUARTERLY 312.

basic law, there should be much less difficulty in securing the lesser improvements from the legislative body itself.

5. SUBSTANTIVE LIMITATIONS

There remains, finally, the question of the *substantial* limitations imposed by the constitution upon the powers of the general assembly. It is, of course, impossible in a cursory survey such as this, to deal adequately with this question. Certain general observations, however, are in order. In the first place, it is well to remember that any state constitution is at one and the same time both a grant of power and a limitation of power. Article IV of the Missouri constitution opens with the statement: "The *legislative power*, subject to the limitations herein contained, shall be vested in a Senate and a House of Representatives, to be styled "The General Assembly of the State of Missouri'." Such a general grant of power might be regarded as fully adequate, for legislative purposes. Yet one finds, scattered throughout the entire constitution, numerous specific grants of power to this general assembly, some mandatory, and some merely permissive. Many of these specific powers, it is true, would not normally be classified as legislative powers. Such, for example, would be the powers granted in connection with impeachment, or with tied or contested elections, or with removing judges from office. Most of them, however, do seem to come within the general grant of "legislative" power. It seems hardly necessary, in view of the opening statement found in article IV and quoted above, to confer specifically upon the general assembly the power to establish criminal courts, to set up registration laws for the large cities and counties, to set up a system of free and public education, to regulate corporations, and so on. The length of our state constitution, often the subject of adverse criticism, might be substantially reduced by the deletion of many of these apparently unnecessary provisions. But even though their continued inclusion should be deemed desirable, some attempt ought to be made to bring them together, particularly in the article (IV) dealing with the legislature, rather than leave these provisions scattered as they now are, throughout the whole length and breadth of our fundamental law.

The same criticism can be brought against the many provisions of the constitution which *limit* the power of the general

assembly. Altogether apart from the question of the desirability of such limitations in themselves, the fact that they are so scattered throughout all parts of the constitution justifies criticism. Article IV, already referred to as dealing primarily with the legislative department, does contain a lengthy and detailed series of "limitations on the legislative power." Naturally, one is left with the impression that here all, or nearly all, of the specific limitations on the powers of the general assembly may be found. But such is not the case. In fact, on a volume basis, there are more specific limitations on legislative powers set down in the other articles of the constitution than in article IV itself. Here again, it might at least be in the interest of clarity and good order to group the greater part of such limitations together in one place in the constitution.

What can be said, however, of the wisdom, rather than of the location, of all these constitutional limitations on the substantive powers of the general assembly? Any proper analysis of this question must obviously be based upon some sort of classification of the limitations as they are found in the present constitution; sweeping generalizations are always out of order. In a certain sense, of course, no classification is possible; for the entire constitution can be viewed as one, over-all limitation on the legislative as well as on the other agencies of the state government. When, for example, the constitution provides that the executive power shall be vested in a governor, to be chosen in a certain way, it is implicitly imposing a limitation on the power of the general assembly. Again, the whole Bill of Rights constitutes a substantial limitation on the legislative power. But these are limitations the wisdom of which can quite properly be taken for granted. Certainly, there is no one in the state of Missouri who would advocate the removal of the constitutional provisions setting up the basic framework of state government, or defining the fundamental rights of individuals. Constitutional government *means* limited government, and all Americans accept the ideals and principles of constitutional government. With such limitations as these, therefore, there can be no quarrel. Of far more concern to objective students of state government is the tendency to impose an ever-increasing number of direct, specific limitations on the power of the legislative agencies. No survey of the

present constitutional position of the Missouri legislature would therefore be complete without some analysis of the degree to which this tendency is demonstrated in the Missouri constitution.

By all odds, the greater part of the specific limitations on the powers of the Missouri legislature are financial limitations.²⁷ In purely quantitative terms, nearly one-third of the entire length of our state's fundamental law (over thirty pages) is taken up with such limitations. A detailed list, of course, is impossible here; but certain of the more important restrictions of this variety may be catalogued. There are sections requiring a fixed order for the making of appropriations, sections which, incidentally have been honored as much in the breach as in the observance. There are others imposing a fixed maximum rate for the general property tax, and a uniform rule that all property be taxed according to its value. The legislature is forbidden to exempt counties or other local units of government from their share of the state taxes, or to exempt persons or corporations from taxation. There are clauses prohibiting the appropriation of money to private or sectarian schools, or to religious groups. Other clauses limit the period for which appropriations can be made. The loan or pledge of state credit to private enterprises or to local governments, or subscription by the state to the stock of private corporations is also prohibited. The appropriation for public education may not fall below twenty-five per cent of all state revenue. Taxation of all lands (and presumably other properties) owned by the United States, is also expressly forbidden.

Of great importance also are the limitations on the power of the legislature to incur indebtedness. As a basic rule, the general assembly is forbidden to contract debts on behalf of the state; then, as amendments to this basic rule, certain specific exceptions are provided for: to renew existing indebtedness, to provide for unforeseen emergency, when the cost is less than \$250,000.00. If the emergency involves more than this amount, any new contracting of debt must be approved by a two-thirds majority of the voters in a special election. Other exceptions, usually added in the form of piecemeal amendments, include one to provide

27. See Chute and Brannon, *The Financial, Debt, and Taxation Provisions of the Missouri Constitution* (1942) 27 WASHINGTON U. LAW QUARTERLY 371.

employment and rural homes for war veterans, another to provide for the state highway system, and another to provide bonuses for World War I veterans. Mention might also be made of the fact that the power of local units of government to incur debts is likewise subjected to stringent limitations.

The wisdom of all these shackles on the financial power of our legislative bodies is open to serious question.²⁸ In the first place, the imposition of precise and specific restrictions does not leave sufficient flexibility to meet the changing needs of changing times. A ceiling for state indebtedness, for example, which may have been high enough in the economy of 1875, may prove to be altogether inadequate under the circumstances prevailing two generations later. A constitutional mandate setting aside a minimum of twenty-five per cent of all state revenues for public education may well mean, in a particular financial situation, sheer injustice to the aged and the needy of the state. In the second place, and more important perhaps, it must be generally admitted that the limitations, precise and direct though they be, have been ineffective. The perennial complaint is still being made against legislative extravagance. Of what value are restrictions that fail to restrict? Worse than their ineffectiveness may be their deleterious effect upon the state of mind of both voters and legislators. There is some reason to believe that all these limitations have encouraged an attitude of cynicism, hypocrisy and questionable ingenuity on the part of considerable segments of the body politic. Our constitutional system might well be better off without most of them.

The second basic category of limitations imposed on the Missouri legislature has to do with special legislation, that is, legislation which applies to, or is for the benefit of, some particular person, corporation or locality,²⁹ or which is not of general and uniform application throughout the state, or which does not apply to all persons or corporations included in some authorized classification. The reasons for some restrictions in this respect are obvious. With no restraints, there is a wide field for favoritism and corruption. Practically all state constitutions deal with the

28. *Ibid.*

29. See Norton, *Municipal Government in Missouri, with Special Reference to the Metropolitan Areas* (1942) 27 WASHINGTON U. LAW QUARTERLY 405.

problem of special legislation in one way or another. In the Missouri constitution, the method employed is simple. The subjects which may not be dealt with by special or local laws are specifically listed; and the list includes no less than thirty-three items, ranging from the granting of divorces to the regulation of local government affairs. In many instances, these restrictions have unquestionably had a salutary effect. Yet a great amount of special legislation continues to be enacted, for legislators have devised numerous and ingenious ways of evading such restrictions.³⁰ Moreover, the increasing complexity of state legislative problems, and the diversity of local needs, does seem to justify some relaxation of the rules restricting special legislation, by methods that do not endanger the public interest.³¹

There is no term to describe the remaining constitutional limitations on the power of the Missouri legislature except "miscellaneous." Many deal with legislative power over corporations, with special mention for railroad and banking corporations. Another forbids the authorization of lotteries, another the establishment of criminal courts in counties with a population of less than fifty thousand, another the adoption of registration laws for counties with a population of less than one hundred thousand, or for cities with a population of less than ten thousand, another the removal of the county seat of any county. The municipal home rule provision probably also belongs in this category. Some of these "miscellaneous" restrictions, as for example these same home rule provisions, are undoubtedly wise. Some are merely harmless. But others may, under certain circumstances, be positively inimical to the public welfare. At least, the list should be scrutinized in the light of modern conditions, which differ considerably from those prevailing in 1875.

Clearly, there is room for improvement in the present constitutional arrangements for the organization and operation of the General Assembly of Missouri. Some of the existing deficiencies, both positive and negative, have been pointed out. Admittedly, in many cases, there may be disagreement with the criticisms made. Admittedly too, there may be different opinions as to the means and methods suggested for eliminating the defects. But on one point there can be no difference or disagreement. The

30. *Ibid.*

31. See, e. g., Jones, C. L., *Statute Law-Making* (1923) 43.

efficiency of democratic government is primarily a matter of the efficiency of the legislative branch. The people of Missouri, soon to decide whether a constitutional convention shall be summoned to deal with this and all the other aspects of the problem of democratic government, have therefore a great opportunity. But it is also a great responsibility. Under the circumstances now prevailing, it is for this reason a matter of fundamental importance that all the energy and capacity available be devoted to the task of narrowing the gap between democracy as it is and democracy as it should be.

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