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The Florida Constitution of 1885--A Critique

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THE FLORIDA CONSTITUTION OF 1885 — A CRITIQUE

MANNING J. DAUER AND WILLIAM C. HAVARD*

"The State Constitutions are the oldest things in the political history of America . . . ."[1]

The Constitution of the State of Florida[2] was written in 1885 and went into effect in 1887. It is the fifth constitution in the history of the state, the others having been enacted in 1838 (effective 1845), 1861, 1865, and 1868 (effective 1869). It has served the state as basic law for a period of time over one third as long as all of the previous constitutions together; and, since Florida did not become a state until 1845, it has been in use four times as long as the original constitution and well over three times as long as the 1868 document, which is second among the five constitutions in length of service. Since the beginning of World War II serious concern has been expressed over the adequacy of the Constitution of 1885 to serve the needs of the

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[1]1 BRYCE, THE AMERICAN COMMONWEALTH 427 (new ed. 1922).

[2]Unless otherwise indicated, all references are to the Constitution of the State of Florida Adopted by the Convention of 1885 (as amended). Annotations are found in 25, 26 FLA. STAT. ANN. (1950). The Florida Constitution has received much attention. A special committee of the Florida State Bar Association, under the chairmanship of D. H. Redfearn, studied the document for a number of years and has published two drafts of *A Proposed Constitution for Florida* (1947, 1949). In addition, the Citizens Constitution Committee of Florida, which has been operating actively under the chairmanship of J. E. Dovell since 1949, has published four pamphlets: THE CITIZENS CONSTITUTION COMMITTEE OF FLORIDA (1950); THREE

state. As a result, a number of proposals for completely revising basic law have been introduced in the Legislature. It is never of order to examine the legal bases of our government, but the pre: time seems especially propitious for such an undertaking both fı the standpoint of the number of people who are committed to support of revision and because of the fact that the rate of cha of practically all conditions of the state seems to be accelerating raı than diminishing.

Written constitutions are such an integral part of our governmeı arrangement that more often than not we accept without questioı consideration their existence, the basic premises to which they committed, and the political institutions that derive from them. order to take inventory of our Constitution it is necessary to go bey the existing document and inquire into the general nature of wri constitutions. Furthermore, the conditions and needs of the s must be considered from the standpoint of their influence on matters to be included in such a document. A constitution, like other social institution, must be set against the relevant historical, tural, and theoretical backgrounds.

Nature and Content of a State Constitution

Practically any commentary on constitutions will begin by fining a constitution as the basic or fundamental law of a poliı community. Thus a constitution organizes the government, outl the powers to be exercised by the government and the limitation: such powers, and sets forth the rights reserved to the individuals comprise the society. It is the source from which all other politica stitutions and laws stem.

The American federal and state constitutions, with the excep of a very few earlier examples, represent the beginnings of moc written constitutionalism. Earlier types of successful constituti like the British Constitution, although not set out in any one p

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Recommendations for Constitutional Revision in Florida (1951); Purposes Objectives (1952); Florida: 1954 and the Constitution of 1885 (1954). authors acknowledge their debt to the work of these and other advocates of stitutional reform in Florida. A number of citizens' committees appointed bȷ Governor are currently studying the Florida Constitution, but reports of committees, as well as of the Governor's Committee on Constitutional Revi are still in progress. The most complete work on Florida government is Dı Laird and Weiss, The Government and Administration of Florida (1954).

as single written documents, operated through ingrained traditional practices that were not easily overturned. Some of these practices were set forth in exceptionally hallowed enactments such as the Magna Charta, the Bill of Rights of 1689, the Act of Settlement of 1701, the Parliamentary Act of 1911, and the Statute of Westminster of 1931.

Whether written or unwritten, a constitution must have two attributes if it is to serve its purpose: (1) its provisions must give expression to the real allocation of power in the society, because the social structure of the community antedates its legal pronouncements; and (2) it, and the institutions and the laws growing out of it, must become the objects of that veneration and confidence in their workability which strengthen the sense of unity and loyalty of the citizenry. These two conditions mean that a constitution must be both the result of the society which created it and the progenitor of the political arrangements by which the society maintains an ordered existence. Furthermore, if a constitution is to survive, it must be flexible enough to be responsive to changes in the social, political, and economic structure of the society; otherwise, the two attributes mentioned above cannot be preserved.

Both the United States Constitution and the unwritten British Constitution have fulfilled these obligations admirably. The extent to which the British Constitution has been made adaptable to many hundreds of years of change caused one of the great writers on that constitution to comment that it was really composed of two parts, namely, a dignified part and an efficient part, the former serving as an unchanging symbol of the unified existence of the body politic and the latter constituting the basis for the functioning of national political institutions.[3] Although not precisely analogous, the United States Constitution, revered by the people as an expression of the freedom and unity of the nation, may also be divided into two parts. The first part consists of the written document, with its sweeping pronouncements on the nature of the union and the rights of individuals. The second part is composed of the vast body of case law, statutes, and usages which carry the constitutional principles into effect and permit changes to take place without social disruption.

The Constitution when drafted was so completely in accord with the social background of the country that its basic principles have been preserved despite vast changes in territory, population, social stratification, and technology. Under the same basic document, and

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[3]Bagehot, The English Constitution 4 (2d ed. 1929).

without violating its fundamental postulates, this country has gone through a period of agrarianism, a period of industrialism, and an era of almost completely unimpeded *laissez-faire* capitalism as well as through an era of governmentally restricted capitalism. No constitution is written to stand unchanged; a good constitution will of itself make change possible. Only the issue of slavery failed of settlement through the constitutional processes in the United States, and even then the nation emerged from the ordeal with the Constitution more strongly entrenched than ever in both its dignified and efficient parts.

Basic Principles

Certain principles of American constitutionalism are clearly recognizable as forming the cornerstone of the whole edifice of government. The first and most fundamental of these principles is that the people are the sole source of power. Following this idea is the conception that government can exercise only such powers as are bestowed on it by the people. There must, of course, be certain limitations on the exercise of governmental powers. The most notable structurally imposed restriction is the separation of powers. Adapted from the political theories of Montesquieu, the separation of powers principle provides for vesting the legitimate powers of government in three distinct branches — executive, legislative, and judicial. Members of one branch may neither hold office simultaneously in either of the others nor exercise any power assigned to another. The only exception is the specific assignment to each of the three branches of certain powers designed as checks and balances against the remaining two. Another and more substantive constitutional limitation on the exercise of governmental powers is the bill of rights, which guarantees to individuals certain rights and privileges that are not to be infringed by governmental authority. These four principles — popular sovereignty, bestowal of powers, separation of powers, and bills of rights — are universally accepted fundamentals of both the national and state constitutions in the United States.

The principle of federalism complicates our national constitutional structure, inasmuch as it implies a division of legal sovereignty between the central government and its constituent members, the states. This factor is extremely important to the constitutional picture in this country, because provision must be made not only for deciding what powers are to be assigned and what limitations are to be placed on government but also how a division of these legitimate basic powers

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is to be made between the national and state governments.

The settlement of this issue has resulted in a significant difference between state constitutions and the Federal Constitution. That difference is expressed in the Tenth Amendment to the United States Constitution, which provides that the national government is a government of delegated powers while the states are governments of reserved or inherent powers. Reduced to its essentials, this formula for the division of powers means that the federal government is restricted to the exercise of those powers that are clearly granted to it or those powers implied therefrom.[4] Thus the United States Constitution, in providing for the national government, is principally a power-granting document. The state constitutions, on the other hand, are essentially limitations on power.[5] Lord Bryce, one of the great commentators on the American Constitution, notes:[6]

> "That is to say, the authority of a State is an inherent, not a delegated, authority. It has all the powers which any independent government can have, except such as it can be affirmatively shown to have stripped itself of, while the Federal Government has only such powers as it can be affirmatively shown to have received. To use the legal expression, the presumption is always for a State, and the burden of proof lies upon anyone who denies its authority in a particular matter."

Because the major common law police powers are thus left to the states, some commentators regard it as inevitable that state constitutions will be longer and will require much more frequent amendment than the Federal Constitution; and the possible need for complete revision of states' basic laws is also recognized. According to this line of thought, it is shorter work to prescribe the powers that may be exercised by a governing body than to try to confine a presumptively unlimited government to the exercise of powers consonant with needs.

Against this argument is the fact that the states are already re-

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[4]For simplicity's sake this discussion does not cover the refinements of the division of powers formula, especially in the form of the doctrine of implied powers, laid down originally in McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819), with all of its implications of national supremacy.

[5]In a long line of decisions beginning with Cotton v. Leon County, 6 Fla. 610 (1856), the Florida Court has recognized the fact that the state Constitution is a limitation upon rather than a grant of legislative powers.

[6]1 The American Commonwealth 421 (new ed. 1922).

stricted by the contents of the Federal Constitution. By specific restricting clauses, the states are prohibited from exercising several important powers, and their relations with one another are regulated. Furthermore, there are certain general restrictions in the Federal Constitution against arbitrary action by the states. Among the more important of these are the guarantee of article IV, section 4, that every state shall have a republican form of government and the provisions of the fourteenth amendment whereby the state constitutions and laws must grant to all citizens due process of law and the equal protection of the laws. Finally, article VI provides that the Federal Constitution, laws made in pursuance thereof, and treaties made under its authority constitute the supreme law of the land, the constitution or laws of any state to the contrary notwithstanding. Consequently, a valid state constitution must originally be drafted in accordance with existing federal constitutional limitations; and, in the event of any conflict, an action of the federal government that is found to be constitutional takes precedence over the state constitution. In the hierarchy of laws, then, the state constitutions would rank behind the Federal Constitution, treaties, federal enactments, and administrative regulations. Despite the fact, however, that federal powers pursuant to the Constitution are themselves in a state of flux, the state constitution retains its place as a basic law in relation to the vast number of powers residuary in the state.

It is hardly surprising, in view of the problem just discussed, that state constitutions have not held a place of esteem comparable to the Federal Constitution. This lack of prestige of state constitutions and the governments under them is unfortunate. After all, the first state constitutions were drafted prior to the Federal Constitution, and much of the latter's content was derived from the former.

Revisions of State Constitutions. A variety of causes have resulted in frequent revision of state constitutions. Redrafting occurred during the period of the American Revolution largely because of distrust of the colonial governors, who were frequently appointed from England. The Federal Constitution, however, represented a reaction in favor of a stronger executive. In line with this trend, the first move to redraft state constitutions came during the period from 1790 to 1820. Another redrafting movement, to make state constitutions more democratic, occurred between 1820 and 1850. During this later movement, state constitutions began to grow longer because of a desire to place restrictions on the legislatures, particularly on fiscal powers, which

had frequently been used for chartering "wildcat" banks and for practically unlimited encouragement of the building of canals and railroads at state expense. This trend caused more and more restrictive material to be incorporated into the state constitutions at the very time when social change and the increasing functions of government were demanding more governmental flexibility to cope with growing problems.[7] Much of the shift of power to Washington may be attributed to the rigidity of state government in the face of new problems. This rigidity goes back, at least to some extent, to the basic laws of the various states.

Two new types of revisions have occurred since the Civil War. In Florida and other southern states there were the reconstruction constitutions, and then the constitutions following reconstruction, which were similar to the present Florida Constitution. These documents continued the earlier trend by becoming even more detailed with each redraft.

A final type of revision has occurred in some states, calling for a general reorganization of state government to provide more adequate machinery for modern problems, especially more modern management in the executive branch. This first occurred in New York in 1894; it began in the south with the movement launched by the then Governor (now Senator) Harry F. Byrd in Virginia in 1929. This type of reorganization includes such recent constitutional revisions as those of Missouri in 1945, New Jersey in 1948, and Tennessee, through a limited constitutional convention, in 1953.

Content

To the question, What should go into a state constitution? no *a priori* answer can be given. Even the commonly recurring advice that a constitution should be limited to basic matters and should exclude statutory material does not aid in the determination of the practical differentiation between basic and statutory law. To make such a distinction requires initial consideration of those things that cannot possibly be conceived as being omitted from a constitution and also requires filling in the details of the document around these.

Traditionally, the structural content of a constitution of the American type contains four major parts: a bill of rights, the structure of government, governmental powers, and a provision for piece-

[7]GRAVES, AMERICAN STATE GOVERNMENT 48 (4th ed. 1953).

meal amendment.[8] The bill of rights and certain aspects of the structure of government are so well established as to preclude any extensive change. The bill of rights must contain the basic civil liberties, the protections guaranteed to those accused of crimes, and certain property rights. The governmental structure invariably will be built around that form of government which we have come to know as a representative democracy. That is, the principal law-making agency will be an assembly voted into office by the adult population through electoral techniques designed to weight each ballot fairly equally. Inevitably the chief theoretical protection against the abuse of governmental powers will be the separation of powers and the concommitant system of checks and balances; the chief executive will be a single official vested with the responsibility of seeing that the laws are faithfully executed; and the highest judicial body will be a supreme court, explicitly or implicitly exercising the power of judicial review.

Given this framework, the main problems in drafting a good constitution center on the question of what limitations are to be placed on the powers exercised by the branches of government, with particular concern for the legislative branch, since the powers of the other two are so closely related to the type of policy made by the legislature. Much of what is included will depend on what the state's political traditions are and what the people feel to be necessary to insure that the most desirable kind of governmental organization and proper behavior of public officials will be forthcoming. Some general rules may be advanced, such as those requiring that power be equivalent to responsibility; that the branches of government be responsive to the popular will; and that the document possess clarity for insuring ease of interpretation. Ultimately, however, each matter to be included should be dealt with in terms of three considerations:

(1) What is the purpose to be effected and how can it best be achieved in terms either of the establishment of a particular political institutional arrangement or the inclusion of a particular limitation?

(2) Are there any powers of such importance that it is necessary to establish constitutional mandates to the appropriate agencies to carry them out — mandates which could not be changed except by the process of amendment in which reference would be made to the people?

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[8] *Id.* at 49.

(3) What institutional arrangements or power limitations have proved most successful in this state or similar political units in accomplishing these purposes?[9]

To a great extent these three questions will provide the foundation for evaluation of the substantive parts of the Florida Constitution and for suggestions as to its improvement. Before turning to that document, however, it will prove beneficial to consider some of the general social factors which influence the content of a specific constitution.

FLORIDA AS A CHANGING STATE

Both the recentness and the speed of Florida's growth have often been the subject of comment. As one writer puts it: "There are many who will agree that Florida was indeed the first state to be discovered, yet the last to be developed."[10] There are so many indices of this development that it is impractical to do more than present a random few for illustrative purposes. These facts, however, should serve to keep in the foreground the vast differences between the Florida of 1887 and the Florida of today when assessing the Constitution as a practical basis for contemporary government.

Growth

Population. From 1885 to 1953 the population of Florida increased from 338,406 to an estimated 3,268,000.[11] The decennial rate of population growth in the past fifty years has never been below twice the percentile rate at which the United States as a whole has grown. Also, the population density has increased from an average of seven[12] to nearly fifty-six persons per square mile.

Urban. There is a sharp division between rural and urban areas in Florida today. Of the three cities classified as urban in 1880 – Jacksonville, Key West, and Pensacola – none had a population of 20,000,

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[9] *Cf.* Hyneman, *The Illinois Constitution and Democratic Government,* 46 ILL. L. REV. 511, 514 (1951).

[10] See 2 DOVELL, FLORIDA, HISTORIC, DRAMATIC CONTEMPORARY 894 (1952).

[11] Except when otherwise indicated, most of the subsequent material is from *Statistical Abstract of the United States* (1953) or *Statistical Abstract of the Eleventh Census* (1890).

[12] See the population map in ABBEY, FLORIDA LAND OF CHANGE 326 (1941).

and their combined population was less than 12.2 per cent of the population of the state. Today 68 per cent of the people live in urban areas, and many of those sections classed as rural have numerous characteristics of cities.

Commercial. Although commercial indices require highly skilled handling for an accurate representation, because of such distorting factors as variations in dollar values, even some limited comparisons are revealing. The number of inhabitants today is about ten times the number in 1885. In two major economic fields alone, however – citrus[13] and manufacturing – the present output is about 100 times that of 1885. This is a substantial increase in commercial income, even in terms of differences in dollar value.

Transportation. There has been a tremendous increase in the facilities of Florida's ground transportation system. The number of miles of operating railroad tracks has increased from 2,471 miles in 1890 to 4,809 miles in 1951. Also there are now 41,464 miles of public highways used by over one million vehicles owned by Florida citizens, as well as the innumerable automobiles of tourists.

Governmental Activities. Tremendous increases in the activities of government have accompanied the growth and changing modes of life in the state. Even the detailed administration of the functions of government in 1885 was almost entirely in the hands of the constitutionally established cabinet officers. The Constitution of 1885 provided for some additions to the administrative agencies of the state, thereby recognizing growing needs for activities such as a public health program.[14] For the most part, however, the functions of government were still overwhelmingly of a protective rather than of a regulatory or service type. It was not until 1887, with the creation of the Florida Railroad Commission,[15] that the state began an extensive program of administrative regulation of businesses affected with a public interest. Of the three functions that cost the taxpayer most today – education, welfare, and highways – only education had a place in the state's activities in 1885. The State Road Department did not come into existence until 1915,[16] and the State Welfare Board was

[13]FLORIDA DEP'T OF AGRICULTURE, CITRUS INDUSTRY IN FLORIDA 7 (1954).
[14]FLA. CONST. art. XV.
[15]Fla. Laws 1887, c. 3746.
[16]Fla. Laws 1915, c. 6883.

created in 1927.[17] Even the Board of Conservation was not brought into being until 1933,[18] while the Florida Industrial Commission has been in operation only since 1935.[19] The now more than 100 administrative agencies of the state, which employ over 26,000 people, are largely the product of an urban, industrial society which demands that government provide myriads of services of a regulatory or assistance type unknown to the framers of the 1885 Constitution.

In 1887, during the first session of the Legislature under the 1885 Constitution, only 158 acts were passed. Today the Legislature passes some 1500 laws per session, more than half of which are general acts. The Comptroller's report for the fiscal year ending June 30, 1953, shows a tremendous increase over the report for 1887. The largest single item of expenditure in 1887 was fees for jurors and witnesses; the largest functional expenditure in fiscal year 1953 was for highways. In fiscal year 1953 state institutions received over 200 times the allocations made to them in 1887, and the cost of other forms of welfare amounted to much more than this.

Despite the enormous differences in the economic, social, and governmental composition of the state, the government operates under a Constitution framed in light of the experience of the very attenuated activities of the late nineteenth century. This situation would not have worked any hardship but for the fact that the Constitution contained many provisions designed solely for the period then at hand. The result is the Constitution we know today – a long, frequently amended, and in part unsatisfactory, basic law. To document these charges, this article will examine the Florida Constitution of 1885 from two standpoints: (1) its draftsmanship and (2) its provisions for Florida government.

Defective Constitutional Draftsmanship

As an expression of the legal fundamentals of a political society, a constitution should be a unified, literate, and easily comprehended document. Its internal consistency should be beyond question; otherwise there is a strong implication of uncertainty about the basic principles on which civil government stands. In practical terms, "a good

[17]Fla. Laws 1927, c. 12288.
[18]Fla. Laws 1933, c. 16178.
[19]Fla. Laws 1935, c. 17481.

constitution is more than a collection of good articles and sections. It must be an organic unity in which each part is adjusted so that the whole makes sense."[20]

Even the most perfunctory inquirer cannot fail to be impressed by the fact that the Florida Constitution does not fulfill these exacting requirements. That a casual count disclosed more than 200 errors of spelling and grammar[21] is a fact condemning in itself, but this disclosure is merely indicative of more serious drafting faults which interfere with the proper functioning of the Constitution. A badly drafted constitution may be expected to increase the difficulties of interpretation, lead to extensive litigation, add to the necessity for frequent amendment, and perhaps even lessen the effectiveness with which the actions of governmental officials are kept responsive to the public.

The draftmanship of the Florida Constitution is open to criticism on six major points: (1) excessive detail, (2) obsolete matter, (3) dispersion of material throughout the document, (4) inconsistencies and contradictions, (5) incorporation by reference to other legal enactments of materials outside the Constitution, and (6) errors.[22] These faults vary somewhat in seriousness, and they are undoubtedly of less importance than some of the problems posed by the structure and policy of government provided for by the Constitution. Taken in their entirety, however, these drafting deficiencies add up to a serious indictment against the Constitution of 1885.

Excessive Detail

Most state constitutions are not confined even approximately to the inclusion of material that would be generally recognized as basic. They tend to run to great lengths on matters which either should not be included at all or should be constitutionally determined only in the very broadest terms and otherwise left to the legislature. Consequently, the majority of state constitutions are exactly the type of document that Chief Justice Marshall warned against in speaking for broad construction in *McCulloch v. Maryland:*[23]

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[20]Bebout, *Adaptation of the Model State Constitution* in MODEL STATE CONSTITUTION 52 (5th ed. 1950).

[21]REDFEARN, A PROPOSED CONSTITUTION FOR FLORIDA 2 (1947).

[22]For the development of these and other criteria of constitutional draftsmanship see Owen, *The Need for Constitutional Revision in Louisiana,* 8 LA. L. REV. 1, 2 (1947).

[23] 17 U.S. (4 Wheat.) 316, 407 (1819).

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> "A constitution, to contain an accurate detail of all subdivisions of which its great powers will admit, and all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind . . . ."

The attempt to place too detailed constitutional limitations upon state government has resulted in "the entrenchment of more and more vested interests and a blurring of the distinction between constitutional and statute law which has confused the public and stymied healthy progress in law and government."[24]

In this respect the Florida Constitution is about average in comparison with the other states. As amended, it is about 35,000 words in length and is composed of twenty articles. It is, however, by no means the lengthiest or most detailed state constitution. The California basic law is well over twice as long as that of Florida, and the Louisiana Constitution is several hundred pages in length.

Comparison with the worst offenders on this score does not, of course, allay the very real problems of the excessive detail of the Constitution under consideration. A more sobering comparison may be made with the United States Constitution, which is about one fifth as long as Florida's. It contains only seven articles and has been amended only twenty-two times, and yet it has been in effect over twice as long as Florida's basic law.

The amount of material and the types of subjects covered by the Florida Constitution lead to adverse effects on governmental arrangements. The lack of distinction between basic and ordinary law deprives the Legislature and local governing bodies of the flexibility needed to settle problems that arise as a result of the changing conditions of contemporary existence. It leads also perhaps to carelessness of the governing agencies in regard to the carrying out of some of the clearly drawn directives of the Constitution. On what other grounds can we explain the failure of the Legislature to abide by its constitutional mandate[25] to establish a uniform system of local government and to provide for the classification, incorporation, and structure of such governments by general, rather than by special, laws? The Legislature similarly avoids with impunity the even more important

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[24]Editorial introduction to a symposium entitled *Modernizing State Constitutions*, 37 NAT'L MUNIC. REV. 2 (1948).

[25]FLA. CONST. art. III, §24.

provision requiring decennial equalization of apportionment in the Senate.[26]

The failure of the Constitution to provide a general framework within which the Legislature could deal with its problems resulted in the inclusion of much statutory detail. Pertinent examples of this may be found in those parts of the Constitution that deal with local government, such as article VIII, which pertains to counties and cities. In that article a relatively short portion contains the general provisions defining the legislative power relative to local government and establishing the actual structure of government for the counties, whereas over three times as much space is devoted to the details of government of specific cities and counties. Moreover, article XX, added by amendment in 1946, permits the Legislature to consolidate, abolish, or create county officers for Orange County, with the requirement that the action be approved by referendum in the county concerned. Furthermore, in the general election of November 1954, the voters approved an amendment giving local units the general authority to consolidate city and county tax assessing and collecting upon referendum approval of the local electorate. Nevertheless, the special provisions permitting such consolidation in specific counties will continue to appear in the Constitution. Surely these details result from a constitutional policy too narrowly conceived, and their inclusion obscures the already hazy lines of constitutional authority pertaining to local government.

Another example is found in article IX, section 16, which sets out at great length the details of the distribution formula and administration of the two cents of the state gasoline tax distributed among the counties. This unnecessary detail could have been avoided by including a general requirement that a portion of this tax be devoted to the purposes contemplated and then allowing the Legislature to set the details of the formula and administration. Under the present scheme the terms of distribution are constitutionally set on the basis of a formula sure to be quickly outmoded in view of changing conditions.[27]

Still another example reflecting the tendency to regulate the affairs of the state by long, restrictive constitutional provisions is found in article XII, section 18. This verbose section was added to the Constitution by amendment in 1952, and contains the complete method for administering the distribution and use of motor vehicle licensing funds dedicated to the County Capital Outlay and Debt Service School Fund.

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[26]FLA. CONST. art. VII, §3.

[27]The details of this provision are so pertinent to the discussion at hand that

Obsolete Matter

The failure to make any attempt to exclude all but the most fundamental matters from the Constitution has resulted in many instances of obsolescence. The establishment of salaries to be paid to members of the executive and judicial branches is a good illustration. In compilation after compilation of the Constitution, the Governor's salary is listed at $3,500 a year and the members of the Cabinet at $1,500 or $2,000.[28] Immediately after setting these salaries, the same constitutional provision goes on to permit the Legislature to change them after the Constitution has been in effect for eight years. Not only are the constitutional salaries obsolete in terms of what the officeholders actually receive, but by placing them in the Constitution the framers made it necessary to include the provision permitting the Legislature to change salaries, a provision that allows the Constitution to be altered in its written particulars without going through the formal process of amendment.

A similar situation results from the provision for judicial salaries, except that in this case the extent to which the judiciary article has been amended complicates these sections even more than those of the executive branch. Article V, section 1, as amended in 1914, permits the Legislature to "prescribe the compensation of the Justices and judges of the several courts . . . ." Section 8 of the same article, however, as amended in 1902, establishes the salaries of circuit judges at $2,750, thereby contradicting the provision in section 9 that sets circuit judges' salaries at $2,500 a year and annual salaries of the justices of the Supreme Court at $3,000.

Few will disagree that the setting of salaries is a statutory rather than a constitutional matter. Even the Florida Constitution recognizes it as such by general provisions allowing the Legislature to make salary changes. Fluctuations in the economic system necessitate change, and therefore any fixed salary soon becomes obsolete. On the whole, the setting of salaries is perhaps best left to legislative discretion altogether; it is one subject in which the public evinces much interest, and retribution at the polls may be expected to be swift in the event of abuse.

Another form of antiquated material consists of amendments that were to remain in effect for a stipulated period only. Two examples in

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it seems worthwhile to include them at the end of the text in Appendix I.

[28]FLA. CONST. art. IV, §29.

the field of tax exemption stand out. Article IX, section 12, added by amendment in 1930, permits a fifteen-year tax exemption to certain types of manfacturing establishments, "except that no exemption which shall become effective by virtue of this amendment shall extend beyond the year 1948." Section 14 of the same article, added in 1934, provides a similar exemption for motion picture studios that is not to extend beyond 1943. Policies like this, spelled out in detail in the Constitution, are apparently felt to be necessary because of limitations on legislative power, but a consistent tax policy becomes difficult to achieve when such restrictions exist. If government is to perform its job well, the Legislature needs to be freer to develop a tax policy consistent with the end it seeks to achieve, whether it be the attraction of new industry to the state or some other purpose.

Other examples of obsolete material having less effect on the operation of the Constitution are plentiful. The duelling provision,[29] for instance, would appear to be no longer of such importance as to be embodied in the basic law, if indeed it ever was. In other instances mere verbiage obscures the outlines of the Constitution. Typical of this propensity are clauses in which the Constitution, after having laid out a general policy, proceeds to charge the Legislature with a mandate to enact such laws as shall be necessary to carry the particular article into effect.[30] The Legislature inherently has a mandate by the very nature of the Constitution to effect with all possible dispatch any policy of the basic law, and an additional special mandate does not add to the obligation. Moreover, since the Legislature is responsible solely to the people and is not subject to mandamus proceedings, such mandates to carry out mandates may even be taken as a condonation of failures or procrastination on the part of the Legislature in the past.

Dispersion of Material

A third major fault in the draftsmanship of the Florida Constitution is the manner in which provisions covering a single subject are scattered throughout the entire document. Too often this condition makes it impossible to consult a single portion of the document for information on a major point; instead it is necessary to work through the entire document in order to be sure not to overlook a

[29]FLA. CONST. art. VI, §5.

[30]See, *e.g.*, FLA. CONST. art. X, §6; art. XI, §3; art. XIII, §4.

provision tucked away many pages from the article covering the general topic being researched. Dispersion also makes for redundancy and lack of clarity, and it leads directly to the more serious faults of contradiction and inconsistency. Examples of dispersion are too numerous to be catalogued completely, but some of the more noticeable instances may be given.

Between article III pertaining to the Legislature and article VII concerning census and apportionment, much material devoted to other subjects intervenes; yet the two articles complement each other so closely that they should be combined. A specific point will illustrate both the closeness of the substantive connection and the dispersion of the written material. Article III, section 3, sets the time for choosing members of the House of Representatives, while article VII, section 1, establishes the time for choosing members of the Senate.

Each of the major subjects covered by the Constitution demonstrates the same diffusion of related material. The general executive veto provision is in the legislative article,[31] but the item veto on appropriation bills is contained in the executive article.[32] Taxation limitations are widely dispersed among several articles, and all but one of the homestead exemption provisions are carried in an article separate from the general article on taxation and finance.[33] Typical of the repetitive nature of the document is the establishment of the office of Superintendent of Public Instruction in different words in two different places.[34]

In the matter of dispersion, the most glaring examples of all, however, are found in article XVI, appropriately entitled "Miscellaneous Provisions." Almost all of the thirty-three sections not only could be placed elsewhere but actually belong in other places. Some random illustrations will make this apparent. Section 3 on payment of salaries of officers should certainly be in the executive provisions; section 4 on location of county officers belongs in the article on local government; section 6, on the publication and distribution of laws, section 7, which is a limitation on the terms of offices created by the Legislature, and section 30 on legislative power over common carriers, are all legislative in nature and should be in that part of the document. Sec-

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[31]FLA. CONST. art. III, §28.

[32]FLA. CONST. art. IV, §18.

[33]FLA. CONST. art. X pertains to homestead and exemptions; the homestead personalty exemption of $500 is contained in art. IX, §11, the taxation and finance article.

[34]FLA. CONST. art. IV, §20; art. XII, §2.

tion 8 on elections seems properly to fit into the article on suffrage and eligibility, which incidentally might be more broadly entitled "Suffrage and Elections"; and section 16 on exceptions to corporate property's liability to taxation belongs in the fiscal article. Even matters that seem appropriate to the declaration of rights are not exempt from this curious hodgepodge article. Sections 22, 23, and 29 on mechanics' liens, quartering of soldiers, and compensation for condemned property, respectively, are surely guarantees of individual rights.

Inconsistencies and Contradictions

When a constitution reaches the length of the present Florida Constitution and has been so frequently amended, it is certain to contain parts that are not in complete agreement. It may be argued that, since a constitution will have to be interpreted in its details by the courts anyway, occurrences of contradictions and inconsistencies are of small consequence. But it is one thing to interpret the principles of a constitution in relation to their applicability to a particular case in controversy, and another to make an interpretation involving conflicts within the document itself. Respect for a constitution is obviously made more difficult by faulty draftsmanship and lack of clarity. Indirectly these intangibles also affect the practical operation of government through their tendency to increase the amount of litigation and to encourage evasion of constitutional responsibilities.

The most blatant examples of contradiction as well as the worst faults of draftsmanship in the Constitution occur in the judiciary article.[35] Article V, section 8, makes provision for *eight* circuit judges to be appointed by the Governor for terms of six years. In the same section the Legislature is given the power to divide the state into *eight* judicial circuits, each circuit having one judge who will hold at least two terms of court in each county of the circuit each year. The section further provides that the Governor may in his discretion order a temporary exchange of circuits or order any judge to hold one or more terms in any other circuit and that the judge will reside in the circuit of which he is judge. Section 10 of article V then sets up *seven* judicial circuits until the Legislature divides the state into *eight* districts.[36]

Section 45 of the judiciary article alters the circuit court organi-

[35]FLA. CONST. art. V.

[36]The reason for the discrepancy in numbers is that §8 was amended in 1902

zation by providing that there shall be no more than *fifteen* judicial circuits and that each circuit shall contain at least fifty thousand inhabitants. Finally, section 46 of article V changes the method of selecting circuit judges from appointment by the Governor with Senate confirmation to popular election, and section 51 of the same article proceeds further to alter the circuit court structure by creating a *sixteenth* circuit consisting of Monroe County. In addition, operation of the circuit court in particular counties is affected by a number of amendments.[37]

The reader of the Constitution is so baffled by this series of bewildering changes that only the most scrupulously careful analysis of the conflicting provisions will yield an understanding of the actual organization of the circuit courts. The explanation for this confusion is very simple: the judiciary article has been amended time and time again.

These amendments have added new sections to the body of the article, but the old sections that they replaced have not been deleted. The simplicity of the explanation regarding the manner in which these contradictory sections came into being, however, does not alter the resultant malconstruction of the Constitution. On the contrary, it indicates a rather cavalier attitude toward the serious business of drafting and passing amendments. If amendments are to be placed in the body of the basic law, consistency would seem to require that they be drafted as substitutes for the material they were designed to displace, so that in future compilations the old wording could be deleted in favor of the new. In this manner the Constitution would give only the current structure and would not contain obsolete sections out of keeping with the operative provisions.

The difficulty in interpreting the judiciary article is evidenced by the significant case of *State* ex rel. *West v. Butler*.[38] The facts of the case stem directly from the method of amendment by which new parts of the Constitution may come into conflict with older parts. Section 8 of the judiciary article stipulated in part that one judge shall be assigned to each circuit. In 1909 the Legislature proposed, and the people passed in 1910, an amendment to section 35 of this article, which now reads as follows:[39]

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to provide for 8 rather than 7 circuits, but the Constitution continues to carry the original provisions of §10, with its 7 circuits.

[37]See, *e.g.*, FLA. CONST. art. V, §§39, 42.

[38]70 Fla. 102, 69 So. 771 (1915).

[39]Italics supplied.

"No courts other than herein specified shall be established in this State, *except that the Legislature may provide for the creation and establishment of such additional Judicial Circuits as may from time to time become necessary, and for the appointment by the Governor and confirmation by the Senate of additional Circuit Judges therefor* . . . ."

Acting on the basis of this amendment, the Legislature in 1915 established the Twelfth Judicial Circuit and took the unprecedented step of providing two judges for that circuit.[40] Upon the appointment of Judge Butler as the additional circuit judge, the Attorney General instituted quo warranto proceedings against the creation of a new circuit and the appointment of an additional judge. In a 3-2 decision, the Supreme Court decided that the appointment of an additional judge was unconstitutional and entered a decree of ouster against Butler. The case turned mainly on the question of whether the wording of section 35, as amended, permitted the Legislature to provide more than one judge for each circuit or simply permitted the establishment of additional circuits, while retaining the single judge requirement imposed by section 8 of article V. The majority opinion by Justice Whitfield is interesting not only for the eloquent expression of the standards the Court applies in reconciling different parts of the Constitution but also for the careful grammatical analysis made of section 35 in order to disclose legislative intent – an analysis that might better have been made earlier by the drafters of the amendment.

With respect to standards of interpretation, Justice Whitfield stated that the wording of the Constitution has to be read in context and considered in its entirety in light of the intent of the lawmakers.[41] It is the duty of the Court to resolve apparent conflicts in the basic law in such a manner that all parts of the document retain their intended effect. Therefore, "when a constitutional provision will bear two constructions, one of which is consistent with, and the other inconsistent with, an intention expressed clearly in a previous section, the former must be adopted, that both provisions may stand and have effect."[42]

In accordance with these standards and by means of grammatical analysis, Justice Whitfield found that there is really no conflict. The

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[40]Fla. Laws 1915, c. 6899.

[41]State *ex rel.* West v. Butler, 70 Fla. 102, 124, 69 So. 771, 777 (1915).

[42]*Id.* at 134, 69 So. at 781.

meaning of section 35 is not to be construed as altering section 8 by overruling the limitation of each circuit to one judge, because the plural words *additional Circuit Judges* in section 35 are manifestly used as the legal and grammatical accompaniment of the antecedent and controlling plural words *additional Judicial Circuits*.[43] The only power of the Legislature to establish additional judgeships, then, was a direct concomitant of the power to create new circuits, and each circuit was still restricted to a single judge.

In retrospect it appears either that the Legislature and the people were poorer students of the language than the majority of the Court or that their intentions were very short-lived, because in 1921 the Legislature proposed, and in 1922 the people adopted, an amendment adding section 43 to article V. The new section stipulated, "The Legislature may from time to time and as the business of any Circuit requires, provide for the appointment of one or more additional Circuit Judges for such Circuit," thereby permitting what the *Butler* case had denied under the controversial clause in section 35.

Many other examples of apparent contradiction may be found in article V. In addition, other parts of the Constitution are not altogether free from this fault. One example should suffice. Article IV, section 16 states, "The Governor shall appoint all commissioned officers of the State Militia, including an adjutant general for the State, with the rank of brigadier general, who shall be chief of staff," while according to article XIV, section 3, "The Governor, *by and with the consent of the Senate,* shall appoint two Major-Generals, and four Brigadier-Generals of militia."[44]

Inconsistencies are less apparent even to the careful reader than are contradictions, but they too are often present. Perhaps the most obvious examples are to be found in the variation with which the Constitution treats subjects of apparently equal importance. It is particularly difficult, for instance, to rationalize the establishment of certain administrative agencies by the Constitution, while others that seem to be of fully as much significance have only statutory status. Even those agencies blessed with constitutional mention are variously treated: some are mentioned casually in relation to general legislative powers;[45] others are actually established in the Constitution;[46] and

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[43]*Id.* at 131, 69 So. at 780.

[44]Italics supplied.

[45]See art. V, §35, for a reference allowing the Legislature the power to clothe a railroad commission with judicial powers.

[46]Constitutionally established administrative agencies include: Board of Com-

the Legislature is given a constitutional mandate or permissive power to establish still others.[47] It may be thought that this objection is mere quibbling or fault finding for the purpose of expanding the evidence against the Constitution. Nevertheless, the inconsistencies shown by the Constitution in these instances are actually indicative of haphazard constitutional growth accompanying the expansion of governmental functions and an uncertainty about the powers of the Legislature to deal with problems requiring expansion of administration and the development of administrative techniques.

Incorporation by Reference of Other Legal Materials

The Florida Constitution does not prescribe in its own language all of the regulations it embraces. Instead, several constitutional arrangements are handled by the stipulation that the matters concerned shall be controlled by specified earlier constitutions or by federal, state, or local enactments. This device would not seem to work a serious hardship in the interpretation of the basic law unless the references could be changed so as to affect the Constitution; but its use does indicate a willingness to overlook the distinction between basic and ordinary law. If a subject is important enough to be included in the Constitution, then the provisions of the Constitution covering it should be complete in themselves. It is ironic that brevity should be sought by this type of reference, when so many parts of the document go into such detail.

The most extreme example of this inclusion by reference is found in article VIII, section 11, which fixes the Dade County Commissioners' Districts by references to resolutions passed by the Dade County Commission. In some clauses of this section page references to minutes of the county commissioners' meetings are included, presumably in order to add precision to the references.

Another example occurs in relation to the gasoline tax receipts provisions. In allocating the gasoline tax proceeds to be distributed

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missioners of State Institutions, art. IV, §17; Game and Fresh Water Fish Commission, art. IV, §30; State Board of Administration, art. IX, §16(b); State Board of Education, art. VII, §3; and a pardon board, art. IV, §12. In addition, certain individual offices such as the Adjutant General, Supervisor of Public Instruction, and Supervisor of Conservation are given constitutional status.

[47]The Legislature has a constitutional mandate to establish a state board of health, art. XV, §1; and has constitutional permissive power to create a parole commission, art. XVI, §32.

among the counties, the Constitution provides that one part of the sum shall be distributed "according to the counties' contributions to the cost of state road construction in the ratio of distribution as provided in Chapter 15659, Laws of Florida, Acts of 1931 . . . ."[48]

Other instances of incorporation by more general references may be justified to a greater extent than the examples given, but their existence still raises questions. Article X, section 3, pertaining to homestead and exemptions, states: "The exemptions provided for in the Constitution of this State adopted in 1868 shall apply as to all debts contracted and judgments rendered since the adoption thereof and prior to the adoption of this Constitution." This reference, while perhaps necessary, seems to belong in the schedule article of the Constitution, inasmuch as it is designed to provide for the transition from the old to a new constitution.

In addition, other general references to federal policies may be cited as exemplifying the desire to make sure that the state does not lose any benefits to be derived from federal enactments, even though the Legislature is prohibited from acting in these matters. After defining age and residence requirements for welfare benefits, article XIII, section 3, then states:[49]

> ". . . where by any law of the United States, a lessor [sic] or different period of residence, age or citizenship shall be fixed in order for the State of Florida to participate in any Federal grants that might be made for such purposes, the Legislature may prescribe such requirements as to citizenship, age and residence as will be consistent with and not in conflict with such Federal law."

In this instance it would appear desirable, in view of the federal-state nature of old age assistance, to allow the Legislature a freer hand in working out qualifications within the framework of federal requirements rather than fixing them constitutionally.

Essentially the same type of escape clause is provided in article IX, section 11, which, after prohibiting state income or inheritance taxes, states, in substance, that the Legislature can tax estates or inheritances up to the amount of credit allowed to the state by the United

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[48]FLA. CONST. art. IX, §16.

[49]The commas needed preceding the word "age" wherever it appears in the quoted portion are omitted in the original.

States tax law but only so long as the federal credit is extended.

Although verging on a policy question, it may well be asked whether it is feasible in the long run to oppose a tax policy on principle while at the same time providing a loophole so that the proceeds of that form of taxation will not be lost to the state if the policy is applied by another taxing authority.

Errors

The errors found in the Constitution, other than those of grammatical construction and spelling, are not intrinsically serious, but they do point to other disturbing symptoms. The most noticeable error is the misnumbering of sections, a drafting fault that graphically illustrates a sort of constitutional slovenliness resulting from the frequency with which the Constitution has been amended in its details.

Section 49 of article V, for example, was erroneously numbered 46 when proposed by the Legislature in 1947. Again, in 1949 the Legislature wrongly numbered sections 50 and 51 of article V when they were proposed as amendments. In article VIII, sections 12, 13, 14, 15, 20, and 21 were wrongly labeled 11, 12, 13, 14, 13, and 14, respectively, at the time they were added by amendment. The numbers were so disordered that the Secretary of State was authorized to number correctly sections 18 and 19 of this article when they were added in 1947. Section 33 of article XVI was also misnumbered 32. And although the Constitution lists a section 16 of article XII, the section is blank because an amendment proposed in 1908 was defeated, while the next addition to the article, which was passed in 1912, was labeled section 17.

The faults of draftsmanship in the Florida Constitution delineated here do not exhaust the examples that might be given. Even so, these deficiencies alone constitute a good argument for constitutional revision in this state. The complexities of the literary style of Florida's basic law are so great that it is difficult to classify them; very often one drafting fault is so closely related to others that the reader tends to give up entirely the effort to find clarity in the various provisions of the document.

The reasons for this situation are fairly apparent — the Constitution too often seeks to regulate, or to control entirely, matters that are susceptible to changing conditions and should not be placed, by inclusion in the Constitution, beyond the possibility of fairly rapid change. In many instances the Convention of 1885 appears in retro-

spect to have attempted to make final decisions on transitory problems, relying on its judgment in preference to that of future legislative assemblies. The necessity for changing many of these legislative provisions by amendment has undoubtedly resulted in additional drafting faults, the final result being the Constitution as it appears today.

STRUCTURE AND POWERS OF GOVERNMENT

It has been noted that a constitution of the American type contains a bill of rights, a plan for the structure of government, a definition of powers and limitations of government, and a provision for piecemeal change. In combination these parts are designed to carry out the following purposes: (1) to reaffirm the location of the ultimate power over government and to prescribe the way in which that power is to be exercised in controlling the government; (2) to establish the major institutions through which the powers of government are to be carried out; (3) to limit the powers of government that may be carried out by these institutional agencies; (4) to provide for the procedures by which the powers are to be exercised; and (5) to define certain powers or functions which the government must carry out.

The various articles and sections of a constitution interact to effect these purposes. In most cases the purposes are so interwoven that a single article or section may involve several of them. The affirmation of the seat of power and the way in which it is used to control the government are defined primarily in those parts of a constitution that are concerned with the political processes, notably the provisions on suffrage and elections and the role of the people in amending the basic law. The Florida Constitution makes explicit the basic characteristic of American constitutionalism, which holds that the sole source of power is in the people: "All political power is inherent in the people. Government is instituted for the protection, security and benefit of the citizens, and they have the right to alter or amend the same whenever the public good may require it . . . ."[50]

The main outlines of the organization of the government in a state constitution are established in the articles on the legislative, executive, and judicial branches and on local government. In applying the separation of powers principle, which is the main structural characteristic of a state constitution, Florida's basic law goes beyond the Federal Constitution by including a separate article clearly setting

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[50]FLA. CONST. decl. of rights, §2.

forth the distribution of powers rather than establishing the doctrine by construction alone. It prescribes:[51]

> "The powers of the government of the State of Florida, shall be divided into three departments; Legislative, Executive and Judicial; and no person properly belonging to one of the departments shall exercise any powers appertaining to either of the others, except in cases expressly provided for by this Constitution."

Finally, almost all parts of the Constitution are concerned with limiting governmental powers, giving mandates to governmental authorities, and defining procedural requirements. The bill of rights, which is referred to as the "Declaration of Rights" in the Florida Constitution, limits governmental control over individuals and guarantees certain procedures of law to persons accused of a crime. The various checks and balances of one branch of government against the others are set up to insure internal control; the fiscal article is included in order to limit taxes and expenditures, and to control the handling of public funds in a manner consonant with the public interest; and various parts of the document are designed to require the government to carry out functions of government, such as public education, that are so basic to the welfare of a state as to demand constitutional status.

To facilitate examination of the structure and powers of government provided by the Constitution of 1885, the following topics will be considered in order: the bill of rights, suffrage and elections, the legislature, the executive, the judiciary, taxation and finance, local government, and the process of amendment. In dealing with each of these topics it should be recognized that there are very few arrangements which are universally accepted by constitutional authorities, and, even when such concensus of experts exists, local predispositions will often necessitate modification. Many observers in Florida hold, for example, that public opinion will hardly tolerate any interference with the existing constitutional provisions which: (1) prohibit a state income tax;[52] (2) provide for the distribution to the counties of tax receipts from the excise tax on the operation of pari-mutuel pools;[53] and (3) establish the homestead tax exemption of $5,000 on the

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[51]FLA. CONST. art. II.
[52]FLA. CONST. art. IX, §11.
[53]FLA. CONST. art. IX, §15.

assessed value of residential property occupied by the owner.[54] The practical impossibility of adopting certain desirable practices, however, does not abrogate the responsibility for using them as the standard by which the present systems are measured. Even when compromise is required, it is necessary to be aware of it as such rather than to follow the prescription that "whatever is, is right."

Bill of Rights

The basic provisions of a bill of rights are so well established in the tradition of American constitutionalism that they are not likely to be modified greatly, nor should they be. The Florida Constitution's Declaration of Rights is located immediately after the preamble and is not a numbered article of the basic law. It follows the general pattern of rights laid down by the United States Constitution, with some additions and with a great deal more verbosity. The substantive civil liberties of speech, press, assembly, petition, and religion are included, as well as the usual procedural guarantees to persons accused of crime or subject to searches and seizures. Recognition and protection of the rights of private property are of the usual type, including a due process clause and eminent domain provisions that protect against seizure of private property without just compensation. In fact, the latter guarantee is laid down not only in the declaration of rights but is also included in more detail in the article entitled "Miscellaneous Provisions."[55] Slavery is prohibited, and treason is defined in the declaration of rights; and prohibitions against legislative enactments, such as bills impairing the obligation of contracts, bills of attainder, and ex post facto laws, are established.

Although Florida has not seen fit to include in its declaration of rights certain guarantees of economic security such as unemployment insurance, old age pensions, or prohibition of child labor,[56] two provisions of the Constitution of 1885 contain overtones of an economic concern which are related to the trend toward incorporating these matters in the Constitution. One is the section in the miscellaneous article pertaining to mechanics liens,[57] and the other is the politically con-

[54]FLA. CONST. art. X, §7.

[55]FLA. CONST. art. XVI, §29.

[56]GRAVES, AMERICAN STATE GOVERNMENT 51 (4th ed. 1953). Emphasis is placed by Graves on the fact that some of these economic protections have come to assume about as much importance as the older political, civil, and procedural rights.

[57]FLA. CONST. art. XVI, §22.

troversial "right to work" clause, which was added to the declaration of rights by an amendment adopted in 1944.[58]

The National Municipal League, in its *Model State Constitution,*[59] solves the problem of what to do about social security guarantees of this type by placing certain of them in a separate article entitled "Public Welfare," and retaining in the bill of rights only the traditional protections of American constitutionalism. To many persons who feel that special constitutional recognition should be given to the responsibility of the state for the establishment of minimum protections against economic insecurity resulting from social conditions beyond individual control, the *Model State Constitution* provides an acceptable precedent. In any event, the question of the number, type, and place of such guarantees will engage the attention of any future drafters of a new constitution for the State of Florida.

One question of less significance might be raised with respect to the Florida Constitution's Declaration of Rights. This is whether it would not be advisable to follow the practice of most other constitutions in making the bill of rights a numbered article — preferably article I — rather than having it identified only by title at the front of the Constitution. Since the declaration of rights has been judicially interpreted in many cases, however, changes in wording in its general provisions should not be lightly made.

Suffrage and Elections

Since one of the fundamentals of American constitutionalism is that all political power is inherent in the people, the inclusion of constitutional provisions insuring the full and free expression of the will of the people is manifestly required. For the most part these provisions are concerned with the qualifications for voting and with certain other regulations designed to secure the purity and equality of the ballot. Although the United States Constitution for the most part leaves the detailed regulation of elections to the states in both state and national matters, it does provide that those qualified to vote for the most numerous house of the state legislature shall be qualified to be electors of United States Senators[60] and Representatives,[61] and,

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[58]FLA. CONST. decl. of rights, §12.

[59]MODEL STATE CONST. art. X (5th ed. 1948), obtainable from Nat. Municipal League, 299 Broadway, New York 7, N.Y. Note particularly the provisions on public relief and public housing.

[60]U.S. CONST. amend. XVII, cl. 1.

[61]U.S. CONST. art. I, §2, cl. 1.

furthermore, that no person shall be deprived of the right to vote on grounds of race, color, previous condition of servitude,[62] or sex.[63]

The Florida Constitution of 1885, like the other state constitutions, has a separate article on suffrage and eligibility, which defines the right to vote, prescribes the grounds on which the franchise may be withheld, and makes some broad policy statements on the conducting of elections.[64] In addition, there is, in article III, section 26 – presumably placed there to insure that the record on dispersion of material remains unimpaired – a mandate to the Legislature to pass laws "regulating elections, and prohibiting under adequate penalties, all undue influence thereon from power, bribery [sic], tumult or other improper practice."

Under the Florida Constitution, a qualified elector is required to be twenty-one years of age, a citizen of the United States, a state resident for one year, and a resident in the county for six months.[65] The basic law also stipulates that qualified electors shall be male persons, but the superior status of the Nineteenth Amendment of the Federal Constitution has abrogated this requirement. Constitutional disqualification is prescribed in the case of persons under guardianship, non compos mentis or insane, as well as persons convicted of felonies whose civil rights have not been restored.[66] Section 5 of article VI requires the Legislature to pass laws excluding persons from holding office or voting if they have been convicted of bribery, perjury, larceny, or an infamous crime, or if they have become involved either as principals or seconds in the issue of a challenge to a duel or a duel itself, or if they have a direct or indirect interest in a wager the result of which depends on any election.

The major institutional protection by which the state insures that only qualified persons may vote is the registration requirement prescribed in section 2 of article VI. The next section of the same article sets forth in full the oath exacted of the elector at the time of registration. In the matter of the actual conducting of elections, the Constitution prescribes that voting shall be by ballot,[67] although it does not provide, as should certainly be required today, that the ballot be secret. In addition to the provision in article III mentioned above,

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[62]U.S. CONST. amend. XV, §1.
[63]U.S. CONST. amend. XIX, cl. 1.
[64]FLA. CONST. art. VI.
[65]FLA. CONST. art. VI, §1.
[66]FLA. CONST. art. VI, §4.
[67]FLA. CONST. art. VI, §6.

the Constitution requires that the Legislature "enact such laws as will preserve the purity of ballot . . . ."[68] Finally, the Legislature is given the permissive power to levy a capitation or poll tax and to make its payment a prerequisite for voting, a provision which, in view of both its association with certain unsavory events of the past and the abolition of its use by the Legislature,[69] should be removed from the basic law.

The problems involved in the popular control of government are so important that several questions will be considered, and in two instances possible additions will be proposed. At any rate, the matters which follow should be raised for consideration by those who are concerned with any form of general constitutional revision.

With one exception, few people would quarrel with the present restrictions on voting in Florida; for the most part they are defined in a manner designed to guarantee a broadly based suffrage from which no person is excluded for arbitrary or discriminatory reasons. The exception to this general statement occurs in the case of those who favor lowering the voting age to eighteen. This question is certainly one which is to be settled politically, and cannot be resolved by a pro or con statement here. Suffice it to say that sooner or later, either by amendment or in a new constitution, the question will probably be raised and the people will be given an opportunity to decide it.

Problems of nomination and election procedure are raised by article VI. The methods of nominating elective officials, for instance, are not mentioned in the basic law, despite the facts that they are closely regulated by state law, and, in the south, at least, nomination is tantamount to election.[70] Do we desire to take cognizance in our basic law of the role of political parties in the governmental process by making it mandatory for the Legislature to require that nomination for certain offices be made by primary election? Further, would we want to include in a constitution some provision designed to protect the equality of the ballot in both primary and general elections by excluding the "county unit" or other forms of collegial or weighted voting?

Another closely related issue is whether provision should be made for more direct democracy in the affairs of the state. In other words, should we include constitutional provisions for popular initiation of

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[68]FLA. CONST. art. VI, §9.

[69]See FLA. STAT. §193.75 (1953).

[70]Smith v. Allwright, 321 U.S. 649 (1944).

legislation followed by popular referendum on the items initiated by petition? Additionally, should the public be allowed to recall from office elective officials of the state and local government by petition and referendum? Direct democracy through initiative, referendum, and recall had widespread support in the reform movements of the early part of the twentieth century, and most of the states made at least some limited use of these devices. At the present time the only referendum requirement in the Florida Constitution concerns statutes and applies in situations in which local laws are passed by the Legislature; and even then an alternative is permitted whereby the legislation may be passed without referendum if proper public notice is given thirty days in advance of its introduction in the Legislature.[71]

At the present time, the movement for the expansion of the opportunity for expression of public opinion through the media of initiative, referendum, and recall has abated. With the improvement of the democratic processes afforded by the adoption of the primary nominating system, popular control of the government is more effectively insured without the necessity for such devices. Also, for technical reasons the complexities of contemporary legislation require a more effective representative system rather than more direct participation in the details of legislation by the public. States having provisions for initiative and referendum have the problem of inordinately long and complex ballots, for example. In view of the sporadic nature of mass participation in legislation, the arguments seem to favor limiting initiative, referendum, and recall to cities and counties.[72] Especially in the case of cities with the council-manager form of government the recall should be included as a protection against possible abuse of power by the city commission. This has proved effective in Florida in a number of cases, as in Daytona Beach and Miami Beach during the past five years. It might be noted also that there is more argument for possible utility of the recall for state officers than for the initiative and referendum.

Another problem that faces the constitutional critic is whether more mandates designed to control legislation on registration and election procedures should be established in the Florida Constitution. The Legislature recently passed a law requiring the adoption of a

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[71]FLA. CONST. art. III, §21; approval of local issues of bonds by freeholders is required in art. IX, §6.

[72]*Cf.* ANDERSON and WEIDNER, STATE AND LOCAL GOVERNMENT IN THE UNITED STATES c. 12 (1951).

single, permanent registration system to go into effect in the various counties by 1960.[73] A registration system of this type, which includes proper methods of purging the roles of unqualified voters, is such an improvement as an administrative device, and is so much more convenient to the voter than the duplicatory system now in use in many counties, that its protection by constitutional inclusion may be justifiable.

Other matters of a related nature should also be considered. Should the Constitution, for example, include a guarantee preserving the absentee ballot, or providing that voting machines be used in all elections, or that campaign expenditures be limited? The "basic law" premise should not be violated by turning the suffrage and elections article into an election code, but general provisions affording constitutional guidance to the Legislature and protecting basic democratic electoral procedures would not be out of place.

In discussing the institutional arrangements by which the democratic process is assured, two of the most important aspects of the subject -- the apportionment of seats in the Legislature and the long ballot -- have not been touched upon. They are omitted at this point, not because they are unrelated to the matters under consideration but because they are so closely tied to the over-all problems of the legislative and executive branches that it has been thought better to defer them until those branches are discussed.

Legislature

General. For two reasons improvement of the provisions governing the legislature is probably the crux of any general state constitutional revision: (1) the legislative branch is the representative law-making agency and therefore occupies a unique position in democratic government; and (2) state legislatures have not undergone the same growth and development which have characterized the other two branches. As a result of this latter factor, an imbalance exists in most states between the legislative and executive departments in terms of the relative conditions under which the two branches perform their traditional functions. Legislatures are still expected to make public policy, to control the state purse, and to hold the administration accountable for the manner in which it carries out the legislative policies. All three of these functions have grown tremendously over

[73]FLA. STAT. §98.131 (1953), enacted as Fla. Laws 1949, c. 25391.

the past few decades, yet few state legislatures have been re-adapted, in their representative character or their organization, to this growth. The executive branch has expanded its operating divisions and its personnel, has increased the state assistance to the office of the chief executive to aid in planning and co-ordinating the state administrative operations, and has seen its budget grow to meet the new demands on it. Conversely, the typical state legislature continues to try to carry out its responsibilities through an organization and operating procedure adopted long before today's heavy demands were placed upon it. State legislatures have remained part-time agencies; more than half the states place fairly rigid limits on the length of the session, and thirty-eight states prescribe that sessions shall be biennial. Often the legislature's sources of objective information are limited, and reliance must be placed by the legislator on executive agencies, on pressure groups, and on local opinion for the data from which his decisions are made. In most states there are little or no legislative activities in the interim between sessions, even on fiscal affairs. As a prominent state legislator and student of state government recently said: "In these uncertain times, it would be difficult to plan for a pretzel factory twenty-four months ahead, let alone a state of millions of people."[74]

The Legislature created by the Florida Constitution is patterned closely after those of the other states. It is a bicameral assembly, composed of a thirty-eight member Senate and a ninety-five member House of Representatives. Each senator is elected from a single-member district for a four-year term, half of the members being elected every two years at the state general election. The members of the House are elected for two-year terms. The Legislature meets in regular session every two years in April of odd-numbered years, its sessions being limited to sixty days. Under the terms of an amendment passed in November, 1954, however, the Legislature may by a three-fifths vote of the membership of both houses extend its sessions by thirty days. Although these additional thirty-day sessions need not be consecutive with the regular sixty-day sessions, they can in no case extend beyond the first day of September following the regular session. At other times the Governor may call the Legislature into special session for a maximum of twenty days. The members of the Legislature are paid $1,200 per year, their pay having been raised from $10 a day

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[74]Neuberger, *The Decay of State Governments*, Harper's Magazine, Oct. 1953, p. 39, col. 1.

for each day in session by the same amendment which permitted them to extend their sessions, plus subsistence while in session, and limited travel expenses.

The Constitution also prescribes certain types of procedures under which the Legislature shall operate. Although the Florida Constitution contains nearly all the usual state constitutional provisions with respect to the powers of the Legislature to judge election returns and the qualifications of its members, choose its own rules, and control its members, it surprisingly omits the standard immunity of members from arrest for misdemeanors while attending sessions and immunity of speech in the assembly.

Apportionment. The first question that must be raised with respect to the legislative section of the Florida Constitution is: How representative is the Legislature? In the light of our democratic presuppositions, it would certainly appear that any objective appraisal of the representative system would have to begin with the assumption that all citizens should be entitled to equal representation. In pursuance of this equality, representative districts should be laid out so as to assure that the number of persons represented by a given legislator should be — as nearly as possible — equal to the number of persons represented by any other legislator. Of course, this ideal democratic situation can never be attained completely. For one thing, districting must follow existing local government boundaries to some extent if a vast overlapping network of functional districts is to be avoided. But, even allowing for slight variations of a "practical democratic" nature, the apportionment provisions of the Florida Constitution have not produced a situation which satisfies the demand for equality of representation.

The 1950 census figures, which show the total Florida population as 2,771,305, disclose startling facts with regard to apportionment.[75] In the House of Representatives the extreme variation in ratio of voters to representatives is more than seventy to one. In the Senate a comparable situation exists: here the largest district, all districts being single member constituencies, contains 496,000 residents and the smallest 10,413, a disproportion of nearly fifty to one. These districts being the extremes, a more realistic, if no more reassuring, picture is

[75]See Appendix II for a graphic presentation of Florida's apportionment problem as of 1950. This situation has worsened rather than improved since 1950 because the process of urban growth and rural attrition has continued.

presented by looking at the effect that the over-all apportionment has in determining the control of the policy-making branch of the state's government. In the House, the six largest counties hold only seventeen out of ninety-five seats; yet over half of the population of Florida lives in these counties. Conversely, the forty-five smallest counties, which contain only 494,526 people, elect forty-nine members — a majority of the House. Thus less than one fifth of the population controls a majority of the House of Representatives, while over half the population controls only one fifth of the seats in this body. In the Senate an analogous situation exists. The largest districts contain 1,447,203 people — a majority of the population — and elect six senators, and the twenty smallest districts, containing 490,918 people, elect twenty senators, or a majority of the Senate. In this instance less than one sixth of the Senate is elected by more than one half the population, while less than seventeen per cent of the population elects a majority of the Senate.

This unbalanced apportionment means that the rural and small county population is proportionately greatly overrepresented, while the urban population is greatly underrepresented; and fear of dominance of the Legislature by the cities acts as an insuperable barrier to any change. Arguments are even advanced that such a situation is highly desirable in order to protect the minority farming group from some real or imagined threat from the city dweller. An argument of this type can logically be made only on the assumption of some form of superiority of the agrarian over the urban population, an assumption which clearly violates the conception of political equality advanced by the theory of democracy. Probably no other issue of state government today is fraught with more consequences for the whole organization and functioning of Florida's government than apportionment, but the problems aroused by it are so touchy that discussion is far more likely to engender heat than light.

Most other states have badly apportioned legislatures. Few, however, have such severe constitutional restrictions on the legislative power to reapportion as has Florida, particularly with respect to the House of Representatives. Article VII, section 3, requires the Legislature to apportion both House and Senate seats every ten years, beginning with the 1925 session. It then goes on, however, to determine with great rigidity the actual apportionment in the House by providing that the five most populous counties shall each have three representatives, the next eighteen most populous counties two representatives each, and all other counties one representative. Thus, the Legislature

can never provide for fair apportionment of the House unless it completely overhauls the county boundaries, because it is limited to a fixed number of representatives per county, with a spread between the maximum and minimum so small as to be unrealistic in comparison with the disproportionate populations of the counties. In the Senate more discretion is allowed, and consequently more blame can be assessed against the Legislature as an apportioning agency than in the case of the House. Even as to the Senate, though, the Legislature must abide by the requirements that there be thirty-eight single member districts and that no county be divided in making a senatorial apportionment. These constitutional requirements, though less restrictive than those for the House, still discriminate against the largest counties. Dade county, for example, could never secure equal representation under this clause unless it were split into several counties because, although it contains one sixth of the state's population, it is limited to a single senator.

It is fairly obvious that nothing short of constitutional change of the apportionment clause will make equitable apportionment possible. In writing the new apportionment provisions, the two main problems are: (1) what can be done to insure a good initial apportionment; and (2) who shall be given the responsibility for making future periodic apportionments to preserve equality? It may be feasible to prescribe in a new constitution the apportionment that shall exist until the apportioning agency shall act after the decennial federal census next succeeding the adoption of a new constitution. A related question is then raised as to whether the basic law should prescribe the number of members of each house or leave this question open to allow for increases in accordance with future population growth. On the whole it is probably desirable to fix a constitutional limit on the membership of the Legislature and to allow for adjustments by having a larger proportion of population represented by each member as the population grows. The possibility of having an unwieldy assembly would be lessened by permitting the adjustment to be made by increasing representation proportionately to increases in the population.

In the matter of *who* shall apportion, the main problem is whether this responsibility should be left entirely to the Legislature or whether some other organization should be set up either as the apportioning agency or as a check on the legislative performance of this duty. Traditionally the task has been a legislative one, so the main question is whether the Legislature has forfeited its right to carry out its own reapportionment and redistricting by its past failures to abide by

constitutional mandates in this regard. This question is crucial because the Legislature is answerable only to the voters and its own conscience in responding to a constitutional mandate; the Supreme Court cannot force legislative action by mandamus.[76]

If the Legislature does not reapportion, what is the alternative? In writing its new Constitution in 1945, the State of Missouri took the responsibility for apportionment entirely out of the hands of the Legislature. A formula was established for the apportionment of the House of Representatives, and the Secretary of State was made responsible for tabulating changes in accordance with this formula after each federal census.[77] For the Senate, a bipartisan apportionment commission of ten members was appointed by the Governor from a list of nominees submitted by the two parties receiving the highest number of votes in the preceding gubernatorial election.[78] Since even the unlimited special session clause in the Florida Constitution[79] has managed to produce only a token reshuffle rather than an equitable reapportionment, it seems fair to say that some better sanction, possibly in the form of a commission, should be constitutionally established to effect the important objective of equal representation. In setting up a commission, however, the greatest care must be exercised to insure that it performs the unbiased and almost totally mechanical function of simply changing the districts in accordance with population changes, and that it does not become a partisan, gerrymandering body. The one-party organization of Florida politics probably makes it more difficult to establish a satisfactory commission than would be the case in a two-party state.

Sessions and Salaries. Other organizational problems posed by the legislative provisions of the Florida Constitution include the length

[76]State *ex rel.* Lawler v. Knott, 129 Fla. 136, 150, 176 So. 113, 118 (1937) (dictum).

[77]Mo. CONST. art. III, §2.

[78]Mo. CONST. art. III, §7.

[79]FLA. CONST. art. VII, §3, provides in part: "In the event the Legislature shall fail to reapportion the representation in the Legislature as required by this amendment, the Governor shall (within thirty days after the adjournment of the regular session), call the Legislature together in extraordinary session to consider the question of reapportionment and such extraordinary session of the Legislature is hereby mandatorily required to reapportion the representation as required by this amendment before its adjournment (and such extraordinary session so called for reapportionment shall not be limited to expire at the end of twenty days or at all, until reapportionment is effected, and shall consider no business other than such reapportionment)."

of sessions and the pay of the members of the Legislature. The limited session every two years, while still the rule rather than the exception among the states, is inadequate. A number of variations are under experiment in various states, including split sessions, annual limited sessions, and annual sessions with alternate year's meeting restricted to fiscal matters. In the long run it is probable that many states will have to forego all restrictions on the length of sessions and allow unlimited annual sessions. If such a step is taken it will necessitate making the state legislator's position a full-time one with adequate salary provisions. Even with the recent increase, the present rate of pay for Florida legislators has a two-fold disadvantage: (1) it restricts legislative seats to those who can afford to take the requisite time from their regular occupations for legislative business; and (2) it deprives the legislators, in whose hands so much responsibility for the state's welfare is placed, of sufficient remuneration to free them to do the kind of job that needs to be done. It is difficult to see how the Legislature can pass thousands of laws enunciating public policy for 3,000,000 people, appropriate half a billion dollars, and check effectively an administration employing approximately 30,000 persons unless it is given more time within which to act.

Other Matters of Organization and Procedure. There are many other problems of legislative organization and procedure that will require revision. The committee system is unwieldy; staff assistance beyond that now provided for the Legislature and its committees should be made available in order to provide the legislators with the information required for passing acts and reviewing the administration's performance. In addition, legislative rules are probably in need of overhauling in order to expedite some of the processes of legislation. But apportionment, limitation of sessions, and adequate legislative pay are the necessary foundations upon which other desirable legislative changes must be constructed; and these more basic matters are dependent for their effectuation upon constitutional change.

Although the possibility of attaining it in Florida is so slight as to be practically nonexistent, the abstractly most desirable organization of a state legislature is a unicameral assembly with unlimited sessions. In the federal government there is ample reason for having a bicameral Congress, with one house selected on the territorial principle of equality of states and the other on a populational basis. But in the states both of the houses are apportioned — in theory, at least — on a populational basis, and their representation therefore tends to be

duplicatory. A unicameral legislature, such as Nebraska has operated successfully for a number of years, could be made large enough to be representative but small enough to effect sufficient savings to allow its members to be paid on a full-time basis. Adequate staff services could also be provided without substantial increase in the present financial outlay for the legislative branch. The extra time that could be devoted to legislation, it is believed, would more than offset the advantages of the checks and balances maintained by the two houses in a bicameral assembly.

Regardless of whether one house or two is finally decided upon, the measure of the success of a general constitutional change will be the extent to which the new constitution contains provisions giving the Legislature the best opportunities for improving its operations. Most of the states have witnessed a steady decline in the prestige and power of the legislative branch. In many instances its unrepresentative character has caused large portions of the populace to look to the governor as their champion because he truly represents the state as a whole. In consequence, more and more of the actual leadership in policy formation has come from the vigorous and informed executive branch; the legislature has lacked the time and the tools to offset this advantage. Too often the legislative branch has given up the attempt to uphold its traditional position as the general lawmaking body and has become a disjointed amalgamation of local-interest representatives, through which both statewide and local legislation pass by a purely log-rolling process. Most legislators are aware of this situation and are concerned about its effect on the recognized principle of the separation of powers, but they are caught in a system that cannot be altered short of a complete institutional adjustment to changed conditions, an adjustment that appears possible in Florida only through complete constitutional revision.

Executive Branch

As has been shown, the legislative branch must undergo considerable change in order to make it more representative and to expand its capacities to deal with the problems of a complex society. Similarly, the executive branch needs changes designed to replace the disorder resulting from rapid growth of administrative functions with an organization and procedures through which more efficient administration and more effective democratic controls may be obtained. Much of the expansion of governmental activities occurring in the past fifty

or seventy-five years has been purely pragmatic; new administrative units have been created to take care of new problems without much thought as to how they were to be related to existing departments or agencies or how they were to be controlled.

The necessity for reassessing the over-all organization of the executive branch was recognized by the federal government in 1910 with the report of President Taft's Commission on Economy and Efficiency. Since that time two major reports — the President's Committee on Administrative Management in 1937 and the Hoover Commission Report — have been brought out. The states have followed the lead of the national government in providing for surveys designed with a view to recognizing the administrative structure in order to improve efficiency and to make administration more responsive to popular demands. Largely under the influence of the Taft Commission, the states began their reorganization movements in the second decade of this century, and they have nearly all experienced sporadic bursts of reorganizational energy since that time.[80]

Although the subject had been under consideration several times and some studies of fiscal administration had been undertaken, it was not until 1943 that the Legislature created a committee to study efficiency and economy in the government of Florida.[81] The comprehensive report that followed was based on the principles generally recognized by scholars and administrative practitioners as valid for state administrative organization.[82]

A noted authority on state government, A. E. Buck, lists six standards that he says "are no longer theoretical, but are based upon experience and supported in whole or in part by actual practice in a number of states."[83] These are as follows: (1) concentration of authority and responsibility, (2) departmentalization, or functional

[80]The classical work in this field is BUCK, THE REORGANIZATION OF STATE GOVERNMENTS IN THE UNITED STATES (1938) (published for the Nat. Municipal League). See also BOLLENS, ADMINISTRATIVE REORGANIZATION IN THE STATES SINCE 1939 (1947) (U. of Calif. Bureau of Pub. Adm'n). For a more detailed study of selected reorganizations LIPSON, THE AMERICAN GOVERNOR FROM FIGUREHEAD TO LEADER (1938) is a landmark. RANSONE, THE OFFICE OF GOVERNOR IN THE SOUTH (1951) (U. of Ala. Bureau of Pub. Adm'n), is valuable for relating the problems of state administrative organization and management to the political problems peculiar to this region.

[81]H.J. RES. No. 17, filed, Sec'y of State, 1943.

[82]REP. OF SPECIAL JOINT ECONOMY & EFFICIENCY COMM. OF FLA. LEGIS. OF 1943 (1945).

[83]BUCK, *op. cit. supra* note 80, at 14.

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integration, (3) undesirability of boards for purely administrative work, (4) co-ordination of the staff services of administration, (5) provision for an independent audit, and (6) recognition of a governor's cabinet.[84] The controlling idea on which these principles are based is that of giving the governor ample powers for effective management of the affairs of the state while at the same time creating conditions under which he must assume full responsibility and be held accountable for the exercise of these managerial powers.

The above principles were designed to correct faults arising from nineteenth century governmental attitudes and institutions. Distrust of governors, often justified, had resulted in limitations upon his office and a dispersion of administrative powers. Cabinet officers were often made completely independent by having offices to which they could be re-elected, whereas the governor was often restricted to one term. With the growth of governmental functions came new administrative agencies that were often not co-ordinated.

This period of restriction of power, however, was also a time of increasing responsibility for the governor. He was expected to formulate, lobby for, and implement a legislative program. Lack of sufficient staff assistance, budget control, and appointive power prevented him from fully responding to the demands and consequently led to widespread and poor administration. The movement for reorganization came when "experience had taught that power so diffused either ceased to be power or became power in irresponsible hands."[85]

Governor. The Florida Constitution does not, of course, provide for all the components of the administrative branch and cannot therefore be the only source from which administrative disintegration derives, even though some of the seeds from which this uncontrolled growth sprang are to be found there. The Constitution provides for a popularly elected Governor who is vested with the supreme executive power of the state. He serves a four-year term and is ineligible to succeed himself. In the event he resigns, dies, is impeached, or is unable to perform the functions of his office, the president of the Senate acts as Governor until the disability ceases; or, if the vacancy is permanent, he becomes Acting Governor for the residue of the term unless a general election for members of the Legislature

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[84]Buck, *op. cit. supra* note 80, at 14, 15.
[85]Lipson, *op. cit. supra* note 80, at 68.

occurs in the intervening period, in which event a successor is elected.[86]

The general grants of power conferred upon the Governor in Florida are fairly typical of those in other state constitutions. The core of administrative responsibility is found in the section providing that "the Governor shall take care that the laws be faithfully executed."[87] The Governor has a constitutionally prescribed veto power,[88] an item veto power in the case of appropriation bills,[89] authority to call special sessions of the Legislature,[90] power to grant reprieves and to suspend fines for a limited period,[91] certain appointive powers,[92] and rather general powers of suspension of officers not subject to impeachment.[93] He is Commander-in-Chief of the militia;[94] he is charged with the duty of transacting all executive business with the officers of the government;[95] and he has the constitutional duty of informing the Legislature of the condition of the state and recommending to it the measures that he deems expedient.[96]

Cabinet. Six other elective officers are constitutionally established as part of the executive department — Secretary of State, Attorney General, Comptroller, Treasurer, Superintendent of Public Instructions, and Commissioner of Agriculture.[97] The terms of these officers are four years, and there is no prohibition against succession.[98] The general area of administrative authority confided to these offices is defined in the Constitution.[99]

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[86]FLA. CONST. art. IV, §19. The litigation arising from the vacancy in the office created by the death of Gov. McCarty is in itself an important indication of the difficulty of discovering intent in a long, diffuse, and sometimes apparently contradictory Constitution. *Cf.* State *ex rel.* West v. Gray, 70 So.2d 471 (Fla. 1954); Bryant v. Gray, 70 So.2d 581 (Fla. 1954); State *ex rel.* Ayres v. Gray, 69 So.2d 187 (Fla. 1953). And there is by no means any guarantee that this series of cases exhausts the litigation over this particular succession.

[87]FLA. CONST. art. IV, §6.

[88]FLA. CONST. art. III, §28.

[89]FLA. CONST. art. IV, §18.

[90]FLA. CONST. art. III, §2; art. IV, §8.

[91]FLA. CONST. art. IV, §11.

[92]See FLA. CONST. art. IV, §§7, 16.

[93]FLA. CONST. art. IV, §15.

[94]FLA. CONST. art. IV, §4.

[95]FLA. CONST. art. IV, §5.

[96]FLA. CONST. art. IV, §9.

[97]FLA. CONST. art. IV, §20. The office of Superintendent of Public Instruction is also established in art. VII, §2.

[98]FLA. CONST. art. IV, §20.

[99]See FLA. CONST. art. IV, §§21-27.

The administrative structure that has grown up under these constitutional provisions violates many of the principles of organization and functioning previously indicated. In the first place, the cabinet and the Governor's relation to it constitute a peculiar problem. Not only are the cabinet officials independent of the Governor in performing the duties relevant to their particular departments but many agencies of the administration operate under ex officio boards made up of some or all of the members of the cabinet. More than thirty state boards are constituted in this manner, including such important ones as the Budget Commission, the State Board of Conservation, the Board of Commissioners of State Institutions, the State Board of Education, and the Department of Public Safety. Although this system of interlocking cabinet control provides some measure of co-ordination through the concentration of functions in its collective hands, it nonetheless has a dispersive effect on administrative authority and responsibility. The Governor, who is expected to direct the administration toward the ends indicated in his campaign appeal, has no final authority over many of the key agencies. Despite this lack of authority, however, his political position makes him accountable in the eyes of the public for the complete operation of the executive branch. In addition, the members of the cabinet, unlike the Governor, often continue in office for term after term, so that in the functioning of the cabinet they have the advantage of long experience and the practical assurance that they will continue in office after the administration of the incumbent governor. As stated by the Special Joint Economy and Efficiency Committee of the 1943 Legislature:[100]

> "The Governor, charged by the Constitution as Florida's chief executive, has no direct authority over the Cabinet or the activities in the several departments headed by these cabinet members. Only through his prestige, personality, and party leadership can the Governor assume the responsibility vested in him by the Constitution but also denied him by that same instrument in providing for the election of cabinet officials. Fortunately, the position of the Governor on the whole has been such that coordination has been the rule. To prevent friction from occurring, action is sometimes postponed or not taken. This 'do-nothing' may be worse than friction. But, friction,

[100]REP. SPEC. JOINT ECONOMY & EFFICIENCY COMM. OF FLA. LEGIS. OF 1943, p. 21 (1945).

independence of action, and failure to act has [*sic*] occurred in the past and there is no guarantee that they will not again develop in the future."

It should be noted that the previously mentioned cabinet system contemplated by Dr. Buck in his six-point reorganizational plan is not the type used in Florida. The cabinet envisaged by him is primarily an advisory or staff agency designed to assist a governor in planning and co-ordinating rather than to share in his actual executive powers. It is made up of department heads appointed by the governor and made responsible to him for the management of their respective departments, and it does not function as an administrative head of important state agencies. As another commentator has put it, "A cabinet meeting in Florida is not like that in other states in that it is not looked upon as a meeting of the governor and his chief advisors but rather as a meeting of the major executive officials of the state with the governor presiding as chairman."[101]

Administrative Agencies. Added to the particular form of dispersion of executive power represented by the Florida cabinet system is the disintegrated pattern of the approximately 130 administrative departments of the state.[102] These departments vary widely in their relative importance, in the type of department head and the method of his selection, and in the manner of administering their affairs. Because of these organizational complications the Governor finds himself in the disadvantageous position of having to deal in a different manner with each department. Administrative disintegration reduces the effectiveness with which he can direct the over-all administration toward its goals and assess the relative contribution of each agency to the total operation.

To correct this situation the Special Point Economy and Efficiency Committee of the 1943 Legislature recommended that the various duplicatory and closely related agencies be amalgamated in such a manner as to reduce the major divisions of the administration to a total of twenty-three.[103] One of the divisions would consist of a category entitled "independent agencies" made up of units performing very limited functions that do not require integration into the other

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[101]RANSONE, *op. cit. supra* note 80, at 110.
[102]See Appendix III for a list of agencies.
[103]Report, *supra* note 100, at 34-51.

departments. The Committee's report details the major responsibilities recommended for each of these twenty-three agencies, indicating in every case what transfer of functions should be made in order to achieve a rationalized unity of purpose for each department. The Committee also sought to clearly define lines of authority and suggested that several departments previously headed by boards should have a single department head appointed by the Governor. In order to facilitate the Governor's task of co-ordinating these reorganized agencies, the Committee proposed that the Governor's staff include a budget director, personnel director, director of purchases, director of revenue, director of personal safety, and director of planning.

While deliberately following Dr. Buck's organizational principles, the Committee apparently thought it best to compromise on specific points rather than risk the possibility of having the proposed reorganization rejected out of hand. It provided, for example, for several elective officials in the executive branch, although it recommended some useful alterations of the cabinet system. Provision was also made for a number of agencies under board administration, and even for some ex officio agencies. Despite the attempts to make reorganization more palatable to all concerned, no comprehensive action has been taken on the Committee's recommendations.

It should be noted that there are arguments on behalf of the present Florida system of independently elected cabinet officials, with many collegial duties: (1) it provides for co-ordination through ex officio boards; (2) it provides for continuity; (3) it operates as a balance wheel by checking the Governor, such protection being otherwise inadequate, inasmuch as the governorship in Florida has been controlled by one party since 1876; and (4) the caliber of elective cabinet officers in Florida has generally been quite high. Most states that have reorganized, however, have improved the efficiency of administration and have secured a general improvement in co-ordination of agencies and elimination of overlapping functions.

General Reorganization. In view of the present administrative structure and procedures, what constitutional measures should be considered for possible inclusion by the drafters of a new executive article? In accordance with the reorganization practices of most other states, the executive power of Florida should be vested in the Governor, and few, if any, other administrative departments as such should have constitutional status. Consideration should be given to the possibility of having the heads of all major departments appointed by the

Governor and subject to removal by him in order to insure that his power is equivalent to his responsibility and that he be fully accountable for the operations of the administration. It might also be advisable to debate the efficacy of the present prohibition against gubernatorial self-succession. Knowledge by a governor that he can be held fully accountable at the polls when seeking re-election is often a deterrent to the abuse of power.

Although the position of lieutenant-governor was abolished by the Constitution of 1885, it might well be restored. Such a provision would provide a successor elected on a state-wide basis, thereby avoiding the possibility of costly litigation and the necessity for an interim election in the event the Governor dies, is removed from office, or is otherwise unable to act. The lieutenant-governor, as presiding officer of the Senate, as an adjunct to the Governor's office, and as a potential successor, should certainly be worth the cost of the office to the state.

Consideration should also be given to the question of whether to include in the Constitution a provision limiting the total number of administrative departments that could be established by the Legislature. The *Model State Constitution,* for example, limits administrative departments to twenty and allows the legislature a free hand in changing the organization, ,powers, or functions of various agencies within this framework. It also follows recent federal reorganizational practice in permitting the governor to make changes in the administrative structure, subject to legislative disapproval.[104] Adoption of these constitutional practices would insure integration in the executive structure by restricting the number of separate agencies and standardizing their form as much as possible. At the same time it would preserve sufficient discretionary powers of reorganization to the legislative and executive branches to provide the flexibility necessary to adapt to changing conditions. Thus as new functions arise, or as changes are instituted in existing ones, the agencies can be adjusted in any way necessary to insure that each department has responsibility for a single major function and that no department performs work that cannot be effectively related to its total operations. The final advantage in such a plan is the reduction of the separate agencies to a number small enough to allow the chief executive a proper span of control.

It would be well worth while for any future drafting agency to try to ascertain whether the Constitution should contain any pro-

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[104]MODEL STATE CONST. art. V, §506 (5th ed. 1948).

visions relating to an executive office staff. If the basic law does not prescribe that certain central staff positions, such as a budget office, a personnel director, and a planning agency, shall be established in the Governor's office and subject to his appointment and direction, will it be possible to achieve this desirable end by ordinary legislation? In abstract terms it would probably be better to leave such matters out of a constitution for the sake of flexibility, particularly since other parts of the Constitution may be drafted in a manner precluding the possibility of not establishing such a staff arrangement. The absence of extensive development along these lines in Florida, however, might make it practical to include a brief general section requiring the adoption of certain recognized staff positions.

Protective Devices. If the chief executive should be given the rather extensive authority over the administration outlined above, it may well be asked what protective devices should be inserted in the Constitution to insure against abuse. Arbitrary executive action cannot be avoided solely by reliance on the increased popular accountability of the office. The answer to this problem is not too difficult in the purely organizational sense. In the first place, a new constitution should contain provisions establishing a thorough merit system for administering all personnel functions except the top political offices. Second, a section should be included establishing a system of budget controls from which no department of the administration could be exempt. These budget controls would require not only a central executive budget embracing every administrative function of the state but also a pre-audit of all administrative expenditures as a means of forcing compliance with the law and the operating budget. Finally, the post-audit function should be recognized as a legislative activity; there should be an auditor to represent the legislative branch and assume responsibility for periodic audits of state agencies. On the basis of his audits the legislative auditor should be required to file with the Legislature a complete annual report on expenditures under the budget, with explanations of any discrepancies or illegal expenditures. It should be noted that, although the state auditor presently has continuity, he is appointed by the Governor – an unwise provision.

These three measures, together with a legislature strengthened to the point at which it could exercise more effective review of administration, would assist in the removal of the disadvantages of a state employment system based on patronage and would eliminate agencies

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not under effective fiscal control.[105] Furthermore, they would do away with the present institutional limitations on the power of the Legislature to have at its disposal the most effective possible device for holding the administration strictly accountable to its policies — a complete fiscal analysis by its own staff, together with recommendations for improvement.

Summary. The general suggestions offered for changes in the executive article outlined above are designed to overcome the pattern of administrative disintegration, which is becoming more and more apparent because nothing has been done about it since 1885. The combination of increased executive authority and simultaneous establishment of more effective control over the executive, which these constitutional prescriptions have been found to foster, would go a long way toward producing an administrative structure in keeping with the best practices.

Judiciary

In the discussion of the faults of draftsmanship of the Florida Constitution, it was observed that article V, concerning the judiciary, is by all odds the most confusing of the several parts of the Constitution. In large measure the difficulties encountered are the result of the attempt to adjust the organization of the courts to the greatly increased volume of litigation that has been placed upon them. The Constitution of 1885 outlined the judicial system in considerable detail, and the subsequent amendments have been enacted as the only means of expanding this branch sufficiently to meet its increased responsibilities.

Present Structures. The major courts of the state are on two levels, the Supreme Court and the circuit courts. The Supreme Court is composed of seven justices, elected from the state at large for six-year terms.[106] In order to be qualified as a justice of the Supreme Court or a circuit court or criminal court judge, one must be an attorney-at-law and at least twenty-five years of age.[107] The Chief Justice of the Supreme Court, who is the chief administrative officer of the Court,[108] is selected every two years by its justices from among its membership.[109]

[105]Report, note 100 *supra.*, at 82.
[106]FLA. CONST. art. V, §2.
[107]FLA. CONST. art. V, §3.
[108]FLA. CONST. art. V, §4 (c).
[109]FLA. CONST. art. V, §44.

The Supreme Court is allowed to sit in divisions of not less than three members, exclusive of the Chief Justice. The judgment of a division, concurred in by the Chief Justice, constitutes the judgment of the Court in all but a few types of cases. Circuit judges may be called up to sit in these divisions, although no more than one circuit judge is permitted to serve in a division.[110]

Section 5 of article V sets forth the extensive appellate jurisdiction of the Supreme Court. Although the circuit courts have appellate jurisdiction from the lesser courts, there is no intermediate court of appeals in Florida. The Supreme Court, therefore, "handles the largest direct appellate case load of any similar court in the nation."[111] The Supreme Court also has original jurisdiction, which permits it to issue writs of prohibition, mandamus, certiorari, quo warranto, habeas corpus, and others necessary to the complete exercise of its jurisdiction.[112]

The state courts having original jurisdiction over major cases are the circuit courts, which are set up on the basis of sixteen geographical areas.[113] Each of these courts is permitted one judge for each 50,000 inhabitants or major fraction thereof.[114] These circuit judges are elected for six-year terms.[115] All of these courts hold sessions in the spring and fall, and some also hold winter terms, at the courthouse of each county within the circuit.[116]

A number of special courts have been created or provided for by the Constitution for the heavily populated areas in order to relieve the work load of the circuit courts. Included among these are the criminal courts of record,[117] the Court of Record in and for Escambia County,[118] and various other courts specifically provided for[119]

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[110]FLA. CONST. art. V, §4.

[111]DOVELL, KNOW YOUR STATE AND LOCAL GOVERNMENTS IN FLORIDA 13 (U. of Fla. Pub. Adm'n Clear. Serv., CIVIC INFO. SER. No. 15, 1953).

[112]FLA. CONST. art. V, §5.

[113]FLA. CONST. art. V, §§10, 45, 51 (§10 sets out 7 judicial circuits; §45, adopted in 1934, limits the number of circuits to 15; and §51, which was erroneously numbered 48 by the 1949 Legislature, established the 16th Judicial Circuit). See FLA. STAT. §§26.01-26.161 (1953).

[114]FLA. CONST. art. V, §45 (c).

[115]FLA. CONST. art. V, §46.

[116]FLA. STAT. §§26.21-26.361 (1953).

[117]FLA. CONST. art. V, §§24-32.

[118]FLA. CONST. art. V, §39.

[119]*E.g.*, FLA. CONST. art. V, §18 (county courts); art. V, §34 (municipal courts); art. V, §50, erroneously numbered 48 by the 1949 Legislature (juvenile courts).

or created under the general permissive powers granted to the Legislature.[120]

The Constitution provides for a county judge in each county, who is elected for a four-year term by the qualified electors of his county.[121] He presides over a county judge's court, the most important responsibility of which is the probate of wills and the settlement of estates of decedents and minors. The county judge's court also has jurisdiction in civil cases involving $100 or less, and has minor criminal jurisdiction.[122] The Legislature is permitted to organize county courts in such counties as it sees fit,[123] and these courts now exist in twenty-three counties. They are presided over by the county judge and have somewhat more extensive jurisdiction than the county judge's courts, including appellate jurisdiction from justice of the peace courts.

The Legislature has constitutional power to create juvenile courts[124] and has provided for them.[125] Except for the eight juvenile courts previously established in heavily populated areas, the county judges preside over the juvenile courts. These courts have exclusive original jurisdiction over cases involving dependent and delinquent children under the age of seventeen.

The Constitution also provides for the establishment of a maximum of five justice districts in each county, with one justice of the peace for each district. These justices of the peace courts exercise minor jurisdiction, having the power to try civil cases involving $100 or less, as well as certain misdemeanors prescribed by law. In some counties these courts are no longer active.

Judicial Council. The long-standing criticism of the structure and case load of the Florida court system led to the establishment in 1953 of the Judicial Council.[126] The members of the Council consist of a presiding officer, presently Justice Elwyn Thomas of the Florida Supreme Court, a circuit judge, a judge of a court having probate jurisdiction, a representative of the Attorney General's office, and nine laymen, all of whom are appointed by the Governor. The Council is

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[120]*E.g.*, FLA. STAT. c. 33 (1953) (civil courts of record), c. 42 (small claims courts).

[121]FLA. CONST. art. V, §16.

[122]See FLA. CONST. art. V, §17; FLA. STAT. c. 36 (1953).

[123]See FLA. CONST. art. V, §18; FLA. STAT. c. 34 (1953).

[124]FLA. CONST. art. V, §50.

[125]FLA. STAT. c. 39 (1953).

[126]FLA. STAT. §43.15 (1953), enacted as Fla. Laws 1953, c. 28062.

authorized to carry out continuous studies of the organization and procedures of the state court system, collect statistics and analyze them, receive and consider criticisms of the administration of justice, recommend changes in the judiciary to the Legislature, and file annual reports with the Governor.

The Council has set up seven task forces to carry out its purposes in regard to: (1) the appellate courts, (2) trial courts, (3) selection, tenure, and retirement of judges, (4) jurors, (5) drafting of reports, (6) statistics, and (7) public relations, policy, and information. The areas assigned to the task forces are indicative of the problems that beset the judicial branch. That many of these problems are rooted in the Constitution was clearly recognized by the Council in a resolution adopted on May 29, 1954, recommending that a complete revision of article V be prepared;[127] subsequently the Council drafted a proposed revision of this article.[128]

Among the many topics concerning the judiciary upon which comment might be made, three stand out as matters of primary constitutional concern. These three are the organization of the courts, their administration, and the selection of judges.

Reorganization of the Courts. A sounder organization of the court structure and a more effective administration than that presently in existence would have as its basic purpose the elimination of the most frequent criticism of the judicial function — the delay and cost of adjudication. In the past, adjustment to the increase in the amount of litigation handled by the courts has been made by amending the Constitution to provide for additions and changes, particularly in the lower courts. The result is the confusing system of courts now in use. With respect to the complexity of this trial court system the Judicial Council has commented that, irrespective of the circuit court system, the court organization of Florida is in dire need of simplification. For example, there are thirteen different types of trial courts, including criminal courts of record, civil courts of record, courts of crimes, county courts, county judges' courts, justice of the peace courts, and small claims courts. It appears possible to the Council that the court system could be simplified without disturbing the disposition

[127]FIRST ANNUAL REPORT OF THE JUDICIAL COUNCIL OF THE STATE OF FLORIDA (1954).

[128]Florida Judicial Council, *A Proposed Revision of Article V of the Florida Constitution*, 29 FLA. B.J. 468 (1955).

of matters for which these courts have been established.[129]

A thorough revamping of the court structure probably should be made along the lines of many other states that have adopted a court system organized on three main levels.[130] At the bottom of the tier would be the principal courts of original jurisdiction, which might be divided into specialized divisions in the more heavily populated areas. Although the present method of having the court sit in each county in turn might very well be continued, a new judicial structure probably should allow the Legislature to group the counties into the various districts or circuits and to establish the number of judgeships assigned to each district. This would permit the districts and judgeships to be altered to conform to the rapid population changes experienced in Florida. As the second level of courts, a system of intermediate courts of appeal could be set up to take some of the heavy appellate load from the Supreme Court; this would also allow some cases on appeal to be settled nearer to the place of origin of the suit. Finally, of course, the Supreme Court would retain its position as the highest appellate court in the state. Relieved of some of its heavy case load by this plan, it might be required to sit en banc on all suits. The main advantages of this suggested organization, now extensively used in this country, are the uniformity of the court system, more flexibility in adjusting to case loads, and a speedier approach to litigation — all of which are reflected in a lower cost to the litigant.

Administration of the Courts. As a corollary to this plan, the administration of the entire court system should be placed in the Supreme Court, under the direction of the Chief Justice. The concentration of judicial administration in the presiding justice would provide additional flexibility in such matters as the transfer of lower court judges on a temporary basis in order to adjust to crowded dockets or other local situations. It also would facilitate consistency in record-keeping and in filing the various legal materials required in court actions. It might be advisable to establish the Judicial Council on a constitutional basis as a continuing body to study the rules of procedure and distribution of cases and to advise the Court on adminis-

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[129]See FIRST ANNUAL REPORT OF THE JUDICIAL COUNCIL OF THE STATE OF FLORIDA 15 (1954).

[130]For a suggested reorganization into a two-level court system, with other additional minor and specialized courts, having a circuit court in each county and an additional judge for each unit of population of 25,000 or fraction thereof, see Redfearn, *A New Constitution for Florida,* 21 FLA. L.J. 2, 8 (1947).

trative actions that might be taken to improve the operation of the court system.

Selection of Judges. The problem of selecting judges, which includes establishing their qualifications, has a long history as a subject of contention; and most states have experimented with several different means of solving it. Few today would question the necessity for the stipulation that a person be learned in the law before aspiring to judicial office. In Florida, the main issue concerning judicial qualifications probably turns on the question of whether there should be a constitutional requirement that a candidate for a judgeship have had a certain number of years of practice at the Florida bar.

The method of selecting judges is open to far more controversy than the issue of qualifications. Those who favor appointment by the chief executive usually maintain that selection by this means results in the choice of more competent men and that the judiciary's function is such that its officers should not be exposed to the effects of the political arena, even if elections for judicial office are on a nonpartisan basis. The proponents of election argue that judges should be responsible to the people and that politics is as much a part of the appointing process as is election.

The State of Missouri in 1940 led the way to a new approach to the selection of judges[131] by instituting a system approved earlier by the American Bar Association. This system, now frequently referred to as the Missouri plan, was carried over into the new Missouri Constitution,[132] approved by the voters of that state in 1945. The main advantage of this plan is that it combines the method of appointment with responsibility to the public. The original appointment to fill a vacancy in a judgeship is made by the governor from a list proposed by a specially constituted nonpartisan commission. After a set period, which is really probationary, the appointee is subject to an election, in which the sole question is whether he is to remain in office for a full term. At the expiration of his fixed regular term, he is permitted to submit himself for approval or rejection by the voters for a succeeding term. Thus, so long as the judge is acceptable to the voters, he is allowed to continue in office without the necessity of running against another candidate. For states like Florida in which the tra-

[131]Graves, American State Government 612, 613 (4th ed. 1948). As early as 1934, California had adopted parts of this plan.

[132]Mo. Const. art. V, §29.

dition of elected judgeships is strong and yet concern is felt about partisan politics, the Missouri plan has much to commend it.

Undoubtedly other aspects of the judicial branch of Florida government would come under consideration by a revising agency. The question of whether the Constitution should go into considerable detail in dividing jurisdiction among the courts or should provide for jurisdiction only in broad terms is of great concern, as are questions relating to the number and type of minor courts to be established, the jury system, and the retirement of judges. But a logical general court system, with clearly vested administrative responsibility and flexibility of detail, would seem to be the main point of departure for any contemplated judicial reorganization.

Fiscal Provisions

Financial provisions of the Florida Constitution are found in several articles. Article IX is entirely devoted to finances; in addition there are important sections in other articles.[133] Despite the number and detail of these provisions, several items that are of importance in modern fiscal management are lacking, particularly requirements for budget machinery and for post-audit. It is true that the Legislature has provided for these matters by statute,[134] but most states provide for them in their constitutions. Central purchasing is not provided for either in the Constitution or by statute. The establishment of central purchasing, with attendant requirements for competitive bidding, is usual in most states. In considering the fiscal provisions of the present Constitution, taxation provisions will first be discussed, and fiscal management arrangements will next be treated.

Taxation. The Florida Constitution is characterized by the number of provisions on taxation, the prohibitions against certain taxes, and the rigid earmarking of many other taxes for specific purposes. Within the past dozen years this system of earmarking has increased, and from the standpoint of state finance an unusually rigid system results. Because of the rapid growth of Florida and the prosperity of recent years, no serious results have followed; but the fact remains that it is not sound practice to provide in a constitution for the

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[133]Most of these will be considered herein. Minor provisions not covered are found in art. XVI, §§3, 11, 16, 18.

[134]FLA. STAT. c. 216 (1953).

division of funds into water-tight compartments. In case of economic crisis or other emergency, this system of dedicated revenues could produce grave difficulties, especially in the state's general revenue fund. The reason for this potential problem will appear upon examination of the taxation provisions.

Certain provisions are standard. These include the requirement of a uniform rate of taxation,[135] the prohibition against using state taxing power for private corporations,[136] and the provisions that taxes shall be levied only by law[137] and that no monies may be drawn from the treasury except when duly appropriated by the Legislature.[138]

There are a number of distinctive features about the fiscal sections of the Florida Constitution. Included are an unusual number of prohibitions against certain types of taxes. Section 2 of article IX prohibits, except as to intangibles, the levying of a general, real, or personal tax by the state. Subdivisions of the state — counties, cities, and special districts — may levy real and personal property taxes, but homesteads are granted exclusion from real property taxation up to an assessed valuation of $5,000.[139] Article IX, section 11, prevents the state or any subordinate governmental unit from levying an income tax, while the inheritance tax is now allowed to the extent of the federal offset given to the state. These prohibitions logically result in the state's tax system being based on other sources of revenue, such as sales taxes, automobile license taxes, pari-mutuel betting taxes, and various excise taxes such as those for alcoholic beverages and cigarettes.

So long as the state continues to grow and its economy expands in a period of prosperity, these sources promise to be adequate. The rigid situation in the field of finance could prove serious, however, if the economic picture changes. This possibility is made the more likely because many of the tax sources are earmarked in the Constitution,[140] thus markedly increasing the restrictions on fiscal control by the Legislature. There is one mitigating factor in this system of dedi-

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[135]FLA. CONST. art. IX, §1.

[136]FLA. CONST. art. IX, §7.

[137]FLA. CONST. art. IX, §3.

[138]FLA. CONST. art. IX, §4.

[139]FLA. CONST. art. X, §7. In the absence of a state tax commission, however, the requirement for assessment at full value is largely meaningless. Hence the exemption of $5,000 in many counties may amount to double or even triple this value in terms of market price.

[140]*E.g.*, FLA. CONST. art. IX, §16; art. XII, §18.

cated revenue, particularly at the state level. If revenues were not earmarked it would be impossible — in view of the constitutional prohibition against bond issues — to borrow any money at all for long-term capital programs, whereas the allocation of specific revenues for certain purposes under the present arrangement makes it possible to borrow sizable sums through the issue of revenue certificates pledging payment from these particular sources.

The Florida constitutional provisions affecting the capacity of the state and its local subdivisions to borrow money and issue bonds[141] are more complex than would at first appear. The details of these provisions will not be discussed here, since they have been ably and fully discussed in a recent issue of this publication.[142]

Fiscal Management Arrangements. The pattern of fiscal management in most recently adopted state constitutions is to provide for a central revenue collecting agency under the governor, an executive budget authority, also under the governor, and an auditor under the legislature. This is in accord with most recommendations for modern fiscal practice.[143] The Florida system is different,[144] however, and must be analyzed in some detail.

Constitutional provisions in Florida provide for two state fiscal officers, the Comptroller and the Treasurer.[145] Their duties have evolved by statute, so that many of the taxes are collected by the Comptroller, who also certifies disbursements. The Treasurer keeps the state funds and disburses them on warrants emanating from the Comptroller and countersigned by the Governor.[146] Moreover, tax collections of revenue are scattered among a number of agencies in addition to the Comptroller. This dispersal of collection duties has given rise to adverse comment in all surveys of the Florida fiscal

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[141]FLA. CONST. art. IX, §§6, 16; art. 12, §§17, 18.

[142]Patterson, *Legal Aspects of Florida Municipal Bond Financing,* 6 U. FLA. L. REV. 287 (1953); Rose, *Developments in Revenue Bond Financing,* 6 U. FLA. L. REV. 385 (1953). For some other problems of interpretation see Dauer and Miller, *Municipal Charters in Florida: Law and Drafting,* 6 U. FLA. L. REV. 413, 443-449 (1953).

[143]GROVES, FINANCING GOVERNMENT (3d ed. 1950); HANSEN and PERLOFF, STATE AND LOCAL FINANCE IN THE NATIONAL ECONOMY (1944); LUTZ, PUBLIC FINANCE (4th ed. 1947). On budgets the standard work is BUCK, THE BUDGET IN GOVERNMENTS OF TODAY (1935).

[144]FLA. CONST. art. IV, §20.

[145]FLA. CONST. art. IV, §§20, 24.

[146]FLA. CONST. art. IV, §24.

picture.[147] Despite these reports, legislation to centralize tax collecting failed to materialize when the 1953 Legislature could not agree on whether this function should be centralized in a department of revenue under the Governor, as in most states, or should be centralized under the Comptroller. The outcome is that some forty-seven different agencies continue to collect revenue,[148] resulting in duplication and overlapping. It is true, however, that much of this is a statutory rather than a constitutional problem.

Florida has a good auditing department, consisting of the state auditor and assistant auditors, all appointed by the Governor.[149] The present auditor has been continued in office by a number of Governors. As mentioned earlier, the system, employed by many states, that provides the best safeguards is to have a constitutional provision whereby the legislature appoints the state auditor and his reports are made to it.

Another provision that is not typical of more recent fiscal practice is Florida's budget system. The budget commission is an ex officio body consisting of the members of the cabinet. Commenting on this, the Brookings Institution stated: "Reciprocity among cabinet members in supporting each official's requests, is perfectly natural. The result is bound to have a bad effect on budget making."[150] Proponents of the cabinet system, presently in vogue in Florida, argue that the cabinet officers have long continuity of experience; their departments spend a relatively small proportion of state funds; the level of ability of the cabinet members is high; and the officers develop a sense of trusteeship in regard to all state business. Against these considerations, which are designed to check aberrations by the Governor, is the fact that there will also be a check on the Governor when his program is well considered. In the interests of greater responsibility for the chief executive the *Model State Constitution* provides for a budget to be submitted annually by the governor.[151] This practice, which centers responsibility on the governor and consequently makes it easier for the voters to evaluate administrative performance, is followed today in many states.

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[147]See Legislative Reference Bureau, Collecting Florida's Major Taxes (1952); Report of Florida Citizens Tax Committee (1947); Report of the Special Joint Economy and Efficiency Committee of the Florida Legislature of 1943 (1945); The Brookings Institution, The Florida Fiscal Situation (1941).

[148]Legislative Reference Bureau, Collecting Florida's Major Taxes 4 (1952).

[149]Fla. Stat. c. 21 (1953).

[150]The Brookings Institution, The Florida Fiscal Situation 84 (1941).

[151]Model State Const. art. VII, §703 (5th ed. 1948).

The staffing of the budget office in Florida has improved within recent years. Nevertheless, the fact remains that, because of statutory and constitutional provisions, many funds do not come within the scrutiny of the state budget authorities. Furthermore, the State Road Department operates on a fiscal year that differs from that of other state agencies. This is obviously a chaotic situation and one that operates against orderly fiscal planning. In the interests of governmental improvement, a constitutional provision requiring the same fiscal year for all branches of government and for scrutiny of all expenditures by the budget officials is badly needed.

Article IV, Section 18, of the Florida Constitution embodies the very desirable item veto on appropriations, which allows the Governor to disapprove some detail of a general appropriation without vetoing the entire bill. This provision should be retained in any future constitution.

In summary, the Florida Constitution does not provide for the best fiscal management practice as developed in other states. Furthermore, there is more dispersion of fiscal authority among members of the executive branch than is found in most state constitutions. Finally, budget control is far from complete. A usual aid to legislatures, the legislative post-audit, is lacking. Although legislative budget procedures have improved in the past several years through establishment of continuing committees and through assignment of permanent personnel from the Legislative Reference Bureau to aid the Legislature, revision of the machinery could introduce better fiscal procedures.

As a final comment it should be pointed out that most states have found it necessary to establish a state tax commission for the purpose of equalizing assessments from county to county. Although this could be done by statute, the authority of such a statutory commission over constituted county officers would be questioned. To avoid legal challenge, provision for such an agency should be included within the Constitution.

Local Government Provisions

The Florida constitutional provisions for county and city government, most of which are found in article VIII, are typical of the period in which they were written. Since the provisions relating to counties differ considerably from those regarding cities, they will be treated separately.

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a. Counties[152]

The Constitution declares the counties to be political subdivisions of the state,[153] and empowers the Legislature to establish new counties and to adjust county lines.[154] Only one form of county government is prescribed, consisting of five commissioners for each county and requiring each county to be divided into a corresponding number of districts.[155] Although commissioners must be residents of their districts, they are elected by the voters of the county at large. The Constitution provides for a large number of other elective county officers[156] and also for a prosecuting attorney, who is appointed by the Governor.[157]

The main characteristic of the county organizational plan is its extreme decentralization. This system of organization goes back to the time when American life was largely rural and most of the county positions were part-time. Despite the fact that Florida is now two thirds urban, county government retains its traditional pattern, including even the fee system and the absence of any effective budget control. Furthermore, constables and justices of the peace, largely anachronistic in a state with good roads and modern transportation, are still in existence.

Council-Manager System. The co-ordination of county functions in the urbanized counties is very difficult because the administrative organization is not at all adapted to central responsibility. As a result, a number of states have authorized the council-manager system of county government, which is comparable to the council-manager form of city government. Under this system the county manager is appointed by the elective county commission, and he in turn appoints other county administrative officials. The county judicial officers are, of course, not a part of such an arrangement. This plan, with perhaps

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[152]See ANDERSON & WEIDNER, STATE AND LOCAL GOVERNMENT 478-486 (1951); DOVELL, COUNTY REORGANIZATION AND THE FLORIDA CONSTITUTION (12 U. of Fla. Econ. Leaflet No. 6, 1953), FLORIDA'S COUNTY GOVERNMENT (U. of Fla. Pub. Adm'n Clear. Serv. Civic Info. Ser. No. 13, 1952); DOYLE, LAIRD and WEISS, THE GOVERNMENT AND ADMINISTRATION OF FLORIDA (1954); SPICER, TEN YEARS OF COUNTY MANAGER GOVERNMENT IN VIRGINIA (1945).

[153]FLA. CONST. art. VIII, §1.

[154]FLA. CONST. art. VIII, §3.

[155]FLA. CONST. art. VIII, §5.

[156]*E.g.*, FLA. CONST. art. V, §§16, 16A, 21, 30; art. VIII, §6; art. XII, §10.

[157]FLA. CONST. art. V, §27.

some variation, is in operation in Los Angeles County, California, and in some counties in Virginia, South Carolina, Tennessee, and North Carolina. One variation retains one or more elective county officials, such as the sheriff, so that the adoption of the council-manager form does not create a situation that appears to be completely new. The advantage of this relatively new system of county government is that the voters elect a county commission, which has responsibility to act because it has authority over functions hitherto scattered among several agencies and officials, all separately elected. It is also noted that some rural counties, as well as urbanized counties, have followed this system. Petroleum County, Montana, with a population of only 1,200, has adopted the plan, with significant resulting economic savings in cost.

Home Rule. The *Model State Constitution,* in order to enable voters of a county to select the type of government they desire, does not provide for the traditional officials of county government as does the Florida Constitution. Instead it includes a section under which a uniform system of county government may be established by the legislature through general law. This system would apply to every county unless the voters of that county elected to choose a charter board. In the latter case, the county would become a "home rule" county, and the charter board might select whatever system of county government it desired. A system of this type would permit local variations by eliminating the present restrictions of the Florida Constitution. At the same time the Legislature could continue to enact other types of general laws affecting the general form of government of a "home rule" county.[158] Inclusion of such a provision in the Florida Constitution would help to solve another problem of the Florida Legislature — that of enacting special laws applying to particular counties. Such legislation, which constitutes a heavy work burden on the Legislature and frequently creates a legal problem, could be delegated to the counties under the home rule provision. Whatever was decided, moreover, would be by local vote of the electorate involved.

Consolidation of City and County. Reorganization of county government and provision for home rule so as to allow a county a choice of its form of government are not the only modern problems faced by

[158]A home rule provision for counties was submitted to the voters of Florida by the 1951 Legislature but was defeated in the 1952 general election.

counties. As the urbanization of Florida continues, the areas around the larger cities become virtually as densely settled as those within the city limits, creating a difficult problem of co-ordination between the city and county.[159] Over the past thirty years a number of amendments have been added to the Florida Constitution in an effort to control this situation. Permission to consolidate city and county government either in whole or in part has been granted several times.[160] None of these general merger programs have been approved by the local voters, although approval has been given to a number of more specialized co-ordinating programs. Also, since 1944 several counties, by virtue of constitutional amendments, have consolidated city and county tax assessments, tax collections, or both.[161] Furthermore, the 1953 Legislature submitted a blanket amendment to the voters,[162] which was approved in the 1954 general election, whereby the Legislature may by general, special, or local act authorize consolidation of city and county tax assessments and collections. Consolidation, however, may not become effective for any municipality until approved at a referendum election. Another type of functional consolidation was contained in a special act delegating to the Pinellas County supervisor of registration the duties of registration officer for all cities of that county; this act was upheld by the Florida Supreme Court.[163]

A further type of consolidation is that in which a service is carried out for both county and city by the same agency. Consolidations along these lines have occurred in cases such as that of the county water supply in Pinellas County. Exploratory work on consolidation of services has been underway for a year among the cities of Dade County,

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[159]See Dauer and Miller, *supra* note 142, at 455-459.

[160]FLA. CONST. art. VIII, §9 (Duval County and Jacksonville); *id.* §10 (Monroe County and Key West); art XX, §1 (Orange County and cities therein). In 1953 the Legislature authorized transfer of the functions of the City of Miami to the Dade County Commission, subject to local referendum, which failed to carry, Fla. Spec. Acts 1953, c. 29280.

[161]FLA. CONST. art. VIII, §§12, 13 (1944) (Hillsborough County); *id.* §§14, 15 (1948) (St. Lucie County); *id.* §§16, 17 (1948) (Volusia County); *id.* §§18, 19 (1948) (Broward County); *id.* §§20, 21 (1948) (Pinellas County); H.J. RES. No. 858, filed, Sec'y of State, June 15, 1953, pertaining to Monroe County and approved by voters in the 1954 general election. All section numbers are as corrected rather than as erroneously assigned by the Legislature in its joint resolutions.

[162]H.J. RES. No. 851, filed, Sec'y of State, June 15, 1953. See Dauer and Miller, *supra* note 142, at 456-458.

[163]Fla. Spec. Acts 1947, c. 24214. For earlier act affecting Clearwater and decision upholding constitutionality, *cf.* Cooley v. State *ex rel.* Aldrich, 155 Fla. 703, 21 So.2d 347 (1945), upholding Fla. Spec. Acts 1943, c. 22235.

and a survey has been undertaken to make recommendations to the 1955 Florida Legislature.[164] A comparable survey affecting Tallahassee and Leon County is also in process.[165] However, no over-all authorization for co-ordination of city and county functions has been considered for Florida. Instead, local legislation is relied upon to handle particular cases. From the standpoint of the Florida Constitution it would be well to consider the following provision of the *Model State Constitution*:[166]

> "Counties shall have such powers as shall be provided by general or optional law. Any city or other civil division may, by agreement, subject to a local referendum and the approval of a majority of the qualified voters voting on any such question, transfer to the county in which it is located any of its functions or powers, and may revoke the transfer of any such function or power, under regulations provided by general law; and any county may, in like manner, transfer to another county or to a city within its boundaries or adjacent thereto any of its functions or powers, and may revoke the transfer of any such function or power."

The growth of satellite areas around cities, with needs for zoning, fire protection, streets, sanitary and storm sewers, public utilities, and similar services, points to the need for general authorization of the type considered above.

b. Municipalities

The constitutional problems of Florida municipalities are as serious as those of the counties. There are over 300 incorporated municipalities in Florida, in which over two thirds of the state's population dwells. Florida has the highest degree of urbanization of any southern state, and the proportion of the population living in cities is equal to the national average. Consequently, city government in Florida is a matter of considerable importance. Existing constitutional provisions re-

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[164]PUBLIC ADMINISTRATION SERVICE OF CHICAGO, THE GOVERNMENT OF METROPOLITAN MIAMI (1954).

[165]Fla. Spec. Acts 1953, c. 29244.

[166]MODEL STATE CONST. art. VIII, §802 (5th ed. 1948). Art. XI, §§1102, 1103, provide for intergovernmental agreements and for the Legislature by general law to authorize such co-operative agreements or consolidations.

garding city government have proved impractical and have not been implemented by legislation. To understand the situation a brief survey of the background of the current constitutional provisions is necessary.

Special Legislation. The traditional system for granting city charters in Florida is special legislation. This general method was authorized in the Constitution of 1885 by article VIII, section 8, and article III, sections 21 and 24. Some specific changes were introduced, however, requiring legal notice to be given in the locality affected prior to consideration of a local bill by the Legislature.[167] Local bills still provided the usual method of creating new cities or amending existing city charters. The sheer number of such acts made it impossible for the Legislature as a whole to consider the bills. Consequently, the local bill calendar developed. Passage of local matters in each house was automatic if approved by the district senator or local representative delegation, as the case might be. Debate ensued only if the House delegation from that county was divided as to the merits of a local bill. The main objection to this plan is the fact that it requires the expenditure of a great deal of the time of the legislators on purely local matters which could, and probably should, be decided by the voters of a city in the interests of responsible democracy.

Home Rule. In 1915 the Florida Legislature enacted a statute, still in force, permitting charters to be altered or amended by a locally elected charter commission.[168] Such a charter would automatically become law when approved by the voters of a city. Thus statutory limited municipal home rule was introduced. But local bills could still be adopted, and the bulk of charters and charter amendments continued to be enacted by such local bills. In 1933 the Legislature proposed the current version of article III, section 24, and this was approved by the voters in November, 1934. Under this provision the Legislature was called upon to enact uniform charters. But, when the 1935 Legislature sought to implement the amendment, it found the system too rigid; consequently this provision of the Florida Constitution has remained a dead letter, and the system of statutory home rule and local bills remains in force.[169]

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[167]For detailed discussion see Dauer and Miller, *supra* note 142, at 413-420.

[168]FLA. STAT. c. 166 (1953), enacted as Fla. Laws 1915, c. 6940; see Dauer and Miller, *supra* note 142, at 460-467.

[169]This system had been tried and abandoned by other states as unworkable

A number of proposals have since been made in the Florida Legislature to remove that assembly from the local bill field by way of a constitutional amendment providing for municipal home rule. Under this provision, which follows the recommendations of the National Municipal League,[170] cities would be incorporated initially by a local charter, locally approved, or would choose one of several enacted under general law. Charters would be changed or redrafted locally. The procedure would be comparable to the prior noted statute of 1915, but the difference would be that under constitutional municipal home rule there would be no more local bills by the Legislature. The legislative business would then be concentrated on state matters, and local voters would be responsible for adopting or changing their form of city government. Of course the Legislature would not lose all authority over municipalities. General laws as to powers, applying alike to all cities, would still be within the legislative domain. The Legislature would still be concerned, too, with such questions as distribution of any state revenue to cities and limitations on indebtedness of cities. It would also provide by general law for the creation of new cities, but the continual deliberation upon city charters at each session of the Legislature would cease. The Florida League of Municipalities at its 1954 meeting in Tampa partially endorsed such a system.[171] It proposed that annexation of additional territory to a city be covered by a system of constitutional home rule, the details of which would be worked out by general laws but which would be ineffective until locally approved. Local bills providing for annexation would thereby be abolished. A comparable system would be in force for consolidation of two or more cities. The Florida League of Municipalities did not go so far as to endorse a complete abolition of local bills, although this was recommended by a committee at the meeting. Other states have found such a system desirable, and some sentiment has been expressed in the Legislature in favor of adoption of the entire home rule system. Of course it should be noted that home rule has not had sufficient legislative support in the past to be assured of the three-fifths vote in each house required for submitting proposed amendments to the voters.

Two other important points as to home rule should be considered. The very rapid urbanization of the state, plus the advantage of reve-

before it was attempted in Florida. In addition see Bryan v. Miami, 139 Fla. 650, 190 So. 772 (1939).

[170]MODEL STATE CONST. art. VIII, §§800-806 (5th ed. 1948).

[171]Tampa Morning Tribune, Nov. 24, 1954, p. 1, col. 1.

nues from the cigarette tax rebates allowed to cities, has led to the establishment of many satellite towns around certain of the larger municipalities. By 1954, for example, there were twenty-five such smaller cities or towns within Dade County around Miami. Comparable situations are developing around Daytona Beach, St. Petersburg, and Panama City, while other areas are similarly developing on a less extreme basis. This points to the fact that home rule alone is not a complete solution, unless it is accompanied by constitutional provisions, as in the *Model State Constitution,* that will permit consolidation of cities or functional consolidation of services[172] – and even the creation of a metropolitan area government, which may be the solution for the Miami situation. A specific home rule amendment is proposed for Dade County and the cities therein by the recently published survey report on local government in that area.[173] In part this question, too, was recognized by the Florida League of Municipalities.

The second point that needs to be borne in mind is that varying forms of city government are in use in Florida cities.[174] Any system of home rule would have to be flexible enough to permit this choice to continue.

The two usual forms of municipal government in Florida are the mayor-council type and the council-manager form. A high proportion of Florida cities have adopted the latter form,[175] and it has been endorsed by the National Municipal League.[176]

c. Summary

The local government provisions in the Florida Constitution are among the more detailed portions of that document. Article VIII contains the basic provisions on local government, but others are found elsewhere. There are a number of sections, applying to but a single county, which have been inserted because general enactments to modernize machinery of county and city government have not been worked out on any comprehensive basis.

[172]MODEL STATE CONST. art. XI, §§1102, 1103 (5th ed. 1948).

[173]PUBLIC ADMINISTRATION SERVICE OF CHICAGO, THE GOVERNMENT OF METROPOLITAN MIAMI 107 (1954), containing the text of the amendment.

[174]For a detailed discussion of these forms, see Dauer and Miller, *supra* note 142, at 422-426.

[175]LARSEN, THE COUNCIL-MANAGER PLAN IN FLORIDA: THEORY AND PRACTICE (U. of Fla. Pub. Adm'n Clear. Serv. Civic Info. Ser. No. 16, 1953).

[176]See MODEL CITY CHARTER (5th ed. 1941), obtainable from Nat'l Municipal League, 299 Broadway, New York 7, N. Y.; price $1.50.

Because of the high extent of urbanization, no area of the constitutional machinery is in greater need of systematic re-examination. Two thirds of Florida's population is found in cities. Counties are also called upon to supply many urban-type services. Expenditures at the local level now amount to one third of a billion dollars annually.[177] Because of the continual and rapid growth of the state population – 50% in the last decade – these expenditures continue to grow.

It is obviously both good government and good business to analyze carefully the developments in this field. The public is probably unaware of the fact that expenditures of counties, cities, and special districts exceed those of the state by almost $100,000,000 annually. Hence, lack of co-ordination among units of local government and overlapping of functions are matters of major importance. Certainly a high level of public services is necessary in a growing state that has a large tourist trade; but it is also necessary that attention be given to the management of these services, so that the tax dollar may be used to its utmost advantage. From this point of view re-examination of the machinery of local government, and the constitutional provisions concerning it, are indeed in order.

Piecemeal Amendment

In keeping with the idea that the people are the sole source of authority, the process of amending the basic law depends ultimately upon a favorable expression by the electorate. Like most other written constitutions, the Florida Constitution of 1885 provides a method by which it may be amended.[178] Proposals for amendment may be initiated in either house of the Legislature at both regular and special sessions. An amendment may embrace any number of subjects, but no single amendment can revise more than one article of the Constitution. If

[177]This figure includes school expenditures, which are controlled by county school boards elected separately from other county officials. It should also be noted that the school funds and other funds collected by means of state taxes but rebated to school boards, counties, and cities are credited to the cities, counties, and school districts. The theory is that the expenditure basis is the most important way to analyze the work of governmental units. If an analysis is made on a tax basis, however, the state proportion will loom larger. Nevertheless, the monies are turned over to the local government units to spend. From the standpoint of the voters this, it is believed, has somewhat obscured the real importance of local government.

[178]The methods of general revision of the Florida Constitution are discussed below. Both piecemeal amendment and general revision are covered in art. XVII.

an amendment is approved by three fifths of the members elected to each house of the Legislature, it goes before the voters at the next general election. If a majority of the electors voting on the proposed amendment vote favorably, it then becomes part of the Constitution.

In 1942 a constitutional provision was adopted which provided a method of emergency amendment.[179] If three fourths of the elected members of each house determine an emergency to exist, an amendment on the subject of the emergency can be agreed to by the same number of the elected members of each house and placed before the voters for their approval or rejection at a special election to be held not less than 90 or more than 180 days after adjournment. As in the case of a regular amendment, adoption requires the approval of a majority of the voters who cast ballots on the question. For both regular and emergency proposals, the Constitution requires that each amendment agreed to by the Legislature be published at least twice in a newspaper in every county having a newspaper, one publication to be made not more than ten weeks and one not less than six weeks immediately preceding the election at which the proposal is to be submitted to the voters.

The provisions for amendment in Florida allow the Constitution to be changed without excessive difficulty. In view of the detailed materials confided to the Constitution, ease of amendment is probably fortunate, as it secures the flexibility required for government to operate. The problem of amendment in Florida is not so much a technical matter concerning the amendment provisions themselves, but it is rather a symptom of the weaknesses inherent in the whole Constitution. There is a reciprocal effect in over-amendment: a long detailed constitution necessitates frequent amendment in order to carry out the governmental activities required in a changing state, while each amendment of the document is in turn likely to increase the length and add to the drafting faults of the document.

Since 1885 the Florida Constitution has been amended nearly 100 times; consequently, it has increased to about three times its original length. In addition to the amendments adopted during this period, over fifty other proposals were presented to the voters and rejected by them. These figures mean that an average of over four amendments has appeared on each biennial general election ballot, with an average of nearly three of them subsequently receiving the approval of the electorate. And as the Constitution grows, the general trend is toward

[179]FLA. CONST. art. XVII, §3.

a successively greater number. For example, a total of thirty-six amendments were proposed in the last four general elections, and twenty of them were adopted. This represents an average of about nine proposals and five adoptions every two years.

Aside from the generally bad effect on the draftsmanship of the Constitution, excessive amendment creates other difficulties. Government by amendment places a burden upon the voter which in many cases he should not be asked to bear; and, conversely, it often allows those in the government to pass the buck to the people on decisions that should be the responsibility of representative bodies. Too frequently the amendments are complicated, technical, and detailed, with the result that the voter has neither the knowledge and skill necessary to analyze them nor the time to devote to informing himself about them. The voter's responsibility should be of the broadest type in a representative system; he should be able to elect his representatives, assess their achievements at the polls in subsequent elections, and vote on amendments that affect the larger aspects of governmental structure or operation. The voter is fully qualified to decide such matters as whether a legislature should consist of one or two houses, provided he has access to the arguments on both sides of the question; but he elects representatives for the express purpose of carrying out the policy mandates contained in the Constitution and interpreted in the campaign platforms of the various candidates and their parties. The basic idea of representative government is the selection of specially qualified persons who will give the time necessary to govern in the interests of and with responsibility to the electorate. This cause is very poorly served when decisions on technical matters within their competence either cannot or will not be made by the representatives, who instead refer them to the public for settlement.

Closely related to the problem of shifting the burden of responsibility for decisions is the fact that too much amendment tends to allow minority rule to develop. The bewildering number of detailed amendments placed before the electorate has the effect of producing voter apathy. Since the amendments are voted upon in the general election, and since the general elections which draw the greatest number of voters to the polls are those in which the presidency of the United States is at stake, the years 1948 and 1952 afford a good basis for assessing the interest of the electorate in proposed amendments. In 1948 the state had slightly over 1,000,000 registered voters,[180] and

[180]REPORT OF THE SECRETARY OF STATE OF THE STATE OF FLORIDA FOR THE YEARS 1947-1948, p. 264.

about 55% voted in the presidential race. On the other hand, about 20% of those qualified cast ballots on each of eleven constitutional amendments presented. No one of these amendments received as many as 300,000 votes, and the one on which the lowest vote was tabulated polled a total of only 145,707 votes, for and against it.[181] In 1952 the picture was much the same. Over 1,300,000[182] were registered at that time, of whom nearly 990,000 voted in the presidential race. Again there were eleven proposed amendments on the ballot, and again the average vote on each amendment was less than half the vote cast in the presidential race. The amendment receiving most attention was voted on by nearly 560,000 persons in 1952, but the amendment receiving the lowest vote polled less than 325,000.[183] It is noteworthy, too, that the total vote on the amendments declined on the average the further down the ballot the amendment appeared, a fact which tends to indicate that most voters had an initial interest and then either became bored, could not spare the time, or had not been able to inform themselves sufficiently to continue the effort to make decisions on the later issues. Since many of the votes on the various amendments were split nearly evenly, a great many amendments were carried or lost by the vote of a very small percentage of the qualified voters of the state.

Finally, the number and type of amendments which have appeared on the ballot since 1885 have had the effect of denying local self-government to counties and cities. More than twenty proposals have been put before the voters of the state on matters that principally concerned the affairs of only one locality. The result in these situations is too often an even more decided apathy than that demonstrated on the other issues; or, failing that, a tendency is shown either to vote for the matter simply because it does not affect one's own area or to vote against it on the ground that it would be a real or imagined special privilege for the particular unit concerned.

As has previously been indicated, the amending process is not so much at fault as is the inflexibility of our constitutional arrangement. The requirement of publication of amendments is especially good in view of the importance of informing the voter as to the issues; but

[181]TABULATION OF OFFICIAL VOTES CAST IN THE GENERAL ELECTION, NOVEMBER 2, 1948 (Compiled by R. A. Gray, Sec'y of State).

[182]REPORT OF THE SECRETARY OF STATE OF THE STATE OF FLORIDA FOR THE YEARS 1951-1952, p. 325.

[183]TABULATION OF OFFICIAL VOTES CAST IN THE GENERAL ELECTION, NOVEMBER 4, 1952 (compiled by R. A. Gray, Sec'y of State).

it might well be broadened by requiring the newspaper to print the amendments in the order in which they are to appear on the ballot and to accompany each proposal with a brief factual explanation of the effect that it is supposed to have. One of the big problems of contemporary government is that voters often are less interested in issues than in candidates, so that unless more emphasis is placed on amendments they will continue to be ignored in elections even when they concern fundamental material of the Constitution.

The provision allowing an entire article to be changed by a single amendment is also advantageous. If a new constitution should be forthcoming, however, the drafters might want to consider tightening the method of amendment somewhat, especially if the new basic law is framed in general terms. Any number of possibilities for making the Constitution more difficult to change formally could be considered. The devices most frequently used for making amendment more difficult are limitations on the frequency or character of proposed amendments, requirement of a larger majority in the legislature for approval of the proposal, and an increase in the number of voters required to ratify the amendment. For example, a limit could be placed on the number of amendments which could be voted on at any given election, or action in two successive sessions could be made necessary for proposal, or a larger popular vote — such as a majority of those voting in the election at which amendments are voted on — could be stipulated. These methods have, however, proved to be overly rigid in that it becomes very difficult to get an amendment adopted. Any such arrangements would afford additional protection against the present tendency to over-amend, but a far better protection would be a constitution within whose framework the demands on contemporary government could be more easily met. A cardinal rule of piecemeal amendment is that ease of amendment should increase with the amount of detail confided to the basic law, so that any attempt to tighten the amendment process should await the adoption of a constitution whose limitations on governmental power are less stringent.

REVISION

Since the Florida Constitution of 1885 demonstrates serious faults in both its draftsmanship and its provisions for governmental structure and policy, it seems fitting to close this discussion with an inquiry into the methods that might be used to revise the document com-

pletely.[184] In every legislative session in Florida since World War II, and in some instances before and during the war, proposals have been introduced for complete revision of the Constitution.[185] The right of the people to revise their basic law is an unquestioned premise of constitutionalism, and several possibilities by which the alteration may be accomplished are open to them.

The three devices for constitutional revision commonly used by the states are the constitutional convention, the legislature, and the constitutional commission. Each of these methods has its advantages and disadvantages, and there are certain circumstances under which it is advantageous to use some combination of these means of reform. Some of the methods are more difficult to utilize in certain places than others because of legal restrictions and the limitations of practical politics, but it is conceivable that any of these methods could be used to some extent in Florida if desirable.

Constitutional Convention

A constitutional convention is by far the most widely used method of over-all constitutional reform. Dating from the revolutionary period in this country, it may be said to be the normal institution for effecting complete constitutional change. Thirty-six states, including Florida, have constitutional provisions prescribing the convention as a means of revision and defining the terms under which one may be called; and there is little doubt that the twelve states without such provisions may utilize the convention by legislative proposal and popular approval.

The Florida Constitution provides the method by which a convention call is issued and regulates the apportionment of delegates and the time of meeting.[186] The Legislature initiates the proposal by

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[184]A number of works on state constitutional revision are extant. The classical older work is DODD, THE REVISION AND AMENDMENT OF STATE CONSTITUTIONS (1910). Two recent works covering the subject in some detail are KEITH, METHODS OF CONSTITUTIONAL REVISION (U. of Tex. Bur. of Munic. Research Info. Bull. No. 3, 1949); STURM, METHODS OF STATE CONSTITUTIONAL REFORM (U. of Mich. Governmental Studies No. 28, 1954). For a more succinct treatment see DOVELL, MODERNIZING STATE CONSTITUTIONS (U. of Fla. Pub. Adm'n Clear. Serv., Civic Info. Ser. No. 2, 1950).

[185]For more extensive discussion of some of these attempts see David, *The Case for Constitutional Revision in Florida,* 3 MIAMI L.Q. 225 (1949); Murray, *Recent History and Present Prospects of Efforts to Revise State Constitution,* 22 FLA. L.J. 56 (1948). Also see the work of the Citizens' Constitution Committee, *supra* note 2.

[186]FLA. CONST. art. XVII, §2.

a two-thirds vote of the entire assembly. Notice of the action must then be published weekly, in a newspaper in each county in which a paper is published, for three months preceding the next general election. In counties without a newspaper, notice is given by posting at the polling precincts for six weeks preceding the election. The decision is made by a simple majority vote. If the voters approve the convention, the Legislature chosen at the election at which the proposal was voted on is obliged to provide by law for a convention to be held within six months. The Constitution further provides that the convention shall consist of a number of delegates equal to the membership of the House of Representatives and that these delegates shall be apportioned in the same manner as the membership of the House.

At least two objections may be raised against these provisions for calling a constitutional convention. In the first place, the time sequence is very inflexible. If a convention call is approved by the Legislature in regular session, as any call probably would be, at least two years must elapse before the call is implemented, and then a maximum of only six months is allowed for election of delegates and for whatever research is undertaken as a preliminary step in the process of revision. With such a prolonged period between the actions required to call a convention, the difficulty of sustaining public interest in the projected reform is appreciable. The requirement of a two-thirds majority in the Legislature for approving a convention call would appear to be satisfactory insurance against precipitous action; and it would greatly facilitate matters if the Legislature were free to include in its proposal all of the machinery for the election of delegates and the meeting of the convention. Action could then be taken on these matters at the same election as the one in which the proposition to hold the convention would be voted on.

It would also perhaps be better to allow the Legislature to exercise its discretion in proposing a time for the convention to meet, so that factors such as the length of time needed for prior research may be taken into account. To some extent this objection could be met if the Legislature established a research agency at the same session at which it initiated the call. The research unit would not only have more than two years in which to work on the project before the convention met but public interest could be sustained by the fact that this continuous activity was being publicized and carried out in the interim between the initial proposal for a convention and its actual assembly.

The second objection to a specific constitutional provision for a convention concerns the method of apportioning delegates. By having the delegates selected on the basis of the apportionment of members of the House of Representatives the same disproportion of rural and urban representation would exist as in the case of the Legislature. There are many who feel that a convention is the most direct institutional form taken by the principle of popular sovereignty and that any convention which did not preserve the principle of equality of representation would be unlikely to produce a constitution which truly reflected the will of the people. Such factors as the serious responsibility of constitutional reform, general public opinion, and the opportunity of the electorate of the state at large to pass on the constitution drafted by the convention would have to be relied upon to mitigate the possibility of a biased constitution.

Since the Constitution does not contain any references to the convention's meeting place, the manner of selecting delegates, the qualifications of delegates, the powers of the convention, or the method of ratification, it is apparently presumed that these matters would be settled by the act calling the convention. Although some states have held conventions in which appointed or ex officio delegates were included along with the elected representatives, the nature of the convention provision in the Florida Constitution makes it doubtful that any method of selection other than that of a special election would be acceptable to the people of the state; and presumably the qualifications would follow those required of members of the House. In the matter of powers, the Legislature, with popular approval, presumably could enact such limitations as it deemed expedient or could leave the convention free of any substantive restrictions. Procedural matters, such as the length of time during which the convention is to meet, the rate of pay, and the persons to serve as temporary officers, are often determined by the enabling act, while the convention is ordinarily left free to develop its own organization and rules of procedure.

A convention is a special representative assembly selected for the specific purpose of drafting a new constitution or revising an existing one. In one sense it is responsible only to the people. Since the people of Florida vote on the initial call proposed by the Legislature, the content of that call presumably expresses the will of the people when they approve it, and all limitations contained in it are binding on the convention. It seems likely that any legislation evoking a convention would contain the stipulation that the constitution resulting from its work be submitted to the people for ratification. Although some states

have allowed the convention plenary powers to draft and adopt a new basic law, the usual procedure is popular ratification, even in states such as Florida where there is a direct popular mandate on the original issue of holding the convention. The convention would probably be ill-advised not to submit the document to the people, even if the enabling legislation did not make popular ratification necessary. In races for the election of delegates it is quite doubtful that any delegate would be elected who did not pledge in advance that the Constitution would be submitted for ratification by the people. The present Constitution was ratified by popular vote.

There are a number of advantages in the convention method of constitutional reform:

(1) The convention is the traditional means of effecting revision, and it is more likely to be approved than any other method. Furthermore, its acceptability is likely to mean that its final product will more readily satisfy the electorate and that the revised constitution will stand a better chance of being adopted.
(2) The convention is also a representative and deliberative assembly whose nature seems more in accord with the processes of democracy than other revision agencies. It appears only right and fitting that a special representative body should be constituted when the solemn task of rewriting the basic law of a body politic is undertaken.
(3) The convention is also likely to contain men of a high caliber. Many people who would not ordinarily enter partisan politics as candidates for election feel that a convention delegate's role is that of a statesman and consequently offer themselves for election to such a body. For this reason, too, a convention often will prove less open to pressures and to direct interest representation than regular legislative bodies.

On the debit side, conventions are expensive and time consuming. The costly machinery of election must be put into operation, and the large size of the body means a high cost for maintaining it. Serious conflicts will invariably develop when large numbers of individuals come together to resolve important issues, and often the cumbersome organization of the body will reflect itself in a long, overly compromised, and noncohesive constitution. If a time limit is placed on the

convention, the last hour rush characteristic of limited session legislatures may become apparent. Finally, unless the convention has the advantages of some preliminary research work and a research staff to assist it during its meeting, it may lack the impartial sources of information needed to aid it in arriving at sound conclusions.

Even if a convention is used there is no reason to suppose that its work could not be ably supplemented by other devices; and there is every reason to believe that an interested and informed public provides the best guarantee not only that the constitution produced by a convention will be a good one but also that it will be successful at the polls.

Legislature

Under any circumstances the Florida Legislature has an important part to play in constitutional change. In the ordinary process of amendments it is the formal initiator of all proposals, and it thereby greatly influences the content of a constitution in its development and adjustment to new conditions. It is also the sole originator of proposals for complete revision, since the Constitution does not provide for constitutional initiative or for the regular submission to the voters of the question of calling a convention. In instituting the proposal for change, the Legislature has considerable opportunity to influence the ultimate content of the constitution through the placing of limitations in the call. The Legislature also, after setting the machinery of reform in motion, must make the preparations for the convention in the form of special election legislation and appropriations.

There are at least two conceivable ways, other than those mentioned above, in which the Legislature could play an even greater role in constitutional reform. The first means is article-by-article amendment; and the second is the slim possibility that the Legislature might act as a convention. The way was opened for the use of the former device with the 1948 adoption of an amendment to article XVII, section 1, allowing a single proposed amendment to embrace the contents of an entire article. Previously an amendment had been restricted to a single subject. Thus today, even though the Constitution prescribes the convention as a device for complete revision, the alternative of having the Legislature propose a series of amendments completely overhauling the various articles is clearly available as a revision technique. Aside from the advantage of experience that the legislators bring to the job, the most important reason for article-by-

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article amendment is the presentation of the document to the public in piecemeal fashion. If a proposed constitution is presented as a whole, various groups may be dissatisfied with specific parts and their cumulative vote may defeat the entire document. In order to overcome this difficulty, the State of New York used the article-by-article technique in submitting its convention-drafted Constitution of 1938 to the voters.

Naturally this plan has certain drawbacks. Given the short time that the Legislature has to carry out its ordinary functions, it is doubtful whether it ought to undertake the additional task of writing, article by article, a new constitution. Again, doubt is sometimes expressed as to the type of constitution that would be forthcoming should this method be used. How well would the various articles hang together when written over a considerable number of legislative sessions — as they likely would be — if this technique were adopted? Although the process of altering a constitution is to some extent a continuous one, any attempt at complete redrafting requires the uninterrupted concentration of the drafters if the document is to meet the standards laid down earlier. The Legislature also works under heavy pressures from interest groups and is engaged in strongly partisan activities, which, while they may be necessary and even beneficial in the performance of the purely legislative tasks, need to be abstracted as much as possible from deliberations on the basic law.

The possibility of the Legislature's acting as a convention is largely academic, and it is brought up only because it is legally possible. While the Constitution provides that a convention called to revise Florida's basic law shall consist of a number equal to the membership of the House of Representatives and shall be apportioned in the same manner as the House, it does not say how these delegates shall be selected. Although it strains one's credulity, it is nonetheless technically possible that the Legislature might propose that the House serve as a convention. The people might then ratify the proposal, and the Florida Supreme Court might refuse to review the issue on the ground that it is a political question. The only experience of a legislature in the capacity of a convention has been in New Jersey, where in 1943 the voters authorized their legislative body to act as a convention. The constitutional draft was defeated at the polls; a convention was subsequently called and produced a constitution, which was accepted by the voters in 1947.[187]

[187]See STURM, *op. cit. supra* note 184, at 22.

As a constitutional revision agency the Legislature presents certain generally desirable attributes and perhaps a larger number of defects. Its experience in working under the existing Constitution and its knowledge of the state's governmental machinery are probably its best claims to usefulness as a revision agency. In addition it is already in existence as a representative body, is organized, and could probably be utilized at a lower cost than a convention, particularly if the revision were proposed article by article in regular sessions. On the other hand, although it is representative for ordinary law-making purposes, it was not elected for the particular purpose of framing a constitution and therefore does not satisfy the desires of the populace for a specially constituted revision agency. In addition, it has the disadvantages mentioned above of limited time, partisanship, and operation under interest pressures. On the whole, probably the best service in constitutional revision that a regular legislative body can render is to leave the convention as free as possible from legislative legal encumbrances and then appropriate sufficient funds for the convention's use to enable it to exercise full deliberative powers.

Constitutional Commission

A constitutional commission is a small body, usually composed of members thought to be especially qualified, appointed to study and make recommendations on the basic law. New Jersey, which originated the technique in 1852, has had seven constitutional commissions; and over one third of the states have made use of a commission at some time in their history.

Commissions have varied rather widely in their membership and powers. The recent tendency has been to establish commissions composed of a minimum of seven members, although at least one commission has been constituted with as many as thirty-eight members. In some cases a commission may be appointed by the legislative branch alone, in others by the legislative and executive; and in some instances the judiciary may participate in the appointments. Again, the governor alone may appoint them, or some combination of appointive and ex officio membership may be provided. Normally, an attempt is made to insure that the commission is bipartisan.

A commission may be authorized to study the constitution and make general recommendations for change, or it may be charged with the responsibility for preparing a suggested draft of a new basic law. In either instance the commission ordinarily will report its

results to the legislative assembly for further disposition, although it is possible that a legislature may instruct a commission to report its findings to a convention or directly to the people for ratification in a regular or special election.

No state has seen fit to include in its constitution a provision authorizing the use of a commission, but this has not acted as a deterrent. In Florida, because of the existing constitutional provisions, the commission probably would be brought into existence, if at all, to act as a research adjunct either to the Legislature, if article-by-article revision should be attempted, or to a convention should one be called. Since Florida has never actually succeeded in setting up a commission,[188] any attempt to use it other than in a research and advisory capacity would be fraught with legal difficulties unless the Constitution itself were first amended to give a commission other than an advisory role.

Although many advantages are claimed to result from the use of a commission, recent experience has indicated that its usefulness in over-all constitutional change is limited. In its favor may be listed the arguments that it is inexpensive, expert, and small enough to work without unnecessary friction or organizational problems. Also, it is more thorough than other agencies, uses more research materials or engages in actual research itself, is less open to political pressures, and its final product is more likely to approach the ideals of good constitutionalism than drafts produced by other bodies. Professor Bennett M. Rich, a careful observer of a recent New Jersey commission, contests many of these assumptions:[189] he finds that the commission was open to pressures; that it was unwilling to use initiative in attacking the more controversial questions of revision; and that it displayed a tendency to judge too many issues in the light of what the legislature would be likely to accept. Professor Rich, along with a number of others who have studied the problem, concludes that the commission method of revision is not an adequate substitute for a convention and that "a state contemplating over-all revision is courting disaster if it relies exclusively upon the commission."[190] Aside from the value of commissions in recommending incidental change, particularly of a

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[188]For a recent attempt at creating a commission by the Legislature see Murray, *supra* note 185, at 56.

[189]Rich, *Convention or Commission?*, 37 NAT'L MUNIC. REV. 133 (1948).

[190]*Id.* at 138, 139; see also KEITH, *op. cit. supra* note 184, at 19; STURM, *op. cit. supra* note 184, at 147.

technical nature, Professor Rich finds the chief advantage of these bodies to be their educational role in keeping the issue of reform alive and stimulating interest in the discussion of proposals for altering the various parts of the basic law.

One other point might be made as regards the use of a commission as the sole method of reform. Perhaps the main reason for the mediocre success of commissions is the fact that they are not democratic in their manner of selection or representation; hence the constitutions produced by them are more suspect than those drafted by conventions. This obstacle can be overcome by more attention to public hearings and to the representative character of the commission.

The experience of other states may provide a valuable lesson for Florida in this connection. It is possible that a commission could be utilized as a solitary method of constitutional revision, but its creation would require care in order to avoid legal and political repercussions that might seriously set back the entire revision movement. On the other hand, a commission could be appointed to serve on a continuing basis for the dual purpose of research and stimulation of public interest. Not only could such an agency furnish vital information for future consideration, either by the Legislature or a convention, but also it would keep the matter of constitutional change constantly before the public through its research findings, publicizing of constitutional issues, recommendations for change, and other forms of direct or indirect public relations.

Obstacles to Revision

One commentator on state constitutional reform has observed that there are three factors standing in the way of change: legal, political, and psychological.[191] It is not difficult to see that there is a very close interaction among these three barriers to the alteration of outmoded constitutions. To some extent all of these factors play a part in the Florida situation.

The main legal difficulty in this state is the extraordinary majority vote required in the Legislature to begin the process of calling a convention. But there is an additional problem in the length of time required to get a convention under way after the initiation of legislation providing for it.

The legal obstacles could be overcome if the political and psycho-

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[191]Hindman, *Road-Blocks to Conventions,* 37 NAT'L MUNIC. REV. 129 (1948).

logical difficulties were less severe. After all, the legal impediments are put to use only because the other factors are present in sufficient measure to warrant restraint. Chief among the political and psychological drawbacks, other than the previously mentioned apathetic state of public opinion, are the fear that certain revered provisions of the present document will be changed, and a latent conservatism among the populace on the general issue of revision. In this state, as in so many others, the fear that the heavy legislative representation of the rural minority would be diminished is a basic factor in restraining action. Other provisions, such as the tax structure, are regarded so favorably by certain groups that the creation of any deliberative assembly with extensive powers to draft a new constitution for submission to the people would be strongly opposed.

In addition, many people are naturally suspicious of anything that smacks of reform, believing either that what was good enough in the past is good enough today or that any change is likely to be for the worse. In the face of objections of the latter type, the best countering appeal is to the pocketbook. Ordinarily, a fairly clear presentation of the way in which a poor basic law leads to costly operation of government — and a poorly distributed tax burden — will have more weight than other arguments.

The need for constitutional change in Florida is apparent to the great majority of those who have studied the problem carefully. In the face of both overt opposition and widespread indifference, however, the task of setting the available revision machinery into motion is far from a simple one. With the vote presently required to instigate any sort of general constitutional change, it is not sufficient to arouse interest only in the biennial sessions of the Legislature; the main obstacle to revision — public apathy — should be attacked on a sustained basis. If revision comes in Florida, it will be the result of a sustained educational and pressure effort on the part of many individuals and organizations interested in the Constitution, the fundamental political institution of the state.

APPENDIX I

ARTICLE IX

SECTION 16. *Board of administration; gasoline and like taxes; distribution and use; etc.* — (a). That beginning January 1st, 1943, and for fifty (50) years thereafter, the proceeds of two (2c) cents per gallon of the total tax levied by State law upon gasoline and other like products of petroleum, now known as the Second Gas Tax, and upon other fuels used to propel motor vehicles, shall as collected be placed monthly in the 'State Roads Distribution Fund' in the State Treasury and divided into three (3) equal parts which shall be distributed monthly among the several counties as follows:

One part according to area, one part according to population, and one part according to the counties' contributions to the cost of State road construction in the ratio of distribution as provided in Chapter 15659, Laws of Florida, Acts of 1931, and for the purposes of the apportionment based on the counties' contributions for the cost of State road construction, the amount of the contributions established by the certificates made in 1931 pursuant to said Chapter 15659, shall be taken and deemed conclusive in computing the monthly amounts distributable according to said contributions. Such funds so distributed shall be administered by the State Board of Administration as hereinafter provided.

(b) The Governor as Chairman, the State Treasurer, and the State Comptroller shall constitute a body corporate to be known as the 'State Board of Administration,' which Board shall succeed to all the power, control and authority of the statutory Board of Administration. Said Board shall have, in addition to such powers as may be conferred upon it by law, the management, control and supervision of the proceeds of said two (2c) cents of said taxes and all moneys and other assets which on the effective date of this amendment are applicable or may become applicable to the bonds of the several counties of this State, or any special road and bridge district, or other special taxing district thereof, issued prior to July 1st, 1931, for road and bridge purposes. The word 'bonds' as used herein shall include bonds, time warrants, notes and other forms of indebtedness issued for road and bridge purposes by any county or special road and bridge district or other special taxing district, outstanding on July 1st, 1931, or any refunding issues thereof. Said Board shall have the statutory powers of Boards of County Commissioners and Bond Trustees and of any other Authority of special road and bridge districts, and other special taxing districts thereof with regard to said bonds, (except that the power to levy ad valorem taxes is expressly withheld from said board) and shall take over all papers, documents and records concerning the same. Said Board shall have the power from time to time to issue refunding bonds to mature within the said fifty (50) year period, for any of said outstanding bonds or interest thereon, and to secure them by a pledge of anticipated receipts from such gasoline or other fuel taxes to be distributed to such county as herein provided, but not at a greater rate of interest than said bonds now bear; and to issue, sell or exchange on behalf of any county or unit for the sole purpose of retiring said bonds issued by such county, or special road and bridge district, or other special taxing district thereof, gasoline or other fuel tax anticipation certificates bearing interest at not more than three (3) per cent per annum in such denominations and maturing at such time within the fifty (50) year period as the Board may determine. In addition to exercising the powers now provided by statute for the investment of sinking funds, said Board

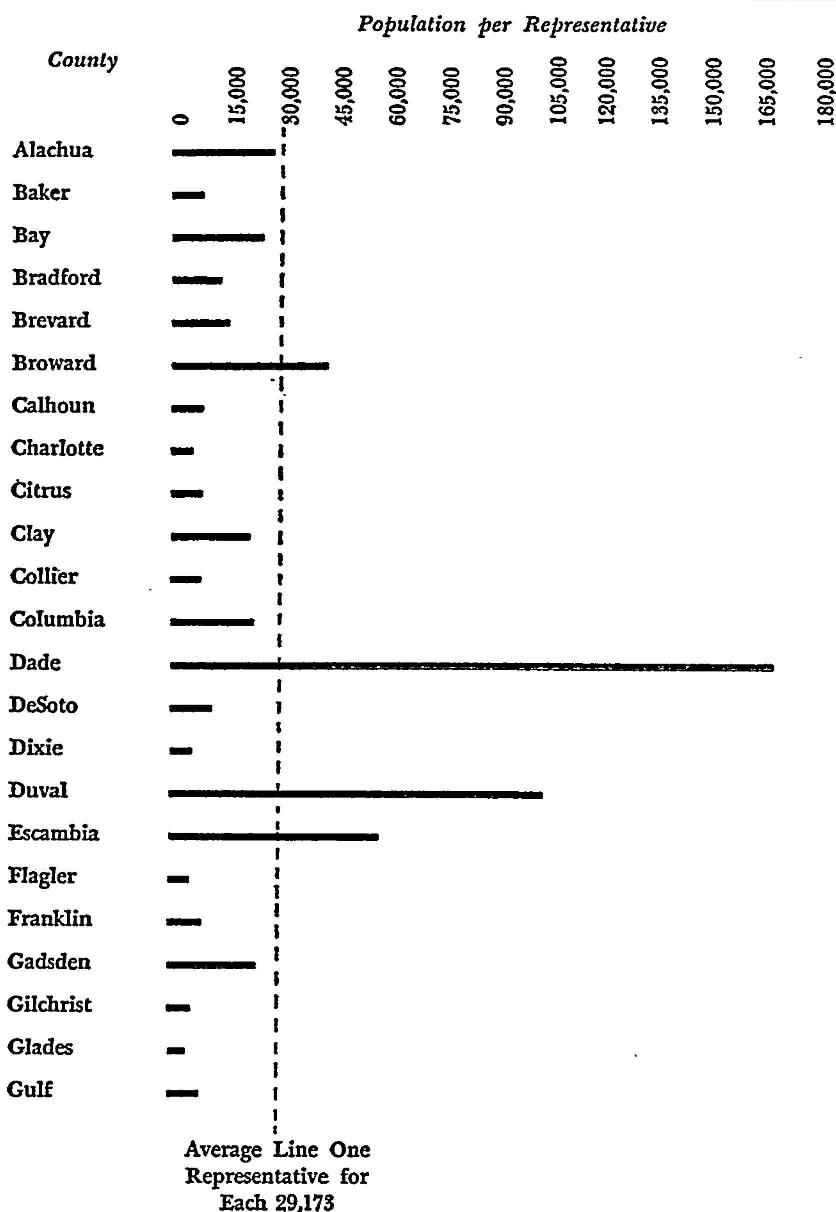
may use the sinking funds created for said bonds of any county or special road and bridge district, or other unit hereunder, to purchase the matured or maturing bonds participating herein of any other county or any other special road and bridge district, or other special taxing district thereof, provided that as to said matured bonds, the value thereof as an investment shall be the price paid therefor, which shall not exceed the par value plus accrued interest, and that said investment shall bear interest at the rate of three (3) per cent per annum.

(c). The said Board shall annually use said funds in each county account, first, to pay current principal and interest maturing, if any, of said bonds and gasoline or other fuel tax anticipation certificates of such county or special road and bridge district, or other special taxing district thereof; second, to establish a sinking fund account to meet future requirements of said bonds and gasoline or other fuel tax anticipation certificates where it appears the anticipated income for any year or years will not equal scheduled payments thereon; and third, any remaining balance out of the proceeds of said two (2c) cents of said taxes shall monthly during the year be remitted by said board as follows: Eighty (80%) per cent to the State Road Department for the construction or reconstruction of State Roads and bridges within the county, or for the lease or purchase of bridges connecting State highways within the County, and twenty (20%) per cent to the Board of County Commissioners of such county for use on roads and bridges therein.

(d). Said Board shall have the power to make and enforce all rules and regulations necessary to the full exercise of the powers hereby granted and no legislation shall be required to render this amendment of full force and operating effect from and after January 1st, 1943. The Legislature shall continue the levies of said taxes during the life of this Amendment, and shall not enact any law having the effect of withdrawing the proceeds of said two (2c) cents of said taxes from the operation of this amendment. The Board shall pay refunding expenses and other expenses for services rendered specifically, for, or which are properly chargeable to, the account of any county from funds distributed to such county; but general expenses of the Board for services rendered all the counties alike shall be prorated among them and paid out of said funds on the same basis said tax proceeds are distributed among the several counties; provided, report of said expenses shall be made to each Regular Session of the Legislature, and the Legislature may limit the expenses of the Board.

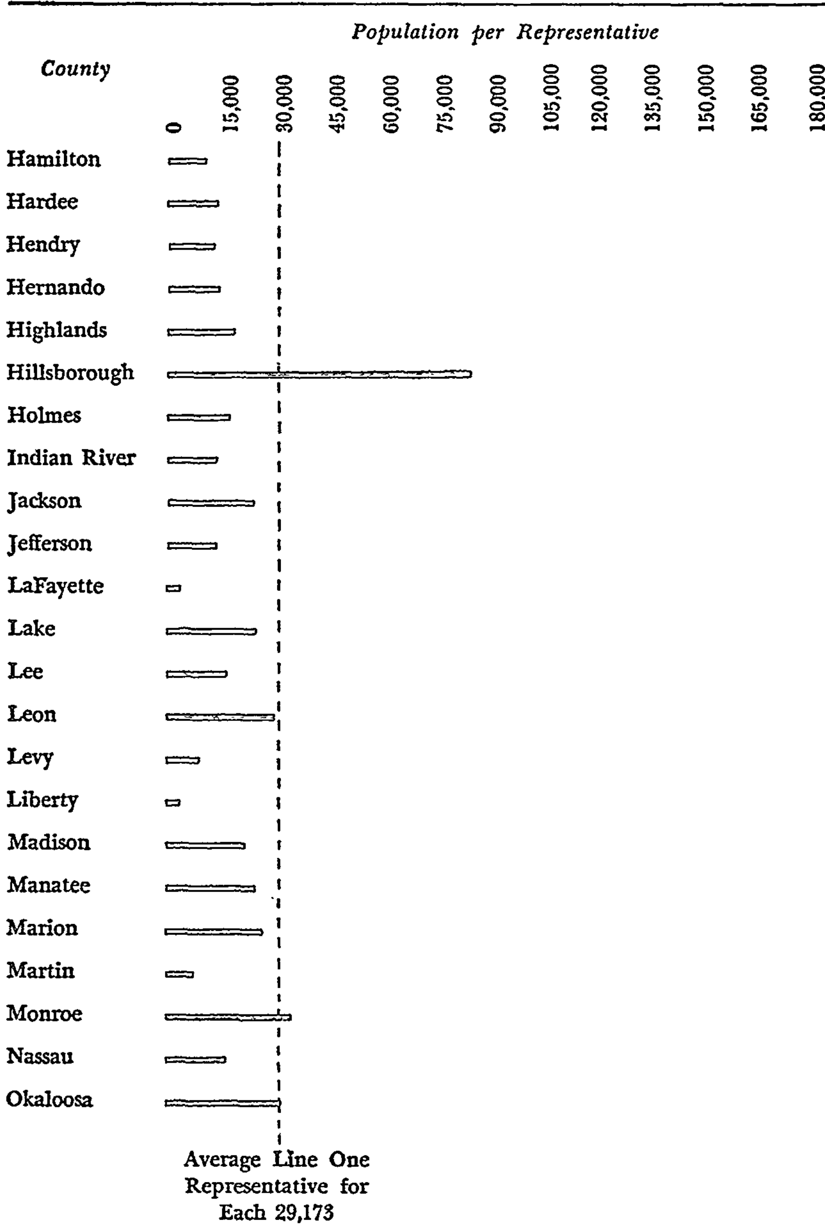
APPENDIX II

FLORIDA APPORTIONMENT (1950) HOUSE OF REPRESENTATIVES



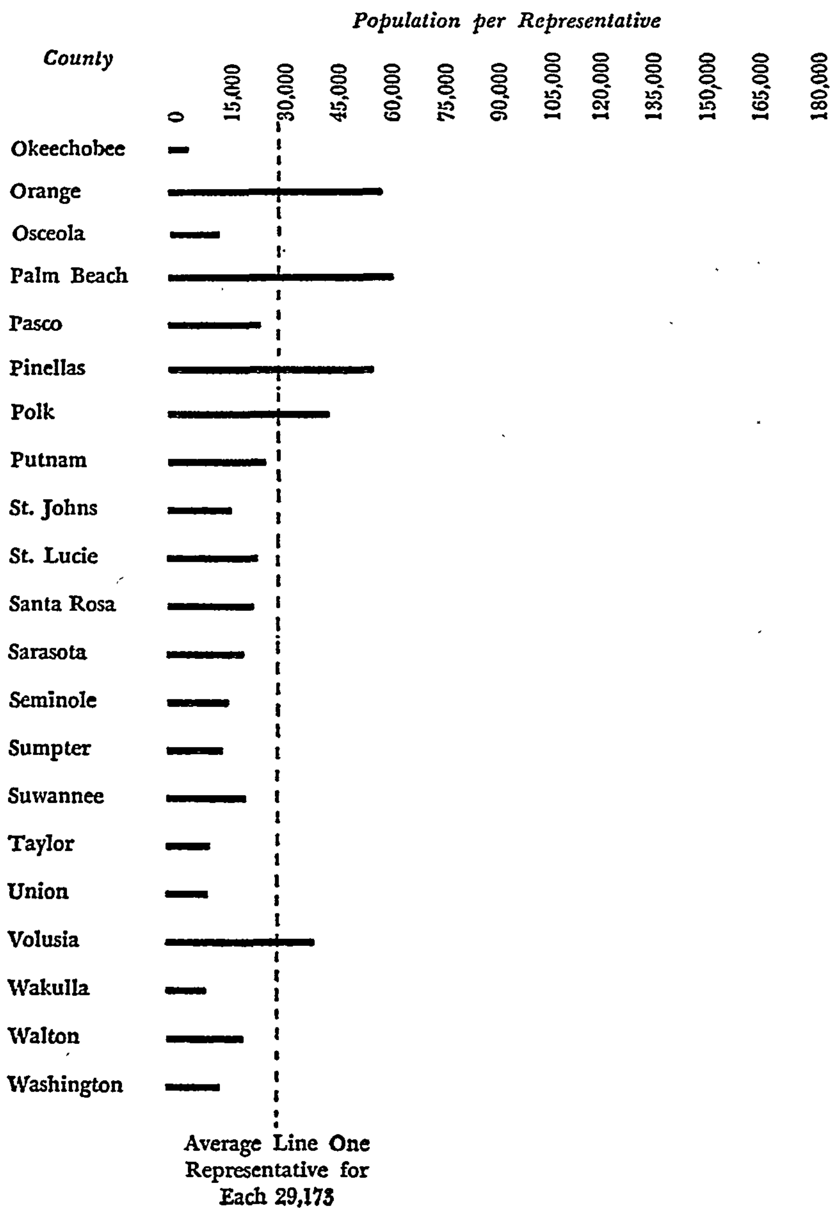
APPENDIX II *(Continued)*

FLORIDA APPORTIONMENT (1950) HOUSE OF REPRESENTATIVES



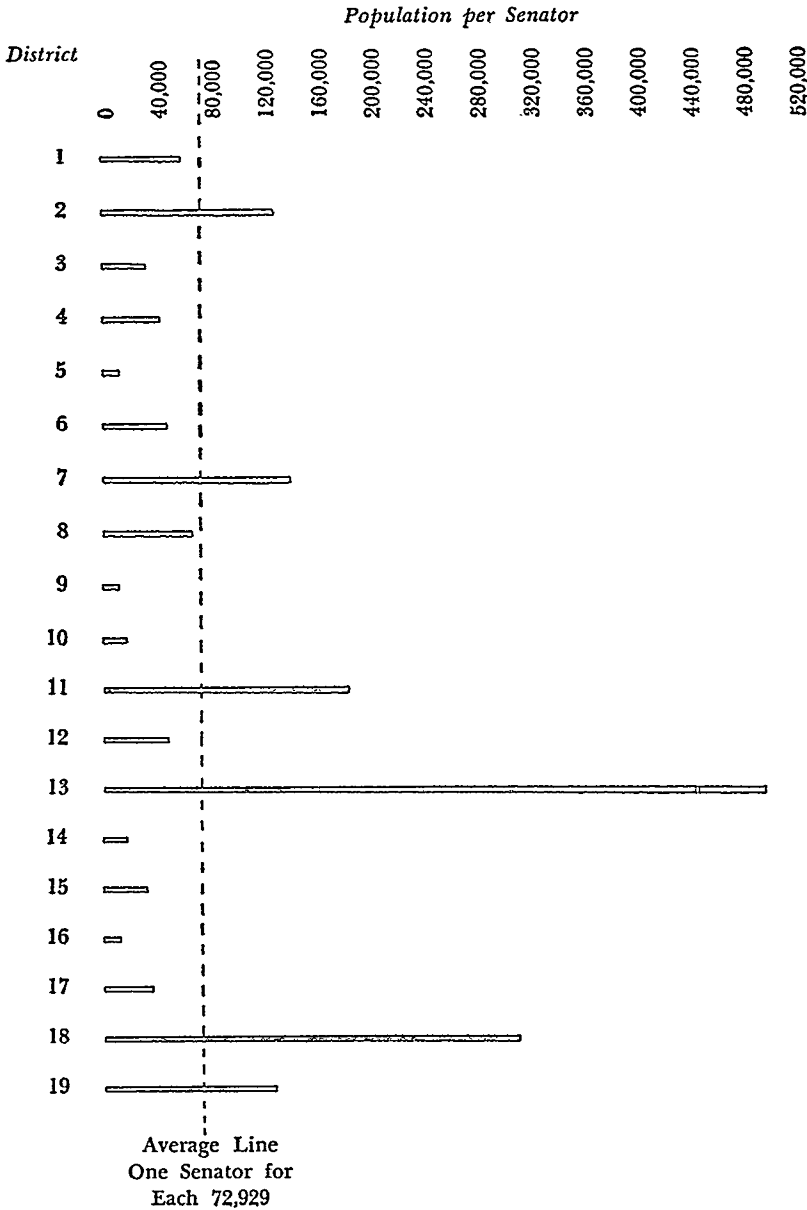
APPENDIX II *(Continued)*

FLORIDA APPORTIONMENT (1950) HOUSE OF REPRESENTATIVES



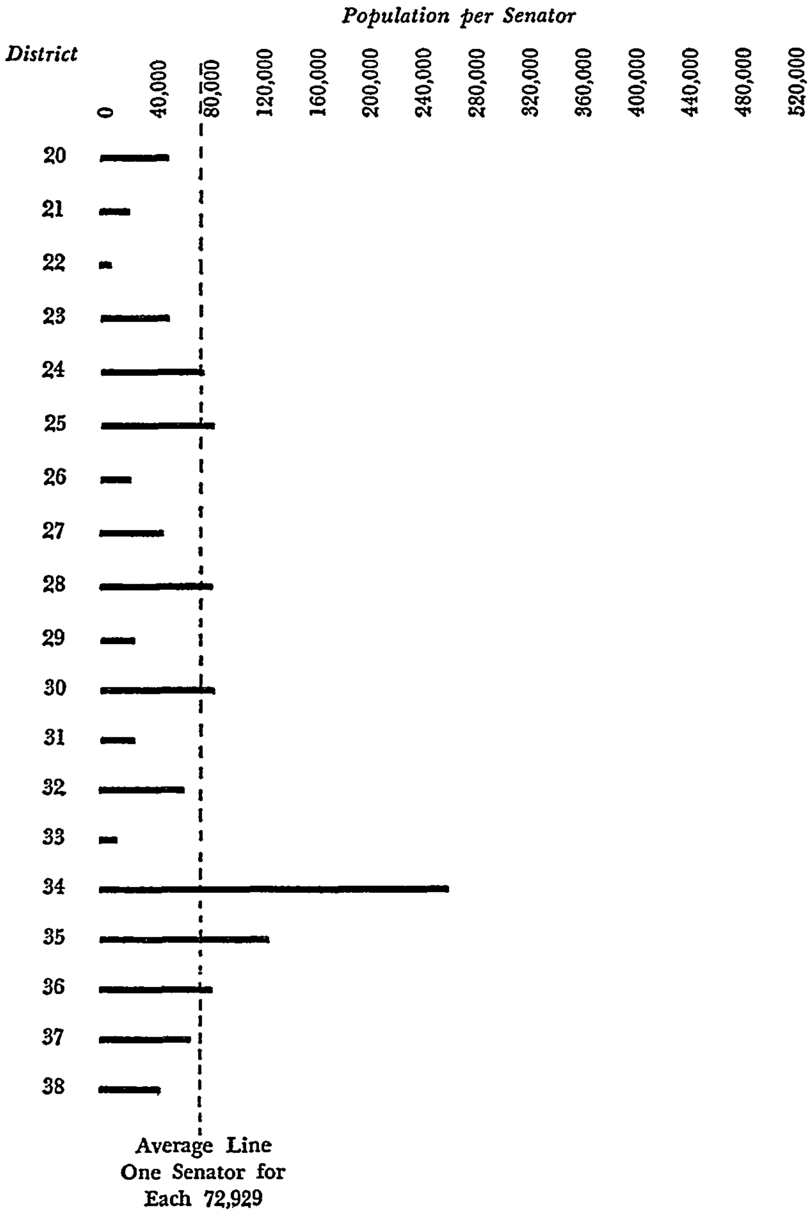
APPENDIX II *(Continued)*

FLORIDA APPORTIONMENT (1950) SENATORIAL DISTRICTS



APPENDIX II *(Continued)*

FLORIDA APPORTIONMENT (1950) SENATORIAL DISTRICTS



APPENDIX III – STATE ADMINISTRATIVE AGENCIES*

I. CONSTITUTIONAL ELECTIVE OFFICIALS AND CONSTITUTIONAL BOARDS AND COMMISSIONS

1. Governor

The Governor's Cabinet

2. Comptroller
3. Treasurer (also by statute Insurance Commissioner and Fire Marshal)
4. Attorney-General
5. Secretary of State
6. Superintendent of Public Instruction
7. Commissioner of Agriculture

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8. Board of Commissioners of State Institutions (Ex-officio)
9. Board of Administration (Ex-officio)
10. Board of Education (Ex-officio)
11. Pardon Board (Ex-officio)
12. Parole Commission (Appointive)
13. Commission of Game and Fresh Water Fish (Appointive)

II. STATUTORY ELECTIVE COMMISSION

1. Florida Railroad and Public Utilities Commission

III. APPOINTIVE EXECUTIVE OFFICIALS FOR EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS AND BUREAUS

1. State Auditor
2. Marketing Commissioner
3. State Chemist
4. Adjutant-General
5. State Service Officer
6. Motor Vehicle Commissioner
7. Beverage Department Director
8. Hotel and Restaurant Commissioner
9. State Archeologist
10. State Budget Director

IV. EXECUTIVE AND ADMINISTRATIVE BOARDS AND COMMISSIONS OTHER THAN EXAMINING BOARDS

A. *Ex-officio:*

1. Budget Commission
2. Agricultural Marketing Board
3. Armory Board
4. Board of Conservation
5. Executive Board, Department of Public Safety
6. Trustees, Internal Improvement Fund
7. Board of State Canvassers
8. Direct Tax Commission
9. Board of Drainage Commissioners

*Adapted from REPORT OF THE SPECIAL JOINT ECONOMY AND EFFICIENCY COMMITTEE OF THE FLORIDA LEGISLATURE OF 1943.

10. Board for Fixing Values of Investment Securities of Trust Companies
11. Housing Board
12. Board of Pensions
13. Railroad Assessment Board
14. Board of Supervision and Registration of Form of Bond of Surety Companies
15. Securities Commission
16. Textbook Purchasing Board
17. Vocational Education Board
18. Labor Agents Licensing Board
19. Civil Defense Council
20. State Purchasing Council

B. *Ex-officio and Appointive:*
1. Defense Council
2. Trustees, Teachers' Retirement Fund
3. State Improvement Commission
4. Florida Turnpike Authority

C. *Appointive:*
1. Livestock Sanitary Board
2. Board of Health
3. Tuberculosis Board
4. Board of Control
5. Plant Board**
6. Soil Conservation Board**
7. Board of Forestry
8. Crippled Children's Commission
9. Board of Examiners for Parole Commission
10. State Library Board
11. Industrial Commission
12. Welfare Board
13. Council for the Blind
14. Road Department
15. Milk Commission
16. Real Estate Commission
17. Citrus Commission
18. Racing Commission
19. Ship Canal Authority
20. Department of Veterans Affairs
21. State Advertising Commission
22. State Fire College
23. Board of Parks and Historical Memorials

V. EDUCATIONAL INSTITUTIONS
1. University of Florida
2. Florida State University
3. Florida School for Deaf and Blind
4. Florida Agricultural and Mechanical College

**This board is composed, by law, of the same members who constitute the Board of Control.

VI. PENAL, CORRECTIONAL, AND MENTAL INSTITUTIONS
1. Florida State Hospital
2. Florida Farm Colony
3. State Prison Farm
4. Industrial School for Girls
5. Industrial School for Boys

VII. EXAMINING BOARDS
1. Board of Law Examiners
2. Barber's Sanitary Commission
3. Board of Beauty Culture Examiners
4. Board of Chiropractic Examiners
5. Board of Examiners for Nurses
6. Board of Accountancy
7. Board of Architecture
8. Board of Examiners in Basic Sciences
9. Board of Chiropody Examiners
10. Board of Dental Examiners
11. Board of Engineer Examiners
12. Board of Medical Examiners
13. Board of Naturopathic Examiners
14. Board of Osteopathic Medical Examiners
15. Board of Pharmacy
16. Board of Veterinary Examiners
17. Board of Examiners in Optometry
18. Board of Funeral Directors and Embalmers
19. Board of Massage
20. Structural Pest Control Board
21. State Board of Dispensing Opticians

VIII. MISCELLANEOUS SPECIAL PARKS AND MEMORIALS
1. Everglades National Park Commission
2. Stephen Foster Memorial Commission
3. Florida Room in Confederate Museum
4. St. Augustine Historical Preservation and Restoration Appropriation
5. Spanish War Memorial
6. Royal Palm State Park

IX. MISCELLANEOUS SPECIAL APPOINTIVE OFFICIALS, COMMISSIONERS, AND AGENCIES
1. Commissioners of Everglades Fire Control District***
2. Commissioners of Everglades Drainage District***
3. Commissioners of Okeechobee Flood Control District***
4. Commissioners of Halifax Hospital District***
5. Commissioners of Overseas Road and Toll District***
6. Trustees, Caloosahatchie Improvement District***
7. National Board of Review
8. Commissioners, Police Officers Insurance and Annuity Fund
9. Commissioners, Promotion of Uniformity in Legislation

***These are statutory agencies dealing with special local problems in which the State assumes a varying degree of activity.

10. Naval Stores Inspectors
11. Pilot Commissioners
12. Harbor Masters
13. Advisory Hospital Commission
14. Apprenticeship Council
15. Board of Control for Southern Regional Education
16. Advisory Council to Survey Hospitals
17. Advisory Council on Education
18. Central and Southern Flood Control District
19. Children's Commission
20. Board of Commissioners, Gulf States Marine Fisheries Compact
21. Florida Keys Aqueduct Commission
22. Board of Commissioners, Florida Inland Navigation District
23. Teacher Education Advisory Council

SUMMARY:

I.	Constitutional elective officials and constitutional boards and commissions (4 ex-officio)	13
II.	Statutory elective commissions	1
III.	Appointive executive officials for executive and administrative departments and bureaus	10
IV.	Executive and administrative boards and commissions other than examining boards	
	A. Ex-officio	20
	B. Ex-officio and appointive	4
	C. Appointive	23
V.	Educational Institutions	4
VI.	Penal, Correctional, and Mental Institutions	5
VII.	Examining Boards	21
VIII.	Miscellaneous Special Parks and Memorials	6
IX.	Miscellaneous agencies and special appointive officials	23
	Total	130

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