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Concepts of Legislative Power in State Constitutions

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Political scientists have long known and commented upon the fact that important political documents do but reflect the generally accepted thinking and the temper of the times in which they are framed. Nowhere is this fact better illustrated than by an analysis of the changing concepts of the legislative power in our state constitutions.

A constitution has been defined as a body of fundamental law. As the blueprint of the framework of the government, the constitution must provide for the organization and powers of the three branches of government—executive, legislative, and judicial. Although there will be found one or more separate articles relating to each branch, the article or articles relating to the legislature ordinarily contain but a small portion of the provisions affecting that body, restrictive provisions being scattered throughout the remainder of the document. Moreover, the detailed provisions in the rest of the document are frequently more important than the legislative article in determining the area within which the legislature may act.

The state legislature, in theory at least, is a repository of the residual powers of the people. Unless restricted by provisions in the state constitution, the state legislature can act with regard to any subject that has not been delegated to the national government or expressly or impliedly denied to the states under the

* Selected references: AMERICAN POLITICAL SCIENCE ASSOCIATION, PAPERS DELIVERED AT THE PANEL ON STATE CONSTITUTIONAL DEVELOPMENTS, FORTY-FOURTH ANNUAL MEETING, CHICAGO, 1948 (Mimeographed, Louisiana State University, 1949); FAUST, FIVE YEARS UNDER THE NEW MISSOURI CONSTITUTION (Missouri Public Expenditure Survey, 1950); GRAVES, AMERICAN STATE GOVERNMENT (4th ed. 1953); Graves, ed., *Our State Legislatures*, 195 ANNALS (entire volume) (Jan. 1938); MODEL STATE CONSTITUTION, WITH EXPLANATORY ARTICLES (National Municipal League, 4th ed. 1948); ZELLER, AMERICAN STATE LEGISLATURES (1954) (Report of the Committee on American Legislatures of the American Political Science Association, containing extensive references and bibliographic aids).

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terms of the Federal Constitution. Grants of power to the federal government operate as restrictions upon the otherwise plenary powers of the state legislature, even though not stated in terms of limitation. In addition, a doctrine of implied limitation applied by the courts in the interpretation of state constitutions removes from legislative judgment and decision many matters of governmental organization and powers that were fixed in the constitution in an earlier period in the history of the state and that now require constitutional amendment to effect needed changes.

Changing Concepts of Legislative Power

The framers of the original state constitutions and of succeeding ones during the early part of the nineteenth century apparently accepted the concept of a constitution as a body of fundamental law. In the instruments they framed, they were content to limit themselves to a statement of basic principles. Their constitutions were, to a large extent, models of brevity and of concise statement, free from unnecessary and extraneous material. The tendency ever since has been to include more and more detail in our constitutions, reducing them in many cases to something resembling codes of law. A great deal of this material has no proper place in any constitution.

Residual versus Delegated Powers. These early constitutions were based largely on the concept of residual legislative power. The idea of delegated powers seems to have prevailed throughout our history, as related to the executive branch; in the early days, it was applied to a limited extent to the legislative branch as well, but the trend has been toward what one might call a theory of negative-delegation or delegation in reverse. The later constitutions do not delegate powers to the legislature, but rather tend to single out specific types of legislative power which the lawmaking body is prohibited from exercising. Each prohibition constitutes a limitation upon a previously existing residual power.

A great deal of the padding in our state constitutions consists of provisions designed and intended to impose restrictions upon the legislative branch of government. The more detailed these provisions are, the more the legislature will be hampered in its ability to deal with the problems that will confront it in the future. This situation is interesting and worthy of comment for two reasons.

It illustrates, in the first place, both a reversal of method and a reversal of attitude on the part of the framers of the more recent constitutions. As regards the reversal of method, it may be noted that the powers of the governor were severely limited in the early constitutions, and in many states, they still are, even to this day. This purpose of setting up a weak executive was accomplished, not by inserting in the constitutions long lists of prohibitions and restrictive provisions, but by the simple expedient of refraining from conferring upon him the powers he needs must have, if he is to perform the functions of executive leadership and control that are expected of him.

In the second place, it indicates a reversal of attitude on the part of constitution framers, as regards their confidence (or the lack of it) in the two branches of government. For reasons which are quite obvious to anyone with even an elementary knowledge of the historical backgrounds of the late colonial and revolutionary periods, the people held the executive in high distrust, while they had an almost unlimited and unreasoning confidence in the elected representatives of the people. Because they distrusted the executive, the powers of the governor were few and inadequate; because they had confidence in the representative assembly, the powers of the legislature were broad and largely unrestricted.

As time passed, the legislatures did many things which were contrary to the interests of the people. Indeed, in all too many instances, they were guilty of grave abuses. Probably no one legislature was "bad" all the time, but each of them was guilty of enough abuses over a period of time to undermine public confidence in the legislative branch almost completely. Gradually, therefore, opinion began to shift, with the result that the executive gained in public confidence while the legislature lost. The provisions affecting the executive were nevertheless not greatly changed, but those affecting the legislature soon began to indicate a pronounced trend toward the inclusion of every conceivable type of provision designed to limit its powers and undermine its effectiveness in the discharge of its responsibilities. The framers forgot that an agency whose powers are so restricted that it cannot do any harm will not be likely to be able to do much that is constructive.

Growth of Restrictive Provisions. In many constitutions, these limitations are quite numerous. Because legislatures in the

past frequently sought to deal individually with matters relating to persons and property which could be adequately covered by general legislation, and because they interfered in an often unintelligent and offensive manner in the regulation of purely local conditions, the restrictions apply particularly to these two types of legislation. The restrictions seem to be of three main types:

(1) Prohibiting special, private or local laws on any matters and in all situations which can be covered by general law.

(2) Listing in the constitution subjects which cannot be dealt with by special or local laws.

(3) Requiring that all general laws, or laws of a public nature, be uniform in their application throughout the state.

The legislative provisions of all constitutions framed during the latter part of the nineteenth century—and since—have been based primarily on distrust of the legislature. The Pennsylvania Constitution of 1873 includes a list of twenty-eight limitations; the California Constitution of 1879, a list of thirty-three; the Louisiana Constitution of 1921, a list of twenty-one. Restrictions on subject matter are found in forty-two states. Some of these lists of limitations are very short, as in Arkansas and Maine. Delaware has only five restrictions. Others are very long. Alabama has thirty-one; Montana, thirty-six; Wyoming, thirty-four. The table on page 762 shows the number of such restrictions found in the three state constitutions most recently revised.

A distinction is commonly made between special legislation, which is ordinarily private, and local legislation which, though public, is restricted in its application to any political subdivision or subdivisions of the state less than the whole. Such measures dealing with matters of a purely local character, formerly consumed, and in some states still consume, a tremendous amount of legislative time and effort. Some are little less than ridiculous. While it is reported that this obnoxious practice of local legislation has been abolished in forty states and that twenty-eight states have granted home rule to cities, it still exists in many more states than these figures might indicate. In these states, municipalities are governed primarily by local laws enacted by their respective state legislatures. In many states, as soon as constitutional restrictions upon such legislation were adopted,

the legislature proceeded promptly to set up classes of local units, by the skillful manipulation of which the constitutional restrictions might be partly if not wholly evaded.

As this writer has pointed out elsewhere, the situation is particularly bad in some of the southern states. In Alabama, local legislation accounts for approximately one-third of the legislative output in regular sessions. A study of the problem in that state, covering the period from 1903 to 1943, inclusive, reveals that the number of local acts sometimes equalled or exceeded the number of general laws, the average for the forty-year period being 35 percent.[1] In Georgia, local measures may account for half of the output of the legislature while the former constitution was cluttered up, in addition, with a large number of amendments relating to purely local matters. In the six-year period from 1938 to 1943, it was amended more than 160 times; approximately three-fourths of all amendments applied to specifically named localities. In Tennessee, where the 1945 legislature passed approximately 800 bills, most of them local, the situation has been acute, but may improve as a result of the home rule amendment adopted in 1953. The unicameral legislature in Nebraska makes a mockery of classification, thereby disregarding the constitutional prohibition against special legislation for cities.

Methods of Restricting Legislative Powers

A general grant of legislative power is common to all four of the recent constitutions examined, as it is to those of other states. This usually takes some such form as: "The legislative power of the State shall be vested in a General Assembly which shall consist of a Senate and House of Representatives." The Georgia Constitution later supplements this general grant by the following interesting statement of the doctrine of inherent powers:

> "The General Assembly shall have power to make all laws consistent with this Constitution, and not repugnant to the Constitution of the United States, which they shall deem necessary and proper for the welfare of the State."[2]

There are a number of different methods or techniques by which recent constitution makers have undertaken to restrict or

1. FARMER, THE LEGISLATIVE PROCESS IN ALABAMA 229 (1949).
2. GA. CONST. Art. III, § vii, ¶ 20.

whittle down the powers of the legislature so conferred, among them positive limitations, mandatory provisions, self-executing provisions, the dedication of revenues to specified purposes or programs, and procedural limitations. Each of these will be discussed and illustrated with particular reference to provisions found in the legislative articles of the recent constitutions of Georgia (1945), Missouri (1945), New Jersey (1948), and in the Model State Constitution (5th rev. ed. 1948). Some consideration is also given to provisions in other parts of the constitutions mentioned which restrict the power of the legislature.

Positive Limitations. Most of the positive limitations in the four constitutions mentioned relate to the passage of special or local legislation. In Georgia, however, some other minor matters have been included. After specifying the nature of the legislative records that shall be kept, there is a positive prohibition that "no other record shall be kept." The number of positive limitations varies among the four constitutions. There are two on special legislation in Georgia, twenty-seven in Missouri, and eleven in New Jersey, while the Model State Constitution simply contains the blanket prohibition that "no local or special legislation shall be passed." There are only three restrictions on local legislation in Georgia, but there are nine restrictive clauses in Missouri and two in New Jersey. The New Jersey Constitution specifies also that "No general law shall embrace any provision of a private, special or local character."[3]

None of the restrictions placed upon legislatures are more unfortunate in their effects than those relating to finance. These include provisions barring the use of particular tax forms such as the income tax; rate limitations, especially with regard to the general property tax; earmarking of revenues; mandatory exemptions, as in some states, for homesteads and for other purposes; and limitations on debt. Added to these provisions, all of which limit the powers of both state and local governments to raise necessary funds, is the fact that many expenditures are established on a mandatory basis.

The legislature is thus ground between the upper and the nether millstone. Services of many kinds must be provided and the bills must be paid, but the legislature has only a limited degree of control over raising the money (which is often well

3. N.J. CONST. Art. IV, § vii, ¶ 7.

nigh impossible under the limitations prescribed) or over the determination of the purposes for which it may be used. The fear that the legislature may be given the powers it needs in fact provides pressure groups in some states with a powerful weapon in opposing constitutional revision. Thus in Florida, it is reported that:

> "Among those who do not want a wholesale revision have been some who fear that it would lead to a reapportionment that would be unfavorable to some of the older and less populous parts of the state; those, especially business interests, who fear that it might lead to repeal of the prohibition against an income tax, and possibly upward revision of the inheritance tax; and those, including average citizens who fear that it might lead to abolition of the homestead exemption provision. For a long time there was another group who feared that it might lead to a change in the location of the state capital from Tallahassee to a point further south."[4]

Mandates. Specific mandates are found in two of the constitutions in our list of four—those of Georgia and Missouri—but none are found in the legislative article of the New Jersey Constitution or in the Model State Constitution. The mandates of these two states do not relate to matters that are important from the point of view of our analysis of the means used to whittle away the legitimate powers of the legislature. The nature of these provisions is indicated in the table on page 757.

While, in theory, one may object to the use of mandates on the ground that they limit the area in which decision may be made by the legislature, and that they tend to undermine the responsibility of that body, Professor Martin L. Faust has found the use of mandates in the new Missouri Constitution a helpful and a wholesome influence, particularly during the process of transition from the old constitution to the new. "Among the factors which favored prompt and reasonably effective action in carrying out the provisions of the new Constitution, the following," he says, "were of primary importance:

> "(5) The mandatory character of many of the constitutional provisions. If the constitution had been merely in the

4. Personal letter to the author from a prominent political scientist in Florida, June 15, 1953.

nature of enabling provisions, the immediate results would have been meager. But the new constitution was a blueprint for action. Inaction would have meant that after the deadline date many operations of both the state and local governments would cease to be constitutional and legal.

"(6) The fact that the new constitution set a definite deadline date. This was a compelling circumstance which was ever present in the minds of the legislators and the staff responsible for adapting and revising the old scheme of things in accordance with the requirements of the new constitution."[5]

Self-Executing Provisions. Self-executing provisions in the four recent constitutions here under review are not numerous, but there are some applying particularly to such matters as legislative reapportionment, appearing in the Missouri Constitution[6] and in the Model State Constitution.[7] This is not an entirely fair appraisal of either instrument as a whole, however, for it is known that in both cases, the framers had constantly in mind the idea of setting up specific requirements in such a way as to have them operate, to the greatest extent possible and practicable, on a self-executing basis. Professor Faust comments favorably on this development also:

"(7) The fact that some of the important provisions of the new constitution were self-executing. No legislative action was needed to make effective such provisions as those pertaining to reapportionment of members of the general assembly, county and municipal home rule, and the use of revenue bonds by municipal governments."[8]

Frederic H. Guild, commenting on the purpose of the automatic provision in the Model State Constitution, observes, "The legislature itself would determine the number of districts and the boundaries of each, but in the absence of any changes therein the reallotment of the number of members to each district would

5. FAUST, FIVE YEARS UNDER THE NEW MISSOURI CONSTITUTION 4-5 (Missouri Public Expenditure Survey, 1950).

6. MO. CONST. Art. III, § 7.

7. MODEL STATE CONSTITUTION WITH EXPLANATORY ARTICLES Art. III, § 303 (National Municipal League, 5th ed., 1948).

8. FAUST, FIVE YEARS UNDER THE NEW MISSOURI CONSTITUTION 5 (Missouri Public Expenditure Survey, 1950).

be made by the secretary of the legislature."[9] Professor Faust reports that the Missouri provision has worked well:

> "The first such commission was to be appointed ninety days after the constitution went into effect. The new arrangement, therefore, has already been tested. On this first trial the new redistricting plan has proved highly satisfactory. District lines have not been drawn to give either political party an unfair advantage. Urban discriminations have been largely eliminated. The two metropolitan centers with about 41 per cent of the state's population now have 38 per cent of the senators, instead of the 26 per cent previously allowed them."[10]

MANDATORY PROVISIONS IN TWO STATE CONSTITUTIONS: GEORGIA AND MISSOURI

GEORGIA	MISSOURI
III, vii, 4. The general assembly shall provide for the publication of the laws passed by each session.	III, 34. Every ten years all general statute laws shall be revised, digested and promulgated as provided by law.
III, vii, 5. The original journal shall be preserved after publication.	III, 35. There shall be permanent joint committee on legislative research.
III, vii, 6 *et seq.* Numerous standard requirements on enactment of bills.	III, 36. All revenue collected shall go into the treasury and the general assembly shall have no power to divert the same.
III, vii, 16. No law shall be amended or repealed by mere reference to its title.	III, 43. The general assembly shall never interfere with the primary disposal of the soil by the United States.
III, vii, 17. It (the general assembly) shall prescribe by law the manner in which such powers shall be exercised by the courts; it may confer this authority to grant corporate powers and privileges to private companies to the judges of the superior courts.	III, 45. The general assembly shall by law divide the state into districts corresponding with the number of representatives to which it is entitled.
III, vii, 24. Neither the state nor any political subdivision thereof shall inaugurate or maintain any civil service scheme of any nature whatever which fails to provide for honorably discharged veterans of any war.	III, 46. The general assembly shall provide for organization, equipment, regulations and functions of an adequate militia.

Dedication of Revenues. There is no more effective means of undermining the authority of the legislature over the budget than by setting up special funds composed of dedicated revenues. That this is a widespread evil there can be no doubt; it may

9. MODEL STATE CONST. 27.

10. FAUST, FIVE YEARS UNDER THE NEW MISSOURI CONSTITUTION 7 (Missouri Public Expenditure Survey, 1950).

serve well the purposes of the special interests benefited, but it works havoc with the financial program of the state. The truth of the matter is, however, that dedication rarely results from constitutional mandates; it develops rather from the action of the legislature itself, or through the operation of the processes of direct legislation. In the constitutions under review, only one—Missouri—has provisions of this character. In that state, provision is made for dedicating certain tax receipts to blind persons, and certain others, for a period of fifteen years, to a state park fund, as follows:

> "The general assembly shall provide an annual tax of not less than one-half of one cent nor more than three cents on the one hundred dollars valuation of all taxable property to be levied and collected as other taxes, for the purpose of providing a fund to be appropriated and used for the pensioning of the deserving blind as provided by law. Any balance remaining in the fund after the payment of the pensions may be appropriated for the adequate support of the commission for the blind, and any remaining balance shall be transferred to the distributive public school fund."[11]

> "For fifteen years from the day this constitution takes effect the general assembly shall appropriate for each year out of the general revenue fund, an amount not less than that produced annually at a tax rate of one cent on each one hundred dollars assessed valuation of the real and tangible personal property taxable by the state, for the exclusive purpose of providing a state park fund to be expended and used by the agency authorized by law to control and supervise state parks, for the purposes of the acquisition, supervision, operation, maintenance, development, control, regulation and restoration of state parks and state park property as may be determined by such agency; and thereafter the general assembly shall appropriate such amounts as may be reasonably necessary for such purposes."[12]

Procedural Limitations. Procedural limitations are very numerous in the Georgia and Missouri constitutions, fewer in the New Jersey Constitution and rare in the Model State Constitution. Most of these provisions, such as those requiring the "yeas" and "nays," one single subject matter per bill, or intention to ask

11. MO. CONST. Art. III, § 38(6).
12. MO. CONST. Art. III, § 47.

for local legislation, relate to necessary and routine matters, common in all state constitutions. While it has been alleged that the intelligent exercise of legislative power is crippled by procedural limitations, as it may be where use of the amending procedure is involved in some states, it is apparent that this is not true of the type of limitation listed in the following table. The observance of these requirements in no way impairs the powers of the legislature and could have only the slightest effect upon the effectiveness of its operation.

PROCEDURAL REQUIREMENTS OF STATE CONSTITUTIONS

REQUIREMENT	GA.	MO.	N.J.	M.S.C.
Each bill to have a title	*	*		*
One subject matter per bill	*	*	*	*
Yeas and nays to be entered in the journal	*	*	*	
Journal to be published		*	*	*
Bill printing			*	
Three readings	*		*	
Limitation on introduction of bills		*		
Limiting appropriation bills to appropriations	*	*		*
Intention to ask for local legislation and publication of notice in the papers	*	*	*	
Publisher's certification of local legislation	*			
Committee reference and procedure		*		
Amendments to bills		*		
Acts taking effect		*		
Reconsideration or referendum		*		*
Abolition of offices	*			
Secretary of state to grant charters	*			
Signature by the governor	*	*	*	*
Voice vote in elections	*			
Adjournments	*		*	

Trends in Types of Changes

The changes made in state constitutions are likely to fall into one or the other of two categories—substantive and procedural. Students are likely to analyze changes of both types carefully, in an effort to foresee "the shape of things to come." In fact, such an attempt was made only a few years ago at a session held during the Annual Meeting of the American Political Science Association, the proceedings of which were made available shortly thereafter.[13]

Substantive Changes. In a comprehensive review of substantive changes during the decade of the Forties (there has been

13. AMERICAN POLITICAL SCIENCE ASSOCIATION, PAPERS DELIVERED AT THE PANEL ON STATE CONSTITUTIONAL DEVELOPMENTS, FORTY-FOURTH ANNUAL MEETING, CHICAGO, 1948 (Mimeographed, Louisiana State University, 1949).

no unlimited convention since that held in New Jersey in 1947), Professor Lloyd M. Short found that the substantive changes adopted were on the whole less significant than the structural and procedural changes. Since the amendment of state constitutions is in most states such a slow and difficult process, he concluded that the states were finding it possible and perhaps desirable to achieve by statute changes which might otherwise have been attempted through modification of the constitution. Professor Short found that the most significant and extensive changes had come about in those states in which a thorough-going revision of the constitution had been undertaken by means of a constitutional convention, and that the changes made revealed a curious mixture of contradictory tendencies. While on the one hand, efforts were made to strengthen the position of the legislature and increase its powers, other changes having a contrary tendency appeared to be designed to control and restrict legislative action.

This, it appears to the writer, characterizes much of our thinking on legislative matters at present and in the recent past. Since the attention of Americans was so forcefully directed toward the importance of the representative assembly as an instrument of popular government by the march of the dictatorships across so much of Europe in the decade of the Thirties, our people have shown a new awareness of the problems of their legislatures. The passage of the Legislative Reorganization Act by Congress in 1946[14] was followed by a concerted effort at the state level to improve both the organization and the procedure of legislative bodies. During this period, it has been considered the right thing to recognize, by lip service, at least, the importance of the elected representative assembly.

Yet we seem strangely unwilling to practice what we preach. A long-standing and deep-seated distrust of legislative bodies still hangs over us, a distrust which effectively prevents us from doing what we readily admit we ought to do. The short, limited session still prevails in many states, as does the biennial session in more than three-fourths of the states. Where the transition from a biennial session to an annual one is successfully negotiated, this is frequently possible only by "kidding" ourselves (and the public) into believing that there will really be only one general legislative session in a two-year period anyway, the

14. 60 STAT. 812 (1946).

other being reserved for a brief consideration of the state's fiscal problems—as though it were possible to separate policy matters and financial matters into separate bins or non-communicating compartments, and to give consideration to either one to the exclusion of the other. The nature and scope of the policies and programs adopted at any given time must depend in part on the money available or that can be made available to support them, while the general economic situation and the availability of funds in turn has much to do with the character of the spending program required.

Procedural Changes. A similar survey of procedural changes[15] undertaken by the writer brought him to the conclusion that such changes had been neither numerous nor epoch-making. Most significant appeared to be the tendency to make as many provisions of the constitution as possible either mandatory or self-executing, to frame them so that they would operate automatically, without the necessity for legislative action or intervention. There may be found in such proposals an element of simplification of procedures; greater promptness of action and greater efficiency may be produced thereby, but there is behind them also a lurking suspicion that the legislature will not act or that, if it does, it will do the wrong thing. This move toward self-executing provisions in constitutions is, from this point of view, an interesting refinement of the older and well-established practice of hamstringing the legislature by all manner of restrictive provisions.

The older method barred the legislature from acting in a given subject field by a specific prohibition whereas the modern one seeks to prevent it from acting by making it unnecessary for it to do so. In other words, while professing to recognize the vital importance of the elected representative assembly in the democratic process, the attempt is made to by-pass it for fear that it will not perform its duties adequately or perhaps that it will not perform them at all. This summary of the findings made at that time is as true today as it was then:

> "Because the legislatures have not called constitutional conventions when they should, we tried first to compel them to do so by inserting in the constitution provisions requiring

15. AMERICAN POLITICAL SCIENCE ASSOCIATION, PAPERS DELIVERED AT THE PANEL ON STATE CONSTITUTIONAL DEVELOPMENTS, FORTY-FOURTH ANNUAL MEETING, CHICAGO, 1948 (Mimeographed, Louisiana State University, 1949).

NATURE AND CHARACTER OF RESTRICTIONS
ON SPECIAL AND LOCAL LEGISLATION

PROHIBITED LEGISLATION	GA.	MO.	N.J.
Special Legislation:			
Granting corporate charters	*		
Legitimation of children	*	*	
Give, lend or pledge credit of state to any individual or organization		*	
Affecting the estates of minors or persons under disability		*	*
Changing the law of descent		*	*
Changing the venue in civil and criminal cases		*	*
Settling claims arising from the Civil War		*	
To act in special session on subjects not listed in the call		*	
Empaneling grand or petit juries		*	*
Changing compensation or tenure of public employees			*
To move the seat of government from Jefferson City		*	
Relating to taxation or exemption therefrom		*	*
To authorize lotteries or gift enterprises for any purpose		*	
Management and control of free public schools		*	*
Granting exclusive privileges, immunities, or franchises			*
Authorizing creation, extension or impairment of liens		*	
Granting divorces		*	
Granting right to lay down railroad tracks		*	*
Changing the rules of evidence or practice in civil trials		*	
Limitations of civil actions		*	
On highway opening, construction, and maintenance		*	*
Remitting of fines, penalties and forfeitures		*	
Vacating public ways or grounds		*	*
Giving effect to informal or invalid wills or deeds		*	
Declaring any named person of age		*	
Changing the names of persons or places		*	
Relating to cemeteries, graveyards or public grounds		*	
Fixing the rate of interest		*	
Regulating labor, trade, mining, or manufacturing		*	
	2	26	11
Local Legislation:			
Creating or changing the boundaries of political subdivisions		*	
Authorizing street railways	*		
Appointing local officers or commissions to regulate municipal affairs		*	*
Grant or authorize extra compensation, fees, or allowances to any local officer		*	
For conducting elections and changing election precincts	*	*	
Establishing bridges and ferries	*	*	
Regulating internal affairs of political subdivisions			*
Pay or authorize payment of any claim, except in accordance with law		*	
Releasing or extinguishing the indebtedness of any city		*	
To impose a use or sales tax on property purchased by any county		*	
Incorporating or changing the name or character of any political subdivision		*	
Legalizing invalid acts of any local officer		*	
	3	10	2

them to submit the question to the electorate at periodic intervals, and when that did not work, we seek to make the submission of the question a mandatory act on the part of a legislative or administrative officer.

"Because the legislatures have so habitually either bungled the job or refrained from taking action at all on the subject of executive organization and reorganization, we now seek to impose constitutional limitations on the number of executive departments, and to give the responsibility for maintaining an orderly administrative structure to the executive, subject to legislative review.

"Because the legislatures have failed so utterly in the matter of reapportionment, we seek now to make that process automatic also.

"Because the legislatures have so often either failed to act or refused to grant a reasonable latitude of home rule to their political subdivisions, we seek to find here too some magic formula by which local units may achieve home rule without legislative aid or in spite of legislative opposition."[16]

It may be that, on the basis of the record, these efforts are justified. At the same time it may be well to consider whether such procedures are compatible with the theory of elected representative government. All of these trends, automatic devices or otherwise, look toward the achievement of a greater degree of democratic control over state government. But is this the right way to accomplish our purpose?

16. *Ibid.*