The Judicial Structures in the "Common Law" States: A Comparative Analysis

Ben R. Miller
The Judicial Structures in the “Common Law” States: A Comparative Analysis

Ben R. Miller*

The Louisiana Law Institute, in particular, the members of the state bar association and the judiciary, in general, face a tremendous responsibility by virtue of the 1946 legislature’s having begun what may result in a much needed revision of our state constitution. The public may rightfully expect the lawyers to carry the main burden of this job.

In the hope that a comparative analysis, in a broad, general fashion, of the judiciary provisions in other state constitutions and the achievements and failures of revision efforts elsewhere may be of interest, this article is presented. It makes no pretense of complete accuracy or interpretation of trends. Its chief merit may well be its timeliness.

An attempt to set forth briefly the structural judicial systems of the other states must, of course, touch only the broad basis of each, principally the constitutional provisions creating the structures. The interpretations of the courts, enlarging, restricting or modifying the provisions in the respective states or the various legislative acts under constitutional authorization can only be commented upon in certain instances and then only insofar as certain decisions or acts have constituted such a novel or important part of a judicial structure as to necessitate inclusion. A more minute study would carry this discussion far beyond its depths.

In such an analysis as shall be attempted, there shall be, naturally, a certain repetition. Although as our nation has developed, new functions have been added to existing organs for the administration of justice, throughout our legal history there have been in the main only three types of courts—a supreme appellate court, intermediate appellate courts, and courts of general trial jurisdiction. Yet not all the states have separate organs for each of these broad classifications.

Different sections and different people, however, have been presented with certain problems in the administration of justice.

*Member, Baton Rouge Bar.
earlier than others, although, of course, all have not experienced
the same problems. As a consequence, the experience and experi-
mentation in various states have been utilized by others. A com-
parative study should be of some value in considering the relative
merits of the judicial structure in Louisiana.

The judicial systems of Missouri, California, New York, Ohio,
Illinois, Michigan and Rhode Island have been chosen for special
attention. These states represent more or less diversified types
of structures and have been the subjects, perhaps, of more general
comment and study. Particularly is this true of Missouri. The
remaining states have been grouped according to the grouping
employed by the West Publishing Company, of St. Paul, in its
National Reporter System for case reporting and digesting.
Hence, these remaining states shall be roughly classified, geo-
graphically.

I. MISSOURI JUDICIARY

The new Missouri constitution, adopted in 1945, is unique in
the annals of state government. The long process leading up to
the drafting of this modern constitution and of the successful
fight made to secure its adoption by the people is an epic, but to
discuss it at length would unduly protract this article.

By this new constitution judicial power is vested in “a Su-
preme Court, courts of appeal, circuit courts, probate courts, the
St. Louis Court of Criminal Correction, the existing court of com-
mon pleas, magistrates court, and municipal courts.”

A. The Supreme Court

The supreme court is composed of seven judges with twelve-
year terms and salaries as provided by law. The court possesses
exclusive appellate jurisdiction in all cases involving a federal
question, the construction of revenue laws of Missouri, title to
any office under Missouri, title to real estate, and all civil cases
where the state or a political subdivision or any state officer is
a party, in all cases of felony, in other classes of cases provided
by law, and until otherwise provided by law in all cases where
the amount exceeds $7500.00.

The supreme court and also the courts of appeal and circuit
courts have a general superintending control over all inferior

2. Id. at §§ 2 and 24.
3. Id. at § 3.
The supreme court may establish rules of practice and procedure for all courts, but it may not change (1) substantive rights, (2) laws relating to evidence, (3) laws relating to all examination of witnesses, (4) or to juries, (5) the right of trial by jury, (6) the right of appeal. An important innovation on the rule-making power, however, is the provision that any such rule may be annulled or amended by a law limited to that purpose.\textsuperscript{5}

The supreme court may temporarily transfer judges from one court to another.\textsuperscript{6} It may sit en banc or in divisions, as it may determine, but each division shall have at least three judges.\textsuperscript{7}

The court elects its own chief justice for a period of four years.\textsuperscript{8}

When a supreme court division is equally divided, or when the division desires it in the event there has been one dissent and the loser makes application, or when a federal question is involved, or pursuant to a rule of the court, a case is transferred from a division to the entire court sitting en banc.\textsuperscript{9}

B. Courts of Appeals

Each court of appeals is to have three judges and is to continue as previously established. The appellate jurisdiction is coextensive with the territorial jurisdiction, but the boundaries may be changed by law.\textsuperscript{10} Terms are for twelve years, but each court of appeals elects its own presiding judge for a period of four years.\textsuperscript{11} These courts may likewise sit in division. Each division shall have at least three judges, one of whom must be a regular judge of the court.\textsuperscript{12}

A case must be transferred from a court of appeals to the supreme court when one judge assents and desires that the case be transferred. Either the court itself or the supreme court may cause any other case to go to the supreme court after there has been a decision in the court of appeals.\textsuperscript{13}

C. Circuit Courts

Circuit courts have criminal jurisdiction not otherwise provided for, exclusive original civil jurisdiction not otherwise provided for, and such concurrent and appellant jurisdiction as the
law may provide. The legislature shall divide the state into convenient circuits of contiguous counties, each circuit having at least one judge selected for a term of six years.

D. Probate Courts

Probate courts are to be established in each county, and their jurisdiction is defined in the constitution. Terms for the judges are four years.

E. Magistrates Courts

There is at least one in each county. If the county has thirty thousand or less population, the probate judge serves as magistrate. Provision is made for magistrates depending on the population bracket into which the county falls. The circuit court may, moreover, on petition and after hearing on at least thirty days public notice, increase the authorized number for a particular county by not more than two, or decrease such increased number. The board of election commissioners after each federal census or, if there is no such board, the county court shall divide the counties having more than one magistrate court into compact contiguous areas. Each magistrate has jurisdiction co-extensive with the county and is selected for a term of four years.

F. Juvenile and Domestic Relations Courts

In circuits having more than one judge, provision is made for at least one division to handle this phase of the judicial functions.

G. In General

Missouri is not liberal with respect to retirement of judges. For permanent physical or mental infirmity, and upon the order of a two-thirds vote of a committee composed of three supreme court judges, one judge of each court of appeal, and three circuit judges chosen by their fellow circuit judges, a judge shall be retired, at one-half pay for the balance of his term. There is
compulsory retirement of supreme court and court of appeal judges at age seventy-five without pay.\textsuperscript{25}

The most novel portion of the judiciary provisions of Missouri's new constitution is that dealing with the selection of judges. This method is widely known and acclaimed as the "Missouri Plan."\textsuperscript{26} Vacancies in the supreme court, the courts of appeal, and the trial courts in the cities of St. Louis and Kansas City are filled from a list of three persons nominated by majority vote of a judicial commission established in accordance with the constitution. The people in the circuits outside St. Louis and Kansas City may adopt the plant in their particular circuit.

For the supreme court and the three courts of appeal this judicial commission is composed of seven members: the chief justice of the supreme court, a lawyer elected by the bar from each court of appeal district, and a citizen not a member of the bar appointed by the governor from each district. For vacancies in the other courts, subject to this method of selection, each circuit has a committee of five: the presiding court of appeals judge of that district, two lawyers elected by the bar of the circuit, and two laymen from the circuit appointed by the governor.

The supreme court may fix and change the terms of members of these various commissions, but may not shorten or lengthen the term of any particular member. Except for the judge members of these commissions, members may not hold any other political office or any official position in any political party. They receive no compensation except actual expenses.

The judge appointed by the governor from the recommended list holds office until December 31st following the next general election after the expiration of twelve months in office. The people then vote on the question whether such judge shall be retained. If a majority vote "no" then a vacancy exists which is again filled by appointment through the process outlined.

At random, these additional features of the new Missouri judiciary article may be of interest: Express provision is made for judicial review from actions of administrative agencies which are judicial or quasi-judicial and affect private rights;\textsuperscript{27} salaries of all judges may be increased but not decreased during incum-

\textsuperscript{25} Id. at § 25.
\textsuperscript{26} Id. at § 29(a-(g), added by 1941 amendment prior to the completion of the new constitution of 1945.
\textsuperscript{27} Id. at § 22.
bency; all judges including justices of the peace must be attorneys—with the provision, however, that this shall not apply to non-lawyers now serving as probate judges, or to any justice of the peace, or former one, who has served at least four years.

II. The California Judiciary

The judicial power of California is vested in “a Supreme Court, District Courts of Appeal, Superior Courts, such municipal courts as may be established in any city, or city and county, and such inferior courts as the Legislature may establish.”

A. The Supreme Court

The supreme court is composed of a chief justice and six associate justices elected at large for overlapping terms of twelve years. It is to be noted that this court is required to render written opinions. The criminal jurisdiction of the supreme court is on questions of law only and then only in those cases in which a judgment of death has been imposed. It has civil appellate jurisdiction from the superior courts in all equity cases except those arising in municipal or justices courts. In law cases the supreme court is invested with appellate jurisdiction over those cases involving the title to, or possession of, real estate, or the legality of any “tax, impost, assessment, toll or municipal fine.” The legislature may, however, confer upon it appellate jurisdiction in probate matters.

The supreme court may order cases before it to be transferred to a district court of appeal or vice versa; or it may transfer a case from one district court of appeal to another. The wisdom of such an authorization in preventing congestion of dockets, assuring uniformity of decisions and asserting control over incompetent or unfair tribunals is apparent although the beneficial exercise of such power depends on the stability of the supreme court itself.

B. The District Courts of Appeal

The state is divided into three appellate districts and in each there is a district court of appeal having at least a single division of three judges. The legislature is empowered to deter-
mine not only the number of district courts of appeal but the number of divisions for each. Judges are elected from their respective districts for overlapping terms of twelve years.8

These courts have, in general, the civil appellate jurisdiction not vested in the supreme court and criminal jurisdiction on questions of law only in all cases prosecuted by indictment or information except those in which a death sentence has been imposed.44

C. Superior Courts

There is one superior court, with at least one judge, for each county. The legislature is empowered to change the number of judges for any superior court.45 These courts have general civil and criminal original trial jurisdiction where not otherwise vested and have such appellate jurisdiction from the inferior courts as the legislature may prescribe.46

D. Municipal Courts

The legislature may establish municipal courts and prescribe their jurisdiction except as otherwise provided in the constitution.47 Only two municipal courts have been established, both in Los Angeles county, although in nine other cities such courts could be established; of these two, the Los Angeles Municipal Court has a bench of twenty-six judges while that of Long Beach has a bench of five.48 In counties, cities or towns having no municipal courts, inferior courts may be provided by the legislature and their jurisdiction fixed by it except where otherwise prescribed.49

E. Judicial Selection

A novel method of selection was instituted by an amendment adopted in 1934.40 An incumbent justice of the supreme court or

33. Id. at § 4-a, new section adopted November 6, 1928.
34. Id. at § 4-b, new section adopted November 6, 1928.
35. Id. at §§ 6 and 8, as amended November 2, 1926. The bar and the judicial council have recommended that, where there is more than one judge, the presiding judge be chosen by the judicial council instead of by the judges themselves. The Second Report of the California Judicial Council (1929) 31.
40. Id. at § 26, adopted November 6, 1934.
of a district court of appeal (or of a superior court in any county whose electors have adopted the plan) may file a declaration of candidacy for re-election and if so his name alone is submitted to the electorate for a "yes" or "no" vote. Should the incumbent not declare, the governor must nominate a candidate who meets the approval of a majority of a commission of three consisting of (1) the chief justice or acting chief justice of the supreme court, (2) the presiding judge of the particular district court of appeal for which the selection is to be made (or the one with longest tenure if the selection is for the supreme court) and (3) the attorney general.

If the electorate refuses to elect the declared incumbent or the nominee by the governor with the approval of a majority of this commission (should the incumbent not declare), a vacancy then exists which may be filled by the governor alone, except that he may not appoint the one repudiated at the polls.

F. In General

Aside from the organic structure of the California courts there are certain features of its judicial system which may not be passed without comment. New trials are granted only when the court is of the opinion that a miscarriage of justice has resulted; hence a harmless error or technicality may not be utilized to secure such a delay. 41

Expedition of justice is also sought by authorizing the legislature to empower an appellate court to make findings of fact contrary to, or in addition to, those of the trial court in all cases in which a jury is not required or has been waived. These findings of fact by the appellate court may be based on the evidence produced in the trial court, or the appellate court may take additional evidence and render judgment thereon. 42 That such a power in the hands of efficient appellate justices is a marked aid in the elimination of delays and the correction of errors is the premise upon which such a provision was inserted in the constitution. Judges are now, moreover, permitted to comment on the evidence and on the credibility of witnesses. 43

Party litigants in a civil case may agree upon an attorney to act as judge pro tempore in any case before a superior or municipal court, subject to the approval of such court as to the selection

---

41. Id. at § 4 1/4, adopted November 3, 1914.
42. Id. at 4%, adopted November 2, 1926.
43. Id. at § 19, as amended November 6, 1934.
and subject to such regulations as might be prescribed by the judicial council of the state.44

The constitution provides for removal of judges by legislative action and by the supreme court. Judges of the supreme court, district courts of appeal and superior courts may be thus removed by a two-thirds vote of a quorum in each house; all other judges, justices of the peace excepted, may be removed by a majority vote of a quorum in the senate on the recommendation of the governor.45 The supreme court, on its own motion or when petitioned, is enabled to disbar a judge convicted of a crime involving moral turpitude.46

In 1930 judges were made eligible for election or appointment to other public office, their acceptance of such other office constituting their resignation from the bench.47

Finally, the legislature shall provide by general law for the retirement and retirement allowance of justices or judges for age or disability.48

III. The New York Judiciary

A. The Court of Appeals

The court of appeals is the highest court of New York and is composed of a chief justice and six associates—all of whom are elected at large for overlapping terms of fourteen years. A unique feature of this court is that, upon certificate of necessity from it, the governor shall designate not more than four justices of the supreme court to serve as justices ad hoc on the court of appeals.49

An appeal of right direct to the court of appeals may be had in criminal cases punishable by death and in actions involving a constitutional question. An appeal to the court of appeals following a conviction in a case less than capital shall be from the supreme court, appellate division, or otherwise as the legislature may provide.50 An appeal lies of right from the supreme court, appellate division, where that court has ordered a reversal or a

44. Id. at § 5, as amended November 6, 1928.
45. Id. at § 10, as amended November 8, 1904. See also Art. XXIII, providing for recall of elective public officers.
47. Id. at § 18, as amended November 4, 1930.
48. Id. at § 26, adopted November 6, 1934.
49. N. Y. Const. Art. VI, § 5.
50. Id. at § 7, as amended November 4, 1930.
modification, or where an affirmance by that court was not unani-
mous;\textsuperscript{51} or from an order of that court granting a new trial.\textsuperscript{52} The legislature may abolish appeals of right in civil cases except
where a constitutional question is involved.\textsuperscript{53}

B. The Supreme Court

The supreme court is the principal trial court in New York and
its justices are elected for fourteen years from judicial districts.
The legislature is authorized to increase the number of justices
for any district but not to exceed one justice for each sixty thou-
sand of population therein.\textsuperscript{54}

For the purpose of service as intermediate appellate tribunals
the state is divided into four departments, two of which have
seven justices each while the remaining two have five each. These
justices of the supreme court constitute the appellate divisions
for their respective departments. The governor designates from
among the elected supreme court justices a presiding judge for
each of the appellate divisions who must be a resident of his de-
partment. The remaining justices for each division are likewise
designated by the governor but only a majority thereof need be
residents of the particular department. The presiding judge
serves only for the duration of the governor's term, but the other
justices of a division serve for five year terms. Congestion is re-
lieved as the occasion demands by gubernatorial designations of
additional, temporary justices at the request of a division. Cases
before any division may be transferred to another upon the de-
cision of a majority of the presiding judges of the several depart-
ments.\textsuperscript{55}

C. County Courts

Kings County has five county judges, Bronx County has two,
and the remaining counties have one each. The legislature, how-
ever, may increase the number of county judges in a particular
county not to exceed one such judge for each two hundred thou-
sand of population therein. In the counties containing New York
City these judges are elected for fourteen years, while in the
remaining counties the term is six years. The county courts of
Kings, Bronx, Queens and Richmond have no civil jurisdiction

\textsuperscript{51} Id. at § 7(1).
\textsuperscript{52} Id. at § 7(2).
\textsuperscript{53} Id. at § 7(7).
\textsuperscript{54} Id. at §§ 1 and 2.
\textsuperscript{55} Id. at § 2.
and only such criminal jurisdiction as the legislature may confer; other county courts in the state have civil jurisdiction over actions for money if for less than three thousand dollars and against residents of their particular county.56

D. Surrogates' Courts

Surrogates' courts are for probate practice. There is one such court for each county and an additional surrogate may be provided by the legislature for counties of over a million population. In the smaller counties the county judge serves as ex officio judge of the surrogate court of his county, but in counties containing over forty thousand population the legislature may provide for a separate judge for this court. Still another prevention of congestion in these courts is by the authority in the legislature to provide for the supreme court in counties of over four hundred thousand population to exercise the powers of a surrogate court.57

E. The City Court of New York

The City Court of New York has original civil jurisdiction, concurrent with the supreme court, in actions involving a sum or value not in excess of three thousand dollars. There are fifteen justices of this court, all elected for ten years: nine of these are elected from New York County, three from Bronx, two from Kings and one from Queens. The county judge-surrogate of Richmond County also serves as ex officio justice on the City Court of New York. The justices themselves choose their presiding judge.58 There is also in New York County a court of general sessions.59

Justices of the peace are elected for four year terms. Within constitutional limitations there is legislative discretion as to the establishment of such inferior courts as children's courts and courts of domestic relations.

F. In General

The Court of Appeals of New York has been the subject of much study by advocates of an improved judiciary. Among the features of this court (which are said to be largely responsible for the efficiency attributed to it) is the discretion permitted it in

56. Id. at § 12.
57. Id. at § 13.
58. Id. at § 15.
59. Id. at § 14.
the matter of writing opinions and the restriction of its appellate jurisdiction.60

On the other hand, the judicial structure as a whole has been considered in need of drastic revision. The Judicial Council of New York for years has urged a revised judiciary article. Extensive research was done by and under the council for the 1938 constitutional convention but only minor changes were recommended. In 1940 the council made less controversial recommendations to the legislature but only one technical recommendation has as yet become effective.61 In its 1946 report the council "renews its recommendations for a revised Judiciary Article . . . [to] include the removal or retirement of judges by a judicial method, age limitation of all but rural judges, . . . temporary emergency inter-court assignment of judges, and court consolidations."62

IV. THE OHIO JUDICIARY

The judicial power in Ohio is vested in "a supreme court, courts of appeal, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law."63

A. The Supreme Court

The supreme court is composed of a chief justice and six associates, elected at large for terms of not less than six years as may be designated by the general assembly.64 The supreme court has civil jurisdiction over cases involving constitutional questions and over cases originating in the courts of appeals; it has criminal appellate jurisdiction over cases "of felony on leave first obtained." In cases of "public or great general interest" the supreme court may direct a court of appeals to certify the record

60. Chief Justice Cardoza of the New York Court of Appeals to the Hon. Harry A. Holzer of the California Judicial Council, New York, March 11, 1929, Third Report of the Judicial Council of California (Sacramento, 1931) 46; Hon. V. J. Dowling, Presiding Judge of the New York Supreme Court, Appellate Division, First Department, to Holzer, Id. at 47.

61. For a comparison as to the number of appeals the seven justices of the Appellate Division, First Department, heard and decided as compared to the number heard and decided by appellate courts in California, see Note, (1930) 18 Calif. L. Rev. 323.


63. Ohio Const. Art. IV, § 1, adopted September 3, 1912.

64. Id. at § 2, as amended November 7, 1944.
to it. The general assembly may confer such revisionary jurisdiction upon the supreme court over the proceedings of administrative officers as it deems wise.65

A very important feature among the constitutional provisions governing the supreme court is the prohibition against its declaring an act of the general assembly unconstitutional, except in affirming a decision of a court of appeals to that effect, without the concurrence of all but one judge.66

B. Courts of Appeals

Courts of appeals each consist of three judges, elected from their respective districts for six years. The general assembly may alter the number and boundaries of circuits into which the state is divided, but may not abridge the term of an incumbent.67

The courts of appeals have appellate jurisdiction in chancery (equity) cases and over all judgments of the courts of common pleas, superior courts and other courts of record in their district. Their decisions are final except in the specific cases which the supreme court is empowered to review. In order for a court of appeals to reverse a judgment based on a jury verdict in a case appealed to it, the concurrence of all three judges is required but a majority thereof suffices in all other cases.68

C. Courts of Common Pleas

Courts of common pleas are established for each county in the state, each with one resident judge elected from the county and with such additional resident judges as the general assembly may provide. Unless otherwise determined by the general assembly the term of office is six years.69 The jurisdiction of these courts is determined by the general assembly unless vested by the constitution in some other court.70

The Court of Common Pleas of Cleveland is especially worthy of attention.71 Since 1925 this court has had a directing head, termed the chief justice, who is elected for five years. He has very broad powers and may require written reports from his associates at least once a month. Only one department of the

65. Ibid.
66. Ibid. For a brief discussion of this plan and its constitutionality, see Note, supra note 60, at 439-441.
67. Ohio Const. Art. IV, § 6, as amended November 7, 1944.
68. Id. at § 6, as amended November 7, 1944.
69. Id. at § 12, adopted September 3, 1912.
70. Id. at § 3, adopted September 3, 1912.
court handles the hearing of demurrers, preliminary to actual trial, and disposes of uncontested proceedings. The other departments are hence free for actual trial work.\textsuperscript{72}

Speedy trials in this court are obtained through the use of a "Master Calendar" system. Under this system, a clerk, known as the assignment commissioner, assisted by five deputies, handles the assignment of civil cases for trial; there is a similar clerk for criminal assignments. Civil cases (when an appearance has been made by the defendant) are placed by the commissioner in numerical order either on an "actual list" or a "trial list," each of which lists is in turn divided into jury and non-jury cases. Suits then proceed orderly to trial. The judges are spared all the preliminaries as the cases are placed before them only when all arrangements for actual trial have been completed. Constant touch is maintained by the commissioner with attorneys in the cases on the list, and once a case comes on the "trial list" it cannot be continued except for cause.\textsuperscript{73}

All cases in which service (notification to the defendant) has not been made within ninety days are dismissed by the commissioner, and, in this way, the dockets are cleared of "dead" cases. Default judgments are entered by the commissioner in those cases in which the defendant has failed to make a timely appearance despite service upon him.\textsuperscript{74}

The judicial statistics concerning this court stand as a marked tribute to the effectiveness of such a system in courts having a large personnel and volume of business. In the first year under the operation of the "Master Calendar" plan, this court handled fifty per cent more business at one-half the cost per case.\textsuperscript{75}

D. Probate Courts

A probate court for each county is presided over by one judge elected for four years. A county may, however, combine its probate court with its court of common pleas if the population of the county is less than sixty thousand.\textsuperscript{76} The court has general probate jurisdiction as provided by the general assembly.\textsuperscript{77}

E. Municipal Courts

Municipal courts may be established by the general assem-

\textsuperscript{72} Ibid.
\textsuperscript{73} Ibid.
\textsuperscript{74} Ibid.
\textsuperscript{75} Ibid.
\textsuperscript{76} Id. at § 7.
\textsuperscript{77} Id. at § 8.
The Municipal Court of Cleveland, established under this authorization, is particularly noteworthy.\textsuperscript{8} This court consists of sixteen judges, including a popularly elected chief justice. The assignment of judges and distribution of work among the associate justices is the function of the chief justice. This court has civil jurisdiction in cases involving less than three thousand dollars, criminal jurisdiction over misdemeanors, and holds preliminary examinations in felony cases.\textsuperscript{9}

One judge hears the demurrers and handles default judgments. Three of the judges dispose of the criminal proceedings; one presides over the conciliation branch of the court, and the remaining ten hear and decide contested civil cases.\textsuperscript{81} The trial calendar is regulated under the “Master Calendar” plan.

\textbf{F. In General}

Certain other interesting features in the Ohio judicial structure should be commented upon. Judges may be removed upon concurrence of two-thirds of the members elected to each house of the general assembly.\textsuperscript{82}

To relieve congestion in the supreme court a commission of five may be appointed by the governor, with consent of the senate, for three year terms, to handle any such legal business pending on the dockets assigned to it by the court.\textsuperscript{83} Once in every ten years the supreme court may petition the general assembly for an additional commission to serve for two years. A two-thirds concurrence in each house is necessary to establish such an additional commission.\textsuperscript{84}

That Ohio does not consider its judicial structure ideal, however, may be seen by the report of the Ohio Judicial Council in 1930.\textsuperscript{85}

“Practically no organization or system exists. Each court—almost each judge—is independent of the other. This great army of judges, properly organized and supervised, could conduct the litigation for twenty million people.”

\begin{itemize}
  \item \textsuperscript{78} Id. at § 1.
  \item \textsuperscript{79} The Second Report of the California Judicial Council (1929) 52-54.
  \item \textsuperscript{80} Ibid.
  \item \textsuperscript{81} Ibid.
  \item \textsuperscript{82} Ohio Const. Art. IV, § 17.
  \item \textsuperscript{83} Id. at § 22.
  \item \textsuperscript{84} Ibid.
  \item \textsuperscript{85} First Report of the Judicial Council of Ohio to the General Assembly of Ohio (1931) 13. Note that Ohio had 325 judges of record, as follows: 7 supreme court judges, 27 courts of appeal judges, 138 common pleas judges, 85 probate judges, 67 municipal judges and 1 insolvency judge.
\end{itemize}
Several years later, by the initiative process a plan was pro-
posed for nomination of judges by a lawyer commission, ap-
pointment by the governor, confirmation by the senate, and sub-
mision of the incumbent’s name to the electorate every six years. 
This procedure would have applied to appellate and supreme 
court judges and optionally to trial judges in each county. It was 
defeated, however, almost two to one.65

In its 1943 report the judicial council urged that the “rule-
making” power be vested in the supreme court acting with the 
advice and consent of the council; and that the legislature be 
given discretion as to the jurisdiction of courts of appeal.”67

V. The Illinois Judiciary

The judicial power is vested in “one supreme court, circuit 
courts, county courts, justices of the peace, police magistrates, 
and such courts as may be created by law in and for cities and 
incorporated towns.”68 Judges may be removed for cause by con-
currence of three-fourths of the members elected to each house 
of the general assembly.69

A. The Supreme Court

The supreme court is composed of seven judges elected from 
the districts for terms of nine years each. They choose from 
among themselves their chief justice. This court hears cases in-
volving franchises, freehold and revenue matters, validity of a 
statute or ordinance, or the construction of the constitution, the 
state as a party, and crimes of the grade of felony. It may review 
of right decisions of the appellate courts in criminal cases, and in 
civil cases upon a certificate of importance issued by the appellate 
court or upon a petition for certiorari.70

B. Appellate Courts

Appellate courts, as well as their jurisdiction, are provided 
for by the general assembly. These appellate courts are presided 
over by circuit court judges who, however, cannot hear appeals 
from their own decisions nor receive additional compensation for 
this appellate work.71

22 J. Am. Jud. Soc. 120.
68. Id. at § 30.
70. III. Const. Art. VI, § 11.
C. Circuit Courts

The state is divided into circuits, each of which is to have a population not exceeding one hundred thousand. One judge is to be elected from each circuit for six years but the general assembly may provide for larger districts and for as many as four judges to a circuit.92 These courts are to have general original trial jurisdiction and such appellate jurisdiction as may be provided by law.93

D. Probate Courts

Probate courts may be established by the general assembly in counties of over fifty thousand population. Such judges are elected for the same term as county judges to exercise that probate jurisdiction which would otherwise be exercised by the county judge.94

E. County Courts

County courts exist in each county with one judge elected for four years. The general assembly may, however, join contiguous and small counties. These courts have original trial jurisdiction in probate, succession, minority, curatorship and tax matters, and "such other jurisdiction as may be provided for by general law."95

F. Inferior Courts

Cook County, containing the City of Chicago, has a separate and independent judicial structure of courts below the supreme court. The Circuit Court of Cook County has five judges, but the number may be increased by the general assembly by one for every fifty thousand inhabitants above four hundred thousand.96 There is a similar provision as to the number of judges constituting the superior courts.97 There is a criminal court of Cook County presided over by one or more of the judges of the circuit or superior courts in alternation, "as may be determined by said judges, or provided by law."98 There are also a county court and a probate court, the latter being of legislative creation.99

92. Id. at §§ 13 and 14.
93. Id. at § 12.
94. Id. at § 20.
95. Id. at § 18.
96. Id. at § 23.
97. Ibid.
98. Id. at § 26.
99. Id. at §§ 18 and 28.
Justices of the peace and police magistrates are provided for by the general assembly, subject only to constitutional limitations that they be elective and have uniform jurisdiction.¹⁰⁰

Justices of the peace for Cook County are appointed by the governor with consent of the senate, "but only upon the recommendation of a majority of the judges of the circuit, superior and county courts"¹⁰¹ for such districts as the general assembly may provide and for four year terms. These justices may be removed summarily in the circuit or superior court for extortion or other malfeasance.¹⁰²

The Municipal Court of Chicago expresses the idea of the unified court plan. It consists of thirty-seven judges, including a chief justice, all popularly elective.¹⁰³ This court has general civil trial jurisdiction in cases involving one thousand dollars or less and has criminal jurisdiction over the trial of misdemeanors as well as preliminary hearings in cases of felony.¹⁰⁴ The extraordinary expedition of litigation in this court is attributed to the broad administrative powers of the chief justice and to the fact that the procedure therein is regulated by rules and not by rigid statutes.¹⁰⁵ The court is divided into branches, of which thirteen such branches for the hearing of certain classes of misdemeanors are in the outlying territory of the city. The remainder are located in the city hall. The composition of the various branches is designated by the chief justice who also directs the preparation of the trial calendar and the general distribution of business.¹⁰⁶

VI. THE MICHIGAN JUDICIARY

In Michigan, judicial power is vested constitutionally in "one supreme court, circuit courts, probate courts, justices of the peace and such other courts of civil and criminal jurisdiction, inferior to the supreme court, as the legislature may establish by general law, by a two-thirds vote of the members elected to each house."¹⁰⁷

A. The Supreme Court

The supreme court has one chief justice and as many asso-
ciate justices as may be provided (all elected at large) for such terms as the legislature may provide.\textsuperscript{108} Besides its general superintending control over inferior courts, the supreme court has such appellate jurisdiction as legislative discretion may provide.\textsuperscript{109} This court must give all opinions in writing.\textsuperscript{110} A very unusual provision in the constitution, and one unlike judiciary provisions in most of the other states, is the rule-making power vested in the supreme court for itself and over inferior courts.\textsuperscript{111}

B. Circuit Courts

Circuit courts, for such circuits as the legislature may create, each have at least one judge, elected from his particular circuit for six years.\textsuperscript{112} The legislature, however, may provide for other judges for a circuit court, and in general has wide legislative discretion over these courts, except that it cannot legislate a judge out of office.\textsuperscript{113} These judges are ineligible for other public office for one year after the expiration of their term.\textsuperscript{114} Circuit courts have general original trial jurisdiction and have appellate jurisdiction as well as a supervisory power over inferior tribunals.\textsuperscript{115}

C. Probate Courts

A probate court is in each county, with one judge elected therefrom for four years. The legislature, however, may increase the number of judges in counties with a population of over one hundred thousand.\textsuperscript{116} These courts have original jurisdiction "in all cases of juvenile delinquents and dependents" and such other jurisdiction as the legislature may confer.\textsuperscript{117}

D. Inferior Courts

There are to be not more than four justices of the peace elected from each organized township for terms of four years.\textsuperscript{118} These justices have certain limited civil original jurisdiction, concurrent with the circuit courts, and such criminal jurisdiction as

\begin{flushleft}
\textsuperscript{108} Id. at § 2.  
\textsuperscript{109} Id. at § 4.  
\textsuperscript{110} Id. at § 7.  
\textsuperscript{111} Id. at § 5.  
\textsuperscript{112} Id. at §§ 8 and 9.  
\textsuperscript{113} Ibid.  
\textsuperscript{114} Id. at § 9.  
\textsuperscript{115} Id. at § 10.  
\textsuperscript{116} Id. at §§ 13 and 14.  
\textsuperscript{117} Id. at § 13.  
\textsuperscript{118} Id. at § 15.  
\end{flushleft}
may be provided. The legislature "may provide by law for justices in cities."

Under authorization the Recorders' Court of the City of Detroit was established in 1919. This court, "in certain respects, is unique in the United States. It represents the nearest approach to what is commonly referred to as the 'unified court.'" The court has ten judges with jurisdiction over all offenses under state laws and all violation of municipal ordinances committed within the city. The presiding judge, besides his executive functions, conducts certain preliminary work and assigns felony cases for trial; another hears complaints, signs warrants and conducts all preliminary hearings; a third hears minor misdemeanors as a magistrates court and without a jury; a fourth handles all other misdemeanor cases and the remaining six try and decide the felony cases assigned to them by the presiding judge.

A "Master Calendar" to expedite trials is worked out under the direction of the presiding judge. Dates for trial are fixed after consultation with the prosecuting attorney's office. As illustrative of how this court functions, only from one to five days intervene between the order of commitment and arraignment, and cases are generally set for trial within from two weeks to a month after arraignment.

E. In General

By constitutional amendment, Michigan has the "recall" but judges are specifically excepted from its operation. The governor, however, upon the concurrent resolutions of two-thirds the elected members of each house may remove a judge. Another interesting provision is that which empowers the legislature to provide by law for the election of one or more persons in each organized county who may be vested with judicial powers not to exceed those of a judge of the circuit court at chambers.

The judiciary fared fairly well at the hands of the Michigan Constitutional Revision Study Commission. In its report of Sep-

---

119. Id. at § 16.
120. Id. at § 15. The Michigan Judicial Council, however, recommends their gradual elimination and the substitution of county courts in lieu. Sixteenth Annual Report of the Judicial Council of Michigan (1946) 22.
122. Ibid.
123. Ibid. It is to be noted that grand juries have been abolished, and felonies are based on "Informations" after an accused has been "bound over."
126. Id. at Art. VII, § 21.
tember 15, 1942, this commission stated that should a revision be adopted at a more opportune time and after the war, it would suggest careful consideration of (1) elimination of justices of the peace as constitutional courts; (2) increase of the terms of judges if effective provisions to improve the method of judicial selection could be found (but it did not recommend a radical change until more experience had been accumulated under the so-called "non-partisan" method of selection established by constitutional amendment in 1939); (3) more complete integration under the rule-making power of the supreme court.¹²⁷

This "non-partisan" plan of selection calls for supreme court judges to be nominated in conventions as theretofore. Other judges, however, are required to be nominated at primary elections, with the nominees placed upon the primary ballot by the signature of a small per cent of the qualified electors, and with no "party" designation appearing as to any candidate on either the primary or the general election ballot. The ballot does designate, however, which man is the incumbent.¹²⁸ The revision committee stated that this method favors an incumbent, perhaps unduly; and to offset, it recommended that the governor fill vacancies only from a list recommended by a judiciary commission.¹²⁹

Earlier in Michigan, by use of the initiative process, a plan had been proposed for the appointment of supreme court judges by the governor, upon the nomination of a commission to be composed of three judges (one from the supreme court, one from the circuit courts, and one from the probate courts), three lay members appointed by the governor, and three lawyers chosen by the Board of the State Bar Association. The commission would have been authorized to recommend only one name, or more than one name. Terms for the supreme court judges would have been left at eight years. The proposed amendment was defeated.¹³⁰

VII. THE JUDICIARY OF RHODE ISLAND

The judiciary article of the Rhode Island constitution is re-
markable for its brevity, consisting of only seven short sections. The judiciary is almost entirely subservient to the general assembly. Judicial power is vested in "one supreme court, and in such inferior courts as the general assembly may, from time to time, ordain and establish."131

A. The Supreme Court

The supreme court judges are "elected by the two houses in grand committee" for an indefinite tenure and may be removed by a majority vote of those elected to both houses.132 This court has "final revisory and appellate jurisdiction upon all questions of law and equity" and other jurisdiction prescribed by the general assembly.133

B. Inferior Courts

Inferior courts are left to legislative discretion, except that "the towns of New Shoreham and Jamestown may continue to elect their wardens as heretofore," and "the other towns and the city of Providence may elect such number of justices of the peace, residents therein, as they deem proper."134 Under this authorization the general assembly has created a superior court and district courts.135 The superior court now consists of a presiding justice and eight associate justices.136

Formerly the supreme court was constitutionally required to instruct the juries on the law in all trials, but this requirement was eliminated.137 Ever since the adoption of the present constitution in 1842, "advisory opinions" have been required of the supreme court.138

THE SOUTHERN GROUP

VIII. THE FLORIDA JUDICIARY

Judicial power is vested in "a Supreme Court, Circuit Courts, Court of Record of Escambia County, Criminal Courts, County Courts, County Judges and Justices of the Peace" and such other courts or commissioners as may be established.139

---

132. Id. at § 4.
133. Id. at § 2, as amended November, 1903.
134. Id. at § 7.
138. Id. at § 3.
The supreme court has seven judges elected at large for six years; these choose a chief justice. They may sit in divisions of three except in (1) capital cases, (2) constitutional cases, (3) when a member of the division dissents, or (4) when the chief justice desires the case be considered en banc. This court has general civil and criminal appellate jurisdiction, either direct from the trial court or from the circuit courts. There is at least one judge of a circuit court in each circuit. The circuits, not in excess of fifteen, are created by the legislature, each to contain at least fifty thousand population. Circuit judges are elected from their districts for six years; additional circuit judges may be provided by the legislature but not to exceed one for each fifty thousand. This structure of the supreme court and of the circuit courts is as amended in 1940 and the Florida Bar Association considers that judicial efficiency has been improved thereby.

Circuit courts are the general trial courts, where jurisdiction is not vested specifically in inferior courts, and in addition have final appellate jurisdiction from most civil and criminal cases tried in inferior courts. A circuit judge may, at will, appoint one or more attorneys at law to serve as his court commissioners, who may, in his absence from the county, issue writs of injunction and habeas corpus. The legislature may authorize such court commissioner to perform other ministerial or non-judicial functions. The judges of the circuit courts are required to report to the legislature such defects in the laws as they may note and suggest amendments or acts they deem advisable.

A county judge is elected for four years. He possesses probate jurisdiction, a limited civil jurisdiction and such author-
ity over criminal cases as the legislature may provide. Not less than five justices of the peace are elected in each county for four year terms from such districts of a county as the county commissioners may provide (but the legislature may arrange the districts). Justices of the peace have a limited civil and criminal jurisdiction.

Separate criminal courts, with exclusive jurisdiction over cases not capital, may be established by the legislature for such counties as it may see fit, with the judges for such courts appointed by the governor for four year terms.

A novel feature of the Florida judiciary provisions is that which authorizes party litigants to agree upon attorneys at law to serve as judges ad litem or as referees. The governor may require "advisory opinions" as affecting his department.

IX. THE JUDICIARY OF ALABAMA

Judicial power is vested in "a supreme court, circuit courts, chancery courts, courts of probate, such courts of law and equity inferior to the supreme court, and to consist of not more than five members" as the legislature may establish. However, no court of general jurisdiction shall be established in counties having a population of less than twenty thousand or having property with an assessment of less than $3,500,000.

The supreme court consists of "one chief justice and such number of associate justices as may be prescribed by law" elected at large for six years. This court, aside from its general supervisory powers, has such appellate jurisdiction as may be provided by law if not constitutionally vested elsewhere.

Circuit judges are elected for six years also, for such circuits as may be created within certain limitations as to composition. These circuit courts are the general trial courts for civil and criminal cases. Courts of chancery may be established for such dis-

151. Id. at § 17. Final appellate jurisdiction from justices of the peace in civil cases, to be tried de novo at the option of the appellant, may be conferred. Id. at § 18.
152. Id. at § 21, as amended 1944.
153. Id. at § 22, as amended.
154. Id. at §§ 24, 25 and 29.
155. Id. at §§ 19 and 20.
156. Id. at Art. IV, § 13.
158. Ibid.
159. Id. at §§ 151-156.
160. Id. at § 140.
161. Id. at §§ 142, 147 and 155.
162. Id. at § 143.
tricts as the legislature may provide, with one judge for each elected for six years.\textsuperscript{163} The legislature may, however, consolidate chancery and circuits courts.\textsuperscript{164} There are probate courts for each county, with a judge elected therefrom for six years.\textsuperscript{165} The legislature may, in its discretion, abolish any of the courts below the supreme court, with the exception of the probate courts, and confer elsewhere the jurisdiction exercised by those abolished.\textsuperscript{166} Not in excess of two justices of the peace are to be elected from each precinct of a county, with a limited civil jurisdiction.\textsuperscript{167} The legislature may provide for city courts in cities and incorporated towns.\textsuperscript{168} Even in the absence of constitutional provisions, “advisory opinions” are required by statute.\textsuperscript{169}

X. THE MISSISSIPPI JUDICIARY

A “Supreme Court and such other courts as are provided for” in the constitution are vested with judicial power.\textsuperscript{170} Two supreme court justices are elected from each of three districts,\textsuperscript{171} for overlapping terms of eight years.\textsuperscript{172} This court has “such jurisdiction as properly belongs to a court of appeals.”\textsuperscript{173} It has no original jurisdiction.\textsuperscript{174}

There are circuit courts for such circuits as the legislature may create.\textsuperscript{175} Judges for these courts are elected from their respective circuits for four years.\textsuperscript{176} The legislature may compel these judges to interchange.\textsuperscript{177} Circuit courts have general original trial jurisdiction of all cases where not otherwise vested,\textsuperscript{178} and have jurisdiction of any case where there is no other legal

\begin{itemize}
\item 163. Id. at §§ 145 and 155.
\item 164. Id. at § 148.
\item 165. Id. at §§ 149 and 155.
\item 166. Id. at § 171.
\item 167. Id. at § 168.
\item 168. Ibid.
\item 169. In re Opinions of the Justices, 209 Ala. 593, 96 So. 487 (1923).
\item 170. Miss. Ann. Code art. VI, § 1; Miss. Const. Art. VI, § 144.
\item 171. Miss. Const. Art. VI, § 145, and Art. 286, as adopted 1914.
\item 172. Id. at Art. VI, § 149, amendment of 1914.
\item 173. Id. at § 146.
\item 175. Miss. Const. Art. VI, § 152. See Hinton v. Perry Co., 84 Miss. 538, 36 So. 585 (1904).
\item 177. Id. at § 158.
\item 178. Id. at § 166.
\end{itemize}
remedy.\textsuperscript{179} The legislature may provide these courts with appellate jurisdiction from inferior ones.\textsuperscript{180}

There are chancery courts for such districts as the legislature may provide,\textsuperscript{181} with judges elected for four years.\textsuperscript{182} These have general equity, probate and minority jurisdiction.\textsuperscript{183} "A competent number" of justices of the peace for each county are to be elected for four years.\textsuperscript{184} Other inferior courts, such as mayor and police magistrate courts, can be established and abolished at will by the legislature.\textsuperscript{185}

Unlike most of the states, the only method for removal of judicial officers in Mississippi is by prosecution and conviction, upon a "presentment or indictment by a grand jury."\textsuperscript{186}

THE SOUTHEASTERN GROUP

XI. VIRGINIA

Judicial power in Virginia is vested in "a supreme court of appeals, circuit courts, city courts, and such other inferior to the supreme court of appeals as may be" authorized by the constitution or established by the general assembly.\textsuperscript{187}

A. The Supreme Court of Appeals

The supreme court of appeals is composed of seven members who are "chosen by joint vote of the two houses of the General Assembly for terms of twelve years."\textsuperscript{188} This court has original jurisdiction for the issuance of certain writs and such appellate jurisdiction as the general assembly may provide. An appeal, however, is guaranteed in cases involving a constitutional question, or the life, liberty or property of a person.\textsuperscript{189}

A special court of appeals to handle a congested docket of the supreme court of appeals, or in event of recusation of the judges thereof, may be provided by the general assembly without limitation as to how often such a special court may be created. Such court shall consist of not less than three nor more than five judges

\textsuperscript{179} Planters Ins. Co. v. Cramer, 47 Miss. 200 (1872).
\textsuperscript{180} Miss. Const. Art. VI, § 156.
\textsuperscript{181} Id. at § 152.
\textsuperscript{182} Id. at § 153, amendment of 1910.
\textsuperscript{183} Id. at §§ 159-161.
\textsuperscript{184} Id. at § 171.
\textsuperscript{185} Id. at § 172.
\textsuperscript{186} Id. at § 175. For interpretation see Hyde v. State, 52 Miss. 665 (1876).
\textsuperscript{187} Va. Const. Art. VI, § 87, as materially amended June 19, 1928.
\textsuperscript{188} Id. at § 91.
\textsuperscript{189} Id. at § 88, and annotations thereto.
chosen from among the circuit court judges or judges of city courts of record, together with at least one judge of the supreme court of appeals.\textsuperscript{190}

There are certain rather inelastic provisions governing the supreme court of appeals. This court is required to give written opinions in all cases.\textsuperscript{191} Although it can discharge a prisoner in a criminal case before it on appeal without being required to remand the case for a new trial in the lower court, it cannot increase or decrease a judgment for unliquidated damages.\textsuperscript{192}

\textbf{B. Circuit Courts}

Circuit courts are to be established in such circuits as may be arranged by the general assembly, although every circuit must contain a population of at least forty thousand. For each such court there is one judge, chosen by the joint vote of the general assembly for eight years.\textsuperscript{193} These judges may be required or authorized to hold court outside their circuit.\textsuperscript{194}

\textbf{C. Inferior Courts}

The provisions regarding courts for cities and towns are very elastic.\textsuperscript{195} City courts for cities with populations of over thirty thousand are as provided by the general assembly. For cities or towns of lesser population there are corporation courts which, however, may be abolished by the electors thereof, in which event the circuit court of the county is to perform the functions of these corporation courts.\textsuperscript{196} Judges for city courts of record are chosen by joint vote of the two houses of the general assembly for eight years. They need not be residents of the city, nor need they reside in the city after elected unless that city has a population of over ten thousand.\textsuperscript{197}

Courts of land register may be created by the general assembly with such jurisdiction as may be conferred relating to the “settlement, registration, transfer or issuance of title to lands in the state or any part thereof.”\textsuperscript{198}

\begin{footnotesize}
\begin{itemize}
  \item[190.] Id. at § 89.
  \item[191.] Id. at § 90.
  \item[192.] Ibid.
  \item[193.] Id. at §§ 94 and 95.
  \item[194.] Id. at § 97.
  \item[195.] Id. at § 98, as materially amended June 6, 1928.
  \item[196.] Ibid.
  \item[197.] Id. at § 99.
  \item[198.] Id. at § 100.
\end{itemize}
\end{footnotesize}
Justices of the peace have statutory jurisdiction, and the general assembly may provide for their election or appointment.\(^{199}\)

There are certain other features of the judicial system of interest for the purpose of this comparative study. The general assembly may authorize the governor to appoint judges pro tem.\(^{200}\) Judicial salaries may be increased during tenure, although not diminished.\(^{201}\) The general assembly is also empowered to provide for retirement of judges with compensation and for the utilization of retired judges for part-time work with compensation.\(^{202}\) All judges are subject to removal by the majority vote of those elected to both houses of the general assembly.\(^{203}\)

**XII. The Judiciary of West Virginia**

Judicial power is vested in “a supreme court of appeals, in circuit courts and the judges thereof, in such inferior tribunals” as are authorized in the constitution.\(^{204}\)

The supreme court of appeals has five judges, elected at large for twelve years.\(^{205}\) There is legislative discretion as to its civil and criminal appellate jurisdiction and its monetary minimum is very low.\(^{206}\) The court is compelled to give a statement of points involved as well as a decision in writing.\(^{207}\)

There can be from thirteen to twenty-four circuits created, in each of which there is a circuit court;\(^{208}\) at present, there are twenty-four. All circuits except one have only one judge, elected for eight years.\(^{209}\) These courts have a general trial jurisdiction, and certain appellate jurisdiction from inferior tribunals.\(^{210}\)

Each county court has three commissioners, elected for six years and having general probate jurisdiction as well as control over county matters.\(^{211}\)

---

199. Id. at §108; Note (1930) 16 Va. L. Rev. 518-521.
201. Id. at § 102, as amended June 19, 1928.
202. Ibid.
203. Id. at § 104.
204. W. Va. Const. Art. VII, § 17. Judges may be removed by two-thirds of the elected membership of each house. Id. at § 17.
205. Id. at § 2, as amended November, 1902.
206. Id. at § 3.
207. Id. at § 5.
208. Id. at §§ 10, 13, 14.
209. Ibid.
210. Id. at § 12.
211. Id. at §§ 23 and 24. At the request of a county, the legislature may reform its county court. Id. at § 29.
1935 and "summary courts" created in lieu. It is of interest to note that their jurisdiction is co-extensive with the county.

XIII. THE NORTH CAROLINA JUDICIARY

The judicial power is vested in "a Supreme Court, Superior Courts, courts of justices of the peace and such other courts inferior to the Supreme Court as may be established by law."

The supreme court is composed of a chief justice and four associates, elected at large for eight years. The legislature may increase the number of associates to six and this has been done. It has original jurisdiction over all claims against the state, but its decision are only recommendatory to the general assembly. It has jurisdiction to review "any decision of the courts below, upon any matter of law or legal inference."

A superior court, with one judge, is provided for each of nine districts, although these districts may be rearranged by the general assembly. The judges for these courts are elected at-large but must reside in the district for which they were elected during their tenure. The general assembly is, however, empowered to make these judges elective from districts instead of at large. The general assembly is further empowered to provide the jurisdiction of the superior courts.

A novel feature as to those judges is that they preside successively in all the districts and not more than four years in any one. In the event of illness or absence of any judge for any reason the governor may require another judge to serve in the district so vacated, and the general assembly is empowered to provide for the selection of special judges in such an event.

Special courts in cities for the trial of misdemeanors may be provided by law. Justices of the peace are elected from districts and have limited civil and criminal jurisdiction. Appeals from

---

212. Id. at § 28.
213. Id. at § 24.
216. Id. at § 9.
217. Id. at § 8.
218. Id. at § 10.
219. Id. at § 21.
220. Id. at § 12.
221. Id. at § 11.
222. Id. at § 14.
223. Id. at § 28. A jury of six can be demanded by a litigant on questions of fact. Id. at § 27.
the justices' courts are to the superior court; in civil cases the appeals are on the record made below, but in criminal cases the appeal is heard de novo.224

The general assembly is specifically empowered to prescribe rules of proceedings for all courts below the supreme court.225 All judges may be removed "for mental or physical disability" by a two-thirds vote of both houses.226

XIV. THE JUDICIARY OF SOUTH CAROLINA

Judicial power is vested in a "Supreme Court, in two Circuit Courts, to wit: A Court of Common Pleas having civil jurisdiction and a Court of General Sessions with criminal jurisdiction only."227 Inferior courts may be created by the general assembly but a county court can be established only if approved by a majority of the electors thereof.228

The supreme court is composed of a chief justice and three associates, chosen by the general assembly for overlapping terms of eight years.229 Concurrence of three is necessary for a reversal; however, if a "constitutional question is involved," any two of the justices may insist upon calling In all the circuit judges. A majority of the total number would then constitute a quorum and a majority of this quorum could decide the case.230

The circuit judges are similarly chosen, one for each circuit, but for terms of only four years.231 By constitutional amendment these circuit judges are now eligible for appointment as acting associate judges of the supreme court in cases of emergency.232 A "sufficient number" of magistrates, an office similar to that of justice of the peace, are appointed by the governor, with the consent of the senate, for each county with two year terms.233

It has been said by a learned South Carolinian that "though our courts are the most satisfactory part of our government, there is abundant room for betterment."234 The three reforms urged by

224. Id. at § 27.
225. Id. at § 12.
226. Id. at § 31.
228. Ibid.
229. Id. at § 2.
230. Id. at § 12.
231. Id. at § 12. These interchange. Id. at § 14.
that critic are “concerned with the election, the tenure and the powers of the judges.” With the exception of “magistrates and the judges of the county courts in the few counties in which they exist, the General Assembly has always elected the judges in South Carolina,” but before 1868 the tenure of judges was for good behavior. A different method of selection is urged but the tenure which was thus provided under the early constitution is considered now desirable.

XV. The Georgia Judiciary

In Georgia’s new constitution, judicial power is “vested in a Supreme Court, a Court of Appeals, Superior Courts, Courts of Ordinary, Justices of the Peace,” and such others as the general assembly may establish.

The supreme court is composed of seven associate justices, all elected at large for six years, who choose one of their number to serve as chief justice. This court has appellate jurisdiction in cases involving constitutional questions, in cases affecting title to land (until the legislature provides otherwise), the construction of wills, and divorce and alimony suits, and in all equity cases. It has criminal appellate jurisdiction over capital offenses, and in all habeas corpus cases.

The judges of the court of appeals are elected at large for six years. There is legislative discretion as to the number of judges for this court. It has appellate jurisdiction where not vested in the supreme court and may certify questions to that court.

Superior courts are for such circuits as the general assembly may provide, with at least one judge for each, elected for four years. These courts are the general trial courts with exclusive jurisdiction in divorce, felony, land title and equity cases; and have such appellate jurisdiction as the legislature may provide. In counties having city courts, the judges may alternate with each other where one is disqualified.

235. Id. at 76.
236. Ibid.
237. Id. at 77.
239. Id. at § 2, par. I.
240. Id. at § 2, par. IV.
241. Id. at § 2, par. VIII.
242. Ibid.
243. Ibid.
244. Id. at § 3.
245. Id. at § 4.
246. Id. at § 5.
for each county, with the judge elected therefrom for four years. These courts have probate jurisdiction and jurisdiction in county matters. There is one justice of the peace for each "militia" district, elected for four years, with limited civil jurisdiction.

City courts may be created by the legislature, in lieu of justices of the peace, in the larger cities or counties. The Municipal Court of Atlanta, however, is of constitutional creation.

THE SOUTHWESTERN GROUP

XVI. THE KENTUCKY JUDICIARY

The court of appeals is the highest court in Kentucky and is composed of not less than five nor more than seven justices elected from such districts as may be created, with eight year terms. The justice with the longest tenure of office serves as chief justice.

Circuit courts exist in such districts as the general assembly may create, but there cannot exceed one district for each sixty thousand of population. The larger counties constitute separate districts and may be allowed additional judges. All circuit judges are elected from their respective districts for six years.

There is a county court for each county and the judge is elected therefrom for four years. This county judge serves as ex officio judge of the court of quarterly sessions for his particular county.

Justices of the peace are elected for four years from such districts in the counties as the general assembly may create; however, there shall be not less than three nor more than eight districts in any county.

Police courts may be established in towns and cities. These courts have such criminal jurisdiction as is possessed by justices of the peace but, except in the small towns, may not be vested with any civil jurisdiction.
There is, however, wide legislative discretion as to the juris-
diction of the other courts. Judges of the court of appeals and of
the circuit courts can be removed "upon the address of two-thirds
of each House of the General Assembly." It is to be noted that
inferior judicial officers are to be prosecuted for misfeasance, mal-
feasance and wilful neglect, upon conviction of which their office
is vacated but from which conviction an appeal may be had to the
court of appeals.

Here again, efforts at revision are under way.

XVII. THE JUDICIARY OF TENNESSEE

Judicial power is constitutionally vested in "one supreme
court, and in such circuit, chancery and other inferior courts as the
legislature shall from time to time" establish. To date the
legislature has seen fit to provide for one supreme court, one
court of appeals which sits in three divisions, fourteen chancery
divisions with two additional chancery divisions presided over by
circuit judges, twenty circuit courts, eight criminal courts, ninety-
five county courts, innumerable justices of the peace courts (from
eight in some counties to as many as fifty-two in others), special
courts dealing with domestic relations, juvenile courts, city courts,
general session courts which take the place of justice of the peace
courts in some counties.

The supreme court is composed of five justices elected at
large for eight years, but not more than two can be residents of
any one grand division of the state. These justices designate from
among themselves who shall serve as chief justice. The appel-
late jurisdiction of this court shall be as the legislature pres-
cribes.

Circuit and chancery court judges are elected from their re-
spective districts or circuits for eight year terms. The number of
judges, the composition of the circuits or districts, and the
jurisdiction of these courts are left to legislative discretion.

258. Id. at §§ 112, 129.
259. Id. at § 227, as amended November, 1919.
262. Tennessee League of Women Voters, Tennessee Needs a new Con-
stitution (1946) 9.
264. Id. at § 2.
265. Id. at § 4.
266. Ibid.
Justices of the peace are elected for six year terms, two from each district created by the legislature;\(^{267}\) however, in districts containing cities or towns, three justices of the peace are elected,\(^{268}\) and the legislature can provide for the appointment of still an additional number in incorporated towns.\(^{269}\) Contrary to the usual provisions, the jurisdiction of these justices is co-extensive with the county and is prescribed by the legislature.\(^{270}\)

Certain constitutional provisions should be noted. Judges cannot charge the jury on facts but “may state the testimony and declare the law.”\(^{271}\) Fines exceeding fifty dollars can be imposed only by juries.\(^{272}\) Judges and attorneys for the state may be removed by the address of “two-thirds of the members to which each house is entitled.”\(^{273}\)

The proposal of the Tennessee League of Women Voters for revision of the Judiciary are by it summarized:

“1. The court system should be coordinated.

“2. Method of selecting judges should be scrutinized.


“4. More citizens should be considered eligible for jury service.”\(^{274}\)

Similar criticism was expressed in a more scholarly manner in 1937 in a study made by the University of Tennessee.\(^{275}\)

XVIII. THE ARKANSAS JUDICIARY

Judicial power is constitutionally vested in “the supreme court, in circuit courts, in county and probate courts, and in justices of the peace. The General Assembly may also vest such jurisdiction as may be deemed necessary in municipal corporation

\(^{267}\) Id. at § 5.

\(^{268}\) Ibid.

\(^{269}\) Ibid.

\(^{270}\) Ibid.

\(^{271}\) Id. at § 9.

\(^{272}\) Id. at § 14.

\(^{273}\) Id. at § 6. The present structure of the courts in Tennessee inferior to the supreme court is a court of appeals, of nine judges elected for eight years and sitting in three divisions; fourteen divisions of chancery courts, each having one or more separate judges, but with two additional chancery divisions presided over by a circuit judge; twenty circuit courts, with all except four having only one judge; eight criminal courts, with all except two having only one judge; and county courts for each county, each with one judge. All judges are elected for eight years. Tenn. Const. Art. VI.


\(^{275}\) The University of Tennessee Record, Extension Series (1937) v. xiii, no. 2, pp. 30-39.
courts, courts of common pleas, where established, and, when deemed expedient, may establish separate courts of chancery.\textsuperscript{276}

The supreme court has five judges elected at large for eight years.\textsuperscript{277} The legislature may increase the number to seven. This court has general supervisory powers and the ordinary appellate jurisdiction.\textsuperscript{278}

Circuit judges are elected for four years\textsuperscript{279} from such circuits as the general assembly may provide.\textsuperscript{280} These courts have general supervisory control and appellate jurisdiction over inferior courts within their circuits.\textsuperscript{281} They possess original jurisdiction in criminal matters.\textsuperscript{282} Suits to remove county and township officers for cause are brought in these courts.\textsuperscript{283} They possessed equitable jurisdiction subject to an appeal to the supreme court\textsuperscript{284} until the general assembly created separate chancery courts.\textsuperscript{285} Circuit court judges may interchange circuits under such regulations as the general assembly may provide.\textsuperscript{286}

County courts exist in each county, with one judge who is elected from the county for two years and who need not be an attorney.\textsuperscript{287} These courts have jurisdiction over various county matters\textsuperscript{288} and are vested with limited jurisdiction in matters of contracts and personal actions.\textsuperscript{289}

The judge in each county having equity jurisdiction likewise exercises probate jurisdiction. The legislature may consolidate chancery and probate courts.\textsuperscript{290} Appeals from probate courts go to the supreme court.\textsuperscript{291}

Justices of the peace are elected for two years; there must be at least two from each township and one for each one hundred electors therein.\textsuperscript{292} They possess limited civil and criminal juris-
Corporation courts may be created for towns and cities.294

Although there is a separate chancery court created for Pulaski County, with a judge elected therefrom for two years, the general assembly may abolish it.295 An interesting provision is that which authorizes the attorneys of any circuit to choose a presiding judge should the circuit judge for any reason fail to appear by the second day of a court term.296

The bar association has proposed a completely new judiciary article—very modern or very radical, depending on the reader's viewpoint.297

XIX. THE TEXAS JUDICIARY

In this the largest of all the states there is a multiplicity of courts. Judicial power is vested in "one Supreme Court, in Courts of Civil Appeal, in a court of Criminal Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justice of the Peace, and in such other courts as may be provided by law."298 In addition, the Criminal District Court of Galveston and Harris counties was recognized and continued by the constitution, although the legislature may otherwise provide.299

The supreme court consists of a chief justice and eight associates elected at large for six years, any five of whom constitute a quorum. This court may sit in sections to hear preliminary matters.300 The distinctive features of this court's jurisdiction are that it has no criminal appellate jurisdiction and the legislature cannot empower it to issue remedial writs against governors.301 The legislature may provide for an appeal direct to the supreme court from any order of a trial court granting or denying an injunction on constitutional grounds, or on the validity or invalidity of any administrative order.302

293. Id. at § 40.
294. Id. at § 43.
295. Id. at § 44.
296. Id. at § 21.
299. Id. at § 2, as amended.
300. Id. at § 2, as amended August 25, 1945.
301. Id. at § 2, as amended, and § 3.
302. Id. at § 3(b), added by amendment and adopted November 5, 1940. Cf. Mo. Const. Art. V, § 22, discussed supra page 404.
The court of criminal appeals is composed of three judges elected at large for six years. It has appellate jurisdiction “in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law.”

The court of civil appeals has a chief justice and two associates elected for six years from not less than two nor more than three districts. This court has appellate jurisdiction as to “all civil cases of which the district courts or county courts have original and appellate jurisdiction” as may be regulated by law. Its decisions are conclusive as to questions of fact.

District courts each have one judge, elected for four years, from such districts as the legislature may create. They have general original trial jurisdiction above a monetary minimum and hear appeals from probate and county courts. Party litigants may themselves agree on a judge ad hoc in event of recusation of the district judge, or the legislature may by law provide for judges ad hoc in such contingencies. Interchange of district judges can be compelled by the legislature.

Judges of the county courts are elected every two years, one for each county. These courts have general trial jurisdiction below that of the district courts in civil and criminal cases, original probate jurisdiction, and a certain appellate jurisdiction from the justices of the peace courts.

Justices of the peace have inferior civil and criminal trial jurisdiction. Each county is divided into not less than four nor more than eight precincts, and from each there is one justice of the peace elected for two years; however, in any precinct containing a city with a population of at least eight thousand there are two elected. A unique judicial tribunal found in Texas is the commissioner’s court. Each county is divided into four commissioners’ precincts, from each of which one “commissioner” is elected for two years, and these together with the county judge

304. Id. at § 5.
305. Id. at § 6.
306. Ibid.
307. Ibid.
308. Id. at § 7, as amended.
309. Id. at § 8.
310. Id. at § 11.
311. Ibid.
312. Id. at § 15.
313. Id. at § 16.
314. Id. at §§ 18, 19.
constitute the commissioner's court, for that county, with jurisdiction over certain county business. 315

There are various interesting features of the Texas judicial system. There can be no appeal by the state in a criminal case. 316 The supreme court is empowered to make rules for itself and other courts not inconsistent with any act of the legislature. 317 District judges may remove county judges and justices of the peace for cause. 318 The legislature may by local or general law change the jurisdiction of county courts, and to conform thereto it may make necessary changes in the other courts. 319 The judiciary article of the constitution may also be said to be an extreme example of legislative detail, comprising twenty-nine sections and covering twelve pages.

Texas, too, is not satisfied with its judiciary.

"Practically everyone feels that our present judicial system is susceptible of improvement, and many lawyers and judges, as well as laymen, feel that our present system is outmoded and inadequate to present day needs in many respects." 320

The judicial council recommends the "Missouri Plan" of selection and a system of integrated courts in which the supreme court is "clothed with the power to control the organization and administration of the Judicial system." 321

THE ATLANTIC GROUP

XX. THE MAINE JUDICIARY

The constitutional provisions pertaining to the judiciary are very brief, as much is left to legislative discretion. Judicial power is vested in "a Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish." 322

The highest state court, termed the supreme judicial court, is composed of a chief justice and five associates. 323 A novel judicial organ is the superior court which has seven justices as-

315. Id. at § 18.
316. Id. at § 26.
317. Id. at § 25.
318. Id. at § 24.
319. Id. at § 22.
320. (1946) 9 Texas B. J. 347.
321. Id. at 348. The full proposed judiciary article then follows. See also Eighteenth Report of the Texas Judicial Council (1946); (1944-1945) 26 J. Am. Jud. Soc. 4.
signed by the chief justice of the supreme judicial court, who may utilize judges or retired judges of the highest court to hold trial court at places designated by law.\textsuperscript{324}

Each county has a probate court and elects a probate judge for four years.\textsuperscript{325} Appeals from these courts go to the superior court.\textsuperscript{326} Judges for municipal and police courts are “appointed by the executive power” for four years.\textsuperscript{327} Justices of the peace are similarly chosen for seven years.\textsuperscript{328}

Numerous features of the Maine judiciary are of marked interest. All except probate judges are apparently appointive. Retired justices of the supreme judicial court are utilized for part-time service.\textsuperscript{329} A conference of judges of the superior court is held at the call of the chief justice.\textsuperscript{330} Maine is among those states requiring “advisory opinions” from the supreme judicial court.”\textsuperscript{331}

XXI. THE JUDICIARY OF NEW HAMPSHIRE

The constitutional provisions pertaining to the judiciary are very brief, covering only nine articles.\textsuperscript{332} These articles are as originally adopted in 1783, with certain amendments. The omission of legislative detail as to organization, jurisdiction, power and rules of the court make the New Hampshire constitution distinctive.

There is a governor’s “council” in New Hampshire, composed of five councilors, one being elected biennially from each county or from a district if the legislative body should so decide. This council is an advisory body to the governor “in the executive part of government.”\textsuperscript{333} All judges are nominated and appointed “during good behavior” by the governor and council,\textsuperscript{334} and the council and the governor have a negative veto upon each other in these nominations.\textsuperscript{335} Judges may be removed by the governor with consent of the council “upon the address of both houses of
the Legislature." There is compulsory retirement of judges at the age of seventy.

Justices of the peace have five year terms, and are vested with certain limited civil jurisdiction, subject to an appeal. Police courts are vested with original criminal jurisdiction in cases where the punishment "is less than imprisonment in the state prison." The legislature, the governor or the council can require advisory opinions from the justices of the highest state court "upon important questions of law and upon solemn occasions."

XXII. THE VERMONT JUDICIARY

The Supreme Court of Vermont is composed of five justices elected by joint action of the senate and house of representatives, for two year terms. Judges of the county courts are similarly chosen for like terms. The legislature is also empowered to create courts of chancery. However, judges of probate, assistant county judges and justices of the peace are elected by the "freemen" for terms of two years. Justices of the peace are elected in such number as the constitution specifies, ranging from a maximum of five justices of the peace for the smallest towns to a maximum of fifteen for the towns with a population of more than five thousand.

XXIII. THE CONNECTICUT JUDICIARY

In marked contrast with the length of constitutional provisions in the Texas constitution pertaining to the judiciary, those in the Connecticut constitution comprise only three sections of Article V and barely cover one-half page. Judicial power is vested in "a Supreme Court of Errors, a Superior Court, and such inferior courts as the General Assembly shall, from time to time,"
ordain and establish; the powers and jurisdiction of which courts shall be defined by law.'

Judges of the supreme court of errors and of the superior court and of the court of common pleas are appointed by the general assembly, upon the nomination of the governor, for eight years, and may be removed by the address of two-thirds of the members of each house.52

Judges of courts of common pleas and of district courts are appointed for four year terms.53 Probate judges are elected from their districts for two years.54 Judges of the city and police courts are appointed for two year terms.55

XXIV. THE JUDICIARY OF NEW JERSEY

Judicial power is vested in a court of errors and appeals, a court of chancery, a prerogative court, a supreme court, circuit courts, and such inferior courts as may be established by law, "which inferior courts the Legislature may alter or abolish, as the public good shall require."56 The supreme court of errors and appeals consists of the chancellor, the justices of the supreme court, and six judges appointed for six years by the governor with consent of the senate. Where the chancellor or any of the justices has previously taken part in the hearing of a case, he does not participate on an appeal before the supreme court of errors and appeals.57

The chancellor alone composes the court of chancery, and he is also the "ordinary or surrogate general, and judge of the prerogative court."58 All appeals from the orphans' court, if that court has jurisdiction, go to the chancellor for final decision.59

52. Id. at § 3, as amended. It is to be noted that there is no compulsory retirement of justices at the age of seventy.
51. The structure of the courts inferior to the supreme court of errors is, however, as complex as the constitutional provisions are concise. There are nine judges of the superior court, which has both civil and criminal trial jurisdiction and a certain appellate jurisdiction; there are six common pleas courts, with an inferior trial jurisdiction and likewise with certain appellate jurisdiction; there are some sixty-two town, city and borough courts with "no general organization among the judges of these courts, no uniform practice, no body of traditions, standards or ideals." The Second Report of the Judicial Council of Connecticut (1930) 19-20, 161-171.
55. Id. at Art. XXI.
56. Id. at Art. XX.
58. Id. at § II, par. 1.
59. Id. at § II, pars. 5 and 6.
60. Id. at § IV, pars. 1 and 2.
61. Id. at § IV, par. 3.
The supreme court has a chief justice and not less than two associate justices. Circuit courts are held in each county, either by justices of the supreme court or by separate appointive judges. These latter courts do not possess either "equity" or criminal jurisdiction but do have "common law" jurisdiction concurrently with the supreme court, and appeals therefrom go either to the supreme court en banc or direct to the court of errors and appeals.

In each county there is an inferior court of common pleas with five judges. At least two justices of the peace may be elected in each township or ward, for five years. Additional justices of the peace may be allowed the larger counties.

Justices of the supreme court, the chancellor, judges of the court of errors and appeals, and judges of the inferior courts of common pleas are appointed by the governor, with the advice of the senate. The term for justices of the supreme court and the chancellor is seven years, while that for the justices of the inferior courts of common pleas is five years.

A scholarly and earnest effort to revise the constitution completely failed in 1944 due principally to the efforts of the well known mayor of Jersey City.

XXV. THE JUDICIARY OF PENNSYLVANIA

Judicial power is vested in "a Supreme Court, in courts of common pleas, courts of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' courts, magistrates courts, and in such other courts as the General Assembly" may establish.

The supreme court has seven judges who are elected at large for twenty-one years but who are ineligible for re-election. The judge whose commission first expires serves as chief justice. Written opinions are not required except where a decision is

361. Id. at § V, par. 1.
362. Id. at § V, par. 2.
363. Id. at § V, par. 3.
364. Id. at § VI, par. 1.
365. Id. at § VII, par. 1.
366. Id. at Art. VII, § II, par. 7.
367. Id. at Art. VII, § II, par. 1.
368. Ibid.
369. Id. at Art. VII, § II, par. 2.
371. Id. at § 2.
reversed.  This court has general civil and criminal appellate jurisdiction and his original jurisdiction over injunction suits for a corporation.  

The superior court is of statutory creation, with seven judges elected for ten years. It has final jurisdiction over civil cases involving sums not in excess of $2500.00, and over criminal cases not of the grade felonious homicide. An appeal from this court lies to the supreme court of right only where a constitutional question or the jurisdiction of the superior court itself is involved.

Common pleas courts are for such districts as the general assembly may create, with one or more judges elected for ten years from their districts. These courts in general possess chancery (equity) jurisdiction and such other jurisdiction as may be conferred.

Justices of the peace are elected for six years from townships, wards, districts or boroughs, but not more than two are elected without the consent of the electors thereof. The general assembly may establish orphans’ courts in every county having a population of over 150,000, with one or more judges elected for ten years and with such jurisdiction as may be provided.

A separate judicial structure, inferior to the supreme court, is created by the constitution for the counties of Philadelphia and Allegheny respectively. All judges may be removed by a two-thirds vote of each house of the general assembly.

The number of appeals to the supreme court are limited by the practice in the courts of common pleas under statutes providing that, after a jury or non-jury award, judgment shall not be entered for several days in order to allow for correction of errors. Exceptions filed during these delays are argued before two or three members of the trial bench, sitting en banc, one of whom presided at the trial.

376. Id. at § 15.  
377. Id. at §§ 10, 20, 26.  
378. Id. at § 11, as amended November 2, 1909.  
379. Id. at § 22.  
380. Id. at §§ 6, 8, 12.  
381. Ibid.  
382. Id. at § 15.  
XXVI. The Judiciary of Delaware

Judicial power is vested in "a Supreme Court, a Superior Court, a Court of Chancery and Orphans' Court, a Court of Oyer and Terminer, a Court of General Sessions, a Register's Court, Justices of the Peace and such other courts as the General Assembly, with the concurrence of two-thirds of the members elected to each House shall from time to time by law establish." 384

Delaware has only six state judges. These are appointed by the governor for twelve years, with the consent of a majority of the elected members of the senate. One serves as chancellor, one as chief justice and the remaining are associate justices. There are only three counties in Delaware and three of these associate justices are "resident associate justices," being required to reside during their tenure in the respective counties to which they are assigned. Only three of the entire bench can be of the same political party. 385

The chief justice assigns not more than three to hold the superior court, court of general session and the court of oyer and terminer for each county. All except a specified and limited class of cases may be tried before one judge. 386 The orphans' court for each county consists of the chancellor and the resident associate justice, either of whom can try cases alone. 387 Appeals from these orphans' courts lie to the superior court. There two justices constitute a quorum but the resident associate justice cannot take part if he participated in the trial appealed from. 388 The jurisdiction of these various courts is co-extensive with the the entire state. 389 When cases are appealed to the supreme court the judge who tried the case originally cannot hear the appeal. 390

There is a register of wills elected in each county for four years, 391 who presides over the register's court for his county. 392 Justices of the peace are appointed by the governor for four years, with the consent of a majority of the elected members of the senate. 393 Inferior courts to exercise certain misdemeanor juris-

385. Id. at §§ 1-3.
386. Id. at § 5, as amended by Del. Laws of 1913, c. 3, V. 27.
387. Id. at § 11.
388. Ibid.
389. Id. at § 19.
390. Id. at § 13.
391. Id. at § 22.
392. Id. at § 33.
393. Id. at §§ 30-32.
diction may be established by two-thirds of the elected membership of both houses, with judges to be appointed for such terms as may be provided and in the manner of other judicial appointments.\footnote{394}

**XXVII. THE JUDICIARY OF MARYLAND**

Judicial power is vested in "a Court of Appeals, circuit courts, orphans' courts, such courts for the City of Baltimore as are" provided in the constitution, and in justices of the peace.\footnote{395} All courts are courts of record.\footnote{396}

The court of appeals is composed of five justices; one from each of the three appellate judicial circuits and two from Baltimore, elected for fifteen year terms. The governor appoints one to serve as chief justice.\footnote{397} This court has such appellate jurisdiction as may be provided, co-extensive with the state.\footnote{398}

There are seven circuit courts, exclusive of the City of Baltimore, each with one chief justice and two associates (except the third, which has three).\footnote{399} All circuit judges are elected for fifteen years.\footnote{400} One justice can hear a case but a review may be had by the entire bench.\footnote{401} These courts possess such jurisdiction as may be provided.\footnote{402}

There is an orphans' court for each county, with three judges elected for three years with such jurisdiction as may be conferred.\footnote{403} The provisions concerning the justices of the peace are distinctive. The general assembly prescribes the number to be appointed by the governor with the consent of the senate. They hold office for two years and have the jurisdiction vested in them by the general assembly.\footnote{404}

For the City of Baltimore there is a separate judicial structure, representing an effort towards what is commonly termed the "unified court." One chief justice and four associates are

\begin{footnotes}
\item[394] Id. at §§ 30, 31.
\item[396] Ibid.
\item[397] Id. at § 3, as amended 1932, and § 14, as amended 1944.
\item[398] Id. at § 14 as amended. Prior to 1944 the court had a very novel composition of eight judges, seven of whom were ex-officio by virtue of being chief justice of a circuit court, with the eighth elected from Baltimore. Efforts to change began as early as 1908, 28 J. Am. Jud. Soc. 151.
\item[399] Md. Const. Art. IV, § 19.
\item[400] Id. at § 3.
\item[401] Id. at § 22.
\item[402] Id. at § 20.
\item[403] Id. at § 40.
\item[404] Id. at § 42.
\end{footnotes}
elected in the city for fifteen years, constituting the "Supreme Bench of Baltimore City." The general assembly may provide for the election of additional justices. These judges sit en banc as the supreme bench, and one or more preside in the following courts for the city: the Superior Court of Baltimore City, the Court of Common Pleas, the Baltimore City Court, the Circuit Court, Numbers One and Two, of Baltimore City, and the Criminal Court, Numbers One and Two.

THE NORTHEASTERN GROUP

XXVIII. THE MASSACHUSETTS JUDICIARY

The constitutional provisions are brief, as much is left to the discretion of the legislative and executive departments. All judicial officers, except justices of the peace, are appointed by the governor with consent of the "council," and may be removed by the governor with consent of the council upon the address of merely a majority of both houses.

A supreme judicial court is constitutionally recognized, as are probate courts. Justices of the peace are appointed for seven years, but may be removed by the governor with consent of the council.

The legislative body is termed "the general court" and has the power to create any type of courts. Although Massachusetts has the initiative and referendum, the operation of these cannot pertain to the appointment, qualifications, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or the powers, creation or abolishment of courts.

The governor, with consent of the council, may retire judges for advanced age, or for mental or physical disability, upon such compensation and subject to such provisions as may be made by

405. Id. at § 31.
406. Id. at § 39.
407. Id. at §§ 27-39.
409. Ibid.
410. Id. at Part the First, Art. XXIX.
411. Id. at Part the Second, c. III, Art. IV.
412. Id. at Part the Second, c. III, Art. III.
413. Id. at Articles of Amendment, Art. XXXVII.
414. Id. at Part the Second, c. I, § 1, Art. III.
415. Id. at Articles of Amendment, Art. XLVIII.
Advisory opinions are required to be given by the supreme judicial court.17

XXIX. THE INDIANA JUDICIARY

Judicial power is vested in “a Supreme Court, in Circuit Courts and such other courts as the General Assembly may establish.”418 There is much legislative discretion pertaining to the judiciary and hence an omission of much of the detail usually found in a constitution.

The supreme court has five judges, elected from districts (but by the electors at large) for six years.419 It possesses such jurisdiction as the general assembly may provide.420

The state is divided into judicial circuits and a judge for each circuit is elected from his circuit for a term of six years.421 These courts possess civil and criminal jurisdiction as prescribed by law.422 Under the wide discretion permitted by constitutional authorization,423 the general assembly has established an appellate court, fourteen superior courts, two criminal courts, two probate courts and one juvenile court.

A unique constitutional judicial provision is that requiring the supreme court to give a statement in writing of the questions involved and the decision thereon in every case before it.424 Another interesting provision allows the appointment of a commission of three to promulgate rules of procedure for the courts, methods of pleading, as well as to codify the law.425

THE NORTHWESTERN GROUP

XXX. THE WISCONSIN JUDICIARY

Judicial power is vested, both as to law and equity, in “a Supreme Court, circuit courts, courts of probate and in justices of the peace.” However, municipal and other inferior courts may be created.426

416. Id. at Articles of Amendment, Art. LVIII.
417. Id. at Part the Second, c. III, Art. II.
419. Id. at § 2 and annotations thereunder. The constitution only fixes a minimum of five and a maximum of eleven.
420. Id. at § 4.
421. Id. at § 9. At present there are eighty circuit courts.
422. Id. at § 8.
423. Id. at § 8, annotations.
424. Id. at § 5.
425. Id. at § 20.
The supreme court is composed of seven justices, elected for ten years, with the eldest in point of commission serving as chief justice. This court has a general superintending power, and the limits of its appellate jurisdiction are not set forth in the constitution but are left largely to legislative discretion.

A circuit court is in each of five circuits, with one judge elected therefrom for such term as the legislature may prescribe. In circuits containing a county with a population of over 85,000 the legislature may provide for an additional circuit judge. Although the legislature is empowered to rearrange the circuits, it cannot by doing so legislate a judge out of office. These courts have general civil and criminal original trial jurisdiction, as well as appellate jurisdiction from, and superintending control over, inferior courts in their circuits. Circuit judges may be compelled to interchange.

In addition, there are probate courts, justices of the peace courts (in all except "first class" cities), courts of conciliation, and commissioner's courts. Wide legislative discretion is granted for establishment, abolition and jurisdiction of these various courts.

In Wisconsin, judicial elections are held separately from others. Judges of the supreme or circuit courts may be removed upon the address of two-thirds of the members elected to each house of the legislature, and the "recall" applies to judges.

XXXI. THE MINNESOTA JUDICIARY

Judicial power is vested in "the supreme court, district courts, courts of probate, justices of the peace, and such other courts, inferior to the supreme court, as the Legislature may from time to time establish by a two-thirds vote."

The supreme court is composed of a chief justice and six associate justices, elected from the state at large for terms of six

427. Id. at § 4, as amended.
428. Id. at § 3.
429. Id. at §§ 5, 6, 7.
430. Id. at § 8.
431. Id. at § 11.
432. Id. at § 14.
433. Id. at § 15, as amended.
434. Id. at § 16.
435. Id. at § 23.
436. Id. at § 19.
437. Id. at §§ 1 as amended, and 13; McDonald, American State Government and Administration (3 ed. 1946) 238.
years each.\textsuperscript{439} Although one or more district judges are elected for and from such districts as the legislature may create, no judge may be legislated out of office.\textsuperscript{440} District courts have general trial jurisdiction and such appellate jurisdiction over inferior courts as the legislature may decide.\textsuperscript{441} An interchange of district judges is provided for.\textsuperscript{442}

In each county one probate judge is elected for a term of four years.\textsuperscript{443} "A sufficient number" of justices of the peace are elected every two years from each county.\textsuperscript{444} Any other inferior court judges must be elected with a term of office not in excess of seven years.\textsuperscript{445}

The judicial council has recommended vesting rule-making power in the supreme court.\textsuperscript{446}

XXXII. THE IOWA JUDICIARY

Judicial power is vested in "a Supreme Court, District Courts, and such other Courts, inferior to the Supreme Court, as the General Assembly may, from time to time, establish."\textsuperscript{447}

Constitutional provision is made for a minimum of three supreme court judges, elected at large for six years.\textsuperscript{448} However, under constitutional authority the general assembly has increased this number to nine.\textsuperscript{449} Of the elected judges whose terms first expire, the senior in time of service is chief justice for six months and so on in rotation until all judges have served in this capacity.\textsuperscript{450} This court has appellate jurisdiction only in cases of chancery and a superintending power over inferior courts.\textsuperscript{451}

Iowa's constitution set up district courts for the eleven districts provided by the general assembly. The number of judges may be increased or decreased except that no judge can be legis-
lated out of office. District judges, as well as those of the supreme court, are elected at general elections for terms of four years.

XXXIII. THE JUDICIARY OF NEBRASKA

There judicial power is vested in "a supreme court, district courts, county courts, justices of the peace, and such other courts inferior to the supreme court as may be created by law." The supreme court has seven justices, including the chief justice. The term of office for all is six years. Only the chief justice is elected at large; the remaining justices are elected from each of the state's six districts. Supreme court districts can be changed only by a two-thirds concurrence of each house and any such change cannot legislate a justice out of office.

Among the novel provisions pertaining to this court are those authorizing original jurisdiction over cases involving the state revenue and in civil cases in which the state is a party, and vesting it with authority to compel an interchange of district judges.

District judges are elected for four year terms. A concurrence of two-thirds of the members of each house can rearrange the districts or change the number of judges, but cannot legislate any judge from his office. These courts have a certain appellate jurisdiction from the county courts and original trial jurisdiction over law and equity cases.

County judges are elected in each county for four years. The county courts have complete original probate jurisdiction, as well as a limited jurisdiction over minor civil and criminal cases. Justices of the peace are elected for such terms and from

452. Id. at Second Amendment of 1844, in effect repealing § 10 as pertaining to district courts.
453. Id. at § 11.
454. Id. at § 5.
456. Id. at §§ 2, 4, 5.
457. Ibid.
458. Ibid.
459. Id. at § 2.
460. Id. at § 12.
461. Id. at §§ 10, 11.
462. Ibid.
463. Id. at § 17.
464. Id. at § 9.
465. Id. at § 15.
466. Id. at § 16.
such districts as provided by the general assembly.\textsuperscript{467} It is important to note, however, that the legislature may substitute other inferior courts for justices of the peace.\textsuperscript{468}

Vacancies in the supreme and district courts are filled by executive appointment; in others, if more than two years of the term is unexpired, a vacancy is filled by election.\textsuperscript{469} There is a partial recognition of the judicial rule-making power as "the supreme court may promulgate rules of practice and procedure for all courts, uniform as to each class of courts and not in conflict with laws governing such matters."\textsuperscript{470}

XXXIV. THE NORTH DAKOTA JUDICIARY

Judicial power is vested in "a supreme court, district courts, county courts, justices of the peace, and in such other courts as may be created by law for cities, incorporated towns and villages."\textsuperscript{471} The supreme court consists of five judges elected at large at general elections for terms of ten years.\textsuperscript{472} A constitutional amendment requiring the concurrence of four justices in order to declare legislative acts unconstitutional has been adopted.\textsuperscript{473} The supreme court has the ordinary appellate jurisdiction and a superintending power over inferior courts.\textsuperscript{474} Written statements of the points involved and reasons for the decision are required of this court in every case.\textsuperscript{475}

There is a district court in each of the six judicial districts organized by the legislature.\textsuperscript{476} One or more judges for each, depending on legislative discretion, are elected from the districts at the general elections for six years.\textsuperscript{477} These courts have general original trial jurisdiction and appellate jurisdiction conferred by law.\textsuperscript{478}

A county judge is elected for each county, at the general elec-

\textsuperscript{467} Id. at § 18.
\textsuperscript{468} Id. at § 1.
\textsuperscript{469} Id. at § 21.
\textsuperscript{470} Id. at § 25.
\textsuperscript{471} N.D. Const. Art. IV, § 85.
\textsuperscript{472} Id. at §§ 89, 90, as amended November 3, 1908, and June 25, 1930, Amendments to the Constitution of North Dakota, Arts. 10 and 46.
\textsuperscript{473} N.D. Const. Art. IV, § 89. However, the supreme court declined to enforce this amendment in Daly v. Berry, 45 N.D. 287, 178 N.W. 154 (1920).
\textsuperscript{474} N.D. Const. Art. IV, §§ 86, 87.
\textsuperscript{475} Id. at §§ 101, 102.
\textsuperscript{476} Id. at §§ 104, 105, 106, as amended, Amendments to the Constitution of North Dakota, Art. 45, adopted June 25, 1930.
\textsuperscript{477} Ibid.
\textsuperscript{478} Id. at § 103.
tions, for two years, and he possesses general and exclusive probate jurisdiction. The legislature regulates the number and terms of justices of the peace in each county and has the power to abolish this office entirely. It is also within the discretion of the legislature to provide for the election of police magistrates and for the establishment of courts of conciliation; however, the decisions of the latter courts are not obligatory unless previously agreed to by the parties.

North Dakota has the "recall" and permits it to be applicable to elective judicial officers. The petition for recall must be signed by at least thirty per cent of the vote cast in the last gubernatorial election. At the election held after filing of the petition the party candidate receiving "the highest number of votes" succeeds to the office.

XXXV. THE SOUTH DAKOTA JUDICIARY

Judicial power, except as otherwise provided in the constitution, is vested in "a supreme court, circuit courts, county courts, and justices of the peace, and such other courts as may be created by law for cities and incorporated towns."

The supreme court is composed of not less than three nor more than five justices elected from districts for six years and possessing the power to choose their chief justice from among themselves. This court has appellate jurisdiction only, aside from a liberal superintending power.

Circuit courts are at present established for twelve circuits, each with one judge elected therefrom for four years. As prescribed by law these courts have general original trial jurisdiction in civil cases (both in law and equity) and in criminal cases, and

479. Id. at § 110, as amended, Amendments to the Constitution of North Dakota, Art. 41, adopted November 18, 1924.
480. Ibid. The electors of counties over 200 population may increase the jurisdiction, concurrently with district courts, in civil cases not in excess of $1000.00, and in criminal cases below the grade of felony.
481. Id. at § 112.
482. Ibid.
483. Id. at § 113.
484. Id. at § 120.
487. Id. at §§ 5, 6, 8, 9.
488. Id. at §§ 2, 3. For liberal interpretations of its "superintending power," see City of Huron v. Campbell, 3 S.D. 308, 53 N.W. 182 (1892) and State v. Kaufman, 20 S.D. 620, 108 N.W. 246 (1906).
also have certain appellate jurisdiction from inferior courts other than justices and police magistrate courts. 490

County courts have such trial jurisdiction as the legislature may provide except, however, that they cannot be vested with civil jurisdiction of cases involving over one thousand dollars nor with criminal jurisdiction of matters of the grade of felony. 491 One county judge is elected for and from each county for two years, until otherwise provided by law. 492

Justices of the peace have only limited jurisdiction. Police magistrates in the towns and cities are vested with jurisdiction over the violation of city ordinances and they may be made ex officio justices of the peace by the legislature. In cities with populations of at least five thousand the legislature is empowered to create municipal courts. 493

South Dakota is another one of the states authorizing and compelling the supreme court to give "advisory opinions" upon request of the governor. 494 The court has given fourteen opinions and has declined to give five. 495

THE PACIFIC GROUP

XXXVI. THE OREGON JUDICIARY

The present judicial structure of Oregon is based largely on a constitutional amendment proposed by initiative petition and adopted November 8, 1910. 496 Judicial power is vested in "one Supreme Court and in such other courts as may from time to time be created by law." 497

The supreme court has seven justices elected from districts for six years. 498 The justice whose commission first expires serves as chief justice. 499 This court has jurisdiction to revise the final decisions of the circuit courts, in addition, the court may in its

491. Id. at §§ 20, 21.
492. Id. at § 19. Hauser v. Seeley, 18 S.D. 308, 100 N.W. 437 (1904).
494. Id. at § 13, and annotations thereto.
495. Ibid.
496. Ore. Const. Art. VII, proposed as an amendment by initiative petition and adopted November 8, 1910. It is to be noted that, where not conflicting, the original Art. VII is still in force.
497. Id. at § 1 of the amendment.
498. Id. at § 2 of the original article. Ore. Gen. Laws (1913) c. 167.
499. Id. at § 5.
500. Id. at § 6. See also § 2 of the amendment.
discretion take original jurisdiction over mandamus, quo warranto and habeas corpus proceedings. An important power granted the supreme court is the right to affirm decisions, even though minor errors were committed, if the "judgment of the court appealed from was such as should have been rendered in the case," and it may direct the judgment to be entered that should have been entered in the court below except that it cannot in a criminal case direct a sentence greater than that imposed in the court below.

The duty of holding circuit courts was formerly imposed upon supreme court justices, but now the legislature has provided for separate circuit judges. There are at present twenty-seven circuit judges, elected for six year terms from their respective districts. The counties are judicially organized into twenty circuits with one judge in each (except in Multonamah County, where there are eight). These are the general trial courts. The chief justice of the supreme court may assign circuit judges to aid congested districts. For example, in 1929, fifty-six such assignments were made.

County courts have general probate jurisdiction and minor civil and criminal jurisdiction provided by the legislature. One county judge is elected from each county.

All criminal prosecution in the circuit courts must be by indictment. Seven jurors constitute the grand jury, of which number five must concur to present an indictment. In civil cases, three-fourths of the trial jury may render a verdict. Every public officer in Oregon is subject to recall, under the provision of Article II, Section 18, of the constitution.

XXXVII. THE JUDICIARY OF KANSAS

The judicial power is vested in a "supreme court, district courts, probate courts, justices of the peace, and such other
courts, inferior to the supreme court, as may be provided by law.512

The supreme court is composed of seven justices elected at large for terms of six years, with the eldest in point of service acting as chief justice.513 The appellate jurisdiction of this court is "as may be provided by law."514

District courts are located in each of five districts, with one judge for each district.515 The legislature may rearrange the districts and thus legislate a judge out of office.516 By judicial interpretation the legislature is empowered to provide for more than one judge to a district.517 These courts have such jurisdiction as the legislature may vest in them, and have appellate jurisdiction from probate and justices courts.518

Probate courts are in each county. The judges for these courts, who are elected from the county for two years, are not required to be lawyers.519 Probate judges pro tem may be provided by the legislature.520

County courts have been established by the legislature in fourteen counties,521 each presided over by the probate judge of the respective county. These county courts have jurisdiction similar to that of justice of the peace courts, but with added civil jurisdiction.522

Not less than two justices of the peace are elected from each township.523 City courts have been established by law in six cities.524

The most unique feature of the Kansas judicial system is that concerning the recall of judges. The petition for recall must be signed by ten per cent of the electors if the office is a state one, by fifteen per cent if the office is of a district greater than a

513. Id. at § 2, as amended.
514. Id. at § 3. On appeal, they cannot consider the case de novo. Coleman v. Mac Lennan, 78 Kan. 711, 86 Pac. 281 (1908).
county, or by twenty-five per cent if the office is a county one or less.525

Supreme court and district judges may also be removed upon the address of three-fourths of the members of each house of the legislature.526 Judges pro tem for the district courts may be selected by the bar in the event the incumbent is unable to try any case.527

XXXVIII. THE JUDICIARY OF COLORADO

Judicial power is vested in “the supreme court, district courts, county courts, and such other courts as may be provided by law.” Separate juvenile courts can be established in the large cities.528

The supreme court has seven justices elected at large for ten years.529 There are four district courts, each with one or more judges elected from their respective districts for six years. The number of districts can be increased or diminished by a two-thirds concurrence in each house of the general assembly, but not so as to legislate a judge out of office.530 These district courts have general original trial jurisdiction and such appellate jurisdiction over inferior courts as may be conferred.531

County courts have general probate jurisdiction and final appellate jurisdiction from the justice of the peace courts.532 The general assembly may confer upon them criminal jurisdiction and may likewise confer civil jurisdiction over cases involving sums not in excess of two thousand dollars.533 Separate criminal courts, however, are established in the larger counties and are given jurisdiction in criminal cases (not capital), concurrent with the district courts.534 Justices of the peace have only limited civil jurisdiction.535 For towns and cities, the general assembly may establish police magistrates.536

Colorado is another of the few states requiring the supreme court to give advisory opinions on “important questions” at the

526. Id. at Art. III, § 15.
527. Id. at § 20.
529. Id. at §§ 5-7.
530. Id. at §§ 12-15.
531. Id. at § 11.
532. Id. at § 23.
533. Id. at § 22.
534. Id. at § 24.
535. Id. at § 25.
536. Id. at § 26.
request of the governor, the senate or the house of representatives.\textsuperscript{37} Judicial interpretation has, however, greatly restricted the effect of this provision.\textsuperscript{38} Colorado has the recall, which is applicable to "every elective public officer."\textsuperscript{39}

An interesting experiment was attempted in 1912 when a constitutional amendment was adopted which declared that the supreme court could not hold a legislative act unconstitutional and further provided for a "recall" of judicial decisions.\textsuperscript{40} The supreme court, however, held this amendment itself unconstitutional.\textsuperscript{41}

XXXIX. THE JUDICIARY OF NEVADA

Judicial power is vested in "a supreme court, district courts and in justices of the peace," and courts for municipal purposes only may be established in towns and cities.\textsuperscript{42} The supreme court is composed of a chief justice and two associate justices, elected at large at general elections for six years.\textsuperscript{43} The justice whose commission first expires serves as chief justice.\textsuperscript{44} This court possesses general appellate jurisdiction, but its monetary minimum is unusually low.\textsuperscript{45}

There is a district court in each of nine defined districts, with one judge elected from his respective district for four years.\textsuperscript{46} There is legislative discretion as to the number of judges for the district courts or the composition and number of the districts, but the office of an incumbent cannot be vacated.\textsuperscript{47} These are the courts of general trial jurisdiction, and may be vested with appellate jurisdiction over inferior courts.\textsuperscript{48} Justices of the peace are elected in such number, for such terms and with such jurisdiction as the legislature may provide; in no event, however, can justices of the peace be vested with civil jurisdiction in cases involving sums in excess of three hundred dollars.\textsuperscript{49}

\begin{footnotes}
\item[537.] Id. at § 3.
\item[538.] In re Interrogatories of the House of Representatives, 62 Col6. 188 (1916).
\item[539.] Colo. Const. Art. XXI, § 1.
\item[540.] Id. at Amendment of November 5, 1912 to Art. VI, § 1.
\item[541.] People v. Western Union Telegraph Co., 70 Colo. 90, 198 Pac. 146 (1921).
\item[542.] Nev. Const. Art. VI, § 1.
\item[543.] Id. at § 3.
\item[544.] Ibid.
\item[545.] Id. at § 4.
\item[546.] Id. at § 5.
\item[547.] Ibid.
\item[548.] Id. at § 6.
\item[549.] Id. at § 8.
\end{footnotes}
All judicial officers, with the exception of justices of the peace, can be impeached or can be removed upon the address of two-thirds of the members elected to each house of the legislature. "Every public officer" may be recalled under Article II, Section 9, as amended.

XL. THE MONTANA JUDICIARY

Judicial power is vested in "a supreme court, district courts, justices of the peace, and such other inferior courts as the legislative assembly may establish in any incorporated city or town." The supreme court consists of five justices, elected at large for six years.

The district courts in each of eight designated districts have one judge elected therefrom for four years. The legislature may increase the number of judges for any district and may rearrange the districts themselves but may not in so doing legislate a judge out of office. The district courts are the general trial courts; and in addition they have appellate jurisdiction from the justices of the peace and other inferior courts, as the legislature may provide. The party litigants may agree on judges pro tem, and the legislature may compel an interchange of district judges in event of congestion.

There are at least two justices of the peace elected from each organized township for two years, with such ordinary civil jurisdiction, if not involving amounts in excess of three hundred dollars, and with criminal jurisdiction in cases not of the grade of felony, as provided by law.

XLI. THE JUDICIARY OF WYOMING

Judicial power is vested in a "Supreme Court, District Courts, justices of the peace, courts of arbitration and such other courts as the Legislature may, by general law, establish for incorporated cities and towns."
The supreme court has three justices, elected at large for eight years, with the one whose commission first expires serving as chief justice.661 There are district courts, one for each of three defined districts, with the judges thereof elected from their respective districts for six years. The legislature may increase the number of judges or districts, which action may not remove an incumbent.662 These latter courts have general original probate, civil and criminal jurisdiction.663 Justices of the peace are elected as provided by the legislature, with a limited civil jurisdiction concurrently with the district courts, and with such jurisdiction over misdemeanors as may be conferred.664

XLII. THE JUDICIARY OF THE STATE OF WASHINGTON

Judicial power is constitutionally vested in a "supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide."665 The supreme court is composed of five justices666 elected at large for overlapping terms of six years.667 The justice whose commission first expires serves as chief justice.668 The distinctive feature with respect to the jurisdiction of this court is that its appellate minimum for civil cases is the very low monetary sum of two hundred dollars.669

For each county in Washington there is a superior court, having one or more judges elected for four years. Where a superior court has more than one judge, its business is distributed among the judges by law or, in the absence of legislation, by rules of that court itself.670 The governor may compel an interchange of judges of these courts.671 The number of justices of the peace to be elected, and their powers, duties and jurisdiction are as the legislature may provide, subject, however, to the express prohibition that the jurisdiction vested in courts of record may not be infringed.672

561. Id. at § 4.
562. Id. at §§ 19-21.
563. Id. at § 10.
564. Id. at § 22.
566. Id. at § 2.
567. Ibid.
568. Ibid.
569. Id. at § 4. All decisions must be in writing, with the grounds stated.
570. Id. at § 5.
571. Id. at §§ 5, 7.
572. Id. at § 10.
Certain interesting provisions merit comment. Litigants may agree upon a lawyer to serve as judge pro tem in a superior court. Any superior court may appoint not more than three commissioners to exercise the powers of a judge at chambers, subject to revision by the court. It is required of the superior judges that they report annually in writing to the supreme court what they consider to be the defects and omissions in the law. The supreme court makes a similar report to the governor.

Judges can only "declare the law" to juries and cannot charge or comment on facts. Judges of any court of record may be removed for cause by three-fourths of the members elected to each house; or may be impeached by a "majority of the members" of the lower house with the concurrence of "two-thirds of the senators elected" necessary for conviction. Judges are excepted from the "recall." Only upon the call of the superior court does a grand jury assemble in a county.

In 1934 the then governor, Hon. Clarence O. Martin, appointed an Advisory Constitutional Revision Commission of nine members who made a written report containing nine proposals. Proposal number eight was "For a Unified Judiciary" and would have substituted an entirely new judiciary article. In their "Explanations and Reasons" the committee said:

"Our constitution provided for five Supreme Court judges and eleven Circuit Court Judges. Today there are nine Supreme Court Judges and sixty Superior Court Judges. Under our constitution each Court is largely independent. There is no adequate means for utilizing the full resources of this increased personnel. There is no single responsible head to direct its procedure. There are no adequate facilities for unifying the rules and regulations governing its operations and functions. As a result of this lack of supervision, our legislature has had to resort to the creation of new Judgeships to alleviate congestion."

---

573. Id. at § 7.
574. Id. at § 23.
575. Id. at § 25.
576. Ibid.
577. Id. at § 16.
578. Id. at § 9.
579. Id. at Art. V, §§ 1, 2.
580. Id. at Art. I, § 23.
581. Id. at § 28.
Among other provisions, this proposal would create a general court of justice as a single court for the state with departments for the performance of all trial and appellate functions.\textsuperscript{583} As yet these proposals have not been adopted.

XLIII. THE IDAHO JUDICIARY

A "supreme court, district courts, probate courts, courts of justices of the peace, and such other courts inferior to the supreme court" as the legislature may create for incorporated towns and cities are vested with judicial power.\textsuperscript{584} Like that of Washington, the Supreme Court of Idaho is composed of five justices elected at large for overlapping terms of six years, with the justice whose commission first expires serving as chief justice.\textsuperscript{585} This court has the usual original jurisdiction and in addition has original jurisdiction of all claims against the state, but its decisions in the latter cases are only recommendatory to the legislature.\textsuperscript{586} It may review "any decision of the district courts" and "appeals" from the public service commission and the industrial accident board.\textsuperscript{587}

The constitution provides for one district judge to be elected for each of five districts for a term of four years.\textsuperscript{588} There is, however, provision for legislative discretion as to the number of districts and judges.\textsuperscript{589} These judges may interchange either of their own volition or by order of the governor.\textsuperscript{590} Party litigants in district courts may agree upon a judge pro tempore.\textsuperscript{591}

There is a probate court in each county with the judge elected biennially.\textsuperscript{592} In addition to general probate jurisdiction these possess original jurisdiction in civil cases if not more than five hundred dollars is involved, and criminal jurisdiction in misdemeanor cases concurrently with justices of the peace.\textsuperscript{593} Justices of the peace are elected under legislative provisions.\textsuperscript{594}

\textsuperscript{583} Id. at 33.
\textsuperscript{584} Idaho Const. Art. V, § 2.
\textsuperscript{585} Idaho Const. Art. V, § 6.
\textsuperscript{586} Id. at § 10.
\textsuperscript{587} Id. at § 9, as amended.
\textsuperscript{588} Id. at § 11. See also Streeter v. McLane, 19 Idaho 229, 112 Pac. 1042 (1911).
\textsuperscript{589} Ibid.
\textsuperscript{590} Idaho Const. Art. V, § 12.
\textsuperscript{591} Ibid.
\textsuperscript{592} Id. at Art. XVIII, § 6.
\textsuperscript{593} Id. at Art. V, § 21.
\textsuperscript{594} Id. at § 22.
As is the case in Washington, the "recall" cannot extend to "judicial officers." Reports similar to those required in Washington must be made by district courts and by the supreme court.

**XLIV. THE JUDICIARY OF ARIZONA**

The constitution vests judicial power in a "Supreme Court, superior courts, justices of the peace, and such courts inferior to the superior courts as may be provided by law." The supreme court consists of three judges, elected at large for six years.

Judges of the superior courts are elected for and from each county for four years. The number of judges for each superior court is dependent on population. These courts have general civil and criminal trial jurisdiction, and such appellate jurisdiction over inferior courts as may be provided. Judges may be interchanged by the governor or upon request of another superior court judge. The number of justices of the peace and their jurisdiction are provided by law. Recall of judges is permitted under Section I of the judiciary article.

**XLV. THE JUDICIARY OF UTAH**

Judicial power is vested in "a Supreme Court, in district courts, in justices of the peace, and such other courts inferior to the Supreme Court as may be established by law." The supreme court has five justices, elected for terms of ten years each. The one whose commission first expires serves as chief justice. The number may be increased or decreased but not to effect removal of an incumbent. Appeals in equity cases are heard on both law and fact, but appeals in other cases are only on law.

There are district courts for each of seven districts, each with at least one judge elected therefrom for such terms as the legislature may provide. The legislature may rearrange the districts

---

595. Id. at Art. VI, § 6.
596. Id. at Art. V, § 25.
598. Id. at § 3.
599. Id. at §§ 5-7.
600. Id. at § 7.
604. Id. at § 9.
605. Id. at §§ 5-7, as amended.
or the terms but not in such a way as to oust a judge. These courts are of general trial jurisdiction, and have a limited appellate jurisdiction from inferior courts. The governor may compel an interchange of district judges. The number, compensation and jurisdiction of justices of the peace are as the legislature may provide, but these must be elective.

JUDGES MAY BE REMOVED BY A TWO-THIRDS VOTE OF EACH HOUSE OF THE LEGISLATURE, VOTING SEPARATELY. THE SUPREME COURT IS COMPelled TO REPORT ANNUALLY TO THE GOVERNOR “ANY SEEMING DEFECT OR OMISSION IN THE LAW.”

XLVI. THE JUDICIARY OF NEW MEXICO

Judicial power is vested in “a supreme court, district court, probate courts, justices of the peace, and such courts inferior to the district courts as may be established” from time to time. The supreme court has three judges, elected at large for eight years. A district court is in each of eight districts, but the legislature may rearrange the districts. Judges of these district courts are elected from their respective districts for six years. These courts have ordinary trial jurisdiction where not otherwise vested. In addition, they have appellate jurisdiction from the probate and inferior courts, and until otherwise provided such appeals are heard de novo. The chief justice of the supreme court may compel district judges to interchange. There is a probate court in each county. Justices of the peace are elective and have limited jurisdiction.

XLVII. THE OKLAHOMA JUDICIARY

Judicial power is vested in a “Supreme Court, District Courts, County Courts, Courts of Justices of the Peace, Municipal Courts”

606. Ibid.
607. Id. at §§ 5, 6, 7, 9.
608. Id. at § 5.
609. Id. at § 8.
610. Id. at § 11.
611. Id. at § 22.
613. Id. at § 4.
614. Id. at § 16.
615. Id. at §§ 12, 25.
616. Id. at § 13.
617. Id. at § 27.
618. Id. at § 15.
619. Id. at § 23.
620. Id. at § 26.
and such other courts inferior to the supreme court as may be established.\footnote{621}

The supreme court has five judges elected at large for six years from supreme court districts.\footnote{622} The legislature can, however, change the number of justices and redistrict the state.\footnote{623} This court possesses the usual powers and jurisdiction, but the legislature is empowered to create a criminal court of appeals to have exclusive appellate jurisdiction over criminal cases.\footnote{624} The supreme court is required to render written opinions in all cases.\footnote{625}

There is one judge for each district court in each of the twenty-one judicial districts, except in the thirteenth; all district judges are elected from their districts for four years.\footnote{626} These courts have general civil and criminal trial jurisdiction, and such appellate jurisdiction as may be conferred.\footnote{627} Appeals from county courts in probate matters are tried de novo by the district courts.\footnote{628}

County courts have probate jurisdiction and a limited jurisdiction in civil cases concurrently with the district courts.\footnote{629} In addition, they possess a limited jurisdiction over misdemeanors, concurrently with the justices of the peace as to certain ones and exclusive to others; these courts also possess such appellate jurisdiction from justices of the peace courts as may be provided, to be tried de novo.\footnote{630} Not more than two justices of the peace are elected from cities with a population of over 2500.\footnote{631} Interchange of judges and the selection of judges pro tem are provided for.\footnote{632}

**CONCLUSION**

A concise summation of the treatment given to the judicial structure of the various "common law" states is, perhaps, best not attempted. Others have drawn accurate comparisons of the vari-

\footnotesize

\begin{itemize}
\item \footnote{621}{Okla. Const. Art. VII, § 1.}
\item \footnote{622}{Id. at § 3.}
\item \footnote{623}{Ibid.}
\item \footnote{624}{Ibid.}
\item \footnote{625}{Id. at § 5.}
\item \footnote{626}{Id. at § 9.}
\item \footnote{627}{Ibid.}
\item \footnote{628}{Ibid.}
\item \footnote{629}{Id. at § 16.}
\item \footnote{630}{Ibid.}
\item \footnote{631}{Id. at § 18.}
\item \footnote{632}{Id. at § 9.}
\end{itemize}
ous constitutional and statutory provisions relating to specific phases of the judicial structure.\textsuperscript{633}

For more detailed study of judicial councils—now organized in some thirty states with varying degrees of power—reference must be had to other sources.\textsuperscript{634}

In this study I have omitted any reference to the amounts paid judges, although, of course, the very close relationship between "proper" salaries and efficiency cannot be disputed. Suffice it to say that the states are at variance not only as to the amount of judicial salaries but also as to the constitutional safeguards pertaining to them. Many of the constitutions do not permit of proper flexibility but fix an absolute maximum, in disregard of the historic truth of changing economic conditions. Many permit an increase but, very properly in my opinion, do not permit a decrease to be made during the tenure of an incumbent. The wisdom of permitting the salary of an incumbent to be increased may well be disputed. An excellent source of material, statistics and comparative tables on judicial salaries is the "Book of the States," published by the council of state governments.\textsuperscript{635}

In certain broad essential elements all the states are in agreement. However, rather than sum up the common provisions found in the judiciary articles of the states I shall briefly point to certain of these. Although most of the states, Louisiana included, have only one appellate tribunal for criminal cases above misdemeanors, it is to be noted that California has an intermediate court for such criminal appeals, in addition to the usual intermediate court for civil appeals. In Texas, there is a different arrangement for criminal appeals. In that state there are in reality two supreme courts, one for civil appeals and one for criminal appeals. A similar situation existed, it will be remembered, in Louisiana immediately preceding the Constitution of 1845. Texas also departs

\textsuperscript{633} Pound, Appellate Procedure in Civil Cases (1941); Sunderland, Judicial Administration, Its Scope and Methods (1935); Book of the States (1945-1946).

\textsuperscript{634} Book of the States, op. cit. supra note 633, at 432. The Judicial Council Central Research Staff, Constitutional Revision Project, Constitutional Problems, Bulletin No. 6 (Louisiana State University, March 1947); Miller, The Louisiana Judicial (1932) 107 et seq.

The states are Arizona, Arkansas, California, Connecticut, Illinois, Indiana, Iowa, Georgia, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia and Wisconsin. In Idaho and Maine councils are inactive; and in Virginia the council has been in process of organization.

\textsuperscript{635} Book of the States (1945-1946) 448-449.
from the general rule by not permitting the state to appeal in a criminal case, and hence, of course, a decision in a trial court there in favor of an accused may not be carried by the state to a higher court. And in Virginia the commonwealth may not appeal in a criminal case except in cases involving a violation of a state revenue act.

The tremendous increase in litigation has brought about a serious problem which the states have usually attempted to meet by increasing the number of judges. In New York, Virginia, Ohio and others, attempts along these lines have been made by the creation of special or temporary supreme courts or commissions. Many states authorize or compel interchange of judges at the demand of a chief justice or governor.

As pertaining to the powers and duties of the highest state court there is a wide divergence. For example, the constitutions of South Dakota, Rhode Island, Massachusetts, Florida, Colorado and Maine require their highest court to render "advisory opinions," and in Alabama such opinions are required by statute. Ohio, for instance, does not permit its supreme court to declare an act of the general assembly unconstitutional, unless in affirmation of a decision of a court of appeals to that effect, and then only upon the concurrence of all but one of the judges. In New York, contrary to the general rule, the judges of the highest court are allowed a wide discretion as to when they shall give written opinions. This feature has been very favorably commented upon as an aid to judicial efficiency. In eight of the eleven states having the "recall" it is applicable to judges as well as other elective officers.3 However, in Idaho, Washington and Michigan, as well as in Louisiana, judges are expressly excepted from "recall."

One of the judicial reforms more often urged for years is that of the "unified court."637 The Recorders Court of the City of Detroit has been termed the nearest approach to the idea of the unified court. The Municipal Court of Chicago, the Court of Common Pleas of Cleveland and the Municipal Court of Cleveland also typify the approach to the unified court. In the Cleveland courts the operation of the "Master Calendar" docket plan is also noteworthy.

Another much agitated reform pertains to the rule-making

---

636. Arizona, Colorado, California, Kansas, Nevada, North Dakota, Oregon, Wisconsin. See Book of the States (1945-1946) 441; MacDonald, American State Government and Administration (3 ed. 1946) 238.
637. Miller, The Louisiana Judiciary (1932) 107 et seq.
power of the courts. In America this power, judicial in nature, has been usurped by legislative bodies. An exception is the state of Michigan which, although not vesting complete rule-making power in the courts, does mark an effort to return to an early principle. Maryland should also be noted in this connection. 3

Although the provisions of the constitutions for the different states differ widely in the prescribed jurisdiction for their courts, as well as in terminology and character, it is only in the state of Texas that the jurisdiction of a court (such as the county court) may be changed by local law. By this is meant, of course, that in Texas a particular county court can be vested with jurisdiction different from other county courts.

Justices of the peace have lost much of their early importance. The usual provisions pertaining to these officials make them elective from divisions of a county, for very short terms and with limited jurisdiction. In West Virginia they have been abolished; yet in Florida their number has been increased. In Illinois the justices of the peace for Cook County are appointive although those for the rest of the state are elective. In Connecticut such justices are appointive for only one year; in New Hampshire, although appointive, the office is for five years. Virginia authorizes the legislature to make justices of the peace either elective or appointive. The term "magistrate" is applied to this office in South Carolina, and it is an appointive one. Missouri's new constitution will ultimately result in requiring justices of the peace to be lawyers, allowance being made for present and former justices of the peace who are laymen.

Efforts to revise obsolete judicial structures are no sudden, present day expression of a need for judicial reforms. In 1938, for example, thirteen states were attempting revision. 639

In the past fifteen years, changes worthy of attention have been effected in California 640 Florida, 641 Georgia, 642 Indiana, 643

639. (1939) 22 J. Am. Jud. Soc. 120.
640. Drastic change in selection method effected 1934, combining the elective and the appointive methods which, among other things, favors the incumbent.
641. Increased size of the supreme court: gave it authority to sit in division, and the legislature discretion as to the number of courts of general trial jurisdiction.
642. No drastic change as to the judiciary in its new constitution. The size of the supreme court was increased and jurisdiction made flexible to a limited extent.
643. Increased the minimum and maximum size of the supreme courts, the legislature determining within those limits as theretofore.
Maryland,644 Missouri,645 Ohio,646 Texas,647 Utah,648 Wisconsin,649 and West Virginia.650 In Michigan some changes were made and some refused.651 Efforts were unsuccessfully made in Massachusetts, Minnesota, New Jersey, New York, Oklahoma, and Washington. And at the present time, there are concerted attempts under way, particularly in Arkansas, Kentucky, Oklahoma, Tennessee, and Texas to effect far-reaching revision of their respective judiciary articles.

644. The highest court, called court of appeals, made a court of separate judges rather than presiding judges of the intermediate courts acting ex officio.  
645. See pages 491-495 supra.  
646. Legislature given discretion as to the terms for intermediate judges and their districts.  
647. The supreme court increased from three to nine, and authorized to sit in divisions.  
648. Legislature given authority to fix terms and size of the supreme court and the district courts, but not to effect removal of an incumbent.  
649. Made recall apply to judges.  
650. Abolished justices of the peace courts.  
651. A modified "non-partisan" plan for inferior courts, favoring an incumbent, was adopted; but a plan for the selection of supreme court judges, similar to the Missouri plan was repudiated at the polls.