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The introduction to this symposium points out the significance of the concept of legislative power for any constitutional convention in this state. To what extent should the legislature be trusted? To what extent should a constitutional convention provide not only the basic structure and principles of government for the state but also the implementation in lengthy constitutional provisions? The answer to these questions will determine whether the next constitution will be shorter than the present one, and it may also determine the extent to which the voters are to be relieved of the biennial deluge of constitutional amendments which they now experience.

The purpose of this article is to trace briefly the basic attitude of the Louisiana courts toward the legislature under Louisiana’s ten constitutions, to present the four principal types of limitations imposed by Louisiana constitutional conventions on the legislature, and to consider the effect on legislative power of the 302 amendments that have been added to the present Constitution. Finally, an attempt is made to deal briefly with the outlook for legislative power in the next convention.

I

The Louisiana Courts and Legislative Power

Under the American federal system, as Dr. Graves points out, the state legislature is a repository of the residual powers of the people: “Unless restricted by provisions in the state constitution, [it] can act with regard to any subject that has not been delegated to the national government or expressly or impliedly denied to the states under the terms of the Federal Constitution.”

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1 See Graves, page 749 supra. It does not appear that the United States Supreme Court has been greatly impressed by the doctrine of residual power of state legislatures, even though the attitude of Mr. Justice Chase in Calder v. Bull, 3 Dall. 386 (U.S. 1798), has not been maintained. In this case
This doctrine is of basic importance for an understanding not only of the constitutional framework in which the power of the legislature must be discussed, but also for an understanding of a practical problem confronting a constitutional convention. As long as the doctrine of residual power is maintained by the courts, a convention need not fear that the deletion of authorizations and mandates in the present Constitution would raise doubts as to the power of the legislature under a new constitution. It is significant, therefore, that the Louisiana courts have consistently maintained this doctrine.

the Justice, speaking for the Court, could not subscribe "to the omnipotence of a State Legislature, or that it is absolute and without control; although its authority should not be expressly restrained by the Constitution, or fundamental law, of the State." Id. at 387. He saw no distinction between the federal and state legislatures in this respect. "To maintain that our Federal, or State, Legislature possesses such powers, if they had not been expressly restrained; would, in my opinion, be a political heresy, altogether inadmissible in our free republican governments." Id. at 388. In Fletcher v. Peck, 6 Cranch 87 (U.S. 1810) the Court declared that "the legislature of Georgia, unless restrained by its own constitution" had the power to dispose of its unappropriated lands, but an act divesting the owner of his property by annulling a grant was not a legitimate exercise of the legislative power. Id. at 128, 139. The Court again referred to the limitations imposed on the legislative power by the nature of society and government. Mr. Justice Storey in his dissent in Charles River Bridge v. Warren Bridge, 11 Peters 420 (U.S. 1837), contended that the legislature is not the sovereign of the state, but possesses only those attributes of sovereignty delegated to it by the people who are the real sovereign. Yet since the power to grant franchises was among the powers so delegated and was not limited by any restrictive terms in the Constitution, the grant was then general and unlimited as to the terms, manner and extent of granting franchises. In Butler v. Pennsylvania, 10 How. 402 (U.S. 1850), the Court upheld an act of the Pennsylvania legislature reducing the per diem of certain public officers against the charge that it represented a violation of contract. The Court upheld the act since there was no restriction in the Constitution of Pennsylvania on the discretion of the legislature in the augmentation or diminution of salaries. Mr. Justice Field in Maynard v. Hill, 125 U.S. 190 (1888), upheld an act of the legislative assembly of the territory of Oregon granting a divorce but was unwilling to base it completely on the residual theory of state legislative power. "The legislative department," he commented, "when not restrained by constitutional provisions and a regard for certain fundamental rights of the citizen which are recognized in this country as the basis of all government, has acted upon everything within the range of civil government." (Italics supplied.) Id. at 205. In the absence of a direct prohibition, he concluded that the right of divorce remained with the legislature. Chief Justice Fuller perhaps came closest to the statement of the theory of the residual powers of the state legislature in upholding the validity of a Texas statute requiring a license for the sale of liquor, one of the conditions of which was an agreement not to sell to parties when so requested through the sheriff by the wife, mother, daughter, or sister of such person. Giozza v. Tiernan, 148 U.S. 657 (1893). The Chief Justice declared, "Irrespective of the operation of the Federal Constitution and restrictions asserted to be inherent in the nature of American institutions, the general rule is that there are no limitations upon the legislative power of the legislature of a state except those imposed by its written constitution." Id. at 661.
In 1826 the Supreme Court of Louisiana in *LeBreton v. Morgan*\(^2\) upheld a special state tax on the Parish of Orleans to pay for the expense of repairing a crevasse in that parish. The Constitution of 1812 was silent on the subject of taxation. The court based its opinion on the proposition that the state constitution constituted not a grant of power to the legislature but rather a limitation of its power. The court declared: "The constitution of this state having affixed no limits to the exercise of the power of taxation by the legislature, it is difficult to suppose even a case, in which the exercise of that power could be considered unconstitutional, or properly become the subject of judicial interference. The only objections that can be made to acts raising revenue is their inexpediency, or injustice, and both these are exclusively for the consideration of those with whom the constitution has deposited this power. . ."\(^3\) The legislature "had the same right to order it to be paid by a tax on the parish of New Orleans, as they had to levy it off the whole state; for there is nothing in the constitution which declares that taxation must be uniform. . . All these powers are by the constitution exclusively and wisely, confided to the representatives of the people."\(^4\)

In 1845 the court provided another statement of the residual power of the legislature in *Bozant v. Campbell*.\(^5\) The court upheld the power of a municipality to grant an exception to an ordinance prohibiting the establishment of a private hospital within the city limits. When the plaintiff argued that neither the legislature nor its creature the city council had such an authority, that even Congress did not have such power, the court commented: "It is useless to inquire into the powers of Congress in this respect; for those of the State legislature exceed, in many cases those of Congress, that body having no power to do any thing which the federal constitution does not authorize, while the State legislatures may do whatever is not prohibited by their respective constitutions."\(^6\)

The court then cited examples of private legislative acts discharging insolvent debtors from imprisonment, authorizing an uncle to marry his niece, and exempting individuals or private

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2. 4 Mart.(n.s.) 138 (La. 1826).
3. Id. at 142.
4. Id. at 143-44.
6. 9 Rob. 411, 413 (La. 1845).
corporations from the general law prohibiting lotteries. The court did not disapprove, for it did not consider that government was "instituted to attend to the concerns of the community alone, but to those of individuals also."  

In 1868 the court cited the residual legislative power in two cases involving changes made in the provision of the Constitution of 1852 by the Constitutions of 1864 and 1868. In the first of these cases, State v. Volkman, the constitutionality of a license tax was challenged as not being equal and uniform or levied pro rata upon the amount of income or business done. Article 123 of the Constitution of 1852 read: "[T]he Legislature shall have power to levy an income-tax, and to tax all persons pursuing any occupation, trade or profession." This language was changed in the Constitutions of 1864 and 1868 to read: "The general assembly shall levy an income tax upon all persons pursuing any occupation, trade, or calling, and all such persons shall obtain a license, as provided by law. All tax on income shall be pro rata on the amount of income or business done."  

It was argued that the pro rata requirement had been added to prevent the injustice of charging the same license fee on small and large traders. The court disagreed and found the act a valid exercise of legislative power, since there was no prohibition in the constitution.

The second case, New Orleans v. Lusse, involved the addition of a provision to the Constitution of 1864 authorizing the legislature to exempt from taxation property actually used for church, school, or charitable purposes. The question raised in this case was whether the legislature was thereby prohibited from exempting persons engaged in selling articles of their own manufacture, manufactured within the state from municipal

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7. Id. at 414. The doctrine of residual power was used in 1857 to uphold the power of the legislature to confer such a part of its power upon the mayor and aldermen and police jurors as might be "suited to their immediate needs" in Hunsicker v. Briscoe, 12 La. Ann. 169 (1857). The doctrine received a slightly different statement in this case. "The State of Louisiana being sovereign, it must follow that the General Assembly, in all that concerns the law giving power, is supreme, except in those particulars in which it is expressly restrained by the Constitution." Id. at 169. See also Avery v. Police Jury, 12 La. Ann. 554 (1857), in which the court emphasized that the legislature was supreme in its sphere.


9. LA. CONST. Art. 124 (1864); LA. CONST. Art. 118 (1868).


11. LA. CONST. Art. 124 (1864).

12. 21 La. Ann. 2 (1869). See also Kotch v. Board of River Port Pilots
taxation. The court decided that the authorization was not an implied prohibition. "Such a power not being prohibited, expressly or by necessary implication, is permitted." 13

Almost fifty years after the first statement of residual legislative power in LeBreton v. Morgan the court gave the doctrine its fullest development in the Slaughterhouse case, State v. Fagan, 14 in 1870. The court upheld in this case the constitutionality of an act incorporating and conferring exclusive privileges upon the Crescent City Live Stock Landing and Slaughterhouse Company. 15 Citing Cooley’s Constitutional Limitations, the court explained:

“The accepted theory seems to be this: In every sovereign State there resides an absolute and uncontrolled power of legislation. In Great Britain this complete power rests in the Parliament; in the American States, it resides in the people themselves, as an organized body politic. But the people, by creating the constitution of the United States, have delegated this power, as to certain subjects, and under certain restrictions, to the Congress of the United States, and that portion they cannot resume, except as it may be done through amendment of the national constitution.

“For the exercise of the legislative power, subject to this limitation, they create, by their State constitution, a legislative department, upon which they confer it; and, granting it in general terms, they must be understood to grant the whole legislative power which they possessed, except so far as at the same time they saw fit to impose restrictions.” 16

Chancellor Kent was also cited to the effect that, although the theory of the omnipotence of Parliament did not prevail in the United States, “if there be no constitutional objection to a statute, it is with us, as absolute and uncontrollable as laws flowing from the sovereign power under any other form of government.” 17

for Port of New Orleans, 209 La. 737, 25 So.2d 527 (1946). “[W]ithin the limits stated by the Constitution, Federal and State, the Legislature is free to determine what subjects are proper to be legislated upon in the conservation of order, morals, health and safety.” 209 La. 737, 749, 25 So.2d 527, 531 (1946).
Since 1900 a series of cases have been decided in which legislative action has been upheld on the basis of the recognition of the legislature's residual power. These cases have involved the control of the legislature over local government and judicial procedures, the legislature's authority to enact civil service legislation, and other questions of legislative power. In all these cases the decisions emphasized that the constitution was not a grant but a limitation on legislative power and that the legislature might, therefore, enact any law not prohibited by the constitution of the state or nation.

In 1893 the doctrine was again employed in upholding legislative action. The Constitutions of 1864 and 1868 had added a prohibition against the adoption of children by special legislation. The court in Hughes v. Murdock ruled that this prohibition did not prevent legitimation by such an act. 45 La. Ann. 935, 13 So. 182 (1899).


19. Walker v. Superior Brass and Copper Foundry Co., 152 La. 626, 94 So. 139 (1922); and State v. Toon, 172 La. 631, 135 So. 7 (1931). In the Toon case, the court observed: "[The legislature] has the power to enact such legislation as is not prohibited by the Constitution of the United States or of the Constitution of the State." 172 La. 631, 639, 135 So. 7, 10 (1931). In the Walker case, the court referred to "the familiar principle that a legislature may enact any legislation not prohibited by the Constitution of the state, or by that of the United States." 152 La. 626, 629, 94 So. 139, 140 (1922).

In State v. Sharp, 174 La. 860, 141 So. 859 (1932), the contention that Article I, Section 10, of the Constitution of 1921, guaranteeing the right of the accused to challenge jurors peremptorily, precluded the legislature from granting that right to the state was "answered by the mere statement that all legislative authority of the state that is not denied to the Legislature by the Constitution resides in that body." 174 La. 860, 864, 141 So. 859, 860 (1932).

20. In upholding the Fire and Police Civil Service Act of 1934 [La. Acts 1934 (2 E.S.), No. 22, p. 113] in Ward v. Leche, 189 La. 113, 179 So. 52 (1938), the court cited the "recognized principle of constitutional law that except where limitations have been imposed by the federal and state constitution the power of the legislature is unlimited and practically absolute. . . . As a rule, therefore, and speaking generally a legislature may do what the state or federal constitution does not prohibit." 189 La. 113, 120, 179 So. 52, 54 (1938). When the 1940 act proposing a constitutional amendment on civil service was challenged in Ricks v. Department of State Civil Service, 200 La. 341, 8 So.2d 49 (1942), the court would not consider it for the reason that the Constitution contained no restriction in this respect and cited the "familiar doctrine, that the Legislature of a State, unlike Congress, which cannot do anything which the Federal Constitution does not authorize, may do everything which the State Constitution does not prohibit." 200 La. 341, 382, 8 So.2d 49, 62 (1942).
Two characteristic statements of the doctrine under the Constitution of 1921 may be seen in the following cases. Upholding the Criminal Code of 1942 in *State v. Pete* the court declared somewhat impatiently: "It is elementary that state Constitutions are not grants of power to their respective legislative bodies but, rather, limitations of their general powers. Consequently, our Legislature may enact any law that is not expressly or inferentially prohibited by the Constitution of this state or of the United States."22

The doctrine of residual power was referred to as "fundamental law" in *State ex rel. Porterie v. Charity Hospital.* This case construed certain important limitations in the Constitution of 1921 in such a way as to favor the exercise of legislative power. The legislature might dedicate revenues without violating the prohibition of making an appropriation for longer than two years.24 Although the state could not incur debt except for certain emergencies the legislature might authorize state agencies to do so.25 Although the state’s revenues could not be pledged for hospital bonds,26 the legislature might authorize one of its agencies to pledge its revenues for the payment of such bonds.27

Residual legislative power referred to as "the familiar principle," the "recognized principle," the "familiar doctrine," the "fundamental law," the "mere statement" of which was sufficient has been maintained by the courts sympathetically through ten Louisiana constitutions. A 1950 case, *Tanner v. Beverly Country Club,* indicates, however, the difficulties which the doctrine is beginning to experience under the present Constitution. The case involved the constitutionality of Act 192 of 1920 as amended

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21. 206 La. 1078, 20 So.2d 368 (1944). See also Conley v. City of Shreveport, 216 La. 78, 43 So.2d 223 (1949).
22. 206 La. 1078, 1085, 20 So.2d 368, 371 (1944). In *Crain v. State*, 23 So.2d 336 (La. App. 1945), a private act authorizing suit against the state in a workmen’s compensation case where the general law would have applied was upheld by reference to this doctrine.
23. 182 La. 268, 161 So. 606 (1935).
24. LA. CONST. ART. IV, § 2 (1921).
25. LA. CONST. ART. IV, § 2, 12 (1921).
26. LA. CONST. ART. IV, §§ 2, 12 (1921).
27. In *State v. Grosjean*, 182 La. 289, 161 So. 871 (1935), the inherent power of the legislature was employed to uphold an act authorizing the Governor to suspend the provisions of a statute levying a petroleum refining occupational tax of five cents a barrel by placing the tax at one cent a barrel. The court construed the act as not violating the prohibition against delegating the taxing power or suspending the laws.
CONCEPTS OF LEGISLATIVE POWER

in 1938 and 1940. The 1920 act, passed in pursuance of the provision of the 1913 Constitution that gambling was a vice and that the legislature should pass laws to suppress it, authorized any taxpayer to file suit in any district court to abate the nuisance of gambling establishments. The 1938 amendment required a petition of twenty-five real estate taxpayers and specified that the petition should be filed in the district court "having jurisdiction thereof." The 1940 amendment changed the requirement to ten taxpayers and deleted the phrase "having jurisdiction thereof." Chief Justice Fournet, speaking for the majority, declared the act unconstitutional as extending the territorial jurisdiction of the district courts in violation of Article VII which divides the state into judicial districts and fixes the territorial limits of each district. From the view of legislative power the significance of the case may lie in the reliance placed by the court upon legislative mandates. The court considered that the mandate to the legislature in Section 38 of Article VII to provide for the trial of recused cases and in Section 45 to provide for change of venue in civil and criminal cases was an implied prohibition against changing the territorial jurisdiction of the courts in any other cases. Black's *Handbook of American Constitutional Law* was quoted with approval to the effect that "A limitation upon the legislative power may be by direct prohibition or by implication, and in the latter case its restraints on the legislature are no less binding than when expressly prohibited. To create an implied prohibition there must be some express affirmative provision . . . ." The Chief Justice then quoted from Cooley's *Treatise on Constitutional Limitations* the New York court's decision in *People v. Draper,* " . . . the affirmative prescriptions and the general arrangements of the constitution are far more fruitful of restraints upon the legislature. *Every positive direction contains an implication against anything contrary to it. . . .'*

Justice McCaleb dissenting in part did not consider the act a violation of the Constitution. It appeared to him that "a contrary inference exists—i.e., an inference in recognition of such legislative power—in view of Section 9 of Article 1 of the Consti-

31. 217 La. 1043, 1066, 47 So.2d 905, 912 (1950).
32. 1 COOLEY, TREATISE ON CONSTITUTIONAL LIMITATIONS 176, n. 4 (8th ed. 1927).
33. 24 Barb. 265 (N.Y. 1857).
34. 217 La. 1043, 1066, 47 So.2d 905, 913 (1950).
stitution which specially fixes the venue of criminal trials in the parish in which the offense was committed—for, if the framers of the organic law did not intend to give the Legislature a free hand to determine venue in all civil cases, it would seem that they would have included a provision similar to that obtaining in criminal trials.” He concluded that the matter rested “entirely within the control of the Legislature unhampered in its power by constitutional limitations.”

The legislature’s residual power to exercise any power not prohibited by the Constitution was not denied. The case does indicate, however, that the growing number of mandates, prohibitions, and other limitations in the Constitution may eventually make the doctrine irrelevant and that the uncertainty caused as to the power of the legislature may well lead legislators and political leaders to demand that even more in the way of legislative powers be included in the Constitution.

From this survey it would appear that in spite of the possible implications of the Tanner case the doctrine of residual legislative power seems sufficiently well established in Louisiana so that a future convention should be able to delete from the new document material in the old Constitution without the fear that the courts would construe such action as a denial of such power to the legislature.

II

CONSTITUTIONAL CONVENTIONS AND LEGISLATIVE POWER

The framers of Louisiana’s ten constitutions have evidently been in full agreement with the courts that the powers of the legislature were limited by the constitution and not granted by it. They have considered it a primary purpose of the constitution to provide effective limits to the possible abuses of legislative power.

The extent and variety of the limitations that have developed in Louisiana’s constitutional history may be shown by

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35. 217 La. 1043, 1073, 47 So.2d 905, 915 (1950).
36. 217 La. 1043, 1074, 47 So.2d 905, 915 (1950).
37. For a discussion of the importance of this problem in the drafting of a constitution, see Saye, The Extent of State Legislative Power, 12 Ga. B.J. 147 (1949).
contrasting and comparing the Constitution of 1812 with that of 1921. The Constitution of 1812 was the first of Louisiana's ten constitutions and the shortest. It represented the least restraint on legislative power. The Constitution of 1921 has grown to be by far the longest constitution, not only in comparison with previous Louisiana constitutions but in comparison with the constitutions of other states. It imposes far more limitations on legislative power than did the Constitution of 1812. From Dr. Graves' discussion in the preceding article it would appear that Louisiana's constitutional development has been similar to that of other states, differing only in the extent and variety of the limitations.

Four types of limitations on legislative power are represented by the Constitution of 1921: (1) limitations on legislative sessions and procedures, (2) substantive prohibitions of legislative action, (3) mandates to the legislature, and (4) the inclusion of statutory material in the Constitution.

(1) Limitations on Sessions and Procedures

The Constitution of 1812 provided for a bicameral legislature meeting on the first Monday in January every year "unless a different day be appointed by law." Sessions were unlimited as to length. The requirements for the passage of bills and other legislative procedures filled less than two pages. The Constitution of 1921 provides for a limited session of sixty days every other year. Requirements of legislative procedures fill nine pages in the Constitution. The biennial session of sixty days was first adopted by the constitutional convention of 1845 as an economy measure. The convention considered sixty days ample if the legislators refrained from local legislation. The annual session was restored by the Convention of 1852 and remained until the Convention of 1879 provided for a sixty day biennial

39. BOOK OF THE STATES (Council of State Governments, 1954); PUBLIC AFFAIRS RESEARCH COUNCIL LEGISLATIVE BULLETIN NO. 6 (June 21, 1952); LOUISIANA LEGISLATIVE COUNCIL, CONSTITUTIONAL REVISION IN LOUISIANA: AN ANALYSIS

40. See page 751 supra.
41. LA. CONST. Art. II, §§ 1, 3 (1812).
42. LA. CONST. Art. III, § 8 (1921). All references are to the Constitution as adopted on June 18, 1921, and therefore without amendments.
43. LA. CONST. Art. 5 (1845); Powell, A History of Louisiana's Constitutions c. 2, in PROJET FOR A NEW CONSTITUTION (Louisiana State Law Institute, to be published in Aug., 1954).
44. LA. CONST. Art. 21 (1879). See LA. CONST. Art. 5 (1852); LA. CONST. Art. 7 (1864); LA. CONST. Art. 17 (1868).
session as one attempt to prevent a recurrence of the abuses of a carpetbag legislature.

The importance of this limitation on the legislature has become more significant with the ever increasing work load of the legislature. In 1879 the legislature had 562 bills to consider. By 1952 the number of bills had increased to 1654.45

A second major limitation on legislative action is found in the provision for special sessions; here too the distrust of the legislature that has developed over the century and a quarter of Louisiana constitutional development is apparent. The Convention of 1812 authorized the Governor to call sessions of the legislature on “extraordinary occasions.”46 In 1879 a limitation was added that restricted the legislature to a consideration of the objects enumerated in the call and to the time specified in the call.47 This limitation was continued by the Constitution of 1921.48

The limitation on the frequency and duration of regular sessions has encouraged the use of special sessions. There have been more special sessions than regular sessions under the 1921 Constitution.49 Since the Governor controls the selection of items to be considered and the length of the session, the frequent use of special sessions represents a significant limitation on legislative power.

A third major limitation on the legislature in this area concerns the veto power of the Governor. The Governor's veto power in the 1921 Constitution is substantially the same as it was in 1812, except for power to veto items of the appropriation bill which was added by the Constitution of 1879 and carried over into subsequent constitutions.50 In 1812, however, there was no limi-

45. The Legislative Process in Louisiana, Louisiana Legislative Council Research Study No. 1, p. 3 (1953).
47. La. Const. Art. 72 (1879).
48. La. Const. Art. V, § 14 (1921). The Constitution of 1921 did add the authorization to the legislature to call a special session by a petition of two-thirds of the members elected. No special session has been called in such manner.
49. There have been 24 special sessions and 16 regular sessions since 1921. For an extensive discussion of the practice and abuses of special sessions, see Special Session of July 6-17, 1953: An Analysis of the Problem, Public Affairs Research Council of La. No. 9 (Oct. 30, 1953); The Legislative Process in Louisiana, Louisiana Legislative Council Research Study No. 1, p. 11 (Feb., 1953).
50. La. Const. Art. V, § 15 (1921); La. Const. Art. III, § 20 (1812). The 1812 Constitution provided that if the Governor did not return a bill within ten days, it should become law without his signature; if the general assembly
tation on the length of the session. The veto provision combined with the sixty-day session mean in practice that the Governor's veto will not be overridden. The pressure on the legislature, because of the constantly increasing work load, has however made this limitation of far greater significance in 1950 even than it was in 1921. The Louisiana Governor has vetoed 808 bills since 1921. Of these only fifty were vetoed before the final adjournment of the legislature. The legislature has never overridden a Governor's veto under the 1921 Constitution.

In view of the obvious dissatisfaction with the legislature entertained by constitutional conventions in Louisiana it is strange that the conventions have done so little to strengthen the legislative process. Since 1879 the only significant positive approach by a convention to securing better legislation would seem to be the provision of a thirty-day time limit for the introduction of bills.

The approach of Louisiana conventions has been characterized by the imposition of limitations on the legislature rather than by serious attempts to improve the legislative process.

prevented its return by adjournment it should become law "unless sent back within three days after their next meeting." LA. CONST. Art. V, § 16 (1921); LA. CONST. Art. 77 (1898, 1913).

51. The Legislative Process in Louisiana, LOUISIANA LEGISLATIVE COUNCIL RESEARCH STUDY No. 1, p. 22 (Feb., 1953). It is interesting to note that the Governor of Louisiana has exercised the veto power more frequently than the governor of any other Southern state. See Prescott, The Executive Veto in the Southern States, 10 J. OF POLITICS 659-75 (1948). See also The Veto Power in Louisiana, in LOUISIANA STATE LAW INSTITUTE CONSTITUTION REVISION PROJECT (unpublished manuscript 1948).

52. The Legislative Process in Louisiana, LOUISIANA LEGISLATIVE COUNCIL RESEARCH STUDY No. 1, p. 22 (Feb., 1953). For figures on the end of the session rush in the passage of legislation, see The Introduction and Passage of Bills, in SPECIAL STUDIES, 1 PROJET FOR A NEW CONSTITUTION (Louisiana State Law Institute, to be published in Aug., 1954).

53. LA. CONST. Art. III, § 8 (1921). This was changed by amendment in 1932 to twenty-one days. LA. Acts 1932, No. 145, p. 502. For the operation of this limitation, see Time Limitations on the Introduction of Bills, in SPECIAL STUDIES, 1 PROJET FOR A NEW CONSTITUTION (Louisiana State Law Institute, to be published in Aug., 1954); and The Legislative Process in Louisiana, LOUISIANA LEGISLATIVE COUNCIL RESEARCH STUDY No. 1, p. 42 (Feb., 1953). Less than 2 percent of the bills introduced in the 1952 session were introduced after the deadline. Rivet, Thoughts on the Legislative Process in Louisiana, 6 LOUISIANA LAW REVIEW 63-69 (1944), commented that the limitation on the introduction of bills was the first attempt in more than a century of statehood to improve the legislature. The legislative bureau created by the Constitution of 1921, Article III, § 31, did provide an opportunity to check bills for drafting errors.

54. This attitude of distrust is reflected in the following comment from the Times Picayune during the 1921 convention: "Two of the most pernicious evils connected with the legislature were dealt a blow in two ordinances introduced . . . [today]. One prohibits members of the Legislature from
(2) Substantive Prohibitions

The second major type of limitation employed by constitutional conventions in restricting legislative power consists of substantive prohibitions. The increasing development of limitations becomes apparent in this area also, if the Constitutions of 1812 and 1921 are compared.

Two prohibitions illustrate particularly well the attempt by constitutional conventions to prevent abuses of legislative power: the prohibitions against the incurrence of debt and against special legislation.55

The Constitution of 1812 contained no prohibition against the incurrence of debt. The Convention of 1845 authorized the incurrence of debt in case of war, to repel invasions, or to suppress insurrections. For other purposes, if the debt exceeded $100,000 it required authorization by a special law providing for the ways and means of paying principal and interest. The law was to be irrepealable until principal and interest were paid and was not to be put "into execution until after its enactment by the first legislature returned by a general election after its passage."56

In 1852 the requirement for approval by the subsequent legislature was deleted.57 An absolute debt limit of twenty-five million dollars was added as an amendment to the Constitution of 186858 and was reduced by an additional amendment in 187459 to fifteen million dollars. The Convention of 1898, faced with the debt and corruption of the reconstruction period, decided to eliminate the possibility of the legislature's incurring debt. It therefore provided: "The General Assembly shall have no power to contract, or to authorize the contracting, of any debt or liability, on behalf of the State; or to issue bonds or other evidence of indebtedness thereof, except for the purpose of repelling invasion or for the trading their votes on any measure, the other prohibits the Legislature from accepting any fee in any measure pending before the law making body."

New Orleans Times Picayune, March 16, 1921, p. 8.

55. Another type of substantive limitation can be seen in the development of the Bill of Rights. The Bill of Rights of the 1921 Constitution contains fifteen sections; the guarantees in only five of these sections were contained in the Constitution of 1812.


This prohibition was carried over into the Constitution of 1913 and adopted by the convention of 1921. Thus another important limitation on the power of the legislature can be traced back to a convention influenced by the abuses of the reconstruction legislature.

A second illustration of this type of limitation can be seen in the prohibition against special and local legislation. Here too the Convention of 1879 has played a determining role. The Constitution of 1812 contained no prohibitions against special and local legislation, whereas the Constitution of 1921 contains a list of twenty-one subjects on which the legislature “shall not pass any local or special law.” The prohibitions include such subjects as changing the names of persons; fixing the place of voting; changing the venue in civil or criminal cases; authorizing the laying out, opening, closing, altering, or maintaining roads, highways, streets, or alleys, or relating to ferries or bridges; or authorizing the construction of street passenger railroads in any incorporated town or city. The entire list of twenty-one subjects with two slight modifications was taken from the Convention of 1879.

Before 1879 the constitutions had contained few limitations against special and local legislation; the Constitutions of 1845 and 1852 had only prohibited divorces by such legislation, and that of 1864 had added adoption of children, emancipation of minors, and the changing of names; that of 1868 had even deleted from the proscribed list of 1864 the changing of names.

The prohibitions directed against a carpetbag legislature by the Convention of 1879 were carried over in the Constitutions of 1898, 1913, and adopted almost verbatim by the Convention of 1921.

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60. LA. CONST. Art. 46 (1898).
61. LA. CONST. Art. 46 (1913).
62. LA. CONST. Art. IV, § 2 (1921).
63. LA. CONST. Art. IV, § 4 (1921).
64. The prohibition against local legislation exempted New Orleans in 1879; in 1888 the exemption was extended to all corporations having a population of not less than 2500. An amendment in 1916 added river improvement districts, harbor improvement districts and navigation districts. La. Acts 1915, No. 115, p. 252.
65. LA. CONST. Art. 117 (1845); LA. CONST. Art. 114 (1852).
66. LA. CONST. Art. 117 (1864).
67. LA. CONST. Art. 113 (1868).
68. LA. CONST. Art. 46 (1879); LA. CONST. Art. 48 (1898); LA. CONST. Art. 48 (1913); LA. CONST. Art. IV, § 4 (1921).
(3) Mandates

A third type of limitation on the legislature devised by constitutional conventions is represented by the mandate, a direction to the legislature to perform an action desired by the convention. In view of the fact that mandamus will not lie to compel the legislature to perform a duty under the mandate, it might be argued that mandates do not constitute limitations upon the legislature at all. Under the theory that "every positive direction contains an implication against anything contrary to it," however, the mandates must be considered seriously.

To constitutional conventions the mandate appears to be an alternative to long detailed provisions in the constitution. The failure of the legislature to follow a mandate may become the justification for the next constitutional convention to include the detailed provision.

The inclusion of mandates in Louisiana constitutions dates back to 1812 when the convention in a brief constitution nevertheless included at least nine policy mandates. A comparison of
the 1812 mandates with those in the Constitution of 1921 indicates not only an increase in number but also the increased scope of the directives involved. A recent study of the mandates in the present Constitution lists over seventy. They include such diverse directives as apportionment; enacting laws to regulate the employment of convicts; appropriating for the clerical and other expense of the executive departments; creating boards of health; provision for the interest of “State Medicine in all its departments”; fostering agriculture and immigration and preventing the spread of pests; fixing the duties, compensation, and powers of the State Bank Commissioner; provision for hard-surfaced state highways; appropriating for the salaries for stenographers of Supreme Court Justices; enacting laws to secure fairness in party primary elections, conventions, or other methods of naming party candidates; and appropriating a minimum amount to the state public school fund.

Although all of Louisiana's constitutions have contained mandates, the Constitution of 1879 may be regarded as establishing the pattern for the extensive use of mandates in the Constitution of 1921.

census for apportionment of the legislature (Art. 2, § 6), to provide laws for filling vacancies in the legislature (Art. 2, § 28), organizing the militia (Art. 3, § 23), excluding certain ineligibles from the suffrage (Art. 6, § 4), providing for the settlement of differences by arbitrators (Art. 6, § 6), fixing terms of office of public officers (Art. 6, § 8), providing deductions from salaries of delinquent public officers (Art. 6, § 10), pointing out the manner in which a man coming into the country should declare his residence (Art. 6, § 12), and for directing how persons who were securities for public office might be relieved or discharged of such securityship (Art. 6, § 18). One of these mandates, that on arbitration, has been conscientiously repeated in six of our constitutions and is now a part of the Constitution of 1921. LA. CONST. Art. 6, § 6 (1812); LA. CONST. Art. 94 (1845); LA. CONST. Art. 95 (1852); LA. CONST. Art. 97 (1864); LA. CONST. Art. 165 (1879); LA. CONST. Art. 176 (1898); LA. CONST. Art. 176 (1913); LA. CONST. Art. III, § 36 (1921).

72. A list of these mandates with the action taken by the legislature can be found in the study, Mandates to the Legislature under the 1821 Constitution, in Special Studies, 1 Project for a New Constitution (Louisiana State Law Institute, to be published in Aug., 1954).
73. LA. CONST. Art. III, § 2 (1921).
74. LA. CONST. Art. III, § 33 (1921).
75. LA. CONST. Art. V, § 20 (1921).
76. LA. CONST. Art. VI, § 11 (1921).
77. LA. CONST. Art. VI, § 12 (1921).
78. LA. CONST. Art. VI, § 14 (1921).
79. LA. CONST. Art. VI, § 18 (1921).
80. LA. CONST. Art. VI, § 19 (1921).
81. LA. CONST. Art. VII, § 17 (1921).
82. LA. CONST. Art. VIII, § 4 (1921).
83. LA. CONST. Art. XII, § 14 (1921).
84. For an extensive discussion of the mandates in the Constitution of 1879 see Powell, A History of Louisiana’s Constitutions, in 1 Project for A
(4) Statutory Material

A fourth type of limitation in Louisiana constitutions is represented by the inclusion in the constitution of statutory material. The constitutional convention limits the legislature when it provides in such detail for the implementation of a basic policy that no additional action by the legislature is necessary. The greater the length of the constitution, the greater the indication that it contains statutory material. The debate as to what constitutes statutory material and what constitutes constitutional material goes back to the Convention of 1845 and it has continued in each succeeding constitutional convention. In 1845 the argument concerned the inclusion of provisions for voter registration in the constitution; one delegate argued that the legislature would be "fully competent, in the exercise of their judgment, not only to decree the principle as effectually as it could be done in the constitution, but to carry out the details. A change of circumstances may occasion a change of ideas; and it is for the legislature to be governed by the necessities that may exist. Our mission here is to establish the fundamental principles of government; not to decree upon matters of temporary expediency." 

The argument for the inclusion of the provision for voter registration in the constitution was that the legislature might be often vacillating and undecided, and that in the thirty-two years of the legislature's existence it had done nothing on this subject. In the Convention of 1845 the Democrats wrote into the constitution as much of their party platform as they could. In 1852 the Whigs were in the majority so they wrote in provisions on public aid for internal improvements and the Democrats urged that such things be left to the legislature. "Leave it to the legislature" was the partisan cry of the minority in each convention.

A delegate to the Constitutional Convention of 1921 expressed the difficulty with the comment: "It all depends upon what a

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85. See in this connection, Powell, Constitutional Growth and Revision in the South, 19 J. of Politics 354 (1948).
particular member wants and what he opposes. If he is for it, it becomes fundamental. If he is against it, it becomes legislative."

Provisions of the 1921 Constitution which may be regarded as more statutory than fundamental in nature include the salaries of many public officials which though fixed in the Constitution may be changed by a two-thirds vote of the legislature; the establishment of administrative officers and boards with qualifications, terms, employees, and powers; the appropriation of funds and the levy of taxes as represented by the establishment of the general highway funds and the public school funds; the detailed provisions for justices of the peace and constables, municipal and juvenile courts, sheriffs, clerks, coroners, minor courts and officials of New Orleans; the application form for registration; local government provisions on debt and taxation; and pension provisions.

This type of limitation often represents the desire on the part of a convention to protect some policy against a desire on the part of future legislatures for change.

It is characteristic of constitutional conventions and of their mistrust of the legislature that every constitutional convention has been concerned with the salaries of at least some public officers. The Convention of 1812 differed only in degree in this respect from that of 1921. Two examples of statutory provisions illustrate this type of limitation on legislative power: the fixing of salaries and the appropriation of public funds. The Constitution of 1812 fixed only the salaries of Supreme Court judges. The Constitution of 1921 fixes the salaries of all judicial officers and of most of the executive and administrative officers referred to in the Constitution.

88. New Orleans Times Picayune, April 27, 1921, p. 6. Cited in Powell, id. at c. 9.
The interest of conventions in salary fixing can be seen from the changes made in the salaries of the Supreme Court Justices. The Convention of 1812, for example, fixed the salaries of the Supreme Court Justices at $5,000. The Convention of 1845 raised the salary of the Chief Justice $1000 and that of the Associate Justices $500. The Convention of 1852 retained the salaries without change. In 1864 the Convention raised the Chief Justice to $7500 and the Associate Justices to $7000. These salaries were retained by the Convention of 1868. The Convention of 1879 reduced the salaries so that all Justices received $5000. The Constitutions of 1898 and 1913 provided that these salaries be not less than $5000. The Constitution of 1921 provided for salaries of $8000.

A more serious limitation on the power of the legislature is represented by the practice of making appropriations and levying taxes by constitutional provision. Beginning with the Convention of 1845, constitution makers have been concerned with directing the appropriation of public funds to objectives approved by the Convention. The Constitution of 1845 established a public school fund to be held by the state as a loan; six percent of this with rent from unsold lands was to be appropriated to the free public schools and the provision concluded that “this appropriation shall remain inviolable.” Another fund was provided for a seminary of learning and the fear of the legislature was expressed in the provision that “no law shall ever be made diverting said fund to any other use than to the establishment and improvement of said seminary of learning.” In 1868 the legislature was directed to levy a poll tax not to exceed $1.50 “for

98. La. Const. Art. 4, § 3 (1812).
100. La. Const. Art. 63 (1852).
102. La. Const. Art. 75 (1868).
103. La. Const. Art. 82 (1879).
105. La. Const. Art. VII, § 6 (1921). The Times Picayune commented: “One of the prime causes for the length of many of the ordinances is the attempt of many of the state officers, departments, and boards to get themselves incorporated into the constitution, together with their salaries, so as to get beyond the reach of the legislature.” May 8, 1921, § 2, p. 17. Salaries in the Constitution of 1921 are subject to change by a two-thirds vote of the legislature. La. Const. Art. III, § 34 (1921). Salaries of judges are protected.
school and charitable purposes"\textsuperscript{108} and the Constitution dedicated one-half of the funds derived from the poll tax to the support of the free public schools and the University of New Orleans.\textsuperscript{109}

The Constitution of 1879 recognized three separate educational funds and specified the debt of the state to each fund.\textsuperscript{110} Similar provisions were contained in the Constitution of 1898, with additional sources of revenues dedicated.\textsuperscript{111} The Constitution of 1898 also required appropriations for pensions for Confederate veterans of not less than $75,000 nor more than $150,000.\textsuperscript{112}

The Constitution of 1913 went one step further in the dedication of revenues by directly levying a special tax of one-fourth mill for a road fund to construct and keep in repair state highways or public roads throughout the state, and the article was declared to be self-operative.\textsuperscript{113} A tax of three-fourths mill was also levied by the Constitution for confederate pensions and the provision was declared to be self-operative.\textsuperscript{114}

The Constitution of 1921 required a minimum appropriation of $700,000 for the higher institutions of learning, excluding Louisiana State University.\textsuperscript{115} It continued the public school fund, increasing its revenues.\textsuperscript{116} For Louisiana State University, in addition to the revenues from the seminary and the agricultural and mechanical college funds, the Constitution required the appropriation of the proceeds of a one-half mill tax up to one million dollars and the proceeds of the state severance tax for two and one-half years up to five million dollars.\textsuperscript{117} The tax for

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  \item \textsuperscript{108} LA. CONST. Art. 118 (1868).
  \item \textsuperscript{109} LA. CONST. Art. 141 (1868).
  \item \textsuperscript{110} LA. CONST. Art. 233 (1879).
  \item \textsuperscript{111} LA. CONST. Arts. 254, 257, 258, 259 (1898).
  \item \textsuperscript{112} LA. CONST. Art. 303 (1898).
  \item \textsuperscript{113} LA. CONST. Art. 291 (1913). The Constitution also required an appropriation of not less than $1200 annually for the maintenance of a Civil War Memorial Hall.
  \item \textsuperscript{114} LA. CONST. Art. 303 (1913). Amendments to the Constitution of 1913 changed the good roads tax to one-eighth mill and the Confederate veterans pension tax to one-half mill. LA. Acts 1918, No. 191, app. p. 11, adopted Nov. 5, 1918. The Constitution was also amended to dedicate "at least one-third of the one mill" for the four institutions of higher learning. LA. Acts 1918, No. 217, app. p. 14, adopted Nov. 5, 1918. At the same election voters approved an amendment levying a one and one-half mill tax for the public schools. LA. Acts 1918, No. 226, app. p. 17, adopted Nov. 5, 1918.
  \item \textsuperscript{115} LA. CONST. Art. XII, § 9 (1921).
  \item \textsuperscript{116} LA. CONST. Art. XII, § 14 (1921).
  \item \textsuperscript{117} LA. CONST. Art. XII, § 17 (1921).
\end{itemize}
Confederate veterans pensions was continued. The sources for
the highway fund were also increased.

From 1812, when the Constitution contained no dedications
of revenue, to 1921, impressive restrictions had been placed upon
the appropriation power of the legislature in the fields of public
education, highways and pensions.

Although all of Louisiana's constitutions have contained
statutory material, the Constitution of 1879 may be regarded the
first to establish the pattern of a long constitution. The Constitution
of 1812 contained only 9 pages; that of 1845, 15 pages; that
of 1852, 14 pages; both the Constitutions of 1864 and 1868 con-
tained 16 pages. The Constitution of 1879, with 35 pages, more
than doubled the size of the preceding constitution. Each of the
succeeding four constitutions has increased in length. The Con-
stitution of 1898 was 57 pages, that of 1913, 67 pages, and that of
1921, approximately 81 pages.

As in the case with the prohibitions on the legislature, the
desire of the convention to prevent the recurrence of abuses of
a reconstruction legislature established a pattern which has been
followed by subsequent constitutions.

It is not surprising that the extent of the limitations on the
power of the legislature has given rise to the practice of including
authorizations to the legislature in the constitution. Authoriza-
tions in the 1921 Constitution include the power to merge or
consolidate executive and administrative offices whether created
in the constitution or otherwise, to make provision for the
practice of forestry and to provide for drainage and reclama-
tion of marsh land.

118. LA. CONST. Art. XVIII, § 3(a) (1921).
119. LA. CONST. Art. VI, § 22 (1921). Vehicular license taxes, gasoline and
kerosene taxes.
120. Comparisons are based on the editions of the constitutions contained
in LA. CONST. ANN. (Dart, 1932). Amendments to the constitutions are not
included in the page count. The official edition of the 1921 Constitution as
adopted contains 127 pages, but it would represent approximately 81 pages
in Dart.
121. See Powell, A History of Louisiana's Constitutions c. 5, in 1 Projekt
for a New Constitution (Louisiana State Law Institute, to be published in
Aug., 1954), for an extensive discussion of the legislative provisions of the
Constitution of 1879, including detailed provisions on sheriffs and coroners,
constables, clerks of court, and justices of the peace, tax provisions, including
collection and delinquency; an article on homestead exemptions in which
homesteads are defined in the Constitution.
122. LA. CONST. Art. III, § 32 (1921).
123. LA. CONST. Art. VI, § 2 (1921).
124. LA. Const. Art. XV (1921). Other authorizations include the power to
From this brief survey of the four types of constitutional limitations imposed by conventions on legislative power in Louisiana, certain conclusions may be drawn: First, the development in Louisiana reflects a mistrust of the legislature that has characterized most state constitutions, although the Louisiana development represents in many respects a more extreme type of limitation. Second, although some of the limitations in the present Constitution can be traced back to 1812, the Constitution of 1879 has been far more influential in shaping the position of the legislature in the present Constitution. The fact that this Constitution was drawn up to correct and prevent the abuses of the carpetbag legislature is then of considerable significance. Third, probably the most significant type of limitation of legislative power has been that pertaining to the length and frequency of its sessions. This limitation has tended to increase the power of the Governor in relation to the legislature not only in respect to the use of special sessions and the veto, but also in affecting the general competence of the legislature to handle the problems before it. Fourth, probably the most serious failure of constitutional conventions in Louisiana has been the lack of concern with measures to improve the competence of the legislature.

III

THE AMENDMENTS TO THE CONSTITUTION OF 1921

An examination of the limitations on legislative power developed from 1812 through 1921 might easily create the impression that the present day legislature is more limited in its exercise of power than the legislature of 1812. However, two factors should be considered in this connection. In the first place, governmental power has expanded tremendously on all three levels of government since 1812 and the legislature has shared in this development.

- grant private rights of way for roads of necessity by general law (Art. III, § 37);
- to make laws limiting or prohibiting the cultivation of specified crops in definite zones and providing the necessary funds to compensate for damages (Art. VI, § 14).
- The legislature may authorize road districts to impose additional taxes (Art. VI, § 19);
- it may rearrange judicial districts (Art. VII, § 34);
- abolish justice of the peace courts (Art. VII, § 51);
- provide assistant district attorneys (Art. VII, § 60);
- vest in clerks of court authority to grant such orders and do such acts as may be deemed necessary for the furtherance of the administration of justice (Art. VII, § 66);
- provide a method by which absentee voting is permitted other than by mail (Art. VIII, § 22);
- provide a survey and maps of all real property in the subdivisions of the state and that parishes and municipalities pay a portion of the cost not to exceed 60 per cent (Art. X, § 15);
- and authorize police juries to establish special districts by general law (Art. XIV, § 14).
In the second place, the Louisiana legislature in the 33 years since the adoption of the 1921 Constitution has proposed 347 amendments, of which the electorate has ratified 302, or 87 per cent. The ease with which the Constitution is amended raises the question of the real effectiveness of the limitations in the 1921 Constitution discussed in Part II. To what extent have the amendments to the Constitution been used to free the legislature from the restrictions imposed by the 1921 Convention?

An examination of the 302 amendments indicates that the amending process has not been used to change the basic structure of government so as to improve substantially the position of the legislature. For example, one of the most important limitations of the Constitution of 1921, that requiring the sixty-day biennial session, has not been affected, nor have any modifications been made in the Governor's veto power.

The important prohibitions on the exercise of legislative power have not been removed. The use of the amending process has made it relatively easy, however, for the legislature to provide exceptions to these prohibitions. One of the most important limitations discussed in Part II was the prohibition against the incurrence of debt. This prohibition still remains. Yet at least nineteen amendments have been added to the Constitution to

125. For an examination of this development, see White, The States and the Nation (1953).
128. Of the twelve amendments to the legislative article, one was the result of an unfavorable judicial decision on the milk commission (La. Acts 1940, No. 394, p. 1463), one repealed the prohibition against a legislator's taking a position during the term for which he was elected which was created or the emoluments thereof increased by the legislature while he was a member (La. Acts 1936, No. 90, p. 269, adopted Nov. 3, 1936). A third changed the deadline for the introduction of bills from the 30th to the 21st day (La. Acts 1932, No. 145, p. 502, adopted Nov. 8, 1932). The other nine concerned procedural matters. La. Acts 1952, No. 509, p. 1227, limited the appropriation power of special sessions in the final months of a governor's term of office.
129. See State ex rel. Porterie v. Charity Hospital, 182 La. 268, 161 So. 606 (1935), in which the court upheld the authority of the legislature to authorize state agencies to incur debt without a constitutional amendment.
authorize particular bond issues. The result is that Louisiana with a constitutional prohibition against the contracting of debt has the tenth highest per capita debt of the forty-eight states. The Constitution of 1921 as adopted prohibited exemptions from the property tax except as to the subjects listed in the Constitution. The prohibition remains but the number of exemptions has been expanded by more than twenty-two amendments.

The Constitution as adopted provided limitations on the incurrence of debt by political subdivisions. This provision has been amended thirty-one times.

The Constitution contained a prohibition against the loaning or granting of funds or things of value by a state or a political corporation. This has been amended five times.

Probably the most significant use of the amending process by the legislature has been in imposing further limitations on its legislative power. It would appear that in many respects Louisiana legislatures have been as mistrustful of legislative power as constitutional conventions have been. Each type of limitation imposed by constitutional conventions on the legislature has also been imposed by constitutional amendments initiated by the legislature. This paradoxical situation is particularly well illustrated by the statutory material added by amendment to the Constitution.

Two examples will illustrate this practice. Article VI-A of the present Constitution was added by an amendment in 1930. This amendment, which is self-operating, levies a one-cent gasoline tax and dedicates it to highways and ports. It covers twelve pages of the Constitution. It actually is longer than an act of the legislature levying a four-cent gasoline tax. The dedication of revenues by the Constitution of 1921 was discussed in Part II.

133. Amendments to the Constitution of 1921, supra note 130.
135. Amendments to the Constitution of 1921, supra note 130.
137. Amendments to the Constitution of 1921, supra note 130.
138. The 302 amendments have tripled the length of the Constitution of 1921.
Yet it was not the Constitutional Convention of 1921 that dedicated forty per cent of the state's revenues to specific recipients but rather it has been the legislatures since that time who have by constitutional amendment continued to restrict the legislature's power of appropriation.\textsuperscript{140}

A second example of the use of constitutional amendments to limit the power of the legislature can be seen in the so-called board bills of 1952 setting up the boards of highways, institutions, welfare, and wild life and fisheries.\textsuperscript{141} There was no question of the authority of the legislature to set up the boards in the manner provided for by the amendments. As a matter of fact, they were provided for by legislation until the amendments were approved by the electorate. Yet the power of future legislatures to deal with these boards has now been limited by the constitutional amendments.\textsuperscript{142}

Of course, the more frequently the Constitution is amended and the greater the detail of the amendments, the more amendments will be required to keep the document up-to-date. Article VI-A, referred to above, for example, has been amended nineteen times.\textsuperscript{143} Article VI on Administrative Officers and Boards has been amended 29 times; 12 of these amendments have concerned the general highway fund in Section 22.\textsuperscript{144}

The abuse of the amending process of the constitution has become the most frequently cited argument for a new constitution. Not only do the amendments submitted contain such a mass of technical detail that the ordinary voter cannot understand them, but the number and complexity of the issues presented constitute an increasing danger that fundamental principles may be whittled away without either the legislature or the people being aware of it.\textsuperscript{145} The fact that only about one out of

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\item[140.\textit{Dedicated Revenues, In Special Studies, 1 Projekt for a New Constitution for Louisiana} (Louisiana State Law Institute, to be published in Aug., 1954).]
\item[142. For a discussion of these amendments see Public Affairs Research Council, Voters Guide to the Amendments 16-23 (1952).]
\item[143. Amendments to the Constitution of 1921, supra note 130.]
\item[144. Ibid.]
\item[145. See, in this connection, Owen, \textit{The Need for Constitutional Revision in Louisiana}, 8 Louisiana Law Review 1, 47-67 (1947); Louisiana Legislative Council, Constitutional Revision in Louisiana 11-15 (1954); League of Women Voters, \textit{The Need for a New Constitution} (1954); Public Affairs Research Council, Legislative Bulletin No. 6 (June 21, 1952); Louisiana Bar Association, Do We Need a New Constitution? (April, 1954).]
\end{enumerate}
\end{footnotesize}
three voters voted on any amendment in the 1952 general election is indicative of the voters' reaction to an increasing burden of constitutional amendments.\textsuperscript{146}

IV

THE NEXT CONSTITUTIONAL CONVENTION AND LEGISLATIVE POWER

Any attempt to explain the limitations placed upon the legislature by constitutional conventions and by constitutional amendments initiated by the legislature must consider two basic factors. The first is the mistakes of the legislature, the abuses of power which constitutional conventions, meeting frequently, felt able to prevent in the future by constitutional prohibitions. This was particularly true of the Convention of 1879. An equally important factor, however, has been the political factionalism of the state beginning with the Whigs and Democrats in 1812, 1845, and 1852, the carpetbaggers and restorationists of the civil war and reconstruction periods, and the two major factions of more recent times. The constitutional convention or the constitutional amendments have been used to write a legislative program into the constitution and thus protect it from change by future legislatures. The administration sponsored amendments in 1952 are thus in the same tradition as the program of the Jacksonian Democrats written into the Constitution of 1845 or the Whig program embodied in the Constitution of 1852.

Will a new constitutional convention carry over all of the accumulated restrictions on legislative power of 130 years of constitutional history and will the new constitution once adopted be immediately amended in the tradition of the 1921 Constitution?

One new element that may have considerable effect upon any future constitutional convention is the strengthening of the legislative process begun by the 1952 legislative session. For the first time in history serious efforts have been made by the Louisiana legislature to reorganize and improve the legislative process. The establishment of the Legislative Council, and its record of accomplishment—which includes an extensive study of the legislative process and dozens of special research studies—afford evidence of a new spirit in the legislature.\textsuperscript{147} The joint fiscal

\textsuperscript{146} \textit{Public Affairs Research Council, Louisiana Voter Participation in the November 4, 1952 Election} (Jan. 20, 1953).

\textsuperscript{147} See, for example, \textit{Louisiana Legislative Council, Report of the Louisiana Legislative Council to the Louisiana Legislature} (April 21, 1954). This
committee and the thirteen informal study groups meeting between sessions are evidence of a new seriousness in the attack on state problems.

The power of the legislature under the state's next constitution appears to depend, therefore, upon a number of factors: (1) an increase in public confidence in the legislature; (2) a willingness on the part of the next convention to eliminate many limitations originally designed to prevent the abuses of a carpet-bag legislature; and (3) a willingness on the part of the Governor, legislators, and citizens to trust future legislatures with factional programs rather than attempting to preserve these programs in the Constitution.

In any event, the Louisiana courts have provided by their consistent adherence to the doctrine of residual powers a safe basis upon which the convention may work out its conception of legislative power in a new constitution.

report contains the recommendations of the Council for strengthening the legislative process.