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## Missouri Constitutions: History, Theory and Practice (continued)

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# MISSOURI CONSTITUTIONS: HISTORY, THEORY AND PRACTICE

(Continued from the January issue)

WILLIAM F. SWINDLER

## III. BASIC THEORIES OF MISSOURI CONSTITUTIONAL LAW

The fourth and latest constitution of Missouri, taken with its predecessors, exemplifies not only the main currents of social and economic development in the state but the fundamental differences in character in the state and federal organic law.<sup>136</sup> This difference in part, of course, is attributed to the traditional definition of the Federal Constitution as a grant of power while the state instrument is held by many established authorities to be a limitation of power—although this latter assumption is not always easy to reconcile with the assertion which typically appears in state bills of rights, that the ultimate source of power is in the people themselves.<sup>137</sup> Whether this distinction in any case justifies the elaborate detail in which state constitutions are wont to express themselves on sundry matters, is a matter for extended debate.<sup>138</sup>

In any event, the Missouri constitutional convention of 1943-44 did attempt to avoid devising an overly-intricate and exhaustive catalog of provisions and prohibitions, and rather sought to simplify and consolidate many concepts which had been introduced heterogeneously into the 1875 constitution.<sup>139</sup> Analysis of the 1945 document, and comparison with its antecedents, makes possible the classification of its subject-matter under seven major headings, as outlined in Table II. (See Appendix immediately following this article.) The most important of these, warranting more extended consideration in the light of judicial interpretation of them, are (A) the legislative, (B) executive, (C) judicial and (D) local government functions; (E) the civil and economic rights of citizens and other persons within the state's jurisdiction; and (F) the public service responsibilities of the state as provided by the constitution. These topics comprise the burden of the present part of this article.

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136. See text at notes 4-9 *supra*.

137. See notes 11, 15-17 *supra*.

138. See the comment by Bebout quoted in note 108 *supra*.

139. See note 130 *supra*.

A. *The Legislative Function*

Historically, the trend of state constitutionalism has been away from an originally dominant legislative branch to one whose powers, although perhaps larger in their practical effect, have been placed under a significant catalog of restraints.<sup>140</sup> The 1875 constitution reflected this movement toward legislative restriction after the Civil War: the widespread corruption in state and local government, the economic hardships which then came home as a result of the overly-optimistic indulgences by the states in the '40's and '50's in various grants to railroads, land promoters and banks, and the conviction, particularly in western America, that out-of-state industrialists and financiers threatened to seize control of provincial lawmaking bodies, accounted for the original restraints upon the legislatures in this era.<sup>141</sup> In Missouri, as in various other states, these restraints took the form, chiefly, of limitations upon the assembly's powers of disposition of tax funds,<sup>142</sup> a precisely defined procedure for enactment of bills,<sup>143</sup> and—after the turn of the century—the enhancing of popular control through the initiative and referendum.<sup>144</sup>

This tendency to a political pendulum-swing between extremes has served to emphasize the growing limitations upon the power of the legislature, although the courts continue to remind us that, absent restrictions in the state or national constitution, the legislature is recognized as the repository of the plenary power possessed by the people of the state.<sup>145</sup> The frequency with which the legislative article has been amended since the period of general restraint began—twenty times in the case of the 1875 instrument and three times within the dozen years since the adoption of the 1945 constitution—suggests an acute consciousness that the sense of the constitutional restraints is that they are to be considered broad rather than narrow.<sup>146</sup>

The limitation on state indebtedness is a case in point: The 1945 constitution preserved the essence of the provision in its 1875 predecessor

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140. See note 106 *supra*. See also *State ex rel. United Rys. v. Public Service Commission*, 270 Mo. 429, 192 S.W. 958 (1917).

141. See notes 86, 103 *supra*.

142. Mo. CONST. art. IV, §§ 43, 44 (1875).

143. Mo. CONST. art. IV, §§ 24-35 (1875).

144. Mo. CONST. art. IV, § 57 (1875).

145. See *State ex rel. Hussman Ref. & Supp. Co. v. St. Louis*, 319 Mo. 497, 5 S.W.2d 1080 (1928) (en banc); *Pitman v. Drabelle*, 267 Mo. 78, 183 S.W. 1055 (1916).

146. See *Kansas City v. Fishman*, 241 S.W.2d 377 (Mo. 1951); *Household Finance Corp. v. Shaffner*, 356 Mo. 808, 203 S.W.2d 734 (1947).

prohibiting the general assembly from contracting liability or issuing bonds therefor, except to refund existing security issues or to deal with "unforeseen emergency or casual deficiency in revenue,"<sup>147</sup> with the requirement that such emergency outlays be repaid within five years. Thus the 1945 instrument preserved the sense of the prior constitution, as interpreted by the court, that the section was to be considered a restriction on the power of the legislature to raise revenue through issuance of bonds or otherwise;<sup>148</sup> and when the rapid growth of the state and its needs for expansion and modernization after World War II made such a new revenue scheme necessary, a specific constitutional amendment was required (and duly adopted) to authorize it.<sup>149</sup>

If anything, the prohibitions laid upon the powers of the general assembly by the 1945 constitution are more specific than ever; section 39 of the legislative article collated many items of the 1875 instrument, and added (subd. 10) a prohibition of sales taxes upon "the use, purchase or acquisition" of property acquired out of funds of local government units. The detailed prohibition of local and special legislation in section 40 was retained with minor changes; and while modern court interpretation of this section tends in some respects to be more liberal in its distinction between "special" and "general" laws,<sup>150</sup> tribunals are still prompt in setting aside any statute on which they entertain any doubts as to the constitutional bar.<sup>151</sup>

The now general provisions in state constitutions, relating to the titling of legislative bills, their contents and procedure for passage, first appeared in the 1865 constitution and was made more stringent in 1875.<sup>152</sup> The same was true of the provision for a record vote on final passage. However, the 1875 clauses on procedure in perfecting measures, saving objections and presentment to the governor for signature or veto—which in their great detail represented the zenith of nineteenth-century restraint

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147. Mo. CONST. art. IV, § 44 (1875).

148. Mo. CONST. art. III, § 37 (1945); *State ex rel. Averill v. Smith*, 352 Mo. 23, 175 S.W.2d 831 (1943) (en banc).

149. See note 135 *supra*.

150. See discussion of these concepts in *Walters v. St. Louis*, 364 Mo. 56, 259 S.W.2d 377 (1953), *aff'd* 347 U.S. 231 (1954).

151. *State ex rel. Gentry v. Armstrong*, 315 Mo. 298, 286 S.W. 705 (1926) (en banc).

152. Mo. CONST. art. IV, § 28 (1875). See Mo. CONST. art. III, § 21 (1945). See also *State ex rel. McCaffery v. Mason*, 155 Mo. 486, 55 S.W. 636 (1899), *aff'd sub nom. Mason v. Missouri*, 179 U.S. 328 (1900).

upon the assembly—were considerably simplified in the new document of 1945.<sup>153</sup>

To describe the legislative function within these copious constitutional restrictions is to leave relatively little practical latitude to the assembly in those areas, however valid may yet be the insistence of the courts on the concept of a limitation, rather than a grant, of power.<sup>154</sup> Inasmuch as the areas in which the restraints apply are those in which most legislative authority is likely to be exercised, the present writer fails to see much substance in the averment that the legislature's power "except for limitations imposed by the state constitution, is unlimited and practically absolute."<sup>155</sup> The true substance, of course, derives from the fact that virtually all of the agencies of government can act only as the assembly appropriates funds and, in some instances, designates their proper use.<sup>156</sup> Beyond that, the practical truth of the proposition lies not in the context of constitutional law but in the political process by which the legislative branch may assume leadership—or dominance.

### B. *The Executive Function*

The developments in the executive branch have been in opposite directions in a sense—the functions of the governor have, like those of the legislature, been limited to an increasing degree by being more precisely defined (although, unlike the legislature, the governor's authority had not originally been so broadly conceived).<sup>157</sup> At the same time, with the growth of administrative processes within the executive department, the practical authority of the executive has considerably expanded. From the first amendment to the 1820 constitution, removing the *minimum* limits on the governor's compensation, to the 1851 amendment making several of the principal executive offices elective, the political authority of the office was progressively restricted;<sup>158</sup> but with the addition in the twentieth century of new service functions, and the transfer in the 1945

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153. See Mo. CONST. art. III, §§ 21-30 (1945).

154. Cf. STORY, COMMENTARIES ON THE CONSTITUTION § 338 (3d ed., Bennett 1858) ("the true view to be taken of our state constitutions is, that they are forms of government, ordained and established by the people in their original sovereign capacity. . . . But they are not treated as contracts . . .").

155. Household Finance Corp. v. Shaffner, 356 Mo. 808, 203 S.W.2d 734 (1947).

156. See MACDONALD, AMERICAN STATE GOVERNMENT AND ADMINISTRATION cc. 8, 9 (5th ed. 1955).

157. State ex rel. Robb v. Stone, 120 Mo. 428, 25 S.W. 376 (1894).

158. See notes 75, 88, 89 *supra*.

constitution of certain major extra-legislative functions to his department, the governor's powers have been substantially enlarged.

A prominent example of this enlargement is in the creation of the department of revenue by the 1945 constitution. Having already vested a budgetary authority in the chief executive in the constitution of 1875, the new provision conceives of the governor's responsibility as extending to the period between legislative appropriations, through his supervision of the general administration of the appropriated funds under the direction of the comptroller who is appointed by him. To a certain degree, also, the 1945 constitution gave the governor, through his budget recommendations, a check upon legislative appropriation powers by stipulating that no appropriation other than for emergencies may be passed by either house until it has acted on all appropriations recommended in the budget.<sup>159</sup>

The 1820 constitution provided (art. VII) that "internal improvement shall forever be encouraged by the government of this state," and exhorted the general assembly to enact suitable laws as expeditiously as possible "for ascertaining the most proper objects of improvement in relation both to roads and navigable waters." Except for a temporary reaction in the unsuccessful 1845 constitution,<sup>160</sup> this function has steadily developed with the growth in demand for public services and maintenance by the state. This in turn has meant a steady growth in administrative offices, and as these have come to be subsumed under the executive department the responsibilities of that branch have proportionately enlarged.

The twentieth-century development of a state highway system was the first important event. It was followed by the conservation commission amendment in 1936, while the 1945 constitution added the departments of agriculture and public health and welfare, and the same instrument in its definition of the executive branch added the provision: "Unless discontinued all present and future boards, bureaus, commissions and other agencies of the state exercising administrative or executive authority shall be assigned by the governor to the department to which their respective powers and duties are germane."<sup>161</sup> Obviously

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159. Mo. CONST. art. IV, § 25 (1945).

160. See text at notes 81-84 *supra*.

161. Mo. CONST. art. IV, § 12 (1945).

following the example of administrative reorganization in the federal government which had begun in the late 1930's,<sup>162</sup> this new definition of the executive function, together with the governor's power of appointment of department heads (sec. 17), has considerably increased the importance of this function in the system of separate but not always evenly balanced powers.<sup>163</sup>

### C. *The Judicial Function.*

The judicial branch in Missouri constitutional history has been confronted with two fundamental problems—one political, the other economic. The latter was essentially the product of the rapid and complex industrial growth of the late nineteenth and early twentieth centuries, and was met to a certain degree by the 1884 amendments creating an appellate court system and (in 1890) enlarging the personnel and activities of the supreme court.<sup>164</sup>

The former was not settled with any great degree of satisfaction until the adoption of the 1940 amendments creating the nonpartisan court plan.<sup>165</sup> From the days of the so-called "judges' party" in the 1820's, through the struggle with the "legislative party" in the 1840's<sup>166</sup> and the chronic factional issues involving the bench during the half-century after the Civil War, politics had been a problem of varying degrees of vexatiousness.<sup>167</sup> The incorporation of the 1940 amendments into the 1945 constitution without substantial alteration attests the effectiveness of this solution of the political problem.

The economics of judicial administration—which is to say, the need of an industrialized society for prompt and efficient disposition of court business—has demanded the attention of both state and federal authorities.<sup>168</sup> External evidence readily demonstrates the effort to satisfy this need with the passing generations—the steady increase in the number of judicial circuits; the appellate court system; the authorization of supreme

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162. See Federal Reorganization Plans of 1938-39, 53 STAT. 1423-30 and 54 STAT. 1231-34. See also COUNCIL OF STATE GOVERNMENTS, REORGANIZING STATE GOVERNMENT *passim* (1950).

163. See *State ex rel. Major v. Amick*, 247 Mo. 271, 152 S.W. 591 (1912) (en banc).

164. Mo. CONST. amends. to art. VI, 1884, 1890 (1875).

165. Mo. CONST. amend. to art. VI, 1940 (1875).

166. SWITZLER, HISTORY OF MISSOURI cc. 20-25 (1879).

167. See note 79 and text at note 89 *supra*.

168. Kaplan, *Judicial Administration and the Common Man*, 287 ANNALS *passim* (1953).

court commissioners; the expanding number of supreme court justices. The 1945 constitution undertook to implement further the expeditious handling of court work by broadening the powers of the higher courts<sup>169</sup> and providing the legislature with wider discretion in defining the jurisdiction of the lower courts, particularly the circuit courts.<sup>170</sup> In the case of the supreme court, the greater facility for transfer of cases from an appellate tribunal, the authority to make temporary transfers of judges to relieve congested dockets, and the power to establish rules of practice and procedure for all courts in the state, represented major advances in administration affecting the entire judicial system.<sup>171</sup> The abolition of justice of the peace courts with their preponderance of lay justices, and the substitution of magistrates' courts for small claims, was another step toward increased efficiency.

The judicial function per se appears to be little changed by the succession of the 1945 constitution.<sup>172</sup> The county court, which in most jurisdictions has long been recognized as an administrative rather than a judicial agency, was more definitely restrained by the 1945 instrument from any judicial function.<sup>173</sup> The right of judicial review has been continued with undiminished vigor,<sup>174</sup> and the decisions of the higher courts, as in the past, have been held binding upon the inferior tribunals.<sup>175</sup> The limited appellate jurisdiction of the supreme court, and the general appellate jurisdiction of the courts of appeals, has been emphasized.<sup>176</sup> The status of the trial courts, generally, has been defined as it has been in the past without any startling innovations.<sup>177</sup>

Taking together these three traditional divisions of governmental authority—legislative, executive and judicial—it may be said that constitutional theory in Missouri (and the same can very probably be shown

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169. Mo. CONST. art. V, §§ 5, 6, 9-12 (1945).

170. Mo. CONST. art. V, § 14 (1945).

171. Hyde, *Origin and Development of Missouri Appellate Procedure*, 2 Mo. LAW REV. 281 (1937).

172. See MOTT, *The Judiciary*, in MODEL STATE CONSTITUTION 35 (4th ed., National Municipal League 1956).

173. *In re Kinloch*, 362 Mo. 434, 242 S.W.2d 59 (1951).

174. *Preisler v. Doherty*, 365 Mo. 460, 284 S.W.2d 427 (1955).

175. *Builderback v. Builderback*, 241 Mo. App. 508, 244 S.W.2d 377 (Spr. Ct. App. 1951); see *Oehler v. Philpott*, 255 S.W.2d 90 (St. L. Ct. App. 1953).

176. *Haley v. Horwitz*, 286 S.W.2d 796 (Mo. 1956).

177. On "excess of jurisdiction", see *Pogue v. Swink*, 365 Mo. 503, 284 S.W.2d 868 (1955); on courts of original limited jurisdiction, see *State ex rel. St. Louis Boiler & Equip. Co. v. Gabbert*, 241 S.W.2d 79 (St. L. Ct. App. 1951).



to be true in most states) has made little change in the basic tenets evolved by the political philosophers of the Enlightenment. Of the three divisions, the judiciary has, in fact, changed the least in terms of its basic role; indeed, it may well be argued that, with the tendency of the several governmental functions to merge or overlap in the face of modern economic and social needs, the court's role as arbiter between the separate powers will become increasingly important.<sup>178</sup> In any event, it is in other areas of constitutional theory that significant new propositions have developed with the change in the social complex of the state.

#### D. *The Local Government Function*

One of the major constitutional developments which is distinguishable from eighteenth- and nineteenth-century theory is the crystallization of a concept of local government—analogue in its separable status, to a certain degree, with the status of the federal function vis-à-vis the states.<sup>179</sup> The assertion of an "inherent right to local self-government" had its brief tenure for a generation after the Jacksonian Age;<sup>180</sup> and it was followed by a period in which municipalities, for the most part, derived their rights to existence solely from the initiative of the legislature,<sup>181</sup> and counties were vaguely defined as "territorial subdivisions of the state, and . . . only quasi-corporations created by the legislature for public purposes."<sup>182</sup>

The innovation of constitutional home rule which Missouri brought into being in its 1875 constitution was essentially a reaction to the increasing intermeddling of the state assembly in local concerns which obtained generally throughout the country in the decade after the Civil War. Although the incorporation of towns by general statute, rather than by individual charter grants, had obtained in the state since 1855,<sup>183</sup> and although legislative, as distinguished from constitutional, home rule had developed in rudimentary form in other states,<sup>184</sup> the 1875 constitutional provision for a local charter for the most part exempt from legislative

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178. See note 130 *supra*.

179. Cf. text at notes 202-06 *infra*.

180. See McBain, *The Doctrine of an Inherent Right of Local Self-Government*, 16 COLUM. L. REV. 190, 299 (1916).

181. See Antieau, *Legislative Control of Municipal Corporations*, 24 TEMP. L.Q. 320 (1951); McQuillin, *Limitations of Legislative Control of Municipal Corporations*, 34 AM. L. REV. 505 (1900).

182. *Clark v. Adair County*, 79 Mo. 536 (1883).

183. c. 157, RSMo 1855.

184. McBAIN, *THE LAW AND THE PRACTICE OF MUNICIPAL HOME RULE* c. 1 (1916).

intervention was a distinctive and unique proposition in politico-legal theory of that time.<sup>185</sup> In effect, St. Louis was, for the following two decades, the only city large enough to qualify for the home rule privilege; in 1890, Kansas City also attained the necessary population requisite and adopted a home rule charter.<sup>186</sup> The 1945 constitution reduced the population qualification to ten thousand inhabitants, and extended the home rule principle to counties of more than eighty-five thousand population.<sup>187</sup> By further providing for consolidation of counties and alternative forms of government, the 1945 instrument opened the door to possible further simplification—and presumably improved efficiency—in the local government process.

The enthusiasm with which home rule was at one time regarded has been considerably tempered with experience.<sup>188</sup> The increase of home rule charters in a number of states has not been in proportion to the lowered eligibility standards which the state constitutions have been amended to provide.<sup>189</sup> In part the prospective large-scale autonomy which the home rule concept conjured up, at least in the minds of the lay public, was substantially reduced by the judicial test of consistency with the constitution and general laws of the state.<sup>190</sup> In part the zeal for freedom from state surveillance was dampened by the growth of local political machines.<sup>191</sup> To the degree that the movement was expected to produce spectacular results, then, it has been something less than sensational in all states where it has appeared. As an efficient framework for local government, however, with freedom on many local questions which would otherwise have to depend upon the much slower processes of legislative accommodation, it has generally justified itself.<sup>192</sup>

The enlarged function of local government was, to a certain

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185. See text at note 107 *supra*; McBAIN, *op. cit. supra* note 184, cc. 4-6; MCGOLDRICK, *THE LAW AND THE PRACTICE OF MUNICIPAL HOME RULE* c. 2 (1933).

186. MCGOLDRICK, *op. cit. supra* note 185, c. 2.

187. MO. CONST. art. VI, § 19 (1945); *id.* art. VI, § 18(a).

188. For the experience of a state (Nebraska) which has provided in its constitution since 1912 for home rule charters for all cities of more than 5,000 population, yet has had only the three largest cities in the state take advantage of this provision, see Winter, *Municipal Home Rule, A Progress Report*, 36 NEB. L. REV. 447 (1957).

189. Antieau, *The Powers of Municipal Corporations*, 16 MO. L. REV. 118 (1951).

190. See *Giers Imp. Corp. v. Investment Service*, 361 Mo. 504, 235 S.W.2d 355 (1951).

191. See *State ex rel. Spink v. Kemp*, 283 S.W.2d 502 (Mo. 1955) (en banc); *State ex rel. Reynolds v. Jost*, 265 Mo. 51, 175 S.W. 591 (1915).

192. See AMERICAN MUNICIPAL ASSOCIATION, *MODEL CONSTITUTIONAL PROVISIONS FOR MUNICIPAL HOME RULE* *passim* (1953).

degree, handicapped by the provisions of the 1875 constitution which laid upon it a higher degree of economic control. Aimed at curbing the excesses of deficit spending which characterized many counties and municipalities in the decade following the Civil War, the provisions of 1875 threatened to become a strait jacket for growing areas in the next half-century.<sup>193</sup> A liberalizing amendment was adopted in 1920, while the 1945 constitution sought further to accommodate the needs of local government by authorizing benefit districts, special assessments, revenue and refunding bonds, and the like.<sup>194</sup> That the local citizens themselves have felt that their economic needs have not been adequately provided for is illustrated by the amendment of 1948, extending the pension power for the benefit of local public employees and their survivors to cities of forty-thousand population.<sup>195</sup> It might almost be said that economic necessity, in which the constitutional definition of the local government function had its origin, has pronounced the final confirmation of the validity of the concept, whatever may be the fate of the home rule idea as a proposition of political science.<sup>196</sup>

#### E. *Civil and Economic Rights*

The declaration of rights in 1820 enumerated twenty-two specific items; the constitution of 1945 found this list grown to thirty-one. Although there have been historical reasons for most of the additions, and although only a few of the rights expressed in the 1875 instrument were significantly altered in that of 1945, it may not be too much to say that in this article the basic concepts of the state constitutional function as a whole may be most clearly discerned. This is because, by the very fact of their lengthy enumerations, the electorate in this article have rather definitely delineated what are considered to be the essential limitations to be laid upon state government in general.

The so-called federal bill of rights may be divided into five major categories, viz.: (1) freedom of expression in various media (amend. I), (2) military-civilian relationships (amends. II, III), (3) security of the person in respect of the administration of justice (amends. IV-VIII), and (4) specific reservations from the federal authority (amends. IX, X) to

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193. Cf. text at notes 27-35 *supra*.

194. Mo. CONST. art. VI, §§ 26(d), (e), 27, 28 (1945).

195. *Id.* § 25. On firemen's and policemen's pensions, involving constitutional changes from the 1890's to the 1920's, see notes 111, 112 *supra*.

196. See Axelrod, *Home Rule*, 30 NEB. L. REV. 224 (1951).

which must be added (5) the prohibitions of political discrimination because of race or sex (amends. XV, XIX).

The Missouri bill of rights, on the other hand, while it is possible to reduce it to a comparable small number of categories—and any such classification is essentially arbitrary—manifestly reflects a different jurisprudential orientation. Thus article I of the 1945 constitution covers: (1) the general definitions of political organization (secs. 1-4), which may be considered as the counterpart, or counterbalance, of category (4), above; (2) the freedom of expression via press, pulpit and assembly (secs. 5-9), which is spelled out in more detail in Missouri—mostly with reference to religious freedom—than in the first amendment to the federal instrument; (3) the rights of the individual in the administration of justice, which are given extended definition in fourteen sections (secs. 10-12, 14-22, 30, 31), many of them of a distinctly twentieth-century flavor (*e.g.*, secs. 18 and 31 discussed in the next paragraph); (4) military-civilian relationships (secs. 23, 24), which seem today merely to complement the relationships expressed in the second and third amendments to the federal instrument; (5) the statement of economic rights (secs. 13, 26-29), which is uniquely modern and is a peculiar contribution of state constitutionalism; and (6) the question of suffrage (sec. 25), which covers substantially the provisions of the fifteenth and nineteenth amendments. The subject of slavery, as such, is not even given separate notice in the 1945 instrument, so completely self-evident is its abolition now regarded.

Thus the Missouri bill of rights, particularly in categories (3) and (5), affords a kind of time table of constitutional change reflecting the varying needs of the several periods of the state's development. The addition of section 18 (b), providing for the taking of depositions in felony cases, is an expeditious provision which has generally been favored by experts in criminal procedure.<sup>197</sup> The granting of broader powers permitting the acquisition of excess property by condemnation (sec. 27) was intended to settle a persistent problem in the law of municipal corporations, although its effectiveness depends upon the nature of judicial interpretation.<sup>198</sup> The right of collective bargaining (sec. 29) incorporates a major tenet of twentieth-century labor law, again depending for its full

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197. See ALI CODE OF CRIMINAL PROCEDURE § 58 (1931).

198. See Steiner, *Excess Condemnation*, 3 Mo. L. REV. 1 (1938).

effectiveness upon adequate court interpretation,<sup>199</sup> while the prohibiting of any power of fine or imprisonment to administrative agencies (sec. 31) is a contemporary reaction to the growth of this new element in the governmental process.<sup>200</sup>

Beyond the provisions of article I, the concept of economic rights and duties—a complement to the inventory of individual prerogatives summarized in the bill of rights—is expressed in article XI; and in the waxing and waning of certain propositions within this article may again be discerned the shifting socio-economic demands of Missouri society over the years. Thus, some of the changes have self-evident explanations: *e.g.*, the dwindling of the constitutional references to banking, from the elaborate provisions of 1820 in the era of state-chartered banks built around the quasi-public Bank of Missouri as a means of creating local currency, to the single clause (sec. 13) of the 1945 constitution excluding the state from all phases of banking or bank chartering. Intermediate in the stage of historical development are the railroad clauses, which were ardently advocated in the rejected constitution of 1845, made a part of the 1865 instrument and extended in 1875. The present constitution has retained most of them; but the age of nefarious finance and lobbying by the great carriers is past. The occupation of this field, in large measure, by the federal government, the satisfied demands of communities once avid for transportation connections with the growth of highway communications, and the general change in industrial mores have all accounted for the gradual development of a state of stabilization in this area of public control.

The corporation provisions are the main elements of article XI which maintain a significant force in the present constitutional system. Both the 1865 and 1875 instruments, indeed, gave attention to the rapidly growing industrial structure which, essentially interstate in nature and by definition limited in liability, was already presenting complex problems of amenability to regulation. The constitution makers of the Post-Civil War era had already experienced two or three decades of unsatisfactory governmental practices with reference to such enterprises—blatant examples of special legislation, including the lending of public credit and

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199. See *Springfield v. Clouse*, 356 Mo. 1239, 206 S.W.2d 539 (1947) (en banc).

200. See FESLER, *INDEPENDENCE OF STATE REGULATORY AGENCIES* (1942). See also *Administrative Procedure Act* § 9, 60 STAT. 242 (1946), 5 U.S.C. § 1008 (1946).

the assignment of the power of eminent domain, without adequate safeguards for the public interest. The 1875 instrument prohibited all of these practices and reasserted as inalienable the right of the state to subject all private economic activity to the general police power. For the most part, the courts have been disposed to interpret this provision broadly in favor of the state, and the same has been true of the power of eminent domain.<sup>201</sup> The net effect has been to circumscribe, by a combination of constitutional provisions and judicial interpretation, the general area of private economic prerogative as a complement to the system of social rights set forth in article I.

#### F. *The Public Service Function*

Beyond all other subjects in the Missouri constitution, the provisions relating to the public services expected of the state uncover the details in a contemporary concept of an economic—as contrasted with the original political—orientation of state constitutionalism. Of the three major categories in this area—education, public works, and social security—the first has received fairly uniform recognition since the initial instrument of 1820. However, there are certain modern additions, such as the provision for adult education (sec. 1 (b) ), the reorganization of public school services under an administrative board (sec. 2 (b) ), the rule against discrimination in the employment of teachers (sec. 3 (c) ), and the state library program (sec. 10).

It is in the expanded administrative functions of the executive department, already referred to,<sup>202</sup> that the growth in the concept of public services by the state is best seen. The 1945 creation of the state department of agriculture, with the supplementary authority to encourage forestry (secs. 35, 36), is a logical consequence of the adoption of the 1936 conservation amendment.<sup>203</sup> The highway department program, already well developed by successive amendments in 1920 and 1928, remains a dominant element in the executive structure; while the 1945 constitution added the department of public health and welfare, with its special provision for institutionalization of juvenile offenders and—what may be its most important social implementation—cooperation with other state and

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201. *Kansas City Power & Light Co. v. Midland Realty Co.*, 338 Mo. 1141, 93 S.W.2d 954 (1936), *aff'd*, 300 U.S. 109 (1937).

202. See text at notes 158-63 *supra*.

203. See notes 126, 130 *supra*.

federal departments in all matters within the department's own jurisdiction (secs. 37-39). Supplementary to the services performed by these administrative agencies is the pension article (art. III, sec. 36 (b) ), whose considerable expansion by the sequence of amendments throughout the twentieth century is eloquent testimony to the public demand for this particular state service.<sup>204</sup>

The distinctive elements of state constitutional theory—at least as exemplified in the organic law of this state—are thus to be found, not in the definition of state governmental powers which largely emulate the model of the federal instrument, but in the special recognition of local autonomy, the changing expression of individual and corporate immunities and liabilities, and the widening definition of the administrative or social services to be provided to the general public. True enough, the federal authority in this latter category has also progressively expanded in the last half-century, and particularly in the last quarter-century. It has done so, moreover, essentially through a shift in judicial attitude which in turn has revealed within the unchanged provisions of the 1787 instrument (with the substantial addition of the fourteenth amendment) a considerable authority which the state governments, presumably unlimited except as they are expressly restrained, have been able to assert only by constitutional revision.<sup>205</sup> In any case, the political economy reflected in the structure of the Missouri constitution of 1945 is in striking contrast to the Cooley-Jameson idea of state constitutionalism of past generations.<sup>206</sup>

#### IV. THE MISSOURI CONSTITUTION IN PRACTICE

##### A. *General Rules of Construction*

In the course of four adopted constitutions and more than eighty amendments (most of them to the 1875 document), the thread of continuity and consistency in judicial interpretation of Missouri constitutional law has become tangled in the extreme. As a general proposition, however, by way of striving for continuity, the courts have suggested that where a given proposition, either constitutional or statutory, has been reenacted in the same language subsequent to a judicial construction,

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204. MACDONALD, *op. cit. supra* note 156, c. 1.

205. *Ibid.*

206. See notes 18-26 *supra*.

there is a presumption that the proposition has both a legislative and a judicial authority behind it.<sup>207</sup> And succeeding constitutional conventions are presumed to know of previous judicial constructions of any provisions being reenacted.<sup>208</sup> But a contrary intent expressed in a subsequent constitutional provision operates not only to repeal all statutes which it may specifically enumerate, but any others whose construction is inconsistent with the full operation of the new clause.<sup>209</sup>

Where the intent of the framers can be learned, a constitutional clause should, if possible, be given such reasonable interpretation as will express that intent.<sup>210</sup> Courts will avoid, if possible, any interpretation which renders meaningless any clause in the instrument: thus the pronoun "his" has been defined as a generic term rather than holding it to mean that only males were eligible to hold a certain office.<sup>211</sup> For "we are controlled by what the amendment says, so far as its recitals are consistent and intelligible, and it is our duty to give effect to every part if possible," observed the court in defining the extent and limitations of the powers of the state highway commission after the adoption of the 1928 highway amendment.<sup>212</sup>

If it is not possible to construe the passage so as to give effect to all of it, the court will endeavor to give effect to as much as will admit of enforcement.<sup>213</sup> The plain meaning of the language is to be taken in preference to any common law maxims of construction.<sup>214</sup> How much the courts will rely on legislative history and extrinsic contemporary evidence is a variable matter, but the trend in this century has been toward giving these data greater weight in the final determination of the ques-

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207. *Ludlow & Saylor Wire Co. v. Woolbrinck*, 275 Mo. 339, 205 S.W. 196, 199 (1918) (en banc); *Sanders v. St. Louis & New Orleans Anchor Line*, 97 Mo. 26, 10 S.W. 595, 597 (1889).

208. *State v. St. Louis*, 216 Mo. 47, 115 S.W. 534, 547 (1909).

209. *Marsh v. Bartlett*, 343 Mo. 526, 121 S.W.2d 737, 745 (1938) (en banc) (relating to the effects of the adoption, by initiative, of the 1936 conservation commission amendment, with respect to prior statutes on general matters of wildlife administration). See also *State ex rel. Kreiter v. Straat*, 41 Mo. 58 (1867).

210. *Woodson v. Murdock*, 89 U.S. (22 Wall.) 351 (1874); cf. *State v. McBride*, 4 Mo. 303 (1836).

211. *State ex rel. Crow v. Hostetter*, 137 Mo. 636, 39 S.W. 270 (1897).

212. *State ex rel. Russell v. Highway Commission*, 328 Mo. 942, 42 S.W.2d 196, 203 (en banc).

213. *Cummings v. Spaunhorst*, 5 Mo. App. 21, 26 (St. L. Ct. App. 1877). See, generally, *State ex rel. City of Carthage v. Hackmann*, 287 Mo. 184, 229 S.W. 1078 (1921) (en banc).

214. *McGrew v. Missouri Pac. Ry.*, 230 Mo. 496, 132 S.W. 1076 (1910) (en banc).



tions.<sup>215</sup> Generally speaking, a legislative construction of the constitution is given considerable weight, as where the court pointed to a consistent practice of the general assembly, through three constitutions, to act on the assumption that the instrument gave it power to divide counties into separate representative districts—the constitution on this point being ambiguous.<sup>216</sup> The practical interpretation of doubtful clauses by executive officers charged with their administration “is usually adopted by the courts when the meaning of the constitution or statute is ambiguous”; but where it is not, “the act of citizens or officers in violating its provisions for any length of time, however long, cannot work its repeal.”<sup>217</sup>

The right of judicial review was pronounced very early in the state's history,<sup>218</sup> and reaffirmed with emphasis in an advisory opinion to the state legislature after the extraordinary constitutional events of the Civil War period.<sup>219</sup> In all cases it is held by the courts to be the constitution, as interpreted by the judiciary, which determines the validity of any governmental act—not the language of the act itself, although this may seek to justify or identify the authority asserted by the act. Thus of a 1917 appropriations act, the court observed that the “mere language” of such an act “is not ordinarily decisive and conclusive upon the courts as to the power of the Legislature to appropriate the money to the state. To so hold would be to put the Legislature above the Constitution whenever it deals in an appropriation act with the moneys of the state.”<sup>220</sup>

Federal courts generally seek to avoid construing either state constitutions or state statutes in relation to state constitutions.<sup>221</sup> The fourteenth amendment to the Federal Constitution is not to be so broadly construed as to empower Congress to devise codes of municipal law for the protection of private rights secured to citizens of the United States; “until some State law has been passed, or some State action through its

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215. *State ex rel. McGaughey v. Grayston*, 349 Mo. 700, 163 S.W.2d 335 (1942) (en banc); *State ex rel. O'Connor v. Riedel*, 329 Mo. 616, 46 S.W.2d 131 (1932) (en banc); *State ex rel. Heimberger v. University of Missouri*, 268 Mo. 598, 188 S.W. 128 (1916) (en banc); *Hamilton v. St. Louis County Court*, 15 Mo. 3 (1851); see *Levin v. United States*, 128 F. 826 (8th Cir. 1904).

216. *State ex rel. Major v. Paterson*, 229 Mo. 373, 129 S.W. 888 (1910) (en banc).

217. *Folk v. St. Louis*, 250 Mo. 116, 157 S.W. 71, 77 (1913).

218. *State v. Stein*, 2 Mo. 67 (1835); *Bailey v. Gentry*, 1 Mo. 116 (1822).

219. *Opinion of the Judges*, 37 Mo. 135 (1865).

220. *State ex rel. Bradshaw v. Hackmann*, 276 Mo. 600, 208 S.W. 445, 448 (1919) (en banc).

221. *Garcia v. Frausto*, 97 F. Supp. 583 (E.D. Mo. 1951); *Dixwell v. Jones*, 7 Fed. Cas. 767, No. 3937 (C.C.E.D. Mo. 1873).

officers or agents has been taken, adverse to the rights of citizens sought to be protected by the Fourteenth Amendment, no legislation of the United States . . . can be called into activity; for the prohibitions of the amendment are against State laws and acts done under State authority."<sup>222</sup> Where state constitutional questions must be reviewed by the federal courts, every presumption in favor of the validity of the clause in question will be indulged.<sup>223</sup>

The judges of the supreme court must determine what are questions of constitutional law; these must be in their own nature judicial questions, the final determination of which belongs to the judicial department, the Missouri supreme court has said in an effort to lay down the lines of its own jurisdiction and at the same time the boundary separating its domain from those of the other branches of government.<sup>224</sup> Thus the courts will usually avoid political questions, whether of state or federal nature.<sup>225</sup> This includes, in general, questions as to the propriety or the effect of legislative uses of the taxing power,<sup>226</sup> insurance rate regulation,<sup>227</sup> public utility regulation,<sup>228</sup> and highway construction authority.<sup>229</sup> Nor will courts undertake to supply statutory omissions: "a mere collection of words cannot constitute a law; otherwise the dictionary can be transformed into a statute by the proper legislative formula. An act of the legislature, to be enforceable as a law, must prescribe a rule of action, and such rule must be intelligibly expressed."<sup>230</sup> The motives of the legislature are not generally a proper subject for judicial notice,<sup>231</sup> and ques-

222. Civil Rights Cases, 109 U.S. 3 (1883).

223. *Walters v. St. Louis*, 347 U.S. 231 (1953). The case affirmed a holding of the Missouri supreme court that there was constitutional sanction for a statute delegating to St. Louis authority to levy an income tax. However, it is analogous to numerous general pronouncements of this court as to resolving doubts in favor of constitutionality where a question of state power is concerned. *Nebbia v. New York*, 291 U.S. 502 (1934); *Aetna Ins. Co. v. Hyde*, 275 U.S. 440 (1928); *Whitney v. California*, 274 U.S. 357 (1927); *Missouri Pac. Ry. v. Boone*, 270 U.S. 466 (1926).

224. *Clark v. Austin*, 340 Mo. 467, 101 S.W.2d 977, 980-81 (1937) (en banc).

225. See *Missouri Pac. Ry. v. Humes*, 115 U.S. 512 (1885); *United States v. Carroll*, 30 F. Supp. 3 (W.D. Mo. 1940).

226. *Campbell Bak. Co. v. Harrisonville*, 50 F.2d 670 (8th Cir. 1931); *State ex rel. Buder v. Hackmann*, 305 Mo. 342, 265 S.W. 532 (1924) (en banc); *Prior v. Buehler & Cooney Const. Co.*, 170 Mo. 439, 71 S.W. 205 (1902) (en banc).

227. *State ex rel. Waterworth v. Harty*, 278 Mo. 685, 213 S.W. 443 (1919) (en banc).

228. *Thompson v. B. & O. Ry.*, 180 F.2d 416 (8th Cir. 1950).

229. *State ex rel. Caruthers v. Little River Drainage Dist.*, 271 Mo. 429, 196 S.W. 1115 (1917) (en banc).

230. *State ex rel. Crow v. West Side St. Ry.*, 146 Mo. 155, 47 S.W. 959, 961 (1898) (en banc).

231. *State ex rel. Blackeman v. Hays*, 49 Mo. 604 (1872); *Fenwick v. Gill*, 38 Mo. 510 (1866).

tions as to the reasonableness or wisdom of a given enactment are likewise eschewed.<sup>232</sup>

Conversely, the courts have asserted their own right to be free from legislative or executive encroachment. Thus, in the absence of a constitutional provision authorizing it, the general assembly may not vest judicial power in any non-judicial agency.<sup>233</sup> Legislative divorces were held to be an invalid attempt to usurp a judicial function, even prior to the amendment of 1852 specifically removing this power from the general assembly.<sup>234</sup> Acts which sought to empower certain courts (*e.g.*, probate) to discharge a judicial function (*e.g.*, issuing injunctions) not granted to them by the constitution have been held invalid: "It is a general rule that the Legislature can neither add to nor subtract from the constitutional powers of a court."<sup>235</sup> Similarly, encroachments upon the judiciary by the executive branch have been resisted: *e.g.*, the effort of ministerial officers to pronounce an act of the legislature invalid and proceed to ignore it—"Obedience to the plain mandate of a statute by a ministerial officer is in no sense a judicial determination or adjudication on his part that the statute is constitutional; he would have no right to disobey it on the ground that, in his opinion, it is unconstitutional. To what confusion would it lead if every ministerial officer in the state was endowed with authority, or should assume authority, to pronounce, in advance of any judicial decision, that an act of the General Assembly was unconstitutional . . ."<sup>236</sup>

In the nature of the case—or at least by political tradition—the judiciary has been the agency to determine the applicability of the constitutional provisions relating to personal and vested rights, and the general compatibility of statutory provisions with the basic principles of due process and equal protection of law.<sup>237</sup> These determinations, in turn, are manifestly colored by the climate of judicial opinion at any

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232. *Crooks v. Harrelson*, 282 U.S. 55 (1930).

233. See, generally, *State ex rel. Pittman v. Adams*, 44 Mo. 570 (1869); *Butler v. Chariton County Court*, 13 Mo. 112 (1850). "Both the Legislature and this court were established by the Constitution and the one may not infringe upon the powers of the other." *Clark v. Reardon*, 231 Mo. App. 666, 671, 104 S.W.2d 407, 410 (K.C. Ct. App. 1937).

234. *Bryson v. Campbell*, 12 Mo. 498 (1849); *Gentry v. Fry*, 4 Mo. 120 (1835).

235. See, generally, *Smith v. United States*, 30 U.S. (5 Pet.) 292 (1831); *State ex rel. York v. Locker*, 266 Mo. 384, 181 S.W. 1001, 1002 (1915).

236. *State ex rel. Mo. & N.A.R.R. v. Johnston*, 234 Mo. 338, 351, 137 S.W. 595, 598 (1911) (en banc).

237. *Clark v. Austin*, 340 Mo. 467, 101 S.W.2d 977 (1937) (en banc).

given historical stage—so that rights which may be narrowly defined in one period are likely to be given progressively more liberal definitions as time goes by: In 1910 a statute setting a six-day work week in certain businesses was held to be an arbitrary infringement upon the freedom of contract; but by 1949 the courts preferred to emphasize the idea that the right to engage in any lawful business “is subject to the police power, and must be exercised in accordance with the . . . statutes passed in the exercise of that power for the protection of the public.”<sup>238</sup> No one, the court has observed, has a vested right in any statute (or presumably in any constitutional guaranty which may be changed by proper procedures) entitling him to insist that it shall remain unchanged for his benefit.<sup>239</sup>

The courts have been inclined to interpret the constitutional provision against special legislation strictly,<sup>240</sup> although statutes are usually held to be “general” rather than “special” where municipal corporations are concerned.<sup>241</sup> No state law, of course, may infringe upon privileges or immunities of citizens of the United States.<sup>242</sup> But such privileges do not preclude state regulation or prohibition of activities contrary to the public interest;<sup>243</sup> and the power to regulate foreign corporations doing business in Missouri is not a denial of privileges and immunities of citizens of other states.<sup>244</sup> “A state may establish one system of law in one portion of its territory, and another system in another, provided always that it neither encroaches upon the proper jurisdiction of the United States, nor abridges the privileges and immunities of citizens of the United States, nor deprives any person of his rights without due process of law, nor denies to any person within its jurisdiction the equal protection of the laws of the same districts,” declared the Supreme Court of the United

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238. *State ex rel. Taylor v. Currency Services*, 358 Mo. 983, 218 S.W.2d 600, 605 (1949) (en banc) (setting aside a statute which failed to establish a reasonable basis for exercise of the police power).

239. *Thompson v. Siratt*, 95 F.2d 214 (8th Cir. 1938).

240. *State ex rel. Gentry v. Armstrong*, 315 Mo. 298, 286 S.W. 705 (1926) (en banc); *State v. Thomas*, 138 Mo. 95, 39 S.W. 481 (1897).

241. *Jones v. Walker*, 357 Mo. 476, 209 S.W.2d 147 (1948); *Ballentine v. Nester*, 350 Mo. 58, 164 S.W.2d 378 (1942) (en banc); cf. *State ex rel. Maggard v. Pond*, 93 Mo. 606, 6 S.W. 469 (1887).

242. *Prudential Ins. Co. v. Cheek*, 259 U.S. 530 (1922); *Gast Realty & Inv. Co. v. Schneider Granite Co.*, 240 U.S. 55 (1916), *reversing* 259 Mo. 153, 168 S.W. 687 (1914) (en banc).

243. *State v. Tower*, 185 Mo. 79, 84 S.W. 10 (1904).

244. *Campbell Bak. Co. v. Harrisonville*, 50 F.2d 670 (8th Cir. 1931).

States in 1879.<sup>245</sup> Thus the state may constitutionally classify, and distinguish between, municipalities, corporations, and individuals.<sup>246</sup>

Equal protection of the laws, observed the Missouri supreme court in 1910, requires that the same means and methods be applied impartially to all constituents of each class, so that the laws shall operate equally and uniformly within that class under all circumstances and upon all persons.<sup>247</sup> If the legislation does apply thus uniformly, it is not open to the objection that other classes are not subjected to these same provisions.<sup>248</sup> Any classification which is not arbitrary and unreasonable is within the prerogative of the lawmaking branch of the government,<sup>249</sup> and a statute does not deny equal protection merely because certain persons may derive special benefits under it.<sup>250</sup> Thus the state may make reasonable classifications for tax purposes,<sup>251</sup> set different dates for the valuation of property for different taxes,<sup>252</sup> devise distinct rules for licensing in various activities,<sup>253</sup> regulate the use of public or private property,<sup>254</sup> and define the terms for trade activities and industrial relations.<sup>255</sup>

These representative propositions of constitutional interpretation indicate no radical innovation in jurisprudential thought. They follow generally the lines of development of court pronouncement and treatise on the subject.<sup>256</sup> If more might have been expected, by way of reaction to the newer ingredients of state constitutionalism in the past seventy years,<sup>257</sup> the answer may be either that these propositions have merely written into the document a generally recognized public policy interpreted in fact by commonly recognized economic and social convictions rather

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245. *Missouri v. Lewis*, 101 U.S. 22 (1879).

246. *State v. Tower*, *supra* note 243; *State ex rel. Gottlieb v. Metropolitan St. Ry.*, 161 Mo. 188, 61 S.W. 603 (1901) (en banc).

247. *State v. Brodnax*, 228 Mo. 25, 128 S.W. 177 (1910) (en banc), *aff'd*, 219 U.S. 285 (1911).

248. *Haeussler Inv. Co. v. Bates*, 306 Mo. 392, 267 S.W. 632 (1924) (en banc).

249. *Finch & Co. v. McKittrick*, 23 F. Supp. 244 (W.D. Mo. 1938), *aff'd*, 305 U.S. 395 (1939).

250. *Stone v. City of Jefferson*, 317 Mo. 1, 293 S.W. 780 (1927) (en banc).

251. *Southwestern Bell Tel. Co. v. Middlekamp*, 1 F.2d 563 (W.D. Mo. 1921).

252. *Stouffer v. Crawford*, 248 S.W. 581 (Mo. 1923) (en banc).

253. *Sedalia v. Standard Oil Co. of Ind.*, 66 F.2d 757 (8th Cir.), *cert. denied*, 290 U.S. 706 (1933).

254. *St. Louis v. Schefe*, 167 Mo. 666, 67 S.W. 1100 (1902) (en banc), *aff'd*, 194 U.S. 373 (1904).

255. *International Harv. Co. v. Missouri*, 234 U.S. 199 (1914), *affirming* 237 Mo. 369, 141 S.W. 672 (1911) (en banc).

256. See SWISHER, *AMERICAN CONSTITUTIONAL DEVELOPMENT* cc. 33, 36, 37 (2d ed. 1954).

257. See pt. III, §§D-F, of this Article.

than requiring court opinion—or that the courts have preferred to settle subsequent issues on more traditional rules of interpretation.

### B. *Summary*

If we accept Holmes' familiar aphorism that the growth of the law has been not in terms of logic but of experience, the theory of constitutionalism in Missouri may be said to be a product of the demands of historical evolution. In this, judging from the general development of state constitutional concepts alluded to in the first part of this study, Missouri has not been unlike her sister commonwealths. As compared with the growth of federal constitutionalism, an analysis of Missouri jurisprudence on this subject reveals less of a distinction in practice than there has been in theory—in defining the national instrument as creating a government of restricted or granted powers and the state instruments as describing a government of general powers subject only to a degree of limitation. Yet in both cases, and whether by broadened judicial interpretation of federal authority or constitutional confirmation of state authority, the major characteristic of modern constitutionalism is the enlarging concept of the public service functions required of the government.

Historically, the six constitutional conventions and the four adopted instruments in Missouri in the space of about a century and a quarter have reflected the steady growth of this concept. At least from the attempted constitution of 1845, the most important changes in the organic law have been in terms of increasing governmental functions in the area of economic and social interests of the general public. This is in turn reflected in the fundamental propositions (or theories) by which the various functions of government are expressed: From an original orientation in terms of the political balance of powers and their adjectival definition, the state had progressed, already by 1875, to a point where socio-economic issues—essentially matters of substantive law—were assuming dominance. The story of the Missouri constitution since that time has been an accelerating movement in this new direction.

With the growth of the local government function the most significant change, from the standpoint of political science, has been away from the position of the early nineteenth century—that the states with their reservoir of sovereignty were in juxtaposition with the restricted authority of the federal government—to a situation where, by the early part of the twentieth century, the states appeared to be somewhere between two

distinct governmental entities—each sometimes referred to as sovereign—at the national and at the local level.<sup>258</sup> If the experience of the second quarter of this century has not borne out the highest predictions for the local government movement of the preceding generation, the fact is that both local and state governments have found of necessity that an increasing part of the field, particularly in socio-economic matters, has been occupied by the United States.<sup>259</sup>

In any event, the constitutions of Missouri have proved themselves reasonably responsive to the demands of a changing society, and the replacement of the constitution of 1875 by that of 1945 was essentially in the nature of a restatement of what, by copious amendment, had been added to the earlier instrument to keep it thus responsive.

## APPENDIX

TABLE II

CONDENSED CONTENT ANALYSIS OF MISSOURI CONSTITUTIONS\*

| Subject-matter         | 1820        | 1865      | 1875                                 | 1945           |
|------------------------|-------------|-----------|--------------------------------------|----------------|
| 1. General provisions  | preamble    | preamble  | preamble                             | preamble       |
| State boundaries       | I           |           | I                                    |                |
| Seat of government     | XI          | XI, 10    | IV, 56                               | III, 39 (8)    |
| 2. Definition of govt. |             |           |                                      |                |
| Distrib. of powers     | II          | III       | III                                  | II             |
| Legislative            | III         | IV        | IV, 1-42                             | III, 1-35      |
| Executive              | IV          | V         | V                                    | IV, 1-21       |
| Administrative         |             |           | V, 13<br>X, 19<br>Am. '26<br>Am. '38 | IV, 22-46      |
| Judiciary              | V           | VI        | VI                                   | V              |
| App. Courts            |             |           | Am. '84                              | V, 7           |
| Non-part judges        |             |           | Am. '40                              | V, 29          |
| 3. Regulation of govt. |             |           |                                      |                |
| Legisl. limitations    |             |           | IV, 43-55                            | III, 36-48     |
| Init., referend.       |             |           | Am. '08                              | III, 49-53     |
| Impeachment            | III, 29, 30 | VII, 1, 2 | VII, 1, 2                            | VII, 1-4       |
| Pub. off. generally    |             | XI, 7, 8  | XIV, 4-9<br>Am. '21<br>Am. '24       | VII, 5-13      |
| Revenue, taxation      |             |           | X                                    | IV, 22-28<br>X |

258. See CLARK, *THE RISE OF A NEW FEDERALISM passim* (1938). It is to be recognized, of course, that the new area of local sovereignty has not attained the stature of the national sovereignty.

259. CLARK, *op. cit. supra* note 258, *passim*.

|                        |      |      |  |                     |
|------------------------|------|------|--|---------------------|
| 4. Local government    |      |      |  |                     |
| General                |      |      | IX                                       | VI, 1-17            |
| Special charters       |      |      |  | VI, 18-23,<br>30-33 |
| Local finances         |      |      |  | VI, 24-29           |
| 5. Civil, econ. rights |      |      |  |                     |
| Bill of rights         | XIII | I    | II                                       | I                   |
| Suffrage, elections    |      | II   | VIII                                     | VIII                |
| Corp., banks, RR.      | VIII | VIII | XII                                      | XI                  |
| 6. Services            |      |      |  |                     |
| Militia                | IX   | X    | XIII                                     | III, 46             |
| Education              | VI   | IX   | XI                                       | IX                  |
| Internal impr.         | VII  | VII  | VII                                      | IV, 29-46           |
| Pensions               |      |      | Am. '92<br>'16, '20,<br>'26, '32,<br>'38 | III, 38 (a)         |
| 7. Amending process    | XII  | XII  | XV                                       | XII                 |

Source: Text of constitutions of 1820, 1865, 1875, 1945.

\*This table seeks to classify various constitutional provisions according to subject-matter, for the primary purpose of illustrating the progressive enlargement of constitutional concepts throughout the state's history. The classifications are to a certain degree arbitrary, and numerous specific details have been omitted in the interest of clarity as to the primary objective; i.e., this is not intended to be a comprehensive analysis of the content of the four constitutions.