A Constitution Adapted to the Coming State.

Suggestions by Hon. W. Lair Hill.

Main Features Considered in the Light of Modern Experience.

Outline and Comment Together.

The Effect of Constitutions on the Development of Civil and Social Economics and Institutions.

Introductory.

A short time previous to the great conflagration which lately swept over the city of my residence, the editor of The Oregonian asked me to prepare, for publication in that paper, an article embodying my views of a constitution adapted to the conditions and prospects of Washington. Notwithstanding some misgivings as to whether, in the midst of professional engagements somewhat exacting, I should be able to devote to the subject time and attention commensurate with its importance, I was gratified that such an opportunity presented itself. Natural interest in the state which in all probability will be my home so long as I shall want a home, was reinforced by the result of no little study of state constitutions and their effect upon the development of civil and social economics and institutions; and while I could not expect to present anything new or valuable which might not be better presented by others, still I could be heard, and perchance might contribute a stone, however small, to help lay broad and deep
the foundation of a commonwealth for which nature has destined a splendid career.

Just when I had begun the preparation of the proposed article, came the great fire, by which the greater part of the business portion of Seattle was destroyed. Then all business was suspended, except that of relieving distress and devising ways and means for the restoration of the city; methodical work of every kind was at an end, and consecutive and persistent thought upon any subject was out of the question for weeks. So, at the last moment, and in the confusion of an hour when almost an entire city is transacting business in tents, and nothing appears stable but instability, I resume the task which I can not consent to relinquish, though sensible that it may be but ill-performed.

The people of Washington territory have chosen delegates who are to meet on the anniversary of the Nation's birth to frame a constitution, which is to be the charter of a new state in the republic. These delegates, it may be assumed — and I think it is a fact — are well equipped for the grave and momentous responsibility devolved upon them; so well equipped that they will gladly listen to any suggestions from any source, touching the needs and wishes of the people who have called them to high service in the post of honor.

W. Lair Hill.
A Grave Responsibility.

The Making of a State an Event of National Importance.

The creation of a new state, and its entrance into the Federal Union upon a footing of equality with all other states, is an event of no small significance. It is an important fact in history - important to the people, thus taking upon themselves new relations, to the people of the whole republic, to the people of the world. Care and guardianship by the parent government, over the people of the new state, are then, for all except national purposes, relinquished, and they become invested with absolute and conclusive power over their own destinies. They also become vested with large powers over the destinies of the nation. Their senators have the same political power as those of old states, to whom long experience has, presumptively at least, imparted wisdom. Their members of Congress are no longer mere acknowledged solicitors of benefits, without the right to vote upon their own just claims, but become at once constituent members of the house of representatives with the power to participate, at every stage, in the determination not only of questions directly affecting their immediate constituency, but, equally with every other member, of all questions affecting the entire nation or any of its members. By so many members as represent the new state in both houses of the national legislature, by so much relatively is the power of all the other members of the federal community reduced. The influence of the people emerging from the condition of territorial pupilage to that of equality with all the other members in the national union, at once expands into a power greater, many times over, for good or evil, to the whole
country. They take into their hands, not only their own future but, in no small degree, the future of the republic and of the broad, free, humane civilization which is its inspiration and its aspiration.

Throughout the world the leaven of the American conception of individual liberty restrained by personal allegiance to law and civil order, is working perceptible change in the sentiments of all classes. With various emotions will the addition of four new stars to the galaxy of American free commonwealths, be viewed from abroad. Those who have waited impatiently for the great experiment of self-government to go up in the smoke and flame of a tremendous social explosion, or collapse by the pressure of centralizing forces, look on with disappointment and chagrin; those who have studied the panorama of liberal government with mingled admiration and doubt, behold the scene with rising admiration and strengthened hope; those who have cherished an abiding faith in the ultimate triumph of the principles of freedom in the government of man, are animated with the new devotion that springs out larger and more triumphant faith. There are no disinterested spectators of the drama when a new state is being launched.

The work of the delegate conventions which will begin their sessions today, is the first step toward statehood. Its approval or rejection by the people ought to depend on whether the work of the convention is done wisely and well.
Scope of Constitutions.

To what extent should power be crystalized in them.

In the enactment of their constitution, the people of the incoming commonwealth exercise their power directly, and determine, without the intervention of representatives, what they will have and what they will reject in their future government; what shall be the powers of their rulers; within what limits their representatives in legislation are to be restricted; what restrictions shall be placed upon the exercise of power by all their magistrates. In short, they determine in the adoption of their constitution, how far natural liberty shall be subjected to the common necessities of law and order, and what restrictions shall be placed upon the selection of methods, by legislative, executive and judicial authority, for the enforcement and protection of private rights and the promotion of public good. This is the only occasion in which the people in their individual capacity possess any power. From the time of the adoption of their constitution, the exercise of power is surrendered to those designated in such constitution to be rulers. But the laws they make in the form of constitutional provisions are the decrees of the royal sovereign - the edicts that are to bind as well the law makers of the future as themselves. They are the laws that no legislature can repeal, nor any power disregard. They are the rules that rulers must obey and can not amend.

The value of a written constitution lies in its permanency and in its supremacy over all other forms of law; but in these same elements lurk also the greatest evils if the constitution be not wisely made and wisely interpreted. It will not be the task of any
body of men in the future to consider a matter of greater moment to
the people of Washington than that which the convention that meets
today at Olympia has in hand. It is but commonplace to remark that
the work of this body of men, if approved by the people, will bind
not only individual citizens, but the people's representatives in
their legislative body; their executive in all his functions, and
their courts of justice; but, though commonplace, the fact can not
be kept too prominently before the eyes of the members of the con-
vention. A wholesome constitution insures a prosperous and happy state.
An unwise, ill-considered constitution may entail calamities not only
for the day but for all the future — calamities perpetual and
irremediable.

To preserve and secure to every individual the largest amount of
liberty compatible with the good order of society and the progress
of the whole community along legitimate paths to the highest
realization of an enlightened and civilized community, is the central
thought of every well-considered constitution, and the whole object
of constitutional government. That constitution which most nearly
attains this object forms a basis of the ideal state. All government
is a system of compromises, and all true statesmanship is in the wise
differentiating between personal liberty and that degree of personal
restraint which is necessary to the orderly conduct of public affairs,
the preservation of peace and the promotion of those common interests
in which a whole society, as contradistinguished from the individual
member, is concerned. It is not necessary to assume that in all this
there is anything new or original. The history of the American
government, national and state, is a history of a struggle between
individual or natural rights and the power of the commonwealth to
place limitation thereon. If social conditions were permanent, a constitution suitable for one age would be suitable for all succeeding ages, and it would be only necessary for the convention to adopt any one of the earlier constitutions, which were found by experience to work satisfactorily. But social conditions are not permanent. Old constitutions have proved inadequate to new conditions in the states where they were first adopted, and in later ones attempts have been made to solve new problems. A glance at early constitutions brings one to realize how wide the difference between the ideas of free government which actuated the great minds in which our republic took shape originally, and those by which it is sustained today.

In, or connected with, all state constitutions are certain general declarations of what are supposed to be the unalienable rights of individuals; and these declarations are generally accompanied by the further declarations in some form that these rights shall never be invaded. In the oldest constitutions these declarations, or bills of rights, were sometimes put forth in a separate instrument, and the constitutions proper were merely provisions for the organization of powers to administer the laws in accordance therewith. In general form they were not very dissimilar to the constitutions and by-laws of the various voluntary societies of the present day. Later on the bill of rights came to be embodied in, and considered as a part of, the constitution proper. In this form the bill of rights appeared in many of the earlier constitutions, the organization of a government and the distribution of its powers into departments. Rhode Island had no constitution until 1842, having down to that time sustained its relations to the federal government and conducted its internal affairs under the royal charter granted
to the colony by the British Crown in 1663.

The "Bill of Rights."

General principles admitted as axioms in our Constitutions.
The recent constitutions commenced with the bill of rights.
The bills of rights, strictly speaking - that is, the declaration of those natural rights which are supposed to be unalienable - are substantially alike, in the various constitutions, though differing somewhat in form, and are merely brief, general and comprehensive declarations of those rights of the individual which are deemed and declared to be sacred and inviolable; such as the right to enjoy and defend life, to acquire and own property, to be exempt from governmental control in matters of religion, and the like. These rights are by common understanding considered as inherent in the constitution of things, as bottomed upon absolute principles which no government can rightfully deny, control or infringe; and the assertion of them in constitutional provisions is not supposed to add materially to the security of the tenure by which they are held. Indeed, declarations so general would be of little value as bulwarks against encroachments of power; for the existence of government implies the right to determine how far the supposed natural rights of man in his individual sphere must yield to the necessities of the commonwealth. Nevertheless, it has been universally deemed expedient and proper to formulate and embody in the constitution an assertion of these natural rights of man, and to declare in those provisions specifically under what circumstances and to what extent such rights must yield to social requirements.
So all the constitutions pass on from the general declaration to specific provisions upon this subject; and it is at this point that divergence begins.

With different degrees of fullness, all the constitutions agree upon the general abstract principles of equality before the law, private ownership of property, religious liberty, and that indescribable thing, the right to pursue happiness; but when we come to provisions for the protection, security and defense of these rights of the individual against the demands of the community, we find almost as much variety in substance as in form. Especially are these differences conspicuous with regard to individual acquisition and tenure of property. Upon this subject of property rights the field of controversy, instead of narrowing down by the closing of questions, seems to widen from year to year; and it is not too much to add, though perhaps it has not attracted so general attention, that the idea of religious liberty is yet not so clearly defined as to be considered a closed question.

When we enter the field of procedure - the means and methods of determining, defining, enforcing - there nothing can be set down as absolute and unalienable. There the constitution becomes more than a statement of abstract principles. Its voice is not alone the declaration of natural rights. It is the establishing of specific rules; it is the creation of ways and means and their adaptation to ends; it is the putting in motion of the forces by which the state as a commonwealth is to move forward, and by which the individual is to defend himself against encroachments by the commonwealth or other individuals. To assert as a general
proposition that you are entitled to life and liberty, and that your title thereto is unalienable, brings very little comfort when you see life and liberty taken by authority of law from day to day. The practical statement of these unalienable rights is, that by nature all men are entitled to them, but may forfeit any of them by violation of the laws governing society, and may lose some of them by misfortune without violating any laws; may lose the right, life, liberty or property, by breaking the laws of society, or may lose rights to liberty by misfortune for which they are in no wise responsible. A necessary incident to the social state is the lodgment of power somewhere to determine under that circumstances these inherent or natural rights shall be denied or abrogated — what shall be the ground of denial or abridgement; by whom and how the fact of the existence of such grounds shall be ascertained and declared; and by whom and how such declaration shall be carried into effect. This is the legislative power of society, and in its last analysis it embraces all power. There is no such thing as co-ordinate branches of government, except so far as constitutional provisions create them. In the nature of things legislature is supreme and legally omnipotent. A careful consideration of any of the state constitutions will disclose that they contain not much of value except inhibitions, restraints, regulations and other precautionary safeguards against encroachment by legislative authority upon the rights of individuals, either by direct enactment or through the agency of other branches of the government.

Beyond merely determining and defining the form of government, there is little in any of them except provisions, mandatory and prohibitory, curtailing legislative omnipotence. Under a government
republican in fact as well as in form, such as are the American states, with suffrage well nigh universal, there is no fear of invasions of the natural rights of man by those in authority, whether of the judicial or executive departments, unless under color of legislative authority, or under claim of authority which the legislature has power to control. "The legislature shall," and, "the legislature shall not," is the burden of every constitution, no matter in what form of words it may be expressed.

In all this there is nothing new, unless to those to whom all thought upon fundamental principles of government is new; but because it is not new - because it is tame and commonplace - its importance as a guide to those having in hand the framing of the constitution may be underestimated. Whosoever undertakes the preparation of a charter for a new state and fails to keep constantly before his mind the principle of legislative omnipotence, will certainly perform a mischievous labor, unless the people have the intelligence and courage to consign his work to that oblivion which alone can render it harmless. He is like one, who, while essaying a difficult musical performance, forgets the keynote.

There appears no other way in which an individual can state his views of what a constitution should be, so clearly as by presenting an outline of such a constitution at length, and offering his reasons for advocating such of its provisions as are deemed to be subjects of reasonable difference. In doing this, it is not supposed that the instrument presented is perfect either as to form or substance, nor that the members of the convention will be unable to improve upon it; but it is supposed they may, perhaps, find something in it worth considering, and possibly worth adopting.
A Constitution for Washington.

Outline and comment on leading features submitted for examination.

We, the people of the State of Washington, to the end that justice be established, order maintained and liberty perpetuated, do ordain this Constitution.

Article I.

Bill of Rights.

Section 1 - All men are possessed of equal and unalienable natural rights, among which are life, liberty and the pursuit of happiness. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness; and they have at all times the right to alter or reform the government as they may think proper.

Section 2 - The State of Washington is an inseparable part of the American Union, and the constitution of the United States is the supreme law of the land.

Section 3 - All men shall be secured in their natural right to worship God according to the dictates of their own conscience; none shall be compelled to attend any form of worship, nor shall any control of or interference with the rights of conscience upon the subject of religion or worship be permitted; no public money shall ever be appropriated for the support of any religious establishment or any form of worship; nor shall any preference be given by law to any religious establishment or mode of worship; no religious test
or qualification shall be required for any office of public trust, nor shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

This is substantially the provision of the constitution of Kansas, excepting with reference to the appropriation of public moneys in support of religious establishments. That clause is taken from the constitution of Oregon. The constitution of California, and that of many other states, vary not much from the section as above offered.

The right to worship according to one's own conscience has been recognized as an absolute and fundamental possession of every man, from before the foundation of the republic; the right not to worship at all, nor contribute to the support of religion, is now considered to rest upon equally firm foundations.

The development of religious liberty, in connection with constitutional guaranties, may be traced very distinctly by comparing the earlier with the later state constitutions, and it forms an interesting study in American history. The people who fled from religious persecution, giving up home and its traditions and sacred surroundings, and making themselves exiles for conscience sake, and afterwards encountered and cheerfully endured the hardships and privations of a long and wasting war to establish and secure civil liberty to themselves and their posterity, did not grasp the idea of religious freedom in its fullness. They could fight or flee, as the circumstances might require, to preserve the right to worship without legal restraint or direction; but the necessary corollary, the right not to worship, they failed to grasp. Freedom of religion they comprehended; freedom from religion they but feebly apprehended.

For illustration, the constitution of Massachusetts, framed by a convention of delegates in 1779, and adopted by the people in the following year, after declaring that no person "shall be hurt, molested or restrained, in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments," proceeds in the next sentence to ordain that "the legislature shall from time to time authorize and require the several towns, parishes, precincts and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion and morality, in all cases when such provision shall not be made voluntarily;" and in Pennsylvania the Quaker Commonwealth, where it has been said, no form of religious intolerance ever poisoned the air, the constitution put
forth by the Convention of 1776, and adopted in the same memorable year, proclaims freedom of worship in broad terms, and follows up the proclamation by declaring in the very next line that no man "who acknowledges the being of a God" can be justly deprived or abridged of any of his civil rights on account of his religious sentiments. These are fair examples. Massachusetts and Pennsylvania being selected because they are, all in all, the best representatives of the ideas entertained by our revolutionarv ancestors on this subject. It remained for a later generation to apprehend the true principle of "soul-liberty" - as Roger Williams named it - and to decree an absolute divorce of the civil government from systems of religion as well as from their ordinances and modes of worship. None of the late constitutions contain any qualifications, express or implied, of the absolute freedom of every person from any form of penal or disability on account of religious sentiments or the want of them.

It may seem needless to impose special restraints of the powers of the government as protection against infringement of liberty of conscience in an age when it is generally assumed that public opinion is practically unanimous against all encroachments upon that right; but while it is true there is practical unanimity in agreement to the general statement of the principle, there is at least so great a diversity as to its application, that the courts are yet called upon for constitutional interpretation in connection with real or supposed invasion of religious freedom, or freedom from religion, about as often as upon nearly any other division of what we are accustomed to call our absolute rights. At all events, the more recent constitutional conventions have, without exception, thought it proper to go beyond a general assertion of freedom to worship God according to individual conscience, and have proceeded with more or less detail to inhibit every sort of meddling with religious questions by the government. When we hear less about compulsory observance of Sunday as a religious Sabbath, it will be time enough to trust the liberties of the individual in hands of unrestrained legislative omnipotence.

Section 4 - The mode of administering an oath or affirmation shall be such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered.

Section 5 - No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write or print freely on any subject whatever, but every person shall be responsible for the abuse of this right.
Section 6 - The people shall have the right to assemble together freely to consult for their common good, to instruct their representatives, and to petition the legislature for redress of grievances.

Section 7 - The right of the people to be secure in their persons, houses, papers and effects, against unreasonable search or seizure shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

Section 8 - No court shall be secret, but justice shall be administered openly and without purchase, completely and without delay, and every person shall have remedy by due course of law for injury done him in his person, property or reputation.

Section 9 - The right of trial by jury shall remain inviolate. A jury shall consist of twelve jurors, unless the parties agree to a less number; except that in courts held by justices of the peace a jury shall consist of four jurors, unless the parties agree to a less number. In civil actions a verdict concurred in by three-fourths of the jury shall be the verdict of the jury. A trial by jury may be waived in any case, but in criminal cases where the crime charged is a felony, it can not be waived without the consent of the presiding judge. Reasonable rules shall be provided by law for the time and manner of demanding or waiving a trial by jury.

In common with all people who have inherited their jurisprudence from England, Americans have regarded the right of trial by jury as necessary to the maintenance of their liberties. The jury was originally supposed to be composed of peers of the parties, drawn from the vicinage, and therefore acquainted with their characters.
and antecedents, and at least so far in sympathy with them and their interests as to withstand any influences of the crown and its officers. The jury was, therefore, cherished as a protection to the individual against the encroachments of power, especially in criminal cases.

Under our system of republican government this reason for the jury is of no practical weight. There may have been, and possibly there may be, cases in which the government, through its officers and agents, might endeavor to influence the result of a trial in courts of justice; but such cases, if they exist, are of exceedingly rare occurrence. We owe allegiance to no crown, and our executive holds his power by the suffrages of the people and for a brief term. The natural ambition to satisfy the public, often coupled with the wish of re-election, or of election to some other position, is a strong safeguard against oppressive conduct by the executive; and the same reasons prevent dangers of oppression from the officers immediately concerned in the administration of the laws. Considerations of this nature, together with what are conceived to be frequent failures of justice in trials by jury, have led many to think favorably of the abolition of the jury system. Demands for its abolition are frequently found in the public prints, and not rarely amongst members of the bar; but it is believed that the more thoughtful members of all classes would hesitate to give their consent to the abolition of a system which has been so long regarded as an essential part of our judicature, and by which justice is often reached more speedily and more satisfactorily than in trials without a jury. It has become common to speak of the uncertainty of the results of trial by jury, and it is a stale saying that the foreknowledge of the Almighty does not extend to the matter of determining what verdict a trial jury will render upon a given state of evidence. This has a catching sound, but persons experienced in the trial of cases are likely to agree that there is as little certainty in any other mode of trial as in that of the jury. The jury had its foundation, as above stated, in the thought that by such a tribunal the individual could be secured against all oppressive influences; but it has its support in the fact that in judging of the affairs of men, of the meaning and intention of their conduct and words, of the purposes inspiring their actions, of the motives prompting their movements, the average judgment of a number of persons drawn together from the active business pursuits of the world, is more likely to be correct, than the judgment of any one person, whose life is devoted to books, and who mingles little with his fellowman. It may be assumed that the jury system will not be given up in the State of Washington. Theorists and doctrinaires will continue to believe it a useless and even a harmful incumbrance upon the administration of justice, but practical people are not likely to agree with them.

In order, however, to preserve the right of trial by jury, it is not necessary that we hold the jury as the one thing sacred, the one thing which can not be improved and whose methods must be the methods of past ages. We can keep the jury without hugging it as a fetish. Whatever may be the reasons for its existence, there is no reason why its manifest defects should not be remedied; no reason why it should not be treated as a living force, instead of a petrification from ancient times.
Most of the state constitutions contain substantially the same general provision upon this subject, varying somewhat in expression, but being practically identical in meaning. "The right of trial by jury shall remain inviolate," is the formula adopted by many, and expresses substantially the thought in all the constitutions. Some of them, however, give the legislature power to reduce the number of jurors in the inferior courts. Such provision is found in the constitution of Michigan in general terms, and in several others with various qualifications.

By construction, the word jury means twelve men. A jury of twelve was the jury known to our forefathers; so the jury in existence at the time of our earlier constitutions was adopted, and the word had come to have a definite signification, and to convey to the mind the idea of a body composed of twelve men. This meaning of the word is its meaning wherever used without other definition. Trial by jury meant and means a trial by a jury of twelve, resulting in their unanimous verdict. This is the jury trial which will be secured by the constitution of the state of Washington, unless other definition shall be given in that instrument. But there is no magic in the number twelve. It so happened that the original jury was twelve, and perhaps that is as convenient and suitable a number as any other; but it is not apparent why any man shall not have the right to submit his case to nine men or one man, if the government does not insist upon the number of twelve, and there is no reason why the government should insist upon that exact number.

In such cases, civil and criminal, as are ordinarily tried in the courts of the justices of the peace, where the matters involved are of no great moment, a less number of jurors might be adopted with great advantage.

It is difficult to see why in such cases four jurors taken from the vicinage, should not be a sufficient jury to determine the rights of the parties.

The right of trial by jury being personal to the parties, it is often waived in civil cases, and sometimes in criminal; but it has been held by many courts that in criminal cases, especially those where the crime charged is very grave, the defendant cannot waive the right to a jury trial. Upon this subject of waiver some of the constitutions have made special provision. The most advanced constitutional provision upon the subject of trial by jury is that of the state of California. The provision of the constitution of that state is: "The right of trial by jury shall be secure to all; but in civil actions three-fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, expressed in open court, and in civil cases by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions and cases of misdemeanor, the jury may consist of twelve or of any number less than twelve upon which the parties may agree in open court."
This is certainly substantial progress; but why shall not a person accused of any crime be allowed to waive the number of jurors and submit his cause to a less number? Or why should he not, in any case, no matter what the gravity of the offense charged against him, have the right to submit his case to the judge of the court without a jury, if he chose to do so and if there were no objections other than those relating to his own personal privilege? There may be circumstances known to the judge, or appearing in connection with the case, justifying the judge in calling to his assistance as tryers of fact a jury of citizens, notwithstanding the defendant's waiver.

There is no reason why a three-fourths verdict should not be received as well in criminal as in civil actions, except that, to the defendant in criminal actions the consequences of conviction are serious, even in the most trifling cases, putting a stain upon his character and often involving his liberties; and in capital, and other grave causes, the consequences are the most serious that the human mind can contemplate. For this reason it is natural to ask for greater certainty as a condition precedent to conviction.

Section 10 - Offenses heretofore legally to be prosecuted by indictment shall be prosecuted by information after examination by a magistrate, or by indictment with or without such examination, as may be prescribed by law; and the grand jury shall be drawn and summoned at least once a year in each county. The grand jury shall consist of seven persons, five of whom must concur to find an indictment.

This is the California constitution, excepting that part which reduces the grand jury to seven, and allows five to find indictments. That provision is taken from the constitution of Oregon. The grand jury was ancienly, like the trial jury, a body of the subjects supposed to stand in the way and shield the individual against oppressive prosecutions and exactions. The same circumstances which take away from the trial jury its ancient "reason to be," render the grand jury useless as a protection of the subject against the crown; and many persons of intelligence believe the whole system ought to be swept away. But, while the reasons which brought it into existence can no longer be urged for its continuance, other reasons, arising out of the nature of republican institutions, seem to demand that it should be retained. It is the crown now that needs protection, not the subject; that is, the government needs protection against certain classes of offenses, the temptation to which, and the temptation to shield which, inhere in all electoral governments.
Crimes against the purity of the ballot box, upon which prosecuting officers may base their title to office; crimes in the administration of public affairs, in which natural sympathy and party associations may tempt to connivance at malfeasance; these and kindred matters will often call for the exercise of the functions of a grand jury. Likewise the public charities and penal institutions ought, from time to time, to be under the scrutiny of a body of men not elected by partisan vote, but chosen by means which will secure the greatest freedom from official influence, and which will be most likely to place in the position of investigators members of both or all of the political parties in the country. By some such device alone would many offenses be ferreted out and offenders brought to justice; by some such means alone can the purity of the ballot, upon which the perpetuity of republican institutions depends, be preserved. For this purpose the grand jury is perhaps as suitable as any other body that could be devised.

But there is no necessity for the ancient grand jury, composed of any large number of persons. A body of seven, carefully selected under provisions guarding against the process of "packing," and drawn from the body of the county, would, in most cases, embrace persons from various localities, and would insure as thorough an investigation as could be had by the grand jury of twelve or upwards, if not a more thorough one. It is a known fact, which loses none of its force by being often expressed, that small bodies are more efficient than large ones, and that a large, unwieldy body of men, whether it be named grand jury or be called by some other designation, is not likely to be thorough in its work.

Section 11 - In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

Section 12 - No person shall be put in jeopardy twice for the same offence, nor be compelled in any criminal prosecution to testify against himself.

Section 13 - No person arrested or confined in jail shall be treated with unnecessary rigor.

Section 14 - Offenses, except murder and treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable when the proof is evident or the presumption strong.
Section 15 - Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice.

Section 16 - Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offence. In all criminal cases whatever, the jury shall have the right to determine the law and the facts, under the direction of the court as to the law, and the right of new trial as in civil cases.

Section 17 - The military shall always be subordinate to the civil power.

Section 18 - No soldiers shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

Section 19 - Private property shall not be taken or damaged for public use, nor the particular services of any man be demanded without just compensation, nor, except in the case of the state, without such compensation first assessed and made to, or paid into court for, the owner of the property or person whose services are required.

Most of the constitutions, if not all now in force, prohibit the taking of private property for public use without compensation; but experience has demonstrated that such a general provision is entirely inadequate to prevent great injustice, and often the most serious oppression. The taking of private property would, in many cases, be a matter of less consequence than injuries inflicted by taking adjacent property, public or private. So, in many late constitutions, provision is made for this class of cases by adding the words, "or damaged;" so that the rights of the individual to the enjoyment of his possessions shall not be invaded and he be indirectly deprived of his property, by means not falling literally within the prohibition against taking private property. So far, no state has receded from this position when once taken in its constitution; and the reports of the courts abound with adjudications, giving construction and effect to the words "or damaged;" so there can not
now be objection to its introduction in the constitution of Washington upon the ground that it would open the way to litigation and confusion over its construction. The phrase, in its connection as here presented, has been construed by the courts of many of the states, and there is no occasion for misunderstanding of its purport or legal force, nor any danger of injustice from too broad or too narrow interpretation. These words give redress for all damages which are the direct, natural and immediate results of the taking of property for public use, even though the property actually taken did not belong to the person so damaged. Such cases are certainly within the equity of the rule against taking private property for public use without compensation. They appeal as forcibly to the sense of justice as if the damaged property were itself appropriated.

Section 20 - There shall be no imprisonment for debt, except in cases of debt and absconding debtors.

Section 21 - Slavery shall never be tolerated in this state, nor shall there be any involuntary servitude, unless for the punishment of crime.

Section 22 - No law shall be passed granting to any citizen or class of citizens privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.

Section 23 - No bill of attainder, or ex post facto law, or law impairing the obligation of contracts, shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this constitution; provided that laws locating county seats, and submitting town and corporate acts, and other local and special laws, may take effect or not, upon a vote of the electors interested.

Section 24 - The operation of the laws shall never be suspended except by the authority of the legislative assembly.

Section 25 - The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety require it.
Section 26 - Treason against the state shall consist only in levying war against it, adhering to its enemies, giving them aid or comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

Section 27 - No conviction shall work corruption of blood or forfeiture of estate.

Section 28 - The people shall have the right to bear arms for the defence of themselves and the state.

Section 29 - Foreigners of any race eligible to become citizens of the United States, under the naturalization laws thereof, while bona fide residents of this state, shall have the same rights in respect to the acquisition, enjoyment, transmission and inheritance of property as native born citizens.

Section 30 - No tax or duty shall be imposed without the consent of the people or their representatives in the legislative assembly, and all taxation shall be equal and uniform.

Section 31 - This enumeration of rights shall not be construed to impair or deny others retained by the people.
Article II.
Sufferages and Elections.

Section 1. In all elections not otherwise provided for in this constitution, every male citizen of the United States, of the age of twenty-one years, who shall have resided in this state during the six months immediately preceding such election, shall be entitled to vote; Provided, No idiot or insane person shall be entitled to the rights or privileges of an elector. The rights and privileges of an elector shall be forfeited by a conviction of any crime which is punishable by imprisonment in the penitentiary. The legislature shall have power to confer upon women the rights and privileges of electors to vote in any or all elections.

Citizenship. — In nearly all the states the rights of electors are confined to citizens of the United States. In Oregon and one or two other states, persons who have declared their intention to become citizens a year previous to the election, and who are otherwise qualified, are electors. In some of the state constitutions the right is confined to "citizens," but it is not stated whether citizenship of the United States, or of the state, is intended.

Residence. — Residence for one year is required in a majority of the states, as a prerequisite to the exercise of the elective right. Six months is the shortest period allowed by any state. In old communities, where civil and social institutions have already become established, and there is little increase of population or change of public wants, there is not much to be said for the long probation or the short one, as the influence of the new citizen in elections can not materially affect himself nor influence the policy of the government. There, the fixing of the period may be considered rather as an arbitrary determination of a matter necessary to be determined, than as the settling of an important question. In Washington, the great majority have not been residents very many years, the country is rapidly increasing in population by immigration from the older communities, new enterprises are constantly presenting new questions for promotion, institutions are only now taking permanent form. Upon various questions the policy of this year may be something very different from that which will be demanded a year hence. Those who come amongst us to help develop our material
resources, prosecute business enterprises, engage in all the avocations of civilized life in the state, will naturally expect to be, and ought to be, heard at the ballot box, where public questions, in which they are as deeply as interested as the old settler, are to be decided. The shorter period, therefore, seems better adapted to the situation of this community, especially if the right to vote is to be enjoyed by citizens only.

Woman Suffrage. — The extension of the elective right to women is favored by many of the most careful and conservative thinkers of the present age. It has been tried in some of the territories, including Washington; and while it can hardly be said that the experiment has been carried so far as to demonstrate the wisdom of the change, no more can it be said that the unwisdom of it has been proved.

It is common to assert that the elective franchise, or right of suffrage, is a privilege conferred by law, and not an inherent right. Historically, and viewed entirely from a legal standpoint, this is doubtless true; but it does not follow that because historically and by legal precedent it is so, therefore it is so upon principle. On the contrary, it is difficult, upon any system of logical reasoning, to reach the conclusion that the elective franchise is not a right of citizenship, subject only to the restrictions which public policy may impose. We proceed in this country upon the principle that government derives all its authority from the consent of the governed; that all authority in the rulers, whether legislative, executive or judicial, is founded upon an appointment by the people. Now, how can the people appoint but by election? Either the principle that our rulers hold by election, and can not rightfully hold by any other tenure, is wrong, or else the elective franchise is a right and not a privilege. Government is carried on through the agency of officers, and can be carried on in no other way. To assert that no one can rightfully hold and exercise an office without being elected by votes, and yet that no one has the right to vote, is merely to babble. So long as governments were based upon the false theory of a divine right in certain persons to rule all the rest, it was logical to hold that the voting was permissive only was a privilege but the moment any people rise to the truth that no man can be ruler till he is chosen therefore by those who are to be ruled, that moment all logical foundation is knocked from under the proposition that the choice is made as a privilege and not by right. But this, right, like all others possessed by individuals, must yield or be surrendered or suffer abridgment, whenever its enjoyment would be incompatible with the interests of society. A correct statement of the principle is, that what we call the elective franchise is a right which belongs, in the nature of republican government, to every individual citizen, and that all restrictions of it are in the nature of an abridgment for the sake of public benefit, and are founded in, and justifiable only by, the necessities of the community at large. That we deny the right to idiots, to insane persons, and to persons convicted of high crimes, does not argue that the right is not inherent in the individual, any more than the denial of the right of liberty to a felon or insane person argues that liberty is not an inherent right. We deny the right of suffrage to these classes because the public safety requires abridgment thus far. But does public safety
require that sex shall be made a test? Women are not, as a general rule, idiotic or insane; nor is it a crime to be born female. Yet, if there is, either in the nature of government, or in the nature of elections, or in the nature of society, or in the nature of women themselves, something that would make it dangerous to the peace and good order of society to recognize their right to vote, the denial of that right is justifiable. Those who assert that such ground of objection exists have not yet been successful in demonstrating it by historical evidence, although women have voted for several years, and under circumstances not the most favorable to the production of results vindicating the usefulness of their vote as a political force.

So far as historical or experimental evidence furnishes any light on the subject, sex appears to be a false quantity in the problem of public policy, which is presented in connection with the exercise of suffrage. Experience down to this date proves practically nothing one way or the other, unless it be that woman suffrage does no harm either to the woman or the commonwealth. Beyond this nothing can be predicated of it upon the basis of actual trial, and we seem to be thrown back upon the old data of human nature, the alleged inherent differences between men and women in their respective capacities for exercising the voting power with intelligence and judgment, and all that sort of nebulae; in other words, so far as tried, it must be admitted that woman suffrage has no where produced, to any considerable extent, the beneficial effects which its advocates have been accustomed to urge as a reason for its adoption. It can not be asserted that elections have been purer, or administration of the laws better, with woman suffrage than without it. The "filthy pool of politics" has remained as filthy where women have voted as where they have not. In a word, the experiment appears to have produced no visible effect, save the addition of numbers at the polls.

On the other hand, the opposition to women suffrage seems to have been as far abroad, in their assumption that the exercise of political rights, would impair the character of women, or that only those of previous questionable character would be active participants at elections. Wheresoever women have had the right to vote, that right has been exercised by large numbers of the very best women; and the numbers increased as the continuation of the right was protracted. In exercising this right they have not unsexed themselves, nor become less modest and womanly than before.

Women recognize the importance of political action, and are not more likely to neglect it, when once accustomed to its exercise, than men. With men the right to vote is deemed a settled thing, outside the field of controversy; and the reciprocal of that right, with large numbers of them, is the duty of exercising it. I think it is safe to assume that it would be the same with women, after investiture for a length of time with the elective franchise; but whether any permanent good would come of it beyond the satisfying of a demand founded upon what appears to be a principle correct in the abstract, and not shown to be hurtful in practice, may still be an open question. It is not,
however, a light thing to deny a right which in the nature of human
society seems demandable upon grounds of inherent justice, unless in a
case where it is clear that public policy requires the denial; and when
the right is in itself important, the argument of public policy should be
both conclusive and practically overwhelming, to justify a denial of
the right.

Nevertheless a system of elections which has proved reasonably
satisfactory in the past, or which, at least, has been in use time
out of mind and has not produced shipwreck, will hardly be changed
suddenly and radically by means of a constitutional provision.
If found detrimental in practice, acts of the legislature — even acts
extending the right of suffrage — may be undone; while, with respect
to constitutional provisions, the detriment would be practically
irretrievable. For my part, however, I should not fear to push the
logic of the right of suffrage to its conclusion, and secure the right
to women, because it is a right.

By the proposed clause leaving this subject under control of the
legislature, the power is so defined as to enable the people through
their legislature to solve the problem gradually, by experiment and
therefore with entire safety. Women may be allowed to vote in some
elections, and the right be withheld in others; may be allowed to vote
in municipal, but not in general elections. Thus, the question of
policy, if there is any question, could be approached without violent
change and without incurring any risk of consequences. In several of
the states, women do vote on certain specified matters. In Oregon,
many years ago, such women as were heads of families, held taxable
property, and had children to be educated, were recognized by law as
proper voters in elections for school district officers. This worked
well. Then the recognition was further extended, and now women vote at
school district elections on the same terms as men. Suppose Washington
should be conservative as to commence at the same point, and the result
should seem to warrant further extension — say, to the municipal
elections. If, in a few years, the evils which the opposers of female
suffrage predict should appear not to be merely imaginary, it would still
be easy to recede. There would be locus poenitentiae. By this plan
a fair trial of equal suffrage could be carried so far forth as to be
satisfactory to practical minds, and yet women not have acquired so great
power as to frighten the politicians out of all their patriotic impulses,
and thus to prevent the retracing of a step which may have proved
unwise, or the calling of a halt where further advance may appear
dangerous.

Section 2. For the purpose of voting, no person shall be deemed
to have gained or lost a residence by reason of his presence or
absence while employed in the service of the United States, or while
engaged in navigation of the waters of this state, or of the United
States, or of the high seas; nor while a student at any seminary of
learning; nor while kept at any almshouse or other asylum at public expense, nor while confined in any public prison.

Section 3. No soldier, seaman or marine in the army or navy of the United States or of their allies, shall be deemed to have acquired residence in this state, in consequence of having been stationed within the same, nor shall any such soldier, seaman or marine, not having been a resident for the requisite length of time, have the right to vote.

Section 4. The legislative assembly shall enact laws to support the privilege of free suffrage, prescribing the manner of regulating and conducting elections, and prohibiting, under adequate penalties, all undue influence therein, from power, bribery, tumult and other improper conduct; and may enact laws requiring and regulating registration of voters as a prerequisite to voting.

This section, except the last clause is copied from the constitution of Oregon. The last clause - authorizing the enactment of registration laws is added, in view of a decision of the supreme court of that state, following the state of Wisconsin and some others, that a law making registration necessary to the right to vote is an attempt to add to the qualification of electors prescribed by the constitution, and is therefore void, unless expressly authorized.

Section 5. Every person shall be disqualified from holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat or reward to procure his election.

Section 6. Every person who shall give or accept a challenge to fight a duel, or shall knowingly carry to another such challenge, or who shall agree to go out of the state to fight a duel, shall be ineligible to any office of trust and profit.
Section 7. A person holding a lucrative office or appointment under the United States or under this state shall be ineligible to a seat in the legislative assembly; nor shall any person hold more than one lucrative office at the same time, except as in this constitution expressly permitted; provided, that officers in the militia to whom there is attached no annual salary, and the office of postmaster where the salary does not exceed $500 per annum, shall not be deemed lucrative offices.

Section 8. No person who may hereafter be a collector or holder of public money shall be eligible to any office of trust or profit until he shall account for and pay over according to law all sums for which he may be liable.

Section 9. In all cases except treason, felony and breach of the peace, electors shall be free from arrest in going to elections, during their attendance there, and in returning from the same, and no elector shall be obliged to do duty in the militia on any day of election, except in time of war or public danger.

Section 10. In all cases in which it is provided that an office shall not be filled by any person more than a certain number of years continuously, an appointment pro tempore shall not be reckoned a part of that term.

Section 11. In all elections held by the people under this constitution, the person or persons who shall receive the highest number of votes shall be duly declared elected.

Section 12. All qualified electors shall vote in the election precinct where they may reside, for the county officers, and in any
county in the state for state officers, and in any county of a congressional district in which such electors may reside for members of congress.

Section 15. General elections shall be held on the first Monday of October, biennially; provided, this provision shall not apply to the first general election after the adoption of this constitution.

Section 14. All elections, except as otherwise provided in this constitution, shall be by ballot.
ARTICLE III

Distribution of Powers.

Section 1. The powers of the government of the state of Washington shall be divided into three separate departments, the legislative, executive and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions pertaining to either of the others, except as in this constitution expressly directed or permitted.

ARTICLE IV.

Legislative Department.

Section 1. The legislative power of this state shall be vested in a senate and house of representatives. The enacting clause of every bill shall be as follows: "Be it enacted by the legislative assembly of the state of Washington."

Section 2. The senate shall consist of thirty and the house of representatives of sixty members. The legislature may increase the number of senators and representatives, always keeping the same ratio as to the number of senators and representatives; provided, the senate shall never exceed forty members and the house of representatives shall never exceed eighty members.

Section 3. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may, from time to time, be divided by law.
Section 4. The senators shall be elected for the term of four years and the representatives for the term of two years, from the day after the general election; provided, however, that the terms of the fifteen senators elected at the first general election under this constitution from the odd numbered districts shall be for two years only; so that one-half of the senators shall be elected every two years; and in case of the increase of the number of senators, such provision shall be made that after the election next succeeding such increase one-half of all the senators shall be elected every two years.

Section 5. The legislative assembly shall, in the year 1895, and every ten years thereafter, cause an enumeration to be made of the population of this state.

Section 6. The number of senators and representatives shall, at the session next following, the enumeration of the inhabitants by the United States or this state, be fixed by law and apportioned among the several counties according to the number of the population, exclusive of persons not eligible to become citizens of the United States. And the ratio of senators and representatives shall be determined by dividing the whole number of such population by the number of senators and representatives respectively; and the number of senators and representatives to which any county or district shall be entitled shall be determined by dividing the whole number of such population of such county or district by such representative ratio; and when a fraction shall result from such division which shall exceed one-half of said ratio, such county or district shall be entitled to a member for such fraction; and in case any county shall not have the requisite amount of population to entitle such county to a member, then such county shall be attached to some adjoining county or counties for senatorial or representative purposes.
Section 7. A senatorial or representative district, when more than one county shall constitute the same, shall be composed of contiguous counties, and no county shall be divided in creating such districts.

Section 8. No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States, nor any one who has not been for one year next preceding his election an inhabitant of the county or district whence he may be chosen. Senators and representatives shall be at least twenty-one years old.

Section 9. Senators and representatives, in all cases except for treason, felony or breach of the peace, shall be privileged from arrest during the sessions of the legislative assembly, and in going to and returning from the same, and shall not be liable to any civil process during the session of the legislative assembly, nor during the ten days next before the commencement thereof; nor shall a member, for words uttered in debate in either house, be questioned in any other place.

Section 10. The sessions of the legislative assembly shall be held biennially at the capitol of the state, commencing on the second Monday of January, in the year eighteen hundred and ninety, and on the same day of every second year thereafter, unless a different day shall have been appointed by law.

Section 11. Each house when assembled shall choose its own officers; judge of the election, qualifications and returns of its own members, determine its own rules of proceeding and sit upon its own adjournments, but neither house shall, without the concurrence of
the other, adjourn for more than three days, nor to any other place
than that in which it may be sitting.

Section 12. A majority of each house shall constitute a
quorum to do business, but a smaller number may adjourn from day to
day, and may compel the attendance of absent members, in such manner
and under such penalty as such house may provide. A quorum being in
attendance, if either house fail to effect an organization within
the first four days thereafter, the members of the house so failing
shall be entitled to no compensation from the end of said four days
until an organization shall have been effected.

Section 15. Each house may, with the concurrence of two-thirds
of all the members, expel a member.

Section 14. The doors of each house and of committees of the
whole shall be kept opened, except in such cases as in the opinion
of either house may require secrecy.

Section 15. Each house shall keep a journal of its proceedings
and the yeas and nays of the members of either house on any question
shall, at the request of any three members present, be entered on the
journal.

Section 16. Either house during its session, may punish by
imprisonment any person not a member, who shall have been guilty of
disrespect to the house by disorderly or contemptuous behavior in
at
its presence; but such imprisonment shall not any time exceed
twenty-four hours.
Section 17. Each house shall have all powers necessary for a branch of the legislative department of a free and independent state.

Section 18. Bills may originate in either house, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the house of representatives.

Section 19. No law shall be passed except by bill, nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of members; nor shall any bill become a law unless the same shall have been read on three several days in each house previous to the final vote thereon; provided, in case of urgency two-thirds of the house where such bill may be pending may, upon a vote of the yeas and nays, dispense with this provision. On the final passage of all bills, they shall be read at length, section by section, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the journal; and no bill shall become a law without the concurrence of a majority of the members elected to each house.

Section 20. Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title.

Section 21. Every act or joint resolution shall be plainly worded, avoiding as far as practicable the use of technical terms.

Section 22. No act shall be revised or amended by mere reference to its title, but the act revised or section amended shall be set forth and published at full length.
Section 25. The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace, police judges and constables.

For the punishment of crimes and misdemeanors.

Regulating the practice of courts of justice.

Providing for change of venue in civil or criminal actions.

Granting divorces.

Changing the names of persons.

Authorizing the laying out, opening, altering, maintaining, working on, or vacating roads, highways, streets, alleys, town flats, parks, cemeteries, grave-yards, or any public grounds not owned by the state.

Summoning and impaneling grand and trial juries, and providing for their compensation.

Regulating county and township business, or the election of county and township officers.

For the assessment or collection of taxes.

Providing for and conducting elections, or designating the place of voting.

Affecting estates of deceased persons, minors or other persons under legal disabilities.

Extending the time for the collection of taxes.

Giving effect to invalid deeds, leases or other instruments.

Refunding money paid into the state treasury.

Releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any person or corporation to this state,
or to any municipal corporation therein.

Declaring any person of age, or authorizing any minor to sell, lease or encumber his or her property.

Legalizing, except as against the state, the unauthorized or invalid act of any officer.

Exempting property from taxation.

Changing county seats.

Restoring to citizenship persons convicted of infamous crimes.

Regulating the interest on money.

Authorizing the creation, extension or impairing of liens.

Chartering or licensing ferries, bridges or roads.

Remitting fines, penalties or forfeitures.

Providing for the management of common schools.

Creating offices, or prescribing the powers and duties of officers in counties, cities, townships, election districts or school districts.

Changing the law of descent or succession.

Authorizing the adoption or legitimatization of children.

For limitation of civil or criminal actions.

Creating any corporation.

Section 24. Provision may be made by general law for bringing action or suit against the state as to all liabilities originating after, or existing at the time of the ratification of this constitution; but no special act authorizing such suit to be brought, or making compensation to any person claiming damages against the state, shall ever be passed.
Section 25. All bills or joint resolution passed shall be signed by the presiding officers of the respective houses.

Section 26. Any member of either house shall have the right to protest, and have his protest, with his reasons for dissent, entered on the journal.

Section 27. No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law.

Section 28. The members of the legislative assembly shall receive for their services a sum not exceeding five dollars per day from the commencement of the session; but such pay shall not exceed in the aggregate two hundred and fifty dollars per diem allowance for any one session.

When convened in extra session by the governor, they shall receive five dollars per day; but no extra session shall continue for a longer period than twenty days. They shall also receive the sum of one dollar for every twenty-five miles they shall travel in going to and returning from their place of meeting, on the most usual route. The presiding officers of the assembly shall, in virtue of their office, receive an additional compensation equal to one-half of their per diem allowance as members.

Section 29. No senator or representative shall, during the time for which he may have been elected, be eligible to any office the election of which is vested in the legislative assembly, nor be appointed to any civil office of profit which shall have been
created, or the emoluments of which have been increased during such term; but this latter provision shall not be construed to apply to any officer elective by the people.

Section 30. The members of the legislative assembly shall, before they enter on the duties of their respective offices, take or subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the state of Washington, and that I will faithfully discharge the duties of senator (or representative, as the case may be) according to the best of my ability." And such oath may be administered by the governor, secretary of state, or a judge of the supreme court.
ARTICLE V.

EXECUTIVE DEPARTMENT

Section 1. The executive department shall consist of a governor, secretary of state, treasurer, auditor and attorney-general, who shall be chosen by the electors of the state at the same time and place of voting for the members of the general legislative assembly.

Section 2. The governor, secretary of state, treasurer, auditor and attorney-general, shall hold their office for four years. Their terms of office shall, except as otherwise provided in this constitution, commence on the third Monday of January next after their election, and continue until their successors are elected and qualified, neither of which officers shall be eligible for re-election more than two or three consecutive terms; nor shall any person be eligible for the office of governor who shall not have attained the age of thirty years.

Section 3. The returns of every election for the officers named in the foregoing section shall be sealed up and transmitted to the seat of government by the retiring officers, directed to the secretary of state, who shall deliver the same to the speaker of the house of representatives at the first meeting of the house thereafter, when he shall open, publish and declare the result thereof in the presence of a majority of the members of both houses. The person having the highest number of votes shall be declared duly elected, and a certificate thereof shall be given to such person, signed by
the presiding officers of both houses; but if any two or more shall be highest and equal in votes for the same office, one of them shall be chosen by the joint vote of both houses.

Contested elections for governor shall be determined by the legislative assembly in such manner as shall be determined by law.

In case time of the regular meeting of the legislature shall be changed by law, the terms of office of the governor, secretary of state, treasurer, auditor and attorney-general shall thereafter commence on the first Monday after the day fixed for such regular meeting.

Section 4. The supreme executive authority shall be vested in the governor. He may require information in writing from the officers in the executive department upon any subject relating to the duties of their respective offices, and shall see that the laws are faithfully executed.

Section 5. He shall communicate at every session by message to the general assembly the condition of the affairs of the state, and recommend such measures as he shall deem expedient for their action.

Section 6. He may, on extraordinary occasions, convene the legislature by proclamation, and shall state to both houses, when assembled, the purposes for which they are convened.

Section 7. In case of disagreement between the two houses in respect to the time of adjournment, he shall have power to adjourn the legislature to such time as he may think proper, but not before the regular meetings thereof.

Section 8. He shall be commander-in-chief of the military in the state, except when they shall be called into the service of the United States.
Section 9. The pardoning power shall be vested in the governor under such regulations and restrictions as may be prescribed by law.

Section 10. No person except a citizen of the United States shall be eligible to the office of governor; nor shall any person be eligible to that office who shall not have attained the age of thirty years; nor any person who shall not have been two years next preceding his election a resident within the state.

Section 11. No member of congress, or person holding any office under the United States, or under this state, or under any other power shall fill the office of governor, except as may be otherwise provided in this constitution.

Section 12. In case of the removal of the governor from office, or his death, resignation or inability to discharge the duties of this office, the same shall devolve on the secretary of state; and in case of the removal from office, death, resignation, or inability of both the governor and secretary of state, the president of the senate shall act as governor until the disability be removed or a governor be elected.

Section 13. The governor shall transact all necessary business with the officers of government, and may require information in writing from the administrative and military officers upon any subject relating to the duties of their respective offices.

Section 14. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and he shall report to the legislature at its next meeting each case of reprieve, commutation, or pardon granted, and the reasons for granting the same;
and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted, and the reasons of the remission.

Section 15. Every act which shall have passed the legislative assembly shall be, before it becomes a law, presented to the governor. If he approves he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, which house shall enter the objections at large upon the journal and proceed to reconsider. If, after such reconsideration, two-thirds of the members present agree to pass the bill it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present it shall become a law; but in all cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for or against the bill shall be entered upon the journal of each house, respectively.

If any bill shall not be returned by the governor within five days, Sundays excepted, after it shall be presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law unless the governor, within ten days next after the adjournment, Sundays excepted, shall file such bill, with his objections thereto, in the office of the secretary of state, who shall lay the same before the legislative assembly at its next session, in like manner as it had been returned by the governor. If any bill presented to the governor contain several items of appropriation of money, he may object to one or more
items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the governor's objection, as hereinbefore provided.

This section, excepting the clause relating to the veto of specific items of appropriation, is copied from the constitution of Oregon; that clause is taken from the constitution of California. With the exception of that clause, the section is substantially the same as found in most of the state constitutions.

The power to veto parts of an appropriation bill, without affecting the other parts is a very wholesome restraint upon a species of legislation that all right-minded people condemn. Improper appropriations of the public funds, appropriations to unworthy and sometimes unlawful purposes, find their way into bills for the appropriation of money to proper and necessary purposes. Members find it impossible to defeat the improper without also defeating the proper, and sometimes the necessities of the government may peremptorily demand the principal appropriation. The best check yet devised upon this class of jobbery, is the power of the governor to veto specific appropriations without rendering proper ones nugatory. Under this plan a job must run the gauntlet of the governor and two-thirds of the legislative assembly or be killed.

Section 16. When, during a recess of the legislative assembly, a vacancy shall happen in any office, the appointment to which is vested in the legislative assembly, or when at any time a vacancy shall have occurred in any other state office, for the filling of which the vacancy no provision is made elsewhere in this constitution, the governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualified.

Section 17. He shall issue writs of election to fill such vacancies as may have occurred in the legislative assembly.
Section 18. All commissions shall issue in the name of the state, shall be signed by the governor, sealed with the seal of the state, and attested by the secretary of the state.

Section 19. The secretary of state shall keep a fair record of the official acts of the legislative assembly and executive department of the state, and shall, when required, lay the same and all matters relative thereto, before either branch of the legislative assembly, and shall perform other duties as shall be assigned him by law.

Section 20. There shall be a seal of state kept by the secretary of state for official purposes, which shall be called "The Seal of the State of Washington."

Section 21. The treasurer shall perform such duties as shall be prescribed by law.

Section 22. The auditor shall be auditor of public accounts, and shall have such powers and perform such duties in connection therewith as may be prescribed by law.

Section 23. The attorney-general shall be the legal adviser of the governor, secretary, treasurer and auditor, and shall perform such other duties as may be prescribed by law.

Section 24. The governor, secretary of state, treasurer, auditor and attorney-general shall severally keep the public records, books and papers, in any manner relating to their respective offices, at the seat of government, at which place also the secretary of state and auditor shall reside.
Section 25. There shall be elected in each county, by the qualified electors thereof, at the time of holding general elections, a county clerk, treasurer, sheriff, coroner and surveyor, who shall severally hold office for the term of two years.

Section 26. Such other county, township, precinct and city officers as may be necessary shall be elected or appointed in such manner and for such terms as may be prescribed by law.

Section 27. No person shall be elected or appointed to a county office who shall not be an elector of the county; and all county, township, precinct, and city officers shall keep their respective offices at such places therein, and perform such duties, as may be prescribed by law.

Section 28. Vacancies in county, township, precinct and city offices shall be filled in such manner as may be prescribed by law.
ARTICLE VI.
JUDICIAL DEPARTMENT.

Section 1. The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide in any incorporated city.

It will be observed that this section allows only the superior court between justices of the peace and the supreme court, save such inferior courts as may be required in the government of cities. The advantages of this plan of judiciary will be discussed, and will, it is hoped, be apparent, under the section defining the jurisdiction of the superior courts.

Section 2. The supreme court shall consist of a chief justice and four associate justices, and shall always be open for the transaction of business, except on non-judicial days. The presence of three justices shall be necessary to transact any business except such as may be done at chambers, and the concurrence of three judges shall be necessary to pronounce any judgment or decree. In the determination of causes all decisions of the court shall be given in writing and the grounds of the decision shall be stated. The chief justice shall preside at the sessions of the court, when present; but in his absence or inability to act, the associate justices shall select one of their own number to perform the duties and exercise the powers of the chief justice during such absence or inability.

Section 3. The chief justice and the associate justices shall be elected by the qualified electors of the state at large, at the general state elections, at the times and places at which state officers are elected; and the term of office shall be eight years from and after the first Monday after the first day of January next.
succeeding their election; provided, that the associate justices elected at the first election shall, at their first meeting, so classify themselves, by lot, that two of them shall go out of office at the end of four years, and two of them at the end of eight years, and an entry of such classification shall be made in the minutes of the court, signed by them, and a duplicate thereof shall be filed in the office of the secretary of state. If a vacancy occur in the office of a justice, the governor shall appoint a person to hold the office until the election and qualification of a justice to fill the vacancy, which election shall take place at the next succeeding general election, and the justice so elected shall hold the office for the remainder of an unexpired term.

The first election of justices shall be at the first general election that shall be held under this constitution.

Section 4. The supreme court shall have jurisdiction to revise the final decisions of the superior courts in all cases in equity, except such as may arise in justices' courts; also, in all cases at law which involve the title or possession of real property or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest of the value of the property in controversy amounts to $200; also, in cases of forcible entry and detainer, and in proceedings in insolvency, and in actions to prevent or abate a nuisance, and in all such probate matters as may be provided by law; also, in all criminal cases prosecuted by indictment or information in a court of record.

The supreme court shall also have power to issue writs of mandamus,
review, prohibition and habeas corpus, and all other writs necessary
and proper to the complete exercise of its appellate jurisdiction.
Each of the justices shall have power to issue writs of habeas corpus
to any part of the state, upon petition or on behalf of any person
held in actual custody, and may make such writs returnable before
himself or before the supreme court, or before any superior court of
the state, or before any judge thereof.

Section 5. There shall be in each of the organized counties of
this state, a superior court, for which at least one judge shall be
elected by the qualified electors of the county, at the general
state election. Provided, that until otherwise provided by the
legislature only one judge shall be elected for the counties of.....

..............................................................; only one
for the counties of......................................; only one
for the counties of......................................; (and so
forth), specifying such contiguous counties as, by reason of their
small population, do not at present require a separate judge. In
any county where there shall be more than one superior judge, there
may be as many sessions of the superior court at the same time as
there are judges thereof; and the business of the court shall be so
distributed and assigned by law, or, in the absence of legislation
therefor, by rules and orders of court, as shall best promote and
secure the convenient and expeditious transaction thereof. The
judgments, decrees, orders and proceedings of any session of a
superior court held by any one or more of the judges of such court,
shall be equally effectual as if all the judges of said court presided
at such session.
The term of office of judges of the superior courts shall be six years from and after the first Monday after the 1st day of January next succeeding their election. The first election of judges of the superior courts shall be at the first general election that shall be held under this constitution. If a vacancy occur in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

Section 6. The supreme court shall have original jurisdiction in all cases in equity, and in all cases of law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and all other cases in which the demand, exclusive of interest, or the value of property in controversy, amounts to one hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of divorce and for annulment of marriage; and of all such special cases and proceedings as are not otherwise provided for. The supreme court shall also have original jurisdiction in all cases and of all proceedings of which jurisdiction shall not have been by law vested exclusively in some other court. And said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justice and other inferior courts in their respective counties,
as may be prescribed by law. They shall be always open except on non-judicial days, and their process shall extend to all parts of the state. Said courts and their judges, shall have power to issue writs of mandamus, review, prohibition, and writs of habeas corpus on petition by and on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

The plan of a judicial organization here presented is substantially that which has been in force in California since the adoption of the constitution of 1879. It is the most radical departure from the itinerant system, which, with its complicated and unwieldy machinery, we have inherited from our British ancestry. It is a notable fact that, in England, reforms in the courts and judicature have recently proceeded more radically and rapidly than in the American states. Still our states have made substantial progress in this respect, as a brief review will show.

The judicial system of the Federal government was formed upon a model which descended to us from our English ancestors, and the character thus impressed upon it, though modified somewhat, has not disappeared. The judges are appointed by the executive head of the government, with the concurrence of the least popular and most conservative branch of the national legislature, and hold their offices during good behavior — commonly called a life tenure. The justices of the supreme court, at state terms, preside over the circuit court, and there decide causes as courts of original jurisdiction. They sit as judges at nisi prius (as that phrase is commonly called nowadays), hearing causes in their first stages, and also as justices of the supreme court in banc, exercising revisory jurisdiction over the decisions of the same nisi prius courts. In a slightly modified form this is the territorial system also, with which the people of Washington are familiar. It was the early system in many of the states. Oregon gave it up as late as 1878.

Whatever differences exist in other respects, there is now substantial unanimity upon the proposition that executive appointment of judges, the life tenure, and the vesting of the functions of both original and appellate jurisdiction in the same justices, must be discarded; the first and second, as inconsistent with the spirit of republican government; the last as manifestly objectionable in principle and inconvenient in practice. It has come to be the recognized and probably the irreversible decision of the American
people that election of judges by popular vote, their tenure only for a
fixed and definite term of years, and the vesting of revisory jurisdiction
in courts not composed of judges of the courts of original jurisdiction,
are logically necessary to the best realization of republican government.
A distinguished lawyer conversing with a gentleman who had considered
this subject pretty thoroughly, remarked that in his opinion the abandon-
ment of the old system was very unfortunate; that when the judges were
appointed by the executive and held office for life, that is, during good
behavior, an abler and more independent judiciary was secured, and the
laws were consequently better interpreted and better administered.
"That is a lawyer's view of it," replied his interlocutor, "and possibly
it is correct, though I doubt it. At all events, correct or incorrect,
it is immaterial; for the people of this republic have concluded that
their courts of justice are of sufficient importance to warrant their
being brought into conformity with republican institutions; and they are
not going to allow anybody hereafter to force upon them better judges
than they think they need." That reply contains the entire philo-
sophy of the situation. For better or for worse, the elective judiciary,
the definite term of office, and a separate class of judges for the
appellate court, are to form the basis of the state courts. None of
the recent constitutions retain the old system, and it has gone out of
most of earlier ones. In Maine, New Hampshire, Massachusetts and New
Jersey the governor still appoints the justices of the supreme court,
subject to confirmation or rejection by the senate; and in Delaware
the governor appoints all the judges, as well those of the courts of
original as those of revisory jurisdiction. In Vermont and Connecticut
the justices of the supreme court are elected by the legislature.
As to the tenure of office, only three states, so far as I am informed,
agree to the life tenure for any of their judges, and only one -
Delaware - applies it to any but those of the supreme court. In
Vermont the term of a justice of the supreme court is one year; in
Ohio it is five years; in Wisconsin, Iowa, Kansas and Oregon, six;
in Maine, New Jersey, Indiana and Minnesota, seven; in Connecticut
and Michigan, eight; in Illinois, nine; in Maryland and California,
ten; in Pennsylvania, twenty-one - coupled, under the new constitution,
with ineligibility to a second term. Further instances are unnecessary.
In all the states except the state of Vermont the judges of the lower
courts have as short terms as those of the supreme court, and in most
of them shorter. Six years is the term adopted in a greater number of
states than any other period. This is the term in California and
Oregon for the judges next in rank to the justice of the supreme court.

In most of the states original jurisdiction in matters of probate
and cognate proceedings is lodged in a special court - sometimes a
court having cognizance of these matters alone; sometimes, as in Oregon
and as formerly in California, having also limited criminal or common
law jurisdiction, or both. This system has some advantages as a
temporary expedient for communities of small population and so situated
as to preclude convenient and quick communication with more populous
places. It may be advisable for a time and for certain localities in
Washington. It has proved inadequate, and in a manner, useless, in
Oregon, and was abandoned in California in 1879, greatly to the improve-
ment of the administration of justice and the advantage of the public
and of suitors. I have practiced law many years in Oregon, and only a few in California, and naturally my predilections would be expected to go toward the Oregon system. But, with sufficient experience under each to enable me to compare them with some degree of intelligence – the Oregon plan, with its separate county court, and the California system, by which all civil and criminal jurisdiction, law – equity and probate – excepting only the small matters given to the justices of the peace – is conferred originally upon a single court, called the superior court, without terms, but always open, subject to the right of appeal to the supreme court – I am forced to the conclusion that the latter is in many ways preferable; better adapted to the expeditious transaction of business; better adapted to the correct, just and uniform application and administration of the laws; better enabling the court to give its attention and its energies to the enforcement of rights and redress of wrongs, instead of wasting a large share of both in the settlement of technical questions touching the relations of the various courts to each other, of the judges to the courts themselves, of the proceedings and judgments of court to the beginning and end of terms, and the like – all of which we lawyers were wont to consider as things important, if not essential, to the orderly conduct of judicial business, until California took hold of the subject with a strong hand and intelligent purpose, and demonstrated that much of what we had supposed to be necessary to judicial procedure is useless rubbish, and that a good deal of what we thought promotive of justice is obstructive of it. It may be best for us, for local and temporary reasons, to start out with some plan involving a separate court for probate and kindred business; but I am satisfied that, even if that is the best course, we ought to have in our constitution suitable provisions for the simpler and more efficient organization of our courts as soon as the conditions shall seem to the legislature to justify the change. It was by a provision of that character in the constitution of Oregon that the legislature of that state in 1878 was able to divorce the supreme court from those of nisi prius. We shall commit a very unfortunate blunder if, in laying the foundation of our judicial system, we allow ourselves to forget that a plan of courts in itself simple and easily understood and operated, is one of the greatest aids to the attainment of the only true and proper end of all legal proceedings – the enforcement of rights and redress of wrongs, with the least possible delay and inconvenience to suitors and the least expense to the commonwealth.

It is a fact well known to all persons having any acquaintance with the condition of judicial business in this territory at the present time, that the judges, though working more days in the year, and more hours in the day, than any other class of people, are unable to transact the business pressing upon them in the courts. This, of course, is partly attributable to the fact that while nearly all the judicial business of the territory is transacted in the district courts, they also have to dispose of much business which, in states, belongs exclusively to the federal courts; and that for all this work there are but four judges. But, the fact remains, that, with any number of judges, a system which distinguishes between business done in term time and business done in vacation, and requires that all
Jury trials shall be had in term, that correction of records shall be made in term, and the like, will prove inadequate and burdensome, unless the number of judges is so multiplied that the judicial system will be itself a burden upon the people. The term naturally draws to it much that might be done in vacation. In some of the more populous counties, even at the present time, one judge at least would be kept constantly busy from day to day, during the whole year, with little if any time for even a short summer vacation. By a system of condensing the year into two or three terms of court, making process returnable in term time, and requiring trials by jury to be had only in term time, business accumulates between the terms till, when court opens, an army of lawyers and suitors and a cloud of witnesses are in waiting at the expense of private interests, and many of them at the expense of the public purse; a jury is in attendance, and can not be dispensed with any day, even though the condition of business may not require its services, because to dispense with a jury is to break up the business of the term. So the public is taxed for juries and for witnesses in waiting, for days and weeks, not knowing when their services may be required, and private suitors are at the expense of keeping in pay large numbers of witnesses waiting for the trial that may never come, or may not come at the current term. Time is wasted by all parties, hanging around the court and watching, lest in a moment of their absence the business of the court may take such shape that their cases will be called up; and, so in the end, there is more useless expense, even at a single term of court, aggregating public and private interests, than would be required to pay the salary of a judge for a whole year, not to speak of the effect that such a condition of things has upon the industries of the country; taking people from their farms, their shops, their manufactories — from whatever employments they have — and holding them idly about a courtroom for days and sometimes weeks. All this is obviated by abolishing terms of court and all the machinery and red tape incident thereto. Let the court always be open, as justices' courts are always open, and in the same sense, when the judge is present with his clerk (it being a court of record), the court is open. All business that may be transacted at any time may be then transacted.

A further advantage of this system, and which naturally flows out of the abolition of terms of court, is, that cases may be set down for trial as soon as they are at issue; there is no occasion for continuances which may carry the case over months to accomplish purposes of justice that might as well be accomplished in a few days. Knowing that a continuance for a number of months is often a means of ultimate escape from justice, conscienceless lawyers, retained by conscienceless clients, are tempted to make conscienceless affidavits for postponement, in order to pass over the term and secure the long delay which may be counted upon for a conscienceless victory; judges are compelled to grant continuances which may amount to a denial of justice to the adverse party by reason of the length of time involved in the delay, or to deny continuances with the reluctance which a conscientious man feels in denying an application that may turn out to be important to the ends of justice. If no term of court began or
expired, but the court were always open, in nearly every case the temptation to seek a continuance for the purpose of delay alone would be removed by the fact that a delay could be obtained for only such length of time as the judge should think actually necessary to a fair and impartial trial of the case. At the same time the judge would have no fear of sacrificing justice in granting a reasonable postponement; and so trials would be more complete, justice more speedily administered, and the temptation to resort to questionable practices at once reduced to a minimum. Under such a system it is not necessary that witnesses be summoned and in attendance upon the court, until the time definitely set for the trial of the case in which their services are required. No witness, either for the commonwealth, or for any individual, need be in attendance at the court a day before the case in which he is to be called is upon trial.

The question naturally is asked by those accustomed to the trial of causes under the system of terms of court: How can this proposed plan be made to work successful in connection with keeping inviolate the right of trial by jury, unless we are to keep a jury in attendance upon the court all the time? The answer is very simple. A venire for a jury is issued after the cases are set for trial. In the setting of cases it is easy to arrange that three or four or more jury cases shall be set down on days immediately succeeding each other, each case being appointed for a day, or if the nature of the case seems to indicate a long trial, then for two days, and the other cases following in immediate succession; and then a venire being issued for the bringing in of a jury drawn as usual from the jury list, the jury is brought in and the witnesses for the first case are in attendance on the day when that case is to go to trial, those for the next case on the appropriate day, and so on; and the jury trials of the several cases proceed without interruption till all the cases are tried. The jury is then discharged, and no jury is called again until the situation again requires the presence of a jury. All that is necessary to make this system work with absolute ease, and without the slightest friction, is a statutory provision or a rule of court, requiring any party who desires a jury trial to file a demand therefor at or within a fixed period after filing his pleading, or after the case is at issue.

In the interim between trials by jury, the court proceeds from day to day with the trial of cases which do not require a jury; and so the docket is never burdened with an accumulation of business, and justice is speedily administered.

Any lawyer need only reflect for a moment to perceive that this proposed system is merely the application and expansion of the manner of getting into court and proceeding to the end of the case, with which he has been familiar for some time in his life, if he is not at present, in the course of practice in the courts of justices of the peace; except that, in the courts of record, routine business not involving the exercise of judicial functions, may all be despatched by the clerk under statutory provision or rules of court, and the time of the judge be devoted entirely to the hearing and examination of those matters which require the exercise of judicial functions.
This plan was matured in the constitutional convention of California, by a committee having for its chairman one of the ablest judges in the state, and was carried through the convention against the opposition of many conservative lawyers, who distrusted any scheme making a radical change in the practice of the courts. It has been in operation now for something over nine years; and, after some two or three years of experience in practice there, and conversation with very many of the leading lawyers of the state, I believe I am safe in saying that today not one judge or lawyer of that state would entertain for a moment the thought of abandoning it.

Jury trials in California are much less numerous, in proportion to the whole number of cases in court, than in most of the states, if not less than in any other state in the Union; and it is supposed by many that the reason for this is to be found in the fact that the judges, by this convenient and rapid system of disposing of business, are enabled to give greater attention and more satisfactory results in trials without a jury than under the system of terms of court and the pressure of excessive labor which that system imposes upon them.

Upon this subject of the organization of courts of justice, there would be absolute unanimity if every member of the convention had witnessed personally the operation of the California system of courts and practice thereunder. My prepossessions were all in favor of the term system, so far as I had any prepossessions, before I practiced in the California courts; for I had seen nothing else in practice; and I venture to assert that any man who should take the trouble to study the no-term system by observation of its workings, would be convinced of its superiority in less than one year's time, no matter how long he had been accustomed to the old plan.

It is not intended to say here that much might not be done in the way of obviating, by statutory provisions, the objections I have made to the old system of courts; but the way to reach the result directly and completely is to settle it in the constitution. All this involves no such radical change as will affect the business of the judicial department of the government by its abruptness, nor does it involve any special preparation, by judges or lawyers, for the change. It involves no change of practice, so far as the details of procedure are concerned. It involves nothing that might not if authority existed therefor be done in any court by a few simple rules of procedure, which would pass almost unnoticed except in the benefits the change would produce. The only thing necessary is a legal basis for a simple, natural reformation, which nobody would feel except in the bettering of the entire system.

In those instances in which it might be necessary to embrace two or more counties in the jurisdiction of one judge, for the sake of economy, the business of the courts is of so small volume and the conveniences of travel have now come to be such, that very little inconvenience could arise from having all original jurisdiction vested in the superior judge. Cases very rarely occur in which the presence of the judge would be required upon short notice,
and such cases, when they occur, would generally be of sufficient importance to justify the parties in going to the judge, if he were not present in the county. The judge of the court could be, and naturally would be, invested with authority to act in matters pertaining to any part of the district, without being present himself at the place; besides, a large amount of the business now done by the judge could as well be done by the clerk of the court - being mainly administrative - and the judge himself be required only when something should arise demanding the exercise of judicial functions in the proper sense of the word. There is no reason why orders setting down matters for hearing citations, orders of publication, and all such preliminary things, should not be made and done by the clerk, as of course, under a rule of court, or under a statutory provision. Nor is there any reason why any writ that is issued as of course, or any order to show cause issued as of course, or any such matter, should not be attended to by the clerk and made returnable at the place of residence of the judge or at the place where, by his appointments, he would be expected to be present at the time the hearing is to be had before him.

This does not imply that persons concerned in such proceedings must necessarily travel long distances; for the cases in which more than one county would be embraced in the jurisdiction of a single judge, would not be numerous nor the districts large. Most of the counties, or at least a large number of them, would at once require all the services of a separate judge; and it must be apparent to all, that in a short time the necessity for uniting more than one county within the jurisdiction of one judge except in very few counties, will have passed away by the natural increase of population and the development of business interests. But even this objection can be obviated, slight as it is, if thought best to do so, by allowing jurisdiction to be vested temporarily, in matters of probate and emergency writs, in a temporary court created for that purpose. A slight modification of the provisions here proposed would enable the legislature to meet any such requirement until such time as there were no longer any occasion to admit any modification of this plan.

The vesting of jurisdiction in all classes of cases - law and equity; civil and criminal; insolvency and probate - in the same court, dispenses entirely with many embarrassing questions, and simplifies others very greatly; and thus saves much time of the court which, under all other plans, is consumed in disposing of jurisdictional disputes and refinements. It also removes all ground of uncertainty as to remedy and course of procedure, so far as that depends upon the character of the suit or proceeding - a matter often very embarrassing to both counsel and court, and sometimes of the utmost moment to suitors.

Moreover, this plan will secure the administration of probate and kindred branches of remedial law by judges of learning, ability and experience, and thus free such interests as are involved in such proceedings from most of the vexatious errors, mistakes and failures which have heretofore furnished endless complications and brought good to nobody not even the lawyers.
Section 7. A judge of any superior court may hold a superior court in any county, at the request of a judge of the superior thereof, and upon the request of the governor it shall be his duty to so do.

Section 8. The legislature shall have no power to grant leave of absence to any judicial officer, and any such officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office. The legislature of the state may at any time, two-thirds of the members of the house of representatives voting therefor, increase or diminish the number of judges of the superior court in any county; provided, that no such reduction shall affect any judge who shall have been elected.

Section 9. The governor may remove from office a justice of the supreme court, or a judge of the superior court, or a prosecuting attorney, upon the joint resolution of the legislature, in which two-thirds of the members elected to each house shall concur, for incompetency, corruption, malfeasance or delinquency in office, or other sufficient cause stated in such resolution. Such resolution shall be entered at length on the journals of both houses; and on the question of removal the ayes and noes shall also be entered on the journal.

Section 10. The legislature shall determine the number of justices of the peace to be elected in incorporated cities and towns; and shall prescribe by law the powers, duties, jurisdiction and responsibility of justices of the peace.

Section 11. The supreme court and the superior courts shall be courts of record, and the legislature shall have power to provide that any other of the courts of this state shall be courts of record.
Section 12. The legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance of this constitution.

Section 15. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office. The justices of the supreme court and the judges of the superior courts shall severally, at stated times during their continuance in office, receive for their services the salaries prescribed by law therefor, which shall not be increased or diminished after their election, nor during the term for which they shall have been elected. The salaries of the justices of the supreme court shall be paid by the state. One-half of the salary of each superior judge shall be paid by the state, the other half the county or counties for which he is elected. In cases where but one judge is provided for more than one county, that portion of his salary which is to be paid by the counties shall be apportioned between or among them according to the assessed value of their taxable property, to be determined by the assessment next preceding the time for which such salary is to be paid.

In the state from which this judicial system is borrowed, the salaries of the superior judges are not uniform, those in the more populous counties, where the duties of the office are onerous, and its responsibilities proportionately great, being larger than in those where little labor or responsibility attends the office. The counties pay one-half of these salaries, and find it no appreciable burden. Meanwhile the circumstance that the salary is to some extent a local charge tends more or less to prevent pressure on the legislature for increase of salaries.

It will be found unsatisfactory to fix the salaries of judges inflexibly, by the constitution. Either they must be made so low in order to meet the demand for economy in the present condition of the country, as to be entirely inadequate when the population and business shall have grown; or they must be fixed at a figure suitable to a large community, and thus be a burden while the community is small. Oregon has felt this very sensibly. The salaries of the
judges in that state were fixed by the constitution at a time when the community was in its infancy, and were of course, placed so low as to be entirely inadequate to the present condition. This has resulted in much inconvenience and dissatisfaction, and has caused various devices, that were not entirely above criticism to be resorted to as a means of correcting the evil. It will be found best to lodge discretion upon this subject in the legislature, to be exercised within defined limits. In many, if not most all the states, the amount of the salaries of the judges is left entirely to the legislature; and in those states there appears to be no complaint that exorbitant compensation has been given them.

Section 14. The justices of the supreme court and judges of the superior courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

Section 15. Judges shall not charge juries with respect to matters of fact, but shall declare the law.

Section 16. The justices of the supreme court shall appoint a reporter of the decisions of that court, who shall be removable at their pleasure. He shall receive such an annual salary as shall be prescribed by law.

Section 17. No judge of a court of record shall practice law in any court of this state during his continuance in office.

Section 18. No person shall be eligible to the office of justice of the supreme court or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state or of the territory of Washington.

Section 19. Every cause submitted to a judge of the superior court for his decision shall be decided by him within ninety days after the submission thereof; provided, if within said period of
ninety days, a rehearing shall be ordered, then the period within which
he is to decide shall commence at the time the cause is submitted upon
such rehearing.

Section 20. The justices of the supreme court shall appoint a
clerk of that court who shall be removable at their pleasure; but the
legislature may provide for the election of the clerk of the supreme
court, and prescribe the term of his office. The clerk of the supreme
court shall receive such compensation as shall be provided by law.

Section 21. The county clerk shall be, by virtue of his office,
clerk of the superior court.

Section 22. A sheriff shall be elected in each county for the
term of two years, who shall be the ministerial officer of the superior
court, and shall perform such other duties and receive such compen-
sation as may be prescribed by law. The term of office of the clerk
and sheriff shall be two years.

Section 23. There shall be elected a sufficient number of prose-
cuting attorneys, who shall be law officers of the state and the
counties for which they shall have been chosen; shall hold office for
the term of two years; and shall perform such duties pertaining to the
administration of law and general police, as the legislature may direct.

Section 24. The legislature shall provide that the most competent
prominent citizens of the county shall be chosen for trial jurors and
grand jurors.

Section 25. All process shall run in the name of the state of
Washington.

Section 26. The legislature shall provide for the speedy publication
of such opinions of the supreme court as it may deem expedient, and all
opinions shall be free for publication by any person.
Section 27. Every justice of the supreme court and every judge of a superior court shall, before entering upon the duties of his office, take and subscribe and transmit to the secretary of the state, an oath that he will faithfully and impartially discharge the duties of a justice or judge, as the case may be, to the best of his abilities.
ARTICLE VII.
REVENUE AND FINANCE.

Section 1. The legislature shall provide by law a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such as is exempt by the laws of the United States, and such only for municipal, educational, literary, scientific, religious or charitable purposes as may be specially exempted by law.

Section 2. The legislature shall provide for raising revenue sufficient to defray the expenses of the state for each fiscal year, and also a sufficient sum to pay the interest of the state debt, if there be any.

Section 3. No tax shall be levied, except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

Section 4. No money shall be drawn from the treasury but in pursuance of appropriations made by law.

Section 5. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the legislature.

Section 6. Whenever the expenses of any fiscal year shall exceed the income, the legislature shall provide for levying a tax for the ensuing fiscal year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expense of the ensuing fiscal year.
Section 7. Laws making appropriations for the salaries of public officers, and other current expenses of the state, shall contain provisions upon no other subject.

Section 8. The legislature shall not loan the credit of the state, nor in manner create any debt or liabilities which shall singly or in the aggregate with previous debts and liabilities exceed the sum of $250,000, except in case of war or to repel invasion or suppress insurrection; and every contract of indebtedness entered into or assumed by or on behalf of the state when its liabilities and debts amount to the said sum, shall be void and of no effect; provided, that this section shall not be so construed as to make void any obligation of the state incurred for the necessary current and ordinary expenses of the government.

Section 9. All stationery required for the use of the state shall be furnished by the lowest responsible bidder, under such regulations, as may be prescribed by law; but no state officer or member of the legislature shall be interested in any bid or contract for furnishing such stationery.
ARTICLE VIII.

EDUCATION.

Section 1. The legislature shall provide for the establishment and maintenance of a thorough and efficient system of common schools, which shall be open to all the children of the state, and in which all the children of the state may receive a good common school education; and may establish such schools of higher grade as may be deemed expedient. All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

This section is taken from the constitution of Illinois, modified only so far as it seems necessary to bring it into conformity to the provision on this subject in the act of congress providing for the admission of the state.

Section 2. The governor shall, until otherwise provided, be superintendent of public instruction, and his powers and duties in that capacity shall be such as may be prescribed by law; but the legislature may provide for the election of a superintendent, and prescribe his powers and duties, and the term of his office.

Section 3. The proceeds of all lands which have been, or may hereafter be, granted to this state for educational purposes (except the lands heretofore granted to aid in the establishment of a university), all the moneys and clear proceeds of all property which may accrue to the state by escheat or forfeiture; and all moneys which may be paid as exemption from military duty; the proceeds of all gifts, devises and bequests made, or that may be made, by any person to the state for
common school purposes; the proceeds of all property granted to the state when the purpose of such grant shall not be stated; and all other moneys or other property granted to the state for common school purposes, and not otherwise directed by the terms of the grant, shall be set apart as a separate, permanent and irreducible fund, to be called the school fund, the interest of which, together with all other revenues derived from the school lands mentioned in this section, shall be exclusively applied to the support and maintenance of common schools in each school district, and to the purchase of suitable libraries and apparatus therefor.

Section 4. Provisions shall be made by law for the distribution of the income of the school fund among the several counties and school districts of the state in proportion to the number of children resident therein between the ages of 5 and 20 years.

Section 5. The superintendent of public instruction, secretary of state, and state treasurer shall constitute a board of commissioners for the management and disposal of all property the proceeds of which is set apart for the irreducible school fund, and for the investment of the funds arising therefrom; and their powers and duties shall be such as may be prescribed by law.

Section 6. Provisions shall be made by the legislature for the education of the blind and deaf between the ages of 5 and 20 years; and reform schools may be established for the reformatory education of children who are without parental restraint, and are growing up in idleness and vice.
ARTICLE IX.

MILITIA.

Section 1. The militia of the state shall consist of all able-bodied male citizens between the ages of 18 and 45 years, except such persons as now are, or hereafter may be, exempted by the laws of the United States, or this state.

Section 2. Persons whose religious tenets of conscientious scruples forbid them to bear arms, shall not be compelled to do so in time of peace, but shall pay an equivalent for personal service.

Section 3. The governor shall appoint the adjutant-general and other chief officers of the general staff and his own staff, and all officers of the line shall be elected or appointed in such manner as may be prescribed by law.

Section 4. The majors-general, the brigadiers-general, colonels, or commandants of regiments, battalions or squadrons, shall severally appoint their staff officers, and the governor shall commission all officers of the line and staff ranking as such.

Section 5. The legislature shall fix by the law the method of dividing the militia into divisions, brigades, regiments, battalions and companies and make all other needful rules and regulations in such manner as may be deemed expedient, not incompatible with the constitution of laws of the United States, or of the constitution of this state, and shall fix the rank of all staff officers.
ARTICLE X.
CORPORATIONS.

Section 1. Corporations may be formed under general laws, but corporations shall not be created, nor their charters extended or altered, nor any right of power whatever conferred upon them, by special laws. The legislature shall have power to alter, repeal and amend any law providing for the formation, regulation, privileges or powers of corporations.

Section 2. The legislature shall not remit a forfeiture of the charter or franchises of any corporation now existing, or which shall hereafter exist, under the laws of this state.

Section 3. The property of corporations shall be subject to be taken in the exercise of the right of eminent domain on the same terms as that of natural persons.

Section 4. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received. The stock of a corporation shall not be increased without the consent of the persons holding the majority in value of the stock, nor without giving sixty days' public notice, in such manner as may be provided by law, of the intention to increase the stock, and of the time and place of the meeting when the matter is to be voted on.

Section 5. Every corporation other than educational and benevolent, doing business in this state, shall have and maintain an office or place of business in this state for the transaction of its business, where transfers of stock may be made, and where shall be kept subject to the inspection of any person having an interest therein, and of legislative committees and other agents authorized by the state,
books in which shall be recorded the amount of the capital stock subscribed, and by whom, the names of the owners of its stock and the amounts owned by them respectively, the amount of stock paid in and by whom, the transfers of stock, the amount of its assets and liabilities, and the names and places of residence of its officers.

Section 6. No corporation organized outside of this state shall be allowed to transact business within the state on more favorable conditions than are presented by law to similar corporations organized in the state.

Section 7. All railway companies and common carriers, and as such are and shall always be subject to the control and regulation of law. They shall not charge extortionate or excessive rates for transportation, nor unjustly discriminate in their charges or the rendering of services against or among persons or places. Laws shall be enacted prohibiting, under adequate penalties, violations of this provision.

Section 8. Every railway company shall have the right with its road to connect with, or cross any other railway; and all railway companies shall receive and carry each other's passengers, tonnage and cars, without delay or discrimination. The legislature shall provide adequate penalties for violation of this section.

Section 9. No banking corporation, company or institution shall ever exist in this state with the privilege of making, issuing or putting into circulation any bill, check, certificate, note or paper of any bank, company or person, to circulate as money.

The tendency of recent times to the concentration of capital for carrying forward enterprises too vast to be carried on by individual effort, and the convenience, for this purpose of the legal
creation known as a corporation, has filled every avenue of human endeavor with these combinations; and from their multiplication and expansion have come necessity for keeping them firmly in the grasp of law. This is particularly true of those corporations which engage in the transportation of persons and property. So great are the amounts of money requisite to the construction and operation of facilities for transportation, that individual competition is, as to the greater portion of the country, as completely shut out as if it were illegal. Meanwhile the condition of society and the interdependence of all its various industries upon convenience of rapid interchange, render the multiplication of railways and other transportation facilities a sine qua non of progress and prosperity. The corporations, therefore, must be held resolutely in the control of law. There is every reason, both on abstract principles and on the evidence of past experience, for the utmost vigilance on the part of the people in their relations to these corporate bodies. They are excellent servants of the public, but hard masters. Without them, commerce is out of the question, and great progress impossible to any community. Out of legal control, they can destroy or build up wheresoever they will.

To provide in a constitution a complete and detailed system of regulations for control of corporations is impracticable. The best that can be done, so far as experience has yet gone, is to lay down general principles which shall prevent, on the one hand, the investing of corporations with powers that may be exercised oppressively, and, on the other, such legislation under the influence of passion or prejudice, as will be unjust to those who stake their fortunes upon these necessary enterprises. The free use of capital in the state must be encouraged; the rapacity which seems too often to be developed in connection with large aggregations of amassed capital must be restrained. This is the golden mean to be sought. In Medio tutissimus ibis. Let the corporate phaeton move on, but keep the reins in your own hands.
ARTICLE XI.

COUNTIES, CITIES and TOWNS.

Section 1. The several counties as they now exist are hereby recognized as legal subdivisions of the state of Washington.

Section 2. The legislature shall establish a system of county governments, which shall be uniform throughout the state; but no special law shall ever be passed for the government of any county or the administration of county affairs.

Section 3. Laws providing for county governments shall make provisions for the election or appointment of such officers therein as public convenience may require, and prescribe their duties and the terms of their office. The compensation of all such officers shall be regulated in proportion to the duties performed, and for this purpose the legislature may classify the counties by population. Provision shall be made for the strict accountability of county and precinct officers, for all fees which may be paid to them, or may officially come into their possession.

Section 4. Cities and towns shall not be incorporated by special laws; but the legislature, by general laws, shall provide for the incorporation, organization and classification, in proportion to populations of cities and towns, which laws may be altered, amended or repealed by general laws. Cities and towns heretofore incorporated may become organized under such general laws whenever a majority of the electors at a general election shall so determine, under such provision therefor as may be made by the legislature.
Section 5. The charters or acts of incorporation (with their amendments) of cities and towns incorporated prior to the adoption of this constitution, and remaining in force at the time of such adoption, are not abrogated or affected by the adoption of this constitution; nor shall any charter of a city or town be amended or altered by special law; but the charters and government of all cities and town, whether incorporated before the adoption of this constitution, or in pursuance of general laws enacted under it, shall be subject to general laws.

Section 6. The compensation of any county, city or town officer shall not be increased after his election, nor during his term of office.

Section 7. Any county or incorporated city or town may make and enforce within its limits, all such local, police, sanitary and other regulations as are not in conflict with its charter or with the general laws.

Section 8. The legislature shall have no power to impose taxes upon counties, cities, towns or other public or municipal corporations, or upon the inhabitants of property thereof, for county, city, town or other municipal purposes, but may by general laws authorize and require the corporate authorities thereof to assess and collect taxes for such purposes.

Section 9. No county, city or town, board of education or school district, shall incur indebtedness or liabilities in any manner or for any purpose exceeding in any year the income and revenue provided for it for such year, without the assent of two-thirds of the qualified
electors thereof, voting at an election held for that purpose; nor unless before at any time of incurring such indebtedness provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also a sinking fund for the payment of the principal thereof within such time from the contracting of the same as the legislature may be general laws direct. Any indebtedness or liability incurred contrary to this provision shall be void.

Section 10. The state shall never assume the debts of any county, town or other municipal corporation, unless such debts shall have been created to repel invasion, suppress insurrection or defend the state in war.

Section 11. No county, city, town or other municipal corporation, by vote of its citizens or otherwise shall ever become a stockholder in any joint stock company, corporation or association whatever, or raise money, for, or loan its credit to or in aid of any such company, corporation or association.

No one need be informed that the incorporation of cities and towns by special act of the legislature is an exhaustless fountain of evil in a state where it prevails. There is no branch of government more completely and perfectly adapted to the purposes of those who make the filthiest politics a trade, than the manipulating of city charters when this can be done by special laws. These charters are the footballs of all the skilled labor lobbyists, who are sure to besiege the legislature when there is opportunity for plunder. The plan of regulating these municipal governments by general laws only, has been adopted in many of the states, and has proved an efficacious remedy for the evils above mentioned, besides securing much better local government. No state has receded, after having once taken the step of prohibiting all special laws creating or governing municipal corporations. And the change has proved altogether satisfactory with regard to the government of counties and other quasi corporations.
ARTICLE XII.

PUBLIC LANDS.

Section 1. All the public lands of the state are held in trust for all the people; and none of such lands nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States.

The latter part of this section is framed in accordance with the restrictions contained in the act of congress providing for the admission of the state into the Union. Perhaps it is unnecessary to embody this restriction in the constitution, but it is believed to be the more prudent course. That act provides that the school lands shall not be disposed of for a less price than $10 per acre. It is highly probable, however, that some of these lands will never be worth that price in the market, though the greater portion of them are or will be in a short time. To fix the absolute minimum in the constitution would, most likely, prove embarrassing in the future when congress shall consent to the sale of the remnant of comparatively valueless land at a lower rate. No longer held back by the act of congress, we should still be bound by the constitutional restriction, and the less valuable lands would remain unsold - pasture ground furnished to the general public by the state at the expense of the common schools. This situation would almost surely arise as to some of these lands. It ought to be avoided, and can be by the adoption of the provision above offered.

Section 2. Whenever the legislature shall provide for the disposal of any of the lands of the state, or any estate or interest therein, reasonable provision shall be made for securing pre-emptive rights to
persons having therein and in actual use in commerce, manufacture or agricultural, valuable improvements made previous to, and in such use at, the time of the adoption of this constitution; but such pre-emptive rights shall in no case cover more land than is occupied by such improvements. In estimating the value of such lands for disposal, the value of such improvements shall be excluded, and such improvements shall not be deemed the property of the state.

Section 5. No individual partnership or corporation, claiming or possessing the shore or tidal lands of harbor, bay, sound, inlet, estuary or other navigable water in this state, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose. The state shall always retain the title and control of the landings and wharfage privileges upon the shore or tide lands fronting upon the navigable waters of the state, and the same shall forever be held in trust for the use of all the people subject to such reasonable regulation by general law, as the manners and terms of such use, as the legislature may prescribe. The legislature permits the use of such landings and wharfage privileges, for a limited time and upon just terms, to persons who at the time of the adoption of this constitution shall have thereon and in actual use in commerce, valuable improvements made before the adoption of this constitution. The legislature shall enact such laws as will secure full enforcement and protection to the rights secured to the public by this section, so that access to the navigable waters of this state should be always attainable by the people through streets, alleys and other approaches, wheresoever required for public conveniences.
The subject of the public lands, especially those belonging to
the state in virtue of its sovereignty, lying between high and low
water mark at the margin of our navigable waters, is difficult and
delicate, and its importance is far greater in Washington than in any
state that has been admitted. It presents questions of the utmost
importance at every view; and it may be assumed that no solution of
them will be reached which will not be unsatisfactory to large numbers
of persons, and probably none which will not seem unjust to certain
interests. It is thought by some that these lands ought never to be
disposed of, but ought to be retained by the state, and an income be
denied from them perpetually. At first I was inclined to that view;
but on further reflection it seemed to promise evils which would
hardly be compensated by any ben fits that could arise from such a
course.

The situation in Washington is in many respects different with
respect to her lands from that of any other community. When the older
states came in, the relation of the public and the individual to the
lands held by the commonwealth was settled and defined by the previous
condition of society. When most of the new states came in, whatever
lands they had were of little value, the communities were small, the
forces which give value to real property had not yet been fully felt,
and there was little cause to consider the problems presented in
Washington territory at this time concerning the disposal of the public
lands. The new state of Washington, upon its entry into the Union,
will own a vast amount of valuable land directly granted by the govern-
ment of the United States for school and other purposes. These lands
are of great value for timber and agriculture. They ought not to be
frittered away, as has been the case with the lands given to many of
the other states which have come lately into the Union; but, besides
this, and not by grant of the United States, but under the inherent
sovereignty of the state, it will own perhaps more of that class of
lands called shore or tide lands than any other state in the Union.
These lands embrace all the shores on the water front of its navigable
waters between low water mark and ordinary high water. Their amount
and value can hardly be appreciated by any one who has not carefully
studied the subject. At a recent meeting of the Bar Association at
Tacoma a paper was read by a member of the Tacoma bar, from which the
following is taken:

"The magnitude of the interests which are involved,
especially upon Puget Sound, must appear incredible to
one who has not given the subject study. Almost every mill,
every warehouse, every manufacturing industry, every railroad,
is directly, and through them almost every other avocation
and occupation on Puget Sound, is indirectly, affected by
the settlement of this question. Whatever way we turn we
find a deadly conflict of interests, and the duty of the
wise statesmen should be to effect such a settlement as
will produce the greatest good to the greatest number.
But settled it must be. There is over 2500 miles of coast
line in Washington Territory. The interests involved are entirely too vast to allow doubt to longer exist as to the main points in this controversy. It is asserted that no other state has made constitutional declaration of its rights to these lands, and for this reason it is urged that the state of Washington should do so. To such I would answer that no other state in the Union, excepting perhaps some of the original thirteen, has this question been of any great moment. The gulf states, the lake states, and the states of California and Oregon were the only states to which the questions could have the slightest importance, and the civilization of none of them had advanced to such an extent as to render the subject of such general interest that a declaration in the constitution would be warranted. Besides it is only of late years that this question has become a mooted one. Some recent writers and recent courts are attempting to establish a different rule of law from that which formerly obtained, and for this reason, if no other, the people of this state should declare what their rights are in the premises."

With regard to the legal status of these lands it may be considered as settled:

First - They belong to the state by virtue of its sovereignty immediately upon its coming into the Union, and it has absolute dominion over, and power of disposition of them, no matter whether occupied by private individuals or unoccupied;

Second - That any grant of land by the United States during the territorial condition of the country, covering any of these tide lands, confers no title upon the grantee;

Third - That riparian or littoral proprietors of land fronting upon these tide lands have no rights in them which the state is, in law, bound to respect.

These propositions have been settled by decisions of the supreme court of the United States, and of the highest state courts of the states wherever the question has been presented. In the state of Oregon, whose legal position with reference to these lands was, before it became a state, identical with that of Washington territory, the question came up in Hinman vs. Warren, reported in 6 Oregon Reports, and was fully examined. In that case, the United States, under the donation law, had granted and patented a tract of land by metes and bounds extending from the shore (which was also included), to a point below mean high tide. The state, after its admission, conveyed this tide land to a person not the patentee of the United States, nor the littoral proprietor, and his title was assailed by one claiming through the patent. The supreme court of the state, in a carefully considered opinion, held, following the
decisions of the supreme court of the United States, that the patent was ineffectual to convey the tide lands, and that the title derived from the state was the true title to the lands in dispute. It is believed that, in the absence of state statutes regulating the subject, no case can be found conflicting with the decisions of the supreme court of Oregon in that case.

This does not imply that the territorial government might not give permission to the littoral proprietors to extend improvements in the way of wharves, warehouses and the like, over the lands in front of their possessions, or that such rights would not be recognized in court; but it does imply that such permission, if valid, can only be considered temporary, and can not extend beyond the period of territorial existence.

A glance over the history of the states which have come into the Union of late years will show that the public lands of these states have been generally a temptation and inducement to schemes of speculators, and have thus become a field of jobbery and a source of corruption. The lands, which are in morals, and ought to be in law and in fact, held as a sacred trust for the benefit of our people, have, in most cases, if not in every case, been squandered, and little has been realized from them in comparison with their true value. In the case of Washington territory, the great value of these lands, especially of the tide lands, will tend to aggravate these evils, and will be the inspiration of organized schemes for their capture, at every session of the legislature, until they are entirely exhausted; unless, by constitutional provision, the legislature is restricted in their disposition in such manner as to make it less convenient to dispose of them, and impossible to do so without receiving their actual value. It is not supposed that the provision here offered will be an absolute protection against the evils suggested. It is not supposed that it will cut off the desire of speculators to obtain these lands, nor that it will preclude the possibility of their doing so. While human nature is human nature, it is not probable that any constitutional provisions or inhibitions will be found sufficiently strong or sufficiently strict to convert professional lobbyists into honest citizens, and speculators into disinterested patriots, or entirely to preclude in all cases a combination of these classes from at least partial success. Perhaps the only way to accomplish this purpose would be to hold these tide flats forever open and unoccupied, and let them be considered merely as things ornamental; to shut the gates of commerce and allow millions of dollars of property to lie unused. If disposition is to be made of these lands by the state, or if they are to be used for commercial purposes under the direct supervision of the state, in either case there is room for, and temptation to, the corrupt practices which cupidity would suggest and evil ingenuity perfect. But is is something gained if provision can be made by which a practical approach to the actual value of the property can be secured, and by which some restraint may be thrown around the disposition of the lands to those who seek them merely for speculative purposes. These tide lands are for the most part useful only as sites for manufactories and commercial establishments, and for approaches thereto from the water; but they are peculiarly useful for these purposes, and are, for some of these purposes, the only lands that are useful.
The towns and cities lying upon the public waters are necessary as centers of trade and commerce; their streets, alleys and public landings are for the use of the whole people - not merely of the cities or towns themselves, but of the state at large, and of all who may visit the state. It is, therefore, eminently proper that so far as these lands are needed for streets and other public conveniences in the cities they should be freely given and devoted to those purposes. No imagined or real equity of individuals who have taken possession of the tide lands should ever be allowed to stand in the way as an obstacle to the enjoyment by the people of their higher right in this respect.
ARTICLE XIII.

STATE PRINTER.

Section 1. There shall be elected by the qualified electors of this state, at the times and places of choosing members of the legislative assembly a state printer who shall hold his office for the term of four years. He shall do all the job printing for the state which may be required of him by law. The rates to be paid him for such printing shall be fixed by law, and shall neither be increased nor diminished during the term for which he shall have been elected. He shall give such security for the performance of his duties as may be provided by law.
ARTICLE XIV.

SALARIES

Section 1. The governor shall receive an annual salary of $5000; the secretary of state, treasurer, auditor and attorney-general shall each receive an annual salary of $4000; the justices of the supreme court shall each receive an annual salary of $5000; the judges of the superior courts shall each receive an annual salary to be fixed by the legislature, according to the services to be performed by each respectively, and not in any case to exceed $4500, and the compensation of other officers, if not fixed by this constitution, shall be prescribed by law. All salaries shall be paid quarterly.
ARTICLE XV.

SEAT of GOVERNMENT.

Section 1. The legislature shall not have power to establish a paramount seat of government for this state; but at the first regular session after the adoption of this constitution the legislature shall provide by law for the submission to the electors of the state at the next general election thereafter, the matter of the selection of a place for a permanent seat of government, and no place shall ever be the seat of government under such law, which shall not receive a majority of all the votes cast on the matter of such selection. If at the election in which said matter is first voted upon no place shall receive a majority of the votes cast on that matter, then at the next general election, those places, not exceeding three in number, which shall have received at such first election the highest number of votes, shall again be voted upon; and so on, from election to election, the three having the highest number of votes shall again be voted upon until a choice is made.

Section 2. The seat of government when established as in the last preceding section provided, shall not be removed for the term of twenty years from the time of such establishment, nor at any time in any other manner than as provided in the last preceding section.

Section 3. No taxes shall be levied, or money of the state expended, or debt contracted, for the erection of a state house until the place of a permanent seat of government shall have been selected in accordance with section one of this article.

Section 4. Until a place for the permanent seat of government shall have been selected, the temporary seat of government of this state shall be at Olympia.
ARTICLE XVI.

MISCELLANEOUS.

Section 1. All laws in force at the time of the adoption of this constitution and not inconsistent therewith, shall remain in full force and effect until altered or repealed by the legislature; and all rights, actions, prosecutions, claims and contracts of counties, individuals, or public or private corporations, not inconsistent with this constitution, shall continue to be valid as before the adoption hereof. The provisions of all laws which are inconsistent with this constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this constitution as require legislation for their enforcement, shall remain in full force until such legislation be enacted, unless sooner altered or repealed by the legislature.

Section 2. All recognizances, obligations and all other instruments entered into or recorded before the adoption of this constitution, to the territory of Washington or to any subdivision thereof, or to any municipality therein, and all fines, taxes, penalties and forfeitures due or owing to the said territory or any subdivision or municipality thereof, and all rights, prosecutions, actions and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this constitution. All indictments or informations which shall have been found, or may hereafter be legally found for any crime or offense committed before this constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this constitution.
Section 3. All courts now existing, except justice courts and police courts, are hereby abolished; and all records, books, papers and proceedings in such courts as are abolished by this constitution, except such matters as are transferred by law to United States courts, shall be transferred by force of this constitution to the courts provided for in this constitution, and the courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance filed or lodged therein.

Provided, until the judicial officers provided for in this constitution shall have been elected, and shall have qualified, the judicial power shall be exercised so far as consistent with the laws of the United States, by the judicial officers in office at the time of the adoption of this constitution, and they shall receive therefor the same amount of compensation as under the territorial government.

Section 4. The state of Washington assumes and undertakes the payment of all debts owing by and all demands against the territory of Washington.

(This section is required by the admission act. W. L. H.)

Section 5. All officers, except members of the senate and house of representatives, shall hold their office until their successors are elected and qualified.

Section 6. When the duration of any office is not provided for by this constitution, it may be declared by law, and if not so declared, shall be held during the pleasure of the authority making the appointment; but the legislature shall not create any office, the tenure of which shall be longer than four years.
Section 7. Every person elected or appointed to any office shall, before entering on the duties thereof, take an oath or affirmation to support the constitution of the United States and of this state, and faithfully to perform the duties of such office.

Section 8. The legislature shall have no power to authorize any lottery or gift or enterprise for any purpose, and shall pass laws to prohibit, under adequate penalties the sale in this state of lottery or gift enterprise tickets, or tickets or other evidences of any interest in any scheme in the nature of lottery.

Section 9. The use of water for irrigation and manufacturing purposes shall be deemed a public use; and the legislature shall have power, but by general law only, to regulate such use and provide for the appropriation therefor of the waters of the streams and of land for canals, ditches, flumes and other conduits for water, for irrigating or manufacturing purposes.

Section 10. The property and pecuniary rights of every married woman, acquired before marriage, or afterwards acquired by gift, devise or inheritance, shall not be subject to the debts or contracts of the husband; and laws shall be passed providing for the registration of the wife's separate property.

Section 11. No state officer or member of the senate or house of representatives shall directly or indirectly receive a fee, or be engaged as counsel, agent or attorney in the prosecution of any action against this state, and the legislature shall provide by law for the punishment of any violation of this section.
Section 12. All officers of the territory of Washington, or under the laws, when this constitution takes effect, shall continue in office until superseded by the officers of the state.

Section 13. The provisions of this constitution are mandatory and prohibitory, and no right shall ever be acquired, held, lost, denied or affected, but in conformity therewith.
ARTICLE XVII.
BOUNDARIES.

Section 1. In order that the boundaries of the state may be known and established, it is hereby ordained and declared that the state of Washington shall be bounded as follows, to wit:

(Defining the Boundaries.)
ARTICLE XVIII.
AMENDMENTS.

Section 1. Any amendment or amendments to this constitution may be proposed in either branch of the legislature, and if the same shall be agreed to by a majority of all the members of each of the two houses, voting separately, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and referred to the legislature to be chosen at the next general election; and if in the next legislature so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, voting separately, then it shall be the duty of the legislature to submit such amendment or amendments to the electors of the state, and cause the same to be published without delay for at least six consecutive weeks, in not less than four newspapers of general circulation, published in the state; and if the majority of the electors shall ratify the same, such amendment or amendments shall become a part of this constitution; provided, any proposed amendment or amendments which shall be agreed to by two-thirds of all the members elected to each of the two houses, voting separately, shall be submitted to the electors without a second vote thereon, by the members of the two houses.

Section 2. If two or more amendments are proposed, they shall be submitted in such manner that the electors shall vote for or against each of them separately.
ARTICLE XIX.

SCHEDULE.

Section 1. For the purpose of taking the vote of the electors of the state for the adoption or rejection of this constitution, an election shall be held on the second Tuesday in October, in the year 1889, to be conducted according to the existing laws regulating the election of delegates in congress so far as applicable, except as herein provided.

Section 2. Each elector who votes in such election shall deposit a ballot, on which shall be written the words "For the Constitution," or, "Against the Constitution," as he may desire to adopt or reject this constitution.

Section 3. The votes shall be canvassed in accordance with the laws relating to the election of delegate in Congress, and the returns thereof shall be certified to the secretary of the territory, and shall be publicly opened and canvassed by the governor and secretary, or by either of them in the absence of the other; and the governor, or in his absence, the secretary, shall forthwith issue his proclamation, and publish the same in at least ten newspapers printed in the state, declaring the result of the election upon the question of the adoption or rejection of the constitution.

Section 4. If a majority of the votes given for and against the constitution be given for the constitution, it shall be deemed approved and adopted and shall take effect accordingly; but if a majority be against it, it shall be decided rejected.
Section 5. If the constitution be adopted, an election shall be held on the _____ day of _____, 1889, for the election of members of the legislature and state and county offices; and the legislature shall convene at the seat of government on the first Monday of January, 1890, and make such further provision as may be necessary to complete the organization of a state government.

Section 6. Until an enumeration of the white inhabitants of the state shall be made, and the senators and representatives apportioned as directed in this constitution, the senatorial and representative districts, and the apportionment of senators and representatives shall be as follows:

(Making a temporary apportionment.)

Done in Convention at Olympia, etc.
I need not repeat that in proposing the foregoing draft of a constitution, I do not assume that it is perfect, or that it can not be improved upon by the convention. I have given the subject a considerable amount of thought, because in common with all citizens of Washington, I am very very anxious that the young state shall be launched in the best condition and position to catch the breeze that is to speed her on to a high destiny. I have examined the constitutions of all the states, and have offered not much of importance that has not been tried and approved in some of them. I have drawn most upon the constitutions of Oregon, California and Illinois, because upon comparison of all, there seemed to be in them more that is adapted to our condition, situation and hopes than in the others.

Of course, for the greater part, constitutions are all practically alike; but in many points there is great difference of form and no little in substance. I am not so vain as to expect, or wish for the adoption of this instrument as a whole, or that any article of it may be adopted without improvement. I hope the convention will give us a much better one.

W. LAIR HILL.