dangerous in the case of a mere literary composition. But the constitution is a legal document, and its provisions had been construed by the courts over a long period of time. To change the language of these provisions involved the danger of introducing changes in substance, even where no changes were intended. Changes in substance actually were introduced in many cases without an intention to do so; and changes in form of language aroused suspicion that concealed results were intended, even where the changes were entirely innocent.

The popular result was occasioned primarily by the following influences: (1) taxation; (2) representation; (3) the necessity of voting upon the document as a whole; and (4) distrust of a document whose language had been changed in cases where admittedly no change of sense was intended.

The constitution of Illinois needs change as badly as it did before the assembling of the constitutional convention of 1920. The defeat of the proposed constitution was not an expression of satisfaction with things as they are. The people of Illinois will not and probably should not take steps immediately for the assembling of another convention. Efforts will now be centered upon the attempt to obtain an easier method of amending the present constitution through legislative proposals.

W. F. D.

Constitutional Amendments in Vermont. Under a joint resolution of the Vermont general assembly of 1919, the governor appointed a commission of seven members, five of them lawyers, to prepare and present to the next session of the assembly proposals of amendment to the state constitution. Public hearings were held by this commission, and its report was presented to the governor in December, 1920, in time for consideration by the assembly of 1921.

Nine proposals were presented; a minority of the commission reported against two of these proposals, and made three minority proposals. Both majority and minority proposals were accompanied by brief statements of reasons in support thereof.

Under the state constitution proposals of amendment must be made by the senate, by a two-thirds vote; if concurred in by a majority of the members of the house they are entered on the journals of the two houses and referred to the general assembly "then next to be chosen," and published in the principal newspapers of the state. If a majority of the members of the senate and house of the next general assembly shall concur in the same proposals, it shall be the duty of the assembly

to submit such proposals to a direct vote of the freemen of the state; and such of them as shall receive a majority of the popular vote shall become a part of the constitution.

Thus the commission above referred to was an extra constitutional agency, its purpose being to aid the senate in the exercise of its constitutional right to initiate amendments. Its report was laid before the senate, both majority and minority proposals being severally embodied in resolutions and referred to the senate judiciary committee. Other proposals were initiated by the senate, the total number considered being twenty-two. Of these eight only were adopted by the senate, by the requisite two-thirds majority; the house concurred in only four of these, so that but four proposals of amendment are to be acted upon by the general assembly which met in January, 1923.

The first proposal adopted amends section 34 of Chapter 11 of the constitution, which defines the constitutional qualifications of a freeman and prescribes the freeman's oath, by broadening it to include "every person" instead of "every man." The obvious purpose of this proposed amendment is to make the state constitution consistent with the federal Constitution as modified by the Nineteenth Amendment.

The second proposal is intended to confer upon the general assembly power to regulate by law the mode of filling all vacancies in the house of representatives which shall occur by reason of death, resignation or otherwise. The commission pointed out that the constitution as it now stands is obviously defective in that, while the general assembly has authority to provide by law for filling vacancies in the senate, no analogous provision exists for filling vacancies in the house. On this point the commission remarked that, in the absence of any constitutional provision to that effect, it has been generally held that vacancies in the house may not be filled.

The third proposal adopted by both houses amends Article 10 of Chapter 1 of the constitution, which prescribes the rights of the accused in criminal prosecutions, by adding thereto the following: "Provided, nevertheless, in criminal prosecutions for offenses not punishable by death or imprisonment in the state prison, the accused, with the consent of the prosecuting officer entered of record, may in open court or by a writing signed by him and filed with the court, waive his right to a jury trial and submit the issue of his guilt to the determination and judgment of the court without a jury.

In support of this proposal the commission cited State v. Hirsch, 91 Vt., 330, wherein the supreme court held that under existing statutes,

if a person be accused before a municipal court of a crime within the jurisdiction of the court to try and determine, he may not waive a jury trial. The commission argued that while this decision was not put squarely upon constitutional grounds, the inference from it was that there is a constitutional objection to the waiver of trial by jury in criminal cases; and that while conditions existing at the time the constitution was adopted, or at least fresh in the minds of its framers, may have justified the binding phraseology of the constitution with reference to the right of jury trial, such conditions have long since passed away. In fact, it was pointed out that in some cases the present constitutional guaranty may operate to the positive disadvantage of the accused, as well as of the state.

The foregoing three proposals were all of those presented by the commission to be approved by both senate and house. The fourth proposal to run the gauntlet of both houses was senate proposal number eighteen. This is to amend Article 1 of the bill of rights, which declares the "natural, inherent and unalienable rights" of all men, by eliminating, in the latter part of the section wherein involuntary servitude as a servant, slave or apprentice is prohibited, the distinction as to age between males and females in respect to consent to such service, the uniform age prescribed being twenty-one years.

Of the four proposals approved by the senate but rejected by the house, one is of special interest,—commission proposal number two. This would enlarge the veto power of the governor by providing with reference to appropriation bills as follows: "If the Governor shall not approve any one or more of the items or sections contained in any bill, but shall approve the residue thereof, it shall become a law as to the residue in like manner as if he had signed it."

The commission placed this proposal upon the following weighty grounds: "Under our system, the so-called budget bill is necessarily considered during the last days of the legislative session and is often presented to the executive on the very eve of final adjournment. In this way the alternative is presented to the governor to approve the bill as presented or to veto the entire bill, which would necessarily involve much delay and expense as it is absolutely necessary that the general appropriation bill be passed. Thus the Governor in many instances may be actually coerced to approve items which he may believe to be inadvisable.

"We believe that the proposed amendment would tend to economy and greater care in the preparation and passage of appropriation bills.

Thirty-five states have provisions in their constitutions for an item veto, which seem to be working very satisfactorily. As a large degree of responsibility must necessarily rest with the executive in reference to the expenditure of money, it would seem that he should be given power to approve such items of the budget bill as may to him seem advisable without compromising his judgment as to the other items which may seem to him inadvisable."

As stated, the senate followed the recommendation of the commission, but unfortunately the house refused to sanction any enlargement of the veto power, thereby defeating the possibility of submitting this most salutary amendment to popular vote.

The three other proposals approved by the senate but defeated in the house were: Number six, empowering the general assembly to provide by law as to recording deeds and convenances of lands, the constitution now expressly providing where such instruments shall be recorded; number nineteen, which would amend section 20 of Chapter 2 of the constitution, wherein the governor is given power "to call together the general assembly, when necessary, before the day to which they shall stand adjourned," by specifically limiting the competency of the assembly, when so called together, to such subjects as may be specified in the governor's proclamation; and number twenty-two, which also modified in a minor particular section 20 of Chapter 2 in respect to the powers of the governor.

Several of the proposals made by the commission, which failed of adoption by the senate, are of interest. Number four contemplated a modification of section 30 of Chapter 2, relating to the trial of civil issues by jury, by excepting from the class of cases triable by jury those requiring an accounting with numerous items, as well as those wherein the parties agree to trial otherwise than by jury. In fact this proposal had no great weight, because in practice parties ordinarily recognize the wisdom of trying otherwise than by jury cases involving a multiplicity of issues, and other tribunals are provided by statute for this class of cases.

Commission proposal number seven was intended to make the constitutional changes necessary to effect a return to September elections as they existed prior to 1914, when the constitutional amendment postponing them to November became effective. The commission does not argue this proposal at length; a minority of two dissented on the following ground:

"From the standpoint of convenience, economy, uniformity and efficiency, we believe considerable loss would be sustained by the proposed change. The only advantage that we can conceive, of a return to the old date, would be the privilege of posing in the limelight for a few weeks in each presidential year. Even conceding that to be a worthy reason for changing, it would seem that the benefits received would not be commensurate with the cost."

Commission proposal number eight contemplated the addition to the constitution of a new section providing for the appointment of a commission with functions similar to those of the present public service commission, but with an enlargement of power conferred by the following clause: "Said commission shall have the powers of a court both at law and in equity in the determination of all matters over which it is so given jurisdiction and may render judgments and make orders and decrees subject to such right of review as the legislature may prescribe, and the legislature may provide such method of enforcing the judgments, orders and decrees of said commission as it may deem proper."

In explanation of this proposal the commission pointed out that, in view of the decision of the state supreme court, in Sabre v. Rutland Railroad Company et al, 86 Vt. 347, the exact character of the public service commission is somewhat in doubt, the court saying: "The public service commission is not in the strict sense a court, though like many administrative bodies it may exercise quasi-judicial functions, but it is a governmental agency provided for the administration, in respect to certain specific matters, of what in a broad though true sense may be called the police power."

In the view of the commission it was desirable to eliminate all doubt on this point by conferring upon the public service commission adequate power to enforce its judgments, orders and decrees. It found a precedent for this innovation in several state constitutions. One commissioner filed a minority report against this proposal, and it failed of adoption, his contention being, in substance, that it was unwise as a matter of public policy, and unnecessary from the standpoint of administrative efficiency, to create an additional constitutional court with jurisdiction over a definite type of business.

Commission proposal number nine was of a new section, as follows: "The General Assembly shall have authority to provide for compulsory voting at elections."

In favor of it the commission argued thus: "Suffrage is not an individual right of the citizen which he may use and abuse as his personal

interests dictate; it is rather a function and a duty which is intrusted to him in order to insure representative government and the best interest of the nation. Every free government rests on the national will which alone should make the law and control the government and which will never be known if the voters neglect to go to the polls. Too great a neglect of this duty will not only hinder an expression of this will, but will render it uncertain and doubtful and even falsify it by displacing the true majority."

The commission further pointed out that Massachusetts and North Dakota have each recently adopted a constitutional amendment similar to the one proposed, and Oklahoma has a statute along the same lines; also that compulsory voting has become an established principle in several foreign countries, and has operated very successfully.

Evidently the senate deemed this proposition too debatable to warrant its submission to as conservative an electorate as that of Vermont; it was rejected by an almost unanimous vote.

Of the minority proposals of the commission, mention will be made of but two,—one proposing a change in the basis of representation in the senate, and the other removing the so-called timelock on constitutional amendment. The former contemplated the abandonment of the present county basis of senatorial representation, under which the legislature apportions to the several counties, from time to time, their respective quotas of senators, and the adoption of the district system, whereby the state would be divided by the legislature into thirty senatorial districts as nearly equal in population as practicable, with provision for a new division after each federal census. Each district would elect one senator. Under the present system each county elects its quota, varying from one to four.

The minority presented a strong argument in favor of this proposal, the gist of it being that the Vermont system of choosing senators and representatives is in violation of the fundamental principle of representative government, in that it involves grossly unequal representation in the constituencies. For example, two counties each with over 40,000 population have four senators each, while one county with less than 4,000 population has one senator.

The minority conceded that this violation of the representative principle is more gross in the Vermont house than in the senate, the largest city in the state being represented there by a single member, while the smallest town—in some cases towns with less than fifty inhabitants—has a like representation. But the minority frankly

confessed the impossibility of changing the house basis; the event proved that their attempt to make at least one of the legislative bodies "represent population rather than acreage" was doomed to ignominious failure, not a single senatorial vote being cast for it.

The other interesting minority proposal contemplated the elimination of that curious provision of the Vermont constitution whereby it is rendered unamendable save at ten-year intervals. The proposed amendment would have preserved the existing machinery of amendment but made it possible for the senate to set it in motion at any session of the general assembly. It is significant of the highly conservative temper of the average Vermont legislator on this important question,—and in this respect he is without doubt fairly representative of the whole state electorate—that only four senate votes were cast for this proposal. A similar proposal made in 1920 met the same fate after full public discussion.

The minority argument for this proposal was unanswerable from the standpoint of political theory. No such timelock is to be found in any American constitution; if the people cannot be trusted with their constitution, under reasonable restrictions intended to make it reflect their deliberate will, they are unfit for self-government, the minority contended. Special emphasis was laid upon the fact that the people of the state know very little about their constitution, owing to the timelock, which automatically closes the door upon all effective constitutional discussion for long periods of time.

The result of this conservative amending process has been, whether for better or worse, that no state constitution has preserved its original form so closely as that of Vermont; none has been so free from the spirit of modern constitutional innovation and experimentation. It is significant that no proposal was advanced, either by the commission or in the senate, for the adoption of means of general amendment or revision by constitutional convention. Unless the general assembly may, by virtue of its inherent legislative power, call a constitutional convention, none is possible under the constitution as it stands.

It will be observed that the four proposals of amendment now pending all relate to matters of detail; none in any way changes the general scheme of government embodied in the constitution, or establishes any new agency of government, or broadens the authority of any existing agency. Thus Vermont presents the interesting example of an electorate that still successfully resists the temptation, so seductive in most of the other states, to transform its constitution into an elaborate code

of law. Nor does this indicate a conservatism in governmental policy so extreme as would appear at first blush. That the people of the state are content with an eighteenth century constitution is to be accounted for, in the main, by the fact that, like that other classic model of eighteenth century constitution-making, their fundamental law is so general in its phraseology, so truly a constitution, one may justly say, as to permit of the exercise of governmental power ample to keep the state fairly abreast of modern governmental requirements.

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Indexing Statute Law.[1] The necessity for an adequate index to the statute law of all the states daily confronts those whose research leads them into the field of legislation. For this reason it has been thought well to present to these associations whose members have a common interest in the subject, a brief survey of what has been accomplished and it is hoped that there may be derived from the discussions following the papers to be read, some suggestions as to how to accomplish the work which remains to be done.

The pioneer work was done by Frederic Jessup Stimson who published his *American Statute Law* in two volumes, indexing legislation of general interest from the beginning to 1892.

In 1890, the New York State Library began the publication of the *Index to Legislation* (1890–1908), later followed by the *Annual Review of Legislation*, (1901–1908), and the *Digest of Governors' Messages* (1902–1908). This index appeared annually until 1908. Manuscript copy for the years 1909 and 1910 was destroyed by the fire of 1911; and although the index was reproduced and continued through 1912 in manuscript form, lack of funds for its publication resulted in the dis-

[1] A paper read before the joint meeting of the American Association of Law Libraries and the National Association of State Libraries in Detroit, June 28, 1922. Other papers presented at this meeting were: "Review of the Summary and Index of Legislation, the Digest of Governors' Messages and the Annual Review of Legislation, issued by the New York State Library," by John T. Fitzpatrick, Law Librarian; and "Indexing Legislation," by the Pennsylvania Legislative Reference Bureau. These papers have been published in the Proceedings of the National Association of State Libraries. A committee to consider the matter was appointed for the year 1922–23, as follows: Luther E. Hewitt, Law Librarian Philadelphia Bar Association; George Godard, State Librarian of Connecticut; Frank O. Poole, Law Librarian, Association of the Bar of New York City; Gertrude E. Woodard, Ann Arbor, Michigan; John T. Fitzpatrick, New York State Law Library.