

Spring 3-1-1952

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### Recommended Citation

D.H. Carlisle, A Proposed New Constitution, 4 S.C.L.R. 380. (1952).

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## A PROPOSED NEW CONSTITUTION

D. H. CARLISLE\*

During recent years there has been growing dissatisfaction among lawyers and students of government in South Carolina over the State Constitution, which seems to many of them outdated and inadequate. Since the late war there has been a movement to secure the calling of a constitutional convention to draw up a new basic law. The House of Representatives passed in 1951 the necessary measure for calling such a convention, but the legislature adjourned before the Senate had an opportunity to vote on the matter. If and when a convention is called it will probably give some consideration to a "proposed new constitution," a document submitted to the legislature April 14, 1950 as part of a report by a committee created in 1948 to study the present constitution and to make recommendations.<sup>1</sup> It is my purpose here to examine this proposed Constitution and to determine the extent of the improvement it makes over the present Constitution of South Carolina.

It may be well first to review briefly the history of the proposed Constitution. In 1948 the South Carolina state legislators passed a joint resolution creating a committee to study the Constitution of 1895.<sup>2</sup> The joint resolution provided that this Committee would be composed of fifteen members, five elected by the House of Representatives, five elected by the Senate and five appointed by the Governor. On April 1, 1949, a second resolution was passed giving the committee another year to complete its work, and this second act was passed in the form of an amendment to the first resolution. The purpose of this committee as stated in the second joint resolution was:

To study the existing Constitution of the State of South Carolina and the present Constitution needs of said State; to conduct such investigations and hold such hearings as

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1. JOURNAL OF THE SENATE OF THE SECOND SESSION OF THE 88TH GENERAL ASSEMBLY OF THE STATE OF SOUTH CAROLINA, 1950, p. 766. Hereafter referred to as the SENATE JOURNAL, 1950.

2. *Ibid.*

the committee shall deem advisable; to fully inform itself as to the present Constitutional needs of South Carolina and such revision of the present Constitution as may be desirable; to employ such clerical and technical help as the committee may deem necessary, within the appropriations hereinafter provided, for the performance of the duties of the committee; and to report to a constitutional convention if ordered and also to the General Assembly during its regular session for the year 1950 the findings and recommendations of the Committee, together with a proposed draft of a new constitution in the event that a new constitution is deemed desirable.<sup>3</sup>

The committee members were duly appointed, and it organized and began its investigation. Mr. R. M. Jefferies, Senator from Colleton County, was elected Chairman, Mr. Thomas Allen of Anderson, S. C., Vice Chairman, and Miss Ruth Roettinger of Winthrop College Secretary. The committee was divided into five subcommittees, to each of which certain articles of the Constitution were designated for intensive study. Reports made by the subcommittees were then studied by the whole committee, and comparisons were made between the Constitution of 1895 and other state constitutions. Decisions were reached by majority approval, and a report was made to the General Assembly on April 14, 1951, almost a year after the second resolution was passed extending the lifetime of this committee. The majority report contained a "proposed new constitution,"<sup>4</sup> but some of the committee members were dissatisfied with the conclusions of the majority. Miss Roettinger wrote and filed with the General Assembly a minority report.<sup>5</sup>

A convenient approach to the subject is provided by Dr. George R. Sherrill's summary of the basic weaknesses in the Constitution of 1895. He lists them as follows:

1. It is a needlessly long document, disjointed, complicated, and hard to understand.
2. It is not limited to a mere statement of important principles, but goes into almost endless detail which should have been left for legislative or administrative definition.

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3. *Ibid.*

4. *Ibid.*, p. 767.

5. *Ibid.*, pp. 810-818.

3. It provides a poor distribution of powers in which the legislative can more or less dominate the executive and judicial departments.

4. It places responsibility for law enforcement upon the governor but provides for popular election of many law enforcement officers, thus taking them out from under control of the executive.

5. It provides for a judicial department which may be lacking in freedom and independence because the judges are elected by the General Assembly.

6. It does not provide a suitable method of amendment. Change by legislative proposal is too rigid in that an amendment must be passed upon by two different legislatures and change by a constitutional convention is too lax in that the people are not permitted to pass upon the final work of the convention.<sup>6</sup>

Perhaps some critics of the Constitution of 1895 would not agree with Dr. Sherrill's entire list; but most of the criticism revolves around one or more of the points that he gives. I propose to give specific illustrations of these six weaknesses and to determine whether or not they are eliminated in the proposed new Constitution.

We recall that the first weakness listed above is that the Constitution of 1895 is "needlessly long . . . , disjointed, complicated, and hard to understand." In this respect the proposed new Constitution is a vast improvement. It contains only about one-third as many words as the present Constitution, and much of the obscurity and verbosity of expression has been eliminated. The structure of the document, too, is more coherent and logical. Let us note some examples of these changes.

One of the most noticeable instances of reduction in length comes as a result of the elimination of the constitutional limitation on local financial matters. The Constitution of 1895, for example, provides in Article VIII, Section 7, that no city or town shall "incur any bonded debt which shall exceed eight per centum of the assessed value of the taxable property therein." Changing financial conditions and increased municipal responsibilities in the years since the Constitution was

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6. SOUTH CAROLINA: ECONOMIC AND SOCIAL CONDITIONS IN 1944. Columbia: The University of South Carolina Press, 1945, p. 145.

written have necessitated numerous amendments to this article, swelling the original provision to fourteen pages of print. Similarly, Article X, Section 5, which includes a limitation on the bonded debt of any "county, township, school district, municipal corporation or political division or subdivision of this State," has been expanded to sixteen pages by the addition of amendments. In the proposed Constitution, such financial limitations are left to the discretion of the General Assembly. In Article III, Section 21, this Constitution authorizes the legislature to enact local or special laws for counties, townships, and school districts. A two-fold brevity and simplicity results from the omission of details which could be better dealt with by the legislature as the occasion arose: 1) The original document is shortened by such omissions and 2) the necessity for amendments is decreased.

Another change which has curtailed the length of the proposed Constitution is the careful rephrasing and the consequent elimination of much confused and verbose language. This improvement is notable throughout the new document. One example of complicated phraseology, intelligible only after patient unravelling, is afforded by Article V, Section 21 of the Constitution now in effect. The provision concerning special magistrates in Anderson County reads, in part, as follows:

They shall not have jurisdiction in any case where the title to real estate is involved: and such Magistrate or Magistrates shall have jurisdiction in such criminal cases as the General Assembly may prescribe, but such jurisdiction shall not extend to cases where the punishment exceeds a fine of Five Hundred (\$500.00) Dollars and/or imprisonment for eighteen (18) months, (either or both) with or without hard labor, except, however, such jurisdiction in criminal cases may be extended by the General Assembly to include any and all violations of the law relating to intoxicating and/or alcoholic liquors, cases charging non-support of wife and/or child or children, bastardy, drawing and uttering fraudulent check, driving motor vehicle under the influence of intoxicating liquor, and disposing of property under lien, and in such cases said Magistrates shall have the power to impose such sentences as are provided by law for such offenses.

The provisions concerning magistrates in the proposed Constitution (Article V, Section 18) differ somewhat from those of the present one, but the change in wording is even more noticeable than the change in policy. Although still very detailed, this section achieves clarity through more economy of language and simplicity of construction. The following extract is given for the purpose of comparing diction, not ideas:

. . . no magistrate shall have jurisdiction of any civil case in which the amount involved exceeds two hundred dollars (\$200.00), or to try any criminal case in which the punishment may exceed a fine of one hundred dollars (\$100.00) or imprisonment for thirty days, unless he has been licensed to practice law in this State and has been engaged in the practice of law therein not less than five years . . . . Magistrates having jurisdiction to try civil cases in which the amount involved exceeds two hundred dollars (\$200.00), or to try criminal cases in which the punishment may exceed a fine of one hundred dollars (\$100.00) or imprisonment for thirty days, shall be designated and appointed as Special Magistrates in order to distinguish them from other magistrates not having such jurisdiction.

Another instance in which the proposed constitution improves on the wording of the present one is found in the provision for the filling of legislative vacancies. Article III, Section 25 of the Constitution of 1895 treats the subject in confusingly detailed and redundant language:

If any election district shall neglect to choose a member or members on the day of election, or if any person chosen a member of either house shall refuse to qualify and take his seat, or shall resign, die, depart the State, accept any disqualifying office or position, or become otherwise disqualified to hold his seat, a writ of election shall be issued by the President of the Senate or Speaker of the House of Representatives, as the case may be, for the remainder of the term for which the person so refusing to qualify, resigning, dying, departing the State, or becoming disqualified, was elected to serve, or the defaulting election district ought to have chosen a member or members.

Article III, Section 7 of the proposed Constitution retains this same idea and much of the same language except for excision of unnecessary repetition:

If any county should fail to choose a member of members of the General Assembly on the day of election, or if any person chosen a member of either house should fail to qualify, or should resign, die, or depart the State, or should for any cause become disqualified to be a member of the General Assembly, a writ of election shall be issued by the President of the Senate or Speaker of the House, as the case may be, for the purpose of filling the vacancy thereby occasioned for the remainder of the term concerned, and the term of office of the person so elected shall begin on the Monday following such election.

But the greatest improvement made by the proposed Constitution in favor of compactness is in structure rather than in wording. Much of the sprawling, disjointed effect of the present Constitution results from poor organization. Let us note a few of its many displaced provisions. Article I of this Constitution, intended as a Declaration of Rights, includes in Section II a prohibition against duelling. Section 2 of this same article deals with the apportionment of representatives according to population, a provision which would logically be included in Article III. Article III is assigned to the Legislative Department; yet Section 33 of this article contains a prohibition against the marriage of whites and Negroes. And the same section provides that "no unmarried woman shall legally consent to sexual intercourse who shall not have attained the age of fourteen years." Unless this section was intended to restrict the extra-parliamentary activities of the legislators, it is difficult to understand its inclusion in Article III. Provisions concerning the taxation of property appear in both Article I (Section 6) and Article II (Sections 28 and 29), whereas such provisions would normally be confined to Article X on Finance and Taxation. Instruction for the election of the President *pro tempore* of the Senate, instead of appearing in Article III as would be expected, is found in Article IV (Section 7), which is designed to deal with the Executive Department. And Article VII, though entitled "Counties and County Government," in Section 13 authorizes the General Assembly to draw the lines of judicial and Congressional dis-

tricts. These are only a few of the numerous instances in which subjects are treated in articles supposedly devoted to entirely different matters. All of the displaced provisions which we have mentioned have been either omitted from the proposed Constitution or placed in their proper context in this document.

So much for the improvements relating to the criticisms of excessive length, awkward wording, and poor organization.

Another criticism levelled at our present Constitution is concerned with its failure to confine itself to a statement of basic general principles; its proclivity for going into many details normally left to legislative or administrative definition is considered one of its most obvious weaknesses. A few examples of this fault will convince us of the validity of the criticism.

One outstanding example has already been mentioned as contributing to the excessive length of our present Constitution. That is its limitation on the amount of bonded indebtedness for cities, counties, etc. We have seen how these unnecessarily specific provisions (found in Article VIII, Section 7 and Article X, Section 5) have necessitated many pages of amendments relating to local matters. The section of the proposed Constitution which deals with bonded indebtedness (Article IX, Section 6) is still quite detailed; but it is confined mainly to the conditions under which bond issues are authorized, and it does not make the mistake of setting an exact figure for the ceiling on such issues.

A somewhat similar situation exists in connection with the provisions for local taxation. A number of sections (13-A through 20) have been added to Article X of the Constitution now in force enabling particular cities and counties under certain conditions to levy taxes on abutting property for public improvements. The minuteness with which these provisions are detailed may be illustrated by a quotation from an amendment relating to the city of Greenville (Section 14):

*Provided, still further,* That crushed stone or slag laid on a prepared clay or top-soil base and bound securely by some bituminous material in such a manner as to form a durable hard surface, by methods commonly termed "surface treatment", shall be considered and construed to be a type of permanent improvement permitted or authorized hereunder for use on the streets and road-



ways within the present or enlarged corporate limits of the City of Greenville.

The incongruity of the existence of such provisions in the basic law of our state is immediately apparent. The proposed Constitution, in Article IX, Section 8, authorizes the General Assembly, "in order to make provision for the cost of permanent public improvements," to "provide by law that special or local assessments be levied upon the real property directly and specially benefitted thereby." Its only special provisos are that "due and timely notice shall be given to the property owners affected thereby" and that "no such assessment shall be levied upon abutting property for the purpose of paying for permanent improvements on streets and sidewalks in incorporated cities or towns without the written consent of the owners of at least one-half of the abutting property." Even these special provisions, though they insure uniformity of procedure, could have been omitted from the Constitution and left to the more elastic control of the legislature. In fact, there is no real necessity for including in the Constitution a special section concerned with the taxation of abutting property. If the committee that drew up the document had rigorously conformed to the idea that a Constitution should confine itself to the statement of general principles, it would probably have been content to write one brief section conferring on the General Assembly the power to levy taxes and to authorize taxation by local units of government. It is evident, however, that the sections of the proposed Constitution dealing with these matters are less encumbered with detail than those of our present Constitution.

There are several sections in the present Constitution whose detailed provisions seemed to the Convention of 1895 necessary transitional measures for the government reorganization which it was attempting to effect after the chaos of the Reconstruction Period; now, however, these provisions are only the fossilized remains of history. One such, found in Article III, Section 3, lists the number of members of the House of Representatives to be elected from each of the counties of South Carolina prior to 1901. Nothing comparable to this provision appears in the proposed Constitution.

The principle of a state-sponsored system of higher education is an important part of any constitution in which it appears; but the enumeration of all schools connected with this

system is unnecessary. The Constitution of 1895, however, includes such a list in Article XI, Section 8, which reads as follows:

The General Assembly may provide for the maintenance of Clemson Agricultural College, South Carolina School for the Deaf and Blind, located at Cedar Springs, the University of South Carolina, and the Winthrop Normal and Industrial College, a branch thereof, as now established by law, and may create scholarships therein . . . .

The proposed Constitution disposes of the subject in one sentence of Section 3, in Article X: "The General Assembly also shall provide for a system of higher education."

Also too specific to be permanently satisfactory was one provision in the Constitution of 1895 that the members of the General Assembly receive five cents a mile for travel expenses (Article III, Section 19). This has been modified in the proposed Constitution to a general provision that the legislators "shall receive an annual salary for services, and in addition, mileage and *per diem* for all expenses during attendance at regular and special sessions." (Article III, Section 8).

We may conclude, then, that the proposed Constitution, though more detailed and less elastic than the ideal, has to a considerable degree been successful in remaining on the high-way of basic principles and avoiding the worst sloughs and morasses of over-specific regulation. Only time could reveal what detailed amendments might accrue to the new Constitution if it were adopted, unless the legislature and the electorate were convinced of the principle that a Constitution loses in dignity and vitality, as well as in simplicity and practically, if it is burdened with matters of temporary or local concern.

The weaknesses of the present Constitution that have already been discussed deal with the writing of a constitution, its wording and the arrangement of subjects into articles. Now let us examine the weaknesses of the structure of government that is created by the Constitution of 1895. The poor distribution of power between the executive and legislative branches, the weakness of the executive branch, and the dominance of the legislature are the defects in the organization of South Carolina's government.

The distribution of power between the executive and the legislative branches is out of balance because the General Assembly has been vested with authority that should have been given to the Governor. The legislature elects administrative officials that should be appointed by the Chief Executive. Among these are the members of the Highway Commission,<sup>7</sup> the Public Service Commission,<sup>8</sup> the Chief Game Warden,<sup>9</sup> boards of trustees for South Carolina colleges and the state university, and several other commissions. The General Assembly also has complete control over the budget.<sup>10</sup> The Chairmen of the Senate Finance Committee and the House Ways and Means Committee are *ex-officio* members of the Budget and Control Board, and the legislature in reality uses its own discretion as to what will be included in the appropriation bills. Only occasionally does a governor veto an item of the measure that has been passed, and even then the veto may be over-ridden. County supply bills are not contested, as a rule, in the General Assembly once they are reported out by the finance committees, and it has become generally accepted that the finance committees in the legislative body write the measure and the two houses accept, amend, or reject various provisions.<sup>11</sup> Basically the General Assembly has its way concerning financial matters. With the exercise of the power to elect administrative officials and with its control over the budget the legislative body has added to its law-making powers sufficient authority to dominate the executive branch.

The strength of a governor should be found in his power to appoint and remove public officials, to recommend a budget to the legislature, to direct the proper enforcement of the laws, to direct the administration, and to present a legislative program.<sup>12</sup> The present Constitution does provide that the Governor "shall, from time to time, give to the General Assembly information of the condition of the State, and recom-

7. CODE OF LAWS OF SOUTH CAROLINA 1942, § 5867.

8. *Ibid.*, § 8200.

9. ACTS OF THE GENERAL ASSEMBLY OF SOUTH CAROLINA, 1937, No. 195.

10. CONSTITUTION OF THE STATE OF SOUTH CAROLINA, 1895, Article III, §§ 29 and 15. Hereafter called CONSTITUTION OF 1895.

11. A close survey of the laws passed by a session of the General Assembly proved to this writer that more than eighty percent of the legislation passed deals with local matters, financial or otherwise.

12. GREAVES, W. BROOKE, AMERICAN STATE GOVERNMENT, Boston: D. C. Heath and Co., 1946, pp. 375-377. See also the MODEL STATE CONSTITUTION prepared by the Committee on State Government, National Municipal League, New York, N. Y., Article V.

mend for its consideration such measures as he shall deem necessary or expedient . . ."<sup>13</sup> and he has the power to veto bills and resolutions.<sup>14</sup> However, these are about the extent of the Governor's powers. The Chief Executive does not have the power to appoint and remove most of the important public officials. The executive in this state is plural in nature with each department independent of the Governor, and, since most of the executive heads are elected by the people, they feel that they are responsible only to their constituents. Other executive heads are elected by the General Assembly, and they feel that they are responsible to the legislature. The Governor does appoint the members of some of the commissions and boards, such as the members of the State Ports Authority Board, the Tax Board of Review, the Board of Examiners of Public Accountants, and Public Service Authority, but most of these agencies are created to carry out a special function and do not deal with the basic operation of the government. And although the Governor is a member of several scores of boards and commissions, his directive authority is limited usually to the influence of his prestige and personality.<sup>15</sup> Therefore, as long as the officials of the government continue to fulfill their duties as they interpret the laws respecting their offices the governor has very little if any control over them.

The present system of government was created before the importance of planning the governmental income and expenditures was realized. The system that promotes the maximum efficiency in an administration requires that the Governor be given control over the departmental requests and apportionment of the money to the various activities. The state now has a Budget and Control Board which plans the budget for each year. The members of the Board are: the Governor, the State Treasurer, the Comptroller General, the Chairman of the Senate Finance Committee, and the Chairman of the Ways and Means Committee in the House of Representatives.<sup>16</sup> The heads of the various state agencies dealing with finance, personnel, and property and purchasing compose the remainder of the membership. None of these officials are responsible to

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13. CONSTITUTION OF 1895, Article IV, § 15.

14. *Ibid.*, Article IV, § 23.

15. The Governor does have authority to require written reports from the members of these various boards and commissions. *Ibid.*, § 14.

16. ACTS OF THE GENERAL ASSEMBLY OF SOUTH CAROLINA, 1948, No. 621.

the Governor, and any influence that he has on the decisions that are made concerning the budget are because of his prestige and personality. After the appropriations bill has passed the General Assembly, the Chief Executive does have the power to veto items in the measure without having to kill the entire act,<sup>17</sup> but this is a very small amount of control.

Moreover, the Governor can not direct the execution of the laws. The Constitution now in effect says of the Chief Executive: "He shall take care that the laws be faithfully executed in mercy."<sup>18</sup> However, his powers in this respect are severely limited. The Adjutant General, Solicitors, Superintendent of Education, and other law-enforcing officers are elected by the people,<sup>19</sup> and they are not responsible to the Governor. A state constabulary has been created,<sup>20</sup> but again the Chief Executive can not use this agency effectively because sheriffs on the local level often consider this agency as a threat to their jurisdiction and therefore they do not cooperate with the state agency. The Constitution does provide that the Governor may prosecute public officials who appear to be guilty of "embezzlement or the appropriation of public or trust funds to private use."<sup>21</sup> But this is the extent of his power. In summary, the Governor can not really enforce the laws nor direct the work of any office other than his own and the state constabulary. South Carolina has a governor with almost no power and an executive branch that is as weak as could be constructed.

The control over the judiciary by the General Assembly completes the ascendancy of the legislative branch. According to Section 2 of Article V of the Constitution members of the courts are elected by the legislature. Justices on the Supreme Courts are elected by the General Assembly for a term of ten years, and they are subject to reelection. Section 13 of the same article provides that the state may be divided into as many judicial circuits as the General Assembly prescribes, and it also gives the legislature the right to elect and reelect the judges in the circuits. Although there is no evidence that judges have allowed the opinions of legislators to influence their decisions, it is to their advantage not to come into an open clash with the General Assembly since they are subject

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17. CONSTITUTION OF 1895, Article IV, § 15.

18. *Ibid.*, § 12.

19. *Ibid.*, § 24.

20. ACTS OF THE GENERAL ASSEMBLY, 1935, No. 232.

21. Article IV, § 22.

to reelection after four (for Circuit Judges) or ten (for Supreme Court Justices) years. Also many of the legislators have been elected to the judiciary. Four of the five members of the Supreme Court were formerly members of the General Assembly, and eleven of the fourteen Circuit Justices were formerly in the legislature. It becomes clear that the judiciary would be no match for the General Assembly should there be a sharp difference of opinion between the two bodies.

The proposed new constitution does not improve the structure of government that we now have. The General Assembly is given in Article V the same powers over the judiciary that it now has,<sup>22</sup> and the judicial branch would remain as it is presently constructed. Article IV divides the executive branch into seven positions that are filled by popular election, and the governor does not have any more power than he has under the Constitution of 1895. Article III, gives the legislative branch the same predominance of power it now has, including (Article IX, Section 5) the right to control the county budgets. While the majority of the Committee members were interested in proposing a constitution that would make some improvement, one member was anxious to make the improvement in the organization of the government that is needed. It was because she felt that the Committee had not dealt with the most important question of all—the distribution of power among the three branches of government—that Miss Roettinger filed a minority report.<sup>23</sup> In this report she argued for the delegation of adequate power to the Governor, who would be responsible for and have responsible to him the entire executive branch; for allowing the Governor to be eligible for reelection; for a real system of county government that is not under the control of the legislature; and for a constitutional convention that would create this form of government. The system that would be created under the new proposed constitution—like the system that we now have—would be the result of the fear that many South Carolinians have of a strong executive, but it is a system that not one of them would want for his own business house.

The Report of the Committee to Study [the] Existing State Constitution dealt with one of the weaknesses in the state's

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22. The proposed new constitution is located in the SENATE JOURNAL, 1950, p. 776ff.

23. *Ibid.*, p. 810ff.

basic law, the difficulty in making amendments. The Constitution of 1895 provides that an amendment shall be proposed by the General Assembly and voted on in the next general election. Then it must be passed again by the General Assembly. In order to improve the process of changing the Constitution and clearing the way for a new one an amendment was recommended providing that proposed amendments may be submitted to the people at a special election although not sooner than three months after the General Assembly has adjourned.<sup>24</sup> A second amendment was suggested which would provide that a new constitution could be submitted as a whole directly to the people, and this change would dispense with ratification if the vote were favorable.<sup>25</sup> The third amendment would allow the question of calling a constitutional convention to be submitted to the people at a special election.<sup>26</sup> The amendment suggested would change the constitution so that public officials could sit in a constitutional convention without violating the present constitutional provision prohibiting dual office holding.<sup>27</sup> The amending process of the proposed document simply embodies the changes that would be made in the present system by the above suggested amendments.<sup>28</sup> The proposed Constitution still leaves the General Assembly in control of the amending process.

There are several conclusions that may be drawn concerning the proposed new Constitution. It is interesting to note that three members of the Committee to Study [the] Existing State Constitution did not agree with the majority report, and there was a fourth member who filed a minority report stating her views on what a new constitution for South Carolina should contain. The views of the Committee, then, took on three different attitudes, and each one of the divisions of this Committee reflects public opinion.

One group seems to want a more highly restricted suffrage than the proposed document calls for, and they have other objections to the committee report which are not specified. There are a great many people in the state who can find very little wrong with the present system of government in South Carolina, and, when a flaw is pointed out, they tend to blame it on

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24. SENATE JOURNAL, 1950, pp. 769-771.

25. *Ibid.*, pp. 771-774.

26. *Ibid.*, pp. 774-775.

27. *Ibid.*, pp. 775-776.

28. *Ibid.*, pp. 804-805.

"bad politics." It is true that the people must give support and cooperation to any political system in order for it to function effectively. Therefore, it is natural that one group should maintain that only minor changes are needed in the Constitution and perhaps that the present system works sufficiently well considering the interest that people have in their governmental activities. Those who want more restrictions on the suffrage may argue that allowing people to vote does not always bring about better government. In a complex society where government is growing larger and more complicated more intelligence is needed in making decisions of a political nature. Public opinion is not consistent nor is it constantly active at the same degree of intensity. In making a major change in the political system there is likely to be a period of instability before the new method begins to operate effectively. Those who have prestige and influence do not want to make any change in the system of government that may cause them to be politically impotent, and they point with alarm to the possibility of a demagogue being raised to power during a time when great changes are made. However democratic it may be for the people to make decisions concerning public politics, they may not always make the wisest decision. Political stability is necessary, and those who properly maintain it make a real contribution to their community.

The majority of the Committee members present their views in the report, and there must be several parts of the report that would be acceptable to all or nearly all of the members. (On the other hand, it should not be assumed that any member of the Committee agrees with all of the provisions of the proposed Constitution.) The Committee members who basically agreed with the report are not advocating any changes in the organization of the government. They would like to see the basic law of the state better organized and better written, and they think that the present Constitution covers many points that are not necessary in a fundamental law for South Carolina. This group believes that there should be a change in the educational requirement for suffrage,<sup>30</sup> but otherwise the provisions concerning election in the proposed

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29. *Ibid.*, p. 810.

30. Instead of a literacy requirement determined by the Board of Registration, the proposed new Constitution would require that every elector have a seventh grade education or give evidence of the equivalent. *Ibid.*, p. 780.



Constitution do not differ greatly from the election law that is now in effect.

The minority report represents a small but growing segment of the voters in the state. The desire of these people is to bring about a "short ballot," to create a strong and well-organized executive branch of the government, to rewrite the Constitution so as to eliminate the inconsistencies and unnecessary details, and to bring about a system of government that can be better controlled by the people. It would be useless to review the arguments for these changes; the minority report is well written and speaks for itself. Certainly it has called attention to a systematic idea for the organization of the government in South Carolina that is not seen in any other state document of recent years. But the probabilities of the adoption of a system of government with a strong executive are not great, nor should it be thought that there will be any major change in the near future.

Our study of the proposed Constitution leads us to conclude that it is a definite improvement when measured by the criticisms of the Constitution of 1895. However, there are two great criticisms of the present basic law which are not remedied in any way by the Constitution or recommendations contained in the report of the committee created to study the existing Constitution. The distribution of powers among the three branches of government is badly out of balance, with the legislative branch holding supremacy, and the executive branch is divided and weak. The Governor cannot be held responsible for the acts of other executive officials although he is supposed to see that all laws are properly enforced. Considering the lack of interest in this subject by any large group of voters in the state, we cannot expect any change at all within the next several years. Documentary evidence does not allow one to conclude whether the writers of the proposed Constitution were trying to perfect the government of South Carolina or merely trying to make the changes that they thought had a good chance of being adopted. It is most likely that the latter is the case.