

*Essays on
Constitutional
Reform*

*Contributed by members of the
Shoals Chapter of Alabama
Citizens for Constitutional
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PREFACE

The Alabama Constitution adopted in 1901 performed the function for which it was intended very well - until that function was nullified in the 1950s by enforcement of provisions in the United States Constitution. The function was to restrict the political involvement of blacks to the greatest extent possible.

To accomplish this, the 1901 Constitution concentrated as much power as possible in the State legislature. Both foreseen consequences and unforeseen consequences arose from this power aggregation. Combined, these consequences have acted to make the government of Alabama one of the least responsive to the needs of its citizens and, at the same time, one of the most expensive for the governmental functions it supplies.

One of the most injurious results financially and socially is the reputation this situation has engendered throughout the business community in the United States and in the other States in the Union.

It is not generally understood just how profoundly the provisions in this constitution impact the lives of every individual in the State of Alabama. To call attention to these impacts, many of them negative, the Alabama Citizens for Constitutional Reform was organized and began the process of informing the citizens of Alabama.

The necessity for a completely new constitution was realized very early in this process, but the first task is to inform.

The articles included here were written by individual citizens for publication in the TimesDaily of Florence, Alabama. They represent only part of the ACCR campaign to acquaint the Alabama public with the need for a new constitution and only a portion of the inadequacies and faults of the 1901 Constitution.

WHAT IN THE WORLD IS A CONSTITUTION?

Stated simply, a constitution is the basic law on which all other laws are based.

Every permanent organization of individuals, whether public or private, must have basic rules or laws for its establishment and for the conduct of its activities. Our entire national, state, and local governmental system rests on constitutions.

In a democracy, the construction of a constitution is a function of the people because the people exercise the sovereignty and, as a result, decide what rules and principles they want government to follow. A portion of this constituent power is delegated by the people to the legislature by allowing it to participate in the process of amending the constitution.

A constitution to be successful must be both stable and flexible. We, in the United States, are accustomed to a single-document, relatively rigid constitution. It is rigid in that it can be formally changed only by amendment or replacement entirely. Flexibility is achieved through decisions made by the legislature, by the chief executive, and by the courts, all of which do introduce flexibility. Both our national and the State constitutions are of this single-document, rigid variety.

But, this is not the only type of constitution. The British constitution consists of custom and tradition, laws dealing with the fundamentals of government, and some court decisions. It is usually said to be an unwritten constitution but this is not quite correct as, although it is not a single-document constitution, some considerable parts of it are written. It is, however, much more flexible than constitutions in the United States.

The constitution supports statutory laws as well as regulations and actions supported by those laws. But it does even more.

A constitution provides for the structure of the organization. In government, it establishes the legislative, the executive, and the judicial branches of the government. The structure of each of these branches is spelled out, e.g., for the legislature two houses are provided and named and the functions to be performed by each are specified as well as restrictions on their functions. The executive offices are established and the functions of these offices specified and restrictions may be stated. Courts are established and their functions and restrictions given.

The methods of selection of the individuals to fill the positions in the structure are specified. The requirements those individuals must meet to fill those offices and the length of terms are stated. The functions to be performed by each, the restrictions on them, and the relationship to other functions within the structure are given.

A bill of rights is also included in State constitutions just as in the national constitution. These rights are usually stated as restrictions on the State although some of the rights are stated directly. The constitution may contain statements of various duties of the citizens of the State or activities in which they may not indulge.

Because all States have subordinate governments, counties, cities, towns, etc., it is necessary to include in the constitution the means of creating and eliminating these organizations. Their functions, duties and responsibilities are spelled out or permission given to the legislature to establish these by later laws.

The methods of amending or replacing the constitution are also provided by the constitution itself.

Every State in the United States has, in one sense, two constitutions because portions of the national constitution apply to the States as well as to the national government.

Our system of constitutions, national and State, provide the United States as a whole with a very stable system of government. Although all State constitutions provide stability, some are more stable than others and require few amendments. Other State constitutions, because of provisions within the constitution itself, provide less stability or, in some cases, so much stability that progress is hampered or even harmed.

By: W. S. Dixon, Board Member of Shoals ACCR

A COMPARISON OF CONSTITUTIONS – ALABAMA AND U.S.

A constitution is, by definition, the basic law of the organization it covers. In the United States, everyone is under the United States Constitution and, at the same time, under the constitution of the State in which they reside or, in some cases, carry on their activities. The U.S. Constitution specifies the powers possessed by the national government, although these are very broad, and leaves all other powers to the States or to the people.

A comparison of the Alabama Constitution and the United States Constitution is both interesting and frustrating. It is interesting because the U.S. Constitution meets the definition of a constitution. It is frustrating because the Alabama Constitution does not.

The original Constitution of the United States consisted of seven Articles. It has been amended 27 times in the 216 years since it was ratified and now consists of approximately 7550 words.

A new Alabama Constitution (the sixth) was adopted in 1901. It consisted of 17 Articles containing 287 Sections, has been amended more than 750 times since it was adopted, and requires over 12,000 words just to list the headings of its contents.

Both the U.S. and the Alabama Constitutions cover many of the same topics: individual rights, the separation of powers into legislative, executive, and judicial, the structure and functions of these branches, qualifications for holding the various offices, length of terms, methods of amending or replacing the constitution, specific powers of the government, and restrictions on government actions.

Because of the “unitary” form of State government, the Alabama Constitution provides for the creation and removal of subordinate governments such as counties and towns. The degree of control over these governments contained in the Constitution is such that they cannot truly perform their functions without the approval of the State legislature. While the national government is one of limited powers (although broadened by controlling superior purse strings,) the State governments are restricted almost solely by the restrictions erected by the national government and thus can exercise more stringent control over the governmental functioning of the State.

In contrast to the U.S. Constitution that either provides for broad powers to be exercised by the Congress or executive branch or is silent concerning many functions or activities, the Alabama Constitution reaches out to gather in power over as many functions and activities as could be imagined in 1901 and in subsequent years. The result in many areas is to smother the function or activity or to keep control of the function or activity in the hands of the controllers of the legislature to their personal advantage.

The U. S. Constitution was devised and constructed at least in part as a result of rivalries or competition among the 13 original States. It was necessary to provide a government with sufficient power to overcome or to hold in check these rivalries but also a government that at least nine of those States would approve. This was accomplished largely by compromise and by the good will of those who were delegates to the convention. Ratification of this constitution was a result of the application of reason backed by the sterling reputation of George Washington and the sales job done by John Jay, James Madison, and Alexander Hamilton through the Federalist Papers. It also profited from the

realization by many of the leaders of the States that they could not go it alone, they had to have a more stable government than the Articles of Confederation provided.

None of this applied to the Alabama Constitution of 1901. It was concocted by people whose intent was to deprive the poor, particularly blacks, of the opportunity of controlling their own destiny. It had little in common with the U.S. Constitution except in the mechanics of government. It still has little in common.

By: W. S. Dixon, Board Member of Shoals ACCR

(This is the first of two parts)

THE ALABAMA CONSTITUTION, A HISTORY OF REGRESSION

Alabama, in its one hundred eighty five years as a state, has had six constitutions, 1819, 1861, 1865, 1868, 1875 and 1901.

All but the 1819 were fostered by sectionalism, bitter turmoil, and undemocratic principles. The 1861 constitution was the Confederate States constitution and was superseded by the Constitution of 1865, merely a stopgap constitution designed to fill the void after the collapse of the Confederacy. At that time, no provision had been made for readmission of seceding states into the Union.

After the Civil War, between 1865 and 1868, persons called “Carpetbaggers” (Northerners proclaiming themselves as “Radicals”) moved into the state and assumed control of its institutions, through cooperation with the Federal military government. To gain readmission to the Union after the war, Congress, in 1867, required the state to adopt a new constitution containing certain provisions.

The Carpetbaggers and recently emancipated, mostly illiterate, slaves, and “Scalawags” (native, white, Alabama Union sympathizers) controlled the 1867 convention and drafted the 1868 “Reconstruction Constitution.” The people of Alabama, by popular vote, refused to accept that constitution, but it was actually ratified by Congress over a presidential veto.

Given the circumstances of its ratification and the fact that the majority of the delegates to the 1867 convention seemed to have been determined to impose punishment on those who supported the Confederacy, the Reconstruction Constitution engendered deep resentment among Southern whites.

While it was the clear duty of the 1867 convention to see to the protection of the newly acquired voting and civil rights of hundreds of thousands of freed slaves, the convention went well beyond that charge, to the point of disfranchising many whites who had participated in the “rebellion.” This was hard for white Alabamians to accept and has contributed to several generations of racial discord in the state. A backlash from whites was sure to come and we are still paying for it in the 21st Century.

The 1867 convention also adopted several broad provisions not looked upon with favor by the wealthy, conservative, agricultural, industrial, mining, and railroad interests in the state. Some of the provisions of the 1868 Constitution are, however, still looked upon as progressive, particularly those relating to women’s rights and education.

Largely by means of fraudulently controlled elections, most specifically by deliberate manipulation of the black majorities by white officials in the Black Belt, by 1874 conservative, wealthy, white interests, had regained control of Alabama state politics. They were determined to replace the 1868 Constitution, but they feared that any attempt to disfranchise blacks would again bring down the heel of the Federal boot, something they were determined to avoid. Furthermore, because they controlled a large part of the black vote, there was a disincentive for them to eliminate this vote, even though they and many less prosperous whites harbored a deep fear of “black rule.”

The period of Carpetbagger rule could serve as a case study in irresponsible government. Several county governments bankrupted, and the state government became seriously in debt, beyond its means to pay. The situation was ripe for an appeal to limited government and limited taxes. It was those two issues that the 1875 convention largely addressed.

In addition to the austere limitations on government contained in the 1875 Constitution, it severely limited local governments in conducting their own affairs and prohibited works of public improvement. Rather than create a broad outline of government, it was extremely detailed, being more in the nature of a code than a constitution. But one of its greatest deficiencies was that it was almost impossible to amend. In its 26 years of life, it was amended only one time, and that was by subterfuge.

By: Hartwell Lutz, Board Member of the State ACCR

(This is the second of two parts.)

THE ALABAMA CONSTITUTION, A HISTORY OF REGRESSION

(Part one of this essay ended with the 1875 constitution and noted that Alabama, in its one hundred eighty five years as a state, has had six constitutions, 1819, 1861, 1865, 1868, 1875 and 1901 and that all but the 1819 constitution were fostered by sectionalism, bitter turmoil, and undemocratic principles.)

It is no doubt safe to say that many white Alabamians were chafing at the bit to revisit the matter of the black franchise. By 1900 Federal troops were gone and there was little fear of interference from Washington.

It was no secret that the overriding purpose of the 1901 constitutional convention was to disfranchise as many blacks as possible, and if this meant that poor whites were also denied their right to vote, then so be it, at least in the minds of many of the leaders.

Ironically, it can be said with confidence that there was legitimate concern over the undisputed fact that virtually all elections were being greatly influenced by the fraudulent manipulation of the black vote. The elimination of the black vote was, therefore, seen by many as a way to eliminate that evil. “Honest elections” and “white supremacy” were the juxtaposed rallying cries for ratification.

Except for matters of the franchise, there were few significant changes from the 1875 Constitution to that of 1901. The former served as the framework for the latter. Time after time during the convention, substantive, progressive amendments were beaten back with the argument that the leaders did not want “controversial” matters to jeopardize the ratification of what they were really there about.

The final product of the 1901 convention disfranchised practically all of Alabama’s black citizens and many of her poor whites, through poll taxes and other devices. It also perpetuated virtually all of the principles of bad government contained in the 1875 constitution. It did allow, however, for a more liberal amendment process.

The work of the 1901 convention was ratified by what was undoubtedly a fraudulent election. To believe otherwise, one would have to believe that overwhelming numbers of black voters in the Black Belt counties voted to disfranchise themselves.

All of the egregious disfranchisement provisions in the 1901 document have now been either repealed or declared unconstitutional by the courts. But we are still left with a horrible constitution, one that is so bad that the people and the legislature have found it necessary to amend it 751 times, as of June, 2004.

The 1901 Constitution needs to be replaced. It has been amended so many times that it is unworkable. Further amendments would only be band-aids, at best. Under present constitutional and case law in Alabama, a new constitution can only be obtained by means of a constitutional convention and a vote of the people. That process must be preceded by an act of the legislature and a vote by the people to hold a convention.

Thus, the process for getting a new constitution must begin in the legislature. However, many legislators are reluctant to give up what they see as their power. Others simply do not want to face the possibility of real change because several powerful interests

in the state do not want to give up some privilege or preferential treatment that they presently have.

It should be clear by now that the legislature, left to its own devices, is very unlikely to call for a convention. Movement must, therefore, come from “grassroots” efforts by Alabama’s people.

We have a right to good government, and it is time we demanded it. Verily, it is past time.

By: Hartwell Lutz, Member State Board of ACCR

RESTRICTIONS ON AND CONTENTS OF STATE CONSTITUTIONS

Several Articles in the Constitution of the United States (especially Article IV) as well as several of the Amendments to the Constitution (especially the 14th Amendment) apply to the State governments. In fact the following provision of the 14th Amendment reaches back and makes the 1st Amendment apply to the States: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction of the equal protection of the laws.” This, then makes the five freedoms, religion, speech, press, assembly, and petition, guaranteed in the 1st Amendment apply in the States.

If the Supreme Court of the United States had not made this interpretation of the above clauses in the 14th Amendment, the States would have been free to restrict religious freedom and even establish a particular religion as the official State religion, to prohibit any desired variety of speech, limited or prohibited the printing or disseminating of any information the State decided was not allowed, prohibited or restricted meetings of any kind as the legislature desired, and prohibited or restricted access to State public officials or organizations.

Other restrictions on the States are specifically stated in the U.S. Constitution in Article I Section 10. In addition, because of the powers assigned to the Congress, the States cannot regulate commerce with foreign countries nor with other States, nor can they naturalize citizens, fix standards of weights and measures, declare war, nor raise or support an army or navy.

Although we refer to the States within the United States by that designation, they do not meet the criterion of sovereign states because they do not have the power to provide protection from outside interference as indicated by the restrictions listed above.

State constitutions are limited, in part as a result of these restrictions. States do, however, have the ability to regulate all other levels of government situated within their territory and Alabama has done this with a vengeance.

All State constitutions contain the following provisions:

1. Preamble (This has no legal authority and cannot be enforced, but it is a general statement of purpose.)
2. Declaration of Rights (also called Bill of Rights)
3. Distribution of Powers (among legislative, executive, judicial branches)
4. Suffrage and Elections (who can vote and how)
5. Representation (Offices and methods of filling them)
6. Taxation (what taxes, how determined, who pays, how much)
7. Education (schools supported, how supported, or, in Alabama, support not required)
8. Corporations (public – counties, cities, etc; private - establish and control)
9. Mode of Amending the Constitution
10. Miscellaneous Items (whatever)

Still other items may be addressed in State constitutions including such matters as the Militia, banking, various exemptions from certain provisions, and the boundaries of the State.

The Alabama constitution is unique in several ways. The most notable difference from other State constitutions is in the number of amendments that have been made to the Alabama constitution with Alabama having, by far, the largest. Another major difference is that in most State constitutions education is treated as a right - in fact, in the constitution of some States, the right to an education is in the Bill of Rights. Still another difference is the excessive restriction on the freedom granted by the Alabama constitution to local governments, i.e., counties, cities, and towns.

The uniqueness of the Alabama constitution has not been an asset to the State of Alabama but rather a detriment. If this State has any real desire to progress both economically and socially, the Alabama constitution must be reformed.

By: W. S. Dixon, Board Member Shoals ACCR

MAKING A NEW CONSTITUTION FOR ALABAMA

The effort to reform Alabama's 1901 state constitution is not new.

In 1915 Governor Emmet O'Neal observed: "Many of the provisions of our present antiquated fundamental law constitute insuperable barriers to most of the important reforms necessary to meet modern conditions." Governor Kilby, in 1923, proposed the creation of a commission to facilitate a constitutional convention. Governors "Big Jim" Folsom, Albert Brewer (who remains unwavering in his support of constitutional reform), Fob James, and Don Seigelman all made attempts to reform the Alabama Constitution. Why the failure?

The Alabama Constitution is difficult to revise because it was intended to be difficult to revise. The 1901 constitution was written to consolidate power in the hands of the elite and away from ordinary citizens. It would make little sense for the framers of our constitution to strip the average citizen of his rights and then allow an easy method of securing those rights by making a new constitution. So, they limited the number of ways that the constitution could be rewritten. The Alabama Constitution provides only two methods of modification - change through amendment and change through a convention - both of which involve the legislature.

The amendment method is a well-known and understood process, evidenced by the fact that the constitution has been amended over 750 times and is the longest constitution in the world. Because amendments must be proposed by the legislature, using this method provides no security from the overriding dominance of the legislature in any reform effort. The legislature decides when to tackle a particular constitutional issue, creates the content, and creates the wording of the amendment. The people get to participate only to accept or reject the amendment.

The real promise for a brighter future in Alabama is through a constitutional convention called for the purpose of writing a new State constitution. The legislature creates a resolution calling for a constitutional convention, the resolution is put on a state-wide ballot for approval, delegates are selected by the people (using a process to be determined by the legislature) and the delegates come together to create a new constitution. This proposed constitution is then approved or rejected by the people in a state-wide vote. The constitutional convention method of reform thus allows the people to participate at several points in the process.

An attempt to rewrite the constitution was made in 1983 by proposing an entirely new constitution in the form of a constitutional amendment. The proposed constitution passed in both houses but was struck down by the Alabama Supreme Court a week before the scheduled referendum.

The constitutional amendment approach can be painfully slow when it comes to meaningful reform. The last article rewritten in its entirety was the judicial article changed in 1973.

The amendment approach, moreover, only serves to further lengthen and complicate an already ridiculously long document. In 1915 Governor O'Neal wrote that the only logical step was to "take into consideration the entire subject and remodel the entire constitution so that it might make a harmonious whole."

Other States have a wider array of options available for updating their constitutions. Fourteen State constitutions provide for a periodic vote, by the people, on whether to hold a constitutional convention. Eighteen States have the option to allow citizens to propose amendments to be directly ratified by the people or submitted to the legislature for approval prior to ratification by the people.

The delegates to the 1901 constitutional convention knew they had succeeded in their quest to usurp political power from the people but the extent of their success would have surprised even the most ardent of them.

It is up to the people and political leaders of the State of Alabama to work together to return to the people the power taken from them by the 1901 Constitution.

By: Mike Van Rensselaer, former Chairman of the Shoals Chapter of ACCR.

TAXATION AND THE ALABAMA CONSTITUTION

The basic concept of a state's taxation of its citizens can be illustrated with a three legged stool with the three legs represented by income, sales and property tax revenue.

Income taxes at the federal and state level are generally applied in a manner to alleviate the burden of these taxes on those with low incomes. The major ways are to allow exemptions for dependents, exclude a certain amount of income from taxes and to increase tax rates as income increases.

In Alabama tax exemptions for a family of four are about one third of that for federal returns and substantially lower than most other states with income taxes. There is only one tax rate in Alabama compared to six at the federal level and two or more in many states with income taxes. As a result Alabama families begin paying income taxes with incomes as low as \$4,600 compared to over \$40,000 for federal returns. Even Mississippi excludes taxes on income below \$19,600.

Alabama is also fairly unique among states with income taxes in that it allows individuals to deduct all of their federal income taxes on their state return, one of only six states to do so. This deduction favors higher income families and results in substantial lost revenue for Alabama every year.

Sales taxes, depending on the tax rate and what items they are levied on, can be very regressive in that they represent a larger percentage of a low income family's earnings. In Alabama, unlike many other states, sales taxes apply on all purchases of goods including all food and prescription drug items. Sales tax rates vary by localities but generally are high compared to other states, exceeding 10 percent in some areas. Sales taxes account for over 50 per cent of Alabama's tax revenues compared to about one third for all states.

Property taxes in most states are the main revenue source used to support education since they are more immune to business cycles than income and sales taxes. Of the three major tax revenue sources, property taxes are the least regressive because wealthier families tend to own the most property.

Alabama has by far the lowest per capita property taxes in the nation. They are one third of the average for all the states and less than one half of the average for the Southeastern states. In addition, a lower percentage of some classes of property are taxed, like timber. This approach further favors large timber and other land owners. In Alabama sales and income taxes are primarily used to support public schools. Since these tax sources vary with economic cycles there is a feast or famine aspect to these taxes which has resulted in pro ration of school budgets every two to four years.

The amount of taxes collected by the state, divided by the number of residents, results in a tax revenue per person or per capita number which can be compared to other states. This number, in effect, measures the height of our tax stool.

Since the early nineties Alabama's tax collections on a per capita basis have been lower than any other state and only two thirds of the national average. In other words Alabama is trying to do what other states do with one third fewer resources. Thus, Alabama's tax approach has resulted in a very short and very lopsided tax stool.

Many of the reasons for the unusual tax structure and low per capita tax revenue number can be traced back to the 1901 Constitution. The framers of the Constitution embedded most of the tax structure for income and property taxes into the Constitution, making it a legislative document as well as a constitution.

The framers, primarily industrial barons and large landowners, then devised a long and tortuous path to make changes in the Constitution which in large part have made it difficult for the legislature and local governments to perform their functions.

By: George Petty, Member of the Board of the Shoals Chapter ACCR and a Florence resident.

EARMARKING CREATES A NEED FOR A NEW CONSTITUTION

Dead men have, at times and through dirty politics, controlled elections in Alabama, Chicago, and other places. Dead men also control the budget making and the expenditure of State money in Alabama through a practice known as earmarking.

Earmarking is the practice of setting certain revenue aside for the exclusive use of a particular purpose. The Alabama income tax revenue earmarked for the exclusive use of education. The gasoline tax is earmarked for highway and bridge construction and maintenance. Other revenue is set aside for the protection of wildlife.

Nothing is inherently wrong with the practice of putting money aside to be used exclusively for a specific purpose. Earmarking has been an established practice for a long time. Every state in the Union, and probably every city and county government does it. In Alabama, most of the earmarking of State revenue has been done through amendments to the constitution.

The people of Alabama seem to prefer extremes. We have the longest State constitution of any State in the Union and probably in the world - approximately 575 pages long. The Alabama practice of earmarking follows this extreme with approximately 85% of all revenue going directly into earmarked funds. No other state comes close to this high percentage. Nevada, next highest, earmarks about 65% of its revenue. The national average for earmarking is slightly less than 22%.

How did this situation come about?

In most cases, the people simply wanted to ensure that some very important government services were reasonably well financed and not ignored by insensitive politicians. In Alabama there seems to be an additional concern. Alabamians seemed to see earmarking as a way of guaranteeing wise use of State money and simply did not trust the legislature to make good and honest decisions regarding expenditure of public funds.

Earmarking of public funds may well be a good thing when done on a relatively small scale. But, when 85% of the total State budget is earmarked, the whole financial structure of State government is in jeopardy.

Some government services are operating under financial laws passed over 75 years ago. Under such conditions, State financial planning, appropriations, and expenditures are out of balance. (What were wages in 1930? Could you live on that today?)

Obviously the present earmarking system in Alabama does not work at all well. Programs receiving earmarked money, such as education through the Educational Trust Fund, often have more money than is actually necessary, while other programs are horribly under-funded. This is exactly the condition existing today, and it has existed numerous times in the past one hundred years. State money cannot be shifted from the over-funded areas to the under-funded areas and, as a result, government financing is often wasteful and services inadequate.

It is illegal for the governor and legislators to take earmarked money such as that in the Educational Trust Fund and use it for non-education purposes. To get around this restrictive situation, governors have often proposed that money earmarked for education be spent for non-education purposes. Numerous projects were labeled education programs and financed out the Educational Trust Fund.

Many of these projects have been discontinued, but the effort to use earmarked money for other purposes goes on. This year Governor Riley has proposed that \$23 million of earmarked money be used for a Children's Health Insurance Program, about \$9 million for the Department of Public Health, and about \$19 million for Mental Health. These are worthy projects, but under the existing earmarking system, they cannot be adequately funded.

Taking money from earmarked programs for other purposes is basically illegal. At best, it is a temporary fix. Legislators and the Governor should seek a long -term solution to this recurring budget problem.

Their efforts and their leadership should be directed toward adopting a new constitution and a permanent correction of the problems resulting from earmarking.

By: Dr. Kenneth R. Johnson, Professor Emeritus of History, UNA

RACISM AND VOTING RESTRICTIONS

The government of the United States has declared parts of the 1901 Constitution illegal, therefore unenforceable and invalid, but the racist, prohibiting, illegal language remains a part of our official governing document.

Even though illegal, the effects of the language still remain. Our State and our citizens suffer because of this language. Our heritage of discrimination and segregation painfully affects our present actions.

Mr. John B. Knox, President of the Constitutional Convention, said “The Southern man knows the negro, and the negro knows him...if we would have white supremacy, we must have it by law...”

To further quote “These provisions are justified in law and in morals, because it is said the negro is not discriminated against on account of his race but on account of his intellect and moral condition... There is in the white man an inherited capacity for government, which is wholly wanting in the negro...”

The delegates listened closely. These remarks set the tenor for the Convention and, ultimately, the Constitution.

The Preamble to the 1901 Constitution states: “We, the people of the State of Alabama, in order to establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God, do ordain and establish the following Constitution and form of government for the State of Alabama.”

The Declaration of Rights, which immediately follows, declares “...all men are equally free and independent,” “...political power is inherent in the people,” and “...government exists to protect the citizen in enjoyment of life, liberty, and property.”

“*Invoking the favor and guidance of Almighty God*” separate schools were provided for “white and colored children” with no person of either race being allowed to attend a school of the other race.

“*Invoking the favor and guidance of Almighty God*” the document declares, “The legislature shall never pass any law to authorize or legalize any marriage between any white person and a negro, or descendant of a negro.”

“*Invoking the favor and guidance of Almighty God*” the poll tax was established. The poll tax effectively denied voting rights to both blacks and poor whites.

“*Invoking the favor and guidance of Almighty God*” the framers denied the right to vote to women while providing for husbands to vote based on his wife’s ownership of property. Article VII, Section 181 provided: “The owner in good faith in his own right or the husband of a woman who is the owner in good faith, in her own right, of forty acres of land situate in this state, upon which they reside...or of real estate assessed for taxation at the value of three hundred dollars or more...provided the taxes have been paid....” Even if the husband were not a property owner (a qualifying restriction,) if his wife owned property, he could vote. The wife could not.

Other provisions in the Constitution appear to confer voting rights, but, as a practical matter, inability to pay the poll tax, along with the literacy requirements and the property ownership restrictions, overrode these provisions. This combination successfully changed the landscape of the voting public. Some 140,000 blacks voted in 1890, 100,000 voted in 1900, fewer than 3,000 voted in 1903.

***“Invoking the favor and guidance of Almighty God”* significant energy and effort were directed toward protecting the rights of the delegates (white, male, property owners) and others like them while denying those same rights to others.**

A new constitution is needed. A fairly written, open, people-based, forward-looking document is vital to our State, our citizens, our future. A new constitution that treats all our citizens with equal dignity. A new constitution that eliminates the illegal, unenforceable, embarrassing language that still remains in our Constitution and restrains the progress of the entire State of Alabama.

By Barbara M. Nash, a member of the state board of Alabama Citizens for Constitutional reform

STATE CONTROL OF LOCAL GOVERNMENT

The original 1901 Constitution of the State of Alabama consists of 18 Articles containing 287 Sections. It has been amended 753 times and still does not fit the definition of a true constitution.

This constitution is the basic law on which the State is founded. It does contain the elements of government. It does set out the powers of the State. It does lay out the functions of the State. But, it contains as much law that is statutory in nature as it contains basic law. It contributes to inefficient government. Worst of all it makes Alabama government cost more than it should.

In the United States there are approximately 120,000 units of government. One of these is federal, 50 of these are States, and the rest are local governmental units. A wide variance of opinion exists as to the proper distribution of functions between the States and the several areas of local government. To a degree, the distribution of functions depends on the circumstances of the time. In Alabama in 1901, apparently the framers of the constitution felt that circumstances dictated that the State should control almost all of the functions of local government and dole them out as circumstances directed; they were afraid so-called "home rule" would dilute the legislature's control.

Many, if not most, of the amendments to the original, basic constitution are concerned with local, i.e., county or municipal, actions. Some expand the functions that can be undertaken by these governments, others restrict their functions. Of the first hundred amendments, 56 of them deal with local government. Much of this stems from the perceived need to control both the population and the finances of the State. Most of the 56 amendments mentioned above are concerned with taxation by the local governments. Many later amendments deal with individual municipalities or counties and give them permission to perform governmental functions that are strictly of local concern.

While it is true that counties and local governments are extensions of the State that carry out functions that the central government believes ought to be performed, other States have dealt with this by laying out general functions that can be performed by all local governments and providing that any additional functions can be authorized by enacting enabling laws. In Alabama the constitution must be amended to accomplish most of these functions. To amend the constitution requires a vote of the people of the entire State even when the function to be performed or allowed will affect only one county or one community. The cost of doing this is not inconsiderable. To be blunt, it is costing Alabama an arm and a leg to do what other States do for little or nothing.

A cost of this system that is frequently overlooked is that rapid action by a county or community is frustrated by this system. Delaying needed action almost inevitably raises the cost of taking the action. In some cases allowing the activity that needs to be addressed to continue can have costs beyond simple financial costs and can affect the health of the people of the area.

Another cost of this system is in the opportunity it provides for manipulation for private or partisan political gain. Representatives, both public and private, of all areas of the State have the opportunity to influence the outcome unless their particular requirements are met.

Perhaps the greatest cost of all, however, is to the reputation of the State of Alabama. When businesses are looking for a place to locate their establishment and they find that it takes a constitutional amendment to ensure that the local area can provide the resources needed by their establishment, they are forced to reconsider. And Alabama suffers.

**By: W. S. Dixon, Board Member of Shoals ACCR and Michael Varchetta,
President of ACCR at UAH**

WILL CONSTITUTIONAL CHANGE BE POSSIBLE?

The previous articles in this series have done an excellent job of discussing the problems with Alabama's constitution. Its excessive length, racist intent and language, removal of local control, contradictions, and other issues have been exposed. The purpose of this article is to consider the question, "Where do we go from here?" For those who have read these articles and now believe that change must be made, what can we do?

First, a quick review of how the process of developing a new constitution might work. In 1999, Former Governor Albert Brewer and Samford University President Tom Corts, along with hundreds of fellow citizens founded the Alabama Citizens for Constitutional Reform (ACCR). Their call for a new constitution emphasizes citizen involvement from the ground up. Citizens would be the authors and framers of the constitution and all Alabamians of voting age would have the opportunity to vote numerous times during the process.

While the Alabama Legislature would have to pass a "Call for a Constitutional Convention", the delegates would be citizens elected on a non-partisan basis. The "call" would outline the number of delegates, how they would be selected, when the convention would be held and for how long the convention might last. ACCR suggests 105 delegates—one from each state house district. This would allow for geographical distribution as well as racial balance. The people would then vote on this legislation to call for a convention.

If the voters approve this legislation, the people would then vote to elect delegates. Those chosen would convene and draft a new constitution. While this sounds like a daunting task, there are several drafts already available, as well as examples of other state's constitutions and various documents available to give the delegates a "starting place." Before any constitution could be adopted, the people again would vote and if approved by the majority, we would have a new constitution. It is evident, therefore, that people would have ample input into the process.

This process will not be easy. For the Legislature to be convinced to call for a constitutional convention, there must be a ground swell of people from all walks of life to express their wishes. Powerful special interest groups who fear losing their power will be in opposition. At the current time, many benefit from having the power in Montgomery instead of back home with local communities.

When the Legislature becomes convinced and puts a "Call for a Constitutional Convention" on the ballot, scare tactics will be used, as they have been in the past, to try to prevent a new constitution. People who are informed and knowledgeable will be able to see through these tactics.

During the past six years, ACCR has been working to educate thousands of people about the need for a new constitution. To continue spreading the word and to address the difficult challenge of informing people about the process, the Greater Birmingham Ministries (GBM), an inter-faith organization serving the needs of the poor for thirty-five years, has developed a Constitutional Reform Education Campaign called "Alabamians Bringing Democracy Home."

Throughout the state of Alabama training programs are being held with small groups of people who will then share the information with their respective communities. Peer to peer, one small group at a time, individuals from all economic backgrounds and all communities will be involved. With information being shared among people who know and trust one another, it will be more difficult for the scare tactics to work and the people will prevail to bring democracy home.

By: Susan D. Parker, Ph.D., Trainer, Greater Birmingham Ministries

Any individual or group who wishes to learn more about the need for a new constitution should call Susan Parker, GBM trainer for the North Alabama area. Her phone number is 256.247.2877 and email: park9301@bellsouth.net