

# Commission Drafts Judiciary Article to Replace Two Old Ones

(This is the sixth in a series of articles about the revised Constitution proposed by the Oregon Constitutional Revision Commission. The articles were written by Hans A. Linde, professor of constitutional law at the University of Oregon and a member of the Commission.)

Commission drafted a new article on the Judiciary, Article VI of the revised Constitution. In this task the experience of the Supreme Court Justices K. J. O'Connell and A. T. Goodwin, Circuit Judge H. M. Schwab, and the six other lawyer members of the Commission was of great value.

**Lawyer's Article**  
It is natural to think the judicial article as the "lawyer's article" in the Constitution, and the Oregon State Bar has in fact concentrated its attention on Article VI. But law and the courts exist for the community at large, not only for those directly concerned with litigation.

Law administration is too important to be left to lawyers alone; it is important to everyone. The provisions of greatest interest in the revised judicial article concern the qualifications and selection of judges, and the power of the Oregon Supreme Court to administer and make rules for the state courts.

tution contains no requirement that judges have any prior legal training. Laymen may and do perform judicial functions. The revised Constitution would assure that judicial appointments be made from persons licensed to practice law. It also adds an explicit new provision that the judiciary shall be non-partisan.

All state judicial appointments would be made by the governor originally. This is in fact true now in more than 90 per cent of all cases. Only rarely is a vacancy on a court filled by election in the first instance. After considering the record in other states where judgeships are regularly filled by political elections, the Constitutional Revision Commission concluded that Oregon's experience with gubernatorial appointment of judges was good and should be made the rule in the revised Constitution.

More controversial was the decision of the Commission that at the end of his six-year term, a judge should run "on his record." His name would

appear on the ballot with the question: "Shall Judge (name) be retained?"

At present, judicial elections are theoretically contested between competing candidates. In practice, such contests are very rare, and the voters are in effect deprived of their right to vote on retaining a judge unless some lawyer decides to run against the incumbent. The Commission decided that this right of popular review should not be left to the initiative of bar associations or ambitious individuals, nor is the performance of judicial office an appropriate subject for an election campaign between competing aspirants.

Together, gubernatorial appointment of judges and ballot review "on the record" are the key features of judicial selection recommended, with different modifications, by the American Bar association and other groups that have long worked for judicial reform. In various forms, they are used in California, Missouri, New Jersey, Alaska and several other states. The Oregon State Bar supports initial appointment of judges by the governor, but the Bar prefers leaving their reelection to contests in which another candidate challenges the incumbent.

(All these provisions of the judicial article refer only to state courts. Municipal courts would be governed by statutory provisions.)

**Court Rules**  
Another issue on which the legal profession has been divided is the provision for making rules of judicial procedure. In federal law, this power has been given to the United States Supreme Court. Lawyers who do not like the federal rules of procedure therefore fear giving the Oregon Supreme Court similar rule-making power.

Yet it is widely recognized that the task of keeping court procedures rational, effective and up-to-date cannot be expected from piecemeal laws urged on a preoccupied legislature to meet particular problems.

The revised Constitution proposes to meet both objectives by dividing the power

between the Supreme Court and the Legislature. The Supreme Court would propose rules of court procedure and submit them to the Legislature. A rule would go into effect only if it had not been rejected by legislative resolution, and the Legislature could provide other rules by statute.

A State Law Commission could also be established by statute to advise the governor on judicial selection, the Supreme Court on rules of procedure, and to give systematic study to needed changes in substantive law. In these provisions the Constitutional Revision Commission made use of recommendations made by the 1959 Leg-

islative Interim Committee on Judicial Administration, among other modern studies of good judicial systems. The result is a judicial article consistent with the aim of the revised Constitution to adapt to Oregon's experience the best present proposals for a modern state government. (Next: The Bill of Rights.)

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Among the oddities which over the past century have crept into the Oregon Constitution, a reader will find two Articles numbered VII—both of them dealing with the "Judicial Department."  
When Article VII (Amended) was adopted by initiative amendment in 1910, it provided that the courts, except as changed by the amendment, should "remain as at present constituted until otherwise provided by law." As a result, the repeal or continued force of the old provisions was oddly left to subsequent statutes, and Article VII (Original) is still printed as part of the Oregon Constitution.

The Constitutional Revision

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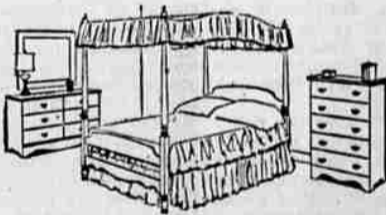
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## PET TALK

By M. I. L.

**WAYS OF KINDNESS**  
There are few things that soild such a depth of interest for children as do pets and other animals. Yet, because they often know so little of their ways and needs, children cause their pets discomfort and sometimes thoughtlessly mistreat them.

Kindness is one of the simple words of our language —yet, a word of such force that its applications exerts an unlimited influence on life itself. A child is inherently kind, needing only training to develop its character.

Most people, in a sense, are kind, but only a few of them are actively so—the great majority content in not causing pain. To be sure there are animal protection societies, but unless cases of cruelty are reported to them, they cannot fulfill the entire scope of their work.

Here are a few ways of kindness by which the lives of our animals may be made more comfortable.

Always uncover caged birds each morning. Provide clean drinking water for all pets or animals for whom you are responsible. Do not keep a dog chained up too long and on too short a lead. Provide shelter and protected beds in cold weather. Make provision for the care of pets when you are on holiday.

**ON KINDNESS TO ANIMALS**  
They have no voice to ask us, For the pity which they need. With shame they cannot task us How'er their hearts may bleed. They cannot ask for kindness Or for our mercy plead, Yet cruel is our blindness Which does not see their need. World-over, town or city, God trusts us with this task; To give our love and pity To those who cannot ask. —Edgar A. Guest

## 'Burn Problem' Set At Phoenix Today

The Jackson-Josephine Counties Fireman Instructors association will present its second "burn problem" starting at 10 o'clock this morning in conjunction with the Phoenix fire department.

All fire departments are invited to the session, which will be held at 205 B St., Phoenix. Anyone interested in going through the training is asked to bring protective clothing and smoke masks, if possible.

The association also is planning now for the Flammable Liquid school to be held in the White City area May 11 and 12.

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