

sometimes found others, whose true place is in the Frame of Government, or whose character is such that they cannot rightfully find any place in a Constitution. Of the former, sections relating to subjects treated of in the body of the instrument, but bearing upon points which have apparently been forgotten, or which are mere after-thoughts, are instances. It is, perhaps, rather a sense of logical completeness and order than substantial propriety which is offended by such provisions; but if a Schedule is a proper subdivision of a Constitution, it should be, not in the nature of a labor-saving postscript, made at the expense of clearness and finish, but of an appendix, in which to gather provisions of a temporary and miscellaneous character, related to the instrument in the main only as subservient to its general objects. Among provisions which ought to find no place in a Constitution at all, but which are, nevertheless, occasionally placed in a Schedule, may be mentioned laws or ordinances relating to the submission of the Constitution to the people, to take effect at once, in cases where power to make such laws or ordinances has been expressly withheld by the legislature calling the Convention, or where different directions have already been given to that end by the legislature itself, and, perhaps, where the legislature has been altogether silent on the subject of submission. The objection to such provisions is, that they are exercises of a legislative discretion not belonging to a Convention; and as, from the nature of the case, the action of such a body, in placing them in the Schedule as rules of conduct, cannot be revised, but is definitive, it is an excess of authority to assume to enact them.

Whether or not it might be allowable to make such provisions in the case last supposed, where the legislature has been silent on the subject of submission, or of the time and mode in which it shall be made, is a fair subject for argument, which will be considered in a subsequent chapter.

"It should be noted that the Schedule did not make its appearance until after the first batch of Constitutions, including those of the Union, had been framed and put in operation. The first Constitutions in which it was used were those of South Carolina and Pennsylvania, framed in 1790. Of the Constitutions now in force, only about two in three have them, though in a few instances a separate article containing similar provisions is embraced in the Constitution, without special designation, or under the title of General Provisions."⁸

C.J.S. in its section on "Constitutional Law," considers "Ordinances and Schedules" in the following terms:⁹

**ORDINANCES AND SCHEDULES
APPENDED TO CONSTITUTION**

"While ordinances and schedules appended to a constitution are considered temporary enactments for the purpose of effecting a transition from the old government to the new, the provisions thereof, adopted as a part of the constitution, may be equally binding with it.

"It is generally the rule that ordinances and schedules appended to a constitution, as distinguished from the permanent and fundamental law embodied in the constitution itself, are temporary enactments for the

⁸ J. JAMESON, *THE CONSTITUTIONAL CONVENTION* 95-96 (1867).

⁹ 16 *C.J.S. Constitutional Law* § 11 (1956).