Condemnation, Credit, and Corporations in Washington: 100 Years of Judicial Decisions—Have the Framers’ Views Been Followed?

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I. INTRODUCTION

One hundred years ago, on July 4, 1889, seventy-five delegates from Washington Territory met in Olympia to frame a constitution for the State of Washington. Seven weeks later, on August 22, 1889, a constitution had been drafted. By October 1, 1889, the people of Washington had ratified the constitution and on November 11, 1889, Washington was admitted to the Union as the forty-second state.

One hundred years later, even though this constitution has been amended eighty-two times, we celebrate the vision of the framers who gave the people of Washington a living, vibrant document that still provides the basic framework of government for the state. The purpose of this Article is to provide a greater awareness of how portions of the Washington Constitution were drafted in 1889 and how they since have been applied and interpreted.1

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1. This Article continues the well-established tradition of examining and focusing upon state constitutions. See, e.g., Brennan, State Constitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489 (1977); Symposium: The Emergence of State Constitutional Law, 63 Tex. L. Rev. 959-1375 (1985); Utter, Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights, 7 U. Puget Sound L. Rev. 491 (1983) [hereinafter Utter];
As part of the commemoration of Washington's centennial, this Article will examine three parts of the Washington Constitution written and adopted in 1889: article I, section 16, the taking clause; article VIII, section 7, the municipal credit clause; and article XII, sections 1-22, the Corporations Article.

Each of these three provisions provides a different perspective on the draftsmanship and interpretation of constitutional language. Washington's taking clause is an example of a universal and traditional constitutional provision. The municipal credit clause shows the difficulties of applying constitutional language to new circumstances and situations inconceivable to the framers. The Corporations Article reflects language that essentially attempts to legislate, or codify in the constitution, restrictions on corporations, trusts, and railroads.

This Article will attempt to identify and explain the fundamental premises behind each of the three parts by considering the constitutional text, the specific intent of the framers where discoverable, the climate of the times in the territory and nation in 1889, and the judicial gloss from early case law. Additionally, given these considerations, this Article will


2. WASH. CONST. art. I, § 16.
Eminent Domain. Private Property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having first been made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefore be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined without regard to any legislative assertion that the use is public.

Id.

3. WASH. CONST. art. VIII, § 7.
Credit not to be loaned. No county, city, town, or other municipal corporation shall hereafter give money or other property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

Id.

4. See infra note 183 for portions of article XII.
explore how faithfully the decisions of the Washington Supreme Court have applied the framers' premises.

Constitutional interpretation, especially when involving ambiguous or arcane provisions, is difficult and controversial.⁵ The difficulty increases when the constitution must be applied to conditions that could never have been foreseen when the constitution was drafted and adopted. Yet the interpretation of constitutions, among other documents, is precisely what judges are daily called upon to do.

Constitutional interpretation is similar to the interpretation of any other document, and four major factors must be considered.⁶ First, the actual text of the constitution itself must be examined.⁷ The meaning of the words themselves provide an excellent start, and often an end, to any interpretive dispute. However, open-textured clauses⁸ or meanings of words that have changed over time require that the other factors of interpretation be considered in order properly to apply

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⁸ An excellent example of the differences between open-textured and close-textured language appears in the same article of the United States Constitution. In article II, § 1, the United States Constitution requires the President to "have attained to the age of thirty-five years," while elsewhere requiring the President to be a "natural born citizen." U.S. Const., art. II, § 1. The language, "thirty-five years," is an example of completely closed-textured language, while "natural born" is somewhat open-textured and requires some historical knowledge to determine, for example, if illegitimacy, Caesarean birth, or birth abroad to parents who were American citizens would bar eligibility for the presidency. Ely, Constitutional Interpretivism: Its Allure and Impossibility, 53 Ind. L.J. 399, 413-15 (1978); Brest, The Misconceived Quest for the Original Understanding, 60 B.U.L. Rev. 204, 207 (1980). For a more tendentious view of the presidential age provision, see Feller, The Metaphysics of American Law, 73 Calif. L. Rev. 1151, 1173-75 (1985); Tushnet, A Note on the Revival of Textualism in Constitutional Theory, 58 S. Cal. L. Rev. 683, 686-88 (1985).
a constitutional section to a given contemporary factual situation.

Second, analysis of specific constitutional provisions requires consideration of the intent of the framers. The controversy over constitutional interpretation has reached its highest levels over this issue of "framers' intent." While many commentators condemn the use of, or dispute the existence or discoverability of framers' intent,9 at a minimum, an examination of this intent is helpful.

Third, the atmosphere or temper of the times surrounding the constitutional convention must be considered. The problems facing constitutional delegates, and the methods chosen to address them, may reveal much and may be immensely helpful in future applications of constitutional provisions. In order to discover the general intent or fundamental premise of the framers behind each provision, an understanding of the political, social, and economic environment of 1889 is crucial.10 This Article will attempt to discover the then-existing intellectual environment and gauge its impact on the language drafted by the framers in 1889. The Article's focus will be on broad themes existing in the territory and nation, as well as the specific history behind each of the three provisions, but is not intended to provide a comprehensive history of Washington Territory and the 1889 Constitutional Convention.11

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9. See, e.g., Brest, the Misconceived Quest for the Original Understanding, 60 B.U.L. REV. 294, 299-17 (1980); C. DUCAT, MODES OF CONSTITUTIONAL INTERPRETATION 103 (1978) (observing "the framers, after all, are dead, and in the contemporary world, their views are neither relevant nor morally binding"); cited by Fried, Sonnet LXV and the "Black Ink" of the Framers' Intention, 100 HARV. L. REV. 751, 755 n.22 (1987); Schlag, Framers' Intent: The Illegitimate Uses of History, 8 U. PUGET SOUND L. REV. 283, 284 n.4 (1985).


One of the best sources from which to learn of the intellectual environment surrounding constitutional delegates would be a transcript of a convention's proceedings, which records the delegates' debates, voting records, and overall attitudes.\(^\text{12}\) Unfortunately, such detailed records of the Washington Convention have not survived.\(^\text{13}\) However, it remains possible to determine the underlying assumptions of the framers, given the existing secondary records from the convention.\(^\text{14}\) Writings completed after the convention by former delegates are also useful.\(^\text{15}\)

A fourth factor to consider in constitutional interpretation is that it may be influenced by the judicial gloss placed on the framers' words by earlier courts construing the same or similar

\(^{12}\) This was recognized early in Washington by Lieutenant Governor Charles E. Laughton, acting governor in 1891, when he urged the legislature to appropriate funds to print the stenographic records of the convention. He states: "They will throw a flood of light upon the intent of the framers of the Constitution, and thus aid materially in giving a correct interpretation to provisions whose meaning may not be free from doubt." Message of Charles E. Laughton, Lieutenant Governor and Acting Governor to the Legislature of 1891, at 37 (Olympia, 1891), cited in Crawford, Gray Attitudes in Washington, 30 Pac. N.W. Q. 243, 250 n.18 (1939) [hereinafter Crawford].

\(^{13}\) The record of the Washington Constitutional Convention was destroyed. See B. Rosenow, The Journal of the Washington State Constitutional Convention, 1869, at vii (1962) [hereinafter Rosenow Journal].


Three of the first five judges of the Washington Supreme Court were delegates to the convention: T.L. Stiles, John P. Hoyt, and R.O. Dunbar. Their early opinions may be helpful in understanding the views of the framers during the convention. But see Seattle School Dist. No. 1 v. State, 90 Wash. 2d 476, 508-09, 585 P.2d 71, 89-90 (1978) (the fact that three judges were convention delegates merits no special consideration nor does it provide any insight into separation of power issue at hand; yet the court later cited with approval T. L. Stiles' article reprinted in 1913).
constitutional provisions. Constitutional interpretation based upon the language used, the specific intent of the framers, the climate of the times, and the problems facing the framers can certainly be aided by the gloss of earlier judicial writers.

By far the most difficult and important part of interpretation is applying the constitutional language to contemporary factual problems never considered or imagined when the constitution was drafted. These situations require a transposition of the language, purposes, and intent of the constitution from the time it was drafted and ratified, to the conditions of today.\(^{16}\)

This Article will begin with a general historical overview of the 1889 convention, and continue with more specific histories of the adoption of the taking clause, municipal credit clause, and the Corporations Article. An analysis of each of the constitutional provisions follows this historical background. Finally, this Article will assess how faithfully the Washington Supreme Court has applied the constitutional language.

II. HISTORICAL OVERVIEW

Following years of attempts by Washington and the other territories to gain statehood,\(^ {17}\) Congress passed the Enabling Act, which granted the authority to call constitutional conventions.\(^ {18}\) On July 4, 1889, the Washington Constitutional Convention convened in Olympia, Washington, joining four other territories seeking to attain statehood. Washington, North Dakota, South Dakota, and Montana held constitutional conventions under the authority of the Enabling Act, which allowed each to "form constitutions and State governments

\(^{16}\) See Utter, supra note 1, at 521-24. See also State ex rel. Evans v. Brotherhood of Friends, 41 Wash. 2d 133, 147, 247 P.2d 787, 795-96 (1952) ("constitutional provisions should be interpreted to meet and cover changing conditions of social and economic life"); State ex rel. Linn v. Superior Court, 20 Wash. 2d 138, 145-46, 146 P.2d 543, 547 (1944); Seattle School Dist. No. 1 v. State, 90 Wash. 2d 476, 516-17, 585 P.2d 71, 94 (1978).

Other Washington cases express the contrary view that constitutions should be consistently construed over time or have had their meanings fixed at the time of ratification, or that changing circumstances do not justify new interpretations. See State ex rel. Munro v. Todd, 69 Wash. 2d 209, 214, 417 P.2d 955, 958 (1966); State ex rel. Lemon v. Langlie, 45 Wash. 2d 82, 110, 273 P.2d 464, 479 (1954); Boeing Aircraft Corp. v. Reconstruction Finance Corp., 25 Wash. 2d 652, 658, 171 P.2d 838, 842 (1946); State ex rel. Banker v. Clausen, 142 Wash. 450, 454, 253 P. 805, 807 (1927).

\(^{17}\) See J. D. HICKS, THE CONSTITUTIONS OF THE NORTHWEST STATES 19-21 (reprinted from 23 U. NEBRASKA U. STUD. (1923)) [hereinafter HICKS].

\(^{18}\) Id. at 21-25.
and . . . be admitted into the Union on an equal footing with the Original States." 19 Idaho also convened a constitutional convention on July 4, 1889, in the hope of attaining statehood. 20 All five states succeeded in gaining admission to the Union. 21

Under the authority and guidance of the Enabling Act, the people of Washington Territory elected delegates representing twenty-five territorial districts to draft Washington's Constitution in the spring of 1889. 22

The Act ensured minority representation by limiting voters to voting for only two delegates in their district. 23 Thus, while a strong Republican majority existed at the convention, over one-third of the delegates were Democrats. 24 And, despite the majority, several Democrats chaired a number of the convention committees. 25 Although facing a difficult task, the con-


20. Two months later in September of 1889, Wyoming, as did Idaho, convened a constitutional convention without congressional authorization. Hicks, supra note 17, at 26.

21. Id. at 148-49. The four previously authorized convention territories, North and South Dakota, Montana, and Washington, were admitted in November, 1889. Idaho and Wyoming were admitted as states in July, 1890. Id.

22. Enabling Act, supra note 19, § 3; Airey, supra note 11, at 440; Fitts, supra note 11, at 8.

23. "[I]n each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such convention. . . ." Enabling Act, supra note 19, § 3; Airey, supra note 11, at 440; Fitts, supra note 11, at 8.

24. The sources vary slightly in the number of delegates from each party. Airey states that 43 Republicans, 28 Democrats, 2 Independents, and 2 Labor delegates attended. Airey, supra note 11, at 440-42. Fitts states that 44 Republicans and 28 Democrats attended. Fitts, supra note 11, at 13. In the forward to the Rosenow Journal, Professor Gates states that 43 Republican, 29 Democrat, and 3 Independent delegates attended the convention. Rosenow Journal, supra note 13, at v. Hicks lists the count as 43 Republicans, 26 Democrats, 4 Labor, and 2 Independent delegates. Hicks, supra note 17, at 29. Austin Mires, a convention delegate, states that the convention consisted of 43 Republicans, 29 Democrats (counting a seat belonging to Dr. J.J. Travis that was occupied for 6 days by W.W. Waltman), 2 Independents claiming to be Republicans (S.G. Cosgrove and J.J. Weisenburger), and 2 Labor delegates (M.J. McElroy and W.L. Newton). Mires, Remarks on the Constitution of the State of Washington, 22 Wash. Hist. Q. 276, 279 (1931).

25. Democrats chaired 7 of the 26 standing committees at the convention. The standing committees of the Convention, with the chair and his political party affiliation listed, were:

1. Preamble and Bill of Rights, Warner, Democrat
2. Elections and Elective Rights, P.C. Sullivan, Republican
7. State, County and Municipal Indebtedness, Browne, Dem.
vention delegates were not without guidance in their attempt to draft a constitution. In addition to the constitutions of existing states, among which California and Oregon were most influential, the convention delegates also looked to, and relied upon, the Hill Constitution and the Washington Constitution of 1878.

The convention delegates who met in the various states in 1889 reflected, to varying degrees, the growing populism of the 1880s and 1890s in the nation. Throughout the country, fears of corrupt government and large corporations increased, and many recognized a need and called for some type of reform.

8. Education and Educational Institutions, Blalock, Dem.
15. Revision, Adjustment and Enrollment, Minor, Rep.
20. Harbors, Tidewaters and Navigable Streams, Durie, Dem.

ROSENOW JOURNAL, supra note 13, at 19-20, 22-23, 37.


27. The Hill Constitution was a model constitution prepared by W. Lair Hill, a prominent attorney of Oregon and California, code writer of Oregon, former editor of the Portland Oregonian, resident of Seattle, and compiler of Washington's first code. Hill's draft of a model state constitution was at the request of the Portland Oregonian and was published in the paper and available to the delegates. Id. at 361-63. See also ROSENOW JOURNAL, supra note 13, at v; Fitts, supra note 11, at 21-22.

28. Beardsley, supra note 26, at 363. Washington Territory's first constitutional convention was held in Walla Walla in June, 1878. See generally Airey, supra note 11.

29. See generally Washington Standard, Sept. 21, 1888, at 1, cols. 4-6 (reprinting General Benjamin Harrison's acceptance letter of the Republican presidential nomination which remarked on the need to control trusts and prevent election frauds); Hicks, supra note 17, at 30-32, 38-54, 90; Deutsch, A Prospectus for the Study of the Governments of the Pacific Northwest States in Their Regional Setting, 42 PAC. N.W. Q. 277, 283-84 (1951) [hereinafter Deutsch]; J. GARRATY, THE NEW COMMONWEALTH 1877-1900, at 302-04, 311-12 (1968); S. CASHMAN, AMERICA IN THE GILDED AGE 283-301 (1984).
In Washington Territory, the delegates and people expressed concern over the abuse of public offices; the use of public funds for private purposes; the concentration of power, both in and out of government; and the protection of individual liberties.\(^{30}\) Even so, many delegates and citizens recognized a need to provide flexibility and freedom for future government decision makers, and a need for business investments to help build the new state.\(^{31}\)

III. TAKING CLAUSE

Article I, section 16 of the Declaration of Rights sets out Washington's version of the basic, and almost universal, constitutional provision limiting the sovereign's exercise of eminent domain power.\(^{32}\) Although some discussion over this section's language did occur, little about this section can be discovered directly from the convention journal or contemporary newspapers because debate was relatively limited. Much can be learned, however, from a basic constitutional understanding of the times, other state constitutions on which the Washington Constitution was based, and early Washington Supreme Court decisions.

Section 16 of article I originated in a proposition submitted on July 11, 1889, as part of a proposed Bill of Rights by Dele-
gate Weir. This proposition was referred to the Committee on Preamble and Bill of Rights. On July 25, the Committee gave its report. The report essentially included the text of the section eventually adopted by the convention, omitting only the manner of judicial determination of public use and the irrigation exception for private property taking.

The Committee of the Whole considered section 16 and the Declaration of Rights on July 29 and 31. Two separate attempts to eliminate the power to take property for private ways of necessity were handily defeated. A separate motion to strike the words “other than municipal” was defeated by a vote of twenty-five to sixteen. Both the meaning behind the inclusion of the words “other than municipal” and the rejection of the motion to strike them are unclear, and the cases interpreting this part of section 16 are arguably contrary to the intended purpose.

After initial consideration on July 29 and 31, the Committee of the Whole referred section 16 and the Declaration of Rights to the Committee on the Judicial Department. This

33. “Private property shall not be taken nor damaged for public use without just compensation therefore.” ROSENOW JOURNAL, supra note 13, at 52.
34. Id. at 53, 469-88. The committee consisted of C.H. Warner, a Democrat from Colfax, a flour miller and lawyer; George Comegys, a Republican from Davenport, an editor; Francis Henry, a Democrat from Olympia, a lawyer; Owen Hicks, a Democrat from Tacoma, a lawyer and printer; J.C. Kellogg, a Republican from Seattle, a doctor; Frank M. Dallan, a Republican from Davenport, a printer and publisher; and Louis Sohns, a Republican from Vancouver, a barber.
35. Id. at 153-57.
36. Id. at 504.
37. Id. at 190-91, 198-201.
38. The attempts were on July 29 and July 31. Id. at 504-05.
39. Id. at 504-05.
40. At least two possible interpretations exist for the inclusion of the words “other than municipal” in §16. The first would be to allow municipal corporations to take physical possession of condemned land before making actual payment of just compensation. The second would allow municipal corporations to offset against any amount of just compensation payment, any benefit the landowner receives from the public use for which the land was taken. See infra notes 89-90 and accompanying text.
41. See infra notes 89-100 and accompanying text; Stiles, supra note 15, at 282-83.
42. ROSENOW JOURNAL, supra note 13, at 201. The Committee on the Judicial Department consisted of: George Turner, committee chair, a Republican from Spokane Falls, a lawyer and judge; R.O. Dunbar, a Republican from Goldendale, a lawyer; John F. Gowey, a Republican from Olympia, a lawyer; M.M. Godman, a Democrat from Dayton, a lawyer; Robert Sturdevant, a Republican from Dayton, a lawyer; Thomas C. Griffis, a Democrat from Spokane Falls; Austin Mires, a Republican from Ellensburg, a lawyer; B.L. Sharpstein, a Democrat from Walla Walla, a lawyer; George H. Jones, a Republican from Port Townsend, a lawyer; John R. Kinnear, a Republican from Seattle, a lawyer; J.J. Weisenburger, an Independent from
committee added a method to determine whether a taking of property was actually for a public use, and allowed for the taking of private property for milling and mining purposes.\(^{43}\) The Judiciary Committee reported the section out on August 5\(^{44}\) and the convention considered section 16, as amended, on August 6. The convention struck the exception for milling and mining, and also defeated motions to strike the exception for irrigation, to leave out any reference to the legislature in the public use determination, and to strike the words "other than municipal."\(^{45}\) The convention finally adopted the section on August 6.\(^{46}\)

Given the language of section 16, the debates, and the accepted constitutional theories of the day, some framers' intent is evident. Beyond the traditional and universal intent to protect private property from being taken by the sovereign by limiting the power of eminent domain, the framers followed the lead of many states in seeking also to protect against damage to property short of a complete taking by the sovereign.\(^{47}\)

Additional property protection was afforded by providing for judicial determination of whether a use of property was actually public.\(^{48}\) This clear rejection of legislative determinations of public use reflected the general attitude that legislative bodies were to be limited and not completely trusted.\(^{49}\)

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Whatcom, a lawyer; and D.J. Crowley, a Republican from Whatcom, a lawyer. Id. at 19, 469-89. Of this group, Dunbar, Stiles, and Hoyt served as three of the original five supreme court judges, Turner served as a United States Senator, and Gowey as United States Minister to Japan. Fitts, supra note 11, at 12.

43. ROSENOW JOURNAL, supra note 13, at 226-27, 505.
44. Id. at 505.
45. Id. at 265-68.
46. Id. at 268-72.


48. WASH. CONST. art. 1, § 16, supra note 2, states in relevant part: Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

49. See generally HICKS, supra note 17, at 74-75; Knapp, supra note 30, at 228; Thorpe, supra note 30, at 505-08. Washington convention delegate and later Washington Supreme Court Judge R.O. Dunbar was quoted, while discussing the
Finally, the framers appear to have intended that municipal corporations be allowed the ability to appropriate and take possession of property after completing eminent domain proceedings, but before actually paying just compensation.\textsuperscript{50}

A review of the Washington cases on eminent domain, with the above premises of the framers in mind, reveals at least two conflicts.\textsuperscript{51} The first involves the clause in section 16 requiring a judicial determination that a proposed use is really a public use. The second concerns the power of municipal corporations to offset any benefits received by a landowner from a public use when determining the amount of just compensation.

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\textsuperscript{50} Airey, supra note 11, at 484 n.5.

\textsuperscript{51} See supra notes 33-50 and accompanying text. In addition, two other conflicts also may exist. A major change has arguably occurred in court decisions expanding the meaning of the term "public use." See generally 2A J. SACKMAN, NICHOLS ON EMINENT DOMAIN, §§ 7.02[1]-[3] (3d ed. 1985) (narrow view of "public use" as "use by public" and broad view as "public advantage"). See also 2 ROTUNDA, NOWAK & YOUNG, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 15.13 (1986). Compare Healy Lumber Co. v. Morris, 33 Wash. 490, 501-09, 74 P. 681, 684-85 (1903) (public use means use by the public or by some quasi-public agency, and is not simply a use that incidentally or indirectly benefits the public interest or welfare); Miller v. Tacoma, 61 Wash. 2d 374, 396-401, 378 P.2d 464, 477-80 (1963) (Rosellini, J., dissenting); In re Seattle, 96 Wash. 2d 616, 627, 638 P.2d 649, 556 (1981) (beneficial uses are not necessarily public uses) with Miller v. Tacoma, 61 Wash. 2d 374, 384-88, 378 P.2d 464, 470-73 (1963); In re Port of Seattle, 80 Wash. 2d 392, 396-97, 495 P.2d 327, 330-31 (1972); U.S. v. Town of Bonneville, 94 Wash. 2d 827, 833, 621 P.2d 127, 130 (1980) (discussing changes in definition of public use since Healy while construing WASH. CONST. art. 7, § 1); In re Seattle, 96 Wash. 2d 616, 635-41, 638 P.2d 549, 560-63 (1981) (Utter, J., dissenting) (arguing for a broader, liberal view of public use as any public benefit).

An examination of this conflict between the framers' views and judicial interpretations is beyond the scope of this Article, especially given the lack of clarity in the definition of the term "public use" in the Washington and other state constitutions. See 2A J. SACKMAN, NICHOLS ON EMINENT DOMAIN, § 7.02 (3d ed. 1985); State ex rel. Tacoma Industrial Co. v. White River Power Co., 39 Wash. 648, 662, 82 P. 150, 151 (1905) ("public use" is not easily defined); Carstens v. Public Utility Dist. No. 1, 8 Wash. 2d 136, 142, 111 P.2d 583, 586 (1941) (no clear or concise definition of public use has emerged from innumerable court decisions); King County v. Theilman, 59 Wash. 2d 586, 594, 369 P.2d 503, 507 (1962) ("public use" is not abstractly or historically capable of complete definition).

Another area of importance which is beyond the scope of this Article is the confusion concerning the difficulty in distinguishing between eminent domain, tort, and the police power. See Comment, Distinguishing Eminent Domain From Police Power and Tort, 38 WASH. L. REV. 607 (1963); Maple Leaf v. Department of Ecology, 88 Wash. 2d 726, 731-35, 565 P.2d 1162, 1164-65 (1977); Northern Pacific Ry. Co. v. Sunnyside Valley Irrigation Dist., 85 Wash. 2d 920, 924, 540 P.2d 1387, 1390 (1975); Hagen v. Seattle, 54 Wash. 2d 218, 221, 339 P.2d 79, 80 (1959); Wong Kee Jun v. Seattle, 143 Wash. 479, 480, 255 P. 645, 646 (1927).
the municipal corporation must pay. Both involve a deviation from, and a threat to, the system of government envisioned by the framers, the first case being more theoretical and the second case being more practical.

The judicial determination clause in the Washington Constitution is a clause currently existing in only four other states.52 At the time of the 1889 Washington Convention, only Colorado and Missouri had similar provisions.53 It is not entirely clear why such a provision was included in Washington's only constitutional restriction on the sovereign's otherwise limitless eminent domain power. No journal records or contemporary newspaper accounts reflect why this provision was included by the Committee on the Judicial Department after section 16 was referred to them. The only motion relative to this provision in the convention was an attempt to strike out any reference to the legislature.54 It failed.55 However, the clear language of the provision, with its difference from most other constitutions56 and early cases,57 shows that the constitu-


55. Id. If the motion to strike out any reference to the legislature had succeeded, Washington's judicial determination clause would have been identical to Oklahoma's. Such a clause would have simply stated the interpretation used by other states without judicial determination clauses, and that, though a public use determination is for the court, legislative determinations are entitled to great or almost conclusive weight. 2A J. Sackman, Nichols on Eminent Domain, § 7.16[1] (3d ed. 1985).

56. See supra notes 53-54 and accompanying text.

57. See infra notes 59-65 and accompanying text; Savannah v. Hancock, 91 Mo. 54, 57, 3 S.W. 215, 216 (1887) (holding, under judicial determination provision, a constitutional duty of courts to not defer or respect legislative assertions); Denver R.L. & C. Co. v. Union Pac. Ry. Co., 34 F. 386, 388 (C.C. Col. 1888) (questioning whether presumption in favor of legislative assertions had been removed by inclusion in 1875 constitution of the judicial determination provision). Cf. Cooley, Constitutional Limitations 591-93 n.4 (2d ed. 1871) (citing Bankhead v. Brown, 25 Ill. 540; Olmstead v. Camp, 33 Conn. 532 for view that what is a public use is for the courts, but when a
tional framers sought to place a limit on the legislature by assigning the judiciary the duty to determine the character of proposed public uses.58

One of the first major discussions of this provision occurred in 1903. In Healy Lumber Co. v. Morris,59 Judge60 Dunbar, a convention delegate and member of the Judicial Department Committee, wrote an opinion for the court on whether a public or private purpose was served by a statute authorizing the condemnation of property. In Healy, the court explicitly rejected cases from other jurisdictions with different constitutional language that supported deference to legislative public use determinations, noting that only Colorado and Missouri had constitutional language similar to Washington.61 The court pointed out that the “constitution has expressly nega-
tived” the idea of giving great weight to legislative pronouncements of public use,62 and that judicial determinations of public use are to be “untrammled by any consideration due to legislative assertion or enactment.”63 As Judge Dunbar stated,

use is declared public by the legislature, the courts will hold such unless the contrary clearly appears).

58. See also Jones, Proposed Amendments to the State Constitution of Washington, 4 WASH. HIST. Q. 12, 13-14 (1913) (discussing attempt in 1905 to amend art. I, § 16 which would have removed the power from the courts of declaring additional private uses enumerated in the constitution as not public uses; Washington voters rejected the proposed amendment in November, 1906, with 15,257 in favor, and 20,984 against). Cf. Wandermere Corp. v. State, 79 Wash. 2d 688, 693, 488 P.2d 1088, 1092 (1971) (judicial determination of public use only required for a taking and not for damaging).

59. 33 Wash. 490, 74 P. 681 (1903).

60. Washington's Constitution, article IV, refers to "judges" and to the "chief justice." It was not until the creation of the Washington Court of Appeals in 1969 that all the members of the high court were designated as "justices." C. SHELDON, A CENTURY OF JUDGING 229 n.44 (1988) [hereinafter SHELDON]. For an irreverent view of this matter, see the exchange of letters between John N. Rupp and James M. Dolliver in WASH. ST. BAR NEWS, Sept., 1979, at 40-42, and WASH. ST. BAR NEWS, Dec., 1979, at 5.

61. 33 Wash. at 499, 74 P. at 682. The opinion failed to mention Mississippi's similar constitutional provision adopted in 1890, one year after Washington's Constitutional Convention. See supra note 52. See also In re Seattle, 96 Wash. 2d 616, 627, 638 P.2d 549, 556 (1981) (noting only Arizona, Colorado, and Missouri have similar constitutional provisions and rejecting cases from other jurisdictions holding legislative pronouncements controlling, yet according legislative declarations great weight. Id. at 624-25, 638 P.2d at 555). In re Seattle also failed to mention Mississippi's similar constitutional provision.

62. Healy, 33 Wash. at 500, 74 P. at 682.

63. Id. But see State ex rel. Tacoma Indust. Co. v. White River Power Co., 39 Wash. 649, 662, 82 P. 150, 151 (1905) (court, in dicta, stating "[i]n determining the question of public use, courts have always been influenced, to a greater or less extent, by legislative declarations, and by local customs and conditions, and local necessities.").
in a somewhat self-serving observation, the framers "evidently deem[ed] it necessary to place a restriction upon legislative sentiment" concerning the power of eminent domain,64 as it "was no doubt for the purpose of preventing enthusiastic legislation . . . that the question of public use was especially submitted to the courts, who are, and should be, ever watchful in maintaining inviolate the constitutional rights of the citizen."65

Despite the clear language of section 16 and the Healy court's recognition of a specific grant of duty to the judiciary without any regard to legislative pronouncements whatsoever, the Washington courts have wavered and abdicated their constitutional duty by, at times, deferring to legislative pronouncements.66 One year before Healy, the Washington Supreme Court, though recognizing the potential danger if legislative declarations of public use were conclusive upon the court, declined to examine the public character of a highway.67 The court found that there was no necessity for a legislative or judicial determination that a highway is for a public use since "[f]rom time immemorial, a highway used for the public and controlled by the public has been considered a public use."68

Following Healy, the court appeared to contradict itself and the constitution in Tacoma v. Titlow69 by stating: "[T]he determination of the questions of public use and public necessity by the proper municipal officers is conclusive upon the courts in the absence of fraud."70 This early contradiction appears, however, to be simply an oversight in language or more a result of the subject matter of the case than a shift in constitutional interpretation. All of the cases cited in or citing to Titlow, like Schroeder, involved conceded public uses such as public roads71 and parks.72

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64. Healy, 33 Wash. at 500, 74 P. at 682.
65. Id. at 505, 74 P. at 684.
67. State ex rel. Schroeder v. Superior Court, 29 Wash. 1, 5-6, 69 P. 366, 368 (1902) (Dunbar, J. concurring without opinion in unanimous decision).
68. Id. at 4, 69 P. at 367. The court stated that highways were not covered by the judicial determination provision of the constitution as the issue had been settled by the framers. Id. at 4, 69 P. at 367-68.
70. Id. at 218, 101 P. at 828. See also Spokane v. Merriam, 80 Wash. 222, 232-33, 141 P. 358, 362 (1914) (citing Tacoma v. Titlow, 53 Wash. 217, 101 P. 827 (1909)).
71. Selde v. Lincoln County, 25 Wash. 198, 65 P. 162 (1901); State ex rel. Schroeder
Whether an oversight in language or analysis, or merely the result of conceded public uses, the Titlow language did not signal an abdication of the court's constitutional duty. Ten years later in Allen v. Spokane,73 the court seemed to question its Titlow holding, stating that the constitutional language "clearly implies that the courts may decide contrary to the declaration of the municipal officers."74 Shortly thereafter, in State ex rel. Andersen v. Superior Court,75 the court, without mentioning Titlow, restated its constitutional "duty . . . to pass upon the question [of public uses] independently of" any legislative declaration.76 While maintaining its constitutional authority and duty to disregard any legislative assertions, the Andersen court rejected an argument that the legislature was precluded from declaring any public purpose at all.77

In 1941, the court in Carstens v. Public Utility Dist. No. 178 wavered and sub silentio rejected the views in Healy that legislative determinations of public use are not entitled to great weight, and that other constitutions with different language are not helpful.79 In Carstens, the court, after mentioning the constitution's judicial determination clause, cited a New York case as authority and simply stated "determinations of public use by the state or its agencies are entitled to great respect by the courts, since they relate to matters which should, and must, have been known to the legislature."80 Carstens involved the generation and distribution of electricity, a long-recognized public use.81

In 1959, the court seemed to recover and again reassert its power and duty to declare public uses in Hogue v. Port of Seat-

v. Superior Court, 29 Wash. 1, 69 P. 366 (1902); Adams County v. Schroeder, 30 Wash. 703, 70 P. 1134 (1902); State ex rel. Thomas v. Superior Court, 42 Wash. 521, 85 P. 256 (1906); State ex rel. Pagett v. Superior Court, 47 Wash. 11, 91 P. 241 (1907).
72. Spokane v. Merriam, 80 Wash. 222, 141 P. 358 (1914).
73. 108 Wash. 407, 184 P. 312.
74. Id. at 410, 184 P. at 313.
75. 119 Wash. 406, 205 P. 1051 (1922).
76. Id. at 409-10, 205 P. at 1052. See also State ex rel. Henry v. Superior Court, 155 Wash. 370, 374, 284 P. 788, 789 (1930).
77. 119 Wash. at 410, 205 P. at 1052.
78. 8 Wash. 2d 136, 111 P.2d 583 (1941).
79. 33 Wash. 490, 74 P. 681 (1903).
80. Carstens, 8 Wash. 2d at 142, 111 P.2d at 586 (citing New York City Housing Authority v. Muller, 270 N.Y. 333, 1 N.E.2d 153 (1936).
81. Id. at 143, 111 P.2d at 586. See also State ex rel. Wash. Power Co. v. Superior Ct., 8 Wash. 2d 122, 133, 111 P.2d 577, 582 (1941).
The *Hogue* court recognized the judicial determination provision as one of two important limitations placed by the people of the state on the sovereign's limitless power to take private property. While noting the *Carstens* decision as a "potential qualification of the doctrine" of judicial determination, the *Hogue* court reiterated that the question of public use was one for the courts, and that "the state or its subdivision [must] prove to the satisfaction of a court that it seeks to acquire the property for a 'really public' use."

Since *Hogue*, however, the Washington courts have repeatedly stated that legislative declarations are entitled to great weight or respect, while asserting that whether the contemplated use is really public is solely a judicial question. Given the clear language of section 16, the limiting purpose behind the language, and the early cases, it can be argued that the balance reached by the court skews the views of the framers, and is inherently contradictory. If the question is *solely* for the judiciary and is to be "determined . . . without regard to any legislative assertion," it reasonably can be asked how great a weight can be given to such assertions. While this view does not preclude legislative public use declarations, it does seem to require that judicial determinations be made separately and independently from any such declarations.

The language of section 16 places trust in the judiciary to make public use determinations independently. This language

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82. 54 Wash. 2d 799, 341 P.2d 171 (1959). This case involved a taxpayer's challenge to the constitutionality of a 1957 act authorizing the Port of Seattle to issue a tax levy to support the creation of industrial development districts and to acquire and develop marginal lands within the district for sale or lease to private parties. The court upheld the taxpayer's challenge because the proposed condemnation of the lands in question was not for a public use, and thus the proposed use of the tax levy was not for a public purpose.

83. Id. at 838, 341 P.2d at 193. The other limitation is that just compensation, as determined by a jury, must first be paid to the owner, constructively or actually, before an owner can be deprived of his property. *Id*.

84. Id. at 832, 341 P.2d at 190.

85. Id.

86. Id. at 838, 341 P.2d at 193.


88. WASH. CONST. art. I, § 16 (emphasis added).

does not require the court to defer to legislative actions, even if reasonable, or to give great weight to legislative declarations. Such a view does not imply any disrespect by the courts for an equal and coordinate branch of government; it simply executes the views of the framers who wished to limit legislative power.

The second possible contradiction between case law and the framers' intentions concerns municipal governments' offsetting of benefits when calculating and paying just compensation. The issue of offsetting benefits received by property owners has generated "great diversity of opinion and more rules, different from and inconsistent with each other, [than] have been laid down . . . upon any other point in the law of eminent domain."90 Since 1893, Washington's calculation of compensation has allowed an offset of benefits in municipal takings of rights-of-way due to the language "other than municipal" in section 16.91 Was this the intended effect of the framers when they included the words in the section?

When originally debated, delegates objecting to the inclusion of the clause exempting municipal corporations feared that organized towns would take private property without paying just compensation to the property owners.92 Attempts to strike the phrase "other than municipal" from the clause in section 16 failed in the Committee of the Whole and the convention.93

Years later, in 1897, former delegate and judge of the Washington Supreme Court, T.L. Stiles, commented on this clause when using it as an example of how better draftsmanship would have made the intended exception more clear.94 Judge Stiles' comments intimated that the exception was meant to allow municipal corporations "to take possession of lands condemned for streets as soon as the damages had been ascertained".95 The clear and uncontradicted opinion of the

90. 3 J. SACKMAN, NICHOLS ON EMINENT DOMAIN, § 8.62 (3d ed. 1985).
92. ROSENOW JOURNAL, supra note 13, at 504 (citing the Spokane Falls Review and Tacoma Daily Ledger of July 30, 1889).
93. See supra notes 83 and 90 and accompanying text.
95. Id. Stiles states that cities were "worsted" in a conflict with property owners when in fact cities have benefitted from the offset of benefits interpretation. Since Stiles concurred in Lewis v. Seattle, how much weight should his comments receive? His 1897/1913 article recognizes the mistakes of draftsmanship, however, and perhaps...
Washington courts on this clause over the years has been to the contrary. Since 1893, the Washington Supreme Court has rejected the view that the clause exempts municipal corporations from paying compensation in advance.\(^\text{96}\) Because of the clear language requiring just compensation to be made initially in the main clause, the court has consistently construed the provision to allow municipal corporations to offset benefits conferred upon the property owner from the appropriation and building of a right-of-way.\(^\text{97}\) However, when private property is taken by a railroad or private corporation, property owners are entitled to just compensation for the value of the land taken and damages to their remaining land without any offsetting deductions for any benefits created.\(^\text{98}\)

In terms of actual impact, this apparently different construction has not been too important. The offset provision in Washington is well-settled in case law and statutes.\(^\text{99}\) Nor can it be argued that any real detriment to the governmental framework created in 1889 has occurred. Perhaps the only real impact has been to force private corporations that exercise eminent domain to pay more for rights-of-way to individual property owners, who arguably receive a windfall.\(^\text{100}\) The impact from this windfall is negated somewhat given the abil-

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he did not think it necessary to explain in a written concurrence. Cf. Sheldon, supra note 60, at 249-50.


100. When property is taken by a private corporation, a property owner is entitled to the value of the land taken and damages to his remaining land without any deduction for special benefits. When property is taken by a public corporation or the state, a property owner is entitled to the value of the land taken and damages to their remaining land after deducting any special benefits that accrue to the remaining land because of the public improvement. Thus, public corporations and the state are only paying for the actual loss to a private property owner. Private corporations pay for the loss without any deduction; thus private property owners receive a windfall, accruing special benefits without any offset in the compensation they receive. See Sinnitt, Offsetting Special Benefits and the Larger Parcel Test in Eminent Domain, 1 Gonz. L. Rev. 77 (1966).
ity of private corporations to offset benefits when acting under the authority of municipal corporations and for the benefit of the municipality.101

IV. MUNICIPAL CREDIT CLAUSE

Article VIII, section 7 prohibits municipal corporations from giving any money or property, or lending any money or credit, to individuals or associations.102 The debates surrounding this section were some of the most heated in the entire convention. The issue of municipalities lending their credit came to be known as the "Walla Walla subsidy" issue or scheme103 because delegates from the Walla Walla area sought the authority to subsidize a railroad to increase rail competition in their community.104

The nine-member Committee on State, County, and Municipal Indebtedness initially faced the subsidy issue.105 In its report issued July 25,106 the majority, consisting of five members,107 allowed for municipal loans of credit if two-thirds of the property taxpayers in the county approved, and limited such debt to four percent of the assessed value of the property


102. See supra note 3. Section 7 also prohibits municipal corporations from becoming an owner of stock or bonds in any association or company. Article VIII, § 5 prohibits the state from giving or lending its credit to any individual or association. See infra notes 126-38 and accompanying text for a discussion of the differences and similarities between these two limitations.

103. Airey, supra note 11, at 481; Knapp, supra note 30, at 270; Tacoma Morning Globe, Aug. 1, 1889, at 1, col. 4; Walla Walla Morning Daily Union, Aug. 6, 1889, at 2, cols. 1-3.

104. See generally Airey, supra note 11, at 481-87; Fitts, supra note 11, at 64-75; Knapp, supra note 30, at 270-72. The subsidy issue was apparently so important to Southeastern Washington that the five counties of Walla Walla, Asotin, Columbia, Franklin, and Garfield voted against ratification of the constitution. Fitts, supra note 11, at 194.

105. The committee consisted of: J.J. Browne, committee chair, a Democrat from Spokane Falls, a banker and lawyer; N.G. Blalock, a Democrat from Walla Walla, a physician and wheat grower; Thomas M. Reed, a Republican from Olympia, a civil engineer and lawyer; David E. Durie, a Democrat from Seattle, a merchant; Charles Coey, a Republican from Rockford, a merchant; James A. Hungate, a Democrat from Pullman, a farmer; Robert F. Sturdevant, a Republican from Dayton, a lawyer; H.W. Fairweather, a Republican from Sprague, a banker; and Charles T. Fay, a Republican from Steilacoom, a farmer. ROSENOW JOURNAL, supra note 13, at 19, 466-86; C.M. BARTON, LEGISLATIVE HANDBOOK AND MANUAL 167 (1889-90).

106. ROSENOW JOURNAL, supra note 13, at 152.

107. The majority were committee secretary Blalock, Sturdevant, Reed, Fay, and Durie. Id. at 152-53.
in the county. The minority report, signed by four members of the Committee, flatly prohibited any municipal aid or subsidy of private corporations, associations, or individuals.

The Committee of the Whole faced the subsidy issue on July 31 and August 1. Heated debate occurred in the convention, and throughout the territory, on the proposed majority and minority reports.

Proponents of the majority report vigorously argued that subsidies were the only means to increase railroad competition and protect citizens from the extortionate prices charged by railroads in the transportation of goods. They asserted that the people could be trusted and that enough safeguards existed in the proposed section to protect the people from ill-advised subsidies.

Opponents argued that the use of subsidies, as shown in other states, was "vicious," was open to abuse, and would allow the majority in a county to oppress and burden the minority. Opponents maintained that neither public money nor the power of taxation should be used for the benefit of private interests.

The Committee of the Whole discussed several amend-

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108. The text of the majority report read as follows:
No county shall hereafter give or loan its money, property or credit to or in aid of any individual, company, corporation or association unless two-thirds of the property taxpayers thereof being legal electors therein and voting thereon vote therefor at an election to be held for such purpose, and in no case shall the sum so voted exceed in the aggregate four per centum of its assessed valuation for county and state purposes as shown by its assessment next preceding such election.

The Legislature shall enact the necessary laws to carry out the provisions of this Article.

Id. at 152, 680.

109. The minority members were committee chairman Browne, Hungate, Coey, and Fairweather. Id. at 153.

110. The minority report text was the same as finally adopted, except it did not contain the clause "except for the necessary support of the poor and infirm." Id. at 153, 690. The minority report paralleled a similar provision in the proposed Washington Constitution of 1878. See Knapp, supra note 30, at 272; Washington's First Constitution, 1878, 10 WASH. HIST. Q. 110, 124 (1919) (art. XII, § 9).

111. ROSENOW JOURNAL, supra note 13, at 202.

112. See Fitts, supra note 11, at 64 (citing Airey, supra note 11, at 481). See generally Seattle Times, July 23, 1889, at 4, col. 1; Id., July 24, 1889, at 4, cols. 1-2; Id., Aug. 1, 1889, at 4, cols. 1-2; ROSENOW JOURNAL, supra note 13, at 667-68.

113. Airey, supra note 11, at 484; ROSENOW JOURNAL, supra note 13, at 660-61.

114. ROSENOW JOURNAL, supra note 13, at 681-82; Fitts, supra note 11, at 69; Seattle Times, July 24, 1889, at 4, col. 1

115. ROSENOW JOURNAL, supra note 13, at 681-82; Fitts, supra note 11, at 70; Airey, supra note 11, at 485-86.
ments to both reports. Proposed amendments to the majority report seeking to ensure continued competition among railroads and to require that subsidies be for a public use failed.116 Despite these attempts to save the majority report, the motion to accept it was defeated.117 Several attempts to amend the minority report followed, with only the exception for the necessary support of the poor and infirm succeeding.118 On August 1, the Committee of the Whole approved the original minority report119 and the convention adopted the final text later that day.120

Washington's constitutional prohibition against the lending of municipal credit is not unique. Using similar language, all of the 1889 conventions prohibited their states and their municipalities from aiding any corporation or individual.121 Commentators122 and many Washington court decisions123 have

116. Delegate Powers' August 1 motion to add to the majority the following, "provided that any railroad company shall not combine with or sell out to any competing railroad company, but the railroad so aided shall be maintained and operated as an independent public line," was either withdrawn or defeated. The Spokane Falls Review reported it as being withdrawn, while the Seattle Times and Tacoma Daily Ledger reported it as being defeated. ROSENOW JOURNAL, supra note 13, at 682-83. Delegate Stiles' August 1 motion to amend the majority to require subsidies be for public uses was defeated 34 to 27. Id. at 683.

117. Id.

118. The first motion to allow money to be given or loaned for the necessary support of the poor was defeated. A motion to allow cities to grant terminal and shipping facilities and rights-of-way was defeated 43 to 31. A motion to except the building and operation of irrigation canals from the prohibition was defeated 30 to 27. Id. at 207-209, 683-84.

119. Id. at 207-08, 683 (approved by a vote of 49 to 25).

120. Id. at 210, 684 (approved by a vote of 48 to 24).


recognized the framers' clear premise of attempting to protect counties and other municipalities from bankruptcy and corruption by the railroads.\(^{124}\)

As the Washington Supreme Court has noted, many Washington case decisions involving section 7 have been "erratic"\(^{125}\) as the court has struggled to apply the constitutional language to the realities of contemporary financial situations confronting municipalities.

Washington cases involving the municipal lending of credit clause have attracted the attention of many commentators.\(^{126}\) Article VIII, section 7 cases are intertwined with cases involving section 5 of the same article.\(^{127}\) The history of these two sections has been confusing, as they have been construed to contain similar prohibitions and exceptions.\(^{128}\)

Despite the plain language used in both credit clauses, it is unclear from the court's interpretation and analysis whether the framers' views have been followed. This is not a criticism of the court; rather it illustrates the common problem of rec-

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\(^{125}\) For broader views of the framers' purposes and policies, cf. C. KIPPEN, ARTICLE VIII, SECTIONS 5 & 7: AN EXAMINATION OF THE PROVISIONS, THEIR IMPACT AND THE PROSPECTS FOR CHANGE at I-6 through I-11 (1979) [hereinafter Kippen] (Kippen describes the two underlying policies behind § 7 as a fear of a risk of loss and a fear of public and private entanglement). See also State ex rel. Potter v. King County, 45 Wash. 519, 528, 88 P. 935, 938 (1907) (constitutional restraints on municipal corporations are "intended for the protection of minorities, for the protection of posterity, and to protect majorities against their own improvidence, and it is the duty of the courts to enforce them."); Japan Line, Ltd. v. McCaffree, 88 Wash. 2d 93, 98, 558 P.2d 211, 214 (1977) ("manifest purpose of [art. 8, §§ 5 & 7] in the constitution is to prevent state funds from being used to benefit private interests where the public interest is not primarily served.").

\(^{126}\) Marysville v. State, 101 Wash. 2d at 52, 676 P.2d at 990. Similarly, § 5's case history has been "checkered," In re Marriage of Johnson, 96 Wash. 2d 255, 264, 634 P.2d 877, 882 (1981), and "has not been smooth." Housing Finance Comm'n v. O'Brien, 100 Wash. 2d at 494, 671 P.2d at 249.


\(^{128}\) WASH. CONST. art. VIII, § 5. "Credit not to be loaned. The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company, or corporation." Id.

\(^{129}\) The Washington courts have construed and interpreted article VIII, § 7 and article VIII, § 5 as containing similar prohibitions and exceptions in implementing nearly identical policies with different political entities. See, e.g., Health Care Fac. v. Ray, 93 Wash. 2d 108, 115, 605 P.2d 1260, 1264 (1980). See also Kippen, supra note 124, at I-11 through I-18.
onciling the apparent intent of the framers with seemingly contrary common sense applications to modern developments. The court's struggle with this basic problem has made it unclear whether the focus has been, and continues to be, on a literal application of the language of the credit clauses, on the policies and purposes underlying the two sections, or on a combination of the two approaches or on exceptions for "recognized governmental functions." One of the first contributions to the uncertainty in the analysis of the credit clauses arose in Morgan v. Department of

129. A classic example of the court's struggle faithfully to apply the framers' premises is Morgan v. Department of Social Security, 14 Wash. 2d 156, 127 P. 386 (1942), infra note 134-36 and accompanying text, which upheld state welfare aid to private individuals although no similar "necessary support of the poor and infirm" exception exists for the state in article VIII, § 5. A literal reading of the constitution would seem to prohibit state aid to private individuals. See also Public Util. Dist. No. 1 v. Taxpayers of Snohomish County, 78 Wash. 2d 724, 729, 479 P.2d 61, 64 (recognizing municipal corporations' need for new means of financing public works in order to fulfill their responsibilities); State ex rel. Graham v. Olympia, 80 Wash. 2d 672, 685-86, 497 P.2d 924, 931 (1972) (Finley, J., concurring specially); State ex rel. O'Connell v. Port of Seattle, 65 Wash. 2d 801, 804-06, 399 P.2d 623, 626-27 (1965).


131. See, e.g., Reich, supra note 122, at 662 (proposing new rules of analysis suggested by the credit clauses' historical roots, the trend of recent cases, and public policy considerations); Marysville v. State, 101 Wash. 2d 50, 676 P.2d 989 (1984); Washington State Hous. Fin. Comm'n v. O'Brien, 100 Wash. 2d 491, 671 P.2d 247 (1983).

132. See Tacoma v. Taxpayers, 108 Wash. 2d 679, 701-03, 743 P.2d 793, 804-05 (1987). Cf. State Lending, supra note 126, at 271-73 (proposing, when analyzing § 5 cases, two additional factors to add to four discrete components analyzed in Gardner—the importance of public purpose and the extent of public control to minimize the risk of loss).

133. See, e.g., In re Marriage of Johnson, 96 Wash. 2d 255, 261-62, 634 P.2d 877, 881 (1981) (opinion in a § 5 case signed by only three judges, with three others concurring in result only, one judge dissenting, and two dissenting in part and concurring in part by separate opinion); Public Employment Relations Comm'n v. Kennewick, 99 Wash. 2d 832, 838, 664 P.2d 1240, 1243 (1983) (a § 5 case); Department of Labor and Indus. v. Wendt, 47 Wash. App. 427, 435, 735 P.2d 1334, 1339 (1987) (a § 5 case). Cf. Washington State Housing Fin. Comm'n v. O'Brien, 100 Wash. 2d 491, 505-06, 671 P.2d 247, 255-56 (1983) (Rosellini, J. dissenting) (objecting to majority's characterization of Marriage of Johnson and arguing Johnson stood for the "well-established principle that the constitution permits the expenditure of state funds for the performance of recognized governmental services as law enforcement, fire protection or consumer protection" (original emphasis, citation omitted)).
Social Security. Morgan involved a challenge to the Washington Senior Citizens Grants Act made shortly after the state legislature had shifted responsibility for welfare relief to the state from local governments. In granting state aid to private individuals, Morgan quietly began the similar interpretation of the two credit clauses without rigorously examining the constitutional challenge to state, as opposed to municipal, aid to the poor and infirm.

Since Morgan, the court has consistently construed the two sections to contain similar prohibitions and exceptions. While the similar interpretation of both clauses appears to be contrary to some of the principles of constitutional interpretation existing at the time of the 1889 convention and recognized by the court, it does reflect the difficulty of strictly applying the framers' language to changed circumstances.


135. "The support of the poor and needy is a recognized governmental function. If the act by its terms purports to relieve persons not in actual need, it might well be challenged upon constitutional grounds." Id. at 169, 127 P.2d at 69.
136. Kippen, supra note 124, at I-14 through I-18. See also State v. Guaranty Trust Co., 20 Wash. 2d 588, 591-92, 148 P.2d 323, 324-25 (1944) (citing Morgan to uphold state welfare relief); Morgan, 14 Wash. 2d at 194, 127 P.2d at 702 (Simpson, J., dissenting) (seemingly unknowingly, recognizing clear language of constitution that providing for the poor is a local, not a state concern).
137. See supra note 128. Although one commentator identified the possibility of the court recognizing and attributing significance to the differences in the wording of the two credit clauses due to the language in Marysville and Gardner (though Gardner stated that the two sections are generally interpreted in like manner), State Lending, supra note 126, the court continues to interpret the two sections similarly. See Tacoma v. Taxpayers of Tacoma, 108 Wash. 2d 679, 701 n.13, 743 P.2d 793, 804 (1987) (construing § 7). See also Department of Labor & Indus. v. Wendt, 47 Wash. App. 427, 433, 735 P.2d 1334, 1338 (1987) (construing § 5).
138. If a constitutional provision is clear, plain, and unambiguous on its face, then no construction or interpretation is permissible. Anderson v. Chapman, 86 Wash. 2d 189, 191-92, 543 P.2d 229, 230 (1975); State ex rel. O'Connell v. Public Util. Dist. No. 1, 79 Wash. 2d 237, 240-41, 484 P.2d 393, 395 (1971). Cf. State Capitol Comm'n v. Lister, 91 Wash. 9, 14, 156 P. 858, 859-69 (1916) (citing Cooley, CONSTITUTIONAL LIMITATIONS 92; BLACK, CONSTITUTIONAL LAW 79) (words in a constitution are to be understood in the ordinary and popular sense). The different language used in §§ 5 and 7 is clear, plain, and unambiguous on its face. Courts may also not create exceptions to provisions where none have been expressed in the constitution. Anderson, 86 Wash. 2d at 196, 543 P.2d at 223; State ex rel. O'Connell v. Port of Seattle, 65 Wash. 2d 801, 806, 399 P.2d 623, 626-27 (1965). Section 5 contains no express exceptions, and § 7 only contains an exception for the necessary support of the poor and infirm.
139. 18 Wash. 612, 52 P. 251 (1899).
140. 151 Wash. 55, 275 P. 62 (1929).
Olympia, present good examples of the struggle by the court since 1889, in the face of changing circumstances and different financial instruments, to maintain a consistent, coherent, and principled interpretation of section 7. Less than ten years after the constitutional convention, the court upheld the deposit of Tacoma's funds into a bank "simply for safekeeping, [and] subject to re-payment on demand." The court noted that deposits are "neither a loan nor an investment of funds, in the ordinary meaning of these words . . . ." In 1929, the Aberdeen court declared that the City of Aberdeen's purchases of interest-bearing time certificates of deposit were illegal under section 7 and a bonding statute. The court found the deposit, in effect, to be a loan or investment because Aberdeen's money was left in the bank for a fixed time while earning interest. The court distinguished Bardsley because Aberdeen's funds were not subject to check or to withdrawal.

In 1972, the court again faced the issue of municipal deposits of funds in a declaratory action brought against the City of Olympia challenging the constitutionality of statutes authorizing the deposit of municipal funds in interest-bearing time deposits. The Graham court illustrates well the problem, in contemporary times, of trying to give effect to the clear language of the constitution and the framers' intent.

Three justices concurred in Justice Hunter's opinion upholding the statutes, which relied both upon a literal application of the language of section 7 and an attempt to follow the intent of the framers of the constitution. Justice Hunter first found, without citing Bardsley, that bank deposits were not loans in the ordinary and popular sense of the word. He then examined the framers' purposes and objectives, concluding that the framers' intentions were to protect and secure

141. 80 Wash. 2d 672, 497 P.2d 924 (1972).
142. Bardsley, 18 Wash. at 624-25, 52 P. at 255.
143. Id. at 625, 52 P. at 255.
144. Aberdeen, 151 Wash. at 59-61, 275 P. at 63-64.
145. Id. at 58, 275 P. at 63.
146. Graham, 80 Wash. 2d at 673, 497 P.2d at 925.
147. Id. at 676, 497 P.2d at 926. This is clearly consistent with a rule of interpretation that language in the constitution is to be taken and understood in its natural, ordinary, general, and popular sense. State ex rel. O'Connell v. Public Util. Dist. No. 1, 79 Wash. 2d 237, 240-41, 484 P.2d 393, 395 (1971); State ex rel. State Capitol Comm'n v. Lister, 91 Wash. 9, 14, 156 P. 858, 859-60 (1916). This examination of whether the challenged action is literally prohibited by the constitution follows Spitzer's proposed analysis. See supra note 130 and accompanying text.
public funds from a risk of loss.\textsuperscript{148} Given the extensive protection of funds from federal deposit insurance, Justice Hunter concluded that a prohibition of statutorily authorized deposits would be inconsistent with the framers' purposes and objectives.\textsuperscript{149} The \textit{Graham} plurality distinguished \textit{Aberdeen}, stating that the holding of \textit{Aberdeen} was based upon a statutory violation, and rejected as dictum the characterization of time deposits as constitutionally prohibited loans.\textsuperscript{150}

Tested against the framers' purposes, the \textit{Graham} plurality arguably went too far. Regardless of the safeguards, if the deposits were loans, and the rest of section 7 applied, they were prohibited. The framers decided that \textit{any} municipal loans posed unacceptable risks, and it is questionable whether the legislature or the courts can say whether certain safeguards are sufficient to protect against the risks. Indeed, in referring to a municipal loan one year previously, the court in \textit{State ex rel. O'Connell v. Public Utility Dist. No. 1. of Klickitat County}\textsuperscript{151} stated, "[t]he constitution, however, makes no distinction; it prohibits all such transactions, good or bad, large or small."\textsuperscript{152}

In his concurring opinion in \textit{Graham}, Justice Finley explicitly recognized the difficulty in applying the exact words of the constitution and implementing the framers' intent to accommodate contemporary needs. Although he admitted Olympia's time deposits were loans in the strict sense of the word, he concurred in upholding them because the framers would not have prohibited them if faced with the problem, and because sufficient safeguards existed to serve the purpose of section 7 of protecting the integrity of public funds.\textsuperscript{153}

\textsuperscript{148} \textit{Graham}, 80 Wash. 2d at 682, 497 P.2d at 930.

\textsuperscript{149} \textit{Id.} at 681-82, 497 P.2d at 929.

\textsuperscript{150} \textit{Id.} at 682-83, 497 P.2d at 930.

\textsuperscript{151} 79 Wash. 2d 237, 484 P.2d 393 (1971).


\textsuperscript{153} \textit{Graham}, 80 Wash. 2d at 685-86, 497 P.2d at 931-32 (Finley, J., concurring specially). "However, I believe that the exact words of the constitution should not be strictly and restrictively construed inconsistently with the probably underlying or basic intent of the drafters and contrary to a common sense accommodation to the needs of the times." \textit{Id.}
Justice Hale, joined by Justice Rosellini, concurred in the Graham result, but would have affirmed on a narrower ground.\textsuperscript{154} Justice Hale reasoned that the time deposits in question would not be a prohibited loan because they were subject to withdrawal at will without any substantial penalty.\textsuperscript{155} Justice Hale also commented that section 7 must be applied to prohibit all municipal loans or investments even when "well-secured and exceptionally safe," save for the sole and explicit exception for the necessary support of the poor and infirm.\textsuperscript{156} He further disagreed with the majority's characterization of the purposes of section 7, finding a broader prohibition "expressly aimed at the use of public money by any private entity for private purposes."\textsuperscript{157}

Justice Wright in dissent, joined by Justice Stafford, would have applied the clear language of section 7 and followed Aberdeen to reverse and hold Olympia's investments violative of section 7.\textsuperscript{158}

These cases illustrate the various methods of analysis used by the court in its attempt faithfully to apply the provisions of article VIII, section 7, to municipal credit cases. While the court may shift from a literal analysis to a policy analysis, or from a liberal view to conservative view of allowing municipal credit to be provided, the court's decisions are rationally grounded. These differences of perspective and mixtures of analysis simply reflect the problem of reconciling the changed circumstances of contemporary society with a broad constitutional prohibition specifically intended in 1889 to control the problem of railroad subsidization. While such a specific intent does not imply that the prohibition is not applicable today, it does require the court at times to focus on the underlying premises of the framers, rather than the literal text in applying section 7 to contemporary financing schemes.

V. CORPORATIONS ARTICLE

The proper limits to place on corporations, trusts, and rail-

\textsuperscript{154} 80 Wash. 2d at 687, 497 P.2d at 932 (Hale, J., concurring in result).
\textsuperscript{155}  Id.
\textsuperscript{156}  Id. at 686-87, 497 P.2d at 932.
\textsuperscript{157}  Id. at 687, 497 P.2d at 932.
\textsuperscript{158}  Id. at 687-89, 497 P.2d at 933 (Wright, J., dissenting). Justice Wright also found Olympia's investment in a savings and loan association under the authorizing statutes violative of a later clause in § 7, which prohibited the ownership, directly or indirectly, of any stock or bonds of any association.  Id.
roads were a central issue in the convention. An attitude of ambivalence toward powerful business organizations existed throughout the five July 4 constitutional conventions, their territories, and the nation. In Washington, tension between the desire to protect individuals and the state from overpowering financial forces was set against the recognized need for investment to help develop the vast natural resources and economic potential of the state.

The debates concerning the corporations article, and the text eventually adopted, clearly portray the mood and tensions of the intellectual environment of the day. Reformist attitudes to limit corporations contrasted with views seeking to encourage financial investment in the state and to not overly restrict corporations.

The Committee on Corporations Other Than Municipal, chaired by John Kinneear of Seattle, consisted of nine members. This committee reported and recommended twenty-four sections to the convention on July 26. The Committee of the Whole considered the proposed Corporations Article at various times from August 1 to 5. On August 6, the convention considered the numerous amendments made by the Committee of the Whole to the original committee report. Final changes were made before approval of the twenty-two section

159. See S. Cashman, supra note 29, at 283; J. Garraty, supra note 29, at 311-12; The Gilded Age: America, 1865-1900, at 111-12 (R. Bartlett ed. 1969); Hicks, supra note 17, at 43-52; W. Hill, Washington—A Constitution Adapted To The Coming State 45 (reprinted from The Morning Oregonian, July 4, 1889, at 9); Crawford, supra note 12, at 244; Fitts, supra note 11, at 95; Knapp, supra note 30, at 239-40; Walker, What Shall Be Done About The Trusts?, Proc. WA. St. B. Ass'n 92, 92-100 (1899); Donworth, Corporations, Proc. WA. St. B. Ass'n 94, 96-107 (1896).


161. The committee consisted of the following members: Chairman Kinneear, a Republican and a lawyer from Seattle; J.J. Weisenburger, an Independent and a Whatcom lawyer; J.P.T. McCroskey, a Democrat and a Colfax farmer; P.C. Sullivan, a Republican and a lawyer from Tacoma; Lewis Neace, a Democrat and a farmer from Waitsburg; B.L. Sharpstein, a Democrat and a lawyer from Walla Walla; John A. Shoudy, a Republican and an individual from Ellensburg; Francis Henry, a Democrat and a lawyer from Olympia; and Charles Coey, a Republican and a merchant from Rockford. Rosenow Journal, supra note 13, at 20-21, 468-89; Legislative Handbook and Manual, supra note 105, at 167-68.


163. Id. at 212, 215, 219, 247.

164. Id. at 252-63.
Corporations Article on August 10.$165$

Debate regarding article XII reflected the ambivalence toward corporations. This debate also revealed the legislative character of the constitution that was criticized during and after the convention.$166$ Most notable are those parts of the article that were changed or deleted in the final form of the constitution.

The Corporations Committee's proposed article attempted to place much stronger limits on corporations and railroads than those that were finally adopted. Opponents of these portions of the proposed article claimed that they were too legislative and merely restated settled law,$167$ or that they would hamper investment in the state.$168$ The proposed sections rejected by the Committee of the Whole and the convention included those that would have: Limited corporations to those activities authorized by their charters or by law; required corporations to maintain offices in Washington and keep corporate books open for inspection; defined where corporations could be sued; and constitutionally established a railroad commission to control and regulate common carriers.$169$

Of all the sections in the Corporations Article, the one that caused the most controversy was an attempt to establish a railroad commission.$170$ Although many states had railroad

165. *Id.* at 318-25, 770.

166. Many critics of the constitution claimed that too many provisions that more closely resembled legislation than organic principles were included in the constitution. They objected to attempts to use the constitution to provide for and against everything as with a code of laws. *See generally HICKS, supra* note 17, at 24-26; *AIREY, supra* note 11, at 489; *Deutsch, supra* note 29, at 283-84; *Fitts, supra* note 11, at 188; *Thorpe, supra* note 30, at 507-08; *Blaine, Decennial of our State Constitution, PROC. WA. ST. B. ASS'N* 101, 102-03 (1899); *Yakima Herald, Aug. 1, 1889*, at 2, col. 2.

A quote from the Seattle Post-Intelligencer from August 12, 1889, sums up the dispute over legislative provisions in the constitution: "The principal source of objection is that there is so much attempt at legislation. Of course, nothing is supposed to be placed in the Constitution that is not fundamental, and there is a wonderful diversity of opinion as to what is fundamental." *See AIREY, supra* note 11, at 493.


170. *Id.* at 733; *AIREY, supra* note 11, at 493 (citing the August 12, 1889, Seattle Post-Intelligencer for the view that the fight over the Railroad Commission was the hardest so far in the convention).

The Railroad Commission proposed in the July 26 report of the Committee on Corporations Other Than Municipal to provide for three elected members empowered
commissions, only California's was constitutionally rooted. The intensive lobbying surrounded the debate over the commission in the Committee of the Whole and in the convention from August 2 to 10. Proponents of the commission advocated it as a means to establish a commission that might never come about legislatively because of the powerful railroad lobby, a way to settle disputes between consumers and the railroads, and a way to regulate reasonably and fairly the rates and structure of transportation in the state. Various opponents feared that the commission itself might be controlled by the railroad lobby, trusted the legislature to be able effectively to regulate the railroads, or felt any railroad commission would threaten investment and future rail building in the state.

The provisions written and the progressive mood of the period indicate the framers' attempts to control and limit corporations and railroads without driving away crucial investment and rail lines. Although it seems as if the hopes of the framers have been met, it does not appear that the methods by which their hopes were realized were what they had planned. First, the state legislature proved to be very slow initially in enacting provisions to regulate corporations and railroads, a prediction of many of the delegates and citizens that unfortunately came true. Second, of the restrictions that eventually did affect most corporations and railroads, statutory, rather than constitutional limitations, were more effective. Finally, the amount and effectiveness of federal regulations were unlikely to have been foreseen by the framers.

Washington's article on corporations is similar to many of the corporations articles in the constitutions of states admitted to supervise and regulate the railroads and all other common carriers. See ROSENOW JOURNAL, supra note 13, at 758-59 for complete text.

The "Railroad and Transportation Commission" discussed in article XII, § 18, has had several names, from a Railroad Commission, State ex rel. Great N. Ry. Co. v. Railroad Comm'n of Wash., 52 Wash. 33, 100 P. 184 (1909), to a Public Service Commission, to the current Utilities and Transportation Commission provided in WASH. REV. CODE ANN. § 80.01.010-300.

171. See generally Airey, supra note 11, at 491 (of 21 states with commissions, only California's was constitutionally incorporated).

172. ROSENOW JOURNAL, supra note 13, at 760-65; Airey, supra note 11, at 490.

173. ROSENOW JOURNAL, supra note 13, at 760-62; Airey, supra note 11, at 491.

174. ROSENOW JOURNAL, supra note 13, at 759-63; Airey, supra note 11, at 490-91.

175. See infra notes 182-83 and accompanying text.

176. Id.

177. Id.
in the late nineteenth century.\textsuperscript{178} When drafted and ratified, it was the origin of much of the controversy and discussion over the proposed constitution and reflected the ambivalence of the time by constitutionally attempting to limit corporate powers and abuses. However, like the "curious incident of the dog in the night-time" that did nothing,\textsuperscript{179} the actual influence of the article in limiting the powers and abuses of corporations and railroads in Washington has been relatively modest.\textsuperscript{180}

Most of the impact upon corporations has been through national and state legislative measures.\textsuperscript{181} With the development and growth of Washington, the national government, and legislative restrictions, the power and resultant fear among citizens of corporate monopolies, banks, insurance companies, and railroads has diminished. However, an attitude of ambivalence continues to this day.

Despite the reform attempts constitutionally to restrict corporations, article XII itself has not had much impact upon the corporate abuse of power feared by the framers. In the early years after the convention, many recognized the failure of the constitution adequately to control railroads, monopolies, and trusts.\textsuperscript{182} Having left to the legislature many corporate provisions that were not self-executing,\textsuperscript{183} it was several years

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\textsuperscript{178} See generally Hicks, supra note 17, at 43-52; Airey, supra note 11, at 487; Beardsley, supra note 28, at 393-97.


A computerized search revealed that article XII has been considered in slightly more than 90 cases by the Washington appellate courts, and most of these cases have been resolved by relying on statutory provisions. In contrast, article VIII, § 7 cases alone number over 70, and almost 300 cases involve or discuss article I, § 16.


\textsuperscript{182} See Knapp, supra note 30, at 273; Stiles, supra note 15, at 286; Fitts, supra note 11, at 189; Message of Governor J. H. McGraw to the Legislature of 1895, at 30 (Olympia, 1895) ("Our railroad legislation has been tentative and trifling"), cited in Crawford, supra note 12, at 250 n.18.

\textsuperscript{183} See, e.g., WASH. CONST. art. XII, § 19 in relevant part: "The legislature shall,
until much of the framers' goals were effectuated. 184

Although article XII itself has not proved to be the hoped-for dominant restraint on corporations, its inclusion in the constitution was not all for naught. The component sections of article XII "[stand] as the complete and wholly unobscured guide pointing out the plain pathway of public policy in this state." 185 Though slow to act initially, the legislature followed the direction of the constitution and the growing progressive mood of the nation, and did establish state restrictions and regulations of corporations and railroads.

VI. CONCLUSION

The review of these provisions of the Washington Constitution and the cases interpreting them is meant to be an illustration of the struggle by the supreme court to be faithful to the underlying premises of the framers and to the constitution itself; a struggle made more difficult by ever-changing facts and conditions, some of which would be unrecognizable and

by general law of uniform operation, provide reasonable regulations to give effect to this section." (regulating telegraph and telephone companies); State ex rel. Spokane & British Columbia Tel. & Tel. Co. v. Spokane, 24 Wash. 53, 60, 63 P. 1116, 1118-19 (not a self-operative provision); WASH. CONST. art. XII, § 22 in relevant part: "The legislature shall pass laws for the enforcement of this section by adequate penalties" (prohibiting monopolies and trusts in the state) (Northwestern Warehouse Co. v. Oregon Ry. & Navig. Co., 32 Wash. 218, 227, 73 P. 388, 391-92, (1903), (not a self-operative provision)); WASH. CONST. art. XII, § 15 (prohibiting discrimination in railroad transportation charges) (Northwestern Warehouse). Cf. id. art. XII, § 20.

Prohibition against free transportation for public officers. No railroad or other transportation company shall grant free passes, or sell tickets or passes at a discount, other than as sold to the public generally, to any member of the legislature, or to any person holding any public office within this state. The legislature shall pass laws to carry this provision into effect.

Id.


184. The railroad commission authorized in WASH. CONST. art. XII, § 18, was not created until 1907. See Crawford, supra note 12, at 252 (citing First Annual Report of the Railroad Commission of Washington (Olympia, 1907)). This railroad commission currently exists as the Utilities and Transportation Commission. See supra note 169. T.L. Stiles' comments of 1897, reprinted in 1913, indicate no legislation was introduced to carry out the prohibitions against monopolies and trusts in art. XII, § 22. Stiles, supra note 15, at 286. Statutes making it a misdemeanor to violate art. XII, § 22 and authorizing the forfeiture of corporate franchises as a penalty were not enacted until 1909. See WASH. REV. CODE ANN. §§ 9.22.010, .030 (repealed by 1975 Wash. Laws, 1st Ex. Sess., ch. 260, § 9A.92.010); Dewell, supra note 180, at 240.

even unknown to the framers.186 The court has generally avoided the rigidities of a textual determination of constitutional principles, while at the same time it has attempted to honor what it has perceived to be the real meaning underlying the text. As the cases cited in this Article illustrate, this meaning will be affected by the composition of the court, the time of the decision, and the factual pattern before the court to which the constitution must be applied. In the final analysis, this review demonstrates the humanness of judges in grappling with real cases, not just abstract formulations, and the benefits of the appellate system with a multi-judge court. Thus do judges play their part in that glorious adventure of self-govern-ment. May it always be so.