

ments but who are well suited for trusteeship.

Even more questionable are requirements that certain board members be selected from a specific profession or political party. Trustees chosen on such bases often see themselves as a representative of a particular element in society and tend to place the interest of their profession or party above that of higher education.<sup>32</sup> If state legislatures (or constitutional conventions) think conditions for membership must be set, it probably is better to frame them in the terms of "men and women of character and demonstrated capacity and possessing a strong interest in public service,"<sup>33</sup> than in the specific characteristics of profession, sex, residence, or possession of a degree from a particular university.

#### LEGAL STATUS OF BOARDS

The legal character of state institutional boards is largely determined by the instrument through which legal authority is transferred to the board. If the state constitution is used to create, organize, or incorporate the board, it possesses a degree of independence not found in boards authorized by state statute. When the state constitution grants full authority to the board of trustees to govern the university, the board can be classified as a constitutional corporation. This grant of authority creates a formidable barrier against interference in institutional affairs by either the voters or popularly-elected state officials not on the board. One commentator has gone so far as to

characterize such universities as "... a fourth branch of the government, coordinate in some respects with the executive, legislative, and judicial branches."<sup>34</sup>

Nine of the nineteen states examined, including North Carolina,<sup>35</sup> have used their constitutions to confer some measure of authority on their university governing boards. The number of constitutional corporations on which complete authority and corporate powers have been so conferred, however, is very limited. Of the twenty-two boards examined, only five boards, located in four states, can be classified as constitutional corporations.<sup>36</sup> They are the Universities of California, Georgia, Michigan, Minnesota, and Michigan State University. In the remaining five states the extent that the constitution has been used to create, organize, or incorporate state universities is varied. In some cases the use of the medium of higher law is substantial while in others it is only perfunctory. Even in the latter case, however, the mere mention of the board in the constitution tends to create some legal insulation from legislative interference. (See Table 8-D.)

<sup>34</sup> M. CHAMBERS & E. ELLIOT, *THE COLLEGES AND THE COURTS* 1936-40, at 35 (1952).

<sup>35</sup> See J. Sanders, *The Legal Development of the University of North Carolina* (unpublished study, Institute of Government, University of North Carolina at Chapel Hill, 1965) for a historical treatment of the legal provisions affecting the University of North Carolina.

<sup>36</sup> Of the remaining thirty-one states not examined in this paper, only four have boards of trustees which can be considered constitutional corporations. They are the University of Colorado, University of Idaho, Oklahoma State University, and the University of Utah. See Wooden, *Legislative Control of a Constitutional Corporation*, 55 MICH. L. REV. 728 (1957).

<sup>32</sup> M. RAUH, *COLLEGE AND UNIVERSITY TRUSTEESHIP* 59-60 (1959).

<sup>33</sup> MARTORANA & HOLLIS, *supra* note 4, at 32.