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Concepts of Legislative Power

Preface

*John H. Tucker, jr.**

The Louisiana State Bar Association last year, by a resolution adopted at its annual meeting, initiated the movement for the calling of a State Constitutional Convention. A committee from the Bar Association has prepared a bill designed for that purpose and will seek its introduction and passage at the regular session of the legislature convening in May 1954. Widespread interest in this movement has resulted, and the question of the necessity for complete revision of the Constitution is being brought into sharp focus by discussions in the Bar Association Committee, in the press of the state, and in many civic organizations. The League of Women Voters of Louisiana has already published several excellent informative studies concerning constitutional revision in Louisiana.

Since 1921, our Constitution has been amended by vote of the people 302 times, and as a result we have the longest constitution of any state by tens of thousands of words. By comparison, Massachusetts, with the oldest constitution (1780) has amended it 81 times, as of 1953; and Vermont, with a constitution of about 5750 words has only amended it 40 times since 1795. Our neighboring states have been almost as parsimonious with amendments as their Yankee sisters—Arkansas 42 amendments since 1874; Mississippi 32 amendments since 1890; Texas 110 amendments since 1876.

Length is not an infallible criterion by which to appraise a constitution, but W. L. Hindman, writing in 1948 on the need for constitutional revision and rewriting in the states, said that these states "include the famous unamended document of Tennessee and California's constitutional colossus [Louisiana's constitution is much longer]. . . . The instances of Tennessee and California are typical demonstrations that constitutional change is

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needed both to modernize the archaic and to organize the chaotic."¹

In Louisiana we have transferred a considerable body of law purely statutory in nature to the Constitution by the amending process. And most of the criticisms of the present Constitution are generated by this foreign content in our Constitution.

This transference of the legislative function by means of amendments to the Constitution has resulted firstly from the restriction placed on the legislature by the Constitution itself, and, secondly, from the pragmatic political philosophy that a measure in the Constitution is more difficult to change than one on the statute books. Of these two sources of haphazard and illogical growth, amounting almost to malignancy, the desire of each state administration to freeze its own proposals in the Constitution accounts for more amendments than result from constitutional restrictions on the legislature. Fear has been the motivating cause in both instances. The framers of the Constitution erected these barriers to free legislative action because of their distrust of the government of the day, and the government of the day, because it feared the government to follow.

To get at the root of the matter, let us look at the last legislature. The Legislature of 1952 proposed 34 amendments to the Constitution which were voted on and adopted at the general election on November 4, 1952. As compiled by the Secretary of State, it required 165 pages to print these proposals. They cover a variety of subjects—civil service, registration of homestead exemptions, municipal powers and charters, bond issues for several state and local agencies, substitutions and fidei commissa, farm youth program, money for tunnels in Royalty Road Fund, and others of varied character, including proposals to establish the Boards of Highways, Institutions and Welfare as separate constitutional boards.

Take the civil service proposal for an example of how the system works. This proposal takes up 24 printed pages in Secretary Martin's compilation. In addition to its very commendable provisions to take politics out of state and city employment (the popular conception of the meaning of civil service), the Civil Service Commission is given broad powers to adopt, amend, repeal and enforce rules and regulations having the effect of

1. Hindman, *Road-Blocks to Conventions*, 37 NAT. MUNIC. REV. 129 (1948).

law regulating employment, transfers, promotion, removal, qualifications and other personnel matters and transactions and employment conditions and disbursements to employees, including the right to establish hours of work with the approval of the Governor.

What the voter saw on the ballot on election day was this:

"FOR the proposed amendment to Section 15 of Article XIV of the Constitution of Louisiana, relative to State and City Civil [sic] systems." (This is as it appears in the enrolled bill. Of course the ballot provided for a vote "against" using the same language.) The point here is that this proposal, reaching deep into the personnel administration of every state agency, could not possibly have been given careful consideration by the voters; and in a legislative session of 60 days, in which the harassed legislator was confronted with upwards of 2000 bills, there was little, if any, opportunity for a proposal of such length and complexity to be thoroughly debated and understood by the legislature itself. If any of the wealth of detail in this amendment proves to be defective or unsound or unworkable in operation, it will take a constitutional amendment to correct the defect.

This brings us to a basic and very grave problem we must face if we have a constitutional convention, probably the most important issue which will be brought before the convention. It concerns our concept of the legislative power, for if we are to bring law making in Louisiana back to its natural functional channels, it will be necessary to revise the trend of our political pragmatism of the last quarter of a century, and place far greater trust in the legislature than we have in the past.

If, on the other hand, Louisiana is not yet ready to place a full measure of confidence in the legislature, the convention should carefully devise the means whereby the voters can be made aware of the proposals submitted to them. We should devise the means to insure that the voters are informed of the basic issues submitted to them and strive to keep legislative detail out of the Constitution in any event. It might be found advisable, for example, to limit the number of proposals which may be submitted at any one election if such drastic action would help in accomplishing this result. For we should do all that we can to dry up the flood of constitutional proposals dictated by the fear of one administration that the next one will upset its own legislative program.

This symposium may well be the beginning of the debate on this tremendously important issue, for all debate must begin with a careful and accurate statement of the issue. It is a question to which Louisiana must find the right answer, whether we have a convention or not. For if we do not find the way to a sound concept of the legislative power, the confusion of the present Constitution may easily become chaotic.