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# Reforming Alabama's Constitution

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*Since the passage of the Alabama Constitution of 1901, many citizens and political leaders in Alabama have attempted unsuccessfully to rewrite it. Although Alabama has made progress in reforming the constitution with the work of a constitutional commission in 1973, much work remains.*

The focus of this article is constitutional reform in Alabama. We divide the article into two sections. The first section reviews methods of constitutional change in the American states and explores reasons for success or failure. The next section discusses the history of constitutional change in Alabama and it includes summaries of the public's opinions about constitutional change in that Alabama.

## METHODS OF CONSTITUTIONAL CHANGE

Constitutional revision in the American states has occurred with varying frequency, often with significant partisan political influence (Goodman *et al.*, 1973). In a typical scenario, change initiatives originate among the educated, the upper-middle class who advocate "good government" as a basis of political support. Upwardly mobile lower income groups and institutional representatives, such as state legislators and agency heads, are more likely to oppose constitutional change as a threat to the status quo and their positions of power in state politics. Major revisions

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of constitutions or the complete rewriting of the document through a state constitutional convention is not common practices in the states. In the 19<sup>th</sup> century, there were numerous revisions of state constitutions, as well as adoptions of constitutions by new states. The 1800s saw the adoption of ninety-four state constitutions. The 20<sup>th</sup> century only saw twenty-three new constitutions. The 21<sup>st</sup> century, though relatively young, has not seen a single, new constitution (Tarr 2002).

Shortly before the beginning of the 20<sup>th</sup> century, many Southern states revised their constitutions because of a backlash of the populist movement (Rogers and Ward 1994). Southern elites, seeking a way to disenfranchise Blacks and poor whites used a constitutional framework to do so. Most of these constitutions did not conform to the United States Constitution and were challenged extensively, especially beginning in the 1960s. For example, Georgia had ultimately to adopt a new constitution in 1975 after the U.S. Supreme Court rejected the Georgia "county unit" electoral system. The Supreme Court ruled that the county unit system violated the "one person, one vote" rule (Hill 1994).

One way to change a state constitution is to add an amendment. Likewise, some states may call a constitutional convention to change their state's legal document. Adding amendments is the more common method. Several state constitutions have over one hundred amendments (Tarr 2002). Change by amendment is a more piecemeal approach than a constitutional convention, which usually takes a comprehensive approach. The amendment process requires two steps—initiation and ratification. There are three methods to initiate an amendment—legislative action, state convention, or the initiative and referendum. Legislative action requires a majority vote of both houses of the state legislature before the people vote on it. States use conventions to propose general election amendments to an existing document. Several

states allow the addition of constitutional amendments by the initiative. The initiative begins with a petition that requires a certain percentage of signatures as specified in the existing state constitution. Once verified, the amendment goes directly to the general election ballot. The most successful method, which usually results in voter approval, is legislative initiation. However, research indicates that the larger the legislative majority required for initiation, the fewer amendments proposed (Lutz 1996). A majority vote is typically required in the general election (or in a legislative vote after the general election in states that require it) for an amendment to take effect (Bartley 1960; Lutz 1996).

A constitutional convention is a more controversial approach. Often the proposal for convening a convention does not win approval from the state legislature, or, if authorized by the legislature, often does not win majority approval in a general election referendum. Scholars characterize constitutional conventions as more democratic and as an expression of "the direct voice of the people in matters affecting general constitutional overhaul" (Bartley 1960, 32). Conventions give opportunities for citizens to re-evaluate and re-assess political institutions. They are "instruments, of normal constitutional evolution" (Bebout and Sady 1960, 69).

Procedurally, a constitutional convention is an *ad hoc*, or temporary, body. Depending on the state, it may result from a popular initiative or from a popularly approved legislative proposal. The convention's authorization legislation describes its jurisdiction. States form conventions to do one of two things, to revise the document in its entirety or to add amendments to an existing constitution. Occasionally, a convention may propose enough amendments to make the proposed revisions comprehensive. The legislature typically sets the time and place for the convention meeting, stipulates the selection of delegates, and

makes appropriations for expenses. Either legislators appoint delegates or they may be elected from districts of equal population (Dealey 1907). The work of the convention must be completed in a final recommendation (Goodman *et al.*, 1973). If the convention does draw up a new, comprehensive constitution, it goes to the voters. Voters may accept the document as their new fundamental law or reject the document thus keeping the old constitution.

Historically, there have been approximately 240 conventions called to revise constitutions (Bartley 1960). Nine states have adapted a mandatory, periodic vote on a constitutional convention. Hawaii mandates an election every 9 years, the fewest number of years between calls of any state. Alaska requires a constitutional call every 10 years. Most often, the call for a new constitutional convention fails. Sitting legislators are typically reluctant to act if the authority to convene a constitutional convention is with the existing legislature.

Even in cases where the legislature has called a convention, many problems persist. State legislatures frequently limit the scope and power of the convention to prevent consideration of controversial issues. Adequate representation in the selection of delegates is another concern. As a result, only one state in the past thirty years has used a constitutional convention and only three states have revised their document over the past 35 years. Most state constitutions have come to resemble a lengthy code of laws compared to the national constitution with its relatively few amendments. Compared to the difficulties of conventions, the relative ease of amendment procedures has led to many state constitutions having hundreds of amendments (Hargrave 1991).

An alternative to a convention or piecemeal amendment is the constitutional commission. The commission approach has grown in popularity because it is less costly than a constitutional convention and because it limits the extent of constitutional revi-

sion. A commission is usually composed of a select group of individuals, typically academic, business, and political leaders, appointed by the legislature or the governor to make recommendations. Appointment may raise doubts about representativeness. Another disadvantage may be the reluctance of an appointed group actually to campaign for political approval of its proposals.

Because of legal and political barriers to state constitutional change, most scholars today would suggest reliance on the amendment process. In a comprehensively revised constitutional proposal, many voters will find at least one part to oppose and thus reject the entire proposal. An approach to revision using major amendments allows more time for debate and reflection on each one, while moving steadily toward an overall goal of comprehensive change. Since the electorate votes on controversial parts separately, there is an increased chance of approval of at least some of them (Goodman *et al.* 1973), especially when compared to an up or down vote at once on a totally revised constitution. Alabama faces the pros and cons of the various approaches to state constitutional change as it weighs alternatives for constitutional reform.

#### THE ALABAMA CASE

Alabama's political history is typical of a Deep South state in which one-party politics dominated and matters of race were central well into the 20<sup>th</sup> century. After the end of Reconstruction in the 1870s, white populists who were mired in poverty and threatened by political subordination challenged the traditionalistic, established, white Democratic Party elite and its alliance with selected, loyal blacks. Racial tension became a popular way to discredit the elite's tolerance of their former slaves as well as a way to disfranchise black voters.

To reassert traditional, one-party control, the Sayre Election Law was passed in the 1892-1893 Alabama legislative session to restrict the voting rights of illiterate or semi-illiterate white or black voters. That way, elites could continue to control the populists' challenge by weeding out the less predictable whites and simultaneously win the support of decent whites at the expense of black representation. Any symbol of party or office that might help an illiterate voter, black or white was removed from the ballot and candidates for office were listed in alphabetical order. Voters had to cast their ballots within five minutes and could only ask for help from polling officials appointed by the Democratic governor. The political effect of the Sayre Election Law was magnified by electoral fraud. In counties where blacks were a substantial percentage of the population, the white Democratic Party won majorities over white populists or black Republicans where no majority existed by "stuffing ballot boxes, voting in and counting out at will" (Jackson 2002, 17).

Any hope for a political alliance between white populists and black Republicans was snuffed in a movement for a constitutional convention to revise Alabama's constitution of 1875. Eliminating the black vote was a central reason for what became the Constitutional Convention of 1901. When white Alabama Democrats learned that Mississippi and other southern states were being allowed by the United States courts to disenfranchise ignorant and incompetent voters, the political question of the day became how to "relieve the state 'of the burden of the black man' and get rid of many poor white voters in the process" (Jackson 2002, 19).

By 1896, the newly elected governor, Joseph F. Johnston, called for a constitutional convention. The state legislature approved in 1898, but quickly repealed its decision through the emergence of a temporary coalition of Democrats and populists. Shortly thereafter, white conservatives, the old Democratic elite,

abandoned its earlier position of working with blacks by launching a campaign to reassert its dominance by "bringing honesty back into government" through restriction of black voters. The campaign worked and on April 1, 1901, voters approved a constitutional convention 70,305 to 45,505. A large percentage of the votes in favor of the convention derived from counties where blacks outnumbered whites, a clear suggestion of fraud.

Convention delegates were chosen from House and Senate districts and no poor whites or blacks attended. John B. Knox, convention president, made clear in his opening address that establishing white supremacy was the focus of the convention, not eliminating voter fraud or expanding black representation. The vexing question was how to disenfranchise blacks without disenfranchising whites. The debate over how to accomplish this task was held in secret and the Committee on Suffrage and Election reported on June 30<sup>th</sup>. It recommended males over twenty-one be allowed to vote if residency requirements were met, a poll tax of \$1.50 was paid, they could read or write English, and had been involved in a lawful business for the past 12 months or owned 40 acres of land. Moreover, those who had been convicted of one of the 30 crimes listed (crimes of which typically blacks had been accused), they could not vote. Since many of these requirements also disfranchised whites, a temporary measure was included to allow individuals to register until January 1, 1903, if they met other requirements, which included service in a war, being a descendant of a veteran, or a man of good character who understood citizenship—a clear exception for former Confederate soldiers. These provisions—the grandfather clause, poll tax, and temporary plan—passed 104 to 14 at the convention.

Black Alabamians did not react favorably to the convention's decision. Several prominent blacks, including Booker T. Washington, wrote letters to the convention. He argued that delegates at the constitutional convention should allow blacks to

vote and have their votes counted since they paid taxes and performed other citizenship duties. Most of the letters argued that if blacks were denied an education and the right to vote “there will be [a] danger that he will become a beast, reveling in crime and a body of death around the neck of the State” (Jackson 2002, 28). The efforts of Washington did not convince convention delegates. The convention also ignored hopes for reform in the 1875 document, such as home rule for local governments and mandatory funding of infrastructure or education.

Alabama citizens ignored black protests against ratifying the new constitution and arguments made by conservatives who stated that the constitution would maintain white supremacy and foster honest elections. The constitution was ratified 190,347 to 108,613. Only 30,000 votes came from black majority counties—a clear indication of voter intimidation or fraud.

After the ratification of the 1901 constitution, the number of black voters decreased dramatically. By 1903, the State of Alabama only allowed 2,980 blacks to vote of the approximately 181,000 blacks eligible to vote in 1900. During the same period, the number of eligible white voters also declined by approximately 41,300 (Flynt 2002). The result was a more controllable, unified, one-party electorate.

Pressure to change the 1901 constitution has persisted since its adoption. In 1915, Governor Emmet O’Neal unsuccessfully advocated a new constitution due to a lack of funding for roads and public education—essential elements in state economic development. At the request of Governor B.M. Miller in 1931, The Brookings Institution issued a report suggesting a new constitutional convention, but no action occurred. Beginning in 1957, Governor Jim Folsom called special legislative sessions to enact a constitutional convention on several occasions without result.

It was not until 1969 that Governor Albert P. Brewer has some success in constitutional revision. He recommended a con-

stitutional commission to propose revisions to the 1901 document. Both the governor and members of the legislature chose a twenty-one member commission of white men to study the constitution. During the work of the commission, Governor Brewer lost the election to George Wallace who was uninterested in constitutional reform. However, the commission continued to work and released an interim report in 1971 and the final report in 1973. The report concluded, "The 1901 constitution, with its [then] 327 amendments, is obsolete and should be replaced by a constitution that is more adequate for the citizens of the state and for their government, both state and local" (Stewart 2002, 55).

Although the legislature did not act on the commission's entire report, the legislature did ultimately pass an amendment to reform the court system. Chief Justice Howell Heflin made reform of the state's court system a cornerstone of his judicial electoral campaign and pursued passage of an amendment creating a unified court system in Alabama. These reform efforts made Alabama's courts one of the most efficient systems in the nation.

In 1979, Governor Forrest James named a committee that recommended changes that ultimately passed the Senate but was stalled and expired in the House. In 1982, lieutenant governor Bill Baxley and state senator Ryan DeGraffenried attempted to recompile the entire document and send it to the state legislature as one comprehensive amendment. The new proposed constitution passed both houses in the legislature and voters had to decide whether to adopt the new constitution. However, the Alabama Supreme court ruled that the legislature did not have the authority to "put before the voters a new constitution in the guise of a single amendment to the present document" (Stewart 2002, 57). Thus, the new document never received a vote of the citizens of Alabama.

Since the early 1990s, several attempts have been made to call a constitutional convention. In 1993, the Senate passed a resolution calling for a convention, but the leader of the House killed the measure. More recently, in 2002, Governor Siegelman suggested that the legislature give the voters a right to call a convention. However, the legislature did not endorse this measure before the deadline to place the measure on the November ballot. Similarly, a recent proposal to call a constitutional convention stalled in the state legislative session ending June 7, 2007 (Tarr, 2007).

Although federal law eventually overrode discriminatory provisions in the Alabama constitution of 1901, many of these provisions remain in the document. For example, Alabamians recently voted on referenda to repeal two particular sections of the document that were racist. One banned interracial marriages; the other mandated segregated schools. The first referendum barely passed in a 1996 state referendum and the second referendum in the 2004 election failed.

### **The Campaign for Constitutional Reform in Alabama**

Although the most recent attempt to call a constitutional convention failed in the legislature, there are groups that continue to fight for constitutional change in Alabama. An extensive grass roots organization has sought to increase public awareness of the need of constitutional change. The most notable grass roots organization is Alabama Citizen's for Constitutional Reform (ACCR). ACCR is a public interest group formed in 2000 to assist in drafting a new constitution for Alabama. Some of its notable members include a journalism professor from the University of Alabama, Samford University's president, a former governor, and a former U.S. representative (Flynt 2002). ACCR has campaigned and held public meetings throughout the state since its inception to develop support for constitutional change

In addition to the ACCR's grass-roots approach, the media has increased public awareness about the issue. Newspapers from around the state have r editorial series to increase public awareness of constitutional reform. Nevertheless, several questions remain, among them, do Alabamians support of constitutional reform? Which method of constitutional reform would Alabamians prefer? Finally, because of the history of the 1901 document, are there differences between the views of whites and blacks on constitutional reform?

### **Alabamians' Views on Constitutional Reform**

The ACCR conducted a telephone survey of a representative sample of 600 registered voters in Alabama in March 2002. The margin of error is +/-4%. Table 1 displays the results of the survey.

***Awareness.*** The data in Table 1 indicate that a large number of survey participants (562 respondents of the 600 surveyed) are aware of proposals to rewrite the constitution. While political awareness is not a guarantee of success for reformers, it does suggest a citizen body at least knowledgeable of the subject matter. However, of those surveyed, a substantial proportion of blacks remain unaware of constitutional reform efforts (41% compared to 22% of whites). Lower awareness may lead to lower levels of black participation in a constitutional convention. However, after the failure of the amendment to end segregated schools in the 2004 election, more blacks may become aware of needs to change the constitution.

***Support.*** As shown in Table 1, approximately 70% of Alabamians are aware of proposals to rewrite the constitution, but fewer than two-thirds of them support constitutional reform. About three-fourths of blacks agree that the constitution needs reform while slightly less than 60% of whites have the same view. There is no noteworthy, underlying positive or negative

association between race and interest or support for constitutional reform.

**Reason to Support.** Nearly two-thirds of reform supporters declare the existing constitution needs rewriting because it is outdated. About 20% of respondents feel that the existing constitution is too long or too complicated and that there is a need to simplify it; 11% feel that tax policy and tax issues are reasons to change the constitution, while another 2% focus on the need for

**Table 1**  
**Comprehensive Results of Survey Of Alabama Citizens Regarding**  
**Constitutional Reform**  
 Percent saying "Yes" (N in parenthesis)

	Total	Black	White	Gamma	Strength
Awareness	69 (562)	59 (71)	78 (322)	0.31	Weak
Support	60 (390)	75 (53)	58 (186)	0.16	Weak
Reason to Favor	90 (237)	87 (46)	91 (167)	0.82	Strong positive
Reason to oppose	80 (99)	77 (10)	80 (69)	0.66	Moderate positive
Specifies changes	51 (437)	42 (43)	49 (164)	-0.02	None
Prefer legislature	12 (562)	36 (31)	15 (36)	-0.06	Moderate negative
Prefer convention	68 (562)	72 (87)	69 (304)	0.38	Weak
Elect delegates	84 (562)	79 (96)	86 (379)	0.72	Strong positive
Appoint delegates	67 (562)	56 (68)	70 (309)	0.40	Weak

Note: Gamma is a measure of association that is based on concordant and discordant pairs. If the number of concordant pairs exceeds the number of discordant pairs, there is relative support for a positive relationship between two variables. In this case, the association is between race and agreement about a feature of constitutional reform. Gamma is standardized between plus or minus one to indicate the positive or negative direction of the relationship as well as its relative strength. See Kenneth J. Meier, Jeffrey L. Brudney, and John Bohte, *Applied Statistics for Public and Nonprofit Administration*, 6<sup>th</sup> ed. Belmont, California: Thompson-Wadsworth, 2006.

improvement in education funding. About 8% see a need to promote home rule and reduce state control over local governments. Respondents also mention that a rewrite is necessary because the document is racist and embarrassing. Of the total

sample, 4% mentioned racism as a reason to rewrite; only 2% of whites listed racism as a reason compared to 11% of blacks. Among respondents who support constitutional reform there is a high, positive association ( $\gamma = 0.82$ ). The total number of respondents is low however, 237 out of 600 interviewed or 40%. This interracial coalition will be the core of support should a reform effort be approved and modernization, not race, will be its rhetorical key.

***Reason to Oppose.*** Most Alabamians who oppose a constitutional rewrite believe it is unnecessary. A moderately positive consensus appears to occur between blacks and whites that a rewrite is unnecessary ( $\gamma = 0.60$ ). However, the overall part of the total interviewed (99 out of 600 or about 17%) is small. This group will be the vocal, or maybe silent, opponent to constitutional change. More blacks than whites (22% to 16%) distrust the need to rewrite the constitution or its supporters. When the governor attempted to call a constitutional convention through the state legislature earlier in 2001, the Congressional Black Caucus opposed the convention. The rationale behind their decision was that the new document might be more detrimental to the rights of blacks than the document from 1901. This could also be the case as to why more blacks distrust supporters of a constitutional rewrite. Another 11% of blacks and 13% of whites feel there is no one capable of re-writing the constitution. Seven percent of whites, but no blacks, fear constitutional reform would lead to a tax increase.

***Knowing Where Change is Needed.*** Of the respondents who believe constitutional reform is necessary, nearly a majority of respondents, both white and black do not know where change is needed in the constitution. This particular finding relates to previous research, which suggests that citizens that are more affluent are more comfortable and have a more positive view of constitutional change (Goodman *et al.* 1973). However, of those

respondents that identified an area of change, a sizable portion of both Blacks and Caucasians (19% overall) believe that the document should be updated and that more power is needed at the local level (10% overall).

One of the major problems in the existing document is the lack of home rule. While cities have relatively broad powers in governing themselves, county governments have virtually no authority without first going through the state legislature. As a result, local matters not related to their constituency often bog down state legislators. Further, because the constitution requires statewide votes on many local issues, a tax increase in a county in north Alabama requires a vote by the entire state, which is an inefficient process.

**Prefer Legislature.** As Table 1 shows, having a constitutional convention to reform Alabama's constitution seems to bode well with most respondents (68% overall). However, when preference for a legislative approach is compared to preference for a convention, almost 40% of the respondents oppose holding a constitutional convention or prefer the legislature. There is a moderately negative association on this concern ( $\gamma = -0.60$ ) due to the larger percentage of blacks (36%) who support a legislatively driven amendment process compared to whites (15%).

**Prefer Convention.** Only about one-third of blacks prefer that the legislature have the sole authority for re-writing the document. When respondents were asked directly if they would prefer a convention to re-write the constitution, there is general agreement among both blacks and whites that a convention is the best way to re-write the constitution. One of the major concerns about holding a constitutional convention is the selection of delegates, whether or not they are appointed or elected (see below) The selection of delegates at a constitutional convention could determine the output from the convention and ultimately approval or rejection from the community (Cornwell *et al.* 1970).

**Elect Delegates.** More Alabamians prefer the election of delegates as opposed to delegate appointments to a constitutional convention (84% to 67%). There is a strong positive association among blacks and whites and the election of constitutional convention delegates ( $\gamma = 0.72$ ). However, even with elections, there are ongoing concerns about representation results. For example, partisan at-large elections would more likely produce delegates who are party politicians, elected officials or bureaucrats, who may produce a document that preserves the status quo. Non-partisan, at-large elections would probably generate more reform-oriented interest and an innovative document. Non-partisan delegates may lack the organizational influence of party structure and be more vulnerable to interest groups influence—a potential limit on the innovative nature of a nonpartisan convention.

**Appoint Delegates.** A large percentage of respondents (67%) prefer the option of a constitutional convention with no elected officials acting as delegates, but there is no underlying agreement among blacks and whites ( $\gamma = 0.40$ ). Leaving out elected officials may not lead to recommendations that are politically acceptable to current officeholders. If united, they could become a major obstruction to adopting any changes. A mixture of delegates, both elected officials and non-elected officials, may be more practical.

Regardless of how its composition or how it proceeds, ultimately, whether voters would support a document produced from a constitutional convention depends on whether there is a process of compromise present in the convention. It will be vital for all voting blocs in the convention to agree on a proposed document. Further, research also indicates that the “all-or-nothing” approach to voters accepting the document could be problematic for reformers. The idea of accepting a document in its entirety has proved to be unworkable for states that have had

constitutional conventions in the past because the likelihood of a citizen rejecting one portion of the document and voting against the entire document is relatively high (Cornwell *et al.* 1970). This may be the ultimate flaw of a state constitutional convention and require reliance on a process controlled by the state legislature.

### CONCLUSION

The case of Alabama suggests that constitutional revision faces many problems that are typical of reform efforts in the states. The difficulty of revising a state constitution is as difficult as explaining complex issues to the public. Unfortunately, unlike other political issues, reformers cannot explain why comprehensive constitutional revision is necessary in a television commercial sound bite. Although each state's situation is different, Alabama's traditional political culture that depends on elite control shows why reform is difficult. Furthermore, Alabama's history of distrust, election fraud, racism, and demagoguery has caused many to become wary of any reform. Yet, the survey data reviewed above demonstrate that there are sizeable blocks of public support that, if informed and encouraged, will continue to press for constitutional modernization. Success in reforming Alabama's constitution will require compromises by citizens, interest groups, and elected officials who share concern about the state's future and its people.

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