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Book Reviews

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BOOK REVIEWS

REAPPORTIONMENT, THE LAW AND POLITICS OF EQUAL REPRESENTATION. By Robert B. McKay. New York: Simon and Schuster, 1970. Pp. 498. $3.95 (paperback).

Professor McKay has compiled a formidable and scholarly work on the now well-settled principle of "one man-one vote," as found in the fourteenth amendment's Equal Protection Clause. His analysis of the concept is enlightening and informative without being pedantic.

The book was commissioned by the "Twentieth Century Fund" of New York, a nonprofit foundation dedicated to research and dissemination of the results thereof in such diverse fields as economics, social problems and international affairs. Authors writing for the fund are said to be given complete freedom in the statement of opinions and the interpretation of facts. However, it is likely that Professor McKay was chosen or supported by the Twentieth Century Fund to write the book because of his dedication to the cause of equal representation—a dedication shared by the Twentieth Century Fund. Indeed, Professor McKay attempts, at least, to destroy all of the arguments ever advanced in opposition to the strict application of the one man-one vote principle.

The author does a good job in developing the material so as to provide the reader with a sound background in the historical roots of equal representation and thereby fosters a greater appreciation for the later decisional processes which enunciated the doctrine. Of particular interest in the historical section is the author's tracing of various states' constitutional provisions regarding majority rule and the rise and decline of the county as an effective governmental unit. Therein lies one of the chief causes of unequal representation which began to manifest itself quite markedly in the twentieth century. The rural counties began to lose population and the once nearly equal population balance between rural and urbanized counties formerly enjoyed in most states became more and more weighted in favor of the urban counties. With this in mind, the states began to abandon reliance on population as the only criteria for apportionment. Montana, in 1899, was apparently the first state to provide that representation in one house of the legislature was to be on the basis of population while representation in the other house was to be apportioned on the bases of one member per county, regardless of population. After the example set by Montana,

other states were quick to follow. As the author points out, many states merely failed to take any action to reapportion seats in the legislature even though population had shifted to the cities and notwithstanding reapportionment based upon such shifts in population was required by their constitutions. Two reasons are advanced by Professor McKay to explain this disregard of "equal representation": (1) a distrust by the existing legislatures of an urban majority; and (2) a reluctance on the part of rural legislators to reapportion themselves out of office.

Professor McKay's analysis of the political background of malapportionment is very enlightening and assists the reader in fully appreciating the apportionment decisions of the United States Supreme Court which he so ably dissects, especially the dissenting opinions. Professor McKay is neither sympathetic with nor appreciative of the dissents of Justice Harlan. Essentially, Justice Harlan viewed the apportionment issue as a political question and hence not justiciable. He stated in *Reynolds v. Sims*[1] that the majority opinion in *Baker v. Carr*[2] was "an experiment in venturesome constitutionalism."

Professor McKay devotes much time and space to the Harlan dissents and does a creditable job in bolstering the majority view. In these pages, one can readily see that Professor McKay is truly dedicated to the cause of equal representation. In short, it is obvious that the author agrees that population rather than real estate should determine representation. In principle, no one can deny the rather simplistic and appealing "one man-one vote" proposition. The fact remains, however, that not only did many states require that one house of the legislature be apportioned on the bases of one vote per county, but the United States Senate is also apportioned on a similar basis.

This analogy to the federal system is discarded by Professor McKay as inapposite. I was not overly impressed, however, with his handling of this part of the argument. He makes a somewhat weak effort to show that the states did not pattern themselves upon the federal system and strove instead for representation based upon population. Hence, any attempt to justify malapportionment based upon the federal analogy, he argues, is merely a rationalization for maintaining a malapportioned legislature. Moreover, Professor McKay decries the federal analogy for yet another reason. He states that:

> The constitutional decision which established the Senate without reference to population was made by sovereign

1. Reynolds v. Sims, 377 U.S. 533, 625 (1968).
2. Baker v. Carr, 369 U.S. 186 (1962).

> states in an act of consensual union. But counties, cities, towns and the subdivisions of the states are not sovereign; they neither have nor need the prerequisites of sovereignty. The power of altering local political lines rests with the parent state, not with the dependent units. Unlike the states, which are protected from boundary changes, the lesser subdivisions within a state have no constitutional protection against state legislative decisions to reduce, enlarge, alter, or abolish them except, for example, where the redrawing of political lines is motivated by racial discrimination intended to make ineffectual the right of franchise of Negroes.[3]

I do not find the above argument wholly convincing and the lack of "sovereignty" among state political subdivisions does not in any real sense diminish the need for effective representation among such subdivisions of the state. This seems especially true when at least one house of the state legislature is based strictly on population. If both houses of the legislature are apportioned only on a population basis, bicameralism seems rather unnecessary.

Whatever one's personal feelings on the subject may be, it is clear that Professor McKay has presented the issues in a way that on the whole is quite compelling. He suggests that the following criteria are appropriate for an apportionment commission at the state level:

> 1. Representation should be accorded to the leading political parties so long as persons not specifically involved in political pursuits are represented in equal numbers. Such nonpolitical representatives might be nominated to the appointing authority by presidents of leading universities or other respected bodies.
>
> 2. Less than a majority of the entire commission membership should be drawn from legislative or other official positions.
>
> 3. The commission should be entrusted with complete responsibility for the apportionment and districting functions, subject only to adequate opportunity for judicial review to test compliance with whatever standards are specified.
>
> 4. Standards to govern apportionment and districting should include the following:
>
> a. Each district should be as nearly equal in population as practicable.
>
> b. Each district should be composed of as compact and contiguous an area as possible.

3. R. MCKAY, REAPPORTIONMENT, THE LAW AND POLITICS OF EQUAL PROTECTION 199 (1970).

c. To the extent practicable and consistent with the foregoing standards, local political subdivision lines should be followed.

d. Districts should be drawn without respect to the strength of any political party as reflected by enrollment, votes for candidates in any election, or any similar criteria.[4]

There is an excellent appendix to the book which is impressive because of the large amount of legal research which was necessary for its compilation. The appendix consists of a summary of each state's apportionment history and law. Professor McKay's dedication to scholarship as well as his ability to clearly state his convictions makes this book a truly significant contribution to a better understanding of one of the most important legal, political and social issues of our time. His treatment of the subject is a most worthwhile addition to the literature of apportionment.

BRUCE E. BOHLMAN*

THE POLITICS OF JUDICIAL REFORM. By James A. Gazell and Howard M. Rieger. Berkeley: California Book Co., Ltd., 1969. Pp. 278. $6.00.

Judicial reform has become an urgent matter in many states. The politics of judicial reform could be aptly called the politics of constitutional revision, since constitutional restrictions have been the obstacle that has prevented timely judicial reform in most states, and that includes the state of North Dakota. *The Politics of Judicial Reform* deals with judicial reform in the state of Illinois which recently succeeded in achieving some judicial reform following the adoption of a new judicial article to its constitution.

As an introduction to the Illinois study of the various political elements that come into play in constitutional and judicial revision, the authors briefly allude to early judicial consolidation of courts in England under the Judicature Act of 1873, and then follow with a brief summary of early advocacy of judicial consolidation in the United States between 1905 and 1939. The book should be of

4. *Id.* at 270.

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particular interest to anyone who is concerned with constitutional revision. The authors are presenting in a limited way a discussion of the various elements that play a role in constitutional revision and judicial reform. The authors assume that criticisms leveled at the court systems by Roscoe Pound in 1906 for being archaic, are applicable to Illinois as well as to most other states, particularly prior to 1940.

The authors have divided the court reform struggle into four steps: establishment of a court administrator's office, abolition of justice of peace and fee officers, consolidation of courts with overlapping jurisdictions, and the integration of all the courts in a state into a state wide unified court system. A fifth step, although not designated as such by the authors, but dealt with at some length, is the matter of judicial selection and tenure of judges which has become a part of judicial reform in many states. Only a few states to date have adopted the nonpartisan appointive system referred to as the Kales plan in the book and more popularly known as the Missouri Plan.

We could well agree with the authors that all of these steps which they have discussed would, if adopted, make for a more efficient administration of justice, but nowhere do the authors point out how and to what extent any of these reforms would actually solve the most pressing problem in the courts today, that of court congestion which results in intolerable delays in the final disposition of a civil case. Indeed, the authors themselves raise the question of whether progress through the proposed judicial reform is not being outstripped by the growth in the problems that are facing the state courts. If true, this may necessitate giving serious consideration to more drastic reform measures, such as, the integration of the federal and state courts into one national judiciary, and the abolition of jury trials in all civil cases.

A considerable portion of the book deals with a detailed account of the struggle in Illinois for judicial reform, which finally culminated in the adoption of a new judicial article in 1962. The authors relate how the various political, public, and private interest forces were marshalled in support of constitutional revision. It is interesting to read how the authors have evaluated the relative importance of these various forces, such as bar associations, the major political parties, newspaper, radio and TV editorial support, labor, and business and civic organizations. As a result of their study, the authors conclude that four ingredients are necessary in order to achieve constitutional revision: a reasonably amendable constitution, lack of other serious problems occupying the attention of

the voters, a heavy public relations campaign, and a political consensus in favor of the proposal.

The discussion of these ingredients is directed primarily toward constitutional revision in connection with judicial reform, but the authors suggest that these same ingredients and same political forces will come into play in any kind of constitutional revision. This portion of the book would be of considerable interest to the North Dakota Constitutional Convention delegates, since not only must the delegates be concerned about the final proposal that will be offered to the electorate, but about what it will require to convince the electorate that the proposal should be acceped.

The last part of the book deals with the analysis that the authors have made of the answers that were received by the Illinois Judicial Advisory Council in response to lengthy questionnaires that were directed to the lawyers, law school professors, and judges and court administrators, in an attempt to evaluate the impact that the Illinois judicial reform has had on the Illinois court system.

The questionnaire directed to the lawyers in Illinois consisted of eighty questions covering eleven different categories, including attitudes of lawyers toward the bench, judicial selection and tenure, delay in disposition of cases, use of pre-trial conferences, use of impartial medical witnesses, and use of split trial procedure under which the issue of liability and damages are tried separately. Some of the conclusions reached as a result of these surveys indicate that, although Illinois has been operating under consolidated courts and state wide court administration since about 1964, it has not materially reduced either the backlog of cases in some of the courts or the time required to process civil actions.

The two primary culprits causing court congestion, according to these surveys, appear to be: the increase in automobile accident litigation, and lawyers accepting more cases than they can effectively handle. This points up the fact that judicial reform cannot be limited to simply reforming the court structure, but also has to be directed towards the attitudes and practices of the lawyers using the courts, the personalities of the judges operating the courts, and the type and incidence of cases that are being processed through the courts.

The book presents no easy solutions to the problems facing the courts, but does point to some of the problems that need to be resolved and to some of the proposals that are and will be receiving serious attention in the immediate future, not only in Illinois, but in all the states. The book is recommended as

worthwhile reading for those interested in constitutional revision and judicial reform.

ADAM GEFREH*

THIRTY YEARS OF STATE CONTITUTION-MAKING: 1938-1968. By Albert L. Sturm. New York: National Municipal League, 1970. Pp. xviii, 155. $2.50 (paperback).

Dr. Sturm, a veteran writer on constitutional reform, examines the major efforts of the American states to re-work and modernize their constitutions during the thirty year period from 1938 through 1968, with an epilogue covering 1969.[1] Interest in revising and re-writing state constitutions has burgeoned in recent years as the problems of state government have become more and more complex. This study shows the principal methods and techniques employed by the states in revising their constitutions, ranging from piecemeal amending to complete revisions. Not concerning himself with substantive constitutional change, nor the political aspects of reform, Dr. Sturm's work is a utilitarian study, the primary purpose of which is to make available readily usable information to persons directly concerned with modernizing state constitutions. It presents background information on state constitutions, data on the methodology of recent reform efforts, and a distillation from this experience of possible guidelines for present and future constitution drafters.

The contents include five chapters and four appendices. Chapter One provides background information and summary data with charts covering development, weaknesses, and major documentary characteristics, plus a summary of the techniques of amending and revising, with particular attention to the role of state legislative assemblies. There were far simpler state governmental organizations and a less complex society in the days during which many of the state constitutions were drafted. Through the amending process many of these documents have been added to so many times as to obfuscate understanding and judicial interpretation. The amend-

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1. A. STURM, METHODS OF STATE CONSTITUTIONAL REFORM (1954); A. STURM, MAJOR CONSTITUTIONAL ISSUES IN WEST VIRGINIA (1961); A. STURM, CONSTITUTION MAKING IN MICHIGAN: 1961-1962 (1963); A. STURM & J. CRAIG, STATE CONSTITUTIONAL COMMISSIONS, FIFTEEN YEARS OF INCREASING USE (1966).

ing process as a method of reform has failed to keep pace with the relief demanded by the pressure of the times. The growth of governmental machinery, as it has tried to cope with problems fostered by urban development, technological advances, growth and shift of population, minority matters, and the pressure for better living standards, presented the states with a portfolio of severe problems which most of them were ill-equipped to handle.[2] The ever-rising cacophony of pleas from the cities for assistance is symptomatic of the disease which has its roots in the state's inability to provide the relief sought. Washington's Governor Daniel J. Evans, in his second inaugural speech in 1967, put it succinctly:

> State governments are unquestionably on trial today. If we are not willing to pay the price, if we cannot change where change is required, then we have only one recourse. And that is to prepare for an orderly transfer of our remaining responsibilities to the federal government.[3]

Somewhat in the same vein, former Governor Terry Sanford of North Carolina, in his book covering the current dilemma of the American state,[4] declared:

> State constitutions, for so long the drag anchor of state progress and permanent cloaks for the protection of special interests and points of view, should be revised or rewritten into more concise statements of principle.[5]

Also speaking with considerable authority, the prestigious Committee on Economic Development issued a hard-hitting report on state government deficiencies and gave constitutional reform top priority among the corrective steps required to infuse new strength into the states:

> Most states should hold constitutional conventions, at the earliest possible date, in order to draft completely new documents.[6]
> [Otherwise] the states . . . [will be little] more than administrative instrumentalities of decision-makers at other levels.[7]

Philosophically, early state constitutions reflected a basic belief

2. COMMISSION ON INTERGOVERNMENTAL RELATIONS, A REPORT TO THE PRESIDENT FOR TRANSMITTAL TO CONGRESS (1955).
3. Address by Governor Daniel J. Evans, Washington Inaugural Speech (1967).
4. T. SANFORD, STORM OVER THE STATES 189 (1967).
5. *Id.*
6. COMMITTEE ON ECONOMIC DEVELOPMENT, MODERNIZING STATE GOVERNMENT: A STATEMENT ON NATIONAL POLICY 68 (1967).
7. *Id.* at 10.

that government, at best, is evil and should be restrained. Thus the ideas of popular sovereignty, limited government, separation of powers, checks and balances and legislative dominance were the watchwords. Overcoming or re-working these concepts in order to make state government flexible enough to respond to current day needs is the crux of the problems facing modern day constitution-writers. How to eliminate the over-abundance of statutory material is one of the tough assignments to be handled, yet done in such a way as to be palatable and practical with the electorate.

Chapter Two recites the methods of amending, whether by legislative initiative or popular initiative, the convention or the commission process in some form. In North Dakota our constitution has been amended ninety times, usually making limited changes and providing backup authority for statutory changes. The amending process itself is not overproductive of any great reform in the parent product. W. Brooke Graves wrote in 1966:

> Generally . . . the piecemeal amending procedure's fragmentary approach to constitutional problems has not demonstrated that it possesses much fitness for dealing with such fundamental and highly complicated problems as streamlining the organization and procedures of the three branches of government, of the tax and fiscal system and the system for constitutional revision itself—all of which must be effectively dealt with if constitutional modernization is going to be anything more than an idle dream.[8]

The use of the initiative method, as in North Dakota, where 20,000 signatures are required to place a measure on the ballot, are in themselves often productive of added statutory material which has no proper place in a constitution. Many times such moves reflect the power of some special interest group, yet it can also represent popular effort to overcome legislative inertia. Through 1968, in all the states, 7,761 amendments have been proposed and 4,883 have been adopted, 4,503 of which resulted from legislative action and 161 from popular initiative.

Chapter Three discusses the growing use of the constitutional commission to accomplish both major and minor revisions. These are usually extra-legal assemblies (except in Florida) usually promoted by the governor or the legislature. Indeed, the commission usually performs as an arm of the legislature in the study and drafting process, and submits its finished product to the legislature for passage and later submission to the people for voter action. New York, for example, employed four commissions at

8. Graves, *State Constitutional Law: A Twenty Five Year Summary*, 8 WM. & MARY L. REV. 12 (1966).

a cost of over four and a half million dollars, while Vermont's cost only five hundred dollars. Voter interest in commission work, because of its relative isolation from public gaze, has been somewhat limited.

Chapter Four deals with the constitutional convention method, surely of current interest to North Dakota. Two hundred eighteen such conventions have been held since the beginning and 27 since 1938. Appropriations for such entities have varied from a low of $300,000 in Alaska, to a high of $6,477,000 expended out of a $10,000,000 appropriation in New York. Delegate numbers have gone from a low of 40 in Virginia to a high of 462 in New Hampshire's 1964 convention. Strong leadership by state officials, legislatures, civic and service oriented groups has been a prerequisite for the convention movement. "Good government" organizations and the media as well, have been instrumental in securing affirmative voter reaction for calling of such conventions.

The power of a constitutional convention has been questioned, from time to time, particularly when legislative limitations have been set by the enabling act.[9] The prevailing view today is that a constitutional convention is bound by its public mandate, not by legislatively imposed restrictions on its proper conduct.

Troublesome problems are indigenous to all conventions. Among the most troublesome have been those concerning legislative apportionment, state aid to church related educational institutions, tax exemptions, judicial selection, the long and short ballot, single member legislative districts, voting rights and separation of powers generally. It is worthy of note that of the 118 amendments or re-writes presented to North Dakota voters in the last thirty years, 90 of them, or 76 per cent, have met with voter approval; a considerably better batting average than those taking the legislative initiative route.

Chapter Five concerns perspectives and appraisals of the total reform process. Dr. Sturm, aided by his charts, seems to feel that greater voter involvement has a salutary effect in preparing and actually passing reform measures. He explains:

> Although one of the most often cited obstacles to constitutional revision is the fear of radicalism, seldom do constitution-makers propose revolutionary changes. Much more characteristically, they suggest modifications in existing political institutions and practices that avoid stirring up unnecessary antagonism to the point that popular acceptability of their proposals is jeopardized. An ingredient of successful

9. *See e.g.*, Bartley, *Methods of Constitutional Change*, in MAJOR PROBLEMS IN STATE CONSTITUTIONAL REVISION 34 (W. Graves ed. 1960); A. STURM, METHODS OF STATE CONSTITUTIONAL REFORM 101-103 (1954).

> constitution-making is the ability to gauge the extent to which the electorate will accept alterations in the status quo. This is the essence of sound political judgment and a hallmark of statesmanship in the exercise of the constituent power.[10]

The non-political aspect of a constitutional convention, while it has its roots in delegates elected on a no-party ballot, often changes into a political result. The "politics" essentially are not of a partisan nature. Leach puts it well, when he says:

> Politics implies competition among interest groups and individuals for power to determine public policy and control its execution. Constitution-making, like other forms of law-making, is a very practical process that is necessarily moulded by tradition, political forces and experience. Even though it is law-making on the highest level, it cannot be removed from politics. Interest groups naturally are vitally concerned with the contents of a constitution that directly affects them. This applies to vested interests both within and outside government.[11]

It is of interest to mention that in recent years there have been six outstanding conventions, three of which failed and three of which passed voter inspection. Among those successful was that of Connecticut in 1965, passing by a two to one vote. Pennsylvania passed theirs and Hawaii voted favorably on 22 out of 23 proposals, amounting to a new product. On the losing side was that costly product in New York which went down three to one in 1967. The reasons ascribed for that defeat were constant bickering between party politicians and the extravagant cost. The product was submitted in a single package measure, which included the controversial aid to parochial school provision. Rhode Island too, submitted a single package which was defeated by a four to one margin. Maryland, in 1968, defeated by a three to two vote, what appeared to the experts to have been a textbook exercise in correct draftsmanship. There the opposition by the so-called "Courthouse Elite," the radical right, and the majority of the voters, again proved the point that opposition by means of a well-organized propaganda campaign appealing to many elements unwilling to make changes or unwilling to give the power to change itself, could defeat a good product. Further, the assassination of Martin Luther King had a harmful backlash effect, coming near the time of election.

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10. A. STURM, THIRTY YEARS OF STATE CONSTITUTION MAKING: 1938-1968, at 83-84 (1970).

11. Leach, *The Modernizing Procedure*, in COMPACTS OF ANTIQUITY: STATE CONSTITUTIONS 106 (R. Leach ed. 1969).

The author provides a ten point primer in basic suggestions for a successful campaign to pass a constitutional reform presentation. They are worthy of study by all constitution buffs.

1. Careful preparation in advance of the convention.
2. An effective public relations campaign.
3. Maximum involvement of the citizenry.
4. Necessary compromise to attain the limits of tolerance for change.
5. Unremitting effort to obtain a favorable vote.
6. Separate submission of highly controversial issues—avoid a single package presentation.
7. Adequate professional staff and organization.
8. Careful choice of method of final presentation.
9. Proper timing of the election.
10. Persistence in submission.[12]

In his Epilogue, Dr. Sturm treats the 1969 efforts in several states. The Arkansas defeat and the Illinois passage were not available when he wrote. He does cite North Dakota's convention measure calling for the convention in 1972.

In conclusion, we may treat this book as a valuable aid in better understanding the varied processes employed in constitutional reform and revision. It is helpful to survey the successes and failures and the apparent reasons for such actions by the electorate. Dr. Sturm helps achieve a better understanding of the complex and often frustrating process by which the voting public may express its will to be governed. While the process of change may be difficult, it is necessary that we remember that our uniquely American governmental process is the result of hard-fought battles to preserve men's liberties and rights. We can do no better than to approach our own constitutional convention with a measure of reverence for such a heritage.

GEORGE M. UNRUH, SR.*

12. A. STURM, THIRTY YEARS OF STATE CONSTITUTION MAKING: 1938-1968, at 101-104 (1970).

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THE PROCESS OF CONSTITUTIONAL REVISION IN NEW JERSEY: 1940-1947. By Richard J. Connors. New York: National Municipal League, 1970. Pp. 207. $4.00.

> Are those of us who favor constitutional revision going to center our efforts on what is politically possible and practical, or are we going to try to reach out for the stars and come up with nothing?[1]

The above quote posed by a concerned citizen in the early 1940's sets the theme of the *Process of Constitutional Revision in New Jersey*: 1940-47, in that the process of constitutional revision is at its heart political. Richard J. Connors through his use of the New Jersey constitutional revision experience creates a model to which future constitutional revisors will be able to turn when facing political obstacles. The maneuverings of the actors and interest groups is intertwined with the two essential forms of the revision process: 1) that of procedure, politically moulding and managing a marketable constitution through its various stages of development; and 2) that of substancce, the contents of the document and its attendant provisions.

Since the problems of substance were, on the whole, peculiar to New Jersey, this form will not be of particular importance to the North Dakota Constitutional Convention. Some of the substantive concepts considered by New Jersey, although new for their time, have been subsequently improved upon in later state constitutional revision developments. Therefore, of significance to North Dakota constitutional delegates are the procedural obstacles that may be faced during the convention.

There are three main areas in which these procedural obstacles were observed: 1) those arising from an historical analysis of the particular revision problems that have arisen in the past; 2) the decision to have a convention and the subsequent political forces maneuvering at the hearings stage of the convention; and 3) the workings and outcome of the Convention and the difficulties of presenting this product to the voters through a referendum.

Because Connors precisely details the historical problems that were peculiar to New Jersey this section will be of little value to the delegates. However, viewing historical perspectives has the following advantages to the procedural process and its success. From disputes of the past one can see an emergence of the various interest groups that have stakes in constitutional revision. This is of fundamental importance in order to view the necessary coalitions that must be constructed to achieve an over-all

1. R. CONNORS, THE PROCESS OF CONSTITUTIONAL REVISION IN NEW JERSEY: 1940-1947, at 50 (1970).

consensus. Examples from the New Jersey experience of two primary obstacles that militated against this consensus can be seen in the inherent defects of the two previous systems of reform, the commission and legislative appointment plans, because of their inherent political divisiveness and the power struggle among the coordinate branches of government in the need for changing the constitution from that of a system of legislative supremacy to that of a system of separation of powers. However, from failures such as the above, there emerged some strong elements that later would have a decisive impact at the constitutional convention. Since the revision of a state constitution is the alteration of that state's fundamental law there should be the strong element of bipartisanship. Otherwise, the furor that can emerge from the procedural process can render the revision nugatory. Therefore, it is of paramount importance to bind a spirit among the delegates in order to work out a compromising document. Another element that emerged from the struggle of revision was the discovery of those groups that were amenable to revision, and the subsequent need to strengthen these groups throughout the revision development. This complements another element that is essential to revision—planning. Finally, emerging from the struggles of the past was the necessity to realize and include throughout the process strong leadership.

Once a constitutional convention has been decided on, there are certain problems that can erupt to impede the marketability of the product. These problems are usually ascertained at the "hearings" stage. Essential to the New Jersey experience and of crucial importance to the "hearings" stage, in order to mollify these problems, is the necessity of bringing all elements of the state's political life into the drafting process. These open hearings provided for an establishment of media exposure throughout the convention, and provided a forum where prospective voters were first introduced to the problems of constitutional revision. Also, the hearings helped to develop a consensus among the delegates in the respective committees, although it elicited some items that would have to be referred to the convention, for its decision. This consensus, however, was helpful in building the bi-partisan spirit and constructing the delegates decision making process. Connors found that: "The delegates interviewed felt that the compromise nature of the committee drafts, plus attitudes of mutual respect built during the committee stage (rather than deference to the *specialized* expertise of the committee . . .)"[2] were major determining factors in the delegates attitudes at the convention.

At the convention stage the New Jersey experience highlights

2. *Id.* at 168.

certain procedural problems that are critical to the success of all conventions. "Writing a constitution is a technical problem and a political problem . . . revolving around who writes the constitution, what concepts and compromises are contained therein, and how it is sold to the voters."[3] In other words, the constitution is the weaving of a great many factors at the convention stage, and its success is geared to the proper combination of these factors. It is indispensible that a *convention mystique,* established at the hearings stage, be carried on throughout the convention. This factor is crucial in that there must be a device to militate against the assault of the veracity of the special interest groups. Without this the brevity of the document may be lost to the whims of fragmentation. Coupled with a *convention mystique* is the maintenance of the element of bi-partisanship throughout the convention to further the premise that a constitution should be preserved as the state's fundamental law, rather than that of mere legislative decision. The element of bi-partisanship, although by no means a cure-all, helps to insure the necessity of compromise which is crucial to the success of any democratic institution. The functioning of the media, carried on from the hearing stage, gives the convention a deserved forum among the voters. Hopefully it will lay the ground work to the educating process, because of the assumed apathy of the public at large. Also, with proper strength within the convention the media is an appropriate device to counteract the assault of special interest pressure groups.

At the referendum stage, timing and initial preparation are critical. To describe this importance, Connors sets out three important considerations: 1) an interesting idea that as the delegates return to their home towns they will act as "mini-conventions" in that they will perform an educational function on the local grassroots level; 2) the use of a centrally directed group as broad-based as possible that will promote and distribute information about the convention and the importance of revision; and 3) the gathering of a strong statewide bi-partisan leadership, to direct this broad-based structure.

Although this book does not necessarily explain what should be included in the constitution, its importance lies in the fact that the constitutional convention is a political process. This book delineates some of the problems in this process in order to achieve the paramount consensus—that of the voter. The revision movement uses an ongoing process shaped and often moulded by the political actors and interests within the state. The balancing of these groups

3. *Id.* at 119.

and an awareness of the risks involved should forever loom in the back of the concerned delegate's mind.

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