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The Work of the Constitutional Convention

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The recent constitutional convention was preeminently a body of able men. Many of its members had attained distinction in public and private life and they came to the convention well equipped in ability and experience to perform the important and arduous task of revising the constitution of the state.

Of the one hundred and sixty-eight members, one hundred and twenty-five were lawyers in active practice; seven, publicists; four, educators; four, bankers; two, physicians; one, an architect; and twenty-five otherwise engaged in various lines of business. Of the number, thirty-nine had previous legislative experience, one in the United States senate, three in congress, fourteen in the senate of the state and twenty-one in the assembly. Three had filled cabinet positions under the federal government and three had been United States district attorneys. Two had been lieutenant-governors of the state and two were defeated candidates for the office of governor. Thirteen were ex-judges, three of the supreme court and ten of county and surrogate's courts. Four had been members of the constitutional convention of 1894.

The convention assembled at the capitol in the city of Albany on the first Tuesday in April last, pursuant to the adoption of a proposition therefor at the general election held in 1914. No legislative or constitutional restriction was placed upon its manner of organization or method of procedure. At the first session the delegates proceeded to the election of a president, two vice-presidents, a stenographer and numerous other minor officials. Subsequently, rules of procedure were adopted providing, among other things, for the appointment of thirty standing committees, which were divided into two classes: (1) those, such as the committee on rules, on printing, etc., which had to do with the formal business of the convention; and, (2) those among which were distributed the several parts of the constitution for preliminary consideration.

No one without legislative experience can appreciate the enormous amount of work involved in the adoption of a proposed constitution by a convention of delegates. The president, in his closing address,

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referring to the work of the convention, very aptly said: "Any one of us with the models which are available could have produced, in the solitude of his own office, a more harmonious scheme of government," and yet it took the one hundred and sixty-eight delegates practically five months, working almost uninterruptedly, to formulate and adopt the thirty-three proposals which are to be submitted for ratification at the coming general election as amendments to the present constitution.

One hundred and twenty-nine of the delegates introduced seven hundred and twenty-eight separate proposals and thirty-nine introduced none. Each proposed amendment was referred to one of the standing committees as soon as introduced. In this manner seventy-seven proposed amendments were referred to the bill of rights committee; forty-eight to the committee on legislative organization; fifty-five to the committee on legislative powers; thirty-eight to the committee on suffrage; seventy to the committee on governor and state officers ; one hundred fifty-three to the committee on judiciary; forty-four to the committee on finance; thirty-two to the committee on cities; seven to the committee on canals; seventeen to the committee on public utilities; seventeen to the committee on country, town and village government; thirteen to the committee on county, town and village officers; ten to the committee on prisons; seven to the committeee on corporations; one to the committee on banking and insurance; eleven to the committee on military affairs; eleven to the committee on education; seven to the committee on charities; twenty-four to the committee on industrial interests; twenty-five to the committee on conservation; two to the committee on Indian relations; twelve to the committee on future amendments; twenty-four to the committee on civil service; and seventeen to the committee on taxation.

The primary function of a committee was to consider the various amendments referred to it, with a view to obtaining agreement upon certain broad questions of principle, which amendments were to be later reported to the convention for its adoption or rejection. In other words, the committees, through a process of elimination and evolution, matured matters for the consideration of the delegates sitting as a committee of the whole and in convention.

The committees varied in size from seven to seventeen members. Each committee held frequent meetings, many of the more important ones holding almost daily sessions during the months of July and August. These sessions were notable for their intelligent and earnest study of the manifold activities of the state and of the various pro-

posed amendments under consideration. During the progress of the proceedings of the convention it was particularly interesting to note the quickness and precision with which the delegates acquired an intimate knowledge of the workings of the state government.

Of the great number of proposed amendments introduced, only twelve bearing the names of the introducers were finally acted upon and adopted by the convention. Twenty-one of the thirty-three proposed amendments to be submitted were prepared by and represent the composite views of the members of the various standing committees to which was referred the work of the convention. This statement may be illustrated by the action of the committee on governor and other state officers, to which were referred, as I have pointed out, seventy separate and distinct proposals introduced by individual delegates. This committee reported to the convention article VI of the proposed constitution. In the course of its deliberations the committee considered each one of the seventy proposals referred to it, with the result that in article VI, as proposed, is embodied so much of each of the seventy proposed amendments as the committee, in its wisdom and after careful deliberation, following a process of elimination, deemed necessary to establish a broad principle of administrative reform. It would be interesting to trace the extent to which, in this process of evolution, the ideas and suggestions of individual delegates have found actual expression in the proposed constitution.

In this manner the committee assimilated the ideas of the delegates and of distinguished men who, from time to time, were invited to address them on particular subjects, molded those ideas into concrete form, and reported the result of their labors to the convention for its modification, acceptance or rejection. On the coming in of the reports the convention frequently resolved itself into a committee of the whole to consider in minute detail the principles involved before final action thereon was taken by the convention. Very few of the reports were accepted by the committee of the whole without amendment and many were wholly rejected by it.

Finally, after this process of introduction by delegates, of maturing in committees and of consideration and treatment in committee of the whole had been completed, the various proposals which had stood the test were reported to the convention for final adoption. There each proposed amendment was separately considered without amendment or extended debate and finally acted upon section by section. If adopted, it was referred to the standing committee on revision for technical correction and molded with other amendments into the completed and final draft of the proposed constitution to be submitted.

On September 10th, after five months of earnest, conscientious labor, the delegates adopted the proposed constitution, containing the thirty-three amendments thus evolved, by a vote of one hundred and eighteen ayes to thirty-three noes of those present and voting. After the president, secretary and each person present had signed the instrument the convention adjourned *sine die*, its great work at last completed.

The more important of the amendments adopted by the convention deal with:

1. A reorganization of the state government on its administrative side into seventeen civil departments, a reduction in the number of elected officers and provisions for the appointment of all other officers.
2. Provisions affecting the legislature, designed to remove from it the consideration of local matters and private claims, and to restore it to its function of enacting laws of general application and of making necessary appropriations for the conduct of the state government.
3. A regulation of and change in the methods of making appropriations for the expenses of the state by means of an annual executive budget.
4. Improvements in the method of contracting indebtedness for the purposes of the state and the substitution of serial for sinking fund bonds.
5. The grant to cities of a larger control of their own municipal government and affairs.
6. Authority in the legislature to establish by general laws different optional forms of county government and to prohibit the passage of local or special laws relating to a county, except at the instance of its local authorities.
7. Reform in civil procedure in the courts of the state and provisions affecting the organization and jurisdiction of the courts designed to prevent delays in the administration of justice and to simplify litigation and make it less expensive.
8. State control over the assessment of taxes on personal and intangible property.
9. The protection of the natural resources of the state under a conservation commission.
10. Provisions for the benefit of wage earners by creating a department of labor and industry, by extending the benefits of the workmen's compensation act to embrace occupational diseases and by empowering the legislature to regulate or prohibit manufacturing in tenement houses.

The convention, however, should not be judged wholly by its constructive work in formulating the thirty-three separate and distinct amendments adopted by it. In the course of its deliberations through standing committees, in committee of the whole and in convention, it had occasion to consider and reject many important propo-

sitions of interest to the people of the state. Not a few of them were matters of legislative import; others it was felt, if adopted, would engraft into the fundamental law certain principles of government which would be harmful to the best interests of all the people of the state. Only one thus rejected invited and received strict partisan consideration, though several others were considered as political matters in the broader sense of the term and not in the narrow sense of party politics.

Among the many propositions rejected by the convention was that of Mr. Betts relating to capital punishment. It sought to amend section 5 of article I by providing in substance that no person should be deprived of his life by the state for any cause whatever and substituting life imprisonment for the death penalty. The bill of rights committee failed to report the amendment, whereupon Mr. Betts moved to amend the committee's report in the committee of the whole by incorporating in it his proposal, but his motion was defeated by a substantial vote.

The convention likewise rejected many propositions to amend article III relating to the organization, powers and duties of the legislature. Most of them, such as those providing for an increased term for its members, for biennial sessions and for the election of senators at large, were killed in committee. But one—that of Mr. Morgan J. O'Brien, amending section 4 by removing the limitation therein placed upon the representation in the legislature of the district now comprised in the counties of New York, Bronx and Kings—was reported adversely by the committee on legislative organization A motion was thereupon made to diasgree with the adverse report That motion invited a vigorous partisan debate. The limitation referred to was originally incorporated in the constitution by the convention of 1894. The proposition was mainly defended then, as it was in the present convention, on the ground that it would be unwise, in the interest of good government, to permit the metropolitan section of the state ever to gain control of the legislature for fear that the destinies of the remaining sections of the state might suffer under such control. In support of the amendment to remove the limitation the Democratic delegates claimed, as was claimed in the convention of 1894, that the real purpose of the provision was to perpetuate Republican control in the state regardless of what might be the popular will. The motion to disagree with the report was lost by a vote of ninety-nine to thirty-six, a few Republicans from the metropolitan district voting with the Democrats.

The most important of the amendments proposed to Article IV, relating to executive power, which was rejected by the convention, sought to increase the term of the governor and lieutenant-governor from two to four years and to make the governor ineligible to succeed himself. The proposition was seriously considered by the committee on governor and other state officers and was favorably reported by that committee. It was felt that, by lengthening his term and making him ineligible to succeed himself, the governor would be free to perform the duties of his office without political embarrassment. Under a two-year term a new and ambitious governor, if he would succeed himself, must necessarily devote a considerable part of his time in seeking a primary nomination during the last six months of his first term. Unless he has had experience in state affairs, his first months in office are devoted to a study of the various activities of the state, with the result that he is of real service to the state only for about one year of his first term. Many of the delegates believed that it would be wise to increase the term to four years, with ineligibility for succession, but the proposition was defeated in committee of the whole by a substantial vote.

The amendments to article V abolishing the offices of secretary of state, state treasurer, and state engineer and surveyor and continuing the comptroller and attorney-general as elective officials failed to meet with the approval of either the short ballot advocates or those who believed that the number of elective state officials should be increased rather than diminished. The delegates divided on these propositions without regard to politics. On the one hand the advocates of the short ballot maintained that the governor and lieutenant-governor only should be elected; that the governor should have absolute power of appointment and removal of other state officials and that he should be charged with the responsibility for the administration of all state affairs. On the other hand, many delegates were opposed to the centralization of power in the governor through the power of appointment and removal of state officials. They maintained that the affairs of the state government would be better administered through several independent executive officials rather than through one. The amendments were adopted largely as a result of compromise between the two extremes and to meet a political exigency occurring by reason of the fact that the two great parties represented in the convention were committed to the short ballot idea in their party platforms in more or less of a modified form.

The committee on judiciary had to deal with one hundred and fifty-three separate and distinct proposals to amend article VI. In

dealing with these several propositions the committee worked laboriously throughout the entire session of the convention. It would be impossible to enumerate in this paper the many complex problems which were referred to the committee for its consideration and report. It may be said, however, of the committee that it defeated many propositions which, if reported to the convention, would have precipitated that body into prolonged debates. Among others, the committee rejected the proposition for the appointment of judges, for the abolition of the appellate division and the transfer of the powers of that court to the court of appeals, and for the abolition of the court of claims and the transfer of its powers and functions to the supreme court. The committee, however, reported several propositions which were defeated in the committee of the whole, among the more important being the ones providing that all surrogates should be disqualified from practicing law and providing pensions for retired judges of the supreme court and judges of the court of appeals through the designation of such judges as official referees.

Two very important amendments relating to the article on education were defeated by the convention. It was proposed by these amendments to write into the constitution what is now the settled policy of the state in matters pertaining to education—that public education is a subject under the control and supervision of the state and should be administered in every city of the state through a board of education, created a body politic, which should have the power to determine the amount and direct and control the expenditure of all school moneys. While it has been the educational policy of the state for more than a century to provide for the general direction and control of its schools and the education of its children, a policy which has been repeatedly upheld by the courts, no provision has ever been written into the fundamental law that education is an inalienable and sovereign duty of the state. The propositions, however, were seriously opposed by the delegates and the one to write into the constitution the provision that public education is a state function was defeated on the floor of the convention and the other to provide for a board of education in every city of the state was defeated in committee of the whole.

The convention, in adopting the amendment that the public service commissions should be constitutional bodies, seriously considered and rejected a proposition providing that the courts should review the decisions of the commissions on questions of fact as well as upon questions of law. It was the opinion of the convention that questions relating to a review of such decisions should be left wholly with the legislature.

The convention also considered many proposed amendments relating to the forest preserves. It rejected all suggestions which would permit of the exploitation of the state's lands in the Adirondack and Catskill parks for commercial purposes and continued the provision that the forest preserve shall be forever kept as wild forest lands. While permitting the construction of a single state road through Hamilton and Franklin counties, it rejected propositions for the construction of highways generally on state lands. It also refused to permit the leasing of camp sites and the cutting of diseased timber. The removal of dead trees was authorized for the purposes of reforestation, but not for sale.

In reviewing the proceedings of the convention one can not help but be impressed with the calm and deliberate manner in which the delegates proceeded with the work. The debates were notably free from partisan and intemperate remarks. Its record may be summed up in the words of Mr. Root who said in his closing address: "I have seen and heard the debates of many parliamentary bodies and never have I heard or read debates in which the matter was more relevant, the discussion more earnest and to the point, the attempt at display less conspicuous, the speeches for home consumption more infrequent, and real discussion—that real, open, public discussion of a deliberative body, which is the essential process of free self government, on a higher level than in this convention of the year 1915."