

University of Chicago Law School

Chicago Unbound

Journal Articles

Faculty Scholarship

1914

Is a Constitutional Convention in Illinois Desirable at This Time?

James Parker Hall

Follow this and additional works at: https://chicagounbound.uchicago.edu/journal_articles



Part of the [Law Commons](#)

Recommended Citation

James Parker Hall, "Is a Constitutional Convention in Illinois Desirable at This Time?," 9 Illinois Law Review 20 (1914).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

IS A CONSTITUTIONAL CONVENTION IN ILLINOIS DESIRABLE AT THIS TIME?

COMMENT UPON THE PRECEDING PAPER¹

BY JAMES PARKER HALL.²

With most of Mr. Latham's positions one may heartily agree, and a loosening of the straight-jacket amending clause of the Illinois constitution is much to be desired.

In reviewing the arguments that may be urged in favor of a constitutional convention, however, I think Mr. Latham has scarcely done justice to the one based upon the superior fitness of such a body for that particular job as compared with the legislature. No doubt any proposed changes that might wisely be made would not alter more than 10 per cent of the present constitution; clearly its structure and wording should not be needlessly revised so as to cast doubt upon settled and reasonably satisfactory judicial interpretations; and probably a new constitution proposed by a convention would not differ in substance from the result that might be achieved by ten or a dozen amendments proposed by the legislature. Indeed, a convention might prefer to submit its proposals in the form of separate amendments, as was done with good judgment in Ohio in 1912. If we had been able readily to amend our constitution at need in the past, as have Massachusetts and Wisconsin, so that there was not now an accumulation of desired changes, very little could be said in favor of a constitutional convention. But, because we have not been able to do this, the withdrawal of our "stopper" amending clause must result in the legislature trying to pour at once a very large amount of new wine into our old bottle, and one may doubt the quality of much that will flow from the legislative wine-press under such urgency.

Neither the personnel of our legislature nor the conditions, necessary or artificial, under which it works are favorable to the rapid production of any large amount of well-considered fundamental legislation.

For reasons that seem at present inherent in the organization of American society, we cannot secure legislatures composed

1. The substance of remarks made before the Law Club at the conclusion of the preceding paper.

2. Dean of the University of Chicago Law School.

largely of our more able men in any department of affairs. Most of our legislators must be professional politicians (using the words in their best sense), must devote their time largely to matters incidental to politics, must be fairly faithful adherents of some political party, and must shape their acts and votes in most matters with a view to their effect upon the larger ends of party organization. The case of a substantial minority I fear cannot be stated even as favorably as this. The office is essentially political, and will rarely be occupied by any man who does not devote to political matters a large share of his time and associate himself actively with the fortunes of one of our national parties. These practical requirements exclude from the legislature many persons admirably adapted to take part in a constitutional convention, who would be willing to devote to the public the moderate amount of time required for this service, and who, though without any extended apprenticeship in organized party work, might hope to be chosen to membership in such a body with little patronage and no direct legislative power. Finally, the members of a convention are chosen for a single definite task, lying within moderate limits, and considerations of special fitness for this may be expected to have a larger influence in their selection than can be the case with members of the general assembly who are primarily legislative representatives, and only incidentally framers of a constitution.

In the New York convention of 1894 sat Joseph H. Choate, Elihu Root, William C. Whitney, Andrew H. Green, John Bigelow, Louis Marshall, William C. Osborn, Frederick W. Holls, Edwin Countryman, John M. Francis, and Edward Lauterbach—to name only those who have made reputations much wider than the state—and with them were a score of men whose fitness for the task could not have been matched in the New York legislature. The recent conventions in Michigan and Ohio, though containing few members of national reputation, have been generally described as bodies of distinctly better caliber than the local state legislatures. The names of many distinguished fellow citizens of Illinois suggest themselves to us as quite possible candidates for membership in a constitutional convention, whom we could never hope to see in the legislature.

As an organ for proposing a number of constitutional changes at once, the legislature suffers also, by comparison with a convention, in respect to the conditions under which it works. It is not merely that legislation is largely the result of trading and com-

promise—that is likely to be also true of the work of a convention, or of any body large enough to represent conflicting interests and charged with the consideration of a variety of proposals—but if the legislature frames constitutional changes the area of probable log-rolling will include not only the constitutional proposals themselves, but the whole field of ordinary legislation as well. Support for a clause in the constitution will be traded for votes upon legislation desired by Chicago or “Egypt,” and the pressure of extraneous and partisan considerations of all kinds, which is naturally much greater even in a single branch of the legislature than in a convention, is practically doubled by the need of getting legislatively proposed amendments through both houses. Even under the most favorable conditions the legislature could not hope to consider several constitutional amendments with a purpose as singly devoted to the needs of the constitution, specific or composite, as could a convention.

But the Illinois legislature notoriously does not work under conditions at all favorable to the production of well-considered measures. Its rules and traditions seem most unhappily designed to thwart such efficiency as it might normally possess from the time a bill is referred to an unwieldy committee until it is swept irresistibly or blindly on to glory or the grave in the mad rush of the closing days of the session. What opportunity for genuine deliberation and debate, thorough consideration, or careful drafting is promised for proposals that must be run through our biennial legislative hopper, striving for the right of way with all of the ordinary legislation that members of the assembly have been induced to propose by some part of our 6,000,000 people? The larger the number of constitutional changes that may legitimately be urged, the less effective does their legislative proposal appear as compared with the work of a convention.

Doubtless the problem of Chicago representation in the legislature is formidable, whether it is to be dealt with by the legislature or by a convention. It seems unlikely that the rest of the state will ever consent to an apportionment, either legislative or constitutional, that promises to give Cook County a majority of both houses of the legislature at any future time, and I can sympathize with this feeling. On the other hand grave embarrassments are threatened where a majority of the voting population are permanently subject to the potential control of a minority. The statesmanlike compromise appears to lie in the direction of a con-

stitutional provision limiting the legislative representation of Cook County, and in return granting Chicago wide powers of local home rule, thus protecting the substantial interests of both city and country. It seems possible to limit the power of a convention to deal with this question, so that neither party would run the risk of losing all of its strategic advantage in the present legislative deadlock.

To me the most serious objection to a convention in the near future seems to lie in the present abnormal political condition of the state. The existence of three parties, one of which commands a large plurality, is distinctly unfavorable to the influence ordinarily exercised by the independent vote in securing better candidates from two fairly matched opposing parties; and this would doubtless prejudicially affect the choice of members of a convention, were one to be called at the present time.