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The Kansas Experience: State Constitutional Revision and The Moral Element

Walter E. Sandelius*

I. INTRODUCTION

It was long ago observed that the nature of the citizen corresponds to that of the constitution of his state. No state can be better than its citizenship. This truth appears also in the revising of our state systems.

The technical issues involved in revision are several and diverse. Yet by and large it is an old story that for the most part they lack representativeness, are too long and too detailed in content, diffuse responsibility of leadership, make necessary too long a ballot, do not permit integration and flexibility of the judiciary, and impede the improvement of local government. Other shortcomings might also be mentioned. Is the backwardness of state constitutions (barring, of course, some) to be attributed primarily to the excessive power of privileged interests, to lack of interest in the citizen, or to that weakness of leadership cited often as a characteristic fault of democracy?

I venture some reflection on these issues from the viewpoint of experience gained by the Kansas Commission on Constitution Revision. There was in it from the beginning something unusual, namely that at the time of the appointment there had appeared no public interest or concern whatsoever with the thought of constitutional reform. The movement was not prompted by any voices from the urban districts—with regard either to local government powers or to the inequities of legislative representation. Nor did it come from other aggrieved groups. Not that some few were not alert to the needs. My impression is, however, that the Governor, a banker who had entered politics relatively late in life, at the be-

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ginning of his campaign for election was casting about for likely issues such as would make some sense, and chose to follow an idealistic suggestion. I had mentioned to him, in a casual moment before the time of his candidacy, the need for a new constitution. After he took office he insisted that I should head a commission on the constitution. If there were any political pressures soon to come to the fore in this regard, they came, probably, from interests opposed to disturbance of the *status quo*. This commission, after some three and a half years of activity, has now dissolved itself with a recommendation to the new administration—of the party opposite to that which preceded—that a new commission be appointed to carry on the work. The new commission—at this writing only recently appointed by the new governor—is made up in part of the same membership as the old, including the same chairman. It remains to be seen what pressures may grow.

The first commission of twenty-two members included three former governors of the state, three former speakers of the House, two retired supreme court justices, and the rest were scholars in political science and law, journalists and representative citizens. Originally without funds, the commission was later given financial support by the legislature to the extent of \$7,500, mostly for travel expense of the members. The press of the state on the whole made a favorable response and there has been a modest growth of public interest in the work of the commission. Recent adoption by the electorate of a municipal Home Rule Amendment¹ to the constitution resulted in considerable part from its activities. Comprehensive proposals to revamp the entire executive and legislative articles of the constitution were advanced by the commission to the Legislative Council, and recently recommended by this body to the legislative bodies. The legislature, however, at this writing—near the end of the 1961 session—has failed to take action. The new commission, not yet under way, anticipates a few active years ahead.

II. WHY THE COMMISSION METHOD?

On the question of the convention *versus* the commission method of approach to constitutional revision, this at least may be said for the latter: Where the convention is entirely outside the realm of possibility, a commission may at the very least begin study and start the promotion of interest in the issue. The expense is minimal. Conceivably, too, a commission may be able to carry through with a considerable portion of the contemplated revision.

¹ Adopted at the general election of Nov. 8, 1960.

Our commission, which is not a statutory body, setting out exclusively as a gubernatorial commission—appointed, moreover, by a governor of the party opposite to the legislative majorities—succeeded in achieving co-operation with the Legislative Council and in becoming in effect a *joint* commission. The committee of five appointed by the Legislative Council to work with our commission joined in with all of our sub-committees, so that the Joint Commission of twenty-seven, instead of the original body of twenty-two members, made first a progress report, then later a final report to the governor and legislature. Moreover, the continuity that has been built, bridging over the change of administrations, bespeaks a rather gratifying beginning.

One matter of interest, involved in the procedure of piecemeal amendment through the means of a commission, is the question of the possible breadth of a single amendment. The Kansas Constitution imposes a limit of three amendments to be passed upon in any one election.² Thus it is of importance that we have had agreement among legal authorities that an entire article of the constitution, such as the whole executive or the whole legislative article, may be replaced by a single amendment. It would seem that there should be no bar against including in one amendment the revision of several articles of the old constitution, if these are properly related into a homogeneous whole. Whatever its disadvantages, the commission method has the advantage of not risking the emergence of a multitude of pressure groups desiring to fix their interests in the constitution, as does the open convention.

III. THE CITIZEN'S APATHY

The average Kansan, and the average American, knows next to nothing about his state constitution. He does not care much that one of its basic principles is being persistently ignored. What he may have heard of this, he soon forgets. But when the inequities of representation are pointed out to him he is, in fact, astonished that we have allowed the thing to go so far. The Kansan, like the American by and large, is one of conscience and integrity. But he has his own job to attend. No very great evils, after all, have emerged in the political system.

There is some truth in the comment of James Bryce that Americans would govern themselves reasonably well even under a very bad constitution. This, on the whole, is a credit to the man

² KAN. CONST. art. 14, § 1.

and the citizen, rather than to his political system. Yet the business of the state will inevitably grow, and so require more efficiency in organization. In this country we are still so near, perhaps, to the recent *laissez faire* phase of the modern state as not to have been too hard pressed, as yet, by whatever it may lack of adequate means and procedures.

IV. WEAKNESS OF THE MORAL ELEMENT IN POLITICAL LEADERSHIPS

This is not to say that there are no vested interests that control. Some of them are sufficiently entrenched, and perhaps more concealed than we well know. They do what they can to prevent any change at all from the *status quo*. And they need not do too much, since the citizen is not easily disturbed.

It amounts to a question of which of the diverse leaderships in the community will really function. Among them are some that represent the wholeness of community, but in contrast to these are the leaderships of fragmented interests. However, the leaderships identified, for example, with men's service clubs (in good part influenced, no doubt, by the economic climate), with women's clubs, churches, parent-teacher groups, and the like—on the whole take politics less than seriously. The leagues of women voters are exceptional in this regard; but even they do not have the staying power of the economic pressure groups. The *disinterested* side of the citizen is less effectively appealed to than is his economic motivation and group interest.

This does not mean that the political reality is to be seen largely in terms of economic conflict, or to subscribe to the thesis that the political process is almost wholly a thing of the particularized group. Politics, Kant said, cannot take one step forward before it has paid its respects to the moral. The moral being is that of the individual man. How much of what we *choose*, choice being of the essence of morality, can never be identified largely with some particular social segment—except, in the sense of some great grouping like one's civilization, or one's whole human kind. And even these may not suffice to the whole of the foundation of conscience.

V. CONCLUSION

As chairman of the Kansas Commission my relations with the leaders of both political parties have reflected largely a disinterested concern—a thought for what is the right and proper functioning

of democracy, rather than for partisan or sectional advantage. The ideal interest and the moral motivation is found in official political leaderships more often than is usually thought. Yet these leaders fear the political consequences of the disinterested approach, or of the concern with a too wide interest. They depend greatly upon diverse leaderships only partially and indirectly concerned with politics. It is here that the citizen becomes the prey of the narrower economic groupings to the exclusion of the less narrowly self-concerned elements of the human being.

This has not always been so to the same degree. The varying times of human history do not reveal equal quantities—one period compared with another—in the making of these apportionments. There is abroad in the land today some evidence that the moral awareness of the American citizen is on the rise. If this is so, state constitutions also stand to benefit.