DORR PAMPHLET NO. 2

The Constitutional Convention That Never Met

First Part — 1935

BY

ZECHARIAH CHAFEE, JR.

Professor of Law in Harvard University
Member of the Rhode Island Bar

Articles and Documents on the Proposed Rhode Island Constitutional Convention

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A Reprint, with some Additions, of Articles from the Providence *Evening Bulletin*

"That, indeed, is why I have spent many words upon the city. I wish to show that we have more at stake than men who have no such inheritance."

—*The Funeral Oration of Pericles.*

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TO MY FATHER

ZECHARIAH CHAFEE

A CITIZEN OF RHODE ISLAND

GOING ON EIGHTY YEARS

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TABLE OF DATES IN CONSTITUTIONAL HISTORY OF RHODE ISLAND[1]

1.

The Colony (1636-1776)

1636

Roger Williams founds the Colony.

1643

Patent obtained by Roger Williams from the Parliamentary Commissioners, granting no territory but conferring liberal powers of self-government to the Towns of Providence, Portsmouth, and Newport "by the Name of the Incorporation of Providence Plantations, in the Narragansett-Bay, in New England."

1647

Government organized in the Colony under the patent, and Warwick admitted to its privileges.

1663

Charter obtained by John Clarke from Charles II, for the new colony "by the name of The Governor and Company of Rhode-Island and Providence Plantations, in New-England, in America." This granted territory with specified boundaries, to be governed by a Governour, a Deputie-Governour, and ten Assistants, all to be selected by the freemen, and an Assembly comprising these officers and Representatives elected by the freemen of the various Towns as follows,—Newport, 6; Providence, Portsmouth, and Warwick, 4 each; other future towns, 2 each. (The charter fixed no qualifications for freemen, i.e., members of the Company, who were to be admitted by the General Assembly, which delegated this duty in 1666 to the towns.)

1669-1678

Five new towns admitted.

1685-1689

Charter suspended under Andros.

1724

The General Assembly limits the right to vote to adult males owning £100 of real estate or property renting for at least 40 shillings annually, and to the eldest sons of such persons.[2] (These amounts were altered up and down until 1798, when they were finally fixed at $134 and $7 rental. In 1840, this allowed only half the adults to vote.)

1700-1776

Twenty-one more towns incorporated, thirty in all.

[1]The chief source of information is the appendix to the brief submitted by thirty-three lawyers as *amici curiae* in opposition to the power of the General Assembly to call a constitutional convention, reprinted in Advisory Opinion of the Supreme Court of Rhode Island . . . ; Affirmative and Negative Briefs Submitted, 347-358 (1935). Use has also been made of Macdonald, Select Charters Illustrative of American History, 1606-1775 (1904); Mowry, The Dorr War (1901); Rhode Island: A Guide to the Smallest State (American Guide Series, 1937); Providence Journal Almanacs; Providence Journal and Evening Bulletin.

[2]Acts and Laws of R. I. (1730) 131.

II.
The State under the Charter (1776-1843)

1776

May 4. Independence declared. King's name and authority omitted from official documents and transactions, but Charter government otherwise unchanged.

July 18. Name of Colony changed to State of Rhode Island and Providence Plantations.

1777

General Assembly appoints committee to submit plan of government; no action recorded.

1792-1793

General Assembly discusses and rejects proposal for constitutional convention.

1796

General Assembly requests freemen of towns to instruct representatives about calling constitutional convention; no recorded action. Name of the ten Assistants changed to Senators; they continue to be elected at large.

1797

Col. George R. Burrill in Fourth of July address advocates equal representation, but admits hopelessness of inducing General Assembly to surrender the powers of the existing majority of members. General Assembly votes down proposal for constitutional convention.

1798

New Digest of Laws takes effect, with Bill of Rights, declared to be "inherent and unquestionable." (This now appears in Article I of the Constitution.)

1799

General Assembly votes down proposal for constitutional convention.

1806

Several towns instruct representatives to obtain constitutional convention; question presented to General Assembly, without action. Burrillville incorporated, making 31 towns. (No more were added until after 1843. There are now 39 towns and cities.)

1808

Henry Wheaton writes letter strongly urging adoption of a constitution.

1811

General Assembly refuses to extend suffrage to all adult males.

1817

General Assembly discusses calling constitutional convention.

1818

Connecticut abandons her charter and adopts a new constitution framed by a convention.

1819

General Assembly discusses calling constitutional convention.

1820

Massachusetts convention to revise her constitution of 1780. Widespread Rhode Island discussion of a constitutional convention; Providence mass meeting to further it.

1821 and 1822

Freemen defeat legislative proposals for constitutional convention.

1823

General Assembly discusses calling constitutional convention.

1824

First constitutional convention called by General Assembly and elected by freemen;[3] delegates correspond to Representatives in House; constitution drafted by convention giving Providence one more Representative and limiting suffrage to landholders; rejected by freemen.

1829

Petitions of citizens for extension of suffrage rejected by General Assembly in Hazard's Report.

1834

Several towns send delegates to a Providence convention to promote a new constitution; Dorr drafts committee report urging constitutional convention. *Second* constitutional convention called by General Assembly,[4] on same plan as that of 1824; quorum frequently lacking; adjourns several times and breaks up in 1835 with no result.

1837

General Assembly votes down constitutional convention.

1840

Dorr founds Rhode Island Suffrage Association, maintaining right of "the people" (not limited to freemen) to meet by delegates and form a constitution.

1841

Third constitutional convention called for November by General Assembly, to be elected by freemen with apportionment of delegates slightly more favorable to Providence and some larger towns than representation in House; bill rejected for election by adult male citizens with delegates more nearly proportional to population.[5] Succession of Dorrite mass meetings for free suffrage ends in July in resolution for People's Convention to frame constitution for adoption by a majority of the whole people; committee calls such convention for October, delegates to be elected by adult male citizens and apportioned according to population.

August. Delegates to both conventions elected.

October. Extra-legal People's Convention led by Dorr meets; frames constitution extending suffrage to white male citizens (with property qualification for tax matters), assigning specified number of Representatives to each

[3] P. L. (Jan. 1824) 13.

[4] P. L. (1834) 10.

[5] R. I. Acts & Resolves (Jan. 1841) p. 85; *id*; (May 1841) p. 45; Mowry, Dorr War, 68.

city and town, establishing 12 districts for Senators (2 in Providence), ratifica- to be by adult males.[6]

November. Landholders' or Freemen's Convention (*third* official constitutional convention) meets; frames constitution extending suffrage to white male citizens (with property qualification for tax matters, naturalized persons, and recent residents among native citizens), apportioning House according to population but with minimum of 2 Representatives for each town and maximum of 8 (for Providence), establishing 19 districts for Senators (2 in Newport and in Providence), ratification to be by freemen.

December. People's Constitution adopted at election open to all adult males.

1842

January. General Assembly refuses to accept People's Constitution and condemns People's Convention; allows Freemen's Constitution to be submitted for ratification to all persons who would be given the vote under its terms, and not merely to freemen.[7] Freemen's Convention reconvenes and votes to submit its constitution to an enlarged electorate, as above.

March. Freemen's Constitution rejected by voters.

April. Election by white adult males under People's Constitution; Dorr chosen Governor. Election by freemen under Charter; King chosen Governor.

May. Legislature under People's Constitution convenes in Providence; Dorr and other general officers inaugurated in an unfinished foundry; legislature adjourns till July. General Assembly under Charter convenes in Newport. Dorrite officers arrested. Dorrites fail in attack on Providence arsenal.

June. Fourth and last official constitutional convention under Charter called by General Assembly, delegates apportioned as in 1841 but to be elected by all native male citizens not recent residents, and constitution to be submitted to same electors.[8] General Assembly establishes martial law. Dorrites defeated in fighting in Chepachet.

August. Martial law suspended. Delegates to *fourth* constitutional convention elected.

September. Fourth and only successful constitutional convention meets and drafts a constitution.

November. Constitution of Rhode Island adopted. This is the present Constitution, except for many amendments. As originally adopted it extended suffrage to adult male citizens, with property qualification for naturalized aliens (and for the native-born on tax matters); apportioned House of 72 according to population with maximum of one-sixth (12) for Providence; gave one Senator to every city or town; gave governor no veto power, no pardoning power, and no real appointive power; vested judicial power in Supreme Court of Judges elected by General Assembly for one year or until removed, and in inferior courts chosen as statutes should determine; and provided for separate amendments through General Assembly and voters, with no mention of constitutional conventions.

1843

May. Constitution in force, and Charter superseded after 180 years.

[6]The two constitutions framed in 1841 are reprinted in Appendices in Mowry.
[7]R. I. Acts & Resolves (Jan. 1842) pp. 45, 58.
[8]R. I. Acts & Resolves (June, 1842) p. 3.

III.
Agitation for a Convention under the Constitution (1843-1883)

1853

General Assembly submits question of convention to voters in June, who at the same time elect delegates on somewhat the same basis as Representatives and Senators; delegates elected, but convention rejected. Again submitted in November to voters, and rejected.[9]

1854

Governor given pardoning power by constitutional amendment.

1881-1882

Agitation for constitutional convention, especially to give naturalized citizens the vote. General Assembly approves amendment to Constitution providing for constitutional conventions; defeated at polls.

1883

Supreme Court gives advisory opinion that Constitution cannot lawfully be amended by a constitutional convention.[10]

IV.
Revision of the Constitution by Separate Amendments (1883-1934)

For the first twenty years of this period this State was controlled by the Republican Party, and more specifically by General Charles R. Brayton from his office in the State House. "It was said of him that he never made a promise unless he had to, and never broke a promise once it was given."[11] Since the Governor had no veto, legal power was vested in the General Assembly, strongly Republican because of the apportionment—especially the Senate in which the smallest towns had as much representation as the cities. All the Supreme Court judges, most other judges, and the bulk of the office-holders were Republicans until 1935, no matter who was Governor.

1886

Constitutional amendment, extending suffrage to such naturalized citizens as served in the Civil War.

1888

Constitutional amendment, extending suffrage to naturalized citizens on same basis as native citizens.

1893

April. Democratic candidate receives more votes for Governor than Republican, but only plurality; majority then required by Constitution, so election thrown into grand committee of Republican Senate and Democratic House with legislators equally divided and Republican Lieutenant Governor having casting vote; House unseats 2 Republicans, Senate refuses to meet in grand committee and adjourns; Republican Governor prorogues Assembly, has ballots counted and locked up in State House, and holds over another year without being elected.[12]

November. Constitution amended to allow election by plurality vote.

[9]R. I. Acts & Resolves (May, 1853) p. 3; *id.* (June, 1853), p. 153; *id.* (October 1853), p. 253.
[10]*In Re* The Constitutional Convention, 14 Rhode Island Reports, p. 649 (1883).
[11]Rhode Island: A Guide to the Smallest State, 56.
[12]Largely based on Providence Journal Almanac (1938) 36.

1897

General Assembly establishes commission of 15 to revise Constitution and report back.

1898

Commission's draft of new constitution, which permitted constitutional conventions among other changes, duly approved by General Assembly and submitted to electors as a blanket amendment to the Constitution; rejected at polls.[13]

1899

Blanket amendment in similar terms again rejected at polls.[14]

1901

Brayton Law allowing the Senate to appoint office holders not named by the Governor, if it does not confirm his nominees[15] (placing the appointive power in the Senate until 1935, when this statute was repealed).

1903

First Democratic Governor in many years, L. F. C. Garvin.

1907

Fusion of Democrats with Republicans opposed to corrupt government elects Governor and Congressman and prevents undesirable Republican Senator, despite speeches, etc., in support of regular Republicans by administration of Theodore Roosevelt.

1907-1908

Democratic Governor, James H. Higgins. Brayton ousted from the State House after control of the State government for thirty years.

1909

Constitutional amendments increasing House to 100 members, with maximum of one quarter (25) for Providence; and giving Governor veto power, overrulable by three-fifths vote.

1911

Constitutional amendment establishing biennial elections.

1923

Democrats elect Governor and Lieutenant Governor, with sufficiently large minorities in both Houses to conduct two months filibuster against appropriation bills in order to obtain vote on constitutional changes; Lieutenant Governor, presiding, refuses to recognize Republican Senator for 9 hours, 40 minutes; longest and most bitterly fought session of General Assembly in State's history; General Assembly eventually votes on and defeats constitutional amendments for redistricting Senate, abolishing property qualification, and holding constitutional convention.

[13]R. I. Public Laws (1898) c. 579.

[14]R. I. Public Laws (1899) c. 698.

[15]R. I. Public Laws (1901) chap. 809, §§ 62, 63; G. L. (1923) chap 30, §§ 8, 9,; see *In Re* The Election of Officers by the Senate, 28 R. I. 607 (1907). This statute was repealed by R. I. Public Laws (1935) c. 2220, giving the Governor power to appoint all heads of departments with the consent of the Senate.

1924

Filibuster repeated; only 18 statutes enacted (13 of these on local matters); no appropriation bills.

June. Senate holds longest single session (53 hours) of any legislative body in U. S., which begins with battle of Senators and spectators quelled by sheriff and police, Governor refusing to clear chamber; and ends when gas bomb placed by unknown person explodes, its fumes causing collapse of 5 Senators and driving out others. Republican Senators then prevent quorum by going into exile at Rutland, Mass., till Jan. 6, 1925, when 1924 session expires by limitation. Meanwhile, Democrats hold constant rump sessions without quorums; 13 Democrats in Senate "pass" convention bill without effect; banks and individuals finance state activities.

November. Republicans elect state officers, and increase majorities in General Assembly.

1928

Constitutional amendments abolishing property qualifications in cities though not in towns, and giving Providence 3 more Senators (chosen by districts).

1930

Superior Court judges, by statute, are to be appointed for life by Governor with consent of Senate, and no longer elected by General Assembly.

1931

Republican General Assembly and Governor take control of Providence police away from Democratic city govt.; set up State board.[16]

1932

November. Democrats regain strength; elect Green Governor and Quinn Lieutenant Governor, but fail to win General Assembly.

1934

November. Democrats re-elect Green and Quinn, control House of Representatives; Republicans supposed to hold Senate by 2 votes.

V.

Renewed Struggles over a Constitutional Convention (1935-1936).

1935

[Events during the session are mentioned with considerable detail, to show how little time and attention the General Assembly could give to a convention bill.]

Tues., January 1. General Assembly convenes; in Senate, 2 Republicans officially returned as elected are counted out and Democrats get control by 2 votes.[17] Senate then concurs with House in turning out entire Supreme Court (5 Reps.); present court elected (3 Dems., 2 Reps.). Most State offices (except those filled by voters) abolished, and new scheme enacted for officers to be appointed by Governor with consent of Senate removable at will.[18]

[16]Public Laws (1931) c. 1710, held constitutional in Providence *v.* Moulton, 52 Rhode Island Reports, 236 (1932). Compare events on Apr. 4, 1935.

[17]See State House *v.* Pent House (Dorr Pamphlet No. 1) pp. xi, xii.

[18]R. I. Public Laws (1935) c. 2188; see also c. 2250.

New Prov. Cty. sheriff (Democrat) appointed, and new board with Democratic majority to administer Prov. police and fire depts. State finances placed under new Democratic officer, Budget Director T. P. McCoy.

Wed., Jan. 9. Democrat appointed presiding justice of Superior Court.

Tues., Jan. 22. Lieutenant Governor Quinn (now Governor) gives statement to Providence *Evening Bulletin* about a constitutional convention.[19]

Thurs., Jan. 24. Governor Green asks the new Supreme Court judges for an advisory opinion on the validity of a constitutional convention and on several subsidiary questions.[20] The Court subsequently asks to be assisted by briefs submitted by members of the bar and other citizens as *amici curiae* and for oral arguments by members of the bar. R. I. Bar Assn. in response to this request delegates Patrick H. Quinn and Wm. A. Graham to argue for the validity of a convention, and Frederick W. Tillinghast and Elmer S. Chace to oppose its validity.[21]

Thurs., Jan. 31. General Assembly replaces sheriffs of four remaining counties by Democrats.

Fri., Feb. 1. Sisson, Republican leader, calls for fair convention, favors election of delegates by Assembly districts.

Mon., Feb. 18. Supreme Court hears arguments on validity of convention.

Thurs., Feb. 21. Democratic leaders confer 3 hours about plans for convention; Quinn gets little support for his plan.

Mon., Feb. 25. (First article appears in Providence *Evening Bulletin.*)

Tues., Feb. 26. Governor Green sends to Senate Administrative Code bill reorganizing State government in detail under 11 new departments.

Fri., Mar. 1. Senate confirms four of Governor's appointees as department heads after all night session.

Tues., Mar. 5. Senate confirms 2 more department heads.

Fri., Mar. 8. State budget of over 11 millions adopted.

Wed., Mar. 13. Last day for introduction of new business in General Assembly, except by unanimous consent; 142 bills introduced. Constitutional convention bill introduced in House of Representatives (H 750),[22] anticipating opinion of Supreme Court judges.

Thurs., Mar. 14. Providence *Bulletin* editorial calls conv. bill "a rotten bill."

Mon., Mar. 18. Governor Green says that the people who have always wanted a convention should control the convention and have a right to the greatest representation in it.

Fri., Mar. 22. Curry, Republican leader, asks Democrats not to stack convention and to apply Quinn's ideas.

Tues., Mar. 26. "Old line Democrat" in *Evening Bulletin* condemns convention bill for not consulting people and for letting party committees nominate delegates.

Wed., Mar. 27. Convention bill reported out by House Judiciary Committee, on day for reporting bills, and recommitted.

Fri., Mar. 29. State organization bill of Jan. 1 found to have been altered after adoption; Governor denies this.

[19]Reprinted in Appendix C.

[20]Reprinted in Appendix B.

[21]The subsequent opinion of the Court and the briefs on both sides have been reprinted in Advisory Opinion of the Supreme Court of Rhode Island . . . , cited *supra*, note 1.

[22]See Appendix D for abstract of the bill.

Mon., Apr. 1. Governor asks and receives resignation of city police commr. of Woonsocket. Supreme Court hands down advisory opinion validating constitutional convention.[23] Important bills by the General Assembly considered and passed during last 12 days of session include regulation of unauthorized practice of law, establishment of old age pensions, introduction of voting-machines and choosing between rival types, appropriations for newly created officials, creation of state planning board, provisions for celebrating State Tercentenary, several relief measures, and a constitutional amendment for biennial registration; in addition, many controversial bills not enacted.

Thurs., Apr. 4. State police board established for Woonsocket. House overrides Governor's veto of bill making Armistice Day compulsory holiday, by 90-0.

Fri., Apr. 5. Senate overrides same veto, by 33-9. House Judiciary Committee consider convention bill.

Wed., Apr. 10. House Judiciary Committee delays House session 2½ hours discussing convention bill; reports out a substitute bill with some changes.

Thurs., Apr. 11. Providence *Journal* says amendments to convention bill give members of House of Representatives control of nominating delegates. Rural Democrats unfriendly to convention, for fear of reapportionment.

Fri., Apr. 12. Sixtieth day of session—last day for which legislators are paid. General Assembly deadlocked; jam of trading over bills holds up adjournment. Convention bill passes House in amended form;[24] referred by Senate to Special Legislation Committee, where it dies. All-night session of General Assembly.

Sat., Apr. 13. 8:30 A. M. General Assembly adjourns until Jan. 7, 1936. Governor Green ousts Budget Director McCoy, blaming him for Assembly holdup; McCoy hits back at protest meeting next day.

May. Special session of General Assembly called by Gov. Green to handle mass of unfinished business; passes appropriation bill for coming fiscal year, and Administrative Code Act reorganizing State government in detail; throws out all district court judges (elected for 3-year terms), and gives Governor power to appoint successors.[25] Governor puts in new judges.

[23]See Appendix B.

[24]See Appendix D for abstract of amendments. The House passed the bill by 57-42; all but 3 Democrats were for it, and all but 2 Republicans against it.

[25]Public Laws (May, 1935) c. 2253, held constitutional in Gorham *v.* Robinson, 57 R. I. 1 (1936).

THE CONSTITUTIONAL CONVENTION THAT NEVER MET

1935

In 1935, for the first time in over fourscore years, a convention to revise the Constitution of Rhode Island became really possible. Eleven articles written at that time about various aspects of such a convention are here collected. The General Assembly adjourned without passing the convention bill. Next year, the issue arose again and another convention act was introduced and adopted in the General Assembly, which asked the voters to elect delegates and at the same time to decide whether a convention should be held. (These different issues of 1936 were discussed in five more articles, and will form the subject-matter in the succeeding Dorr Pamphlet.) The people voted down the convention, and very little has been heard about it afterwards.

So this is not a pamphlet hot off the griddle like its predecessor, the story of the Race-track Row.[1] Indeed, some may consider this to be merely warmed-over hash. But I hope that such an impression will vanish as these reflections are read, and that they will be thought to possess some lasting helpfulness for the solution of important problems of the State. The convention never met, but the debate about it was significant in the constitutional struggle in Rhode Island, which is always a very live issue.

Constitutional changes in Rhode Island have come hard. It took many years of agitation to extort each reform from the General Assembly, which in the end granted as little as possible, on the principle that "Half a loaf is better than a whole loaf." This legislative reluctance has repeatedly made the advocates of new institutions seek to detour around the General Assembly and go to a constitutional convention for what they want. Thus the appearance

[1]State House *v.* Pent House: Legal Problems of the Rhode Island Race-track Row, by Z. Chafee, Jr. (Dorr Pamphlet No. 1).

of a strong agitation for a convention is a symptom of frustrated political desires.

The oldest political question in Rhode Island is: Shall there be a constitutional convention? This question has been asked over and over for one hundred and forty years, and opinions about what is the proper answer have been sharply divided. The forces favoring a convention have been powerful enough to get the issue before the voters in one form or another for thirteen times[2]—in 1821, 1822, 1824, 1834, 1841 (twice), 1842, 1853 (twice), 1882, 1898, 1899, and 1936—besides producing many debates in other years in the General Assembly. On the other hand, the strength of the forces opposing a convention is clearly shown by two facts; the proposal was six times rejected at the polls, and four[3] out of the five conventions actually held were failures. The only convention whose work became the fundamental law of the state was that of 1842, which framed our present Constitution.

This long continued demand for a convention and this repeated lack of success resulted from a clash between intellectual, economic, and social factors that are still operative. First, the ideal of the Declaration of Independence that "All men are created equal" is constantly offset by the belief that those who lack the will or ability to acquire a moderate stake in the community should not share full political privileges, and by the principle that the distribution of political power should not be solely based on the quantity of inhabitants without regard to qualitative aspects. Perhaps the importance of farmers in a well-balanced community, in comparison with that of industrial workers, cannot be measured simply by their relative numbers. Possibly education and thrift deserve some sort of recognition. Counting heads may not be the only answer to the distribution of votes. Then, there are long-standing economic conflicts that are always cropping up, between the prosperity of

[2]On three occasions the electors chose delegates but voted in the negative on the question whether a convention should be held; on five occasions they merely chose delegates (including those to the People's Convention); twice they rejected a convention; on three occasions they refused to ratify a constitutional amendment providing for calling a convention.

[3]Those of 1824 and 1834, and the Freemen's and People's Conventions in 1841.

manufacturing and the comfort of labor, between city and country, between adequate relief and tolerable taxes. Furthermore, small towns which have for many years possessed representation in the General Assembly out of proportion to their population acquire emotions of regional and local prestige, which constitute a solid obstacle in the way of a more equal apportionment. All these ideals, interests, and emotions displayed themselves in the convention discussions of 1935 and 1936. They will come to the front once more when the problem of constitutional change again arises, whether by way of another convention or through separate amendments to be submitted by the General Assembly. The same reasons for action, the same objections to action, will be eloquently voiced. Furthermore, if a convention is again proposed, similar questions about the distribution of seats and the methods for nominating delegates will have to be considered. Therefore, I hope that the citizens of my native State in preparing for such future discussions will get some assistance from my endeavor to examine seriously and fairly the arguments for and against a convention and the comparative advantages of various plans for such a convention.

In order to make it clear why the issue of a constitutional convention blazed up in 1935, a little history must be given. (Further information will be found in the Table of Dates.) While the State was governed under the Charter granted by King Charles II, constitutional conventions were considered to be the normal method of changing the fundamental law. Four of them were called by the General Assembly and a fifth met without its authorization under the leadership of Dorr. Indeed, three conventions were held within the space of twelve months before the voters were persuaded to supersede the Charter and adopt the present Constitution.

This document allayed most of the desire for constitutional change until after the Civil War. By that time many immigrants had settled in the State to help build up its growing industries. After these became naturalized, they found that American citizenship did not carry the right to vote in state elections, unless they

complied with a property qualification not imposed upon native-born citizens.[4] Requests for the full franchise were rebuffed by the General Assembly, and some politician with more wit than wisdom described the men doing the dirty work of the community, many of whom had fought in the Union armies, as "Those who are among us uninvited, and on whose departure there is no restraint." So the naturalized citizens and their supporters demanded the traditional Rhode Island remedy of a constitutional convention.

All of a sudden the reformers ran their heads against a new stone wall. They learned that a constitutional convention was unconstitutional. True, the General Assembly had called four such conventions, but that was under the Charter before its limitless powers were cut down by the Constitution. A convention wrote it, and made no provision for any more. True, only ten years after 1843 the General Assembly, with some of the framers of the Constitution among its members, twice asked the voters whether they desired a convention; but legislators sometimes misunderstand the implications of their own past language. At all events, the General Assembly of thirty years later would not go ahead on its own responsibility, although many other states with similar constitutions had repeatedly held conventions, including our nearest neighbors—Connecticut and Massachusetts. First, it "passed the buck" to the existing voters, by submitting a constitutional amendment providing for conventions. The amendment was decisively rejected, but the agitation grew more vigorous. Then the Assembly shunted the issue of constitutionality to the judges of the Supreme Court, by requesting an advisory opinion. The judges replied that the General Assembly was powerless either to ask the electors to choose delegates to a convention or submit the question of holding one to a popular vote. The opinion reasoned that the Constitution, by providing for separate amendments, had made it impossible for the

[4]Native-born citizens were free from a property qualification except when voting for a city council or on tax matters in towns or cities. The same arrangement was extended to naturalized citizens in 1888. The surviving property qualification was abolished in cities in 1928, but still applies to those voting on tax matters in towns. So far as I know, Rhode Island is the only State which has any property qualification for voters.

people to revise their fundamental law in any other way.[5] The baffled advocates of a convention could only console themselves with the following jingle:

> "Alas what a pity our fathers didn't mention,
> That we boys, if very good, could hold a convention.
> They never said we shouldn't but didn't say we might,
> 'Ergo,' cry the sages, 'you haven't got the right.'
> 'Twas very bad, indeed, their permission to deny,
> But infinitely worse at once to up and die;
> For thus they turned the lock and flung away the key,
> And Rhode Island's 'in a box' for all eternitee."

This famous opinion of 1883 ended all active agitation about constitutional conventions for half a century. Reforms could only come through the slow piecemeal process of separate amendments. In this way the naturalized citizens soon got what they wanted, but it took many years of bitter agitation to accomplish any other important change.

As time went on, a new cause of discontent ripened and eventually formed the main cause of the convention struggle in 1935. This grievance was the apportionment of one Senator to every city and town regardless of population. It may be conjectured that both sides in the Dorr War cared only about the franchise and the House of Representatives, so that the framers of the Constitution had no idea what to do about the Senate until as an afterthought they followed the superficial analogy of the United States Senate.[6]

[5]*In Re* The Constitutional Convention, 14 Rhode Island Reports, p. 649 (1883). This opinion has not been approved by leading writers on constitutional conventions, and it was attacked at the time by a former Chief Justice of the Rhode Island Supreme Court. Bradley, Methods of Changing the Constitutions of the States (1885).

[6]The absence of any preponderant plan for the State Senate is indicated by the wide variation among the provisions of the three documents that preceded the Constitution of 1843. Under the Charter the ten Senators were elected at large. The People's Constitution set up twelve regional districts, two for Providence and each of the others containing from two to five towns. (Mowry, The Dorr War, p. 331.) The Freemen's Constitution set up nineteen districts, but was much less favorable to Providence, giving it only one district on the same basis as six of the towns. (Mowry, p. 355).

It seems possible that quarrels about the number and area of these districts were so perplexing to the framers of the existing constitution, that they imitated the United States Senate, without looking twenty years ahead to the difficulties caused by the admission of thinly populated areas like Nevada, and without considering the difference between a federation of sovereign states and a single state, in which many of the towns were only convenient geographical groupings of isolated villages with practically no unified historical or cultural life. Rhode Island cities and towns have no independent sovereignty or indefeasible rights of self-government under the Constitution, but only "the same rights which cities and towns have in other States." Providence *v.* Moulton, 52 Rhode Island Reports, 236 (1932), holding that Providence could be subjected without its consent to a State police commission.

At all events, whatever the logical basis in 1842 for this unequal distribution of State Senators, it rapidly became the most controversial part of the Rhode Island Constitution. As cities multiplied in size and country towns grew slowly or actually lost population, the urban inhabitants were increasingly under-represented. Nor was the traditional antagonism between country and city the only cause of exasperation. The apportionment worked overwhelmingly to the advantage of one political party. It made the Senate a Republican stronghold. While the industrial workers tended to be Democrats the farmers inclined to remain Republicans, so that the Republican Party seemed assured of always winning twenty towns and controlling the Senate, even though it was plain by 1900 that the tide was fast running against it among the voters of the State as a whole. Although a slight majority of the entire electorate was still Republican, it would not be long before the balance frequently swung the other way, bringing in a Democratic Governor and perhaps a Democratic House. But a Democratic Senate appeared impossible. Thus the Republican Senate dominated Rhode Island legislation just as the Conservative House of Lords dominated English legislation. And the Democrats felt even more baffled in 1901, when with the governorship at last within reach they saw the Governor deprived by a clever statute of the power of appointing State officials,[6] which vested the appointive power completely in the Senate. Human nature being what it is, most of the offices were filled with Republicans for a generation thereafter. The Democrats won several State elections in the first third of the present century, but the victors did not have the spoils. The Senate controlled the jobs with pleasant salaries. The Senate could defeat labor legislation and higher taxes. And the Senate would not commit political suicide by passing a constitutional amendment that materially reduced its decisive powers. So the Republican Party seemed to have dug itself in forever.

For a long time, the parties stayed pretty nearly equal in the whole State. The Democrats succeeded in choosing several Gov-

[6]See note 15 to the Table of Dates.

ernors, but did not hold this office for more than two years in succession until they won the election of 1934. Meanwhile, they made some constitutional gains through separate amendments. They obtained a moderate veto power for the Governor and a greater representation for Providence in the House, but they could do almost nothing in this way about the Senate. Their strength among the voters gradually increased, so that in 1923 and 1924 they had enough legislators in both houses to block the measures of the majority by astonishing filibusters, even though they could not pass their own bills and constitutional amendments. However, the most they could get as a sequel to this struggle was three more Senators for Providence. Believing that such a slight concession was all that could be hoped from the General Assembly for years to come, the Democrats turned once more to the possibility of a constitutional convention.

Therefore, when the *coup d'etat* of January 1, 1935, placed all three branches of the government in Democratic hands, plans were disclosed at once for such a convention. The first step was to get rid of the advisory opinion of 1883. This is commonly supposed to be one reason why the five Republican judges of the Supreme Court were immediately ousted, and a new Court with a Democratic majority put in their place. Three weeks later, Governor Green asked the new judges to give him a fresh advisory opinion on the validity of a constitutional convention.[7] In view of the numerous conventions in other states with no express provisions in their constitutions, the favorable opinion that was eventually given could reasonably be anticipated from the start.

All my life I had heard reformers talking about the need of a constitutional convention. At last, it was likely to come. The important question now was, what would be done with it? Would the long-sought opportunity be wasted, or would it be used in a way worthy of men of the past who had cherished ideals for a better-governed Rhode Island—men like Thomas W. Dorr, James H. Higgins, and Robert H. I. Goddard? Obviously, one valuable

[7]The Governor's formal request is reprinted in Appendix B, with a brief abstract of the favorable opinion that was given two months later.

service would be to rewrite provisions that had long vexed a considerable portion of the voters, notably the Senate apportionment. But a convention might accomplish much broader aims.

Constitutional conventions had acquired a new importance in the preceding twenty years. Several states had made use of them, not merely to remove a few questionable clauses, but to rebuild the whole machinery of government. The steady output of startling inventions, changes in business organization, new dangers to health and bodily safety, the unexpected effects of rapid transportation, the concentration of large masses of people in cities—such developments in the external world called for a thoroughgoing readjustment of the powers of the various branches of government and the relations among them. For example, our staid northern neighbor, Massachusetts, had adopted the initiative and referendum in its convention of 1918. The most far-reaching achievements were those of the New York convention of 1915, whose work was inspired by Elihu Root and made a reality by Alfred E. Smith. Could not Rhode Island also do something more with its convention than settle a few local squabbles? Might it not make all its institutions adequate for the strains and crowded life of the Twentieth Century?

Fortunately, one at least of the Democratic leaders had such a vision of a great constitutional convention. Just before the advisory opinion was requested, Lieutenant Governor Robert E. Quinn issued a notable statement.[8] Casting aside partisanship, he outlined the comprehensive tasks that the convention could accomplish, and the means to that end. The articles that follow[9] were written in this same spirit, and tried to test the actual plans for a convention by the high standards that the Lieutenant Governor had thus expressed:

> "The best minds of the State should sit in the convention . . . The very best that is in existence in the shape of state constitutions should be studied.

[8]This statement is reprinted in full in Appendix C.

[9]My articles are reprinted as they were originally published in the Providence *Evening Bulletin*, except for the correction of a few inaccuracies and some slight rearrangements to bring out the meaning more clearly.

> "We are the smallest State in the Union. Because we are the smallest, we should become the laboratory of the nation. We should lead the way in progressive government. We are peculiarly fitted to do that. Without danger to anyone living and working within our borders, rich or poor, we can show to the country how and under what laws a State should be governed."

I

MAKING THE CONSTITUTIONAL CONVENTION SUCCEED.[1]

The question of the validity of a constitutional convention for Rhode Island will be determined by the Supreme Court.[2]

But beyond this purely legal problem, there remains for the people of Rhode Island a question that is equally important—if the convention is valid and is called, will it succeed? For such a convention might become the biggest event in Rhode Island in our generation. Or it might be a fizzle, an elaborate waste of time and money.

The convention will not succeed merely because the Supreme Court pronounces it legal. Failure still remains possible at any one of three stages.

How the Convention may Fail

First, the convention may meet and wrangle and get nowhere, like the Rhode Island convention of 1834, which sat awhile, adjourned, met again, then faded out.

Second, the convention may propose constitutional changes which the people will reject. This happened with the convention of 1824. Again, in 1898 we had a sort of convention, though they called it a commission. The General Assembly chose all its fifteen members, and the voters repudiated its constitution twice. A recent Illinois convention spent over two years drafting an excellent constitution, which the people defeated. Our convention will accomplish nothing unless its work satisfies a majority of the voters.

Finally, constitutional provisions may be solemnly adopted and not last. Unless they are deeply rooted in public opinion and considered substantially fair by nearly everybody, the embittered mi-

[1]The first four articles were published in the Providence *Evening Bulletin* on four successive days, beginning February 25th, 1935.

[2]Five weeks later the judges advised that a convention was valid. See Appendix B.

nority of the moment may soon become a majority and toss the new scheme on the junk-pile. Remember the fate of the federal Eighteenth Amendment. If the new coat does not fit, it will soon be thrown aside.

Three Successful Conventions

In order to learn how these various disasters may be avoided, let us examine three epoch-making constitutional conventions which did succeed.

First comes the convention which drafted the United States Constitution in 1787. It was preceded by twenty years of keen political discussion. All the fundamental ideas of government had been threshed out during the struggle for independence, the adoption of new State constitutions, and the difficulties of the national Confederation. The States sent to the convention such men as Washington, Franklin, Hamilton, and Madison. The delegates deliberated with a feeling of great responsibility and a constant awareness of the necessity of compromises, especially between large and small States.

The Rhode Island Freemen's Convention of 1842, which framed our present Constitution, is a second though less satisfactory example. Unfortunate in the non-participation of the Dorrites, it at least contained broad-minded conservatives, who gave up trying to preserve their own supremacy, made many concessions to their antagonists, and produced a new constitution genuinely responsive to the popular demands of the preceding ten years.

Our last example, the New York convention of 1915, was the outcome of extensive talking and writing about new methods of State government. Elihu Root presided over the convention. Henry L. Stimson was there, and George W. Wickersham, and a young Assemblyman, Alfred E. Smith, who showed an unrivalled knowledge of the operations of New York government and "whose attractive personality," declared Mr. Root, "has impressed itself upon every member." The deliberations were on a very high level. The result was a modern State constitution with all its new provisions adopted in the convention unanimously or by overwhelming ma-

jorities, often running as high as ten to one. It was not a matter of little prejudices or oppositions. It was a great departure in government, decided upon great lines. Even though the new constitution was defeated at the polls, the convention had not failed, because the people subsequently ratified a series of separate constitutional amendments embodying the most important achievements of the convention, like the Governor's cabinet and the executive budget. There could be no better model for the Rhode Island convention than this gathering in Albany in 1915.

Reasons for their Success

The notable conventions just described all possessed three qualities which contributed powerfully to their success and which are just as essential for our convention.

First, each convention was preceded by long and widespread discussion of the main problems to be solved. The members did not come into the convention out of the dark. They were already familiar with the arguments for and against concrete proposals. They knew pretty well what they wanted the convention to accomplish. In short, a constitutional convention, like any other important enterprise, requires thorough, intelligent preparation. Rhode Islanders should seriously consider how much time they need to thresh over beforehand what they expect a convention to do after it meets.

Second, these conventions had a distinguished membership. Those who selected the delegates wanted men capable of establishing an enduring government. Is Rhode Island now ready to choose men with similar qualifications, and will such men be willing to give the necessary time to the work?

Third and most important, the proceedings were remarkably fair and free from partisanship. The group then in power did not try to dig themselves in for years to come, but endeavored to set up the best government they could and one acceptable to the greatest possible number.

Rhode Island's Greatest Danger

Right here the proposed Rhode Island convention runs its great-

est danger of failure. An atmosphere of fairness and non-partisanship is going to be very hard to attain after the events of the last dozen years. To be frank, those events have not been a source of pride to a devoted Rhode Islander like myself, who, though forced by his occupation to live elsewhere, preserves a keen desire that the State of his birth should have a government worthy of its enterprising citizens and its inspiring past.

Both parties have been responsible for transactions which strongly resemble the exploits of Pooh-bah and Ko-ko or Wintergreen and Throttlebottom. The main object of each party has apparently been to play some sharp trick a little worse than what its opponents did the last time.

Cherished American traditions like the dignity of legislative assemblies, the self-government of cities, the reasonable equality of representation, and the independence of the judiciary have been flouted. Some of these acts may be partly excused as provoked by long-standing injustice or as stresses and strains bound to accompany widespread readjustment of a political system. But when it comes to a constitutional convention, anything of this sort will be fatal. For instance, no wise and enduring results will be possible, if there is the slightest ground for believing that votes for the election of delegates to the convention were miscounted or that the presiding officer refused to let his political opponents speak and did not conduct roll-calls according to rule. Like Cæsar's wife, a constitutional convention must be above suspicion.

The proposed convention will fail unless its ideals are those stated by Elihu Root in closing the New York convention of 1915:

> "This convention has risen above the plane of partisan politics. It has refused to make itself or permit itself to be made the agency of party advantage except as faithful service to the State is a benefit to party. It has refused to engage in the play of politics. Our conception of our duty was to leave behind strife of party, and to join all together, whatever our parties, in doing the best we could for the prosperity of our beloved State."

If the Rhode Island convention is to succeed, its members must

be chosen and must deliberate, not as leading Democrats or leading Republicans, but as leading Rhode Islanders. And we all want it to succeed—to produce an instrument worthy to replace the Charter which has lasted nearly two centuries and the Constitution now beyond its ninetieth year.

II

WHAT IS A CONSTITUTION?

Whatever the proposed convention, if called, does to the Constitution will affect the life of every Rhode Islander, for better or worse. Nowadays, a government does all kinds of things people used to do privately, like factory inspection, milk inspection, unemployment relief. We get much more than formerly, we pay much more, too. Taxes take from everybody money that he would rather use for a radio or a better house or his children's education. Even if he receives no tax-bill, taxes increase his rent and the price of his gasoline and food. And the government is always at us, making us limit hours of work, contribute to old age pensions, kill tubercular cows, take out licenses, give up liquor in the past, and perhaps tobacco in the future.

Nobody can afford not to worry about what kind of government he has, and that depends largely on the constitution. The constitution says what persons are to decide the amount of taxes, administer relief funds, regulate our daily life. It says how they are chosen, how they go about their work, how we can get rid of them if they are incompetent and dishonest.

How does a Constitution Differ from Ordinary Laws?

A constitution is a body of laws differing from ordinary laws in two ways. First, constitutional provisions state the essential rules for making and enforcing ordinary laws. Second, they are relatively permanent. They are expected to last longer than most ordinary laws and to be changed with much greater deliberation.

To draw a rough analogy, the constitution is like football rules which last at least a whole season, while ordinary laws are like the fluctuating plays during a game. The rules tell the number and positions of the players, authorize particular plays, and forbid certain things to be done.

1. A Framework of Government

So likewise the Rhode Island Constitution tells who are to manage the state for the time being—Governor, House of Representatives and Senate, Supreme Court and inferior courts. It defines their relations to each other and the methods for law-making. The very first article lists fundamental rights which these men must not violate. The importance of the existing Constitution in setting up a framework of government is plain. A new constitution will be just as important although the framework may be different and, I hope, in some respects much better.

2. Relative Permanence

The second quality of a constitution, the relative permanence of its provisions, is also assured by our present Constitution. Ordinary laws can be quickly changed by the General Assembly, with the Governor's approval, but, as a later article will show, the Assembly alone cannot change the Constitution.[1] The people must participate directly in changing it, and considerable delay is required.

The very nature of constitutional provisions shows that they were expected to last a long time. Consider the "essential and unquestionable rights and principles" in the First Article. The State is to be "maintained with full liberty in religious concernments." Personal liberty is protected by the abolition of slavery, the writ of habeas corpus to end illegal imprisonment rapidly, jury trial, bail, the accused man's right to have a lawyer. Property, too, is protected. Our forefathers did not despise property. They declared that "the burdens of the State ought to be fairly distributed among its citizens"; that property should be free from unreasonable searches and seizures and not taken for public uses without just compensation; and that no person should be "deprived of life, liberty or property, unless by the judgment of his peers, or the law of the land." Here and throughout, our Constitution takes long-time views.

Statutes must often take short-time views—they deal with taxes for the next few years, annual appropriations, emergency relief.

[1]See the third article in this pamphlet.

But the framework of government and fundamental rights of citizens ought not to be constantly changing.

This contrast between long-time and short-time considerations is familiar in daily life. Shall I buy an automobile or a house lot? Much of our time is passed under the pressure of short-time policies —catching a train, paying the rent. But we all know that we must resist short-time considerations when they interfere with the enduring purposes of our life. We sacrifice a good time next week to send our children to college.

The main object of a constitution is to make sure that when similar conflicts arise in political affairs, the government will choose the long-time view. The public want to hang a murderer on the spot, but the Constitution gives him a lawyer and a jury trial, as the best way in the long run to save innocent men from punishment. Some members of the legislature want to rush a desirable measure through, but the Constitution requires a roll-call so as to get fewer bad laws. Political leaders seek to distribute wealth equally, the quicker the better, but the Constitution requires fair and non-confiscatory tax laws, in the belief that if no capital were left to operate factories there would be no future jobs.

New Constitutional Provisions are Equally Important

Even when changes in population and economic conditions have made old constitutional provisions antiquated, short-time considerations are still out of place. The new provisions, like the old, should be planned with a long-time view, so that they in their turn will last several decades. They ought to be framed to meet permanent needs of the State and not just to help the party at the moment in power. Selfish constitution-making causes widespread resentment and often provides a boomerang. Suppose a party with a bare majority amends the Constitution so that a bare majority can do whatever it wishes. How can that party be sure of always possessing a majority? Republicans have a way of becoming Democrats, and vice versa. Or the Socialists will perhaps be in power a few years later. The short-sighted victors who re-made the Constitution selfishly may have merely sharpened an axe to cut off their own heads.

To return to our football analogy, a college with a star drop-kicker would be foolish to get the rules changed so as to make a drop-kick count as much as a touchdown, because five years later its hated rival might have three drop-kickers while its own hero had graduated with no successor.

Significance of a Constitutional Convention

No possible political event ought to stir up greater interest on the part of every citizen than a convention which can take decisive steps toward changing the framework of the governmental and fundamental rights.

A new tax law would surely arouse widespread discussion, but a constitution does more. It determines what men shall pass a tax law. However exciting an election for Governor may be, the Constitution decides who can vote for Governor and what a Governor can do. A big case before the State Supreme Court amounts to less than a constitution which specifies how judges are chosen and whether they hold office for life or some shorter period. A murder trial draws throngs to the court room, but the new constitution will decide whether or not the accused is entitled to a jury and a lawyer. The questions whether we shall have a convention, how it shall be chosen, what it shall do, are as important as the constitution itself; and what can be more important than the instrument, which fixes the ability of the men in power to take away life, liberty, or property, from every citizen.

III

TWO WAYS OF CHANGING THE CONSTITUTION.

A convention is not the only way of changing a constitution. The legislature may also submit separate amendments to the people. Most State constitutions expressly recognize both methods. Our Constitution mentions only legislative amendments. The Supreme Court is now considering whether this failure to provide for conventions prevents a convention. In this article I shall assume both methods are valid and discuss which is better at the present time.

1. The Convention Method

The convention method usually begins with a vote by the people whether they want a convention. If not, the matter drops. Governor Green proposes to go ahead without consulting the people. A later article will give reasons why the people ought to decide.[1]

After the convention is called, the voters elect delegates as the legislature arranges, by districts or at large or both ways, ordinarily at a special election. The convention then meets, and after weeks or months of work gets the new constitutional provisions into final form for submission to the people, at the regular or special election.

If the convention has drawn a new constitution, the voters accept or reject everything. If instead it has drawn several amendments to the old constitution, the convention decides whether to have these voted on separately or as a unit, for the amendments are perhaps so closely interlocked that part of them would work badly without the rest. Whatever the people thus adopt goes into force.

2. The Legislative Method

Under the legislative method, as outlined in Article XIII of our Constitution, the General Assembly first proposes an amendment "by the votes of a majority of all the members elected to each House." The proposed amendment is then published in the news-

[1]See the fifth article in this pamphlet.

papers, with the names of all members voting for or against it. Consequently, at the next election a voter who wants the amendment adopted, or vice versa, can make his vote for a senator or representative depend on the attitude of the candidates toward the amendment. The new General Assembly must then pass the amendment by the similar majority vote in both houses, without changing its wording. Finally, the amendment goes to the people, and fails unless approved by three-fifths of those voting on it.

Advantages of the Convention Method

The differences between the two methods makes each method superior in some respects. Thus a convention has four advantages.

First, the people participate more fully in the convention method. If thoroughgoing constitutional revision is generally desired, public attention is focused upon every step—the popular vote to call a convention, the election of members, the speeches at the convention, the final decision at the polls.

A legislative amendment, although the people vote on adopting it, is less the work of the people. The legislature which proposes the amendment was perhaps elected before a constitutional change was even thought of by the voters. The people can discuss the amendment before they elect the next legislature, which is to pass on it a second time, but after all, the attitude of rival candidates on the amendment is only one of many reasons for choosing between them. It is not at all like electing delegates to a convention, where the voters think about the constitution and nothing else.

A *second* advantage of a convention is, it may contain men admirably qualified for framing constitutional provisions, who would never run for the legislature or who could not be elected if they did run. Party lines can be disregarded. Leading lawyers, business men, professors of government or economics, may be glad to help revise the constitution, although far too busy to attend legislative sessions. Thus the New York convention included two college presidents, and President Lowell ran unsuccessfully for the Massachusetts convention. Moreover, distinguished citizens who are ineligible for the legislature can be elected to a convention, like the

Governor, United States Senators and Congressmen, State or Federal judges.

Everything depends, however, on public opinion about the convention. If it is generally considered unwise and unnecessary, the kind of men you most want for its members will be just the kind that will not bother with it.

A *third* advantage is, that the convention is better equipped to look at the constitution as a whole. It has nothing else to do except consider what changes are desirable. The legislature is continually occupied with important bills, and constitutional revision must be left till odd moments. If many causes need revision, the legislature has nowhere near enough time to consider them all. On the other hand, if only a few changes are required, the legislature may do about as well as a convention.

Finally, a convention can sometimes accomplish badly needed reforms which the legislature would persistently refuse because these reforms would seriously lessen its own privileges. This is a strong argument for a convention in Rhode Island. The three features of the existing Constitution most open to criticism are the great over-representation of small towns in the Senate and House, the power of the General Assembly to appoint officials regardless of the Governor if it so wishes, and legislative control over the judiciary. Human nature being what it is, there seems little chance that two successive bodies of legislators, who have been elected under the present distribution of seats, will consent to a permanent surrender of these long-standing powers.

Advantages of the Legislative Method

We now consider these points in which legislative amendments are better than a convention.

The most obvious disadvantage of a convention is that it costs more in time and money than legislative amendments. The legislature is already there and all paid for. Legislative amendments can be voted on at regular elections. A convention requires a special election to choose delegates, and perhaps another to adopt its work.

The delegates must be paid salaries. Proceedings must be printed. The proceedings of the last New York convention fill four volumes of 4510 pages. The estimated expenses of that convention itself, apart from the cost of elections, were $429,000, of which $252,000 went for salaries; and printing and advertising cost over $700,000 more.

Of course, a small State will not require one hundred and sixty-eight members for its convention like New York; but even so the proposed convention and the necessary election will cost over a hundred thousand dollars at a time when public revenues are none too abundant. Time is also an important factor. The leading citizens who, we hope, will be elected to the convention ought not to be asked to leave their own work for weeks unless the convention can be expected to accomplish a great deal.

Second, legislative amendments receive more prolonged consideration. If a convention meets next summer, its work can become part of the Constitution in November. An amendment proposed by the General Assembly at the 1935 session could not take effect before November, 1938, unless it could be submitted at the polls in 1937. Of course the greater speed of a convention is not altogether a disadvantage. If an important change is well thought out and generally desired by the people, the sooner it goes into force the better.

However, speed has real dangers. It may be worth while taking a few years to build what is expected to last many years. If without much previous public discussion new constitutional provisions are steam-rollered through a hasty convention and an immediate election by slight majorities, there will be a widespread feeling that something has been put over on the State, and a movement for repeal may be organized which will upset the work of the convention as soon as the opposition gets into power.

A *third* disadvantage is the risk that a convention may be manipulated by the party in power. Since the existing Constitution makes no regulations about a convention, all sorts of important questions will be decided by the General Asssembly and the Governor. They can fix the number and apportionment of delegates,

the time, place and manner of election, the persons who may vote for delegates and on the adoption of the work of the convention.

Obviously, by deciding such matters one way or another, the present State government can to a considerable extent dictate the results of the convention. With legislative amendments no such risk exists, because the Constitution specifies the exact procedure for every stage. If a convention is held, the only way to remove the risk of manipulation is to regulate everything about the convention by rules whose fairness no one questions.

Conclusions

Summing up, we see that a convention can accomplish more, but costs more and involves special dangers. A great deal depends on how much the people of the State want done. My own opinion is that so many clauses need changing in order to create a modern and just State government that only a convention can do the work well. On the other hand, some doubt exists whether a convention is desired by enough citizens of the State to attract members of proper calibre and render its work a success. Unless we can be sure that the convention will proceed from the people as a whole and not from a group of leaders of one party, it will be better to try legislative amendments once more and let the convention wait for more propitious conditions.

IV

DOES THE CONSTITUTION NEED CHANGING?

I appeal to all fair-minded citizens of Rhode Island, whatever their party, to look at the existing Constitution honestly and squarely and ask themselves whether it gives every voter his just share in the government of the State and whether it makes that government able to handle efficiently the problems of our time.

The proposal for a constitutional convention cannot be correctly understood if it is regarded as nothing but a shrewd manoeuvre by the party in power. Doubtless it has partisan motives, but it is mainly the expression of forces that have been operating for more than a century, ever since Colonel George Burrill declared in his oration on the Fourth of July, 1797:

"Equal representation is involved in the very idea of a free State."

We are in the latest stage of the struggle which then began. It has been much more bitter than constitutional controversies in other States because every change has been stubbornly resisted for decades, and when at last the change was made it was too often only a half-way affair, which failed to settle the dispute once and for all, but merely led to more agitation. The time has come for all sides to get together, decide what ought to be done to make the framework of government fit actual conditions in the State, and then do it.

Let us see what those conditions are today, and compare them with the existing Constitution. That instrument, except for the extension of the right to vote and a few less important points, is pretty much what it was at its creation in 1842. It suited the facts of 1842 reasonably well, but facts do not stand still. The daily occupations of our people have altered tremendously. Shipping has almost gone, and farming has lessened under competition from the fertile West. Meanwhile manufacturing has grown by leaps and bounds. Rhode Island is now overwhelmingly an industrial State. Most of its citi-

zens are factory workers and employes in large business establishments. The population has shifted toward the northern part of the State, where most factories are located, and especially to the cities. Meanwhile, new political ideas have developed all over the nation, modifying the constitutions of other States.

Representation in the General Assembly

At first the new elements in the population demanded the right to vote, which was partly denied them by the Constitution of 1842. It took forty years of agitation to give naturalized Americans the same vote as natives, and another forty years to get rid of the property qualification in cities. But discontent continued because the new votes counted for less than the old, as a result of the apportionment of the General Assembly.

Suppose that in elections for Governor, every citizen of Providence were allowed one vote, and every citizen of West Greenwich were allowed 100 votes, and every citizen of Exeter 50 votes. Nobody would call that fair. Of course, it is not so in the election of the Governor, but it is just like that in the election for Senators, and the Senate has much more constitutional power than the Governor. Even for Representatives, some citizens have in effect many more votes than others.[1]

Under the Charter ten Senators were chosen at large by the whole State; Newport had six Assemblymen, Providence, Warwick, and Portsmouth had four, and other towns two each. This corresponded to the facts in 1663, but not at all to those of 1842. The new Constitution restored the balance in the House, but gave one Senator to every city or town. The population went on growing unevenly, and the Senate got farther and farther away from the facts. The only result of eighty years of agitation was three more Senators for Providence.

If we can forget party advantages for a moment, does anybody want to defend the present situation in the General Assembly? Each of four Providence Senators represent 63,000 persons; one Paw-

[1]See Appendix A for population and representation of all cities and towns.

tucket Senator represents 77,000 persons; one West Greenwich Senator represents 402 persons; and many others a thousand or two apiece. Possibly Rhode Island should not be districted with complete equality like Massachusetts, but why should the place where a voter lives make all this difference? It is just as if some players in a big tennis tournament were given handicaps, not of fifteen points a game, but of four games a set to start with and forty points in every game besides.

In the House things are a little better, but still far from equal. That Providence with over a third of the State's population (252,981 out of 687,497 by the 1930 census) has only a quarter of the Representatives would perhaps be fair, if the rest of the State were evenly divided. But the Constitution gives one Assemblyman to each of twenty-seven towns, many of them small. Therefore, one Providence Assembly represents 10,000 persons, one from Pawtucket or Newport 7,000, one from Exeter 1314, one from Foster 946.

The strongest reason for a constitutional convention is not politics but arithmetic.

The foregoing discussion, in saying that the present basis of representation is far too unequal, does not mean that the General Assembly should necessarily be elected from absolutely equal districts. Indeed it might be desirable to make the Senate entirely different from the House by not having Senators chosen from districts at all. We might go back to the Charter and have the Senators voted for by the whole State. But we would arrange some sort of proportional representation to prevent all of the Senators coming from the majority party and enable the other party to have a minority of the Senate. The House on the other hand would be elected from districts with some provisions for the protection of minority rights and for safeguarding the rural towns from domination by the cities. These are only suggestions, for this is not the time to go into details, but a convention could surely work out methods for choosing the General Assembly which would be much fairer to the cities than the present plan, and at the same time just to the towns.

Distribution of Powers between General Assembly and Governor

Another longtime attack has been directed against the powers of the General Assembly. Under the Charter the Assembly was virtually unlimited. Not only could it remove judges at will, as it did after the Revolution when the court refused to make creditors take worthless paper money, but the Assembly decided lawsuits itself, granted divorces, and pardoned criminals. The Governor amounted to almost nothing. One old legislator remarked that the Assembly had the same power that the Almighty has over the Universe. The Constitution of 1842 imposed some limits on the legislature, and transferred all judicial power to the judges. But the Assembly could still elect and remove judges. The Governor, except in war, remained an ornamental figurehead. He had no veto. The Senate could disregard his appointments and substitute its own choices.[2]

Once more the facts grew away from the Constitution. Forty years ago you could find in the State House a Governor, who could do nothing though all the people elected him, and a single private citizen who could do almost anything. General Brayton's domination of State affairs was not in the Constitution, but it was caused by facts. It arose in response to a real need for centralizing responsibility in somebody. Modern business was too complex for the State to be managed efficiently by a headless legislature. Since the Constitution did not give the Governor the right to appoint officials and start or check important legislation, the pressure of events gave the same power to General Brayton without any legal sanction.

Under modern conditions a State needs a leader, and that leader should be the Governor. The Governor should be able to choose all his important subordinates, all the men who assist him in administering the laws. He has no such power under our Constitution. Statutes may allow him to appoint officials and judges of the Superior Court, but later statutes can take these rights away. The Governor should have the responsibility for proposing essential legislation like the annual appropriation bill, leaving the Assembly

[2]The Constitution did not so provide, but a statute to this effect was held constitutional. See Table of Dates under 1901.

to reject or reduce his proposals. New York has recently adopted the executive budget and other constitutional provisions to make the Governor a ruler who initiates policies. The legislature decides whether to approve those policies or not, but it does have a head. What Elihu Root called "invisible government" has disappeared. The Governor governs. Here is one more change for our convention to consider.

The Independence of the Judiciary

The Assembly's control over the judiciary is still much larger in Rhode Island than elsewhere.[3] Until recently this meant that nearly all the judges came from one political party. Whatever be thought of the way this situation was changed, neither the evil nor the remedy ought to recur. Even if the Assembly is the best source for choosing judges, which is doubtful, it ought not to be able to remove them when no charges of misconduct have been made. It is very difficult to have impartial judicial decisions while judges feel that they are likely to be pushed off the bench if they reach a particular result. The Constitution must be changed if the judiciary is to be independent.

Home Rule for Cities and Towns

Another possible limitation on the Assembly concerns its present power over local government. Cities and towns ought not to be footballs of State politics. The Constitution should guarantee the right of cities and towns to determine their own form of government and their own policies, within bounds adequate to protect their solvency and the fulfilment of their obligations to the general welfare of the State. Other States have home rule provisions in their constitutions to make this possible. Under the Constitution of Ohio the right of the voters of a city of that State to establish their own form of government made it possible for Cincinnati to establish its excellent charter government of today. Would not such a provision be desirable in the Constitution of Rhode Island?

[3]See Table of Dates under January, 1935.

Conclusions

Enough has been said to show that our Constitution needs changing, and that a convention would have much to do. Those who oppose a convention, if they are convinced that changes are required, owe it to the State to begin steps at once to produce separate amendments. In any event, let us have no more half-hearted reforms like another Senator here or there. This time let's make a clean job of it.

No doubt one political party stands to gain more now from changes than the other, but this does not make the changes unfair. It is the present constitutional situation that is unfair. No party should be satisfied to admit that it cannot persuade a majority of the voters in a fair and equal fight. When we are honest with ourselves we all want a State government that is just to every citizen and has the efficiency necessary to overcome the confusion and disasters of our time.

"In urging this," said Alfred E. Smith about the revision of the New York constitution, "I assure you that I have no partisan purpose. I regard this as being something above party and a matter of duty for citizens who are interested in getting this government right."

V

THE PEOPLE SHOULD BE ASKED WHETHER THEY WANT A CONSTITUTIONAL CONVENTION.[1]

The proposed constitutional convention will be much more likely to succeed if it is called by the people.

Even if the Supreme Court judges say that the General Assembly can call a convention without consulting the people, it will be better to ask the people to vote on the question,

"Shall a constitutional convention be held?"

Such a course would not then be unlawful, for if the Assembly has power to arrange for a convention on its own responsibility, it can surely obtain the benefit of a popular vote on the subject. For many reasons a vote of that sort would be desirable.

A Popular Vote is the Usual Method

In the first place, it is the usual method for holding constitutional conventions. According to the great principle stated by Washington and declared at the very start of the Rhode Island Constitution,

"the basis of our political systems is the right of the people to make and alter their constitutions of government."

Obviously the people cannot exercise this right by drawing up constitutional provisions themselves, but they ought to be able to participate in the process of constitution-making as much as possible.

The regular practice for constitutional conventions brings in the people at three important stages. *First,* they vote whether to hold a convention at all. *Second,* they elect delegates. *Third,* they approve or reject the new provisions framed by the convention. Thus those provisions if adopted are, to the fullest practicable extent, the work of the people themselves.

To omit the first stage of popular sharing in constitutional re-

[1]This article was published in the Providence *Evening Bulletin* on March 13, 1935. On the same day, the convention bill was introduced in the General Assembly; it did not provide for a popular vote as here urged.

vision, as is proposed, would be very unusual. True, under the Charter the General Assembly called four conventions (in 1824, 1834, 1841, and 1842) without consulting the people, but the Charter let the Assembly do pretty much what it pleased. It even amended the Charter by its own action. And twice, in 1821 and 1822, the Charter Assembly did refer the question of a convention to the people. At all events, we are under the Constitution now, and the only precedent since its adoption favors having the people call the convention. In 1853 the General Assembly asked the people to vote on holding a convention at the same time they elected delegates, and declared that if a majority voted "Convention," then it should be "deemed and taken to be the will of the people of the State, that a Convention shall meet." The vote was against the convention and none was held. The fact that this happened only eleven years after our constitution was framed gives the precedent considerable weight, although the plan of electing delegates before the convention was decided upon was unlikely to make desirable men take the trouble to be candidates.[2]

The experience of other States strongly supports a popular vote on the question of holding a convention.[3] Such a vote is expressly required in thirty-four out of the thirty-six States which provide for conventions in their constitutions. Maine and Georgia are the only exceptions; and Maine is not really an exception since the people can if they wish obtain a referendum after the legislature calls a convention.

How about the eleven other states which like Rhode Island do not mention conventions in their constitutions—Arkansas, Connecticut, Indiana, Louisiana, Massachusetts, Mississippi, New Jersey, North Dakota, Pennsylvania, Texas, and Vermont? Before 1880 the practice in these States was unsettled; there were seven legislative conventions under this kind of constitution and eight conventions called by the people. But we are not interested in ancient history. We want to follow modern constitutional principles. During

[2]This same plan was adopted in the Convention Act of 1936, and is discussed in the second article in Dorr Pamphlet No. 3.

[3]See Appendix F for detailed information.

the last fifty years five of these eleven states have had conventions. The people voted on holding the convention in Connecticut in 1902, in Louisiana in 1898, 1913, 1921, and in Massachusetts in 1917. They did not participate in calling the Mississippi convention of 1890, or the Arkansas convention of 1918. Mississippi, at least, is no example to follow, because the legislature not only called the convention without consulting the people but also put the new constitution in force without ever submitting it to the people for adoption.

One more illustration is especially interesting. In 1917 the Indiana legislature tried to call a convention without referring the question to the people who had voted overwhelmingly against a convention a few years before. The convention never met. It was enjoined by the Indiana Supreme Court, which said:[3]

"The right of the people in this regard is supreme . . . The people being the repository of the right to alter or reform its government, its will and wishes must be consulted before the legislature can proceed to call a convention."

Thus if the Rhode Island convention is called by the General Assembly without authorization from the people, it will have no parallel in the last half-century outside Arkansas and Mississippi, while a popular vote on the question would be following the modern practice of thirty-seven other States, including our nearest neighbors, Connecticut and Massachusetts.

Arguments against a Popular Vote

What arguments can be advanced for refusing to consult the people of Rhode Island? It has been suggesed that since the platform of the victorious party last November [1934] had a convention plank, the voters showed that they wanted a convention when they elected the candidates of that party. But everybody knows that people have many different reasons for voting for candidates. The convention was not an outstanding issue in the campaign. A vote for Governor or a member of the General Assembly entirely lacked

[3]Bennett *v.* Jackson, 186 Indiana Reports, at p. 329.

the decisive quality of a ballot on the sole issue, "Shall a constitutional convention be held?" Furthermore, the platform did not promise that the General Assembly would call the convention without submitting the question to the people.

Another argument is that those who do not want a convention can show their opposition by refusing to vote for delegates, but what would be the use of that course, since the delegates would be elected and meet anyway no matter how few people participated in choosing them.

Some persons may object that it would delay the convention to consult the voters and that the balloting would cost money. It would be time and money well spent. Constitutional provisions are meant to last a long time, and we can well afford to act deliberately in framing them rather than rush something out helter-skelter. And it is cheaper to find out that the people do not want a convention beforehand than to pay heavily for holding one and then have its work rejected at the polls.

The strongest reason for not consulting the people is the fear that they may vote against a convention. If they do not want it, then we had better not have it. And the probable result of choking off the opponents of a convention in advance is that they will get angry and work all the harder to defeat whatever amendments the convention proposes. On the other hand, if a convention is really needed by the State, as I believe, it ought to be possible to bring that fact home to the people by a campaign of education before they vote, during which many of the present opponents can be persuaded of the advantages of a convention.

Fairness of a Popular Vote

Fairness always pays. A good many thoughtful citizens are against a convention at the moment because they think of it as something to be put over on the State by the party in power. They suspect that the General Assembly, knowing that it cannot change the Constitution all by itself, is trying to do so indirectly through cooking up a convention. It will go a long way toward winning over many such persons if the convention is brought out into the

open and left there as a question to be decided by the whole people and not by party caucuses. If the convention meet in response to a clear call from the people of the State, a large number of the present opponents, who would continue to fight a legislative convention, will show themselves ready and eager to give their best help in making a convention called by the people succeed. In this way, the work of the convention will be judged on its merits and not in an atmosphere of bitter controversy, and practically everybody will abide loyally by whatever new constitutional provisions are adopted at the polls.

A More Successful Convention if Called by the People

Finally, the people themselves will be awakened to the importance of the convention if they are asked to vote on the question of holding it. As matters now stand, nobody seems to care much about the proposed convention except party leaders, lawyers, and a few others. This wide-spread indifference will have to be removed if the convention is not to work in a sort of meaningless vacuum. The best way to make the people understand what the convention ought to accomplish is to let them vote on it after thorough public discussion. Then if the people decide for it, they will regard it as their convention. They will choose delegates with the knowledge that they are carrying on their own enterprise and not something imposed upon them from outside. They will feel more keenly the need of sending the best possible men to the convention. The delegates will assemble under a graver sense of responsibility if they are there because the people want the Constitution revised. The progress of the convention will be more eagerly followed by the voters and the issues at stake vigorously talked over. Thus there will be a stronger probability that good constitutional provisions will be framed by the convention. And if the people call the convention, they will be more likely to vote to adopt its work.

VI

THE CONVENTION BILL.[1]

Lieutenant Governor Quinn's statesmanlike discussion two months ago[2] called for a convention in which the best minds of the State would co-operate harmoniously in the formation of a just and modern constitution. The convention bill laid before the General Assembly last week is not at all calculated to produce such a convention. It is to be hoped that this bill is not meant to be anywhere near in its final form, but is merely a provisional measure in order to get under the wire on the last day for introducing bills into the General Assembly. Fortunately, the rules will not prevent extensive revision of the bill. This revision will be a difficult but very important task. The successful outcome of the constitutional convention will largely depend upon the wisdom of the convention statute.

Why a Convention Act is Necessary

Some such statute is indispensable. A convention does not meet out of thin air. Before its members are elected or assemble, all sorts of questions must be answered. How many delegates shall there be? How shall they be nominated and elected? Under what officers and rules shall they deliberate? How shall the amendments they draw be ratified? Somebody must answer these questions and lay out a sort of blueprint for the convention.

In States whose constitutions expressly provide for revision by a convention, the constitution itself lays out the blueprint. Thus the New York constitution makes detailed requirements, while the proposed Rhode Island constitution which the voters rejected in 1898 and 1899 stated only the methods for electing delegates and ratifying their work. On the other hand, under constitutions like ours

[1]This and the two following articles were published in the Providence *Evening Bulletin* on three successive days, beginning March 19, 1935. The convention bill had been introduced on the 13th.

[2]Reprinted in Appendix C.

that say nothing about conventions, the legislature has to make the blueprint. The whole job of blocking out the convention must be done by a statute.

Comparison of Bill with Previous Convention Acts

In order to see what form our convention statute should take, it will be helpful to compare the pending bill[3] with the Massachusetts statute that preceded their 1917 convention and with the Rhode Island statute of 1853, the only convention act passed under our existing Constitution.

No Provision for Popular Vote before Convention

At the very outset both these statutes have a provision conspicuously absent from the pending bill. They arrange for a popular vote on the question of holding a convention. For reasons given in a former article [V], this is highly desirable. The people should be asked whether they want a constitutional convention, and if they do not, none should be held.

In some States the convention statute is not enacted until after the popular vote. The people merely decide to have a convention, leaving it to the legislature to determine the number and apportionment of delegates and other important details afterwards. This gives the legislature more time to draw the convention statute, but on the whole it is much better to pass the statute before the people vote on holding the convention. We did this in 1853, Massachusetts did it in 1916, and Connecticut in 1901. In this way the electors know exactly what sort of convention they will have if they vote for it. They will be authorizing a convention with a definite number of delegates to be chosen in a definite way. By the other method, those who vote for a convention sign a blank check which the legislature can fill in as it pleases.

Choosing Delegates

The *second* point taken up in our 1853 statute and the Massachusetts statute is the apportionment and election of delegates. Of course, the pending bill deals with this matter, specifying 25 delegates-at-large and 100 delegates apportioned much like the House of Representatives, except that each city or town elects as a whole and not by districts. The problems raised will be discussed in the next article.

[3]The 1935 convention bill is abstracted in Appendix E.

The *next* point concerns the methods of nominating candidates. The pending bill provides for party nominations. The Massachusetts convention was non-partisan. Here again is an important controversial question, which needs separate consideration. (See Articles VIII, IX, X.)

Penalties for Fraud and Corruption

A *fourth* point in a satisfactory convention statute is protection against fraud or corruption in nominations and elections. Thus the Massachusetts statute says:

"All laws relating to nominations and nomination papers, and to primaries, elections and corrupt practices therein, shall, so far as is consistent herewith apply."

The Rhode Island Bill makes the general election laws applicable. Since Rhode Island has no primary laws, it may be necessary to create special penalties applicable to the nomination of delegates.

Location and Expenses

Fifth, the convention act must take care of the physical location of the convention and other concrete facts essential to its existence, such as money for salaries and expenses. The provisions of the bill say only that the convention will meet at the State House, and that $5,000 is appropriated for expenses. This sum cannot allow for salaries of the delegates. In any event it seems far too small. Five thousand dollars would not have paid for the telephone bills of the Massachusetts convention. That convention received during its first session from June, 1917, until November, $240,000 for salaries, $25,000 for mileage of members, and for other expenses $55,000. When it reconvened in 1918, it received $160,000 more for salaries, another $25,000 for mileage, and over $45,000 more for other expenses. The total cost was thus over $550,000, in addition to the expenses of nominations and elections. Of course, it was over twice as large as

the proposed Rhode Island convention and sat longer, but these figures indicate that Rhode Island will pay out at least $100,000 for its convention.

Regulatory Powers

Sixth, the convention must be given powers necessary for its work. The pending bill makes it judge of its own membership, authorizes it to choose its officers and adjourn from time to time, and declares a majority to be a quorum. Provisions could also be copied from our 1853 act, which are not already inserted, empowering the convention to establish rules of procedure, punish contempt, and compel the attendance of absent members.

Popular Ratification

Seventh, a convention statute describes the methods for adopting the amendments or new constitution. The pending bill requires ratification "by a majority of the people." A later article [XI] will discuss this topic.

Time for Preparation

Finally, the time element is a very important feature in planning for a convention. There should be plenty of time before the convention meets in which to make proper preparations, both for selecting the best possible delegates and for equipping them with adequate information about the problems to be settled at the convention. The Massachusetts statute allowed seven months for these purposes. The people were to decide about holding a convention at the annual election in November, 1916, and the convention was to meet early in June, 1917. The special election for choosing delegates came early in May, with opportunity beforehand for nominations. The pending Rhode Island bill has no definite dates. The Governor can decide when to hold the special election of delegates and when the convention shall meet. Inasmuch as the Supreme Court judges have not yet said whether a convention can be held at all, this means that if the convention is to meet next summer only two or three months will be left after the convention act becomes law in which

to get ready for a meeting on July 1, which is a late start.[4] During this period, the popular vote ought to be held, the candidates must be nominated and elected, and everything else arranged. A subsequent article will tell what valuable information was prepared for delegates in Massachusetts and elsewhere, and show the disadvantage of hurry.[5]

The Convention Act should be Framed with Fairness

The preceding analysis of a convention statute shows that it is really a constitution for the convention. Just as the existing Constitution sets up the framework for the General Assembly and other branches of the State government, so the convention act sets up the framework for the convention. The form of this statute will largely determine the nature and outcome of the convention. Consequently, the framing of the convention act should be approached with much the same spirit as the framing of constitutional provisions.

A constitutional convention ought not to be treated like a political convention, where the main object is to shape matters beforehand so that everything your side desires will go through by acclamation on the first ballot. A constitutional convention is not concerned with a campaign of a few months, but with a fundamental document to last many decades. It is not limited to one party, but draws up a scheme for governing the members of all parties. It ought not to be planned just for the benefit of the party in power at the moment. Parties come and go, but constitutional provisions remain. Where are the Whigs who ruled the State for years before our present Constitution was framed? The minority party today once seemed invulnerable and even if its control of the General Assembly was based on the unequal apportionment it usually got the Governorship, too, by an open vote.[6] Therefore, it would be shortsighted to shape the convention statute as if the party now in power could count on perpetual supremacy.

[4]The advisory opinion (in Appendix B) was handed down on April 1st, and the bill passed the House on April 12th.

[5]See the second article in the 1936 series, Dorr Pamphlet No. 3.

[6]See Table of Dates showing Democratic governors between 1900 and 1935 for only 8 out of 34 years. They have been in for 4 years since 1934.

The reasons given by the Lieutenant Governor for the co-operation of both parties in the convention are also reasons for their co-operation in framing the convention statute. It would be well worth while for the present minority party to accept the fact that we are almost surely going to have a convention, and submit its own proposals for methods of nominating and electing delegates. These proposals and the pending bill could form the basis for fair and reasonable negotiation to produce a convention act satisfactory to both parties. Such co-operation now would greatly increase the probability of new constitutional provisions that will endure and be advantageous to all the citizens of the State.

VII

HOW SHALL DELEGATES TO THE CONVENTION BE CHOSEN?

If the constitutional convention is to be held, the General Assembly will have the difficult task of deciding upon the way delegates shall be chosen. The methods suggested by experience in Rhode Island and elsewhere are, first, have all the delegates elected at large, that is, by the vote of the whole State just as the Governor is elected; second, election of one delegate or a few delegates by the voters in each city and town or in some other local district; third a combination of delegates-at-large and local delegates.

Delegates should be Able, Representative, Not Too Numerous

Before the detailed operation of these plans is described, it will be worth while to consider the ideals that should influence the selection of a plan.

First, the convention ought to contain the best men possible, men whose ability and character command the confidence of citizens throughout the State. This ideal has been repeatedly stressed in these articles, so that no more need be said here than this,—the success of a constitutional convention depends above everything else upon the quality of its membership.

Another ideal must not be overlooked. The convention ought not to be made up of men from a single section of the State or a single occupation. Small as the State is, its population contains many different groups of persons—farmers, fishermen, factory-workers, employes in large stores and business houses, builders of houses and roads, officers of labor unions, manufacturers, professional men, and so on. To some extent these groups live in different regions—for instance, farmers and fishermen are more numerous on the islands and in South County, factory-workers in the northern cities. Furthermore, the various sections have interests of their own just because of their geographical location. The people of a par-

ticular town or city are used to acting together for political purposes, regardless of their occupations. So far as possible, each occupation and each region should be able to feel that it has a share in the process of constitution-making.

Evidently these two ideals conflict somewhat. Men who are excellent spokesmen for their own section or occupation may lose sight of the welfare of the whole State. On the other hand, a convention chosen for ability alone, with no regard to the delegates' residence or means of livelihood, might be forgetful of groups and regions that form a vital part of the life of the State.

It must be remembered that the convention will want to do more than produce a well-written and far-sighted document. Its main task is to submit constitutional provisions that will be adopted. This is less likely if the convention is chosen in such a way that considerable portions of the population are left out. Therefore, the plan for the convention should give expression to both ideals so far as it can, sacrificing each somewhat for the sake of maintaining the other.

A third ideal is not to have the convention too big. The members should be few enough to get to know each other well during the sessions and interchange ideas freely. On this account, its number should be under a hundred if possible. The United States Constitution was framed by a convention of only fifty-five men. Here again, a compromise between ideals may be necessary. In order to keep the convention reasonably small, some towns and occupations may have to be unrepresented and some able men kept away.

With these three purposes in mind let us examine various methods of choosing a convention.

First Method—All Delegates Elected Locally

In all previous popularly elected conventions for revising the Rhode Island Constitution, the delegates have been chosen from small districts. The convention which framed the existing Constitution had at least two delegates from every town, with more from larger towns and six from Providence.

For the convention of 1853, which never met, the delegates were

to be locally chosen exactly like Senators and Representatives, and this plan was followed in the convention clauses of constitutional amendments that the voters rejected in 1882, 1898, and 1899. The Illinois convention of 1920 had two delegates from each of the fifty-one senatorial districts.

Such a plan carries out the ideal of giving spokesmen to regional interests and indirectly to occupations, but should not be closely followed in the proposed convention. A convention, which will probably have to change drastically the present apportionment of the General Assembly, ought not to have the same unequal basis.[1] Furthermore, election from small districts alone might make the convention too localistic.

Lieutenant Governor Quinn said of the districting of the General Assembly:[2]

"The system of election from small districts has made for the election of 'small' men in many instances . . . and does not bring the best men available into the legislative halls."

The same system might also fail to bring the best men into the convention. Finally, if there is to be one delegate for every member of the General Assembly, the convention will have over 140 delegates, which makes it too large.

Second Method—All Delegates Elected At Large

A second plan is to elect all the delegates at large. The Lieutenant Governor apparently contemplated this when he spoke of a convention of twenty Democrats and twenty Republicans, comprising "the best minds of the State." Precedents for this plan are the Rhode Island convention of 1933 to ratify the repeal of the Federal Prohibition Amendment and the commission appointed by the General Assembly in 1898 to revise the State Constitution. The fifteen members of that commission included leading men from all parties, like Chief Justice Durfee, Chief Justice Stiness, Robert H. I. Goddard, David S. Baker, Mayor McGuiness and Mayor Miller.

This plan would be the best for getting able men into the con-

[1]See the fourth article of this series, and Appendix A.
[2]See Appendix C.

vention and would also make it easier to choose delegates on a non-partisan basis. There is much to be said in its favor. At the same time, great care would have to be taken to avoid serious dangers. If the whole State chooses all the delegates, the urban and populous north of the State might get most of them, and the rural and seashore sections might have practically no voice in remaking the Constitution.

Remember the desirability of giving spokesmen to all interests and sections so far as possible. It would be a mistake to produce a resentment in unrepresented regions which might lead to the defeat of the new constitutional provisions at the polls.

Third Method—Combination of Local Delegates and Delegates-at-large

A combination of the two methods has been successfully tried elsewhere. The New York convention of 1915 had fifteen delegates-at-large and three delegates from each of the fifty-one senatorial districts. Thus it was possible to give representation to local interests through men like Alfred E. Smith and for the whole State to select widely known citizens such as Root, Stimson, Wickersham and President Schurman of Cornell.

In the Massachusetts convention of 1917, there were sixteen delegates-at-large and a delegation from each of the 240 legislative districts. In addition, each of the sixteen congressional districts sent four delegates, an excellent device for giving a voice to large regions of the State. Although the total number of delegates, 320, seems very large, the Massachusetts plan has admirable features.

Occupational Representation Impracticable

Before coming to a conclusion, let us turn aside a moment to the intriguing possibility of ignoring geographical lines altogether and letting the farmers all over the State choose the best farmer, the Bar Association the leading lawyer, the mill-owners their ablest member, and so on.

Then the delegates would represent occupations instead of cities and towns. Something of the sort is done in Chambers of Commerce and in the New England Council. Conceivably the result

would be some highly-qualified delegates. Yet it is hard for me to see how this idea could be made to work. The various occupations are not organized for political purposes. All sorts of difficulties would arise.

There are too many occupations for them all to be represented. Which should be omitted? Should dentists go in with the surgeons or send a separate delegate? Does the elevator-man in a bank vote with the tellers or with elevator-men elsewhere? Where would the unemployed vote? Without the iron hand of a Mussolini to force everybody into a definite pigeon hole, no board of canvassers could settle the qualifications of the electors.

So we shall have to fall back, I think, on either a convention chosen wholly at large or a combination of delegates-at-large and local delegates. If the latter plan be followed, the State is so small that it could have a much larger proportion of delegates-at-large than the New York or Massachusetts conventions. At least one-half should be so chosen.

How Delegates-at-large may Represent Varied Regions and Occupations

It seems entirely possible to omit local delegates and yet give an adequate voice to the different regions and occupations of the State. Even if the convention is entirely composed of delegates-at-large, a plan could be found for nominating these so that many of them would come from the southern counties and rural towns elsewhere, and so that different trades and professions would be represented. Farmers, fishermen, trades-union leaders, lawyers, business men, etc., might all be given a place among the nominations. In this way the convention would fulfill the three ideals. It would contain able men, give a voice to the various important groups, and be small enough to deliberate satisfactorily.

Size of Districts for Local Delegates

If there are to be local delegates, the best results would be obtained if the districts were fairly large, not over a dozen in the State. Several rural towns could be combined into a district re-

sembling the congressional district used in the Massachusetts convention. Our twelve judicial districts might serve as an approximate guide.

Or else the five counties might form a starting point, the rural portion of each being treated as a district and each city as a district. Under such schemes, each district might have the same number of delegates, preferably two or three. Although most of the cities would then be under-represented, the big number of delegates-at-large would offset the inequality.

However, history is probably too strong too allow new kinds of districts for the convention. Existing political lines may have to be followed unless local delegates are to be omitted altogether. The pending convention bill is drawn in this way, apportioning the local delegates to cities and towns exactly like members of the House of Representatives.[3]

Analysis of the Pending Bill

The scheme of the pending bill raises three objections. It makes too large a convention. It gives a preponderant power to the cities and to one political party. It allows too few delegates-at-large (25) in proportion to the 100 local delegates. If a combination of delegates-at-large and local delegates is to be used, it would be more satisfactory to follow the apportionment of the Senate for local delegates and increase the number of delegates-at-large.

The best feature of the pending bill is the clause allowing a city or town to choose as a delegate a person living anywhere in the State. This was also permitted by the convention statute of 1853. In this way the inhabitants of a city or town can choose the man in whom they have most confidence regardless of his residence.

Political Factors Affecting Apportionment of Delegates

The difficulty about discussing any scheme is that it is not going to be considered entirely on its merits. The question invariably arises—what effect will this proposal have upon the action of the convention in re-districting the General Assembly? The Democrats want to frame a convention which will surely apportion the Assembly equally. The Republicans desire to arrange the convention so that the existing apportionment of the Senate will not be much disturbed. Thus the unfair distribution of seats in the Assembly now is likely to be a fatal obstruction to a successful convention. This is very unfortunate, because a convention could settle many important issues besides reapportionment.

[3]See Appendix A for the apportionment of Representatives and local delegates.

It seems to me essential to lift this whole matter out of partisan politics by some kind of immediate negotiations between the leaders of the two parties as to the form of the convention statute. Furthermore, both parties must agree now that decisive changes will be made in the apportionment of the Senate. If that question could be got out of the way, other difficulties about planning the choice of delegates to the convention would probably disappear.

After all, revising the Constitution is a job for the convention and not for the General Assembly. The majority party in the Assembly ought not to try to finish this job before the convention is even chosen.

Hopes for reapportionment of the Senate and other badly-needed reforms may be accomplished without an overwhelming preponderance of one party in the convention. The fulfilment of those reforms will best be obtained through the presence of numerous delegates-at-large, the endeavor of all persons concerned in the convention to be really fair, and a satisfactory plan for nominations and elections of delegates. What that plan should be, is the subject of the next three articles.

VIII

PARTY LINES IN THE CONVENTION BILL—THE PARTISAN METHOD OF NOMINATIONS.

The hardest problem in planning for the proposed Rhode Island constitutional convention is to determine the part that political divisions should play in the choice of delegates.

Three Methods for Nominating Delegates

Past conventions in this and other States have developed three methods of solving this problem. The partisan method allows full scope for party differences. The non-partisan method tries to keep them out of the convention altogether. The bi-partisan method gives the two parties either equal shares in the convention or else a representation roughly equivalent to their strength among the voters.

These three methods will be discussed separately in three successive articles, in an endeavor to find a plan that will enable the convention to accomplish needed reforms in the most satisfactory way.

Method of Party Nominations in Pending Bill

The first or partisan method, which forms the subject of the present article, makes no distinction between a constitutional convention and an ordinary political contest. Everything proceeds just as if a legislature were getting elected. Republicans and Democrats nominate their own candidates for every vacancy in the regular way. Party emblems appear on the ballots. Each party tries to elect as many delegates as possible, the more the better. This method was used in the Illinois convention of 1920, and in the New York convention of 1915, where the bitterest struggles concerned the relations between New York City and the rest of the state.

The pending Rhode Island convention bill is based on the same method. The reason for this is clear. The Democrats want a

thorough-going reapportionment of the General Assembly. They know that this purpose cannot be accomplished if the convention is controlled by their opponents or is deadlocked. Hence they have proposed a plan that will probably make nearly three-quarters of the delegates Democrats.

Although I think that this purpose of reapportioning the Assembly is just, I believe that it can be accomplished more fairly and safely by a different plan, to be outlined in a later article [X], which will avoid two serious objections to the bill as now drawn.

This Discourages Choices According to Ability

The first objection to the pending bill is that it discourages the voters from thinking for themselves and trying to send the best possible delegates to the convention. Instead, the plan in the bill will induce practically all the voters to vote a straight ticket for the men nominated by the party committees,[1] even if some of those officially selected candidates are unfit to serve in a convention.

To show how the bill will work, let us put ourselves in the place of a Providence voter unfolding his convention ballot in the polling booth. He will be confronted with two enormously long columns, each containing the names of 50 persons. The Republican column will have 25 candidates for delegates-at-large selected by the Republican State Committee, and lower down 25 candidates for Providence delegates selected by the Republican city committee. The Democratic column will have two similar groups of 25 candidates each selected by the corresponding Democratic committees. Somewhere else will be a column of independent candidates proposed by nomination papers. This list will probably be shorter since the bill makes nomination papers rather difficult.

Out of this mass of over 100 names, the Providence voter is to choose 50 delegates. He never had such a task before in his life. He is accustomed to ordinary State ballots, where he had to pick out his choices for Governor and four other general officers, and

[1]The bill was amended in committee to have nominations by party conventions. See §§ 3, 4, in Appendix E. This does not substantially affect my objections. Also, according to the Providence *Journal*, the conventions would be managed by the present Representatives, and not free bodies.

then one Senator and one Representative—only seven names in all. But 50 is seven times seven and more. What will be the voter's reactions?

In order to get the best possible men into the convention, he ought to examine all the names on the ballot and decide whether each candidate, considering his party, his ability, and his character, will be the kind of man to frame desirable constitutional provisions. Having finished this survey of all the names, the voter should if he is thinking for himself mark his crosses on the ballot, most of which will naturally be in the column of his own party but some for exceptionally good men in other columns.

That is the way to obtain a really successful convention. But will anything of the sort happen? How can a voter inform himself about the qualifications of 50 or more persons? Will he go to the endless trouble of split voting for 50 separate crosses? Human nature being what it is, he will probably follow the line of least resistance and quickly put all his 50 crosses in a single column under the eagle or under the star.

The result will be that very few Republican electors will vote for good Democrats or vice versa, the independent candidates will all be snowed under, and the whole party slate of the dominant party will be elected, regardless of ability and other qualifications. Nothing will count but party affiliations. Since the Democrats have a majority in Providence, the 25 Providence delegates will not really be picked out by the voters but by the Democratic city committee. Similarly, any 25 delegates-at-large selected by the Democratic State committee will be sure to sit in the convention.

Once the Democratic committees are given these powers of selecting all the delegates-at-large and all the Providence delegates, who together form two-fifths of the convention as fixed by the pending bill, then, no matter how high the motives of the committee-men, they will be under strong temptation to appoint influential politicians as delegates. It will be very hard for the committees to adhere to the standard laid down by Lieutenant Governor Quinn:

"The best minds in the State should sit in the convention."

Pending Bill Under-represents Minority Party

A second objection to the pending bill is that it gives the minority party a much smaller share in the choice of delegates and the deliberations of the convention than the strength of that party among the voters deserves. The Lieutenant Governor asked the Republicans to co-operate in the convention instead of opposing it. He said:

"How much better it would be for the Republican party to take a hand, to lend its best men to the job."

The pending bill makes it very difficult for the Republicans to send their best men to the convention. For example, it prevents all the 30,000 Republican voters in Providence from exercising any effective thought in the matter. Although almost two-fifths of the Providence voters last November [1934] were Republicans, all the Providence delegates will be Democrats. Although over two-fifths of the voters in the whole State were Republicans, all the delegates-at-large will be Democrats.[2]

The 30,000 Republicans in Providence can go through the motions of voting for Republican candidates for city delegates and delegates-at-large, but no matter how able these candidates may be, not a single one of them will be elected under the pending bill. For all practical purposes these voters might as well stay home from the polls.

In the same way, none of the 75,000 Republicans in the rest of the State will have a part in picking out any good Republicans as delegates-at-large. Only those Republicans who happen to live in towns or cities with a Republican majority will have any opportunity to influence the deliberations of the convention, and all that they can do is to select good local delegates.

In order to get a satisfactory convention, the 105,000 Republicans in the State should have some opportunity to help get the best minds of the State as delegates-at-large, and the 30,000 Republicans in Providence should be able to send at least a few local delegates to

[2] *Vote for Governor in November, 1934*: Whole State—Green (Dem.) 140,239; Callan (Rep.) 105,130; Coldwell (Soc.) 2,316. Providence—Green, 51,523; Callan, 30,781; Coldwell, 816.
The registered voters total 298,417 in the State, and 101,407 in Providence.

voice their interests. Since the new constitutional provisions are to affect Republicans as well as Democrats, the State cannot afford to throw away the co-operation of two-fifths of its citizens in any such way as the pending bill proposes.

A distribution of delegates proportional to the strength of the three parties in the State last November would give the Democrats 71 members of the convention, which would insure them a reasonable opportunity of reapportioning the General Assembly.

The pending bill will produce, according to estimates, 92 Democratic and 33 Republican delegates. This is so unfair that the convention is bound to be an object of resentment on the part of every Republican. Such a one-sided body of men will probably not deliberate sufficiently before framing constitutional provisions, and these provisions will be bitterly opposed at the polls by a solid Republican vote, which may succeed in defeating them.

Partisanship in Convention More Objectionable than in Legislature

It is true that in the election of a legislature, the representation of the party in power usually exceeds its strength among the voters. It is probably desirable to have exaggerated majorities in a legislature. For example, if one party has a little more than half the voters, it is worth while that it should have much more than half of each House of the General Assembly.

The reason for this is that a legislature should be able to act quickly and decisively. The main business of a government is to govern. It has to get things done and get them done in a hurry. It is acting for immediate emergencies and should not be constantly embarrassed by legislative deadlocks. If the legislature makes mistakes, these can be corrected easily when the other party gets into power. A law that works badly can simply be repealed by the next legislature.

A constitutional convention is a very different matter. It is not taking care of short-time emergencies but of long-time problems. Its purpose is not merely to get things done, but to get them done right. It is making provisions which will affect the members of both parties

for years to come, during which political and social conditions may completely change.

The mistakes of a convention cannot be easily corrected. If they are ratified by the people, they can be changed only by another vote of the people. Thus if the proposed convention is overwhelmingly controlled by one party and adopts partisan provisions that are ratified at the polls by a bare majority, then even if these provisions work very badly now the State cannot get rid of them except by another expensive constitutional convention or by the slow process of a separate amendment.

On the other hand, if the constitutional provisions forced through a packed convention are rejected by the voters, a large amount of money has been thrown away. In any event, mistakes will be less probable if the convention contains a strong minority representation.

Therefore, the convention bill should be revised, if possible, so that the convention will be chosen by the whole people and not mainly by the leaders of the party now in power.

Conclusions

The two defects of the pending bill are: first, that it throws the selection of delegates into the hands of party committees who can be practically certain that their nominations will be accepted by the voters of the party; and, secondly, that it does not make enough use of the Republican minority's help in getting the best men into the convention or in framing good constitutional provisions.

Succeeding articles will examine the non-partisan and bi-partisan methods to see whether they can be made to produce a convention that will be free from these defects and at the same time calculated to accomplish needed reforms.

IX

SHOULD THE CONSTITUTIONAL CONVENTION NOMINATIONS BE NON-PARTISAN?[1]

The preceding article took the position that it would be a mistake to fight out the choice of delegates for the proposed convention on ordinary party lines. It pointed out two objections to the pending convention bill. First, it will induce practically all the electors to vote a straight party ticket, so that in effects the delegates will be named by party committees, who will be strongly tempted to act on party considerations alone. Second, by assuring a solid block of 25 Democratic delegates-at-large and 25 Democratic delegates from Providence, it deprives the large number of Republicans in the State, especially those in Providence, of any adequate chance to help in getting good Republicans into the convention or in framing desirable constitutional provisions. In short, it tends to produce a Democratic convention, rather than a Rhode Island convention. Therefore, the convention bill should be revised to handle party lines in some other way.

Two different methods have been used in past constitutional conventions in some other states, the non-partisan and the bi-partisan methods. We shall consider whether either of these will produce a more successful convention than the pending bill. It will be necessary to remember one practical consideration throughout the succeeding discussion. No plan is likely to become part of the convention statute unless the party in power is convinced that it will enable the convention to reapportion the General Assembly.

Non-partisan Method Used in Latest Massachusetts Convention

The non-partisan method, which is to be discussed in the present article, assumes that constitutional conventions are planning far ahead and should not be distracted by temporary party issues. Therefore, it tries to disregard party lines altogether in the process of choosing delegates.

A good example is the Massachusetts convention of 1917-18. The

[1]Published in Providence *Evening Bulletin* March 30, 1935.

convention act[2] provides that all the candidates shall be nominated by "nomination papers without party or political designation." Nominations for each candidate-at-large are to be signed by at least 1200 voters. A candidate from one of the sixteen Congressional districts may be nominated by 500 signatures, and from a legislative district by 100 signatures. Nominations for local delegates are thus more easily obtained than under the pending Rhode Island bill, which requires 800 signatures for independent Providence candidates. These nomination papers are to be filed two months before the election, giving ample time for the voters to consider the merits of the various candidates and their attitudes on the issues to come before the convention.

In order to prevent the ballot from being overcrowded, the Massachusetts statute says that if the number of candidates is more than three times the number of vacancies, either for delegates-at-large or for delegates from a district, then the nominations are to be cut down by a non-partisan primary held a month before the election.

For example, suppose that 50 candidates-at-large were nominated to fill the 16 vacancies. At the primary the 32 persons having the highest number of votes would be finally nominated and go on the ballot at the election. Similarly, the primary would reduce the number of district candidates to twice the number of vacancies. At the special election each person can vote for all the delegates-at-large, for one delegate from his Congressional district, and one from his legislative district. No party or political designation is to appear on the ballots either at the primary or at the election. Under this method the names of the candidates would not be separated into party columns as under the pending Rhode Island bill, but would be arranged in a continuous order either alphabetically or by lot.

Completely Non-partisan Method Unsuited to Rhode Island

Some features of this Massachusetts plan would be advantageous for adoption for the proposed Rhode Island convention, but as a whole this plan would not solve our difficulties. *In the first place* it

[2]Mass. Laws (1916) chapter 98.

would stand a very small chance of adoption by the present General Assembly. It is too much of a gamble. Nobody could tell what party would have a majority in the convention until all the ballots were counted. The Democratic leaders would have no assurance of being able to reapportion the General Assembly. In Massachusetts it was possible to overlook party lines because the important issues before the Massachusetts convention did not correspond to party divisions. The chief controversy concerned the initiative and referendum as to which Republican and Democrats were found on both sides. Redistricting the General Assembly is definitely a party issue, so that an attempt to exclude party considerations from the convention is probably a refusal to recognize realities.

Secondly, if other features of the pending bill are to be retained, a non-partisan ballot would make it difficult for the voters to choose intelligently the large number of delegates for whom he would have to vote. For instance, if the Providence electors are to vote for 25 delegates-at-large and 25 city delegates, the number of candidates will be at least 100. So large a number of names is calculated to perplex the voter even if the names are grouped in party columns; but the voter will be more confused than ever if 100 candidates are laid before him with no party information whatever. The Providence elector will be forced to thread his way through 100 names, many of them previously unknown to him, without anything to tell him about the views of all these men. The confusion will be especially serious if the election is set at an early date after the nominations, and not after a two months' interval as in Massachusetts. Inasmuch as the chief issue in the Rhode Island convention is the reapportionment of the General Assembly, it seems only fair that the ballot should enlighten the voters by telling them how each candidate stands with respect to this issue.

Finally, for the sake of getting the best men into the convention it would probably be a mistake to rely on nomination papers alone for selecting candidates. The state and local political committees do, in fact, know a great deal about the qualifications of possible delegates. The citizens should not be wholly deprived of such knowledge. The party leaders can be stimulated to make a good selection by the realization that independent candidates will also be in the field, who are likely to win if the party nominations are bad. If the party leaders can be imbued with the ideal of a convention of the ablest men and will give the State the benefit of their experience in selecting candidates, a list consisting partly of official nominees and partly of independent nominees will probably be more satisfactory than a list obtained solely from nomination papers.

For the reasons given, a completely non-partisan convention would be out of place in Rhode Island at the present time. Any attempt to behave as if political parties were wholly immaterial would be running away from the facts. A satisfactory plan for the convention must recognize that party differences exist on important constitutional issues with which the convention will have to deal. Therefore, political parties must be allowed to participate in the nomination and election of delegates, although it is not necessary to make the choice of delegates a completely partisan contest like an election of the General Assembly. The next article will show the possibility of a middle course, which will enable the convention to reflect political differences without being dominated by them to the exclusion of other considerations.

Giving Scope for Independent Candidates

The upshot of the preceding discussion is, that the party committees should be allowed to name candidates, but it would be an improvement on the present bill if these official nominees had to face a genuine competition from persons put on the ballot by nomination papers. The committee of a majority party would be less sure of getting its selections automatically ratified by the voters if two provisions are made in the bill to give ample scope for independent candidates.

First, nomination papers should be made easier. The law should permit several candidates to be placed together on the nomination paper instead of requiring a new paper for every nominee as in the pending bill. If the party committee can name a slate of several

names, an independent group of citizens should have the same privilege. At the same time the number of signers required might be reduced, at least for naming local delegates.

Second, party emblems should not appear on the ballot and it should be impossible for the elector to vote a straight ticket by making a single cross. He will do more thinking for himself if he is obliged to mark every name selected, whether he votes for independent candidates or official candidates listed under the names of the parties without emblems.[3]

Conclusions

These provisions and others of a bi-partisan nature, to be discussed in the next article, will make it possible to adopt a plan which will not enable either party to swamp the convention, but will give each party a fair representation based on its strength among the voters and also stimulate each party committee to name the best men in the party as candidates for the convention.

[3]The convention bill permitted party emblems, which I thought undesirable because they tend to stimulate emotion rather than thought. The bill, however, did not (as I suggest in the text) allow straight voting by a single cross in the circle; it required the voter to put a cross opposite every name selected. The tremendous congestion in the General Assembly is indicated by the inability to get anything except a press summary of the convention bill for some weeks. Hence my mistake.

X

BI-PARTISAN NOMINATIONS TO THE CONSTITUTIONAL CONVENTION.[1]

In discussing the difficult problem of handling party lines in choosing delegates for the proposed constitutional convention, we have seen reasons in the two preceding articles for rejecting two of the three methods available.

The method of the pending convention bill, which allows the election of delegates to be fought out by the two parties in the ordinary way, just like an election of Senators and Representatives, discourages the voters from picking out the best candidates for themselves and deprives the minority party of a chance to send any of its best men as delegates-at-large or as delegates from Providence. The majority party, with 60 per cent. of the voters in the State and in Providence, will have under the pending bill 100 per cent. of the delegates-at-large and 100 per cent. of the Providence delegates.

On the other hand, the non-partisan method, which keeps party names off the ballots and the nomination papers, is unsatisfactory because it runs away from the facts. It fails to take account of party differences on important constitutional issues, prevents the ballot from giving the voters information they ought to have about the political views of candidates, and fails to give the majority party any assurance that needed reforms will have a reasonable prospect of success in the convention.

In other words, the pending bill gives parties too much importance and the non-partisan methods denies them any importance. Is a middle course possible?

Bi-partisan Method Described

This brings us to the third way of treating political parties in a convention—the bi-partisan method, which aims to give both parties either equal shares in the convention or else representation equiva-

[1]Published in Providence *Evening Bulletin* April 1, 1935, the day on which the Supreme Court declared a constitutional convention valid. See Appendix B.

lent to their strength among the voters. It recognizes that new constitutional provisions will apply to members of both parties, and so ought if possible to be framed by both parties. It aims to carry out the principle that the process of constitution-making will be most successful if both parties are encouraged to send their best men to the convention.

The bi-partisan method was used in the Pennsylvania convention of 1873, which framed the existing constitution of the State. It is the basis of Lieutenant Governor Quinn's plan for the proposed Rhode Island convention.[2] Although the Lieutenant Governor's plan is not embodied in the pending convention bill, it is, I believe, much superior to that bill. At the same time, his plan might be more acceptable to his political associates if it were slightly modified.

The Scheme Proposed by the Author

Accordingly, I venture to submit the following scheme for the nomination and election of delegates to the convention. It brings into the Lieutenant Governor's plan a few changes suggested by the Pennsylvania convention and by general discussions of constitutional conventions. Although this scheme is not the work of a citizen of the State, it will, I hope, serve as a basis for discussion among citizens who want a successful convention. Its main purposes are to be fair to both political parties and to get the best minds in the State into the convention.

For the sake of simplicity, I shall confine the statement of the scheme at the outset to the choice of delegates-at-large, and speak later of its possible application to delegates from towns and cities.

1. Minority Representation among Delegates-at-large

The central feature of the scheme is that each elector votes for only a part of the whole number of delegates-at-large. Assume 40 delegates-at-large, a very suitable number proposed by the Lieutenant Governor. Each elector would then vote for 24 names, which is three-fifths of the number to be chosen. The probable result, as will be explained in a moment, would be that the convention would con-

[2]See Appendix C.

tain 24 Democrats and 16 Republicans as delegates-at-large. The two parties would thus divide the delegates-at-large in roughly the same way that they divided the voters of the State last November, when the Democrats polled about 140,000 votes for Governor and United States Senator and the Republicans about 105,000 votes.

2. Nominations of Delegates-at-large

As to nominations, the State committee of each party would names 24 candidates[3] to go on the ballot as Republicans and Democrats. The committees would be asked to choose the best men from different regions and occupations in the State. Nomination papers with 1,000 signers could also be used to nominate other candidates, who would be labeled according to their views as Independent Republicans, Independent Democrats, or Non-partisans. Several persons in either of these groups could be listed on one nomination paper. (Socialists and other small parties could also name candidates through committees or nomination papers, but I omit them to shorten this description of the scheme.)

3. Placing Delegates-at-large on the Ballot

On the ballot the delegates-at-large would be arranged in groups —Republicans (nominated by the State committee), Independent Republicans (nominated by papers), Democrats, Independent Democrats, Non-partisans. There would be no eagles or stars, no way to vote a straight ticket by making one cross. The elector would have to mark 24 crosses opposite the names of 24 candidates whom he selected. The party names would give him information to influence his decision, but he would have to think carefully about voting and would thus have time to consider the ability and character of the candidates as well as their political affiliations.

How Proposed Scheme Should Operate

This scheme should induce each State committee to nominate 24 good candidates. In that event, most Republicans will vote for the

[3]These could be nominated by party conventions, as in the final form of the bill.

24 official Republican nominees and most Democrats for the 24 official Democratic nominees. Since there are more Democratic voters, all of the 24 Democrats nominated by the Democratic State committee will then get more votes than any of the Republicans. Consequently, the 24 Democratic candidates will be elected. The other 16 vacancies among the delegates-at-large will be filled by the 16 Republican candidates who are most in favor with Republican voters.

However, suppose that one party committee puts on its list of candidates four men who are definitely unsuitable to go to the convention. Many voters in that party may refuse to vote for these four undesirables, and swing over to four men among the opposition or independent candidates who are esteemed throughout the State regardless of party affiliations. The scheme presents no difficulties to the voter who wants to select the best men. Since he has to make 24 crosses anyway, it is as easy to scatter them through different groups of candidates as to mark all 24 against the names on the list made up by his own party committee. The possibility of such bolting ought to put both State committees on their mettle to name the best possible candidates.

The plan of allowing each elector to vote only for a part of the delegates-at-large was followed in the Pennsylvania convention of 1873.[4] There were 28 delegates-at-large and each elector voted for 14 candidates, thus tending to give each party 14 delegates-at-large. The scheme described above simply alters the plan slightly, to give the majority party its proportionate share of delegates-at-large.

Comparison of Proposed Scheme with Quinn Plan and Pending Bill

The proposed scheme has tried to avoid some difficulties presented by Lieutenant Governor Quinn's plan, excellent as it is.

In the first place, his suggestion for an equal representation of both parties in the convention (20 Democratic and 20 Republican delegates-at-large) appears to be unacceptable to Governor Green and other Democratic leaders. Instead my scheme assures more to

[4]Penn. Laws (1872) p. 53. This is reprinted in Appendix G.

the Democrats,—three-fifths of the delegates-at-large if they nominate good candidates. Although the pending bill gives them every delegate-at-large, they cannot fairly object if they get a number proportionate to their popular majority. Of course, if equality is desired by the General Assembly, it could be readily attained under my scheme by allowing each elector to vote for only half of the total number of delegates-at-large as under the Pennsylvania statute.

Another difficulty in the Lieutenant Governor's plan is this. If the Democratic and Republican State committees each nominate 20 delegates-at-large, which makes 40 candidates, and every elector votes for 40 names, all the elector has to do is to vote for everybody on the ballot. Then where do the people come in? The whole convention will be appointed by the two committees.

It may be argued that more candidates can be put up by nomination papers, so as to give the voters some choice. True enough, but that would only take us out of the frying-pan into the fire. Besides the 20 Democrats nominated by the State committee, 20 other well-known Democrats can be placed on the ballot through nomination papers. This will make 40 Democratic candidates in all. If every elector can vote for 40 names, it will take only a little judicious advertising to make practically every Democratic elector vote for the 20 Democrats named by nomination papers as well as for the 20 named by the party committee. Then, since a majority of the voters are Democrats, all the 40 Democratic candidates will be elected and no Republicans. The plan for a bi-partisan convention will be completely wrecked.

The only way out, as I see it, is to limit each elector to part of the delegates-at-large. Then both parties will be fairly represented among such delegates. There is nothing hard and fast about this scheme. For example, if only 25 delegates-at-large are desired, as in the pending convention bill, each elector should be limited to 15. This will probably give the Democrats 15 delegates-at-large and the Republicans 10, a distribution superior to the pending bill which gives the Democrats 25 and allows the 105,000 Republicans in the State no chance to send their best men as such delegates.

4. Local Delegates and Minority Representation

If there are to be local delegates, a similar scheme can be used. In the Pennsylvania convention there were three delegates from each Senatorial district, and each elector voted for two, thus tending to give the minority party in a district one delegate out of three. If Providence is to have 25 local delegates elected from the whole city, as the pending bill provides, minority representation could be obtained if each elector voted for only 15. Then Providence would probably send 15 Democrats and 10 Republicans to the convention, a representation roughly proportioned to the vote of the two parties in the city last November.

It would be fairer, however, to divide the city into several districts. There is as much difference between the East Side and the West Side as between North and South Kingstown, and if the people of those towns vote separately the various parts of Providence should have the same privilege. A good plan, if the number of delegates is to correspond to Representatives as in the pending bill, would be to group the 25 Assembly districts in Providence into five divisions, each to send five delegates. In this case, each elector would vote for three delegates, so that two delegates in each of the five divisions would come from the minority party.

Of course, my scheme would not apply to districts electing only one delegate. For example, if the local delegates are to be based on the House of Representatives, no minority representation could be obtained in the small towns that have one Representative; but it could be obtained in the larger towns and all the cities. If local delegates are to be based on the Senate, minority representation would be possible only in Providence, where each elector could be limited to three delegates.

It is hard to discuss the choice of local delegates with precision until we know how they will be districted; but minority representation ought to be employed under any plan except that of electing one member from every district, as in the existing House of Representatives. Local delegates may prove unnecessary if the state committees nominate candidates-at-large from all over the State.

Proposed Scheme Fair to Both Parties and Promotes Ability

The suggested scheme has many advantages. It is fair to the Democrats, because it assures them a majority of the convention corresponding to their majority among the voters, so long as good Democratic candidates are nominated. It is fair to the Republicans, because it prevents the convention from being overwhelmingly controlled by their opponents and gives the Republicans a share in the delegates-at-large roughly equivalent to Republican strength among the voters, so long as good Republican candidates are nominated. It gets the benefit of the experience of the leaders of both parties in the choice of candidates and stimulates them to name the best men in each party. It gives a reasonable opportunity for independently nominated candidates to get elected if they are distinctly superior to candidates named by the party committees. Thus the scheme tends to get the ablest minds in the State into the convention.

XI

THE ADOPTION OF THE WORK OF A CONSTITUTIONAL CONVENTION BY THE PEOPLE.[1]

The people usually participate three times in the process of constitutional revision through a convention. First, they vote on the question of holding a convention. Second, they elect delegates. Third, they adopt or reject the amendments or new constitution framed by the convention. Previous articles have argued for the desirability of letting the people decide whether they want a convention, and have discussed the advantages and draw-backs of various plans of choosing delegates. Now we come to the final step in constitution-making, and consider what kind of popular vote should be required for ratification of the work of the convention.

Ratification by Three-fifths or by a Majority?

The pending Rhode Island convention bill reads:

"If any revision or amendment (made by the convention) be adopted by a majority of the people, the Constitution shall be taken to be revised or amended accordingly."

Compare this clause with Article XIII of the existing Constitution, that a constitutional amendment proposed by the General Assembly must be adopted "by three-fifths of the electors present and voting thereon."

The outstanding question is whether this three-fifths rule should apply to constitutional provisions framed by a convention, instead of the majority rule specified in the pending bill.

Who are "the people"?

Before deciding this question, let us find out what we really mean when we say that constitutional changes must be ratified by "the people". We certainly do not intend that all the persons who

[1]Published in the Providence *Evening Bulletin* April 6, 1935, when it was becoming probable that no convention bill would be passed this year.

will be affected by the amendments shall have the right to vote on their adoption. This would be obviously impossible, for many of these persons are young children and many more are not yet in existence. Every constitutional provision will necessarily apply to large numbers who never had a chance to vote for or against it. For example, of the 600,000 people who are now governed by the Rhode Island constitution, probably not one was alive in 1842. Constitutional government, as Edmund Burke said, is

"a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born."

Since a new scheme of government cannot possibly be submitted for the approval of everybody who will live under it, we do the next best thing. We treat the qualified voters for the time being as a fair sample of successive generations of citizens and we give those voters a decisive voice on the question of adoption. They are "the people" for the purpose in hand.

Only Qualified Voters who Come to the Polls are Considered

This brings us to our main problem. What portion of these qualified voters should be required to vote for a proposed constitutional provision, in order to ratify it? We want a workable plan for changing the constitution to meet the new needs that arise as time goes on. This plan must not make amendments so easy that they are like ordinary laws; and it must not make them so difficult that the living will continue indefinitely to be governed against their will by the ideas of men long dead.

Suppose, for instance, that an amendment was not adopted unless a majority of the whole number of qualified voters cast ballots in favor of this amendment. This might be a logical plan, but it would be unworkable. Such a majority would almost never be obtained, because many voters fail to participate in every election. This plan would make it practically impossible to change a constitution.

Consequently, everybody agrees to count only the voters who come to the polls. The dispute boils down to this. Is a new constitutional provision ratified if more electors vote for it than against it; or shall we require a larger fraction than this bare majority to vote for it, for example, three-fifths?

Bare Majority can Ratify—Usual Plan

The prevailing rule for popular ratification of constitutional changes framed by conventions is, that they are adopted if the vote for them exceeds the vote against them. Of the nineteen States whose consitutions expressly provide for popular votes on the work of conventions, fourteen, including New York, have this simple majority rule, while five States, as will be seen later, insist on a larger vote in favor of adoption. Oddly enough, seventeen States have constitutions authorizing conventions without mentioning popular ratification. Doubtless, several conventions in these States have referred their work to a majority vote of the people; but several southern constitutions disenfranchising Negroes have gone into force without any opportunity for the voters to express an opinion.

Particularly important is the practice in States with constitutions like Rhode Island's, which do not mention conventions. In these eleven States, the legislature can decide for itself how large a popular vote is necessary for ratification. Two of these States, North Dakota and Vermont, have had no conventions, and two southern States, Louisiana and Mississippi, dispensed with any popular vote after their latest conventions. However, a majority of the persons voting thereon was sufficient for adopting the work of the most recent conventions in seven of these States with constitutions like ours—Massachusetts, Connecticut, New Jersey, Pennsylvania, Indiana, Arkansas, and Texas. Here again, the simple majority rule is favored.

Rhode Island traditions lean toward the same majority rule for constitutional conventions. The existing Constitution was to go into force if approved by a majority of those voting thereon, although in fact it was adopted by the overwhelming vote of 7032 to

59. The People's Constitution and the Freemen's Constitution in 1841 were also submitted for approval by majority votes.

Although no convention has been held under the existing Constitution, the General Assembly arranged in 1853 for a convention whose work (if it had met) was to be ratified by a majority of all persons voting thereon. Thus only ten years after our Constitution came into force, the three-fifths vote required for ordinary amendments was evidently thought to be unnecessary for changes accomplished through a convention.

It is true that when the General Assembly in 1882, 1898 and 1899 submitted constitutional amendments authorizing conventions, they insisted on ratification by three-fifths of the voters; but it is doubtful whether constitutional practice today should be much influenced by amendments that were defeated at the polls.

Alternatives to Constitution-making by Bare Majority

Perhaps Rhode Island experience on this matter is too meagre to be conclusive; but so far as it goes it seems to treat a majority vote as sufficient for ratifying the work of a convention. The only indication to the contrary is the three-fifths rule for amendments submitted by the General Assembly. Do the reasons for that rule also apply to provisions framed by conventions?

The three-fifths rule is a method of avoiding an obvious danger of the bare majority rule. A constitutional amendment, whether submitted by the legislature or by a convention, may excite so little public interest that only a small portion of the population will vote for it and even fewer against it. Perhaps if the consequences of the new measure had been wisely understood, it would have been overwhelmingly defeated. Yet it is adopted, almost by default.

Various plans have been used to escape this danger of constitution-making by a few voters. Illinois and three Western States require provisions framed by a convention to be accepted by a majority of all the persons voting at the particular election, and not merely by a majority of those who vote for or against the constitutional provision. To show how this method would work in Rhode Island,

suppose that the amendments framed by the convention are put on the ballots at the election in November, 1936, that 250,000 electors vote for governor, 100,000 vote in favor of the amendments, and 50,000 against them, while 100,000 voters express no opinion on the amendments one way or the other. Under the Illinois rule, the amendment would not be adopted because they need 125,001 votes, that is, a majority of the total vote for governor. Such a rule is in force in many States for the ratification of amendments submitted by the legislature, and has proved too severe. Much-needed amendments have often failed of adoption, because a large number of the voters at the particular election neglected to act on the amendments.

Another plan is to require a larger fraction than one-half of those voting on the amendment, to vote for it in order to adopt it. Thus, under the New Hampshire constitution, amendments submitted by a constitutional convention are not ratified unless they are approved by two-thirds of the persons voting on the amendments. Similar reasons explain the Rhode Island rule requiring a three-fifths' vote in favor of amendments submitted by the General Assembly.

Three-fifths Rule for Legislative Amendments Not Necessarily Applicable to Work of Convention

The argument may be made that the reasons for this Rhode Island rule as to ordinary constitutional amendments also apply to provisions framed by a convention. However, there is a real difference between the two situations. An amendment submitted by the General Assembly may not have aroused much public attention, and consequently the vote on it will be light. On the other hand, the work of a constitutional convention is much more likely to be the subject of widespread discussion among the great mass of voters. Such a convention has sat for weeks or months and been a focus of interest for the whole community. The provisions framed by it are likely to be warmly supported by some newspapers and public speakers, and bitterly opposed by others. This means that the work of the convention will probably draw a rather heavy vote.

Better Remedies Available to Avoid Constitution-making by Light Majority Vote

Therefore, it seems safe to adhere to the practice when the existing constitution was adopted, and require ratification of the work of the proposed convention by only a majority of those voting thereon. In so far as the danger of a light vote exists, it will be better to try some other plan of avoiding it than that three-fifths rule. There are several practical devices for stimulating public interest in new constitutional provisions that are likely to be effective. One of these is the circulation of copies of the provisions framed by the convention well in advance of the election. Every effort should be made to discuss these provisions freely in the press and at public meetings. Another device, which has worked well in other States, is to put the new constitutional provisions on a special ballot. Experience shows that if the voter is confronted with a long ballot containing the names of many candidates for offices, he gets tired after he has been marking these names for several minutes. His attention flags, and he is likely to overlook constitutional amendments at the bottom of the ballot. However, if the provisions are put on a separate ballot with a different color, the voter realizes immediately that here is something else that demands his action, and becomes much more alert to the need of voting for or against the constitutional provisions.

The best remedy for the dangers of the majority rule is to take steps to get out a heavy vote. Those persons who are doubtful about the wisdom of a constitutional convention ought to concentrate on a better fighting point than this dispute about the 10 per cent. difference between a majority and three-fifths. If the convention should frame undesirable provisions, the opposition must exert itself to enlist more than half the voters against them. If the work of the convention is good, it will probably command much more than a majority vote anyway. Since the advocates of a constitutional convention in Rhode Island have always emphasized the majority rule, an attempt to insist on the three-fifths rule would only arouse bitter resentment without much prospect of success. The majority rule

will be satisfactory if the convention is made the subject of thorough popular discussion from start to finish, so that a very large portion of the qualified voters go to the polls to express their opinions on the work of the convention.

General Assembly Ought Not to Ratify Work of Convention, Only the People

One more plan of dealing with the provisions framed by the convention is worth considering. The convention might submit these provisions to the General Assembly, and not to the people. The Assembly would then follow the method prescribed by Article XIII of the Constitution, and submit the work of the convention for popular ratification by a three-fifths' vote just like ordinary constitutional amendments. This plan would have the advantage of avoiding all constitutional objections to the validity of a convention, and it would also give the leaders of both parties a free hand in selecting the ablest men in the State for the convention. This plan would really make the convention a constitutional commission for advising the General Assembly, like the commission which sat in 1898. However, the revised constitution prepared by that commission and accepted by two General Assemblies was twice decisively defeated at the polls. Such an experiment is not very likely to be repeated at the present time. Successful constitutional revision is more likely to be accomplished by a genuine convention called by the people and elected by the people, and having its work submitted for approval by a majority of the people at an election that excites great public interest.[2]

[2]A week later, the General Assembly adjourned without providing for a constitutional convention, for there was far too much other business on hand. The different convention issues of 1936 are to be discussed in the next Dorr Pamphlet.

APPENDICES

APPENDIX A

Rhode Island Cities and Towns Arranged in Order of Size

Population and Number of Representatives[1]

City or Town	*Population*	*Representatives*	*Average Assembly District*[2]
PROVIDENCE	252,981	25	10,119
PAWTUCKET	77,149	10	7,715
WOONSOCKET	49,376	8	6,172
CRANSTON	42,911	5	8,582
East Providence	29,995	4	7,499
NEWPORT	27,612	4	6,903
CENTRAL FALLS	25,898	4	6,474
WARWICK	23,196	3	7,732
West Warwick	17,696	3	5,899
Bristol	11,953	2	5,976
North Providence	11,104	1	11,104
Westerly	10,997	2	5,498
Lincoln	10,421	2	5,210
Cumberland	10,304	2	5,152
Johnston	9,357	1	9,357
Warren	7,974	1	7,974
Burrillville	7,677	1	7,677
Coventry	6,430	1	6,430
South Kingstown	6,010	1	6,010
Barrington	5,162	1	5,162
Tiverton	4,578	1	4,578
North Kingstown	4,279	1	4,279
Smithfield	3,967	1	3,967
North Smithfield	3,945	1	3,945
East Greenwich	3,666	1	3,666
Portsmouth	2,969	1	2,969
Hopkinton	2,823	1	2,823
Middletown	2,499	1	2,499
Scituate	2,292	1	2,292
Glocester	1,693	1	1,693
Jamestown	1,599	1	1,599
Richmond	1,535	1	1,535
Little Compton	1,382	1	1,382
Exeter	1,314	1	1,314
Narragansett	1,258	1	1,258
Charlestown	1,118	1	1,118
New Shoreham	1,029	1	1,029
Foster	946	1	946
West Greenwich	402	1	402
TOTALS	687,497	100	6,857

[1]Cities are printed in capitals. The populations are those in the U. S. Census of 1930, but the House was last apportioned on the basis of a census in the previous decade. The figures, except the last column, are taken from Providence Journal Almanac (1938). The 1935 bill gave a local delegate for each Representative.

[2]Average districts in the Senate of 42 are the same as populations except in Providence, which has 4 Senators with an average district of 63,245. Other cities and the towns have one Senator each.

APPENDIX B

The Advisory Opinion of the Supreme Court

The Rhode Island Constitution contains no mention of a constitutional convention. Article XIII provides specifically for separate amendments by the following method: The General Assembly proposes the amendment by a majority vote of all the members of each House; the proposition (with the roll-call thereon) is printed and distributed to all town and city clerks, who publish it officially; the electors are thus informed of the proposed amendment and the votes of the legislators thereon when they choose the next General Assembly. After such new election, the proposition must again pass both Houses. Finally, the amendment is submitted to the electors, and if ratified by a three-fifths vote it is adopted and becomes part of the Constitution.

More general provisions in Articles I and IV declare that "the basis of our political systems is the right of the people to make and alter their constitutions", and that the General Assembly "shall continue to exercise the powers they have heretofore exercised, unless prohibited in this constitution." This last clause might conceivably be construed to continue the admitted power of the Charter Assembly to call conventions; but the advisory opinion of 1883[1] stated that this power was now impliedly "prohibited" by the specific method for amending itself imposed by the Constitution in the passage abstracted above.

The whole question was laid anew before the judges of the Supreme Court in January, 1935, when Governor Theodore Francis Green (now United States Senator) requested them to give their written opinion upon the following questions of law:

> "Would it be a valid exercise of the legislative power if the General Assembly should provide by law
>
> (a) for a convention to be called to revise or amend the Constitution of the State;
>
> (b) that the Governor shall call for the election, at a date to be fixed by him, of delegates to such convention in such number and manner as the General Assembly shall determine;
>
> (c) that the General Officers of the State shall by virtue of their offices be members of such convention;
>
> (d) for the organization and conduct of such convention;
>
> (e) for the submission to the people, for their ratification and adoption, of any constitution or amendments proposed by such convention; and
>
> (f) for declaring the result and effect of the vote of a majority of the electors voting upon the question of such ratification and adoption?"

The first question was obviously the main issue; the other questions were

[1]*In Re* The Constitutional Convention, 14 Rhode Island Reports, p. 649 (1883).

declared by the Court to be only subsidiary, and of no import unless the first question was answered affirmatively.

The Court wisely sought the assistance of lawyers and laymen, who were invited as friends of the Court to file briefs and (in the case of the bar) to make oral arguments. So far as I know, this sensible practice had not previously been adopted in the preparation of advisory opinions.

After taking several weeks to consider such briefs and arguments and to deliberate, the judges submitted their opinion[2] some time before the General Assembly adjourned. They were unanimous in overruling the opinion of 1883 and in upholding the validity of a constitutional convention, thus answering the first question affirmatively. The judges further agree in answering all the subsidiary questions in the affirmative except (c).[3] Here they replied that since a constitutional convention is an assembly of the people acting through their duly elected delegates, nobody else could select any of its membership. The General Assembly could not impose the Governor, the Lieutenant Governor, or other State officers upon the convention as delegates. Such persons must seek popular election if they wished to serve. However, the legislation could provide that the Governor or some other person should call the convention to order and preside temporarily while the body organized itself, and the convention could invite the Governor or anybody else to address or advise it.

The only division among the judges was about a question which was not asked directly, whether the power of the General Assembly to call the convention was subject to the condition that the people must expressly consent to the holding of such a convention. Four judges stated that such a popular vote was not necessary, although they hinted it was wise. Judge Baker, one of the two Republican judges, filed a separate opinion, considering it requisite to submit this question to the voters. It is interesting to find this done in the convention act of 1936, though not in the abortive bill of 1935.[4]

[2] *In Re* The Constitutional Convention, 55 Rhode Island Reports, p. 56 (1935). This opinion and the briefs on both sides are reprinted in the pamphlet cited in note 1 to the Table of Dates.

[3] As to this strange proposal to add five Democratic officers of the State to the delegates elected directly by the voters, the layman's brief quoted in Appendix D pointedly remarks (Advisory Opinion, page 459):

"Question (c) contemplates a procedure which is somewhat lacking in its appeal to common sense. Administrative Officers are not ex-officio members of a legislative body or of a body to which legislative prerogatives have been delegated. The Legislature cannot make the Governor or others members of the Legislature. That comes through vote of the people. If the Governor and others wish to be members of a body exercising legislative functions the proper course is for them to present themselves as individuals to the electors and stand or fall by the judgment of the electors as to their suitability for any desired position. The Legislature is going beyond its function when it proposes to stack the cards as to membership in a Convention ostensibly to be filled by candidates selected from and by the people."

Authorities on the negative side of this question were cited in briefs reprinted in Advisory Opinion, pp. 222, 240.

[4] See the fifth and sixth articles in this pamphlet.

APPENDIX C

Lieutenant Governor Quinn's Program for a Constitutional Convention

[*Providence Evening Bulletin*, Jan. 22, 1935, front page.]

A Constitutional Convention, exactly bi-partisan in its personnel, to draft and present to the people a progressive, liberal and sound document which will put Rhode Island in the forefront of well-governed States, is the ideal expressed today by Lieutenant Governor Robert E. Quinn to an *Evening Bulletin* interviewer.

In expounding what he himself believes should be written into the Constitution of the State and what he will work for, Mr. Quinn expressed the hope and the confidence that "real" leaders of the Republican party would co-operate with the Democrats in the achievement.

"I can conceive that almost complete agreement could be reached by the two great parties on this subject," he said. "Complete agreement on the manner of electing delegates, on the truth that the best minds of the State should sit in the convention; yes, even agreement of the personnel of perhaps 20 Democrats and 20 Republicans who would write the document.

"There is going to be a Constitutional Convention. That is certain. How much better it would be for the Republican party to take a hand, to lend its best men to the job? Outside of the manner of redistricting the State, I can see nothing to fight about. I can envision agreement between the men of two different political faiths.

"This is purely a political question. It should be worked out in the open for all to see. The industrial and banking interests of Rhode Island, which have in the past and perhaps do now fear some bogey of what the Democrats will do, will be shown conclusively that they have nothing to fear, that we are out to take nothing away from them, and that we want only to build a better government for our State."

Mr. Quinn was asked, as one of the leading advocates in the State of a Constitutional Convention, to outline his ideas on the subject.

He stated he made no claim to being a constitutional authority, and while he had certain ideas of what should go into the Constitution, he believed that the proposed convention should study the constitutions of other States and should confer with authorities on the subject.

Perhaps a sub-committee of the elected delegates to the convention should be created, he said, to gather the ideas of not only practical men such as Senator Norris, in whose State of Nebraska the unicameral legislative system has been put into practice, and Senator Borah, but with the theorists of perhaps Harvard and Brown Universities.

"The very best that is in existence in the shape of State Constitutions

should be studied and those articles peculiarly fitted to the needs of this State incorporated in the new document," he said. "The unicameral legislative system, for instance, should be studied. Perhaps the time has arrived for the creation of a single legislative branch in the interests of efficiency and economy.

"Prof. Leland M. Goodrich of Brown University, chairman of the Rhode Island branch of the Foreign Policy Association, expressed to me the opinion that governmental systems in this day should be formed to get things done rather than to prevent things from being done. It was all right in times gone by to have systems which would prevent things being done to the country, but perhaps that time has passed. I am not certain. I merely bring it forward as something worth study."

Always emphasizing that he was expressing his personal views only, Lieutenant Governor Quinn stated it was his belief that the House of Representatives should be reduced to perhaps 50 members or thereabouts, and the Senate to 20, and that the members should be elected at large in their various communities. The system of election from small districts, he said, has made for election of "small" men in many instances to the Legislature and does not bring the best men available into the legislative halls.

"Years ago, General Brayton, the Republican boss, districted the State and, when he had done it, declared the State had been made safe for the Republican party for a hundred years. Republicans of today must see now that he was wrong. The control has been shattered. The House is Democratic, strongly Democratic, and the Senate is nip and tuck and can go either way in any election. The system of district elections is no longer of any benefit to the Republican party and it should be ready to lend a hand in changing it so that better men will be elected to the Legislature."

Mr. Quinn said he would favor increasing the pay of legislators, making it worth while for men with businesses to run for office and to give the State the benefit of their ability. He would favor biennial sessions of the Legislature as a move for economy, and believes that annual sessions are not necessary.

More important, however, than any other consideration in regard to the Legislature, Mr. Quinn said, is that legislators should be barred from holding any other State office while serving in the Legislature, and they should be barred from election or appointment to any other such office during their terms in the House or Senate.

It is entirely wrong for legislators to elect themselves or to be appointed to other offices while serving in the Assembly, he said, and the Constitution should definitely prohibit it.

Lieutenant Governor Quinn also would have considered the question of a four-year term for the Governor, with the possible proviso that he could

not immediately succeed himself. Thus, he said, woud be removed the political element which tempts the Chief Executive, no matter how honest he may be, to trim his sails to the winds that may blow in the next election. Mr. Quinn said he did not advocate this as a flat-footed proposition, but an idea worth study.

The judiciary should certainly be placed beyond the reach of politics, he said, but not beyond reach of the people who created and sustain it.

"I am not quite clear in my own mind at present on how this should be done," he said. "There should be provision for impeachment, but that is not enough. It is almost impossible to impeach any official, no matter how bad he is. There is the system under which the Governor could remove a judge of the Supreme or Superior Courts when requested to do so by vote of the Legislature, after it had been shown that the judge was unfit for office. A judge might well be beyond impeachment because of lack of proof, although it might be well known that he was unfit.

"The alternative is election of the judges by the people for long terms, perhaps 15 years. The New York Court of Appeals is thus elected, and is, I believe, one of the outstanding courts of the country.

"The objection that judges under such a system would be looking for political preferment, I think, does not hold good, because of the length of the term. Thirty-eight of the 48 States of the Union elect their judges. However, I have an open mind on that subject."

There should be written into the Constitution a mandatory provision for minority party representation on all State commissions or in departments, Mr. Quinn said, thus eliminating to some extent the spoils procedure under which the victorious political party "grabs everything in sight."

"And that goes for both parties," said the Lieutenant Governor.

Mr. Quinn believed there should be a change in the method of amendment of the Constitution, perhaps in the manner suggested by Senator Russell H. Handy, Rep., of Lincoln, last week. This proposal is that amendments be passed upon by one Legislature, instead of two, and then approved by a three-fifths vote of the people. Mr. Quinn said he believed this would be a good provision, inasmuch as it would make the Constitution more easily amendable, but not too easy. The Constitution, he believed, should not be subject to change as a result of a political turnover which, perhaps, came because of some extraordinary issue such as a strike or an uprising or disorder.

The Lieutenant Governor stated he believed that the several articles of the Constitution as finally drafted by the convention should be voted upon by the people as separate items, so that each item would stand on its own merit and be approved or rejected accordingly.

Furthermore, there should be definitely written into the Constitution, he said, a provision that a constitutional convention should be held perhaps every

25 years, or that such a convention should be held when the vote of the people declared it necessary.

"Not that there is any doubt in my mind now," said Mr. Quinn, "that a constitutional convention is a legal and constitutional way of amending the document. The first article of our present Constitution clearly states that in my opinion, but it should be written into the Constitution so that there can be no doubt in anyone's mind about it."

Concluding the interview, Mr. Quinn said:

"We are the smallest State in the Union. Because we are the smallest, we should become the laboratory of the nation. We should lead the way in progressive government. We are peculiarly fitted to do that. Without danger to anyone living and working within our borders, rich or poor, we can show to the country how and under what laws a State should be governed."

APPENDIX D

Argument Against A Convention

By Zechariah Chafee

[Reprinted from *Advisory Opinion, etc.*, pp. 460-461. This extract is from the only layman's brief filed with the Supreme Court, in response to its invitation to non-lawyers. The argument was primarily directed against the validity of a convention, but the reasons bear strongly against its advisability even if valid. These views are included here in order to give the other side of the issue from that taken by Governor Quinn and the son of the writer of the brief. The author speaks out of long experience, having been born in 1859, and active unofficially in politics, often as an Independent.]

A Convention should not be called. There is no urgent necessity or preponderant public opinion calling therefor.

We have been repeatedly told that the divergence from Article XIII and the calling of the Constitutional Convention was justified by the fact that there is an overwhelming public sentiment in favor of a change in our Constitution, and that this sentiment cannot have effect while our Legislature is as at present constituted. This statement, it should be noted, is not correct. Question (f)[1] submitted by the Governor to this Court is enlightening in this connection. It discloses the fact that in the Governor's judgment there is not an overwhelming desire for the changes which he expects to be presented to the people. He reduces the popular vote necessary for confirmation from 3/5ths to a bare majority. The desire for haste on the part of the Governor and his associates further shows his lack of confidence in a persistent and continuing public sentiment which would retain in a coming legislature the present preponderance of votes for the desired changes.

Haste to seize a special opportunity, and narrow margins in popular vote for adoption, are not consistent with the tenor of our Constitution, with Article XIII[2] or for the good of the State as a whole.

Nor is it correct to say that our Constitution cannot be amended as it now stands. Such a statement is contrary to experience. It has been amended many times within my own experience. The arguments now adduced have been adduced many times and shown by time to be unjustifiable. I recall what was said about the Bourne amendment[3] and about Women's Suffrage.

[1]The question whether the work of the convention could be ratified by a majority of the voters. This is reprinted in Appendix B, *supra*.

[2]The provision for specific amendments, to be passed by two successive General Assemblies and ratified by a 3-5 popular vote. Article XIII is abstracted in Appendix B, *supra*.

[3]In 1888, giving naturalized aliens the vote on the same basis as native-born citizens. See the Introduction to the present pamphlet.

Amendments have come in response to definite and permanent phases of opinions. The process is perfectly natural and inevitable when the preponderance of our people have certain convictions and continue to hold them. There is a weight of public opinion which invariably produces the votes necessary for the amendments in the Legislatures and in popular elections. At the moment adequate popular sentiment is lacking for the desired changes.

Having been brought up in Rhode Island I have a respect for the authors of the Constitution and for those who gave their approval to this document. I believe these gentlemen knew what they wanted to say and said it plainly and not by implication. Article XIII, to my mind, was made to stand and does stand until changed as therein provided.

The Legislature cannot delegate to any Assembly privileges which it does not itself possess. It cannot exclude from any Assembly any of the obligations by which it is itself restricted. It cannot by itself amend the Constitution.

Article IX [which requires all general officers, members of the General Assembly, and judges to swear to support the Constitution of Rhode Island] also, I believe, was made to stand and does stand. Article IX and Article XIII to my mind are not disunited. I quote them as important considerations now before the people and before the Court. I ask adherence to them, and certainly there is no necessity or overwhelming popular sentiment which justifies the lessening of any of the safeguards customarily attending amendments of the Constitution.

APPENDIX E

The Convention Bill of 1935

AN ACT TO PROVIDE FOR THE CALLING AND HOLDING OF A CONSTITUTIONAL CONVENTION.

[Abstract of H750 (January Session, 1935) with amendments in italics.[1]]

§1. The Governor is authorized to call a special election on a date fixed by him [amended to *June 16*] to elect delegates "who shall constitute a convention for the purpose of revising or amending the constitution."

§2. The convention is to comprise 125 delegates; 25 of them elected at large by the whole State, and 100 by the several cities and towns, corresponding in number to their Representatives in the House.

§3.[2] Nominations for delegates-at-large, if made by a political party, are to come in writing, at least 30 days before the election, from the executive committee of such party, designating 25 names, which are to be placed on the official ballot under the emblem of the respective party in the order in which the names are written by the committee. [As amended, *nominations are to be made by party conventions, made up of delegates chosen at caucuses.*]

§4.[3] Nominations for local delegates, to be elected by a whole city or town, if made by a political party, are to be made by city or town committees in the same way. [This was similarly amended for *nominations by city or town caucuses.*]

§5. Any candidate so nominated may take specified steps to withdraw his name.

§6. Any vacancy in nominations thus caused may be filled by the executive committee of the party that made the original nomination.

§7. Candidates can also be nominated by nomination papers filed at least 30 days before the elections and properly certified. No paper shall name more than one candidate, but a candidate may have several nomination papers. An elector may sign as many such papers as there are delegates for whom he can vote. Nominations for delegates-at-large must be signed by

[1]The bill was introduced in the House by Mr. Kiernan of Providence (not Chief Kiernan of the Horse Racing Commission) on March 13, read and referred to the House Judiciary Committee; it was reported out and recommitted on the day for reporting bills, March 27 (On April 1 came the advisory opinion declaring such a bill valid—see Appendix B.) On April 10 it was again reported out with changes; ordered on the calendar April 11; for special consideration April 12; passed the House as H750 Substitute "A" with a brief amendment to §11 limiting the date of the convention. (The other italicized amendments were made in committee.) On the same day in the Senate, the bill so passed was referred to the Special Legislation Committee, where it died.

[2]In substitute A, this became §4.

[3]In substitute A, this became §3.

at least 1000 voters. Those for local delegates must be signed by at least 10% of the total vote last cast for Governor in the respective city or town, with a maximum of 800 and a minimum of 50.

§8. Any qualified Rhode Island voter may be a candidate, and need not reside in the city or town that he represents. The same person cannot run as a local delegate and a delegate-at-large.

§9. At the election, every qualified voter can vote for the 25 delegates-at-large and for all the delegates from his city or town. [The scrutin de liste differs from the districting of a city or town for elections of Representatives.]

§10. The usual statutory provisions for elections shall apply to the special election except as follows: (1) The names of candidates for delegates-at-large shall be arranged in perpendicular columns, one column being assigned to each political party; and that party's candidates for local delegates are to be placed lower down in the same column; a voter must put a cross against the name of each candidate whom he favors, and cannot put it in a single circle at the head of the column in order to vote for the whole party ticket; *residences of candidates are to be printed on the ballot.* (2) Sealed packages of ballots are to be delivered to the Secretary of State forthwith. (3) He shall forthwith have the ballots counted and tabulated, and after certifying the result to the Governor, furnish a certificate of election to each candidate receiving a plurality of the votes cast. [At ordinary elections, local bi-partisan boards did the counting and certifying.]

§11. The elected delegates are to meet in convention in the chamber of the House of Representatives [amended to *the State House*] on a date fixed by the Governor *before November 30, 1935.* They are judges of the election of members, may adjourn from time to time, and a majority is a quorum. After being called to order by the Governor they shall organize by choosing a president, other officers, and such committees as they wish, and by establishing rules of procedure. "When organized, they shall take into consideration the expediency of revising or amending the present constitution of the state." Any revision or amendment adopted by the convention is to be submitted to the people for ratification in such manner and at such time as the convention directs; and if ratified "by a majority of the people", it shall go into effect whenever and however the convention determines.

§12. The convention is to be provided at State expense with suitable quarters and facilities. It may issue a statement briefly setting forth arguments about any revision of the Constitution it adopts. It can provide for other expenses of its session, subject to the Governor's approval, up to an amount not exceeding $5000, which is hereby appropriated with the usual provisions for payment of vouchers.

§13. This act takes effect on passage.

APPENDIX F

List of Convention Acts in States without Express Constitutional Authorization[1]

Twelve states (including Rhode Island) have constitutions which do not mention constitutional conventions. All except three (North Dakota, Rhode Island, and Vermont) has held conventions notwithstanding; and North Dakota and Rhode Island passed convention acts, but the people voted down the conventions. The conventions and convention acts in these states are here listed (a convention having been held and its work adopted unless otherwise stated in brackets):

Arkansas: (1) 1868 [Reconstruction[2]]. Act of Congress (Mar. 2, 1867), and Army District General Order. Pop. vote; rat. by maj. of voters on question.
(2) 1874 [Reconstruction]. Acts (1874) c. 2. No pop. vote. (Cons. says rat. by maj. of voters on qu.)
(3) 1918. Acts (1917) pp. 471, 1278. No pop. vote; rat. by maj. of voters on qu. implied.

Connecticut: (1) 1818. Resolve of legislature (May, 1818), in Journal of Convention, p. 5. No pop. vote; rat. by maj. of voters on qu.
(2) 1902. Laws (1901) p. 1390. Pop. vote; rat. by maj. of voters on qu. implied. [Constitution rejected by voters.]

Indiana: (1) [1914]. Acts (1913) c. 304. Pop. vote; rat. by voters as conv. determines. [Convention voted down.]
(2) [1918]. Acts (1917) c. 2. No pop. vote; ratification as delegates determine. [Convention enjoined as illegal.[3]]

Louisiana: (1) 1845. Acts (1843) Res. No. 7; Acts (1844) No. 64. Pop. vote. (Conv. required rat. by maj. of voters on qu.)
(2) 1852. Acts (1852) No. 73. Pop. vote. (Conv. required rat. by maj. of voters on qu.)
(3) 1864. [Reconstruction]. Under military orders. No pop. vote; rat. by maj. of voters on qu.
(4) 1868 [Reconstruction]. Under military orders. See Acts (1867) Nos. 25, 144. Pop. vote (delegates elected at same time); rat. by maj. of voters on qu.
(5) 1879 [After Reconstruction]. Acts (1879 Ex. Sess.) No. 3. No pop. vote; rat. by maj. of voters on qu.
(6) 1898. Acts (1896) Nos. 52, 137. Pop. vote (delegates elected at same time); no pop. rat.
(7) 1913. Acts (1913, 2d Ex. Sess.) No. 1. Pop. vote (delegates elected at same time); no pop. rat.
(8) 1921. Acts (1920) No. 180. Pop. vote; no pop. rat.

[1]Conventions which transformed colonies or territories into states are not listed.

[2]During and immediately after Reconstruction, conventions were often held without a normal franchise, and are not desirable precedents.

[3]Ellingham *v.* Dye, 178 Ind. 336 (1912); Bennett *v.* Jackson, 186 Ind. 533 (1917). The Indiana convention of 1850 was under a prior constitution providing for conventions.

Massachusetts: (1) 1820. Laws (1820) c. 15. Pop. vote; pop. rat. as conv. directs.
(2) 1853. Laws (1852) c. 188. Pop. vote; pop. rat. as conv. directs.
(3) 1917-18. Laws (1916) c. 74, (1917) c. 59. Pop. vote; pop. rat. as conv. directs.

Mississippi: 1890. Laws (1890) c. 35. No pop. vote; no pop. rat.

New Jersey: 1844. Laws (1843) p. 111. No pop. vote; rat. by maj. of voters on qu.

North Dakota: [1897]. Laws (1895) c. 118, Concurrent Resolution.[4] Pop. vote in 1896. [Conv. voted down.]

Pennsylvania: (1) 1789-1790. Called by Resolution of Assembly and not by Council of Censors, as the Constitution of 1776 required.[5] See appropriation in Laws (1789) c. 88. No pop. vote, but informal popular canvas. (Convention did not submit cons. to people.)
(2) 1837-1838. Laws (1835) p. 270. Pop. vote; rat. by maj. of voters on qu.
(3) 1873. Laws (1872) p. 53. No pop. vote; rat. by maj. of voters on qu.

Rhode Island: (1) 1824. Public Laws (Jan. 1824) p. 13. No pop. vote; rat. by maj. of freemen on qu. [Constitution rejected by freemen.]
(2) 1834. Public Laws (1834) p. 10. No pop. vote; rat. by maj. of freemen on qu. [Nothing accomplished by convention.]
(3) 1841 (People's Conv.). Extra-legal; no statute. No pop. vote; rat. by maj. of male U. S. citizens. [Constitutional unlawful.]
(4) 1841 (Freemen's Conv.). Acts & Resolves (Jan. 1841) p. 85; *id.* (May, 1841) p. 45; *id.* (Jan. 1842) pp. 45, 58. No pop. vote; rat. by maj. of those getting vote under new cons. [Cons. rejected by voters.]
(5) 1842. Acts & Resolves (June 1842) p. 3. Pop. vote; rat. by maj. of those getting vote under new cons. (Adopted existing Constitution.)
(6) [1853]. Acts & Resolves (May 1853) p. 3; *id.* (June, 1853) p. 153; *id.* (Oct. 1853) p. 253. Pop. vote; rat. by maj. of those getting votes under new cons. [Convention twice voted down.]
(7) [1936]. Public Laws (1936) c. 2281. Pop. vote; rat. by maj. of those voting. [Convention voted down.]

Texas: 1875-1876. Laws (1875) p. 201, Joint Res. No. 16; Journal of the Convention, p. 772. Pop. vote (delegates elected at same time). (Conv. required rat. by maj. of voter on qu.)

The constitutions of the remaining 36 states provide for their revision through constitutional conventions. In 27 such states, the legislature must first submit the question of holding a convention to the people, and can do this at any time within its discretion. And 7 such states[6] require a popular vote at stated intervals on holding a convention. Georgia and Maine allow the legislature to call a convention without a popular vote; but Maine permits

[4]See State *ex rel.* Wineman *v.* Dahl, 6 North Dakota Reports, 81 (1896); State *ex rel.* Miller *v.* Taylor, 22 *id.* 362 (1911).

[5]See Jameson, The Constitutional Convention (3d ed.) 211-213, 450 (1873).

[6]Ohio, Maryland, Michigan, New Hampshire, New York, Ohio, Oklahoma. New York is now holding a convention, in pursuance of this provision.

the initiative and referendum on all legislation including a convention act. The constitutions of several of these 36 states formerly lacked their present provisions for constitutional conventions; and yet some of them held conventions in spite of this lack of express constitutional authority. Examples of this may be found in Georgia, Missouri, New York, North Carolina, South Carolina, and Virginia. Perhaps the most interesting fact is, that Delaware and Maryland had clauses permitting conventions if specified stringent formalities were first observed, and yet both these states went ahead and held conventions without bothering to comply with the formalities; the new constitutions were then adopted.

Valuable information on all these conventions and on constitutional conventions in general will be found in the following references:

Dodd, The Revision and Amendment of State Constitutions (1910).
Hoar, Constitutional Conventions: Their Nature, Powers, and Limitations (1917).
Holcombe, State Government in the United States (3d ed., 1931).
Jameson, The Constitutional Convention: Its History, Powers, and Modes of Proceeding (3d ed., 1873).

Rhode Island sources, listing many other useful references, are:

Advisory Opinion of the Supreme Court of Rhode Island upon Questions relating to a Constitutional Convention, April 1, 1935; Affirmative and Negative Briefs Submitted (1935).
Bradley, The Methods of Changing the Constitutions of the States, especially that of Rhode Island (1885).
Eaton, Constitution-making in Rhode Island (1899).

APPENDIX G

Minority Representation in a Constitutional Convention

[The method here used in Pennsylvania (Laws, 1872, p. 53) seems to be well suited to Rhode Island conditions, if it be suitably modified. See the tenth article in this pamphlet.]

" . . . the said convention shall consist of one hundred and thirty-three members, to be elected in the manner following: Twenty-eight members thereof shall be elected in the state at large, as follows: Each voter of the state shall vote for not more than fourteen candidates, and the twenty-eight highest in vote shall be declared elected; ninety-nine delegates shall be apportioned to and elected from the different senatorial districts of the state, three delegates to be elected for each senator therefrom; and in choosing all district delegates, each voter shall be entitled to vote for not more than two of the members to be chosen from his district, and the three candidates highest in vote shall be declared elected, except in the county of Allegheny, forming the Twenty-third senatorial district, where no voter shall vote for more than six candidates, and the nine highest in vote shall be elected, and in the counties of Luzerne, Monroe and Pike, forming the Thirteenth senatorial district, where no voter shall vote for more than four candidates, and the six highest in vote shall be elected; and six additional delegates shall be chosen from the city of Philadelphia, by a vote at large in said city, and in their election no voter shall vote for more than three candidates, and the six highest in vote shall be declared elected."