

YALE LAW JOURNAL

VOL. III

DECEMBER, 1893

No. 2

CONSTITUTIONAL REFORM IN CONNECTICUT.

Dr. Josiah Strong, in his admirable book "The New Era," which everybody ought to read, and which can be bought for thirty cents a copy in pamphlet form, shows, by comparative figures, the tendency in this age of our people to live in cities. The marked changes in local population in Connecticut are not peculiar. When the Constitution was adopted, one town was like the others; the communities were all small and chiefly dependent upon agriculture. Now the resources of the purely agricultural towns are not conspicuous in the activities of our commonwealth, and, so far as the drift of population to cities and centers is concerned, Dr. Strong demonstrates that the experience is well nigh universal in our country. Of 25,746 townships in the United States, 10,063 actually lost population in the decade 1880-1890—our own State showing a loss in 79 out of a total of 153 towns. In 1820 the proportion of the city population of the United States was 4.93 per cent, while in 1890 it was 29.12 per cent of the whole population.¹ These figures show that the practical disqualification of the people under our Constitution increases every year, and that our bad eminence as a State in this regard is becoming more and more striking and intolerable. We have not indeed reached the condition of the mother country in 1830, when it is said that of 658 members of the House of Commons 306 were returned by 160 persons. We have, however, this unenviable distinction, that in our House of Commons the entire membership practically represents artificial corporations and not the people at all.

¹ See Strong's *New Era*, pp. 164-166.

A faint attempt at reform was made by the last House of Representatives in the proposed amendment which regulates the membership of the Senate by population. This is well enough as far as it goes, although it is beginning at the wrong chamber. If the Senate ought to be constituted upon principles of popular sovereignty, it requires little argument to show that the House, which is the larger body, should also represent the people. The House is the first chamber of legislation; constitutional reforms must start there or nowhere. A second chamber should be a conservative body with smaller numbers and a longer term of service. The House is naturally the popular branch and should especially represent the people. We shall hardly succeed, even by a small concession to justice, in overturning the general laws of legislative halls. Referring for a moment to the Senate, it will be remembered that it is often urged by the opponents of representative democratic government in Connecticut, that the United States Senate makes an analogy to our lower House. So far as representation is concerned it makes no analogy at all. The United States Senate was never intended to represent the people, but the constituent sovereignties which became the United States, still States although united, and in most respects as independent of each other and of Federal rule as they were before the adoption of the Federal Constitution. The Constitution defines the representation to be "State suffrage." There is no sovereignty in any town, it is a mere creature of the General Assembly, with just such powers as the Legislature gives it, and such incidental powers as belong to all corporations, and not an ounce of power otherwise.

The friends of popular representation were unfortunate in their divided counsels last winter. The Democratic party had committed itself to a convention, while many friends of reform in both parties preferred to accomplish it in the orderly way prescribed by the Constitution itself.

The Courts of Massachusetts and Rhode Island, and leading writers upon constitutional law, have laid down the principle, that, where an organic law provides for its own amendment and change, any legislative measure providing another method is disorderly. The people have a right to change their organic or statutory law, and they also have a right to limit the method of the change. Were statutory legislation unlimited by the organic act, the people could assemble and make laws when and where they chose; but, after they have made a constitution, and limited the method of law making to the concurrent act of two legislative

chambers, and the approval of the executive, they can no longer lawfully assemble, as *comitia*, and enact laws by the whole congregation. The power to make includes the power to prescribe methods of making. Our Constitution has provided for its own amendment.

It is to be hoped that a united effort will be made at the next session of the General Assembly to reform the Constitution in a sensible and constitutional way by the appointment of a suitable commission to prepare a revised constitution for forthwith action by the House of Representatives. This is at once the orderly and the wisest method. If such an effort earnestly pressed should hopelessly fail, the people may be justified in demanding the summary method of a convention.

The unfounded claim, that the three original towns made the Constitution of 1639, has been kept alive in certain histories and encyclopedias and, although our courts have repudiated it, now and then it crops out in literature as if it were a fact. It is not a fact and would be a humiliating one, if it were. Connecticut has much cause for glory in her colonial, revolutionary and modern history, her distinction in education and manufactures, her story of heroes on battle-field and quarter-deck, but nothing is so honorable to us as our supreme leadership in constitutional law. The fundamental orders of 1639, the first written constitution adopted by a free people, are our largest historic glory. If we were to degrade that immortal instrument into a treaty between three sovereign towns, we should make ourselves only successors in civilization to many others. But that Constitution was the act of the people and directly in terms provided for proportionate popular representation. We have drifted into our present discreditably unique position in the sisterhood of the United States by the current of business and trade and activity, and with no design thereof by the founders of the State.

In the famous trial in 1804 of William Judd and other Justices of the Peace, who had participated in a meeting of delegates at New Haven and joined in an address to the people in favor of a constitution, the principal argument for revoking their commissions was made by Manager Judge David Daggett, a distinguished leader of the Federalist and "Steady Habits" party. To show that nobody then supposed that our immortal old Constitution of 1639 was a creation of three towns, let me quote a few sentences from his argument, the italics being his own.

"The United States formed their Constitution by delegates *appointed by the Legislature, not chosen by the people*. It was indeed *ratified* by conven-

tions chosen by the people. The other States formed their Constitutions by Conventions or Legislatures, and in few instances, have they been submitted to the people, for their adoption. But in Connecticut, where these justices and others, have published to the world that no Constitution exists, the *people actually met*, and without the intervention of agents, by *themselves*, made a Constitution, which is now our Constitution. Heaven grant, that it may long continue ours. Yes, Sir, I shall shew that, unfortunately for these gentlemen, they have struck at the *only* government ever formed upon *entirely* popular principles.

* * * * *

"Thus situated, these first settlers remained till 1639, when the free planters all met at Hartford, and without the intervention of any delegates, formed a Constitution."

A distinguished Englishman, Prof. Goldwin Smith, has just written, chiefly for English readers, a history of the United States. In it he locates the incident of rescuing our Charter of 1662 in Rhode Island and the Charter Oak itself in Providence. If the blunder is more ludicrous, it is not so unjust to Connecticut as to transfer the adoption of our most sacred historic instrument, to which all democracy owes its largest tribute of honor and reverence, from the people to the plantations.

Henry C. Robinson.