



1901

THE STRUGGLE FOR CONSTITUTIONAL REFORM

MELBERT B. CARY

Follow this and additional works at: <http://digitalcommons.law.yale.edu/ylj>

Recommended Citation

MELBERT B. CARY, *THE STRUGGLE FOR CONSTITUTIONAL REFORM*, 10 *Yale L.J.* (1901).
Available at: <http://digitalcommons.law.yale.edu/ylj/vol10/iss3/1>

This Article is brought to you for free and open access by Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in *Yale Law Journal* by an authorized editor of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.

YALE LAW JOURNAL

VOL. X.

JANUARY, 1901.

No. 3

THE STRUGGLE FOR CONSTITUTIONAL REFORM.

BY MELBERT B. CARY,

AUTHOR OF "THE CONNECTICUT CONSTITUTION."

This contest, which has engaged the attention of the thinking people of Connecticut, to a greater or less extent, during the past sixty years, has, by the logic of recent events, been brought into unusual prominence; and definite progress has been made in the direction of a satisfactory solution of the problem.

In every question of public concern that is partly academic in its nature, the people wait until a sense of its importance has been thrust upon them by some timely incident, before they become deeply interested or appreciate its practical bearing. This was notably so in respect to the tariff question, which, in spite of its importance, was ignored by most people for many years before it became a burning issue, demanding the consideration of every voter.

During the past six months, many circumstances seem to have conspired to bring the need of constitutional revision prominently before the people of the State.

The action of both political parties in their state conventions had a direct relation to the question; one of them declaring that it was the paramount state issue, the other party relying upon the fact that it was responsible for two pending amendments to the Constitution, which had been introduced and passed by it at the preceding session of the Legislature.

The figures of the last census have exerted a potent influence in arousing the people of Connecticut to an appreciation of the outrageously unjust, absurd, and antiquated provisions of the Constitution under which they live. Among other political anachronisms, they show the following :

One of these miniature republics, otherwise called towns, having 322 inhabitants and the same representation and power in the Legislature as another town having 4,626 inhabitants.

One town having 428 inhabitants, 84 voters, and taxable property valued at about \$100,000 having the same representation and political power as New Haven, with a population of 108,827, with about 24,000 voters, and a grand list of over \$100,000,000.

Ten cities, aggregating about 455,000 population,—just half that of the entire state,—having 20 members in a House of Representatives numbering 254 in all, whose votes can be neutralized by those of 20 representatives from 18 towns whose combined population is 9,131.

The Connecticut State Board of Trade, at its eleventh annual meeting in October, gave extended consideration to the questions of reform in our methods of representation and taxation as provided by the present Constitution, and finally decided to postpone action upon the subject until the next annual meeting, for the reason that the question had been drawn into the pending political controversy, and it was the desire of the members of the Board of Trade to act upon it in a thoroughly non-partisan manner.

Another incident proving the widespread interest in the question was shown in the action of the State League of Citizens of Scandinavian Descent, also a non-partisan organization, which declared, at its last meeting, unanimously in favor of Constitutional Reform.

Very recently, the Supreme Court of Connecticut, in its decision in the case of *State v. Travelers Insurance Co.*, which involved the validity and constitutionality of an act, on the ground that it did not provide for equal and uniform taxation, decided, among other things, that, since there was no provision in the State Constitution requiring that taxation shall be equal and uniform, it was not within their power to declare such a law invalid for that reason.

The most important evidence, however, of a renewed and vital interest in the question, is shown by the revival of the Constitutional Reform Association, which was first organized

thirty years ago for the purpose of securing much-needed changes in the fundamental law of the State.

Seldom has any movement looking to the public good received a heartier welcome at its inception than was accorded to this Association. From the date of its first meeting, it occupied a position of prominence and influence, commanding the respect and confidence of the people and the press throughout the State; and numbering among its members men prominent in every walk of life, belonging to all political parties, and from every part of the State.

The purpose of the Association is best stated in its own words in the following address to the people:

“The sole object of the Association is to bring about the calling of a Constitutional Convention, by the Legislature, in order that the people of Connecticut may adopt a new Constitution that will be suited to the age in which we live, to the conditions of population which now exist, and which will do away with the inequalities, the evils, and the civic corruption which are traceable directly to the worn-out Constitution which has served the State since 1818.

“The Association is absolutely non-partisan, it is not committed to any special reform, nor does it single out any one defect of the present Constitution as more serious than others. Nor does it countenance any attack whatever upon the rights of the smaller towns; being content to leave all questions of detail to the good judgment and sense of fairness of the people in convention assembled.

“The Association is satisfied that if the people are permitted by the politicians to undertake this work, they will frame a fundamental law which will provide for fair representation, plurality elections, an effective veto by the Executive, a restriction of the powers of the Legislature to its proper sphere, taking away from it the power to interfere in the appointment of judges, county commissioners and other officers; in short, a Constitution that will restore to the people the rights which belong only to them, such as the right to elect their own servants, and to hold them to a strict accountability for their actions; a Constitution that will enable the honest, non-partisan citizens of the State to effectively protest against the boss, the machine, the lobby, and civic corruption of every sort.

“In order that the efforts of this Association may be crowned with success, the co-operation and moral support of every citizen of Connecticut who believes in this movement is

needed. Our campaign will be one of education, seeking to interest citizens, to add to our numbers, and to convince legislators of their duty toward the people in respect to a Constitutional Convention."

The result of this revival of interest in Constitutional Reform has been manifest in many ways, but nowhere is the effect more striking than in the attitude of those who, for various reasons, are opposed to the movement.

In the place of quietly ignoring the question, in the place of covert sneers and open opposition, there appears a respectful consideration; and it is now universally conceded that some change is advisable, if not imperative. In other words, after half a century of discussion, it is no longer a question, "Do we need constitutional revision?" but, "How much do we need, how shall we get it, and how soon?"

Apparently, then, it would be simply a matter of detail, were it not for the silent, but none the less powerful, opposition, that does not dare come out in the light of day and honestly declare itself.

Exactly what is this contest, and who are the opposing parties?

It is the old, old struggle between those who are interested in good government for its own sake, and those who are interested in controlling the government for their own sakes. It is the old contest between the disinterested and the interested—a contest largely between the citizens who sing with great reverence "My Country, 'tis of Thee," and never go to the primaries, and those citizens who have no business but politics and no politics but business. On one side are arrayed the people, the taxpayers, and the business interests of the State; on the other, the boss, the lobby, and the corruptionists. It is the same fight that was made by Comptroller Coler in New York; the same that John Wanamaker is waging now in Pennsylvania; in short, the politicians of either party, who feel that they have an unfair advantage by reason of the defects of the Constitution, or the operation of bad laws, will always oppose, in every way possible, all efforts to remedy these evils, thus depriving them of power.

It is easy to answer the question, "What is this contest?" For all that is sought by those who desire a change is embraced in the demand for a Constitutional Convention.

The defects of the Constitution are so numerous, and it has been amended so often, that nothing short of a thorough revision can meet the necessities of the case.

There are two classes of relief which those who are working for a Constitutional Convention expect to gain.

The first, of course, is a just and suitable fundamental law, commonly called a Constitution, which shall correct the grave errors that now exist in reference to representation, elections, taxation, the veto power of the Executive, and other subjects that properly come within the scope of a State Constitution. And secondly, what is often lost sight of and what is perhaps of greater importance to the welfare of the State: Through a new Constitution, based upon correct principles and suited to present conditions, it is hoped to secure certain reform legislation that is now well-nigh impossible on account of the almost absolute control which the party managers, by means of the present Constitution, have over the Legislature.

Nowhere is it easier for the political machine which happens to be in power, it matters not of which party, to acquire control of all branches of the State government, consequently every effort in the direction of reform legislation is thwarted by the powers that be. For instance, it is practically impossible to get a law regulating the lobby, or to pass a corrupt-practices act, or an efficient statute against bribery, or a general incorporation act, or an Australian ballot law; for all such laws are aimed against the power of the machine, the lobby and the boss.

The peculiar provisions of the antiquated Constitution regarding representation, and practically concentrating all the powers of government in the Legislature, with a corresponding reduction of the rights of the people, the Executive and the judiciary, all tend to increase the power of the political boss and to make his development easy and inevitable.

Consider the situation. There are two parallel lines or channels of political power in every State, each originating in the will of the people. One starts from the Constitution and runs through the three co-ordinate branches of government, the executive, the judicial, and the legislative. The other starts from the party machine and extends through the lobby to the inner ring that controls both the machine and the lobby. The boss is created by the machine and supported by the Constitution, and through them, in the State of Connecticut, can gain control of the State officers on one hand and the lobby ring on

the other. He can control the State officers because, in the first place, he can dictate their nomination, their appointment and confirmation. He has control of the majority in the Legislature through the party machinery, because the Governor, under the Constitution, has no effective veto power.

Both lines of power, therefore, center in the head of the machine, and if he chooses to betray the people and become a usurper, his authority is well-nigh absolute. There is only one worse fate that can befall a community, and that is when there are two bosses, one representing each party, who make deals with each other, who traffic in the rights of the people and make of government a hollow mockery and a sham.

A party machine is a necessity. It means organization for effective work. It must have a head, who should be the servant of the party, not its master. It is only when he usurps powers never given him, dictates nominations, appointments, confirmations, and legislation, shields a corrupt lobby, builds up a personal machine, and frustrates the plain wish of the majority of his party, that he becomes a boss.

In none of the boss-ridden States of the Union are the conditions more favorable for the absolute concentration of all the powers of government in the hands of one man, than here in Connecticut. It is this system, and the possibility that a corrupt man and a corrupt ring may firmly intrench themselves in the halls of government, that is opposed by those who demand a Constitutional Convention.

The next decisive step in this movement will undoubtedly be taken by the Constitutional Reform Association, in connection with the action of the Legislature upon the pending amendments, and in regard to calling a convention. Just what position the Association will take has not yet been announced; but it is certain to have great weight on account of the number and character of the men interested as members.

After all the discussion during the past six months upon this subject, public opinion seems to have crystalized along the following lines:

First—This movement must be considered and treated in an absolutely non-partisan spirit. It is not a question of party. It is a recognition of the frailty of human nature and the danger of unrestricted power. Any party long continued in office would succumb to the temptations offered by the peculiar conditions known to exist in Connecticut by reason of the defective Constitution. As a matter of fact, representatives of both parties are found among the leaders in this movement.

Second—The principle of town government and town representation must be preserved, with such modifications of the system as will do justice to all.

Third—The cities must be given fair representation according to population.

Fourth—A new Constitution must provide for absolute independence of the three co-ordinate branches of government, giving to each adequate power.

Fifth—The entire system of taxation must be surrounded with constitutional restrictions so as to do equal justice to all.

Sixth—The people must be trusted, and the right of electing minor officers, which has been taken from the people and kept by the Legislature for the purpose of bargains and deals, must be restored.

Finally—It is believed that the people of the State, in convention assembled, are competent to deal with this question and will in all things act wisely, justly, and in accordance with the proud traditions of the State as a leader in the making of constitutions.