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Abstract

With all that is at stake in reforming the government of the nation's largest state, with responsibility for the welfare of 38 million Californians, we know very little about how to make a constitutional convention work. How large should the convention be? Should delegates be elected or appointed? What issues should be on the agenda? How can the convention delegates obtain expert information? Who will organize and lead the convention? Remarkably, there is virtually no discussion of the far more common experience by which local and some state governments in California and throughout the nation have reformed governance structures: the charter reform commission. Such commissions have routinely dealt with these issues for more than a hundred years and have managed to update and adapt municipal government with great success.

KEYWORDS: constitutional reform, legislative reform, political reform, California government, term limits

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What Charter Reform Commissions Can Teach Us About a Proposed Constitutional Convention in California

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With reform in the air in California, there is considerable talk about a constitutional convention. The idea has gathered considerable steam, featured favorably in newspaper editorials and discussed at think tanks and other gathering places throughout the state. Ballot measures are being prepared for November 2010 to give voters the power to create a constitutional convention and to set forth the actual requirements for selecting delegates.

It is striking that the idea of a convention has gotten so far because the United States has almost no experience with this method of governmental reform. There are a few state models, with varying levels of success. Perhaps the phenomenal story of the original Constitutional Convention of 1787 accounts for its appeal. After all, Americans still largely follow the Constitution, as amended fewer than 30 times since its adoption. In other words, it is the *idea* of a constitutional convention that has people excited, not a realistic sense of how such a mechanism might achieve reform. In fact, the romance with the idea of a constitutional convention, which is after all only a mechanism to achieve reform, has threatened to outweigh reform itself.

With all that is at stake in reforming the government of the nation's largest state, with responsibility for the welfare of its 38 million residents, it is somewhat alarming that we know so little about how to make a constitutional convention work. How large should the convention be? Should delegates be elected or appointed? What issues should be on the agenda? How can the convention delegates obtain expert information? Who will organize and then lead the convention?

More remarkably, there is virtually no discussion of the far more common experience by which local and some state governments in California and throughout the nation have reformed governance structures: the charter reform commission. Such commissions have routinely dealt with these issues for more than a hundred years, and they have managed to update and adapt municipal government with great success.

Political scientists have often been called upon to assist charter reform commissions. The National Civic League's Guide to Charter Reform Commissions (1991) favors scholars of politics and public administration over lawyers because of the sensitive questions of accountability, representation, and efficiency that must be balanced in governmental reform. "Generally speaking, the best charter draftsmen are those who have made a special study of local government against a background of the study of politics, government and public administration generally. In many cases they are teachers of political science and public administration in colleges and universities who have had experience with charter problems" (National Civic League, 9). Naturally, I can only agree.

I have had the opportunity to become deeply involved in charter reform commissions and related commission processes over the past 10 years. In 1997, I was named executive director of one of two competing charter reform commissions in Los Angeles that together completed in 1999 the first successful revision of the city charter in 75 years. My book, *The City at Stake: Secession, Reform, and the Battle for Los Angeles* (Sonenshein 2004), traces the intricate policy and political questions that were ultimately resolved in charter reform.

In Los Angeles, a realistic threat of secession by the San Fernando Valley created intense interest in reforming the city charter, a long and bulky document that made governance complicated and hemmed in the authority of the mayor. Conflict between Mayor Richard Riordan and the city council over mayoral authority prevented agreement on a single charter reform commission. The city council appointed its own commission whose recommendations would be reviewed by the council before going to the ballot, and the mayor organized a successful ballot campaign for an elected commission whose recommendations would go directly to the ballot. For the next year and a half, the two warring commissions had their own staffs and even wrote their own charters before agreeing on a unified charter in 1999 that won voter approval.

After my Los Angeles experience, I was retained as principal consultant for charter reform commissions in Glendale, Burbank, Culver City, and Huntington Beach, as principal consultant for commissions on neighborhood governance in Riverside and on school reform in Pasadena. Finally, I was called back by Los Angeles to be executive director of the Neighborhood Council Review Commission, to help review one of the principal charter reforms made in 1999. Thus, I can draw on extensive experience with the dynamics of citizen commissions in small and medium sized cities, as well as in the nation's second largest city.

My own experience touches only the tip of the iceberg of charter commission history. At any given moment, there are many such commissions operating throughout the nation. For instance, the 1989 New York City charter reform was at least as extensive as the Los Angeles one a decade later, and there are several studies

available about that process (Sonenshein 2003; Schwartz and Lane 1998; Mauro and Benjamin 1989).

I will mostly focus on the implications of the Los Angeles charter reform for the idea of a state constitutional convention in California, with examples from other cities introduced where appropriate.

Less is More

In the desire to have a diverse and representative convention, advocates have suggested a body from 300 to 600 in membership. Indeed, to have a truly representative body with many subgroups in the hall, these numbers are realistic. However, no charter reform commission in history would ever consider such a large number because of the immense difficulty of deliberation.

Charter reform commissions normally range from 15 to 25 members. In Riverside, my commission had 35 members and right away the main impact was on attendance. The Riverside group, the largest commission I have ever worked with, had the least consistent attendance, because after a time individual members felt, not without reason, that they had little impact on the outcome. In practical terms, the low attendance solved the too-large problem, because the functional commission eventually became the active members who showed up. Even the revered Constitutional Convention of 1787, which began with 55 members, suffered a decline in attendance until the end when signatures were affixed by only 39.

The Los Angeles appointed charter reform commission, for which I worked, had 21 members. The competing elected charter reform commission had 15 members. Had we joined forces, we would have immediately become an unwieldy 36. We each did much better working on our own and later joining forces to negotiate a charter. In fact, when we considered increasing the size of the city council (which failed to win voter approval), we were given a proposal to go to 35 members from the current 15, but decided to recommend either 21 or 25. Our reasoning was that above that number the city council would cease to be a deliberative body, but would instead become a factionalized institution in which individual voices would be less likely to be heard.

Deliberation Requires Voices to be Heard

The *Guide to Charter Reform Commissions* speaks to the importance of open discussion with all voices being heard. Even with a relatively small commission, this can be a struggle. Sometimes the more experienced members make the members who are newer to government feel less confident: “I know how government

works, and you don't." But over time, shy members develop confidence and often insist on being heard, especially if guided by wise commission leadership. In Pasadena, one member spoke constantly of the need to address crime in the schools; after initial resistance, his ideas eventually became a significant part of the final recommendations. The prospects for this dynamic occurring in a body of 300 let alone 600 are quite low.

Commissions Require Strong and Effective Leadership

While intense attention has been given to selection of the convention delegates, little or no apparent attention has been given to the leadership of the convention. Yet without effective leadership the convention has little chance of success.

The most important organizing decision made by a charter reform commission is the selection of its chair and vice chair. In Los Angeles, the commissions were blessed with two outstanding and very different chairs. George Kieffer, a lawyer who had written a book on how to make meetings work (Kieffer 1988), chaired the appointed commission with dispatch, humor, and effectiveness. Erwin Chemerinsky, a noted constitutional lawyer, ran the elected commission with due respect and immense patience because of the need to let his elected commissioners speak.

Ultimately, these two chairs negotiated a unified charter between their warring commissions and guided it through the initial opposition of the mayor and council onto the ballot and electoral victory. No matter how well commissioners had been chosen, the chairs were the keys to the overall success of the project.

Every successful commission I have worked with has had effective leadership. An effective chair must be respected, fair, and sensitive to the small group dynamics of a commission. A large body needs a Speaker of the House, able to impose order. A smaller body that hopes to deliberate needs a good chair.

Consider that the convention that set the standard, in 1787, had a great chair. When the delegates selected George Washington as the meeting's leader, they gave themselves their best opportunity to succeed. Here was the greatest man of the nation, a man of few words and even fewer expressed opinions who ruled with fairness and strength.

The Commissioners Are a Jury

One reason the jury system works is that the judge and attorneys defer to the jury. The jurors have the responsibility. Any attempt to prevent the commissioners from considering a topic is suspect, unless the topic is itself narrower than the constitution. You cannot create a constitutional convention and then take elements of

the constitution off the table. The commissioners will find them and put them back in, and how will you stop them?

My first step with any commission is to work with the chair and vice chair to help the commission decide its own agenda, including what topics will be discussed and when. The calendar becomes the first organizational tool for the commission and allows the public to be heard in a predictable way. The finish line can be envisioned at the beginning, which is good for commissioner morale. But mostly it is their calendar, and they must own it.

Staffing the Commission Is Critical

Another question that has been insufficiently addressed is staffing. Commissions are only as good as the information that flows to them. Without a strong and trusted staff whose loyalty is to the commission, those who testify will unduly influence the deliberations. I have seen this often, as testimony affects commissioners if the person in front of them is clear, compelling, and well regarded, even if wrong. It is the staff's obligation to provide unbiased information that can arm the commissioners with the right questions and help them develop their own ideas in light of what is already known about best practices historically and in other places.

Staff can help make meetings effective by walking commissioners through the material and helping them decide which topics are important. No matter how long it takes to pick a good staff, it is important to have clear lines of authority. There should be a staff director who deals directly with the chair and vice chair of the commission and has a liaison within government (a critical source of information for the staff). The troika of staff director, chair, and government workers provides a major boost to the credibility of the commission. The staff is the avenue by which information flows to the commissioners.

Commissions Win Because They Are Credible

Government reform is not a topic that is widely popular. Claims and counter-claims about reform can baffle voters. But one thing that matters is the credibility of the body that makes the recommendations. A convention that has weak or divided leadership, few opportunities for delegates to be heard, and a poorly respected staff will quickly go off the rails, and when it does, its credibility will go right out the window.

A major source of credibility for a commission is its demonstrated ability to listen to the public. There are many ways to do this, such as websites with feedback mechanisms, but nothing quite matches a well-organized public hearing. Commis-

sioners have to be trained to act in a public hearing in a way that helps the credibility of the commission. In one public hearing in Los Angeles, one of our most feisty commissioners got in an argument with a member of the audience who had asked a very rude question. The crowd, which had been eying the questioner very skeptically, suddenly turned against us when our commissioner joined the fight. "Let him speak!" they yelled out. Lesson learned: you never win a fight with a member of the public.

People Surprise You with the Quality of Their Appointments

An assumption of convention framers is that appointments by leaders are anathema. I think this is a misreading of poll results showing distrust of leaders. In fact, reform measures are not easy to weigh, and the opinions of leaders (including, for example, the League of Women Voters) may matter a great deal. Appointments to reform commissions can be surprisingly good. After all, this is not like choosing people to draw electoral districts. It is not easy to ascertain how reforms will affect the self interest of political leaders.

Consider the Constitutional Convention of 1787. The list of delegates was hardly made up of people off the street. States generally sent their best-known and most respected leaders. I have never worked with a commission entirely made up of amateurs with no relation to the government. Conversely, a commission only made up of insiders would have difficulty playing its role of semi-independent leadership.

Learning to Lose in Order to Win

Every charter commission comes to the same point at the end. Each commissioner has been outvoted on one or more items, and the whole package is now in front of the body for a final vote. The key is to have developed enough trust through the process that each commissioner is willing to overlook short-term defeats to be part of a greater collective victory. That lets the voters know that it is acceptable to vote for a whole package even if one or more items are not their cup of tea.

In Los Angeles, the two commissions not only had to give in to each other on key points, but each side had its own draft charter. Each commission had to abandon its own charter to adopt a unified charter. But that selfless act immensely helped to frame the election on the charter on the theme of unity rather than on the short-term defeats each commission suffered.

A large convention will tend to create voting blocks, and individuals will have less incentive to sacrifice their personal predilections for people they hardly know.

Reform Requires a Political Strategy

No one wishes to serve on a commission whose recommendations are ignored. But unfortunately there are many cases of commissions whose work does not lead to reform. The reports sit on a shelf. Charter reform commissions are part of a political strategy for reform in which the end should be envisioned at the beginning. How will recommendations make it to the ballot? What are the obstacles, including the legislative body that may have to approve them? Which recommendations are political poison likely to doom the entire package? Which recommendations are so popular that they are likely to carry the less popular elements to victory? Whose endorsement and whose opposition will be most consequential?

The Los Angeles charter was probably saved at the polls because the two commissions could not agree on how large to make the city council. As a result, the enlarged council proposal became two ballot measures, one to go to 21 and the other to 25. Both were intensely unpopular, and while the charter itself won 60% support, the council size measures failed by a 2-1 majority.

A virtue of relatively small commissions is that they can engage in strategic planning. With a body so large as to be practically a legislature, factions may insist on their provisions to the detriment of the entire package. Small group dynamics can work to force choices, including leaving particularly contentious issues for another day (or a separate ballot measure).

If at First You Don't Succeed...

Successful charter reforms often build on the failures of previous attempts. Cities that adopt charter reforms often reconsider ideas that have been floating around for years. Scholars of Los Angeles government had long complained that the mayor's office was too weak, but attempts to change it had failed. In 1969 and 1970 proposals made by a major charter reform commission failed to win voter approval for a major set of changes. But they left a report for Los Angeles charter reformers to consider. I studied it carefully when I came aboard in 1997 and noted its conclusion that more public support was needed at the start, not just at the end.

California had its own constitutional revision commission in 1995, which produced an excellent book (Cain and Noll 1995). Its recommendations never made the ballot and failed to even get out of the legislature. But the commission left a valuable report that would guide future commissions (California Constitutional Reform Commission 1996).

A Crisis Helps

Anytime one tries to reform government, the cry is heard: “If it ain’t broke, don’t fix it.” I counter with a reminder that championship teams never look the same after they win. By the next year, they have dropped a player, picked up a few more, and then they are ready. So it is with government.

There is nothing like a crisis to bolster reform. In Los Angeles, the secession movement in the San Fernando Valley was essential to charter reform. Richard Riordan’s inordinate desire for mayoral authority forced a reform-averse city council to undertake its own reform effort (the appointed commission) to counter Riordan’s elected commission. Without secession, and without Riordan’s push, there would have been no reform.

The New York City charter reform that culminated in 1989 was driven by a federal court decision that ruled unconstitutional the Board of Estimate, a body that built governing authority around boroughs of unequal size. The charter reform eliminated the Board of Estimate, weakened the borough system, and increased the size of the city council from 35 to 51 members.

In California, the budget crisis is the key to spurring reform. Let the budget improve and the impetus for reform will disappear. Timing is everything.

This Will Take Much Longer Than Anyone Thinks

Successful reform of California government through the creation of a constitutional convention will take longer than anyone thinks. Delegates must be chosen. Leaders must be identified and elected or selected. A list of issues and a calendar for dealing with them must be completed. Staff must be identified, hired, and organized. The organizing alone will take months, and then the deliberations have to allow enough time with, perhaps, meeting twice a month, to get through the issues. Public hearings must be conducted.

The timeline alone may help clarify whether this process is workable. Instead of all the attention being focused on the selection of delegates, as it is now, more care and consideration should be given to process issues such as agenda, staffing, and schedule.

In the End the Threat May Do It

The very idea of a convention or of a commission may do more to spur reform than the convention itself. In other words, good planning will make clear this is for

real. At that point, the incentive for the legislature to move on reforms that can be placed on the ballot to head off a convention is much greater.

Conclusion

It may be that the constitutional convention is an excellent mechanism for achieving the governance reforms that are being widely discussed in California. But we need to avoid magical thinking about a mechanism that has been used rarely. Instead we should borrow from what we know, the much more common experience of the charter reform commission.

No harm and much good will come from turning the rocks over now and seeing what lies under them, rather than being surprised when bad things happen. With careful attention to the need for time, staff, resources, and deliberation, reform may yet be possible.

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