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THE REVISION OF CALIFORNIA'S CONSTITUTION

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Editor's note: This paper was commissioned to provide background following passage of ACR 188, which requires in part the presentation of alternative proposals for constitutional revision. With the passage of SCR 5 and SB 55, which also address constitutional revision, it is being reproduced here for circulation to a wider audience.

Specific changes to the California constitution may be proposed by *amendment*. Substantial changes may be proposed by a *constitutional convention* or by the legislature as *constitutional revisions*. Regardless of their origin, all changes must be approved by a majority of the electorate voting on the issue.

Legislative amendments, the method most commonly used, require a two-thirds vote in each house of the legislature. Initiative amendments may be placed on the ballot by a petition of registered voters equal in number to 8 percent of the total vote cast in the preceding gubernatorial election. By explicit language in the constitution concerning initiatives and by court interpretation with respect to measures arising in the legislature, amendments are required to be limited in scope. As far back as 1894, the California Supreme Court distinguished between a revision of the constitution and a mere amendment thereof (*Livermore v. Waite*, 102 Cal. 113). As reiterated in 1978, the court held that a revision referred to a "substantial alteration of the entire constitution, rather than to a less extensive change in one or more of its provisions" (*Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208).

For most of the state's history, revisions could only be proposed by a constitutional convention, the convening of which required a two-thirds legislative vote and the approval of the electorate. Following voter approval in 1962, constitutional revisions can now be presented directly to the electorate by a two-thirds vote of each house of the legislature.

All of these procedures have been involved in the development of California's existing constitution. Three milestones mark that history: the Constitution of 1849, the Constitution of 1879, and the major overhaul that followed the work of the Constitution Revision Commission from 1966 to 1972. These events, together with the scores of individual amendments originating either with the legislature or through the initiative process, provide the historical backdrop for looking at the constitution of the 1990s.

THE CONSTITUTION OF 1849

The Constitution of 1849, California's first constitution, was adopted prior to statehood. Following the end of the war with Mexico in 1848, government consisted of a combination of military rule and remnants of the Mexican system. However, the discovery of gold and the invasion of 100,000 immigrants brought a quick end to this relatively informal pattern. Congress, preoccupied and divided over the slavery issue, adjourned in 1849 without responding to pleas to establish a territorial government. The de facto governor, General Bennet Riley, called for a constitutional convention to meet in Monterey in September 1849.

In six short weeks, relying heavily on the constitutions of other states that were available to them, the 48 delegates succeeded in drafting a new constitution. Presented to the voters in November 1849, the document was ratified by a vote of 12,872 to 811. Nearly a year later, in September 1850, California was admitted to the Union.

The Constitution of 1849 lasted for 30 years. During this time, although many amendments were proposed, only three were adopted. On three occasions, the legislature placed on the ballot the question of a constitutional convention, but the proposals failed to gain sufficient voter support. However, it became increasingly clear that the relatively brief document drafted in Monterey was inadequate to meet the needs of the rapidly growing state.

THE CONSTITUTION OF 1879

In 1877, the legislature again submitted to the voters the question of calling a constitutional convention. This time the measure passed, and in 1878 the necessary enabling legislation was adopted. The convention of 152 delegates, meeting in Sacramento, began its deliberations in September 1878 and adjourned in March 1879. Despite strong

opposition and a heated campaign, the new constitution was ratified by the people in May of that year.

Adopted in a time of extreme economic and social crisis and reflecting a lack of confidence in representative government, the new constitution placed a considerable number of restrictions on the power of the legislature. Similarly, because of the convention's emphasis on social and economic reform, the constitution included a great deal of material normally considered statutory in nature. The resulting document was extremely detailed, a fact that has dominated constitutional concerns ever since.

1879 TO 1935

It was not long before further attempts were made at revision. The legislature placed on the 1898 ballot the question of another constitutional convention. The measure lost. Again in 1914 and 1928 proposals for a constitutional convention, having received the necessary two-thirds legislative vote, went before the electorate. Both were resoundingly defeated.

In 1929, the legislature adopted two proposals for revision of the constitution. The first repeated the call for a constitutional convention and was placed on the 1930 ballot. It too failed to be approved. The second proposal authorized the governor to appoint a 15-member commission to study the need for reform. The subsequent report, submitted in December 1930, included a draft constitution designed to improve the form of the constitution while retaining its substance. The draft reduced the length of the constitution, by then over eight times as long as the federal constitution, from 65,000 to 27,000 words. Since the proposal for a convention had just been defeated at the polls, the commission recommended that the legislature propose a constitutional amendment that would permit the legislature (in contrast to a convention) to offer an entire



revision to the people. The 1931 legislature failed to act on the recommendation.

Confronted with the crisis of the depression and agitation for social and economic change, the 1933 legislature repeated its request to the voters to approve the call for a constitutional convention. This time the electorate obliged. Although it received almost no publicity (there were 22 other competing measures on the 1934 ballot), the measure was narrowly adopted, 705,915 to 668,084. Perhaps because of this slim margin, legislative support waned and the 1935 legislature failed to enact the necessary enabling legislation to organize a convention. Constitutional revision returned to the backburner, not to emerge as a topic of interest until after World War II.

JOINT INTERIM COMMITTEE ON CONSTITUTIONAL REVISION: 1947 TO 1949

After the war, several states turned their attention to the subject of constitutional revision. In California, after failing to agree on another call for a convention, the legislature established a joint interim committee and instructed it to draft a revised constitution. A staff was appointed, headquartered in Santa Barbara, and an advisory committee of over 200 members was created. The committee included experts in constitutional revision, two ex-governors, and representatives from a wide variety of political organizations and interest groups. An initial plenary meeting of the interim committee and its advisory group, held in October 1947, was attended by over 1,000 citizens. One newspaper commented that it was the greatest gathering of leading citizens in the history of California.

This level of activity and interest was not sustained. Between November 1947 and February 1948, revisions prepared by staff were presented to three subcommittees, but there appeared to be little

interest in implementing them. The majority of the ten subcommittees met only once and attendance was minimal. At a second plenary session in February, a proposal to amend the constitution to empower the legislature to submit an entire and coordinated revision was hotly debated and defeated. Various private groups and state officials expressed concern that revision might be prejudicial to their interests. It was argued that specific amendments to the 1879 constitution had kept it up to date, it had been thoroughly adjudicated, and there was little demand for substantive changes.

In its final actions in 1948, the advisory committee approved eight routine amendments to the constitution that were subsequently adopted by the legislature, seven of which were approved by the people at a special election in 1949. Involving virtually no substantive changes, the amendments reduced the constitution by some 14,500 words. Of more significance from a 1990 perspective was the failure of the legislature to endorse a committee recommendation increasing the number of required signatures on a constitutional initiative petition from 8 to 12 percent, leaving California with one of the lowest signature requirements in the nation.

CITIZENS LEGISLATIVE ADVISORY COMMISSION: 1956 TO 1962

In 1956, the legislature created a commission of 67 citizens authorized to study and evaluate the organization and procedures of the legislature. The Citizens Legislative Advisory Commission included representatives of a variety of interest groups, professions, the press, and civic organizations. Study committees were established on various aspects of legislative organization, plus an additional committee on constitutional revision. Members of the senate and the assembly were assigned to the several committees as nonvoting members.

In 1959, the assembly requested that the commis-



sion study the problems and methods of constitutional revision. In March 1961, the commission presented its findings and recommendations, beginning with the observation that the constitution had been amended more frequently (323 times) and contained more words (80,000) than that of any other state save Louisiana. One reason for this, the commission indicated, was that the extent of statutory material in the constitution required frequent amendment.

The commission concluded that the constitution was in need of a fundamental review and that it should be amended to permit the legislature to submit proposals for revision, in addition to its existing power to submit individual amendments. This recommendation paralleled that of the Assembly Interim Committee on Constitutional Amendments, which concluded in its 1960 report that "the present prohibition against legislative proposal of revision, imposed by court interpretation, be eliminated by amending Article XVIII so as to permit the legislature to submit an entire revision to the people."

This recommendation was adopted by the legislature and, as Proposition Seven, was placed on the November 1962 ballot. The ballot argument in favor of the proposition stated: "Most state legislatures are free to propose to the people extensive and significant constitutional changes, whether drawn up by an expert commission or a legislative committee. . . . Short of a constitutional convention, California has no way to make coordinated broad changes to renovate outdated sections and articles in its Constitution." No argument was submitted against the proposition. In the weeks preceding the election there was virtually no opposition to the measure, and it passed by more than a two to one vote.

CONSTITUTION REVISION COMMISSION

To begin to implement the authority granted by the voters, the legislature, early in 1963, created the

Constitution Revision Commission, eventually a 60- to 70-person group, all of whom were to be appointed by the Joint Committee on Legislative Organization, together with three members of the assembly and three from the senate. The task of the commission was to submit to the legislature its recommendations for revision of the constitution.

By the time of its first meeting in February 1964, the commission consisted of a broad spectrum of distinguished citizens, almost all male, including lawyers, educators, businesspeople, labor leaders, civic leaders, local government representatives, and others. When it became fully operational, a staff of four attorneys, a public information officer, two secretaries, and occasional consultants assisted the commission in studying, debating, and drafting amendments.

As a rule, the commission met monthly for two- and three-day sessions. In between, subcommittees of from 10 to 30 persons met to discuss staff studies and drafts of proposed amendments on specific articles of the constitution. Subsequently, these materials were presented to the full commission for review and, following discussion and amendment, to a drafting committee for preparation in the approved constitutional form. These drafts were returned to the commission for further discussion and amendment before the article was finally approved and submitted to the legislature.

PROPOSITION 1-a: 1966

In February 1966, two years after its initial meeting, the commission presented its first report to the governor and the legislature. Its recommendations, embodying about one-third of the constitution, covered core provisions dealing with the legislative, executive, and judicial branches of state government.

Proposition 1-a, the end-product of this first report, is perhaps best known as the measure that established annual sessions of the legislature and



empowered the legislature to fix its own salaries. However, other matters discussed by the commission are perhaps of even greater current interest. The 1969 account by Bernard Hyink, political scientist and commission member, suggests the contemporary relevance:

Some members of the commission made several attempts to change radically the provisions relating to initiatives and referendums. They believed that petition circulation and ballot proposition campaigns had become so complex and expensive that it was discouraging to all except highly organized interest and pressure groups. It was also argued that the complicated list of ballot propositions confronting the voter led to considerable confusion resulting in a rather doubtful expression of popular will. Moreover, many commission members wished to prevent the frequent use of the initiative to amend the constitution. Hence efforts were made to abolish the initiative entirely or to require a two-thirds or 60 percent vote of the people for ratification of a constitutional initiative. Some also tried for constitutional change that would require a 10 or 15 percentage of signatures to discourage the use of the petition device for constitutional amendments. Although ten to fifteen of the commissioners were active in the moves to bring about further change in the initiative process they did not muster enough support to win a majority. Those opposed to these changes included members who represented business interests, members of the legal profession, and legislators who also served as commission members. They maintained that the initiative represented a right and privilege of the people and should not be withdrawn nor subjected to more restriction.

Hyink highlighted another issue that has become a focus of contemporary concern in noting that "one of the most critical controversies within the commission" involved an attempt to eliminate the constitutional requirement that the state budget be approved by a two-thirds vote of each legislative chamber. Governor Brown favored a change to majority rule on the grounds that his influence was diminished when a larger number of legislators' votes were required. Concern was expressed over minority control: "It was pointed out that the concessions which had to be made often raised the level of expenditures and had resulted in a larger

budget." However, those voting against the change argued that the budget bill should receive the concurrence of an extraordinary majority before passage, and their views prevailed. The advocates of simple majority rule attached a formal minority report to the commission's report, pointing out that the two-thirds rule had been established in the 1930s for special reasons that no longer prevailed.

It was the hope and expectation of the commission that its proposals would, following legislative review, be placed on the November 1966 ballot. But the existing California constitution provided that in even-numbered years the legislature could, in addition to the budget, consider only matters put on the call for a special session by the governor.

The governor was reluctant to move: "I don't want my budget and smog and rapid transit and the revenue measures to get into a political football between the senate and the assembly where one side or the other will hold a bill for ransom or something else in order to jar loose constitutional revision" (press conference, March 1, 1966). Governor Brown was also concerned that the revisions favored the legislative branch of state government at the expense of the executive branch. He noted that the legislature was moving toward a full-time body, but the two-thirds requirement for appropriations bills was unchanged and restrictive civil service provisions had been left untouched by the commission. The assembly was anxious to move; the senate was preoccupied with other issues. Confronted with the need for radical reapportionment following the court's one-person/one-vote rulings, this was to be the last legislative session for nearly half of the senate. Revision could wait for the new senate in 1967.

Commission chairperson Judge Bruce Sumner protested: "Failure to place the matter on call may result in the end of the entire project, for many of the commission members have stated that unless there is an indication from Sacramento that their



work will receive serious consideration, they will spend no more time on the project" (letter to commission, February 14, 1966).

Pressure on the senate mounted; the governor relented. Constitutional revision was put on the special call. The Assembly Interim Committee on Constitutional Amendments recommended passage for ACA 13 (a revision incorporating most of the commission's recommendations with some legislative changes), and the measure passed with only one dissenting vote. In the senate, a determined effort by some lobbyists to derail the bill was nearly successful. However, in the end, ACA 13 passed and was placed on the November 1966 ballot as Proposition 1-a. The ensuing campaign was one sided. Legislators persuaded lobbyists that it was in their interest to support legislative reforms and improved salaries implicit in the constitutional revision. Leaders of most of the prominent interest groups, the state chairpersons of the two major parties, and most newspapers endorsed the measure, as did both Governor Brown and gubernatorial candidate Ronald Reagan. Such support proved more than sufficient; Proposition 1-a passed by over 70 percent. The result boosted the spirits and energies of the volunteer commissioners as they moved to the second phase of the revision project.

PROPOSITION 1: 1968

Two more years were spent in developing the second round of revisions. These were put into a single package revising the articles dealing with education, state institutions, local government, corporations and public utilities, land and home-stead exemptions, amending and revising the constitution, and civil service. Altogether, an existing 14,000 words were reduced to about 2,000 words, in part by proposing a transfer of language from the constitution to statutes. While there was more opposition in the legislature to the proposals than had been true in 1966, there was little difficulty in

obtaining the necessary two-thirds vote, and the measure proceeded to the ballot as Proposition 1 in November 1968. Unlike 1966, however, support for the measure was lukewarm. Interest groups provided lip service for revision but little financial assistance to the campaign. Governor Reagan failed to endorse the proposition, and the *Los Angeles Times* opposed it. The proposal to make the state superintendent of public instruction an appointive office was especially controversial.

For whatever the reason, the measure was soundly defeated by a vote of 57 percent. Prior to the election the *Los Angeles Times* had editorialized that "the electorate would have been better served had the proposal been less broad in scope" (October 15, 1968). Legislative and commission leaders agreed that too many diverse subjects had been included in the single measure, leading to voter confusion and uncertainty. It was decided that subsequent propositions should contain either the revision of one article or a series of noncontroversial deletions from a number of articles.

REVISION IN THE 1970s

Following the 1968 election, the commission moved to phase three of its work, perhaps spurred on by the *Los Angeles Times'* assertion that, notwithstanding its opposition to Proposition 1, "the work of the commission is vital and must be continued" (November 21, 1968). In 1970, heeding the message not to put too many articles in the same proposition, four ballot measures, incorporating most of the provisions of Proposition 1, were approved by the legislature and 16 were placed on the June ballot. These dealt with local government (Proposition 2), public utilities and corporations (Proposition 3), state institutions and land-use exemptions (Proposition 4), and civil service and revision of the constitution (Proposition 5). Only Proposition 2 was adopted.

Four more commission proposals (Propositions



14-17), all relatively noncontroversial (dealing with the civil service, amendment procedures, and miscellaneous and obsolete provisions), were placed on the November 1970 ballot. All four passed.

The commission issued its final report in March 1971. Some work remained to be done. In 1972, commission recommendations dealing primarily with obsolete and housekeeping provisions were placed on the June ballot (Proposition 10) and November (Propositions 6 and 7). In 1974, four additional measures resulting from the commission's work were put on the November ballot: Proposition 7 clarifying the state's bill of rights; Proposition 8 deleting 8,200 words and reorganizing the article dealing with taxation; Proposition 9 dealing with recall; and Proposition 12 concerning public utilities. All seven of the 1974 measures passed easily.

Finally, Proposition 14, approved by the voters in June 1976, reordered and renumbered articles that had previously been revised. The ballot argument noted that, as a result of commission recommendations, more than 40,000 words had been deleted from the constitution and all but two articles had been revised. California's exercise in constitutional revision had come to an end.

CHARACTERISTICS OF CONSTITUTIONAL REVISION

The following observations can be drawn from this summary of constitutional revision in California:

- Whether in the public and explosive setting of a constitutional convention, as in 1879, or in the relatively calm, almost academic environment of a revision commission some 90 years later, the revision process is intensely political.
- Revision is time consuming, requiring sophisticated legal and drafting skills of the highest order.
- To be successful, revision requires gubernatorial as well as legislative leadership.
- Given the requirement of a two-thirds legisla-

vote, revision involves negotiation and compromise.

- The agreement implied in an extraordinary legislative vote does not guarantee popular support. Thus, an effective political campaign is essential.
- But even with a good campaign, success at the polls is not assured. Constitutional revision can be a high-risk endeavor and will continue to be so.

These conclusions should be taken seriously in any legislative consideration of constitutional revision. In addressing the current imperfections of the California constitution, the costs and risks of revision must be weighed carefully against the alternative of carefully targeted amendments.

(See next page for Selected References.)

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