Some Perspectives Concerning A New Constitution for Louisiana

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SOME PERSPECTIVES CONCERNING A NEW CONSTITUTION FOR LOUISIANA

Some twenty-seven years ago speaking as an officer of the Louisiana State Law Institute with reference to the work involved in the preparation of a projet of a proposed new Constitution for Louisiana, I referred to the need, the challenge and the opportunity that existed in such a task in this State. The need of Louisiana for a more workable Constitution was a matter of common knowledge, even at that date in the distant past. We were mindful then of Chief Justice Marshall's words:

> "A constitution, to contain in accurate detail of all the sub-divisions of which its great powers admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal Code, and could scarcely be embraced by the human mind. It would never be understood by the public. Its nature, therefore, requires that only its great outlines be marked, its important objects designated and the minor ingredients which compose those objects be deduced from the nature of the objects themselves."

Louisiana's Constitution, then and now, as the longest and most complex example of what a State Constitution ought not to be, certainly met the prolixity and

lack of public understability "no nos" against which Chief Justice Marshall admonished.

An eminent student of State Government has made this appraisal:

"Speaking of the Louisiana Constitution, which is one of the worst and certainly the most long-winded of all, an able scholar has written:

> 'A layman who starts out to study the Louisiana Constitution . . . is confronted with a Herculean task. . . . The document will trip, entangle, infuriate and then exhaust him. The difficulties presented to the inquiring citizen include the vast detail, the dispersion of subject matter, confusing terminology, inconsistencies, errors, references to other legal documents, x x x duplication of material, contradictions and omissions.'"[1]

Another distinguished political scientist has observed:

"The Louisiana Constitution, which is so rich in examples of what is wrong with State constitutions, includes by reference sections of seven previous

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[1]Graves, State Constitutional Revision (1960), Chapt. VII, article by David Fellman, Professor of Political Science, University of Wisconsin, pp. 140-141 quoting from Kimbrough Owen "The Need for Constitutional Revision in Louisiana, 8 Louisiana Law Rev. 1 (1947).

constitutions, many state and federal law, municipal ordinances, and even several resolutions or contracts of governmental boards. A competent scholar has computed that it gives some degree of constitutional status to 179 documents. One section (Article XIV, sec. 23.1) dealing with sewerage, water, and drainage in New Orleans incorporates by reference an 1899 statute which has been amended 10 times."[2]

Out of this condition we have worked ourselves in the past two decades into a situation in which it is virtually impossible today to approach ~~the~~ many major new problems confronting State and Local Governments without contemplating constitutional amendments. The Constitution has continued to grow and, as a prior speaker emphasized, the stage of voter rebellion against amendments has now reached a peak with wholesale rejection of new proposals at the polls. Clearly something has to be done.

With the winds of change alive in Louisiana, the time is ripe for the work of the Constitutional Convention. Louisiana's new Governor, in office now for a little better than a year, has had the political courage to lead the movement for a new Constitution. This leadership has brought about a Convention which, just a little over a year ago was considered to be such a monumental task as not to be

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[2]Fellman, op. cit. supra note 1, p. 150.

politically feasible. The Convention's presiding officer, less than two weeks ago, made an eloquent well-reasoned plea calling for true statesmanship to rise over subordinate interests to produce a new charter of fundamental law for our State.

There are indeed prophets of doom who insist on saying that this gigantic effort will come to naught. There is ample time to prove these prophets wrong and there is great hope that the Convention, which will labor during the next six months, will succeed in drafting a document which can gain the approval of the people and can avoid the co-alition of opposition which is always to be expected when changes affecting particular groups or interests are involved with each controversial departure from the status quo. Significant progress has been made by the study and drafting Committees.

I like to think that public sentiment residing in the broad base of voters in Louisiana, unlike what it was when the 1950 Projet was deposited to begin collecting dust in the State Archives, has awakened from complacency and will, when the hour of action comes, realize the importance of having a new Constitution which can meet the needs of Government in the next five decades with all of the rapid changes that are upon us.

The Law Institute's extensive notes and studies were published in 1956 -- the year in which the voters declined to call a convention by a margin of nearly 6 to 1.

This work of the Institute, fashioned with the reform provisions of the Model State Constitution in mind, has been an indispensable starting point for the studies and debates which have been conducted in the Convention's Committees during the past six months. There has been no dearth of new problems attributable to the past two decades to claim the attention of the delegates, as they have labored hard to produce a first draft for consideration by the delegates.

Those decades, in which so many Conventions and other revision procedures were pursued in other States, would indicate a national climate responding to the need for modernizing and streamlining state governments. The keynote for this attitude was struck by President Eisenhower's Commission on Intergovernmental Relations. This group reported:

> "Early in its study, the Commission was confronted with the fact that many state constitutions restrict the scope, effectiveness, and adaptability of state and local action. These self-imposed constitutional limitations make it difficult for many states to perform all the services their citizens require, and consequently have frequently been the underlying causes of state and municipal pleas for Federal assistance.
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> "It is significant that the Constitution prepared by the Founding Fathers, with its broad grants of

authority and avoidance of legislative detail, has withstood the test of time far better than the constitutions later adopted by the states. . . .

"The Commission believes that most states would benefit from a fundamental review and revision of their constitutions to make sure that they provide for vigorous and responsible government, and not forbid it. . . ."[3]

Those words could have been written with Louisiana's Constitution in mind, and Louisiana's challenge today is to move rapidly toward the adoption of a new Constitution which will correct the shortcomings of the outmoded present document and which will provide a broad fundamental law, not a prolix statutory Code of the type that we have in our much amended 1921 Constitution.

The National Municipal League, in its publication "How to Study a State Constitution" refers to a definition of significance as a guide for those who would seek reform. That publication emphasized the general concept familiar to statesmen, scholars, and political scientists:

" . . . 'A constitution is a body of fundamental law.' The Alaska Constitutional Convention in its

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[3]The Commission on Intergovernmental Relations, A Report to the President (1955), pp. 37-38, 56.

report to the people explains that fundamental law 'determines the basic structure of government and the powers and responsibilities of the legislative, executive and judicial branches. It lays down essential principles and safeguards for the conduct of the public business and guarantees the rights and liberties of all the people.'"[4]

Professor Fellman, an authority in this field, speaking to a Constitutional Convention in another state said:

"I believe that the very first requisite for a good constitution is brevity. It is a great mistake for the authors of a state constitution to say too much, or to imagine that they are endowed with wisdom which later generations will never be able to achieve. A constitution is not a legal code, and it should not serve as a vehicle for the appeasement of temporary and partial interests. It should attempt no more than to state enduring first principles. It is sufficient that it describes in general terms the

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[4]National Municipal League, How to Study a State Constitution (1962), p. 2. Citing "What Should a Constitution Contain?" (New York, National Municipal League, n.d.), p. 1 (Mimeographed) and "Proposed Constitution for the State of Alaska, A Report to the People of Alaska from the Alaska Constitutional Convention" (College, Alaska, The Convention, 1956).

fundamental rights of man, the basic framework of government, and the procedures for peaceful change."[5]

We in Louisiana can well take these words to heart. The success of constitutional reform in Louisiana is composed of at least two elements: (1) a document which overcomes a maximum number of the failings of the present document; and (2) ratification by the electorate. The necessity of achieving item (2) may prevent the revision from being as extensive as one would like to see. Professor Sturm has written concerning the practical in this regard:

" . . . compromise is the essence of democratic decision-making, including revision of state constitutions. Purists seldom win public acceptance of their models. . . . Successful reform efforts, therefore, usually must be attuned to the limits of tolerance in the electorate and careful assessment of the acceptable degree of change from the status quo. In constitution-writing few participants are completely satisfied with all the provisions; what counts in the final analysis is achievement of the maximum amount of reform that is acceptable to the electorate, which finally decides."[6]

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[5] Contemporary Approaches to State Constitutional Revision (1970), p. 10.

[6] National Municipal League, Thirty Years of State Constitution-Making: 1938-1968 (1970), p. 102.

At this stage in the Convention calendar it is to be fervently hoped and expected that the debates to take place in the consideration of Committee proposals and of delegate proposals will result in a document which will lean far more toward the ideal than to the path of too early compromises to which Professor Sturm was referring and which are already evident in some phases of the draft reports.

From the broad scope of the substantive areas of the Constitution only a limited number of matters may be touched upon as we approach revision from the perspective of desiring to produce major improvement -- the formidable task the delegates now face in deciding upon the ultimate content.

The Legislature: The attitude toward vesting powers in the Legislature lies at the very heart of Constitutional reform. The guiding principle should be to excise excessive detail in Articles III and IV and throughout the constitution for such details operate as limitations upon legislative authority. The keynote should be to repose greater trust and confidence in the Legislature and, in turn, have confidence in the people who elect the Legislature.

Our Louisiana Supreme Court has observed:

" . . . it is fundamental that the legislature is supreme except when restricted by the Constitution, and that, unlike Congress, which can do nothing that

the Federal Constitution does not authorize, may do everything that the State Constitution does not prohibit."

Thus, by definition, a state constitution must be a restrictive document; all powers not prohibited are reserved and may be the subject of legislative action.

The most important change that can be made in a new Constitution is to increase the legislative power and its responsibility. This result can flow not only from the legislative article itself but also from the deletion of material of a legislative character. If the Constitution provides, for example, for a streamlined Executive Department by deleting agencies and departments; if it curtails and eliminates dedicated revenues and special taxes; if it omits materials on local courts and excessive detail concerning the judiciary; if it deletes lengthy provisions or political subdivisions, local taxes and local debt -- to cite merely some examples -- the deleted material automatically becomes part of the general area of the legislature's increased power and responsibility. Concurrently there must be strengthening of the legislative process, more time for deliberation and essential research for the preparation of sound legislation. The date of legislative meetings should be changed from May to early in the calendar year. This would be conducive to better planning and a stronger legislature.

The proposed article on the legislature, traditionally the weaker sister of Louisiana Government, makes significant changes toward providing more flexibility. Mechanical and procedural restraints can be wisely eliminated. Procedural matters can be relegated to statutes or legislative rules. The Committee proposal does seek to reject the traditional distrust of legislative power which, perhaps is a by-product of Louisiana's special brand of politics. This philosophy can be achieved only by coordination with the sometimes conflicting approaches of other Committees.

Certainly a better, stronger Legislature is inherent in the concept of visualizing the Legislature as a "continuous body". This term is to be distinguished from "continuous session", it denotes that the legislature is to be viewed as a legal entity for the whole term of its members. This would allow for the establishment of standing committees to operate year round to study and analyze needed and proposed legislative action; it facilitates and expands the concept of pre-filing of legislation. In line with this concept, a Committee proposal provides for annual 60 day legislative sessions; the legislature is to sit for 60 days within an annual 120 day period -- thus automatically providing the advantages of the "split session". Fiscal sessions would be eliminated as the annual deliberations are general sessions. The

added session time seems justified by the increased number of problems coming before the legislature for decision.

One of the most difficult problems to be faced is reapportionment. The 1921 convention reapportioned the legislature, wrote that reapportionment into the Constitution, and required the Legislature to reapportion itself every ten years. No significant reapportionment occurred until 1971 when federal court decisions required Louisiana to conform to the judicial mandate of "one man, one vote". The Committee's proposal does not undertake to reapportion the legislature. It does provide that the Senate shall not exceed 41 members and the House 111. The pattern of apportionment is left to the legislature in this draft by establishing that representation in each house shall be apportioned on the basis of total state population as shown by the census. It is essential that there be included in the new Constitution some method to insure that the duty of reapportionment is performed. This might be, as the Committee proposes, action by the Supreme Court. Alternatively consideration might be given to vesting such authority in a designated officer, such as the Secretary of State or possibly a special Commission. This is a problem the delegates must face.

Is there merit in the Committee recommendation that the Lieutenant Governor no longer be the presiding officer of the Senate? This suggested change is likely

to be a lively subject for debate. There is no convincing evidence that the present system has led to domination by the executive branch and it is doubtful that the change will be offset by increased responsibility in the Lieutenant Governor for performance of Executive functions.

What of the Gubernatorial veto of legislation? Doubling the time for consideration by the Governor from 10 to 20 days seems necessary. It would tend to eliminate the possibility of error leading to the recall of veto. Vetoes following adjournment may, upon occasion, be of a nature to require a veto session. Provisions for calling such sessions by majority vote of the legislature are part of the concept of a stronger legislature.

The Executive. The massive, top-heavy executive branch in Louisiana constitutes a basic cause for many of the perennial problems confronting the state. A major focus of state governmental reorganization in recent years has been the consolidation of the executive and its various agencies. Since 1960 there have been several attempts to restructure our chaotic executive organization which resulted in decreasing the number of state agencies from 267 to 200. However, even today, Louisiana is far out of line with other states in the number of state agencies; no state has as many and the national average is only one-fourth the number here.

The effects of this vast bureaucratic proliferation are pervasive. In the minds of most voters, the governor is responsible for everything in state government; he gets the credit and bears the blame. Yet under our present system he has no constitutional or legal authority over many governmental functions which are subject to the discretion and control of elected officials. The governor is further hindered in his effectiveness as chief executive since it is virtually impossible for any one person to confer with and co-ordinate the activities of 200 different agencies. Similarly, the legislature is prevented, through lack of information as to what agencies are doing and what expenditures are reasonable, from exercising its constitutional mandate to control state spending. Perhaps worst of all, the public is hurt by massive disorganization; it is not easy for a citizen to locate all of the various agencies performing service or regulating functions.

As far back as 1954, the Projet of the Louisiana Law Institute called for a reorganization of the executive department that would allow it to operate with maximum efficiency and effectiveness while remaining politically responsive. To effectuate this reorganization it was recommended that all administrative agencies be consolidated into a small number of departments organized by function. Functional consolidation is aimed at eliminating costly overlapping and duplication of effort while encouraging

intelligent, thorough performance of logically related tasks. Further, the Law Institute recommended shortening the ballot by eliminating most elective administrative officials. Louisiana's ballot for state elective officials is one of the longest in the country. This distracts public attention from the more important positions of governor and attorney general and promotes friction between elective department heads seeking to establish their "independence." Instead, these positions would be filled by appointment, thus, establishing clear lines of authority running from the governor at the top of the hierarchy through the entire organization. As a corollary, these appointments would be subject to the governor's power of removal.

In effect, this plan for a cabinet form of government has been proposed as a structure for the executive department in our new constitution. The committee recommends that the number of state wide elected officials be reduced from the present eleven to five, retaining only the governor, lieutenant governor, secretary of state, treasurer, and attorney general. Thus, deleted as elected officials are comptroller, commissioner of agriculture, register of state lands, custodian of state voting machines, commissioner of insurance, and superintendent of education. Elected officials will serve four-year terms with the governor limited to two consecutive terms.

Underneath these elected officials would be the cabinet system. The proposed article provides that the number of executive departments be limited to a maximum of twenty, including elected officials; the treasurer, secretary of state, and attorney general will head, respectively, departments of treasury, state and justice. Below them will be up to 15 departments or agencies. The heads of all these departments will be selected by the governor with the exception of the superintendent of education, to be selected by the Board of Education, and all would be subject to confirmation by the state senate. The governor is empowered to remove any department head. Although a model plan was submitted to the convention by the governor, the actual reorganization plan is to originate in the House which must submit it to the governor within 18 months of the effective date of the new constitution.

The committee has tentatively recommended that the following agencies and officials be omitted from the new constitution: Military, Banking and Commerce, and Industry Departments; State Fire Marshall; Board of Health; Dept. of Highways; Liquified Petroleum Gas Commission; Louisiana State Museum; Board of Public Welfare; Department of Revenue; and the Louisiana Stadium and Exposition Department.

The foregoing proposals are sound. Improvement lies in adopting a provision from the Model State Constitution authorizing the Governor, from time to time,

to make such changes in the administrative structure or in the assignment of functions as may, in his judgment, be necessary for efficient administration. This should be coupled with provision that such changes set forth in executive orders shall become effective at stated periods.

Judiciary. The Louisiana judicial system, as presently constituted, is basically the traditional tripartite division of courts of general jurisdiction: the trial court, the intermediate appellate court, and the Supreme Court.

The Supreme Court is composed of 7 justices elected from 6 districts for 14-year staggered terms. It has supervisory jurisdiction over all inferior courts; original jurisdiction for removal of judges, disbarment, and jurisdiction over disputes affecting its own jurisdiction; appellate jurisdiction in enumerated criminal and civil matters, and writ jurisdiction at the discretion of the Court. Additionally, the Supreme Court may decide questions certified by the four courts of appeal which have appellate jurisdiction in civil matters except when an appeal lies to the Supreme Court.

The district courts are made up of 33 territorial courts with civil and criminal jurisdiction, plus separate

civil and criminal district courts in Orleans Parish. In addition, the present Constitution provides for special courts. Juvenile courts such as exist in Caddo, Jefferson and Orleans Parishes are of this type, as is the one family court in East Baton Rouge Parish. Also provided are courts of limited jurisdiction: 43 city courts, 250 mayor courts, 447 justices of the peace, a municipal court in New Orleans, a traffic court in New Orleans, and a Jefferson parish court.

The Convention will face the basic question of whether the present structure should be retained intact, with provision for subsequent change, or whether significant changes should now be made. There are those who advocate a unified court system under which the various city courts, traffic courts and justice of the peace courts would be merged either into the district courts or into another tier of courts -- parish courts with a limited jurisdiction defined. Advocates of the unified court system argue that it is more flexible in utilizing judicial personnel and in eliminating overlapping and duplication. Reassignments of judges are facilitated under a unified court plan and its advocates believe it can be accommodated to any need of providing "specialist judges". The so-called Unified Court System reflects the modern trend. Its rationale is that fair and prompt consideration of judicial business can be more fully realized in a judiciary unified in its

structure and administration. Its adoption in Louisiana would primarily change our confused lower court structure. Under a unified court system, the trial court would have jurisdiction over all cases and proceedings, with specialized procedures and divisions to accommodate the various types of criminal and civil matters within its jurisdiction. It would abolish our scheme of dispersed specialized courts. Instead, the judicial functions of the trial court would be performed by a single class of judges who would be assigned, on either a rotating or permanent basis, to preside over specialized matters. Thus, if a juvenile or family court matter arose, the parties would not go to a separate court, but to the judge who is handling those cases for the unified court. Thus, under the uniform plan the court system is organized according to uniform and simple divisions of jurisdiction and operates under a common administrative authority. In this way the rendition of equal justice is enhanced because the whole system applies equal standards.

As with much of the present constitution, Article VII establishing the Judiciary Department needlessly enumerates many administrative and procedural functions. When such details are elevated to constitutional status unnecessary inflexibility results and when conditions change a constitutional amendment is required to revise an outmoded procedure. The draft article of the judiciary committee

recommends vesting full rule-making authority in the supreme court. Accordingly it would be given the power to amend, alter, and rescind any rule of practice or procedure not in conflict with law and without prejudicing the rights of any litigant.

The Committee proposal would continue the present system of electing judges. There are essentially two ways to select judges: election by popular vote or nomination by the governor and confirmation by the Senate. In support of the elective system, it is urged that direct and immediate responsibility to the people will keep judges progressive and in sympathetic touch with current opinions. However, the requirement of popular support sometimes tends to elevate to judicial office men marked with the qualities of the successful politician and tends at times to require political activity. Those who favor the appointive method argue that the governor, in whom a majority of the people have already expressed their trust, is in the best position to choose the man with the necessary qualifications. The liability here seems to be the lingering doubt of whether a man so appointed can establish his independence or whether this is substituting "another brand of politics". A combination of these two methods was proposed to the 1921 constitutional convention as the Spencer Report, and resurrected by the Project in 1954. Now known as the Merit System, it calls for vacancies

and new judgeships to be filled by the governor from a select list submitted by an independent commission composed of senior judges. Judges so selected would be presented to the electorate for confirmation within 2 years and again at the end of their term on the question of retention.

Advocates of the so-called merit system will no doubt press their views upon the delegates. A current poll of the Bar Association on this issue will be enlightening. I personally favor the so-called merit plan. In all likelihood, it will have difficulty in gaining acceptance.

Another issue raised in considering the judiciary is whether Louisiana ought to maintain its unique procedure of permitting appellate review of facts. The committee on the declaration of rights has recommended in its article that "in civil damage suits no fact trial by a jury shall be re-examined on appeal", while the judiciary's Committee's draft provides that appellate jurisdiction extends to both the law and the facts. The consequences of the inclusion of appellate review of fact in a judicial system are far-reaching. A major effect in Louisiana has been the relative scarcity of civil jury trials, usually ascribed to a feeling that appellate scrutiny of the facts negatives any advantages of sympathy which might be had in a jury trial.

Under Article VII, Section 29 of the present constitution, in most civil cases, appellate review is upon both the law and the facts, but this does not imply free substitution of the appellate court's judgment for that

of the trial court. In fact, the jurisprudence has developed the manifest error rule intended to operate as a limitation upon the freedom with which the appellate court can overturn a trial court's factual conclusions. Logically, the trial judge or jury is in a better position to observe the demeanor of witnesses on the witness stand, and consequently to evaluate the weight of their testimony than an appellate judge whose review is confined to the bare representation of a written record. Nevertheless, it remains true that errors of fact frequently result in unjust conclusions which are highly prejudicial to a party litigant. By allowing the trial court to perform its function of determining facts and by disturbing such determinations only when manifestly erroneous, every litigant is assured a fairer and more uniform application of the law. There will be heated debates over this issue in the Convention.

Education. The constitutional provisions of the several states relating to the establishment, management, and finance of public educational systems vary in length and detail from the relatively short and simple statement of the Model State Constitution which contains only 43 words:

> "The legislature shall provide for maintenance and support of a system of free public schools open to all children in the state and shall establish,

organize, and support such other public educational institutions, including public institutions of higher learning, as may be desirable."

The present constitution in Article XII provides for a detailed structure to manage the public school system. Under it the State Board of Education has responsibility for all institutions of elementary, secondary, and higher education except the LSU system which is administered by a separate board. Overlapping of functions, duplication of plants, facilities, and personnel, and the rivalry among schools have posed significant management problems especially with respect to institutions of higher learning. In response to this situation the Louisiana legislature in 1972 provided for a 42-member "superboard" to administer institutions of higher education; it would eventually be replaced by a 16 member board. The superboard plan, scheduled for implementation on January 1, 1974, would eliminate the LSU Board and coordinating council and limit the jurisdiction of the Board of Education to the elementary and secondary school system.

The superboard plan, replacing the present system, may itself be replaced if the voters approve a new constitution. A bill which would have delayed implementation of the superboard plan until mid-1974 died on the senate calendar; it was designed to avoid the potential confusion of changing from the present system, to a superboard system, and then

to the system implemented by the new constitution. Thus, the Louisiana system of higher education may have to operate under three different administrative bodies this academic year. The convention will consider a plan calling for four boards to govern education in Louisiana. These Boards would be: one for elementary and secondary education; one, a Board of Trustees for higher education; one for the LSU System; and, replacing the Coordinating Council for Higher Education, would be a Board of Regents with supervisory jurisdiction over all public institutions of higher education and career education. Under this plan the LSU Board of Supervisors would be subordinate to the Board of Regents but would manage the L.S.U. System. State-supported colleges and universities outside the LSU System would be under the Board of Trustees.

As one who worked thirty-four years ago in the problems of the so-called Louisiana scandals insofar as the management of L.S.U. was concerned, I can testify that the constitutional stability given to the University under the 1940 Plan has lived up to all expectations. This University has grown in recognition, status and effectiveness. The proposed plan in the Committee's recommendation seeks to achieve coordination but without destroying the continuity the L.S.U. System ought to have. Short of continuing the present system unimpaired, that proposed in the Committee's draft is an acceptable means

of providing the basis for all public education to grow and develop without needless duplication. One obvious incongruity now existing should be corrected in a new Constitution. Conflicts between an elective superintendent and an elective Board are inevitable. I have long stood with those who believe The Superintendent of Education should be a career and appointive office. There will be much controversy and difference of opinion in this entire area.

Local and Parochial Government. It has become a virtual cliche' today to say that our institutions of local government, well designed to meet the simpler needs of earlier times, are poorly suited to cope with burdens imposed on all governments by the complex conditions of modern life. It is now estimated that between 65 and 70 per cent of Louisianians live in urban areas. To the individual citizen the most important function of government is to provide adequate and efficient services to meet his needs. We are concerned with sanitation pick ups, transit and traffic systems, protection for our persons and property, basic schooling and housing. Each of us looks to our local governments, the city and the parish and see that our demands are simply outdistancing their capabilities. While highly complex problems seldom have simple solutions, most observers feel that the answer may lie in revising patterns of local government to encourage local policy decision-making and to permit effective

management of local affairs. Citizens can obtain the services they need at reasonable cost only through strong local governments, since neither federal nor state governments can be expected to deal competently with local situations.

Article XIV of the present constitution concerning local government is as detailed and voluminous as it is archaic. It is the provision which is responsible for that endless procession of constitutional amendments which regularly perplexes us as voters. Any special district or tax, whether local or statewide, must be approved by the voters in a statewide election and placed in the constitution. Voters throughout the state are asked to decide everything from how much can be charged for water in New Orleans to whether Lake Charles should be allowed to reclaim part of its waterfront for recreational and commercial purposes. Such a procedure in a modern government is ludicrous and the voters know it. A recent survey of voters reveals that more than one-third believe that state government presently has too much control over local government. Thus, the predominant issue in constitutional revision with respect to local government is how to give parishes and municipalities more autonomy.

The consensus is that local governments must be fully redesigned and granted broad home rule powers by the state. A home rule charter is a basic law which defines

and outlines the powers, functions, and essential procedures of a municipal government; a "mini-constitution" if you will. By amending the charter almost any desired change can be achieved in a government's organization or functions. Ideally, it strengthens state governments by freeing legislatures from a multitude of special local bills and the accompanying "log-rolling;" it prevents local officials from evading responsibility for decisions by blaming the legislature. Our present constitution in Article XIV, Section 40, grants home rule authority structurally but not substantively, because it does not give the municipality full authority to operate its own affairs according to its own determination of what is best for the citizens of its community.

A new constitution should provide the mechanism through which municipal and parochial governments may exercise a full complement of sovereign powers. Under a current proposal those subdivisions operating under existing home rule charters, i.e., those established by special legislative act for the parishes of East Baton Rouge, Jefferson, and Plaquemines, and the cities of Baton Rouge, New Orleans, and Shreveport, are confirmed and ratified.

In 1895 the legislature passed the Lawrason Act which was to be the general legislative charter created for all municipalities created after that date; it set up a mayor-council form of government and defined its powers

and duties. Most municipalities in the state today operate under the Lawrason Act. A major innovation of a pending proposal will be to vest in these and all other political subdivisions the full panoply of police powers essential to the management of their affairs. Going a step further, the proposal would provide that these local governments may adopt a home rule charter which will render them semi-autonomous from the state legislature.

Provisions of the Committee proposal constitute a broad grant of self-government powers to parishes, municipalities, and other units of local government. This is accomplished in two ways: first, by giving these local units general authority to exercise any power and perform any function relating to their government and affairs; additionally, the powers to regulate, tax, license, incur indebtedness, and to create special districts are specifically enumerated. The practical effect of this will be to finally do away with unnecessary and burdensome requirement of statewide approval of constitutional amendments intended purely for local purposes. The broad grant of powers in this section is subject to restrictions relating to local debts, election laws, defining and providing punishment for felonies, and laws governing civil relationships all of which must necessarily remain uniform throughout the state.

Ultimate achievement in this field, however, lies in the home rule charter provision. Under this provision "any local governmental subdivision may draft, adopt, or amend a charter of government to be known as a home rule charter." The voters who constitute the municipal sovereign are vested with the charter-making power. "A home rule charter shall be adopted when approved by a majority of the electors voting on the charter proposal at an election proposed for that purpose."

The home rule charter does not grant to the municipality which adopts it any extraordinary powers, as other provisions in this proposal already vest in such government a broad grant of authority. Yet, it is important in that the home rule provision allows the people to directly determine the structure, form, organization, and procedure of government which they desire to manage their affairs. A municipality without a home rule charter may exercise those powers and functions not denied it by general law or the constitution. Necessarily then, municipalities without home rule charters will be limited in form and structure to that provided by the Lawrason Act and such structure will be subject to legislative change. Home rule governments, on the other hand, will be protected by a specific constitution prohibition: "The legislature shall not pass any law the effect of which changes, modifies, or affects the structure and/or

organization . . . of any local governmental subdivision which operates under a home rule charter."

Obviously, the degree of independence of a home rule jurisdiction will depend on what is meant by "structure and organization" as opposed to "powers and functions." The courts have already given a broad definition of "structure and organization." In LaFleur v. City of Baton Rouge, 124 So 2d 374 (1960), the issue was whether an act of the legislature fixing salary schedules to be paid to municipal firemen had to be complied with by the City of Baton Rouge. In holding that salaries were under the exclusive jurisdiction of the city charter, the court said:

> "A municipality, where created by legislative mandate in accordance with the Constitution, is granted powers and authority which are subject to change by the Legislature but where the creation of the municipality has its origin in the Constitution itself, then the Legislature is not vested with authority to alter, change or interfere with the powers and authority so granted to the municipality. Under the 'power and function of government' the obligation on the part of the City of Baton Rouge to furnish a fire department is self-evident, but it is difficult to conceive how the structure and organization of the fire department could be effectuated by the

City of Baton Rouge without giving particular consideration to salaries to be paid to the firemen. Since the aforesaid constitutional provision reserves all matters of structure and organization exclusively to the defendant, City of Baton Rouge, it follows that the question of pay of a fireman being a matter of structure and organization and distinguished from a power or function is reserved exclusively to defendant herein."

Clearly then, the adoption of home rule charters should go a long way towards eliminating the practice of interest groups gaining special dispensations from the state legislature, leaving the bill to be paid by local government.

At this point, I have more than trespassed on my time. I leave untouched the many problems involved in framing of a "Declaration of Rights" -- which, in its adopted form, must cover such difficult areas as protection from discrimination and also be broad enough to embrace the entire ambit of equal protection of the laws. In this area the draftmen of the Constitution must be certain to conform to the minimum standards of the Federal Constitution. For example a simple statement "in all criminal prosecutions the accused shall have the right to counsel" would make the guarantee conform to that under the United States

Constitution. I leave untouched the matter of Revenue and Taxation -- certain to evoke much debate when the matters of property tax and equalization of assessments become involved. There are many other areas left untouched for the detail of even a brief Constitution, which ours has never been accused of being, cannot be covered in one perspective.

I conclude with a declaration of hope that our new constitution may become a reality; that it be a document setting up broad grants of authority to the legislature to function as a representative body; that impediments to this may be removed; that a sound and meaningful bill of rights be incorporated; that the local government units be given authority to settle their own problems via home rule; that guidelines of a broad nature for an equitable tax structure be supplied; that strong encouragement be given to public education; and that the means of making the Executive and the Judiciary more efficient and effective be devised. It is too much to expect that a Constitution solve all problems. It can, however, better the roles of State and Local Governments by providing a framework to move more confidently into the last two and a half decades of this twentieth Century.

Remarks- Dean Paul M. Hebert
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