

THE CALIFORNIA *Journal of* Politics & Policy

Volume 2, Issue 2

2010

Lessons from Recent State Constitutional Conventions

Vladimir Kogan

Stanford University and University of California, San Diego

Abstract

Over the past 45 years, 15 American states have held constitutional conventions to confront the pressing concerns of the day. These conventions pursued markedly different paths toward constitutional reform, and achieved widely varying degrees of success. The experience of these states provides important insights for policymakers and citizens that can help identify both models worthy of emulation and the potential pitfalls of reform. The likely success of state constitutional conventions appears tied not to the identity of delegates or the selection mechanism used to recruit them but rather to the scope of the possible revisions and the way in which amendments are presented to voters for final approval. In addition, recent political history suggests that voters remain reluctant to empanel conventions to pursue wholesale reform, rejecting every call for a constitutional convention that has appeared on a state ballot since 1990.

Keywords: state constitutions, constitutional reform, direct democracy, constitutional conventions

THE CALIFORNIA
Journal of
**Politics
& Policy**

Lessons from Recent State Constitutional Conventions

Vladimir Kogan*
Stanford University and
University of California, San Diego

For more than two centuries, the constitutional convention has served as one of the most important tools in the political development of state constitutions. In total, American states have convened more than 230 constitutional conventions (see Table 1 below), as legislators, governors, and voters turned to such conventions to confront the most pressing issues of the day. Different states have pursued markedly different paths toward reform—indeed, the same states often convened different types of conventions—and the historical record suggests that the states’ experiences with constitutional conventions have been decidedly mixed. This article draws on analyses of conventions published annually by the Council of State Governments to highlight recent state experiences with the hope that lessons learned at these conventions can provide valuable insights for policy makers and citizens and help identify both models worthy of emulation and the potential pitfalls of reform.

Planning a Convention

Perhaps the most important lesson from the last 45 years is that convening a constitutional convention requires planners and advocates to make important choices about the organizational structure of the convention. Many important decisions made in early days of a convention—the makeup and size of the technical and research staff, the type and number of convention officers and the method for choosing them, and decisions about the transcription of convention debates—are rarely carefully considered by reform boosters whose main focus is on the final product of constitutional reform, rather than the process used to achieve it. Indeed, the recent experience of the states suggests that planning for successful conventions begins months before delegates first meet and requires a substantial appropriation of funds from the public fisc.

* The author thanks the Bill Lane Center for the American West for generously supporting this research, Ben DeStein for excellent research assistance, and the participants of “Getting to Reform: Avenues to Constitutional Change in California” held in Sacramento, Calif., on October 15, 2009.

Table 1. State Constitutional Conventions

Period	No. of Conventions
Prior to 1801	26
1801 to 1850	52
1851 to 1900	92
1901 to 1950	29
1951 to 1992	34

Source: Council of State Governments (various editions).

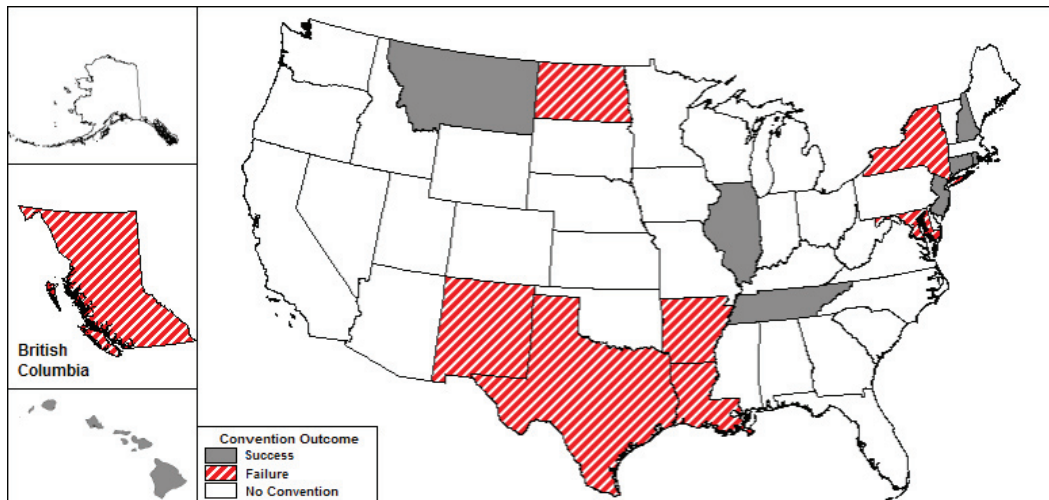
Nearly every state that has held a convention in recent decades began with the creation of planning or preparatory bodies charged with collecting important background information and commissioning studies on questions relevant to delegate deliberations. The Maryland convention of the late 1960s has been held out for special praise by observers for its unusual degree of careful planning. The state's constitutional convention commission prepared a 600-page report and other background for delegates and took the lead in organizing the convention. The report included a complete draft constitution and analysis comparing the proposal to the existing governing charter. The final document adopted by the convention borrowed heavily from this draft. However, it is important to note that—despite these painstaking preparations—the new constitution was rejected by voters.

While some states have relied on existing legislative staff to carry out research in conjunction with the preparation of a new constitution, many conventions have also hired their own staff at significant public expense. The New Mexico convention of 1969, which employed 65 secretaries, clerks, and custodians, was representative in this respect. In Texas, where the state legislature reconvened itself as a constitutional convention in 1974, staff levels ranged from 58 to 266 employees.

Delegate Selection

Though much public discussion in California in recent months has focused on the identity of convention delegates and the method of choosing them, the records from state conventions held since 1965 suggest that these factors are not significantly related to final convention success. The outcome of each recent convention is illustrated in Figure 1 below. As can be seen from the table in the accompanying appendix, which summarizes the key organizational features and the experience of every state constitutional convention in the past 45 years, the method of selecting delegates does not closely predict whether voters adopt the final amendments or

Figure 1. State Constitutional Conventions Since 1965



reforms. Perhaps this is because selection methods and delegation size have not varied too greatly. Nearly every state in this period has chosen to select its delegates through elections—some partisan, some not; some through single-member districts, some at large (see e.g., Cornwell, Goodman, and Swanson 1970). In addition, nearly all delegations have ranged in size from 80 to 150 delegates. Only two conventions, both in New Hampshire, have included more than 200 delegates. No American state has so far used a random jury pool model, giving us no record to predict its eventual success.

Limiting Deliberations and Packaging Reforms

The two key factors that appear to influence voter support for constitutional reforms focus on the scope of the convention deliberations and the way in which the adopted proposals are presented to voters. Table 2 below notes that states have varied in the degree to which they have limited the scope of convention deliberations. Many of the proposed constitutions that have been rejected by voters were produced by conventions unlimited in their authority to draft changes and presented to voters as a single package for an up-or-down-vote. Indeed, unlimited conventions wrote every rejected constitution put to a vote between 1965 and 1980. Because both methods tend to increase the breadth of the final proposals considered by voters, scholars have noted that they can create more opportunities for opponents of proposed reforms to form sufficiently large blocking coalitions (Tarr and Williams

Table 2. State Constitutional Conventions

Period	Unlimited Conventions	Limited Conventions	Total Conventions
1930-1949	5	3	8
1950-1969	13	9	22
1970-1981	5	5	10

Source: Council of State Governments (various editions)

2006; Cain and Noll 2009). Limited conventions have had more success, avoiding unnecessary conflict created by the consideration of highly charged and contentious issues, as have the conventions that allow voters to consider specific proposals separately. In the latter cases, voters have rarely accepted all of the amendments and revisions adopted by the conventions.

When divisive issues are included in the final reforms adopted by conventions, some states have chosen to present them to voters as individual ballot measures separated from the main text of the new constitution. For example, the 1970 Illinois convention produced a new draft constitution that was easily ratified by voters in a subsequent election. However, delegates also adopted four contentious amendments—changes to the electoral system used to choose legislators, abolition of the death penalty, end of direct election of judges, and the lowering of the minimum voting age—that appeared as independent questions on the ballot. Voters rejected all four. Confronting an equally controversial question of usury, the 1977 Arkansas convention chose to defer to the voters, adopting several alternative proposals for limiting interest rates that were considered by the electorate as separate ballot measures. By contrast, the 1967 New York convention chose to bundle changes to legislative apportionment—the convention’s original charge—with state funding for religious schools and racial discrimination. Divided along partisan lines in a bitter fight over social issues, the voters rejected the omnibus package.

Calling a Convention

When voters themselves must weigh in on calling a convention, proponents should consider how different organizational decisions may affect voters support for the idea. As indicated in Table 3, voters have historically been more willing to support calls for conventions with limited scopes compared to unlimited calls that make the entire governing document open for debate and revision.

In recent decades, voters have appeared reluctant to consider major constitutional changes (May 1995), rejecting every call for a constitutional convention that

Table 3. Voter Action on Convention Calls

Period	Unlimited Conventions		Limited Conventions		Total	
	Approved	Rejected	Approved	Rejected	Approved	Rejected
1930-1949	4	6	1	0	5	6
1950-1969	11	11	9	2	20	13
1970-1981	7	8	3	0	10	8

Source: Council of State Governments (various editions).

has appeared on the ballot since 1990. Nearly all of these ballot measures were presented to voters as part of a mandatory periodic vote on the question of calling a convention required in 14 existing state constitutions. Table 4 challenges the conventional wisdom that the increased use of the direct initiative process has made actual conventions unnecessary for incremental constitutional reform. Indeed, convention calls have done only marginally better in states without direct initiatives, with about 40 percent of the voters voting in support of holding conventions, than in initiative states, where 31 percent of voters have voted in favor.

Conclusion

While many states have used the convention process to make significant changes to their governing documents, calling a convention has not always led to substantive reforms. Indeed, state constitutional conventions have varied in the degree to which delegates have been able to agree on large-scale changes, and the rate by which voters ratified amendments and revisions adopted by the conventions. Much of this variation, the historical record suggests, can be explained by how public officials and reform advocates structured the convention proceedings and presented the delegates' proposals to the voters.

In particular, conventions have succeeded when the parameters of reform were established *ex ante*, and when the voters were asked to approve specific changes carefully situated within these parameters. Conventions failed, however, when their proceedings were hijacked by advocates of large reforms on issues for which there was little public consensus. Conventions, in other words, appear to be effective tools for translating public opinion into institutional change, but do not serve as effective forums for building compromise on issues where opinion remains sharply divided. In California, where voters believe that the status quo is unacceptable but

Table 4. Voter Support for Convention Calls Since 1990

Year	State	Percent Voting In Favor of Convention	Outcome	Initiative State
1990	Iowa	26.8%	Rejected	No
1990	Maryland	40.6%	Rejected	No
1990	Montana	18.0%	Rejected	Yes
1992	Alaska	37.3%	Rejected	Yes
1992	New Hampshire	49.2%	Rejected	No
1992	Ohio	38.6%	Rejected	Yes
1994	Michigan	27.9%	Rejected	Yes
1997	New York	37.0%	Rejected	No
2000	Iowa	33.4%	Rejected	No
2002	Alaska	27.6%	Rejected	Yes
2002	New Hampshire	50.0%	Rejected	No
2002	Missouri	34.7%	Rejected	Yes
2004	Rhode Island	48.0%	Rejected	No
2008	Hawaii	33.5%	Rejected	No
2008	Illinois	32.5%	Rejected	Yes

Sources: Council of State Governments (various editions), National Conference of State Legislatures (2009)

agree on little else, history suggests that holding a convention will, by itself, do little to address the state's structural problems.

Appendix Table 1. State Constitutional Conventions Since 1965

Year	State	Convention Initiator	Topics	Number of Delegates	Delegate Selection	Outcome
2004	British Columbia	Convened by provincial government.	Electoral System Reform (Limited)	160	Delegates selected via stratified lottery, with one man and one woman for each electoral districts and two Aboriginal members. Interested residents self-selected into lottery pool after winning earlier stage of lottery.	Voters twice rejected new constitution (required super-majority).
1992	Louisiana	Convened by state legislature.	Public Finances (Limited)		State legislature convened as bicameral constitutional convention.	Voters rejected amendment adopted by convention.
1986	Rhode Island	Legislative call for convention approved by voters.	Elections, Repeal of Lottery, Legislative Compensation, Grand Jury Reform (Unlimited)	100	Delegates chosen in nonpartisan election, one from each lower house district.	Voters ratified eight of 14 proposals adopted by convention (some included more than one amendment).
1984	New Hampshire	Legislative call for convention approved by voters.	(Unlimited)	400	Delegates chosen in nonpartisan election, one from each lower house district.	Voters ratified six of 10 amendments adopted by convention.
1978-1980	Arkansas	Legislative call for convention approved by voters.	(Unlimited)	100	Delegates chosen in nonpartisan election, one from each lower house district.	Voters ratified 10 of 27 amendments adopted by convention.
1978	Hawaii	Legislative call for convention approved by voters.	Term Limits, Balanced Budget, Office of Hawaiian Affairs (Unlimited)	102	Two delegates chosen from each state legislative district in nonpartisan election	Voters ratified all amendments adopted by convention.

1977	Tennessee	Legislative call for convention approved by voters.	Interracial Marriage, School Desegregation, Usury Regulation, Governor Terms, Voting Age (Limited)	99	Delegates chosen in nonpartisan election, one from each lower house district.	Voters ratified 12 of 13 proposed amendments adopted by convention
1974	Texas	Legislative call for convention approved by voters.	Finance, Local Government, Legislative Structure, Executive Power, Collective Bargaining (Limited)	181	State legislature convened as constitutional convention.	Convention failed to agree on amendments. Eight of failed proposals subsequently rejected by voters.
1974	New Hampshire	Legislative call for convention approved by voters.	(Unlimited)	400	Delegates chosen in nonpartisan election, one from each lower house district.	Voters ratified two of six amendments adopted by convention.
1973-1974	Louisiana	Convened by legislature.	Individual Rights, Local Autonomy, Civil Service Reform, State Lottery (Limited)	132	Delegates chosen in nonpartisan election, one from each lower house district. Governor appoints 27 delegates (12 representing specific interest groups, the rest as at-large delegates).	New constitution ratified by voters.
1971	Tennessee	Voters approve one of five subjects proposed for amendment by legislature.	Property Taxation (Limited)	99	Delegates chosen from existing Congressional districts in non-partisan elections.	

Kogan: Lessons from Recent State Constitutional Conventions

1971- 1972	North Dakota	Legislative call for convention approved by voters.	Anti- Discrimination Protection, Individual Rights, Death Penalty, Voting Age and Requirements (Unlimited)	99	Nominating commission consisting of Governor, Lt. Governor, and Attorney General nominated a slate consisting of one convention delegate for each position in the lower house. An additional 141 candidates filed by petition. Delegates chosen in non-partisan election.	Voters rejected new constitution and several accompanying propositions.
1971- 1972	Montana	Legislative call for convention approved by voters.	Individual Rights, Environmental Protection, Voting Age, Open Meetings, Gubernatorial Veto, Judicial Elections, Local Debt Limits (Unlimited)	100	Delegates from each Congressional district elected in partisan elections.	Voters ratified new constitution and several accompanying propositions.
1969- 1970	Illinois	Legislative call for convention approved by voters.	Individual Rights, Voting Age, Executive Elections, Gubernatorial Powers, Home Rule, Income Tax, Constitutional Amendments (Unlimited)	116	Delegates chosen in nonpartisan elections, two from each upper house district.	Voters ratified new constitution but rejected four contentious proposals that were presented separately as accompanying propositions.
1969- 1970	Arkansas	Legislative call for convention approved by voters.	Individual Rights, Gubernatorial Veto, Executive Organization, Judicial Organization, Home Rule, Voting Age (Unlimited)	100	Delegates chosen in same election as the convention call.	Voters rejected proposed constitution.

1969	New Mexico	Convention proposed by Constitution Revision Commission and approved by voters.	Executive Reorganization, Voting Age, Judicial Selection, Home Rule, Parochial Education (Unlimited)	70	Delegates chosen through nonpartisan election.	Voters rejected proposed constitution.
1968-1968	Hawaii	Legislative call for convention—issued under pressure from federal courts—approved by voters.	Redistricting and Apportionment, Voting Age, Presidential Primaries, Office-Holding Requirements, Local Borrowing, Home Rule (Unlimited)	82	Delegates chosen through nonpartisan election.	Voters ratified all but one proposed amendments (could vote for whole package, or individual components).
1967-1968	Pennsylvania	Legislative call for convention approved by voters.	Taxation and Finance, Organization of Judiciary, Redistricting and Apportionment. Specifically forbidden from changing the tax uniformity clause, which prohibited progressive income tax. (Limited)	150	Delegates chosen through partisan elections in multi-member districts (using existing legislative districts). Two major parties nominated two candidates each, with voters electing three delegates total from each district. Thirteen additional ex-officio delegates included six legislative officers from each party and Lt. Governor.	

Kogan: Lessons from Recent State Constitutional Conventions

1967-1968	Maryland	Plans for convention developed by a Constitutional Convention Commission, established by executive order, and approved by voters.	(Unlimited)	142	Delegates chosen through nonpartisan elections in multi-member districts.	Voters rejected proposed constitution.
1967	New York	Legislative call for convention approved by voters.		186	Delegates chosen through partisan elections in multi-member districts (used existing legislative district boundaries). An additional 15 were elected in partisan, at-large elections.	Voters rejected proposed constitution.
1966	New Hampshire	Legislative call for convention—issued under pressure from federal courts—approved by voters.				
1966	New Jersey	Legislature convenes convention to meet reapportionment deadline set by federal courts.	Redistricting and Apportionment	112	Delegates elected under weighted-voting system with seats distributed among counties on basis of population. No one party was allowed to elect more than half of the delegates from any one county.	Voters ratified amendments adopted by convention.

1965	Tennessee	Legislature convenes convention to meet reapportionment deadline set by federal courts.	Redistricting and Apportionment		Delegates elected by voters.	
1965-1965	Connecticut	Legislature convenes convention to meet reapportionment deadline set by federal courts.	Redistricting and Apportionment, Constitutional Amendment	84	Delegates elected by voters (equally divided between two main parties).	New constitution ratified by voters.
1964-1969	Rhode Island	Legislative call for convention approved by voters.	Redistricting and Apportionment, Compensation for Legislators, Governor Terms, State Lottery (Unlimited)	100	Delegates chosen through partisan elections in single-member districts.	Voters rejected proposed constitution.

Source: Council of State Governments (various editions)

References

- May, Janice C. 1995. "State Constitutional Reforms: Recent Experiences." *Proceedings of the Symposium on the Alabama Constitution*. <<http://www.constitutionalreform.org/archive/symposium/recentexp.html>>.
- Cain, Bruce E., and Roger G. Noll. 2009. "Malleable Constitutions: Reflections on State Constitutional Reform." *University of Texas Law Review*, Vol. 87, No. 7: 1517-44.
- Cornwell, Elmer E., Jay S. Goodman, Wayne R. Swanson. 1970. *Midwest Journal of Political Science*, Vol. 14, No. 1: 105-30.
- Council of State Governments. Various Editions. *The Book of the States*. Lexington, Kent.: Council of State Governments.
- National Council of State Legislatures. 2009. "Ballot Measure Database." Accessed October 30, 2009. <<http://www.ncsl.org/Default.aspx?TabId=16580>>.
- Tarr, George Allan, and Robert F. Williams. 2006. *State Constitutions for the Twenty-First Century*. New York: State University of New York Press.