

have followed Mr. Taylor's practical argument straight through without a break.

This book is timely. It is a clear and judicial statement of a case which needed presentation and it should be closely studied by every town and city planner. The appendices contain interesting comments and give an added value to the book. Perhaps the most significant communication is that of Mr. Bush, president of the Bush terminal company, New York, who refers to what is certain to be a potent cause of industrial decentralization in the future, namely, the planning of suburban factory areas adjoining union terminal depots of railway companies. Schemes of this kind have been successfully promoted in several large cities, *e.g.*, its success in St. Paul has led to the planning of a similar depot in Minneapolis. We are only at the beginning of developments of this character on this continent and it is because we are at the beginning that there is urgency in dealing with the problem.

The accumulation of town and city planning literature makes it difficult for students of the subject to select what is most helpful and informing. As one who is forced to make a selection and has read every word of Mr. Taylor's book, I am glad to recommend it as worthy of careful study by every one interested in civic improvement, and particularly by those who are engaged in the practice of city planning.

## THE DEFEATED NEW YORK CONSTITUTION<sup>1</sup>

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**T**HE defeat of the proposed constitution in New York State last November represents a lost opportunity for the people of the state to accept an instrument of government vastly superior to the one they are living under. This statement may be contradicted; but no student or expert in government or administrative efficiency and no man who has kept abreast of the times and understands the lines along which progress is being made to make our forms of government fit new conditions and meet new demands, has any doubt on the subject.

The proposed constitution did not go nearly so far in many directions as men who have been devoting themselves to governmental reform could have wished. It did not include many provisions that have come to be considered, in greater or less degree, essential to a proper reform of the machinery of local and state government. It left many things undone

<sup>1</sup> See article by Prof. Charles A. Beard on "The New York Constitutional Convention." NATIONAL MUNICIPAL REVIEW, vol. iv, p. 637.

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that most publicists and students of government heartily hoped would be done. It was a foregone conclusion that no constitution that could be drafted would please everyone. Probably no one expected such a result. Necessarily there had to be an adjustment of differences of opinion to meet the wide divergence of views among members of the convention as well as among those groups of citizens, organized and unorganized, outside of the convention, who had specific proposals for reforms which they hoped to see incorporated in the completed instrument. As a result many of the provisions bore the marks of compromise. To the uncompromising radical, as well as to the equally uncompromising reactionary, such adjustments appeared to be enough to damn the whole document. To those who recognize that almost all progress and reform has been the result of compromise the completed constitution represented a logical and natural "next step forward." To them it promised a real improvement over existing conditions and an advanced ground from which future progress would be less difficult.

Had the constitution been defeated by a narrow majority or even had the majority against it been under 100,000 votes, it might do to analyze the instrument section by section and endeavor to discover in what respects if at all this adverse majority might have been turned into an affirmative majority. But with a majority of more than 400,000 votes cast against it, the application of any such analytical method would be a mere waste of time. It is clear that the defeat of the constitution was not so much due to what it included or to what it did not include, as to certain conditions and factors that only indirectly and secondarily were determined by the constitution as submitted.

An examination of these conditions brings to light certain facts that are well to bear in mind whenever and wherever a similar attempt to revise or reconstruct the machinery of a state government is attempted. These facts have an added significance for the reason that the total number of votes cast on the constitution probably exceeded in number the votes cast at any previous referendum in American history. They have an added interest because the constitution was not submitted as a partisan document and, as the result showed, the division of sentiment was not along party lines. What then were the elements in the defeat of a constitution framed by some of the keenest and best trained minds in American public life, a constitution which admittedly was an unusually satisfactory product of constructive statesmanship, a constitution which was probably the most progressive ever submitted as a whole to any large body of American electors?

A glance backward in the history of New York State is necessary to bring to view the political background which had an important influence on the result. The constitutional convention of 1894 was contrived by the Democratic party. Presumably safely entrenched in power, they

submitted the proposition for the constitution and it was adopted. The convention elected in 1893, however, was very largely Republican in its make-up. Republicans controlled the body and the Democratic delegates left the convention refusing to sign the instrument and thereafter opposed it at the polls. It was carried in the fall of 1894 by a majority of 83,295 in a total vote of 738,099.

That constitution, still remaining in force, provided that the question of a revised constitution should be submitted to the electors in 1916, or earlier if the legislature so determined. The Progressive movement of 1912, with its emphasis on constitution reform, brought up the subject somewhat earlier. The Democrats, after being out of power almost continuously for sixteen years, were again in control of the legislature and the state government. Expecting to take advantage of the Progressive schism they had the question of a revision of the constitution submitted to the electors of the state in the spring of 1914. There was very little discussion of the matter in any part of the state. The strong Republican counties showed, with few exceptions, majorities of from two to five to one against the question. An unexpected vote in New York City, however, in response to Democratic organization "orders" carried the day for the proposal. But the total vote cast was pitifully small. Out of 1,781,712 registered electors, only a little over 310,000 voted on the proposition which was carried by a margin of 1,353 votes.

Irregularities in the count in New York City resulted in judicial proceedings in the course of which it developed that approximately one thousand votes recorded for the proposal were fraudulent. It has always been contended by those who were familiar with the situation that many more could have been proven fraudulent had it not been for a decision of the court of appeals which virtually estopped the proceedings.

The "demand" then for a revision of the constitution was voiced by only 153,000 voters in the state. This fact has an important bearing on the result of the referendum on the completed constitution. It is clear, therefore, at the start that there was no widespread or organized advocacy of a general revision of the constitution. Whatever some people may have thought respecting the necessity for constitutional changes—and doubtless there were many thousands who did believe and still do believe in that necessity—there was certainly a very small proportion of the electorate who felt that a general over-hauling of the basic law was required. There could be no other explanation of the fact that only about 8½ per cent of the registered voters held this view with sufficient conviction to cast a favorable vote in favor of such a revision.

Attempts were made to provide through the legislature a method by which candidates for delegates to the convention might be chosen at the primaries and at the general election on a non-partisan basis; but both parties looked with distrust on such a plan and it was defeated. When

the time came for the election of delegates the political pendulum had begun to swing back. As a result the Republican delegates-at-large were chosen by an average majority of approximately 100,000 votes and the Republicans, and not the Democrats, elected a large majority of the district delegates thereby insuring that whatever revision was done would be done by a convention under Republican control. This, however, as events proved, did not mean that the Republican party as such was committed to a revision in which it had shown little interest and to the proposal for which it had probably contributed a majority of the votes in opposition.

Both Republicans and Democrats had nominated able men for membership in the convention. Both had adopted platforms setting forth certain things which they declared ought to be included in a constitutional revision. How many of these proposals were advocated for political effect it is hard to say. Certainly, the result seems to indicate that some of them were of that character. For, as the campaign subsequently showed, it was not the proposals which were first voiced in the convention itself that were most violently attacked in the revised constitution, but proposals for which both political parties in state convention had declared their advocacy. A large proportion of the electors who had been stirred in greater or less degree by the reforms in social and governmental methods during the past few years, were convinced that little or nothing in the way of progressive constructive statesmanship could be expected of the convention. The strongest group in the Republican majority was made up of men of wide repute in the state and in the nation. But whether these delegates came from New York City or from the up state cities they were recognized as lawyers—"corporation lawyers" they were usually called—of a conservative stamp. Few of them had been interested in any movement of a progressive nature in the past. The same was true of the Democratic delegates, who naturally divided themselves into two groups. The first group consisted of a number of influential lawyers who were or had been closely connected with great public service corporations. The second consisted of an active group of younger men, most of whom had won prominence in Tammany Hall or in the legislature.

Looking at the make-up of the convention, therefore, the average voter, who had hoped any revision might embody certain progressive principles, felt that he had absolutely nothing to hope for from anything it might produce.

The convention met in April. Almost three months was consumed in what to the man who was not closely following the convention seemed to be merely an attempt to get under way. A large number of proposals were submitted to the convention. The newspapers, devoting a considerable part of their space to the European war, had little to record or

little to say editorially, in fact could say but little of what was really being done in organization of the committees and the consideration of the scope and character of the proposed revision. They did, however, take the opportunity to chronicle the introduction of a vast number of fantastic or reactionary proposals. Their readers early got the notion that the convention was doing nothing, or that what it would do eventually was to bear some resemblance to the sort of propositions which were submitted to it. They were in error, but there was no one to correct the error and the impression remained. An electorate alive to a demand for a revision would have looked farther than this but an electorate whose interest had not been aroused simply did not take the trouble to find out. Democrats generally, disappointed at being unable to control the convention, were inclined to see nothing good in it and rather expected that it would be made a Republican party measure which they could safely vote against when it was submitted.

Machine politicians of both parties, who had accepted with equanimity the demands for the short ballot, budgetary reform and reorganization of state departments and municipal home rule, when they were submitted merely as platform propositions, suddenly awakened to a realization that these reforms put into practice would increase the demand for efficient public servants and thereby decrease the opportunity for the use of public office as patronage. Long before the convention adjourned, the machine politicians of both great parties, therefore, were pretty generally lined up against it.

The Progressives, starting with the idea that nothing was to be expected from the convention, passed through a period when they began to be disappointed that it was really accomplishing so much, and ended by being hopelessly divided in advocacy or opposition, according as to whether they were willing to subordinate their party advantage to the accomplishment of real results or not.

Nevertheless, the fact remains that it is probable that no convention ever met for which so much intelligent preparation had been made. All over the state groups of men interested in constitutional reforms had been working for months studying the needs of the situation and trying to formulate definite proposals to remedy abuses or meet new conditions. There had been general discussion of constitutional problems in newspapers and in conferences and conventions. Organizations like the Academy of political science, the Bureau of municipal research, the state and local bar associations, the City club of New York, Citizens union, and Young Republican club of New York, the Municipal government association, Civil service reform association and the State conference of mayors, had had special committees at work on the subject months before the convention met. The labor unions met and formulated their demands. The state granges considered various prop-

ositions, and an "agricultural conference" made definite proposals for constitutional reform. Engineering bodies were active in studying propositions that entailed a reorganization of the state's public works policy and administration.

This, then, was the situation, when the convention adjourned on September 11 and submitted the result of its labors to the people.

Two points are important to bear in mind in this connection. One is the date of adjournment; the other is the form in which the constitution was submitted. The present constitution which consists of 154 sections is considerably longer than the average state constitution. The convention made it longer. While the greatest and most fundamental changes were incorporated in entirely new articles or sections, there were many lesser changes scattered throughout the constitution. Many of these were merely verbal or rearrangements of old material. As a matter of fact, 74 sections remained wholly unchanged and a majority of the remaining sections were changed only in some minor and comparatively unimportant detail. Nevertheless, the substantive changes and new matter were really of considerable length. When printed in black-faced type as new portions of the revised constitution, they appeared to be much more extensive than they really were. Unimportant and superficial as this factor may seem, it nevertheless contributed to the result by giving the voter who attempted to study the new constitution by himself the idea that very little of the old constitution remained and that in voting for the new he was voting for a complete change in the state's basic law. This frightened many voters away. They complained with some justice that they had not time to get an understanding of such a far-reaching revision. Those who were provided with means whereby they might acquire such an understanding, probably as a general rule, supported it. Those who were frightened away from it by the extent of its proposed changes or by inability of themselves to understand it, voted against it.

There remained after the adjournment but six weeks in which to acquaint the electors of the state with the extent of the changes and their meaning. As a matter of fact the active campaign for its adoption was scarcely under way a month before election day. A "committee for the adoption of the constitution" was organized to carry on a non-partisan campaign in its favor. This committee, consisting of some of the leading men of the state, with Senator James W. Wadsworth, Jr., as chairman and Judge Alton B. Parker as vice chairman, distributed over 2,000,000 pamphlets explaining and advocating the revised constitution. Local committees were formed; meetings were held throughout the state. Three-fourths of the daily newspapers urged their readers to support the constitution. But the time was too short. Three months would have been little enough time in which to accomplish such a difficult task.

Assuming that the average voter will not vote for a proposition that he does not understand, even if he has a high regard for the opinions of the men who framed it, the proportion of electors who voted against the constitution merely because they did not have the time or opportunity to find out for themselves what was in it, must have contributed very largely to its overwhelming defeat.

Closely related to the shortness of time as an element in its defeat, it must be admitted, was the form in which the constitution was submitted. Had it been submitted as a series of amendments to the existing constitution or had the important articles been separately submitted as revised, there would have been a strong possibility that some if not all of them would have been approved. Here again the shortness of time would have rendered the campaign difficult; but it is certain that the policy of the convention, however logical and reasonable, in submitting the constitution practically as a whole resulted in much opposition which might have been focused on specific amendments.

Many people who acknowledged that the constitution contained many valuable constructive proposals, nevertheless opposed it because it contained some single thing to which they objected. To them the inclusion of this one objectionable proposal—or in some instances the omission of something they desired—justified them in opposing the whole instrument. They were not ready to forego their own advantage or subordinate their feelings in regard to a single defect in order that the people as a whole might have a better constitution. Had the various articles been separately submitted their objections could have been very largely met. They could have voted against the particular thing which they objected to and could have given their support to other reforms which they approved. Why, then, it may be asked, realizing that such a pooling of interests in opposition might have been avoided, did not the convention submit the various articles separately? The answer is that the framers of the new constitution considered that their work represented a coherent and systematic attempt to make the government of the state more responsible, more representative and more efficient and that they believed its submission in separate articles would result, if some proposals were adopted and others failed, in a disjointed and unworkable governmental structure.

The defenders of the constitution thus found themselves in the position of a prize fighter who enters the ring and issues a challenge to all comers to meet him at one and the same time. Naturally, he is set upon from all sides and many of the blows he receives are "under the belt." However logical the attitude of the convention in submitting the constitution as a whole instead of as separate articles, it is certain that this method had the disadvantage of attracting the opposition to the whole constitution of men who were really opposed to only one or two things in it.

Although, as has been pointed out, it was not so much what the constitution contained or did not contain that brought about its defeat, as it was due to other factors of a political and social character, all predicated on the underlying fact that there was no real demand for a revision of the constitution, anyway, nevertheless, the elements that were lined up against the constitution are worthy of some consideration in any survey of the forces that led to the overwhelming defeat.

In the first place, politicians of all parties were against it. They were against it because they disbelieve in efficiency in government when that efficiency means, as it almost always does, a cutting down of the party patronage, and an elevation of the qualifications necessary for office holders. They were against it because it tended to consolidate offices; they were against it because it tended to fix responsibility, which no politician enjoys; they were against it because it tended to bring the government out into the open, when they would rather have it do its work in the dark; they were against it because political machines through habit have always favored a government that is invisible rather than one that is visible. Secondly, the state office holders were against the proposition, their objection, like almost all of the other objections, being a selfish one; they did not want to see the state government made more efficient and more responsible if that efficiency and responsibility entailed a consolidation of departments and an elimination of waste and duplicated effort.

Thirdly, the municipal civil servants were against the constitution. Their opposition was based on a fear of municipal home rule. Heretofore, municipal office holders have seldom gone so far as openly to oppose the principle of municipal home rule, however much they may have opposed it in secret. The fight on the constitution brought them out in the open. It brought together on the same plane not only the policemen and firemen and street cleaners and office clerks, but the school teachers. All made common cause in opposition to a proposal which would enable cities to be the masters of their own employees and control their own payrolls. These civil servants have formed the habit of going to the state legislature when they want anything done. To their minds this method had these advantages: In the first place, the civil servants of one city could count on the support of organizations of other civil servants of the same class in other cities. A proposal advocated by the policemen of Buffalo could almost always rally to its support the policemen of Rochester, Syracuse, Albany, and New York City. In the second place, this habit found favor with the civil servants because they could operate in the legislature as a general thing with less danger of publicity for their methods, than if they had to seek the same thing from a local legislature. This opposition of the civil servants to the municipal home rule in the New York constitution indicated the growth of a class feeling among municipal employees



which is certainly one of the most dangerous menaces to efficient municipal government.

It is especially disquieting to find the school teachers, on whom devolves so much of the duty of teaching the rising generation a proper conception of good citizenship, making common cause with and descending to the level of those who, to use the words of Croker, are "working for their own pockets all the time." It is well that this opposition has been disclosed as clearly as it has been in this campaign. It ought to be possible to remove this menace by proving that there is no danger in having the control of municipal office holders vested in the government of the community which they serve.

The labor unions were against the constitution. Their state organization submitted a great many proposals to the convention. These were introduced in the regular way and referred to the appropriate committees. Some of them demanded that certain portions of the constitution be left unchanged; others demanded radical constitutional changes. Practically half of these requests were agreed to. No other class or group of the state's population received a favorable response to so many of its demands. Yet, because they did not get all that they asked for, they decided to oppose the whole constitution. Their chief opposition was due to the fact that there was not removed from the constitution a provision conferring certain powers on military tribunals which has been in every constitution of the state for almost a century, which has never heretofore proved in the least dangerous and which nobody until very recently, had thought might be dangerous.

These constituted the chief elements actively opposed to the constitution. But there were others that are worthy of notice. Organizations of sportsmen were led to oppose the constitution largely through misstatements which made them fear that they were to be restricted in their shooting or fishing privileges. Opposition among the granges was fostered on the old argument that the short ballot undermined the representative character of government. Many radicals opposed the constitution because it did not provide for the initiative, referendum and recall and because they apparently believed in good faith that were this constitution defeated another convention would be held in a few years which would be more radical.

The Republican state committee formally endorsed the proposed constitution. Their action was little more than a form due to the urging of Republican leaders who believed that the work of a Republican controlled convention meant Republican responsibility. As events showed it met with little response. Democrats remained, on the surface, neutral. As a matter of fact, they were hostile. No public action was taken by them, but some influential Tammany delegates who had voted for most of the articles, and signed the document, believing they saw political

advantage in the constitution's defeat, eventually came out against it. The day before election the Tammany organization, without public explanation, sent to every enrolled Democrat a ballot showing how to vote against the constitution. This move was more effective than any number of high-sounding resolutions.

The opportunity lost in November does not mean that everything that was accomplished by the convention is lost. There is little chance that the electors will vote favorably on the proposal to hold another convention, which must be submitted next fall. Their adverse vote last November was not so much in opposition to the revision submitted, as it was an indication that no thorough revision is demanded. Many of the great constructive reforms embodied in the defeated instrument are certain to be submitted as separate amendments in the near future. And it is more than likely that when the voters of the state have an opportunity to pass on separate proposals for a state budget, or state reorganization or municipal home rule, their affirmative response will be clear and unmistakable.

The fact that the women's suffrage amendment was voted on at the same time as the proposed constitution unquestionably increased the size of the vote on the latter. Oddly enough, judging from a survey of the returns, it probably increased the majority against it. The granting of votes to women was a proposition on which most men had definitely made up their minds one way or the other and were ready to express their opinion by their votes. Yet thousands of these same men had formed no definite notion as to the more complex problems involved in a vote on the constitution. In this frame of mind thousands who were convinced so far as suffrage is concerned but who would ordinarily not have voted for a constitution one way or the other that they were not ready to favor definitely, followed a natural inclination and cast their votes against the constitution.