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Minnesota badly needs a revised constitution that generally and broadly defines and distributes powers, responsibilities and rights, and sets up a general frame of government. While this might be accomplished through the amendment process, it has been painfully slow and up to now inadequate to meet the needs for modern, flexible and responsive state government. A constitutional convention may still be the best and most practical way of achieving needed revisions.

A Constitution Defined

Americans have always been preoccupied with written constitutions much more than their English ancestors. In the case of American states this preoccupation has not been an unmixed blessing. Continual tampering, changing and modification has become a commonplace of American state politics. Minnesota, like its sister commonwealths, has been a party to the confusing pressure and flow of state constitutional politics. Since the end of World War II there has been an increasing demand from Minnesota's citizens, political parties, interest groups and citizen organizations, to change and modify its constitution, judging by the number of proposed amendments submitted to the voting public. In 1947 the state legislature[2] created a special Constitutional Commission of Minnesota to "study and consider the constitution in relation to political, economic and social changes and developments which have occurred and which may occur" and in 1948 the Commission made public its *Report of the Constitutional Commission of Minnesota.* From 1948 to 1962 some 29 amendments have been submitted to the state's voters for acceptance or rejection, many of a highly important and controversial nature. And in 1964 the so-called Taconite Amendment, the most controversial amendment in several generations, is to be submitted to the voters.

What is a Constitution? While all citizens are very likely to make reference to "the constitution", still the intended use of the word varies widely. Some revere the word as though it refers to a document created by divine providence. Others think of it as a people's document that must of necessity be subject to frequent and continual change and modification. The pitfall of defining a constitution is that different people and different groups have different uses for a constitution and therefore are likely to want it to conform to their own likes and well-being.

Admitting and accepting the pitfalls of defining such an instrument of government, it is still well to keep in mind the necessity of having a working definition of the word. In the American sense, a constitution is a "document in which are set out the rules governing the composition, powers, and methods of operation of the main institutions of government, and the general principles applicable to their relations to the citizens" (Jennings, 1947:32-3). Another way of defining it is to declare a constitution "The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principle to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers" (Black, 1951). The difficulty, however, in defining a constitution is that in actual practice such an instrument may contain as much or as little as its framers feel is necessary and desirable to achieve the ends of government. From the standpoint of flexibility and ease of use, a constitution should avoid extraneous detail and, instead, contain a broad general framework of the institutions of government, setting forth its powers and functions, the rights of citizens and claims that citizens may make against the government. It is this kind of constitution that was created by the original and later "framers" of the Constitution of the United States. And it is precisely because the states, including Minnesota, have not followed this practice or understanding in framing their respective constitutions that they have become over involved in continually flexing and stretching their constitutions, in order to make them work, through a rash of annual and biennial amendments that would otherwise be unnecessary.

Constitutions, of course, do change and there is a continual need to make them workable under conditions that did not prevail in an earlier generation or decade. They may be amended through popular ratification of the voting citizens or by conventions called under the authority of the constitution. But they are also amended by custom, a fact that Americans too frequently overlook. And they can be amended by the national government through amendments to the national Constitution, or by decisions of the Supreme Court, in such landmark cases as *Baker v. Carr,*[3] in which the Court, in effect,

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[2] Chapter 614, Laws of Minnesota, 1947.

[3] *Baker v. Carr,* 369 U.S. 186 (1962). This decision was in part anticipated by a case that originated in the Minnesota federal district court in *Magraw v. Donovan,* 159 F. Supp. 901 (1958) in which the federal court retained jurisdiction until the legislature had an opportunity to reapportion, which it did in 1959.

either amends state constitutions, the customs of interpreting them or forbids enforcing provisions of them.

The Needs of a Constitution

Americans pride themselves on being a pragmatic people. They point with pride to the fact that the national Constitution, which was written in 1789, has served for 175 years with but 24 amendments to it, and half that number if the Bill of Rights and the eleventh and twelfth amendments are considered so close to the original document as to be almost a part of it. The late W. F. Willoughby once declared that there were two major considerations in drawing constitutions: A constitutional system, he said, should contain two things that at first blush seem to be opposites: stability and flexibility (Willoughby, 1936:129-31). Stability because social and political progress cannot be made when the fundamental law is undergoing constant modification. Flexibility because the conditions that a government must meet are subject to constant change and modification. These seemingly opposite needs can best be met by framing a constitution in such a way that great freedom of action can be obtained under the document without impairing its basic character, and when the occasional need arises where greater change is necessary then the document can be formally amended. Willoughby placed greater reliance on the first method of creating a constitution that "can be bent without breaking, one that can be adjusted to new conditions without undergoing any structural change" (Willoughby, 1936:131-32). Thus, the really stable constitution becomes the flexible constitution that adjusts to new conditions and new demands without a general overhauling or specific new grant of power for some immediate need or change in public policy.

It is in this sense that the federal Constitution has stood the test so well. It is general, restrained, flexible—and, of great importance to the citizen, basically understandable. To be sure, the complete student of the Constitution must go beyond it and know the great decisions of the Supreme Court and the customs which, in practice, have modified it. But even a general reading of the document taxes neither the time nor the patience of the citizen. The Constitution has weathered great domestic, international, financial, social and political crises with a minimum of discomforture, with the possible exception of civil rights.

It is when the student of constitutional government turns to the states that real problems begin to arise. For generality, stability and flexibility, the states have substituted rigidity, particularity and minutiae to the point where state constitutions have become not much more than legal codes meaningful not to the layman but the lawyer. "States' rights" in its noninterpositional sense have been sacrificed to narrow definitions of state power with needed powers so divided and circumscribed that viable and responsible government at the state level, if not impossible, is nevertheless highly improbable.

In brief, then, a constitution, to remain stable and flexible, should do three main things: First, it should set out the broad outlines of state government by defining and establishing its basic institutions and branches. Second, it should define and grant broadly the powers that the government needs to carry out the services and safeguards that the citizenry expects or may expect at some future time from the government. Third, it should state the basic rights and claims that the citizen may make against the government and its officers. A good constitution should be brief, readable to the layman, representative of what the people want or are likely to want from government, and reflecting the emerging needs and problems of mass urban living.[4] A document that fails in these particulars contributes to the frustration and probably the political alienation which are all too common in mass American politics.

The Minnesota Constitution in Perspective

The Minnesota Constitution, written in 1958, is slightly older than the typical state constitution which is now 84 years old and was written in 1880. Only ten states have older constitutions than Minnesota.[5] The approximately 15,059 words in the Minnesota Constitution is slightly less than the national average of 22,518 words for the 50 states. Two states, however, California and Louisiana, with 70,000 and 217,000 words respectively, have exceedingly long constitutions and this obviously skews the national average. The average, excluding Louisiana, is 18,550; excluding both California and Louisiana the average drops to 17,475 words. The Minnesota Constitution thus comes very close to being near the national average in length. By way of comparison to the national constitution, the Minnesota Constitution is two and one quarter times as long, and occupies some 18 pages in the Legislative Manual (Bluebook) as compared to the eight pages necessary for the Constitution of the United States. The shortest state constitution is Vermont's with 4,840 words. By grouping state constitution in terms of length, the following distribution is found:

less than 5,000	1 state(s)
5,000 to 9,999	7
10,000 to 14,999	12
15,000 to 24,999	20
25,000 to 34,999	4
over 35,000	6

Neither length nor age is as important as the content found in a constitution and the care that has gone into writing it.

Writing Minnesota's Constitution. Minnesota is unique in that it is the only state that has two original constitutions. The state's only constitutional convention was convened in St. Paul on July 13, 1857. Because of the intense feeling that existed between Republican and Dem-

[4] For a discussion of the needs of a state constitution, see Fellman, 1960: 137-58.

[5] Data for state by state comparisons is taken from *The Book of the States* for 1962-63 and is complete through the year 1961. The ten states with older constitutions are Conn., Ind., Iowa, Me., Mass., N.H., Ohio, R.I., Vt., and Wisc.

ocratic delegates to that convention, the two groups almost immediately broke up into separate deliberating bodies and each went its separate way. Each drafted a separate constitution.[6] The near impossibility of submitting two separate constitutions to the voters and the Congress finally persuaded the separate drafting conventions to work out a compromise. Both conventions then appointed five members each to a conference committee. The committee of ten nearly broke up over the question of Negro suffrage which was demanded by the Republican members who, by and large, represented the more radical views of the two conventions. So strong were opinions held that on one occasion a fist fight broke out over the question and two members were expelled, so that the actual drafting of the compromise document rested with eight members. After ten days of intense effort, the document was ready for submission to the two rump conventions and, on August 28, both conventions, with much bitterness, approved the compromise document.

"From this brief resume of the proceedings of the conventions of 1857 it must be evident to all that the original state Constitution was not drawn up in that calm and deliberate manner which is essential to a good result," Anderson (1927:193) wrote in 1927. This is a question that Minnesota citizens might well ponder in the 1960's when the state Constitution is viewed as not needing serious and deliberate revision because of the original framers "success" in reaching the great compromise of 1858.

The Minnesota governor. Modern state government needs responsible leadership from the office of governor. One of the vagaries of the Minnesota Constitution is the statement in Article III that the "powers of government shall be divided into three distinct departments—legislative, executive, and judicial . . ." The separation of powers is commonly considered a basic principle of American government yet in the Article V clauses of the Minnesota Constitution, provision is not made for a truly "executive department" but, instead, the power is divided among a group of executives, including the governor, lieutenant governor, secretary of state, auditor, treasurer and attorney general. Without policy coordination through a single, elected chief executive, Minnesota cannot expect to achieve responsible executive government. Administrative reorganization measures that took place in 1939 and afterward will continue to be inadequate until the governor and executive department is centered in a chief executive responsible singly to the voters. Reports such as the Little Hoover Commission in 1950 and the Minnesota Self Survey of 1955-56 will not bring about a more successful and efficient administration, nor will there be coordinated policy development until the sanguine warfare within the executive departments is ended constitutionally. The executive budget, while aiding the governor in policy coordination, is a poor substitute for a truly responsible executive leader. Plural executive leadership serves to confuse the voters and probably adds to political alienation. It also tends to personalize politics by projecting images of certain elected officials to the public and, in the process, undermining political party responsibility that, in turn, further weakens responsible leadership.

The modern legislature. The manner in which Article IV, section 2, prescribes the apportionment of members of the state legislature sets no practical limits on the size of the legislature. Minnesota thus has the largest Senate in the union with 67 members, and its 135 members in the House also is large, except by comparison with the northeastern states where the New England towns serve as a basis for representation. Some practical method of limiting the size of the legislature is necessary, perhaps basing it upon a population standard as recommended by the *Report of the Constitutional Commission* in 1948. Minnesota could well reduce the size of its legislature and increase the compensation for the legislators.

Since 1877 the state has had biennial sessions, subject to the call by the governor of special sessions (Article V, section 4). When the scope and importance of the state's business is considered, the constitutional limitation of this policy setting function to 90 days, or 120 days as the recent 1962 amendment allows, is of questionable validity. The state budget now approximates $600 million annually. There is not a corporation anywhere that would think of limiting its board of directors to meetings every odd-numbered year which cannot be extended beyond 120 days. Yet the Constitution sets such limits upon the transacting of state business by the legislature, a reflection of the old 19th century suspicion that the people's representatives could not be trusted in longer sessions. Those who pay for this constitutional penalty are the state's citizens because much needed legislation is either passed in haste, or is manipulated and emasculated in conference committees under pressure of legislative deadlines. And opponents of legislation strive mightily to bottle up legislation knowing full well that if their dilatory tactics are successful enough there will be insufficient time to consider these matters and the legislation will die a quiet but painless death.

It is debatable whether there ever was a need for this type of restriction upon legislative powers. Even if there was, the state now has reached the point where it cannot ignore the importance of its legislative business, nor can it delay its substantive decision making to a biennial basis. Counties do not do this. Cities and villages cannot do this. Like cities, villages and counties, the state deals both directly and daily with its three and one half million citizens. It should not be limited to this dated and outworn restriction. Limits of any kind upon the length of time that the legislature can meet seems illogical in the press of urgent affairs of state and a $600 million budget. The lack of a constitutionally set adjournment date would still not preclude the legislative leadership from setting a workable adjournment date as a goal toward which to strive.

Another highly questionable feature of the Minnesota

[6] For the story of the drafting of the constitutions, see Anderson and Lobb, 1921: 42-132; and Anderson, 1927: 189-92.

Constitution, and one that unnecessarily ties the hands of the legislature, is the restriction on the use of tax revenues. Approximately three-fourths of all state taxes are dedicated to special uses, some by constitutional restriction, others by statute. The result is that in some years one fund has a surplus of revenue while another is starved. The development of a comprehensive and coordinated budget that adequately considers the impact of taxes on the state economy is thwarted in both the drawing of an executive budget and its passage by the legislature. The use of dedicated funds puts into a fiscal strait jacket the legislative powers over the budget. The legislature has become the fiscal captive of the Constitution: investment of permanent school and swamp funds (Art. VIII, section 4), investment of university funds (Art. VIII, sec. 5), the mining occupation tax (Art. IX, sec. 1A), the motor fuels tax (Art. IX, sec. 5), the details of the handling of state debt (Art. IX, sec. 6), the highway user tax distribution fund (Art. XVI, Sec. 5), the trunk highway fund (Art. XVI, sec. 6), the county state-aid highway fund (Art. XVI, sec. 7), the taxation of motor vehicles and motor fuel (Art. XVI, sec. 9 and 10)—all limit the power of the legislature to determine the distribution and use of state taxes —to cite some but not all the examples of how the legislature is not the master of its own fiscal responsibility. What can and should be noted is that nearly all funds that are dedicated to a specific use by the Constitution were given such status because powerful (and perhaps well meaning) special interest groups championed them. By way of comparison, Article I, section 8, of the Constitution of the United States says simply that "The Congress shall have power: To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform through the United States; To borrow money on the credit of the United States," and, finally, to "promote postoffices and postroads." Beyond that there is no real limitation placed upon the Congress except to state that no military appropriation shall be for a period longer than two years, that "direct taxes" shall be apportioned among the states by population, and the grant of power under Article 16 to impose an income tax.

These are some but not all the weaknesses of the Minnesota Constitution. Section 12 of Article IX even goes to the trouble of stating that if any person converts the state school fund to his own use, this is embezzlement and a punishable felony, as though the legislature were incapable of reaching a similar determination of felonious activity! Or consider the difficulty of the layman and non-lawyer, the person who has not the time to study excessive detail, when he seeks to understand the Constitution and then comes to sub-division 3, section 6, of Article IX:

"No such certificates shall be issued with respect to any fund when the amount thereof with interest thereon to maturity, added to the then outstanding certificates against the same fund and interest thereon to maturity, will exceed the then unexpended balance of all moneys which will be credited to that fund during the biennium under existing laws; except that the maturities of any such certificates may be extended by refunding to a date not later than December 1 of the first full calendar year following the biennium in which such certificates were issued. If moneys on hand in any fund are not sufficient to pay all non-refunding certificates of indebtedness issued on such fund during any biennium and all certificates refunding the same, plus interest thereon, which are outstanding on December 1 immediately following the close of such biennium, the state auditor shall levy upon all taxable property in the state a tax collectible in the then ensuing year sufficient to pay the same on or before December 1 of such ensuing year, with interest to the date or dates of payment." Under the heavy burden of such verbiage the Constitution becomes not a document of citizens but a missile of lawyers.

Size and apportionment of the legislature are still another important consideration of the Constitution. It would seem that a legislature should generally reflect and be representative of the population without the artificial coloration by that time worn tool of majorities and even individuals in legislatures, the gerrymander. No scheme of apportionment is likely to be perfect, nor can it be. But it would serve the state's citizens well if the matter of control over apportionment, as reflected in Article IV, section 2, were entirely removed from those who are most affected by its outcome, i.e., the legislators themselves. The Constitution should set up the general conditions and methods by which reapportionment is effected, but the instrumentation of it should be beyond the reach of those whose careers it may injure. A re-apportionment commission might be appointed made up of judges, party representatives and the general public, which could formulate as equitably as possible a systematic allotment of seats without consideration to the advantages of either incumbents or parties. This is necessary now both because of the greatly changing pattern of the state's population, and, also, because of the new role being played by the federal courts under the 14th amendment.

Although essentially not a constitutional problem, if a full-time legislature is necessary, then its compensation scales must be radically updated. An $8,000 or a $10,000 annual salary for a full-time and "professional" legislature is not a poor investment for citizens, and the total cost of such an increase could be easily absorbed if the unwieldly size of the senate and house were reduced to a more workable level. In terms of occupations found within the legislature, a quick and summary examination of the legislative manual indicated a great over-representation of certain forms of employment — lawyers, farmers and certain limited classes of businessmen — so that the legislative point of view is heavily weighted with particular occupational prejudices. A full time legislature, with a compensation scale that would allow more widespread participation by other income and occupational groups, while it likely would not greatly change the occupational category of most legislators, would encourage those outside the few groups presently

favored to seek legislative service with less chance of economic consequence and penalty.

The state courts. The election of judges is a relic of the Jacksonian era. It will be noted, however, that when the Constitutional Commission of Minnesota made its report in 1948 it retained the selection of judges by popular election. By and large, elections of judges are unimportant. Most vacancies are filled by gubernatorial appointment, for the incumbent normally resigns from office, according to the custom and "code" of the judiciary, or is removed by death; in either case the vacancy is filled by appointment. Since elections are not normally important, and since the state bar association plays an important role in the selection process, it would seem that this custom should be written into the Constitution. The judicial article should be amended to provide for the creation of a nonpartisan commission that would select a slate of qualified judicial candidates. Actual nomination would still be made by the governor but from the slate of prospective judges and based on whatever other qualifications he deemed desirable. In this manner the general meaninglessness of judicial elections could be eliminated, conformity to the true practice of judicial selection would be obtained, as well as possible improvement through the use of a judicial commission to aid in the selection of qualified personnel. In the 1962 general elections, of the ten judicial districts in the state, only in the fourth and sixth districts was there an election contest; in the first, six candidates for the five judgeships were selected,[7] and in the second, four candidates for two judgeships. In every instance the incumbent judge was reelected. A basic weakness of electing judges is the potential effect it has upon voters. The voter knows little or nothing about the judge: he does not run on a platform; few citizens know his record or the number of his decisions that are overturned on appeal; and his legal competence and judicial temper are unknown qualities to the vast number of voters. Nor do judges make election speeches. The result is that the voter can validly say and probably think that it really does not matter if he votes, and this can contribute to the feeling of political alienation that too many voters experience.

Local government. Since the adoption of amended Article XI in 1958, the brightest part and most updated feature of the state Constitution relates to the matter of local government. In substance, and in many instances in the exact wording of the article, the legislature and the voters have adopted the recommendations of the 1948 Constitutional Commission of Minnesota. The article is concise and the legislature is given ample power to effect change and consolidation which are or may be necessary with the shifting population and growing needs of the large metropolitan area that is developing within the state. At the same time adequate powers of home rule are maintained for the local units of government.

[7] When one incumbent died, his successor was appointed by the governor; the courts later ruled that a candidate who filed for the judgeship and was the seeming winner could not under the law be a candidate for the office held by the appointee.

There is one feature concerning local government and the legislature that may at some future time require serious reconsideration. That concerns the matter of consolidation of municipal governments into a "federal" system of city government that may at some future time be necessary for effective and efficient administration. In a metropolitan area, however, such as Minneapolis-St. Paul and their suburbs—the "standard metropolitan statistical area" in the words of the United States Bureau of the Census—with several hundred local units of government, it might prove—indeed, it likely would prove—impossible to obtain the approval of each affected local unit of government. When the Canadian metropolitan government for the area surrounding Toronto was created, it was done solely by the action of the provincial parliament or legislature, and the local units were not allowed the right of veto. This, obviously, runs counter to the practice of local autonomy but, in the future, assuming that some form of federal municipal government becomes necessary and desirable, the only practical way of solving the vexing problem may be through action of the legislature. In defense of the right of the state legislature alone to act in such a case, it can be argued that the state government of necessity is concerned in matters where governmental affairs cross as many as five and six counties.

The Constitution: Individuals Versus Groups

One of the great and vexing problems of government and politics is whether politics should be based on individual needs and responsibilities or whether, in fact, politics is essentially an exercise in group dynamics. One of the 18th and 19th century American myths, and probably a 20th century one as well, is that government should serve the public interest of "the People." When there is talk of "the People," reference is normally made to a collection of individuals who in some Rousseauean and mystical manner arrive at collective decisions through their "will." Lincoln captured this most eloquently when he declared that government "of, by and for" the people ought to prevail.

In fact, however, it is never quite clear to the empiricist if "the People" do or can reach an understanding. Most political action finds certain organized groups acting upon an otherwise passive "public" and activating some or all of them into making or joining a collective action in decision making. The activist groups do not always act fairly and they do not necessarily attempt to be objective or even rational in their approach but, rather, they propagandize and manipulate fact to their own advantage while talking of making government responsible to "the People."

The question of individuals vs. groups become less an academic problem, less a question of political theory, when it moves to the level of what a constitution ought and ought not to be. In the case of Minnesota's Constitution, like that of many states, one of the practical questions is whether the constitution ought to be written for certain group advantages. It, of course, should be remembered that most citizens are members of groups, and

these groups at times may work at cross political purposes. Unfortunately, if one assumes that a constitution should serve the people as individuals and not as members of groups, the weight of evidence is that in practice this is not the case with much of the Minnesota Constitution. Too many sections of the Constitution apply particularly to "special" interests or, in the past have worked to the advantage of "special" interests, regardless of the original purposes or intents. Some examples well prove the point:

1. railroads—under Article IV, sec. 32, there can be no change in the gross earnings tax by the legislature except by a vote of the people approving the change;
2. teachers—under Article VIII certain school funds are set up for education; under Article IX, sec. 1A, 40 per cent of the occupation tax is placed in the permanent school fund, while 10 per cent goes to the permanent University fund;
3. veterans—Article XX granted authority to pass a veterans bonus, while Article IX, sec. IB set aside one per cent of the occupation tax to pay the veterans bonus;
4. motor vehicle operators—under Article XVI, secs. 9 and 10, highways are the recipients of all revenues from motor vehicle taxation and motor fuel taxation.

A side effect of this habit of writing into the constitution the exact purposes for which certain taxes can be used is to encourage the legislature, under pressure of special interests, to pass tax laws that limit the use of certain kinds of tax revenues to specific purposes, such as income taxes solely for educational purposes (mainly going to teacher and school administrator salaries), hunting and fishing fees only for the use or welfare of the special interests of those who hunt and fish or occupations that supply the sportsmen, etc. The end result is that the flexibility of the legislature to deal with the total tax picture is impaired, and secondly, certain special interests enjoy a distinct advantage over other groups for the use of much of tax dollar.

Finally, it might be noted that the question of what groups merit special consideration and protection in a constitution can prove to be most difficult even for a body set up to study and recommend a revised constitution. A case at point is the highly respected Constitutional Commission of Minnesota of 1948. It recommended section 32(a) of Article IV, the gross earnings tax on railroads in lieu of certain other taxes, be changed so that there no longer be a requirement that the voters approve any change in the rate of the gross earnings tax. The reasons given by the commission was that "it does not believe that the railroads as an industry are today entitled to a constitutional tax protection denied to all other corporations and individuals. To the commission's knowledge no other state constitution requires a referendum to change the rate or method of taxation of a railroad corporation" (Constitutional Commission of Minnesota, 1948:34). But, alas, when the Commission came to the question of taxation of taconite, it recommended a change in Article IX, sec. 1A (the occupation tax), to read that there could be no change in the rate of taxation of taconite or the occupation of producing it, except by a two thirds vote of each house of the legislature! The rationale for the difference between railroads and taconite was that the taconite industry needed to "be encouraged to make the necessary investments" from which "the State and the people of the State will gain immeasurable benefits," and also because it "is a new industry requiring tremendous capital investment in processing plants" (Constitutional Commission of Minnesota, 1948:54-5). The commission did not mention whether other iron mining states did this in their constitutions (although it painstakingly noted that other states did not give railroads special protection), or how long this should be a provision within the Constitution. Precisely the same arguments could have been made concerning the railroads in the 19th century: it was a new industry and it required tremendous amounts of capital.

Revision by Amendment

Minnesota citizens, either individually or collectively, seem not to be satisfied with the Constitution of the state. Since 1920, 65 amendments have been proposed to the voters in the 22 elections that have taken place.[8] This means that an average of three amendments were presented to the voters each election. The average is even higher for the years since 1948, when 29 amendments were offered to the voters in the 8 elections, or an average of nearly three and two thirds amendments (3.625) per election. Only once, in 1946, has no amendment been offered to the voters and this is more likely an effect of the war than anything else. The fewest amendments came in 1940 and 1944, when only one amendment was on the ballots. The most amendments that the voter has had to deliberate on were five and this has occurred on three occasions since 1920 (in 1924, 1934 and 1952).

The general willingness of the typical voter to change the Constitution can be seen from the fact that 56 or 86 per cent of the 65 amendments placed on the ballot have received a majority of the votes actually cast on the amendments, in marked contrast to the 33 or 51 per cent that have carried. The reason for the 50 per cent rate of adoption is the effect of the amendment adopted in 1898 which required a majority of all those who vote in the election to approve an amendment so that failure to vote on an amendment is the same as a no vote. For the period beginning in 1920, it was not until 1932 that an amendment failed to receive a majority of all who voted on it. This was repeated again in 1936, and in 1948 when three of the four amendments failed to receive a majority of the votes, and in 1950 when two of the three failed.

Presidential and off-year elections. An analysis of the success of proposed amendments since 1920 in terms of the differing chances that a proposed amendment seems to have in presidential as opposed to off-year elections is revealing. Table 1 presents this information.

[8] This included the 1920 referendum, under Article IV, section 32a, which required that the voters approve any increase in taxes for railroads.

TABLE 1. The number and percentage of proposed amendments that are passed and rejected, by presidential and off-year elections.

	Number	Number passed	Percent passed	Number rejected	Percentage rejected
		1920-62			
Amendments offered	65	33	50.8	32	49.2
Presidential elections	35 (53.8)	14	40.0	21	60.0
Off-year elections	30 (46.2)	19	63.3	11	36.7
		1948-62			
Amendments offered	29	16	55.2	13	44.8
Presidential elections	16 (55.2)	6	37.5	10	62.5
Off-year elections	13 (44.8)	10	76.9	3	23.1

Of the 65 amendments placed before the voters from 1920-1962, 51 per cent passed. More amendments were offered during presidential elections yet only 40 per cent passed. During the off-year elections, however, fewer amendments were offered, yet 63 per cent passed. For the more recent period of 1948 to 1962, the relation between presidential and off-year elections is even more marked. More amendments were offered during presidential elections but only 37.5 per cent passed. During the off-year elections 77 per cent passed. This would seem to indicate quite markedly that the best chances for passage of amendments comes during off-year elections. It also suggests that during presidential elections the voters' interests are turned more to national politics and, as a result, state issues are less likely to come to the minds of the voters who then either vote "no" or fail to vote on amendments.

Political alienation or non-voting. Another change that has occurred during the last four decades is the marked decline in political alienation in terms of non-voting on proposed amendments. Table 2 indicates that there has been a constant and marked decline in non-voting on proposed amendments. For example, in the 1920 through 1928 elections, an average of 27.8 per cent of the voters failed to vote on proposed amendments, while in the 1950 through 1958 elections, the average had dropped to 16.2 per cent, a decline that has continued through the first two elections in the '60s. Generally speaking, there is a slightly higher degree of political alienation or non-voting during off-year elections than during presidential elections, despite the fact that the chances of passage are markedly greater during these elections than presidential elections.

TABLE 2. The average political alienation (non-voting) by decade, presidential and off-year elections.

Decade	Non-voting Per cent	Non-voting in Presidential Elections—%	Non-voting in Off-year elections—%
1920-28	27.8*	28.1	26.9
1930-38	28.4	25.8	30.0
1940-48	22.0	20.7	26.0
1950-58	18.6	18.5	18.6
1960-62	16.2	19.2	12.4

* The reason for the lower average is due to the tremendous interest in the good roads or "Babcock" amendment of 1920 when 91 per cent of the total voters voted on the amendment (non-voting thus was only 9 per cent, the lowest ever recorded).

Table 3 analyzes averages by elections, the "yes" vote, and the degree of political alienation as measured in non-voting for all amendments, passed amendments and rejected amendments. Since 1948, several changes have taken place. For one thing, there has been a decline in the "yes" vote of those who actually vote on the amendments. And there has been, as noted before, a decline in the average political alienation or non-voting. This suggests, then that political alienation, expressed in the past in non-voting, now has transferred to a direct negative vote: the "when in doubt, vote 'no' " reasoning.

TABLE 3. "Yes" votes as a percentage of the total votes, of those who actually vote on proposed amendments, and of political alienation, on proposed amendments.*

	Average yes vote as % of total vote	Average yes vote as % of amendment vote	Average political alienation in terms of non-voting (in per cent)
	1920-62		
All amendments	50.3	64.9	23.4
Passed amendments	59.5	73.0	19.4
Rejected amendments	41.2	57.5	27.5
	1948-62		
All amendments	50.5	62.1	18.2
Passed amendments	59.7	70.9	15.8
Rejected amendments	39.9	50.6	21.1

* While non-voting has declined, the "yes" vote as a per cent of total vote has remained constant, suggestion that the politically alienated non-voter has become a "no" voter.

Amendment types and voter responses. Some types of amendments have a better chance of passing than others. This is demonstrated by Table 4. The most numerous type of amendment during the period 1920 through 1962 concerned taxation and debt. Some 24 amendments (37 per cent) were of this nature; 13 or 54 per cent passed while non-voting averaged 21 per cent.

The next most numerous type was a general category that might for brevity's sake be declared the "mechanics of government" for it included terms of office of state officials and judges, length of legislative sessions, elections and city charters (the latter might have been in a category by itself).

One of the most unpopular amendment types either sought to expand or otherwise define governmental powers and functions. Eight amendments offered some special payment, service or consideration to special interests although this does not imply that no public benefit was involved. The percentage of non-voters is relatively high.

Nine amendments dealt with highways, vehicles and highway taxes. Political alienation or non-voting was the lowest of all amendment groups, amounting only to 17 per cent. Amendments relating to schools were relatively few. Education amendments had a high success ratio, with three of the four or 75 per cent passing, and with a very low political alienation. The least popular, although like the schools the sample is limited, related to those seeking different methods of revising or

TABLE 4. Amendment types and voter responses on proposed amendments. *

Types of Amendments* 1920-62	Number of Amend-ments	Number Passed—%	Number Rejected—%	Average Political Alienation in Terms of non-voting—%	Types as a percent of All (65) amendments proposed—(% No.)
Taxation and debt	24	13—54	11—46	21.5	37 (24 of 65)
Terms, sessions, elections and city charters	19	11—55	9—45	23.3	29 (19 of 65)
Services, payments, or considerations to special interests	8	4—50	4—50	25.8	12 (8 of 65)
Expanding or defining gov'tal powers & functions	11	4—36	7—64	30.2	17 (11 of 65)
Method of revising or amending Constitution	4	1—25	3—75	24.8	6 (4 of 65)
Highways, vehicles and highway taxes	9	5—56	4—44	16.9	14 (9 of 65)
Schools	4	3—75	1—25	18.2	6 (4 of 65)

* Some of the 65 proposed amendments are found in two or more categories.

amending the constitution. Four were of this kind, but only one passed.

Is Revision by Amendment Enough?

An examination of these last 40 years of revising the Constitution by amendments brings to mind one final question: Is revision by amendment enough? The amendment record can not be said to be either impressive or dismally short of the mark. From 1920 to 1962, 51 per cent of the proposed amendments have passed. Since 1948 the record is somewhat better (55 per cent). Opponents to revision by convention decry its cumbersomeness and the time and energy that it takes, with the initiation and the culmination being frequently measured in years. Still, revision by amendment alone is a long, tedious and not necessarily successful process. There has long been recognized a need for revision if the recommendations of the 1948 Constitutional Commission of Minnesota can be judged as a standard of measure. Given the tremendous majority that is required to secure the passage of an amendment, change of a substantive nature is discouraged. Furthermore, the requirement that a majority of all voters who vote *in the election,* and not simply those who vote on the amendment, in fact, amounts to almost the same as a two thirds majority, if it is statistically analyzed.[9] If there was a more reasonable requirement of even a 60 per cent voter approval on proposed amendments, as applies to a proposed submission of a revised or new constitution to the voters (since the adoption of the 1954 amendment) then 50 of the 65 proposed amendments since 1920 would have been adopted.

To this writer's view, when the proposed amendments of the last 40 odd years are examined, many fail to meet the crucial needs of a sound and flexible state government in a highly technical and demanding age. Severe limits are placed on the ability of the government to meet with a measure of competence and responsibility the overall problems of taxation, governmental leadership and legislative responsibility. An "executive department" with one responsible chief executive does not exist. The legislature has been granted an extension of its session length by 30 days, but it still lacks the power and flexibility that are necessary now and will become more so in the future, especially in relation to its taxing and spending powers. The amendment approach to modification and change could be an effective one, but the record to date is not impressive, even admitting some gains in the past 15 years.

One of the major complaints made by critics of national government has been that in using its taxing powers it has limited the sources of state revenue. Some have opposed the use of federal funds through grants-in-aid and similar national-state programs because it limits state action. Leave the states alone, they suggest. The reason, in part, for these programs of federal grants and funds although by no means the only one, for states are handicapped in setting taxes by competition for industry, the general tax base and the wealth of the state – is that the states have placed themselves into financial straitjackets. The national government has twice settled the question of its taxing powers; in 1787 when it granted broad powers to the Congress and, again, in 1912, when the 16th amendment was adopted, an amendment that by itself might not have been necessary for it is quite likely that the Supreme Court would have overturned its "century of error" decision of 1895 at some later date. Minnesota has not been so fortunate. Since 1920 no less than 24 amendments to the State Constitution have been proposed dealing with taxes and debts; this represents 37 per cent of all amendments pre-

[9] If a two thirds vote had been required on all proposed amendments since 1920, 35 of the 65 would have passed, two more than actually did pass under the severe handicap of the present provision.

sented to the voters. When the critics of the federal taxing and spending authority blame the national government, it is because they simply have not examined the many causes of state fiscal difficulties.

Minnesota should consider seriously the calling of a constitutional convention for revision of its Constitution. This seems especially necessary in view of the circumstance that prevailed in the frontier era and the development of Minnesota's state Constitution by the violently split factions of 1858. There is today a greater opportunity for calm and deliberative consideration that would allow a modern convention to "work its will." Nearly 40 years ago Anderson (1927:215) wrote . . . "it is safe to predict that some day, in the near or far future, another constitutional convention will be held in Minnesota, but before that event it may be necessary to amend the convention section in order to remove some of the constitutional obstacles which now prevent the calling of one." [10]

Obviously, there is opposition by some individuals and groups to the calling of such a convention. Some fear it because of the fear of change, others because they might lose some special privilege and still others, who do not fully understand the major difficulties and suspicions that existed in the 19th century in the drawing of a state constitution. These are essentially unnecessary fears. Shall the state fear flexible government? adequate legislative and executive powers? adequate and flexible taxing powers? substantive and procedural protections to citizens? responsible and responsive government?

The major obstacle to the calling of a constitutional convention is that citizens generally and the legislature particularly must be convinced that change is necessary and desirable. Public spirited individuals and groups must continue to press upon the public mind that all is not well with the state Constitution, that there is much that is to be gained in a revised Constitution and, hopefully, revision can still best be obtained through the calling of a special convention. The state has nothing to lose but certain inflexible, archaic and 19th century (even 20th century) chains that are not found in the Constitution of the United States. Nor is the proposal a radical or even a "liberal" one. It suggests a return to the collective wisdom of the original "conservative" framers of the national Constitution who so well understood the needs and merits of brevity, generality, flexibility and adequacy of power for the executive, legislative and judicial branches of government, and the rights and claims that citizens have against the government.

[10] For a different point of view that takes the position that the gains of revision through amendment are substantial and encouraging, and the only likely approach, given the practicalities of constitutional politics, see Mitau, 1960.

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