property. These rights are expressly made enforceable without action by the General Assembly, an unusual self-executing provision. Provisions of this kind are of course found in legislation; but to declare such rights against private individuals in the constitution itself is indeed unusual.

Even more extraordinary is a similar provision applicable to persons with a physical or mental handicap, which declares that such persons shall be free from discrimination unrelated to ability in hiring and promotion practices. Although there is no provision that these rights are enforceable without action by the General Assembly, the mere declaration is a remarkable extension of constitutional principle. Both provisions were hotly contested and their final adoption was far from unanimous. They reflect, perhaps more than any other provisions in the new Illinois Constitution, a widening consensus about the importance of human values which but a few years ago would have been almost routinely rejected as inappropriate for constitutional status.

I close with one more illustration of exceptional significance in the area of private rights. For the first time in the history of this nation, a state constitution expresses a state and individual duty to provide and maintain a healthful environment. Nor is the statement simply a constitutional sermon, meaningless in legal terms. It is expressly provided that each person has the right to a healthful environment which he may enforce against any party, governmental or private, through appropriate legal proceedings, subject only to reasonable limitation and regulation as the General Assembly may provide by law. Heretofore, rights of individuals to seek judicial remedies against other persons or government have depended upon state law and a definitive showing of a specific legal injury to the complainant. Successful individual or class actions asserting damage to the environment is a developing aspect of law, but in the Illinois provision we have the individual's right constitutionally affirmed and expressly made enforceable. The full meaning and impact of this is uncertain; its potential for protecting life and health is incalculable although problems it poses are vast and equally incalculable. In Illinois the concerns of environmentalists were so compellingly advocated that the convention accepted, not without reservation, an extraordinary declaration of private enforceable legal rights.

This has been a brief and not exhaustive account of some humanistic insights into the constitution decision-making process. A constitution should be — and can be — a declaration of conscience as to what state government and human rights can be. Let close with a statement from a commencement address delivered in 1925 by Justice Benjamin Cardoza. Though addressed to law graduates, it speaks as well to those assembled here who are concerned with Constitution making:

"New generations bring with them their new problems which call for new rules, to be patterned indeed after the rules of the past, and yet adapted to the needs and justice of another day and hour. Yours will be the task of formulating those rules. One must be historian and prophet all in one who would fulfill that task completely. Here is a game, a puzzle, a conundrum. Here is a task, a summons, a vocation. Here is the high emprise, the fine endeavor, the splendid possibility of achievement, to which I summon you and bid you welcome."

DRAFTING A STATE CONSTITUTION — A HUMANISTIC APPROACH

H. Vernon Eney

To say that we must modernize state and local governments to solve the pressing problems forced upon us by a rapidly expanding urban population, problems crying for solution with increasing urgency, is to say the obvious. Not quite so obvious is the fact that the first step is revision of hopelessly archaic and outmoded state constitutions.

Now Louisiana has embarked upon the path of constitutional revision. The question is how can Louisiana effectively revise its Constitution and avoid the disaster which efforts at revision have met in so many of her sister states. Undoubtedly, the biggest deterrent to meaningful revision is general apathy. In addition, there is also fear — of government — the kind of fear that defies analysis and which sees no solution but to restrain government with so many restrictions that it cannot act at all.

We must first have some mutual understanding, not only of what is a model constitution, but of what is a constitution. The constitution of an American state is unique. It is subject to the Federal Constitution and to laws enacted pursuant thereto, but it is nonetheless the basic law of a sovereign. The Federal Constitution creates a government to which it grants power. The state constitution creates a government which has plenary power except to the extent that it is limited by the constitution which
created it or by the Federal Constitution and laws.

We must remember that the fundamental purpose of a constitution is threefold: to create basic structure of a government including rights of suffrage and representation, to place limitations or restrictions on the power of government, and to state the rights of the people. A constitution should be timeless or nearly so — it should reflect the past, speak to the present, and be viable for the future; above all, it is not legislation and should not be thought of in those terms. A constitution is the people’s charter; it is their act, their document. It is “we, the people.” Since it is the people speaking, it should be in their language — as they would speak it.

What is a model constitution? If you will reflect, you will conclude that you are not really interested in some theoretical model, nor in some constitution that is perfection for some other state, nor indeed are you interested in a constitution which, though adapted to Louisiana and a model of the political scientist’s art, is not likely to be adopted by the people of Louisiana. In other words, you are concerned with a constitution which will provide for Louisiana a government best adapted to serve well the needs of its citizens, today and in the foreseeable future. Most of all, you want it to be one which will be adopted, and not end up merely as book on a shelf.

Now how do we get such a constitution? We must first define our objectives. What is our philosophy of government, or what should it be? Do we trust or distrust government? Do we believe the best government is the least government or do we want a paternalistic government? If we so fear government that we must shackle it to keep it weak, then we cannot write a constitution for tomorrow because we do not know what tomorrow may bring forth. If we want a legislature which can provide solutions for tomorrow’s problems, then we must have a strong legislature which can legislate for the common good under whatever conditions may exist tomorrow. We must have a strong executive to balance the strong legislature, an executive which is independent of and not subservient to the legislature. With these, we must have a strong and independent judiciary to preserve and protect our rights and liberties.

What do we want of our state and local governments? To what extent do we want citizen participation? How can we make state and local governments most responsive to the needs and will of the people?

We must ask ourselves what are the basic, fundamental rights of citizens which we want to preserve inviolate, and which must we give up in order to live together peaceably in our modern, complex society? — The day of laissez-faire government is gone, just as our old ideas of private property and the right to do with it as we please are no longer valid. But the criteria are really the same as when Mr. Justice Holmes said, “Freedom of speech does not include the right to cry ‘fire’ in a crowded theatre.” Our concept that we have the right to live our own lives as we please so long as we do not harm another or society has changed only in that our ideas of harm to another or to society have changed. Our present day concerns about protection of environment were not of constitutional import or serious legislative concern fifty or seventy-five years ago but today are in the forefront of our thinking. Accordingly, while we must hold fast to guarantee freedoms and liberties that we regard as precious, we must not put so many shackles on our constitution that we deprive our children of their freedoms and liberties tomorrow.

We must also remember that unless the state constitution reserves the power of sovereignty to the people, that sovereignty is vested in the government created by the constitution. The people, therefore, ought to reserve to themselves the ultimate power of sovereignty and ought to retain power to amend or revise their constitution, as well as delegate to the legislature power to propose amendments. We think of changing the form of our government by revising or amending the existing constitution rather than by armed revolution; but it is important nevertheless to have those constitutions reiterate constantly that our government is “of the people, by the people and for the people.”

Now how can we accomplish this purpose? To create for the people of Louisiana a government “of the people, by the people, for the people,” “instituted for their liberty, security, benefit and protection”? Let us consider again the three fundamental purposes of a constitution.

The first is to create a government and to provide for suffrage and election. The choice here is practically unlimited. The only requirement is that there be a republican form of government. It is most likely, however, that the people of Louisiana will choose the traditional American form, a government of three branches. This, however, leaves many other questions to be resolved. For instance, what kind of an executive — single person or multiple executive, a figurehead or a true executive who is responsible to the people? Shall there be a power of recall or shall the executive, once elected, hold office until the end of his term unless impeached? Shall he have broad power of appointment or shall he be hemmed in by numerous elected officials?

And what kind of legislature will be provided — unicameral or bicameral — with members
chosen at large or from more parochial districts? Shall the legislators be completely independent or will they be subject to the executive? Will there be a legislative initiative? So long as they meet the test of constitutionality, will laws passed by the legislature be final or will they be subject to referendum? What kind of judicial system will be provided? Will it be completely independent? Will judges be appointed or elected? Chosen at large or selected from various districts? Will the court system be a unified, statewide system or will it operate on a regional or local basis?

Will local governments be completely subservient to the legislature or will they have a large measure of independence in governing locally? How broad will suffrage be? Obviously, it must meet the test of Federal constitutionality. This, however, primarily is limited to insuring each citizen the same right to vote as is granted to every other citizen and to do away with artificial restraints and restrictions on the right to vote. But there still remains the question of whether the government shall be truly representative with relatively few elected officials other than the legislative branch or shall be in the populist concept of direct election of many, many state officials.

Let us now talk about the second fundamental purpose of a constitution — to place restrictions on the government created by it. This is going to depend greatly upon whether the basic underlying philosophy is one of trust or distrust of government. Almost every provision in a constitution — either affirmative, a “thou shall” provision, or negative, a “thou shall not” — is a restriction. Here we must remember that we are dealing with a sovereign; to the extent that we do not command the government, or the branches thereof, to do or not to do, each within its spheres of action has plenary power. Therefore, every restriction is a limitation upon the power to act. In certain areas, it is traditional that there be limitations. This is considered part of the reservation to the people themselves of the power to act, and is and always has been true in areas of taxation, finance and education. But today there are new areas where limitations are deemed advisable; consumer protection and environmental protection are deemed proper for inclusion in a constitution. Remember always, however, that the more the restrictions, the more the need for change; the more general the language, the less the need for change.

Now a few words about the last fundamental purpose — to state the rights of the people. Perhaps this is the most important of all. Do not be misled that we are here concerned only with human rights because we do not mean that property has rights. The right to own property is just as much a human or personal right as is the right of free expression or free movement or any other purely personal right. There can be a vast difference in emphasis, and the extent to which we consider one kind of right more deserving of protection than another is an expression of our basic philosophy. But all of these rights are rights of the people. They must be guaranteed and protected by a constitution or they are not guaranteed and protected at all against the will of the majority — which may at any given time be only transient.

Should a Bill of Rights be stated in purely exhortatory terms or in judically enforceable terms? That is, should the article on personal rights say to the state “should” or “ought”, or should it say “thou shall” or “thou shall not”? Involved here also is the question of whether the Bill of Rights should be stated in the style of a century or more ago, that seems today somewhat artificial and stilted. A majority of the Maryland Constitutional Convention Commission favored use of plain, simple language. Traditionalists hotly debated the issue. I have no doubt that debate on this question will continue in Louisiana. The important thing, however, is that the real purpose of the Bill of Rights should not be lost sight of in a sea of rhetoric.

The drafting of any constitution should be preceded not only by thorough study but also by very full, thoughtful and intelligent debate. Who, in addition to the convention delegates, is to participate in this? Certainly it should not be merely dialogue between the practical politician and the political reformer or political scientist. Even more certainly, debate and discussion as to shape and content of the Bill of Rights are not to be limited to politicians — both practical and theoretical or scientific. These all have very important roles indeed in this process; but others should participate in the discussion — the business community, academic community, young people, the average citizen from every walk of life. Each should also participate in discussion as to the kind of government provided and as to the personal freedoms which are to be guaranteed. If it is to be “we, the people” who ordain and establish this constitution, then all the people of Louisiana should participate in the process by which it is ultimately ordained and established.

But here old General Apathy rears his ugly head. It is far easier, less demanding to watch an innocuous television program than to think; it is far easier to rail against politicians and government than to do something constructive about them; it is far easier to complain than to analyze the problem and weigh the disadvantage or inconvenience to the individual against the public good; it is far easier to complain privately or suffer silently than to stand up and protest publicly — the cost in time, effort, misunderstanding or abuse may be great. So what is the role of the humanist in defeating old General
Apathy? What is his role in this process of getting a model constitution? He can do much by awakening
the consciousness and interest of those who should be concerned. He can call upon philosophy and upon
history to point out the lessons of the past which should not be forgotten. He can add so very much in
articulating the hopes, the aims, the desires of those who do not possess his facility of expression. He can
keep dialogue moving on a rational and sensible basis so that ultimately there can be a consensus
on a reasonable result. He can make sure that no matter how prolonged the debate, how bitter or
acrimonious, the central issue which must be decided is never forgotten. He can assist in drafting
language that will promote the growth of ideas while continuing always that delicate balance between
necessity for protection of rights of the individual and needs of a society made more and more complex
by the tremendous number and diversity of those same individuals.

I cannot close without reminding you that a constitutional convention is among other things an
educational process. Students of today are our responsible citizens of tomorrow. The more they un-
derstand, the more responsibly the act; the more they are involved in the Constitutional Convention, the
more they will understand the results of its labors, and the better citizens they will be.

A MODEL STATE CONSTITUTION: ITS BASIC STRUCTURES,
AND HOW HUMANISTIC INSIGHTS WILL HELP IT
FULFILL ITS PRIMARY PURPOSE — SERVING LOUISIANAS PEOPLE

Dean Cecil Morgan

My fellow Louisianians: Lift up your spirits! You CAN have a better constitution. IF — if we can
dispell fear and distrust and provide some reasonable safeguards.

This Convention finds itself in direct confrontation with a psychological environment. We have
before us a humanistic ecology study. Our lives and history are in an era characterized by cynicism,
apathy, frustration, fear and distrust. Our most treasured traditions and institutions have been
challenged, most particularly our government and its processes and officials. Our people have
registered their dissatisfaction with legislation by constitutional amendment; consequently under the
existing constitution, we are faced with stagnation or crisis.

Political maneuvers and power struggle that marked Convention organizing procedures added
nothing to confidence. The average citizen, myself included, might indeed be suspicious that elements
in these maneuvers suggested that there were those who wanted no new constitution at all. Remember
that previous proposals for reform in the last fifty years failed only because of fear of political
domination by one group or another.

On the other hand there are things that suggest optimism. Out of chaos came organization.
Delegates have listened to a statesmanlike keynote address by the Governor. They have given thought
to the direction the Convention should take. They will have access to the experience, research, con-
tributions of others. They recognize that they have the opportunity of a life-time to accomplish
something good for the State. And, no matter who has control, the substantive work is what counts, and
is what the public will look to when it decides upon the acceptance or not of a document.

Humanistically, we have come to doubt our ability to govern ourselves. We see problems we know
not the solution thereof. This new constitution can be defeated by going overboard in any direction, by
unwise decisions, by undue exercise of power. It can be defeated by fear, mistrust, and public apathy. It
can be defeated by attempting to legislate in the constitution.

The Federal Constitution is one of delegated powers while state constitutions are documents of
limitation. The state constitution must be in conformity with the federal, but all power not delegated to
the federal government rests in the states and in the people. What is left unsaid in a state constitution
and is not contrary to the federal can be dealt with legally by state government. This concept should be
kept in mind as we write our document.

Delegates to this convention are not here to legislate. They are here to set up the legislature to do
that job, put appropriate limitations on it, and let it function in that framework. Delegates to the Con-
vention are not elected by the people to represent a constituency. They represent the whole state.
Legislators, while acting as such, are elected by a constituency; those members of the Convention who
are both legislators and delegates would do well to keep in mind that while writing the constitution they
open or close the door to legislation where all constituencies may be heard, but they do not properly put
legislation into the Constitution.
Models of state constitutions form a good point of departure. We can see from them what direction to take, and do our best in our circumstances. But no one, not even those who prepare them, expect a state to adopt the model as is. Many restrictions on the legislature should be removed. There is at least one that might well remain. A purist's document would leave it out, but the disposition of our people would dictate that we retain the requirement for a two-thirds vote of the legislature to increase taxes. If there is a real need, the two-thirds vote will not stand in the way of meeting demand; it may be a deterrent to controversial and hasty programs that may later be regretted.

The next delicate question is Civil Service. Again, the history of our state gives this the exalted status of a sacred cow, and I am one of that cow's worshippers. The purists would say it should come out. Not so! The essence of civil service is part of our structure of government, and belongs in the constitution along with its chief purposes: protection of employees from the spoils system, the principle of merit to keep state service at a high level, and equal treatment with proper redress. There is now much legislation attached to the fundamentals; I would suggest that some could well be transferred to the rule-making powers of the commission, and possibly some to the statutes, provided the integrity of the system is preserved.

The Dock Board has features similar to Civil Service, intended to keep this most important agency out of the stream of political vagaries. This gives justification for a large part of its structure to remain, but with flexibility. A business of that importance to the entire state needs stability.

Re-writing of the Bill of Rights can give this Convention as serious a problem as any they are confronted with. A bill of rights belongs in a state constitution; if humanistic insights are to be employed, here is the area for them to be understood, evaluated, and put into perspective. Our present Constitution does not have an equal protection clause in our bill of rights. If the state attempts go beyond what has been established in federal jurisprudence, it is likely to be unacceptable as legislation. New concepts such as the "right of privacy" are not well enough established to go into a constitution. The Right-to-Work clause has been rejected by Louisiana more than once, has torn the state apart, and would do so again, to the detriment of accepting any constitution at all. Let us not write into the Bill of Rights any new ones, like the right to long hair or a beard. And please leave some things for Women's Lib to lobby the legislature for.

There is so much this Convention can do in restructuring such departments as education, welfare, taxes and finance, and rewriting provisions on the franchise that it would be tragic if it went beyond structure and attempted to continue to legislate in these areas. Most problems, other than structural, are not the business of this Convention. We all know how government has grown with increasing numbers of boards and commissions, with indefinite and overlapping responsibilities and costs. We know how the long ballot confuses voters, and how often we do things in the name of democracy that involve a false definition of that designation. It is certainly desirable to simplify that structure. Many boards now in the Constitution could be taken out and put on the statute books; they might be otherwise protected, or if desirable, means found to phase them out. Just how far to go will call for mature judgment.

There is one item of structure that can hardly be ignored. Legislatures in general have found it impossible to reapportion themselves. Surely this is the time to set up in our new constitution some system for self-operative machinery for reapportionment in line with national law and objectives.

Very high on the priority list is emancipation of metropolitan areas from the requirement of state-wide voting on local questions. Also, there should be emancipation in large measure from the legislature itself, and consideration should be given to a general home-rule provision. Many local boards can easily be removed and left to local or metropolitan authority. Local governments and agencies are in crying need of local means for taking advantage of federal money now available, and also of cooperation with their neighbors in regional and metropolitan concerns. Though cities are creatures of the legislature, the state is often by-passed by federal agencies. Relationships we are accustomed to have changed, but the importance of state and local government has not diminished. We need to have flexibility without constitutional impediments.

The next delicate question is Civil Service. Again, the history of our state gives this the exalted status of a sacred cow, and I am one of that cow's worshippers. The purists would say it should come out. Not so! The essence of civil service is part of our structure of government, and belongs in the constitution along with its chief purposes: protection of employees from the spoils system, the principle of merit to keep state service at a high level, and equal treatment with proper redress. There is now much legislation attached to the fundamentals; I would suggest that some could well be transferred to the rule-making powers of the commission, and possibly some to the statutes, provided the integrity of the system is preserved.

The most important element in restructuring state government is strengthening of our legislative branch. Our legislators have already done some things, such as commencing on providing office space in which to work; consideration should also be given to reform of house and senate rules, committees and committee assignments, opportunity to consider a multitude of bills, open hearings. Most work should be done in committees, when the legislature is not in session. There should be more careful consideraton of bills, to avoid mistakes and relieve pressure from deadlines. This program will require adequate pay and much more time spent on legislative matters than now; not pressured by deadlines, the ill-considered will more likely be eliminated and certainly there should be fewer mistakes.

The most severe restriction the present legislature suffers is the small proportion of revenue at
its command because of dedication of funds. The legislature should allocate the state's resources, and it has little opportunity. There is waste and distortion. There is no quick solution to this problem, and important institutions and the bonded indebtedness must be in stable condition. Gradually working ourselves out of this dilemma is an important and difficult task for this Convention.

In considering changes in structure of government, we would do well to put primary propriety on strengthening our legislature. The remaining branch of government, the judiciary, deserves some comment. This state has a superior court system and judiciary, but there is much that can be done. The Louisiana Constitutional Revision Commission prepared an extensive report that has pin-pointed issues, has suggested that the length of this section can be reduced to about a third, and has provided a base from which this Convention can work. There is also forthcoming a Supreme Court-sponsored study of the lower courts that will be available to the Convention during its deliberations. The main thrust of the Commission report is to emphasize the unified court system, strengthen judicial administration of the courts, clarify rule-making power of the courts, and draft alternatives to the most controversial of all judicial issues involved, the election of judges or appointment based on merit. Their substance needs public understanding and open debate. Nothing in the judicial article, however, should prevent adoption by the people if there is any consensus in this Convention.

If alternatives on controversial issues are specifically drafted, if legislation is drafted that represents material removed from the proposed constitution, if good judgment is exercised in recognizing what agencies thus removed need some kind of protection and that protection is provided, and if all of this material receives proper coverage in the media and if the Convention takes the public into their confidence and people get the benefit of their debates, the people are much more likely to accept the judgment of the Convention and support the final document. Let us summarize the important things to be done:

* Remove from the Constitution that which is obsolete, redundant, purely technical, clearly legislation
* Remove unnecessary limitations on the legislature and open the door, constitutionally, to solution of problems; leave solutions, except structural, out of the new document.
* Avoid dealing with controversial issues as far as possible in the constitution, but make it possible for them to be dealt with representatively by means other than constitutional amendment.
* Deal affirmatively with emancipating local governments.
* Most important, make the legislative branch responsive and responsible, and give it the tools with which to work. This is basic to reestablishment of confidence in government. And we have no alternative but to trust, within this framework. We have our remedy at the polls when we center responsibility. That is what representative government is.

So I repeat, lift up your spirits! Lift them high! High above pettifogging, high above cheap and selfish politics, high enough to act to dispell fear und mistrust! You can, you CAN have a better — a much better — constitution!

WHAT HAS HAPPENED SINCE 1921?

Dr. Mark T. Carleton

"What's Happened Since 1921" also involves what has happened between other, previous constitutions. Louisiana has had ten in all, up to the present — an average of one for every sixteen years of her existence as a state. There have been two major underlying themes in every Louisiana constitution since the first one in 1912:

* All have been partisan documents, created at moments of political crisis. As an example, the Creole aristocrats who wrote the first constitution distrusted democracy and wrote a constitution to contain it; the reverse was true of the Jacksonian Democrats, who wrote the next document. When "ins" were thrown out, the new "ins" re-wrote the constitution, and its was often — presented under a reform label.
* Beginning in 1845 (the second constitution) and rapidly after 1879, conventions have behaved like "super legislatures"; they have increasingly restricted the regular legislature, while legislating
themselves. The cumulative end product by 1921, in the words of Professor Powell, was a quasi-constitutional “patchwork of ‘deals and dickers’ containing endless statutory trivia.”

Let us have a brief resume of Louisiana's prior constitutions. The first one was drafted in 1812, on the eve of Louisiana's entry into the union. It is appropriate to remember that Louisiana was never a colony of Great Britain, but by turns of autocratic France and Spain, and so had had no practical experience in representative democracy or popular government. As mentioned earlier, those who drafted this constitution were distrustful of democracy; they wrote into this constitution — our briefest — property requirements for voting and major office-holding, and an amending process so difficult that it was never amended.

The constitution of 1845 was written by an almost even coalition of Jacksonian Democrats and property-conscious Whigs. Each received a little — not all — of what that wanted. The Jacksonians were interested in democratizing suffrage, and were successful in having property requirements for voting and office-holding abolished. Also, certain types of corporate charters were prohibited. The Whigs obtained an extension of the residency requirement for voting from one to two years, and also an apportionment of the Senate on total population rather than on voting population as was so for the House. This gave parishes with large slave populations more representation in the Senate. Later, both houses were apportioned on the total-population basis.

The constitution written in 1852 reflected the Whig belief that government should actively support such things as canal and railroad construction for eventual general benefit; they also felt that future legislatures might be opposed to this concept and so wrote an “Internal Improvements” title into the constitution. This was the first major piece of “special interest” legislation, and subsequent generations of Louisianians have learned from it.

In 1861, the “Confederate Constitution” was drafted; this substituted “CSA” for “USA”, but was never submitted for popular ratification.

The constitution of 1864 was drafted in Union-occupied New Orleans, and was influenced somewhat by Lincoln’s plans for reconstruction. Its noteworthy features were that it abolished slavery (one year before this was done nationally) though it did not explicitly emancipate blacks, it provided for a graduated income tax, and for public education for children of both races — not integrated but rather on a “freedom of choice” basis; it contained a minimum wage-maximum hours provision for public workers employees, and appropriated $10,000 for whiskey and cigars for the convention.

1868 saw the “Radical Constitution,” written by a convention composed of 49 whites and 49 blacks; this was the first time that blacks had participated in politics in a major way, and most of them were educated — “free men of color.” The document, reflecting national reconstruction policies, contained the first formal state Bill of Rights, and provided for general adult male suffrage, which of course included blacks; this was not regarded as a positive accomplishment by Louisiana whites in 1868.

The 1879 “Redeemer Constitution” was a reaction to unpopular acts of Reconstruction. It severely limited taxation, which had risen during reconstruction, and contained Louisiana’s first extensive tax code to be incorporated into a constitution. This constitution also curtailed powers of the legislature and moved the capitol back to Baton Rouge from New Orleans.

Louisiana’s most undemocratic constitution was the “Disenfranchising Constitution” of 1898. Farmers had been hard-hit by depression, and from fear of possible takeover by the Populist movement, the entrenched Democratic regime had resorted to bribery, intimidation and vote-stealing to maintain the status-quo in the election of 1896. To avoid risk of having to repeat this, they decided to reduce the number of voters, in such a manner as to exclude those whom they regarded as a threat to their position. Accordingly, the 1898 Convention wrote both property ($300) and literacy (ability to read and write one’s native language) requirements into this constitution. Since these requirements would also have disenfranchised about 25 per cent of the white population, another inclusion was Article 5 — the “Grandfather Clause”; this automatically gave the franchise to anyone whose father or grandfather had been registered on January 1, 1867 — prior to enfranchisement of blacks — provided they registered within a period of 5 months. This act was thrown out by the Supreme Court in 1915. This constitution also included much legislation and created the Railroad Commission, which in 1921 became the Public Service Commission.

The Convention of 1913 was limited by the legislature to two areas: refunding the state debt, and enlarging powers of the New Orleans Water and Sewerage Board. The Convention far exceeded this authority and went on to write what was — at that time — Louisiana’s longest constitution; several of its provisions were declared “unconstitutional” by the State Supreme Court in 1915, creating the need for
still another new document.

The Convention of 1921 that drafted our present constitution was noteworthy for its lack of research and preparation, which as Professor Alden Powell commented, "... must have forced (the delegates) to rely heavily upon the counsel of lobbyists, who would be less concerned with writing a short constitution than with getting their own pet legislative products written into the new law."

So much for events and influences leading to formulation of the constitution we now have. What things have happened in Louisiana since 1921 that have profoundly affected the state, and should be considered in the writing of a new document? These are some key developments:

* Louisiana has gone from a predominantly rural state to a largely urban one.
* The state has likewise gone from an essentially agricultural economy to a diversified industrial and commercial one; agriculture now occupies about 7 per cent of the state’s population; Louisiana’s current prosperity was triggered by large Federal defense expenditures started during World War II, and it should be realized that in addition to intervening bureaucratically in local matters, the Federal government can also invest in a local economy by these large expenditures.
* The state has gone from legal segregation to a legally, Federally enforced, and fairly thorough integration of public facilities; along with this have come increased opportunities for blacks.
* There has been a remarkable revival of the Republican Party in the state; in 1972, Louisiana elected its first Republican congressman since 1886. Prior to this, Louisiana was the only state in the nation that had elected neither a congressman nor a governor from that party in the 20th century. In addition, in three of the last four presidential elections, Louisiana has endorsed the Republican candidate.
* Louisiana has experienced for much of the time since 1921 a bifactional fight between the Longs and the Anti-Longs; the most serious legacy of this is the lack of a constitutional convention during all of this time. Each of these factions was afraid that the other world dominate a convention and write any new constitution. This divisive situation has now pretty well receded, which is probably why we now do have a convention.

Since 1921, we have had, however, a number of "informal" constitutional conventions — every four years, at the ballot box, as voters were called upon to decide the fate of amendments proposed by the legislature; 536 have been ratified, and many more rejected. This is the major reason why the constitution is so long and so loaded with "endless statutory trivia". We must have a tighter amending procedure.

What are the priorities for a new document?

* Removal of legislative material; "if we cannot trust the legislature, we cannot trust ourselves."
* Establishment of clear and flexible guidelines for the executive and judicial branches.
* Emancipation of local and parish government.
* Inclusion of an up-to-date Bill of Rights; it should be in step with but not necessarily ahead of Federal laws and court rulings.
* It must seriously reconsider the complex question of dedicated revenues.
* Bring franchise provisions up to the level of Federal requirements.
* It should be a constitution, written with the people and for the people, that the people will trust, accept, and ratify.

**ARKANSAS CONSTITUTIONAL CONVENTION**

Dr. Leflar

Compromise is the essence of this type of endeavor — none of us will be completely pleased with what comes out. Benjamin Franklin said this in 1787:

"I confess that there are several parts of this Constitution which I do not at present approve but I
am not sure I shall never approve them: for, having lived long, I have experienced many instances of being obliged, by better information or fuller considerations, to change opinions even on important subjects which I once thought right but found otherwise. It is, therefore, that the older I grow, the more apt I am to doubt my own judgment and to pay more respect to the judgment of others... I doubt too whether any other convention we can obtain may be able to make a better constitution... on the whole, sir, I cannot help expressing a wish that every member of the convention who may still have objections to it would, with me, on this occasion doubt a little of his own infallibility—and, to make manifest our unanimity, put his name to this instrument."

Much of the objection to the Convention's work we may feel is unworthy—but it cannot be disregarded. Opposition that is almost meaningless may have great appeal to large numbers of non-thinking voters. It may come from:

- natural "aginners"
- vested interest groups
- those to be phased out in interest of greater efficiency

A quiet vote will serve to emphasize improvements afforded by the new document; arguments based on its virtues will get lost if too much time elapses between presentation of the final document and the election.

There should be vigorous discussion of what the Convention is doing as it is doing it. The task of the Convention is to produce the best document that it can. There should be an affirmative, not a defensive campaign. The delegates should do a good job—and then fight for it!

**PITFALLS ALONG THE WAY**

**Professor Cohn, Mr. Endy**

Professor Cohn:

It has been most interesting to see this dialogue between academic humanists and delegates. I have been—in a sense—in both fields; as a lawyer who worked in the field of legislative drafting for many years, I was regarded as a hard-headed realist, but quickly came to be regarded as a visionary when I went into teaching.

Louisiana's problems are distinctive to the state. Illinois did not have such a vast amount of statutory material in its former constitution with which to contend. But certain generalities apply to both situations.

Louisiana's delegates wisely rebelled against letting the executive committee prepare the preliminary draft of the document. The convention should be open and should create the impression that it is listening to the people and giving them opportunity to express themselves. Even though much public input will not be constitutional in character, a rapport will be established. Open communication also means an open line of communication with the news media. If some distortion occurs, delegates should be willing to accept it; making sure that the convention has a real "open image" is worth this.

The finished document, in principle, must sell itself to the people and to the press as worthy of being offered to the people. The document must really deal with fundamental issues and human concerns. Nobody will be fooled by a "plastic" job of dealing with issues in an ineffective way. What the delegates propose must be important to the people. A mood must be created that will go beyond "taking it easy"—delegates must have the courage of their convictions.

The delegates must identify the most controversial issues—those that are not able to be resolved by the convention—and these should be submitted as separate propositions together with the main document. This will isolate much potential opposition. In Illinois, separate propositions were: method of selection of judges, single-member versus multi-member districts, the 18-year old vote, and the subject of capital punishment.

Mr. Endy

I have always been a practical, practicing lawyer, not an academician. But I approached our Maryland convention as an idealist, and remained so throughout the whole experience. Professor Cohn, the academic, approached his work with the Illinois convention as a hard-headed and practical person. Our respective conventions pretty well mirrored our sentiments. Maryland and I did not achieve a new
I heard a delegate remark at this very meeting, "We must realize that the moment of truth is here." This is indeed true, and you delegates do not have an easy task. Your pitfalls are the same, in general, as faced us in Maryland. Removing such "sacred cows" as dedicated revenues and boards and commissions presently sheltered in the constitution will create opposition. Maryland, too, had a similar situation, but with fewer agencies involved. But a quiet, yet efficient opposition to these changes contributed heavily to defeat of the Maryland constitution.

It is a necessity not to present the document as a package deal; an amalgamation of minorities can defeat it. Controversial issues should indeed be isolated — but be sure you isolate the right ones. The Maryland Convention debated the question of the vote for young people, and compromised on a vote for 19-year-olds; there was little convention debate on this, and little publicity, yet it blossomed enormously when the time came to vote. (A later amendment to the present constitution, easily adopted, gave the vote to 18-year-olds.) The experience of every state submitting some choices as separate issues is that most of these proposals have been adopted anyhow.

The time and manner of going to the people for ratification is most important. I approached going to the polls as an idealist, and felt that the public could not be "educated" in too short a time. Educate as much as possible, but do not lose the momentum of interest generated by the work of the convention and presentation of the final document. To get your constitution adopted, you must be political, and use every accepted political election technique — a "slam-bang" campaign. An election within 6-8 weeks after the convention completes its work is realistic timing.

The press doesn't find too many headlines in constitutional debate. They must be made to see that they are a vital part of the educational process.

QUESTIONS:

"How many separate issues might be submitted to voters without overwhelming them?"

Cohn: Hawaii had quite a few, and most were adopted. But as a rough estimate, there should be not more than a half-dozen; more than that will result in the main document being "lost" in the profusion of alternatives.

Eney: Pennsylvania submitted 4 questions, and the decision as to the optimum number gave them concern. They felt that five was the maximum.

"How did Illinois determine its choices for alternate propositions?"

Cohn: Early in the convention, the decision was made to go to the people with alternatives. Decisions as to which were made on the floor; by final reading of the draft, delegate consensus materialized as to which these should be.

Eney: You should be very, very careful in choosing these. They should be controversial issues of constitutional importance. Do not allow controversy over lesser issues; if the matter does not have to be in the constitution, avoid it.

"Should the constitution be presented in a general or a special election?"

Cohn: Illinois faced this choice. Ratification was to be based on a majority of those voting in the election, not just on the proposition. Since there are always a substantial number who do not vote on propositions in a general election, this — according to the above criteria for ratification — would mean a large built-in "no" vote for the constitution. Thus, it is better to have a special election, which automatically eliminates such a non-cast "no" vote.

Eney: I agree. Also, if the constitution is submitted in a general election, it can be caught up in personalities involved in the general election.

"How did Maryland and Illinois handle the civil rights issue?"

Eney: Maryland did not include detailed provisions; the delegates felt that the simplest statement was best — something broad enough to include everything conceivable. They eventually adopted a more specific statement because they felt the public might not appreciate the adequacy of the simplest statement possible. Civil rights was really no issue at all in the convention — in spite of minorities, blue collar workers, red-necks on the Eastern Shore — nor was it apparently an issue in the election; the document lost most heavily in Baltimore City, which is heavily black. A caution on civil rights — it is imperative to think through the choice of language; none of us can foresee the future, and we should think carefully as to how far civil rights will be extended. And will provisions affect state actions only, or will they affect private actions?
Cohn: Our new constitution introduced the new — to Illinois — concept of equal protection under law.
The Illinois constitution now provides for enforceable personal rights as to purchase or rental of housing, hiring and promotion practices; some delegates contended that these areas went beyond the province of a constitution. Our black delegates were influential in drafting the Bill of Rights. This did not become a real issue for the convention — in spite of the fact that for the previous ten years, Illinois had been unable to obtain a fair-housing law. The convention felt that an expression of civil rights was essential in this day and age.

“When statutory law has been removed from the constitution, how can it be transferred to the statutes without lapse or confusion?”
Eney: Maryland had many such provisions to be removed. Two schedules were submitted with the proposed constitution. One was a schedule of transfer from the old constitution to the new of provisions relating to local government — i.e. county governments would not immediately begin to operate with the additional authority proposed, but transfer would have been in phases. The other schedule was one of legislation, which — effective upon ratification — would have placed deleted material into the statutes, where it could then be treated as any other legislation by subsequent legislatures.

Cohn: The convention can propose almost any kind of provision for this.

“Did either Illinois or Maryland make any provision for reapportionment of the legislature?”
Eney: Maryland did make provision for reapportionment. Several possibilities were considered; delegates felt that the legislature should have the opportunity to do this, but that if they did not, then someone else would be empowered to. As decided, a plan would be submitted to the legislature by a commission; if the legislature did not adopt it, with or without amendment, it would become effective anyhow. There was also a provision for direct court appeal to test constitutionality of such plans.

Cohn: Illinois made the decision that the legislature should have this responsibility. If it does not act, a four-member commission will act; if they cannot reach a decision, the state supreme court will appoint a tie-breaker who will decide.

“Should Louisiana risk a ‘magnificent failure’?”
Cohn: If Louisiana’s convention comes up with something lacking in meaning, then the whole process has been unproductive. There is a mean between a pedestrian document and extreme idealism. Basically, you should try for something which has a quality of distinction. Fight for it — it is worth the risk, and even worth the loss.

Eney: I heartily agree. We can be comforted by the thought that “. . . the defeat of today may be the victory of tomorrow. When the time is right, the change will be made.” But you should try for the “magnificent success.” Had Maryland done differently, we could have succeeded without compromising with idealism or surrendering to expediency. A prompter decision, with the using of political techniques, would likely have given success. Pennsylvania would have had an experience similar to Maryland’s if they had not gone to the people in 6 weeks. Alternate proposals and subordinate questions can be submitted in such a way that we can achieve our basic purpose and still have citizens feel that they have had a voice in the constitution’s formation. Be sure that the public will have felt that its voice has been heard.

QUOTABLE QUOTES
As Taken From Discussion Group Recorders’ Notes

“Characteristics of a Humanist include: a belief in self-determination, possession of a time-perspective, empathy, perception of a balance of logic and emotion, the valuing of uniqueness, consideration and promotion of answers to human needs. Do our delegates have these qualities? Is there a conflict between humanistic idealism and delegate realism? A conflict between what a delegate and-or a humanist wants? OR are characteristics of the Humanist compatible with those of a good delegate?”

“A Humanist should have a combination of idealism and realism; therefore, a good delegate CAN be a humanist — without conflict.”
"There are many lawyers among the delegates; can they be humanists? They SHOULD be 'super-humanists.'" 

"Reasons as to why people wanted to become delegates are for political gain, and to be of public service. A humanist MUST compromise his concern about dominance of lawyers as delegates; lawyers are super-realistic."

"Does youth have a unified view? Evidence indicates that it is diversified."

"Delegates should not concede to special interest groups, but serve the needs of ordinary people. EVERYONE has a special interest, and each special interest must consider other special interests. THIS is being HUMANISTIC."

"There doesn't HAVE to be a dichotomy between humanist and delegate; there are varying degrees of humanistic qualities in delegates, as there are in everyone, which will be reflected in their functioning as delegates."

"A delegate owes his allegiance to more than his constituents; he should concern himself with needs of all the people. He should begin by asking what the values are in our society; then, which of these have to be preserved — what do we REALLY believe? In what way, if any, do our fundamental values differ from the 19th century, or from the time when our present constitution was written? If so, how can these changes get into a new document?"

"The academic humanist can be a resource for the delegate — and should be. The humanist's role will be to create a balance between the idealist and the utilitarian; humanistic concepts will not be found article-by-article but will permeate the total document. And the humanist's place is also to see that special interest groups are not allowed to have their interests written in to a new constitution."

"From the humanistic standpoint, why revise the constitution?" "It is antiquated because it is too restrictive and unwieldy, and not responsive to need for change."

"What is a constitution? It is a basic document. But what is basic? Should it be a structural document, or an allocation of power? If an allocation, it must be responsive to the electorate."

"A basic document should contain a Bill of Rights, and the only other thing that HAS to go in is an outline of government."

"Our citizens should be protected by the state constitution as well as by the Federal; a separate Bill of Rights for Louisiana citizens is needed. Our present one is good, but has been interpreted very narrowly, and a restatement is needed to relieve the tensions of those who are unsure. We also need an Equal Protection clause; people ought to be able to go to state courts to secure their rights as citizens."

"A Bill of Rights won't change people, but is designed to control behavior. It gives the individual protection from the government and its institutions, and — a new idea — from other individuals; it conveys certain liberties to the individual."

"We delegates have reached the 'Moment of Truth' — which is to allow our representatives really to represent us in solving state problems. The more I see here as a delegate, the more I am willing to give them this power. There comes a time when you have to trust . . ."

"The legislature has so many restraints upon what it can do, and has to hurry to get it done — and often must do it without the proper advice. It's a case of either 'Do it now with little information, or don't do it at all.' "

"One solution might be that we have a split legislative session — one 30-day session to introduce bills, no longer allowing this to be done by title only, a 30-day recess to allow for study of bills, and then a second 30-day session to vote on them."

"Humanists and scientists should have the same objectives, one of which should be home rule."

"The executive branch should be transformed into a body for which the Governor would be responsible, and it would be up to him to make it responsive to the people. He would be accountable for this."
"One possibility would be to have the Governor, Lieutenant Governor, Secretary of State and Attorney-General elected, with the remaining administrative officials appointed by the Governor with approval of the Senate."

"The Alabama Constitution provides for a State Board of Education which may be either elected or appointed as the state legislature sees fit; the State Board appoints the Superintendent."

"We have no fiscal stability for education — we have beautiful buildings which we could not use because we could not pay the utility bills. We have far more institutions of higher learning than we can afford — maybe more than we can use."

"Consolidation would do away with duplicate efforts where both predominantly black and a predominantly white school are in the same area; the people may not want this."

"If some black institutions are to be closed, some white ones should be, also."

"This is a real problem. Legislators' constituents want these separate colleges because it represents a source of additional income. Mississippi has somehow been able to put a lid on their institutions of higher learning — and theirs are way ahead of ours. The Legislature has, at some point, got to say, 'We can't afford it.'"

"Delegates must inform the public of what they are doing, must avoid a defeatest attitude, and avail themselves of resource people."

"The new constitution must convince the public that the Convention has been concerned with current problems, and not with specific personalities. It must present basic, humanistic values as concrete ideas — a difficult task."

"The document we come up with will have to be a compromise document. We must be realistic enough to know we can't cut out some of those things that are traditional; we work toward an ideal, but will have to come up with something that can be passed."

"This is a negative view — we underestimate the electorate of today."
ABOUT THE SPEAKERS

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