

Con-Con

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The US Constitution is justifiably celebrated as a model of brevity and durability—it has been amended only 27 times in two centuries. No wonder—it was crafted by giants, including Madison, Hamilton, Franklin, Washington, and (weighing in from afar) Jefferson. Such a concentration of talent comes about rarely indeed—perhaps once a millennium.

Every American state has a constitution as well, but none of these commands the same awe or can boast of being so brief yet so long-lived. California's constitution is more than 100 pages long and has been amended about 500 times. The present Illinois Constitution, aged 38, is a padded youngster by the standards of the US, but slim and ageless when compared to its California cousin. One of its more interesting provisions is that an opportunity for a new constitutional convention arises automatically every 20 years (a super-majority in the legislature can initiate a convention any time, but the decision goes straight to the people if the General Assembly forgoes action long enough). On the November ballot this year, voters will decide whether or not to engage in constitutional renovation. What is the best standard for evaluating our constitution and its fitness for the next 20 years?

Does it have flaws, such as glaring omissions or passages that resist clear interpretation? Absolutely. But that is too low a standard. No constitution is perfect, and, anyway, we can amend the current document without starting from scratch, to fix one or two specific problems. However, the “don't start from scratch” argument steals a base—a new convention need not write a wholly original document. The elected delegates can, if they choose, make modest changes to the existing constitution; indeed, they can propose no changes. Moreover, whatever they put forth does not become law without winning the approval of the voting public. So the initial question is not, “Must we junk our current constitution” so much as “Should the Illinois constitution be subjected to careful scrutiny and public debate?”

Major constitutional revision divides both of the major parties and can unite disparate ideological types. On both the left and the right one finds agitators unhappy that the constitution omits some topic (say, defining marriage or providing for recall of elected officials), addresses a topic without sufficient clarity (e.g., school funding or protection of the environment), or tackles matters that don't belong in a fundamental law at all, and should instead be handled by ordinary statutes (pensions maybe?). Some would like a longer document, more like that California model. Others think the ideal is the very short, iconic federal example. My own priorities would include establishing non-partisan redistricting, and expanding the use of direct democracy. But predicting what would emerge from a new convention is impossible, and, accordingly, the case for having a new convention should probably not be tied directly to any one reform.

Does unpredictability make a convention a good or a bad idea? It depends on how much you like surprises. Alternatively, it depends on how much confidence you have in incumbent politicians to fix the mess in Springfield without help. Some argue that, since the sitting legislature would design the mechanisms by which convention delegates would be chosen, the convention would be rigged from the start, biased against any reforms threatening the status quo. Such cynicism is understandable, but distressing. “A convention can’t work because those in power would preclude serious reform” is not an argument to which the public should unhappily yield. If the public demands a constitutional convention with a loud enough voice, it will be very hard for the legislature to cook the books and shrug off responsibility.

Arguably, there is no better civics lesson than a serious discussion of what constitutions are for, what is in our current constitution, and what features of this document seem to be tied to the good, bad, and ugly of Illinois government in 2008. No one doubts that state government is very far from perfect. In surveys taken this autumn, large majorities say that the state is “on the wrong track” and approval levels for the governor and General Assembly are dismal. Pessimists fear that re-modeling never works, and caution that the status quo is bound to be better than whatever would be cooked up by the delegates and special-interest lobbyists who would, of course, swarm around.

However, the lessons to be drawn from other states and from Illinois’s own past are ambiguous. Some states seem to have gotten into more trouble with each constitutional re-write; others seem to have made clear gains. There is no iron law here—the outcome of a convention could be good or bad. Not all of our problems originate in the constitution, which is not a detailed blueprint for every aspect of government and politics. New delegates will not measure up to the nation’s Founders. But no other convention in world history has come close on that score. So the question is not whether Illinois can get a perfect constitution or be lucky enough to see an amazingly wise set of delegates emerge. Rather, the question is whether our state should inspect the structure of our government for soundness, and be open to the possibility of doing repairs.

My answer is yes.