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## SHALL THERE BE A CONVENTION TO REVISE THE CONSTITUTION AND AMEND THE SAME?

JAMES B. M. McNALLY †

**A**RTICLE XIX, Section 2, of the New York State Constitution, requires the submission at the general election to be held in 1957 of the question "Shall there be a convention to revise the constitution and amend the same?". The Constitution also provides for a method of amendment at the instance of the Legislature. Ours is a constitutional form of government. Its successful operation depends on the balance of the three departments of government: legislative, judicial and executive; each autonomous, operating on the same plane, with a minimum of friction and conflict, no one overpowering the others. History has shown that the people cease to be the source of power when one governing branch gains marked ascendancy.

It is inevitable, indeed it is inherent, in the form of constitutional government we enjoy, that there be competition for the approbation of the governed; with approbation the tendency is to influence and submerge the other branches of government. When imbalance develops, curbing of the ascending branch or stimulation of the other branches is indicated. In all events balance of the three co-ordinate branches must be achieved. That is not to say, however, that the conditions of government are to be frozen. They should be fluid and flexible, able to cope with ever changing times and conditions. The analogy between our constitutional form of government and the human organism is complete when it appears that each contains the seeds of destruction as well as the seeds of progress and fulfillment, and that in the

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human organism the brain serves to balance the inner drives and in our constitutional government it is the people or, if you will, the collective brain power of the governed which exerts the balancing effort if the government is to operate at optimum.

The constant and unremitting effort of each department of government to gain influence carries with it beneficial as well as disadvantageous effects. That part of the effort which redounds to the public good is, of course, the end result to be sought, encouraged and stimulated; that which tends to submerge, inhibit and overpower co-ordinate units is charged with the poison which undermines free government. Eternal watchfulness alone can prevent disintegration of free government. The time to act is when the evidence tends to support suspicion; to await the active stage of the poisoning process is to invite disaster.

The amending process of the Constitution, which may originate in the Legislature, does not permit full, objective and integrated changes: The Legislature might be inclined toward curtailing and inhibiting the judicial and executive branches of government. It is possible that it would not be equally zealous in respect of measures which tend to limit its own activities. Hence the constitutional measures emanating from the Legislature alone might tend toward imbalance of the units of government. The only other source of constitutional amendment, and, the one least likely to create a distorted result, is the constitutional convention. Then and then only is constitutional government, in its entirety, exposed to the critical eye of a group representative of the governed and the government.

The necessity for constitutional change is vouchsafed by the submission of the many constitutional questions at each general election since 1938, in which year the last Constitutional Convention was held. The constitutional questions submitted since 1938 to the electorate pertained to many subjects of public interest, such as the judiciary, railroad grade crossings, term and compensation of legislators, conservation, fiscal policies, voting requirements, reapportionment, succession to offices, veterans, civil service, public officers, housing, hospitals, welfare, real estate taxes and pensions.

At the forefront today is the drive for overhauling the judicial structure. Whether the suggested plan will meet the critical problem of congestion in the courts is extremely doubtful. Informed proponents of the plan do not advance it as a cure for congestion. Unfortunately the lay public is inclined to believe that the proposed plan is a panacea. Change may be indicated. However, the nature and extent thereof may be best derived from the objective, careful, expert and multilateral consideration possible only at a Constitutional Convention. Furthermore, any amendments proposed by a Constitutional Convention will be submitted for final action with as much dispatch as amendments proposed by the Legislatures of 1957 and 1959.

If none of the problems with which we are confronted was present, it would be sufficient justification for a Constitutional Convention if its sole purpose was to appraise the operations of government and ascertain whether there are present forces which tend toward imbalance, and if they are present, to recommend corrective measures.