

THE EARLY POLITICAL USES OF THE WORD
CONVENTION.

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IN THE dialect of American politics the word convention is applied to gatherings of several different sorts. Occasionally, perhaps, it is used of primary assemblages or political mass meetings, though it may be that in such cases there is always present the notion of persons brought together from distant places, so that a selective principle is at work, even if it is only that inherent in the expense of railroad fares. But usually, it is certain, the word now conveys the concept of a body which is in some formal sense representative, an assemblage of delegates. Of such conventions, two types are most familiar. One is the constitutional convention, in which the representatives of the people are gathered for the purpose of framing an organic or fundamental law; allied to this were those Southern conventions which assumed to represent in a peculiar sense the sovereign peoples of their States, and to declare their nullification of federal statutes or their secession from the federal union. The other familiar type is that of those innumerable nominating conventions by which party organizations put forward their candidates for elective office. The instance of the Hartford Convention shows that there have been other species of the genus in modern times, but they have been less frequent than the two just mentioned. Of the two, it is well known that the latter, the nominating convention, seems to occur for the first time in 1788, and is found only in sporadic cases before the war of 1812. The history of the representative constitutional convention in America begins, apparently, with the early days of the

Revolution, when provincial congresses or conventions framed constitutions for the new States. But there were conventions before there was any making of constitutions, and few conventions of those years confined themselves to that function. An earlier American type than the constitutional convention, then, was that of the revolutionary convention, a body representative of the people and exercising powers of government, but of revolutionary origin.¹ There were not a few instances of county conventions, but the most important variety is the revolutionary convention of the colony or State.

It is not necessary to argue elaborately as to the sense in which the word convention was used when applied to these famous gatherings. It is well known that they usually consisted of, or closely resembled, a colonial legislature minus the governor, or minus the governor and council, and not summoned by the governor, and that they were called conventions because, of all words denoting a political assemblage, convention was held to be the fit and technical term by which to designate such bodies as these. Precisely such an understanding of the term appears not only in the case of the conventions of 1774, but in that of the Massachusetts convention of September, 1768. Such also was the convention of Massachusetts which Otis proposed in December, 1765. But the idea that this was distinctly the meaning of the word convention mounts farther back into the colonial times. Substantially this idea appears in the action of the lower house of the assembly of South Carolina in 1719. They declared that the writs whereby they had been elected were illegal, because signed by a council whose composition was illegal, as being different from that provided by the proprietary charter; and they therefore resolved "That we cannot Act as an Assembly, but as a Convention, delegated by the People, until His

¹ The French Convention, called into existence by the law of August 10, 1792, was of this type, and doubtless derived its name from American examples.

Majesty's Pleasure be known." ¹ It was the council and not the governor that was defective, but the thought that a defect in one estate and a consequent illegality in the summons of the lower house made the latter a convention, if it must act at all, is apparent. The same thought is evinced by the Massachusetts conventions of May, 1689, and by the Maryland convention of the same year, for though the latter body does not seem to have called itself a convention, there is evidence that it was contemporaneously so called by others. ² During the course of Bacon's Rebellion in Virginia, the rebel chieftain summoned "all the prime Gent:men in these parts to give him a meeting in his quarters" (August 3, 1676). ³ In the declaration which it put forth, this body does not call itself a convention, ⁴ but it is so called in the contemporary narratives of Burwell and Mrs. Cotton and in the later accounts by "T. M." and Beverley. ⁵

It is obvious that the instances cited from the years 1689 and 1719, and from later years just preceding the Revolution, were based on the precedent of the English Revolution of 1688, in which the leading part, in representing the nation, was taken by a body which was substantially a parliament, but which was not summoned by the king and lacked his presence and concurrence, and which therefore called itself a convention until the day when, having declared William and Mary king and queen, it declared itself a parliament. There seems to be no evidence that Nathaniel Bacon's convention was modelled on that of 1660. Bacon had been a student of Gray's Inn in 1664, and he was related to that Nathaniel Bacon, member of all the parliaments of the Commonwealth and the Protectorate, who wrote *An Historical Discovery of the Uni-*

¹ *A Narrative of the Proceedings of the People of South Carolina*, in Carroll's *Historical Collections*, II. 189.

² *Maryland Archives*, VIII., XIII.

³ Mrs. Cotton, in Force's *Tracts*, I., ix. 5.

⁴ Beverley, 75.

⁵ Burwell, p. 16, Mrs. Cotton, p. 5, "T. M.," p. 21, in Force, I.

formity of the Government of England, one of the leading constitutional text-books of the country party. Bacon must therefore have been familiar with English precedents. But, as we have seen, it is not known that he called his meeting a convention, and some of Mrs. Cotton's phrases seem to indicate a mass meeting rather than a body of delegates. Other instances of the use of the word convention in its etymological sense of meeting merely, are those conventions of the Massachusetts ministers which began to be held annually before the close of the seventeenth century,¹ and such conventions of the clergy of Virginia as that of 1719, whose transactions are recorded by Bishop Meade.²

But whence came the before-mentioned use of the term into English practice? The word as a technical term is unknown to the older parliamentary law of England. The convention of 1689 sought in vain for precedents anterior to 1660.³ That before the Civil War the word convention,

¹ Walker, *History of the Congregationalist Churches in the United States*, pp. 201, 202.

² *Old Churches, Ministers and Families of Virginia*, II., 393.

³ Lady Mordaunt, in a letter to her husband, March 30, 1660, *Clarendon State Papers*, III., 712, says that a lawyer tells her that though there is probably no English precedent for the summons of Parliament by other means than through the action of the Crown, he supposes one may be found in the special commissions for the calling of a parliament in Ireland. In the debates of the convention of 1689 Serjeant Maynard, a great authority, declared it useless to attempt to found the legality of that convention on precedents. There are evidences, by the way, that some of its contemporaries conceived of that convention as possessing those extraordinary and sovereign powers which in later times have been attributed in America to constitutional conventions and conventions for secession. Thus, in *A Brief Collection of some Memorandums: or, Things humbly Offered to the Consideration of the Members of the Great Convention and of the succeeding Parliament* (1689), we read (p. 7) that although that body consists of the same lords and the same commons that usually make up a parliament, "yet being the Representatives of the whole Kingdom gathered together in an extraordinary case and manner, and for extraordinary ends, it seemeth to be something greater, and of greater power, than a Parliament. If the whole Nation, thus assembled, shall deliberate about and settle a *New Government* (as if they were to begin the World again) this seemeth to be a Transcendent, Extraordinary and Original power, beyond what they could exert, as a Parliament"; and again (p. 13), "If this *Convention* can do anything, cannot it make Laws truly *Fundamental*, and which shall have the same Firmitude and continuance as the Government it sets up?" The view that such conventions can change the terms of the national political contract is also expressed in *A Discourse concerning the Nature, Power and Proper Effect of the Present Conventions in Both Kingdoms* (1689). I have seen no earlier traces of this thought.

to the English mind, meant simply meeting, even when the word was used of Parliament, may be seen by comparing the phrases in which two authoritative writers of that earlier time express a certain doctrine respecting barren sittings of Parliament. It was recognized as good law that if the representatives of the people came together and separated without the royal assent or refusal being given to any bill, there was technically no session.¹ Thus, when James I. dissolved the "Addled Parliament" of 1614, which had completed no statute, he said, in the commission for dissolving it: "Sed pro eo quod nullus regalis assensus, aut responsio, per nos praestita fuit, nullum Parliamentum, nec aliqua sessio Parliamenti, habuit aut tenuit existentiam."² Now the status of such parliaments came up before the judges in 1623, in a discussion relative to a statute which had been passed by the Parliament of 1593, to be in force till the end of the next *session* of Parliament. The judges declared: "If a Parliament be assembled, and divers Orders made, and a Writ of Error brought, and the Record delivered to the higher house, and divers Bills agreed, but no Bills signed: That it is but a Convention, and no Parliament, or Session."³ Now when Sir Symonds D'Ewes, the contemporary of these judges, has occasion to take notice of a similar case, a brief sitting of the sixth parliament of Elizabeth, in 1586, he says that, since no bill passed, "it could not be a Session but a meer meeting."⁴ It is evident from these two passages that by convention the judges meant simply meeting.⁵ Nor have I

¹ Hatsell, *Precedents*, I., 133 n.; II., 284.

² *Old Parl. Hist.*, V., 303.

³ Hutton's *Reports* (1656), p. 61. In their subsequent discussions, *id.* p. 62, doubt was cast on this view; but this does not concern the present argument.

⁴ *Journals*, p. 383.

⁵ So likewise in a passage to which Professor Edward Channing has kindly called my attention, on p. 10 of *Proceedings and Debates of the House of Commons in 1620 and 1621* (Oxford, 1766), where allusion is made to "the last Convention of Parliament," "the last Meeting or Convention of Parliament (which was no Parliament, for that divers Members of that House, after the said Convention, were punished and sent to the Tower for freely speaking their consciences there . . .)"

found any instance in which Englishmen, before the outbreak of the Civil War, used the word in a more technical sense.¹

In the second place, though the representatives of the nation in 1689 applied the name convention to themselves, this was not true of the body which in 1660 restored Charles II. That body was elected in accordance with writs issued, by order of the Rump Parliament, in the name of the "Keepers of the Liberties of the Commonwealth of England." It of course lacked the authorization of the king. But the only way in which it recognized the public question thence arising was to pass an act, before the king's return, affirming its legality as unquestionable. From the first page of its journals, that is, for a month before the actual arrival of the king, it uniformly gives to itself the title of a Parliament.² The application of the term convention to it was a matter of popular usage outside its walls. Bishop Burnet³ speaks of it as "the new parliament, or convention, as it afterwards came to be called, because it was not summoned by the king's writ," implying that the less honorable term was not applied contemporaneously. But the fact is otherwise. A pamphlet of the year 1660, entitled *The Valley of Baca*, raises the question "Whether anything done by this convention can be obliging to the nation, seeing they have not the right constitution of a Parliament, according to the fundamental

¹ Our associate, Mr. Charles H. Firth of Oxford, has kindly called to my notice a passage in Clarendon's *History of the Rebellion* (Book II., § 92), in which, speaking of the Great Council called by Charles at York in 1640, in order to avoid calling a Parliament, Clarendon says, "A new Convention, not before heard of, that is, so old that it had not been practised in some hundreds of years, was thought of, to call a Great Council of all the Peers of England." For "Convention" I find "Invention" in the original edition of 1702, I., 143, in that of 1717, I., 147, and in the Dublin edition of 1719, I., 84, and really this seems to my mind to make better sense. But the Oxford-Boston reprint of 1827, I., 240, has "Convention," and so has Mr. Macray's edition of 1888, I., 133, and these, I understand, present texts more authoritative than those of the early editions. The word can hardly be thought to have here a more definite meaning than that of "meeting." This portion of the book was, I suppose, written in the spring of 1646.

² *Commons Journals*, 1660, *passim*.

³ *History of My Own Time*, ed. Airy, I., 160.

laws of the Kingdom?" A reply to this, entitled *A Scandalous Pamphlet Answered*, speaks of the body as "the parliament, whom he maliciously calleth a convention."¹ Similarly, the author of a tract of the same year called *The Long Parliament is not revived by Thomas Phillips* says, of a portion of Phillips's arguments, "The rest is an answer to Mr. Pryn, and against the authority of this convention, which His Majesty has owned a Parliament."² These phrases, and especially those of the first royalist writer, evidently imply that a convention is understood to be a body lacking something of the complete legal forms necessary to constitute it a Parliament.³ Gumble, General Monk's chaplain, whose life of his patron was published in 1671, calls this legislature of 1660 a "Parliament or Convention,"⁴ though he has called its predecessors of the republican period parliaments. Edmund Ludlow, writing somewhat later, speaks of it as "the ensuing Convention, which by the vote of the Secluded Members was to be called a Parliament," and in another passage as "a Convention, calling themselves a Parliament."⁵

But the same tendency to use the word convention as a semi-technical term denoting a parliament defective or of imperfect legality, may be observed in connection with the parliaments of the preceding seven years, subsequent to the dissolution of the Long Parliament in April, 1653.⁶

¹ *Somers Tracts*, ed. Scott, VII., 399-401.

² *Id.*, 486. This writer also, p. 487, uses convention in the sense of assembly or meeting merely.

³ Apparently this notion underlies the use of the word by the Lord Chief Baron, Sir Orlando Bridgman, presiding at the trial of Major-General Harrison. Harrison had said that what he had done had been done by the authority of the Parliament of England. Bridgman declared it preposterous to give that name to the small portion of the Commons which remained after Pride's Purge; and, speaking for the court, says "none of us do own that convention, whatsoever it be, to be the Parliament of England." *Trial of the Regicides*, ed. 1713, p. 57.

⁴ Gumble, *Life of Monk*, p. 273.

⁵ *Memoirs*, ed. Firth, II., 247, 260.

⁶ It is possible, indeed, that the word bears such a meaning in a passage, to which Mr. Firth has kindly called my attention, in the Declaration of March, 1644, which the Long Parliament put forth against the anti-parliament called by Charles at Oxford. They say that the King is attempting the overthrow and destruction of this Parliament and making way to the setting up of another at Oxford "in stiling

Of such parliaments there were four: that assembly of nominees vulgarly called Barebone's Parliament, July–December, 1653; the first parliament of the Protectorate, September, 1654–January, 1655; Oliver Cromwell's second parliament, September, 1656–June, 1657, January–February, 1658; and that of Richard Cromwell, January–April, 1659. The summons to the members of the first of these bodies studiously avoids giving it a name.¹ Its journal, at the beginning of its proceedings, calls it "this House." But on the third day it resolved, not without opposition and much suggestion of other names,² "That the Title of Parliament shall be given to this Assembly." I do not find that Cromwell, who convened it, ever gave it the name either of parliament or of convention, unless in a speech to the officers, reported in an anonymous letter which has perhaps little authority; he seems to call it either a meeting or an assembly simply.³ Whitelock and Burton call it "the little parliament," its number being exceptionally small; and so does Hobbes in his *Behemoth*.⁴ Edward Phillips, Milton's nephew, in his *Continuation* of Sir Richard Baker's *Chronicle* (1661), alludes to it as "this new Parliament (for so for distinction we must call it)."⁵ Guibon Goddard in 1654 calls it

that Convention by the name of 'The Lords and Commons of Parliament assembled at Oxford,' being the same title which is therein given to the Parliament." *Old Parl. Hist.*, XIII., 79; Rushworth, V., 576. But in several other passages of the documents relating to this affair the word is evidently used in the sense of "meeting."

¹ *Commons Journals*, VII., 281.

² *Id.*, VII., 282.

³ Carlyle, *Letters and Speeches*, IV., 35, 51, 52, 245. *Cromwellian Diary of Thomas Burton*, I., 383, "a Parliament or Convention." Mr. Gardiner, the second volume of whose *History of the Commonwealth and Protectorate* has appeared since this article was written, points out, II., 238, that in the vote upon assuming the title of parliament the tellers of the minority were both members of the Council of State; from this he thinks we may probably infer "that it was the wish of that body, and perhaps even of Cromwell himself, to mark by a less familiar title the exceptional character of the assembly."

⁴ Whitelock's *Memorials*; but when speaking of it contemporaneously he calls it simply "the parliament." Burton, II., 67. Hobbes, *English Works*, ed. 1840, VI., 391.

⁵ P. 638.

a convention, and so does Ludlow.¹ Thurloe, writing on May 5, 1657, to Henry Cromwell in Ireland, names it "the little convention, (as it is called here)."² As in a previous letter he had called it "the little assembly," "the little parliament,"³ this may be thought to indicate that popular speech had begun, while Henry Cromwell had been absent, to assign to this body the name of convention in a peculiar sense, not unconnected with its irregular origin and composition. This thought is strengthened by a passage in Nathaniel Fiennes's *Monarchy Asserted* (1660), in which he gives the text of a speech delivered in April, 1657, in the course of the discussions respecting the offer of the kingship to Cromwell.⁴ After the dissolution of the Long Parliament, he says, "the people might have had new writs sent unto them for the election of their representatives, who might have carried on the publick affairs of the nation by a new parliament; but it seems those times would not bear it, and therefore a convention of select persons were called, unchosen by the people, to whom all power was devolved; . . . [and] that assembly, to give greater authority to their actings, stiled themselves a parliament."

Similar phrases, showing a concurrent popular use of convention in the simple sense of meeting and in the special sense of a defective parliament, may be quoted with respect to the ensuing, or protectoral parliaments, except the first, whose legality seems not to have been disputed save by those who totally denied the validity of the republican government. From the first session of the second protectoral parliament Cromwell excluded a large number of members. It was on this ground that Hazelrigg characterized it as a "forced Parliament, because some of us were forced out; an imperfect Parliament, a lame Parliament."⁵ And doubtless it was on this ground that the

¹ Goddard in Burton, I., xxx. Ludlow, ed. Firth, I., 365, 366.

² Thurloe, *State Papers*, VI., 261.

³ *Ibid.*, p. 243.

⁴ *Somers Tracts*, VI., 384.

⁵ February 7, 1659, Burton, III., 101.

author of a tract called *A Narrative of the Late Parliament (so called)*, published in 1657, frequently calls the body "the late convention."¹ Apparently it is in this sense that Edward Phillips says "The last Convention having adjourned on the 26th of June, met again on the 20th of January following,"² for he gives the title of parliament freely to Richard Cromwell's legislature.

Richard's parliament, however, though there were no such exclusions from it, and though in respect to the distribution of seats it reverted to the customs of the ancient constitution, rested, like all his government, on the constitution called the Humble Petition and Advice, which had been framed by the "forced Parliament, imperfect Parliament, lame Parliament," of Oliver. There were those among the republicans, therefore, who denied all legality to that constitution,³ and some of these are found denying the title of parliament to the legislature summoned by Richard. Such was Ludlow, who calls it "Richard's Convention," and such was Mrs. Hutchinson, who calls it "a convention . . . with a seeming face of authority of parliament."⁴ Similarly, the royalist author of *England's Confusion*, speaks of it, with a touch of irony, as "a general convention, or parliament, wisely chosen by influences from court."⁵ The royalist view of this parliament is hinted at in a passage in *The Tryal of the Regicides*,⁶ in which one of them, Thomas Scott, arguing that what he had said in Richard's parliament was privileged, says: "I have heard the Rule [*i. e.*, the ruling of the court] but do not so well understand it, of that spoken in Richard's Parliament; it will be a nice Thing for me to distinguish between that and another Par-

¹ *Harleian Miscellany*, III., 466, *e. g.*

² *Continuation of Baker*, (ed. 1661), p. 649.

³ Slingsby Bethel, *True and Impartial Narrative of the most material Debates and Passages in the late Parliament (1659)*, in *Somers Tracts*, VI., 480.

⁴ *Life of Col. Hutchinson* (ed. 1806), p. 344.

⁵ *Somers Tracts*, VI., 515.

⁶ Ed. 1713, p. 104.

liament; but this I think, that Convention of the People ought to have the Privilege of the Parliament as well as any other." In other words, if not completely a parliament, it was a quasi-parliament, a convention. It is worth while to add that, during these same years, Vane in *The Healing Question* (1656), gave the name of convention to that representative body, or quasi-parliament, by which he would have had the constitution of republican England framed; and Hobbes, in his *Government and Society*, uses the phrase "convention of estates" to designate a supposed quasi-parliament.¹

In sum, then, it appears that, on the one hand, before the Civil War in 1642, the word convention bears no special or technical sense in the political speech of Englishmen; and that, on the other hand, from the time of the dissolution of the Long Parliament in 1653, we find very definite traces of the idea that a convention is a parliament with certain defects, or marked by certain irregularities. Whence had this idea, which, as we have seen, was also the original idea of the word as politically used in America, been derived or imported? I venture to suggest that it was from Scotland. In the constitution of that kingdom the Convention of Estates had a recognized place as a legal institution, and the phrase had a definite meaning. A convention of estates was a less formal parliament, not requiring the warrant or concurrence of the Crown. Its powers also, though not defined with perfect exactness, were less extensive than those of the parliament; it could levy troops and raise money, but it could not make or repeal laws.² Such an institution seems not to appear in the mediæval history of the kingdom. The first trace of the word convention which I find in the *Acts of the Parliaments of Scotland*, is under date of June 27, 1545, at Stirling: "Efsorsamekle as it is thought expedient be the

¹ *English Works*, ed. 1840, II., 87.

² Laing, *History of Scotland*, I., 40. Rushworth, *Historical Collections*, V., 463, 466.

quenis grace my lord gouernor and lordes of counsell conuenit in this present conuentioun," *etc.*¹ In this body, and in another assembled in 1561,² there was no representation of the third estate. But a convention embracing all three estates was assembled in 1566. Needing that year to raise twelve thousand pounds for the festivities connected with the baptism of their infant son James, the king and queen (Darnley and Mary) gathered together "a gude nowmer of the prelattis nobilitie and commissionaris of burrois conuenit this day to that effect."³ The first examples of a convention not summoned by a king seem to have been that which in 1571, the regent Lennox having been mortally wounded, came together at Stirling and chose Mar to be regent in his place, and that which, in the next year, on a similar occasion, elected the regent Morton.⁴ Eleven conventions are recorded within the next twenty years; the records of the last thirty-three years of James VI. show eighteen conventions to eleven parliaments. It is plain, then, that the convention of estates, though not one of the most ancient institutions of the Scottish monarchy, was now at least well established and definitely recognized. The degree of its independence of the king was less certain. As to his presence, Johnston of Warriston says, in a letter to Hepburn of Humble, April 20, 1641,⁵ relating to the recent convention of 1640: "Montrose did dispute against Argyle, Rothes, Balmerino, and myself; because some urged that, as long as we had a King, we could not sit without him; and it was answered, that to do the less was more lawful than to do the greater" (*i. e.*, to depose him). As to the summoning of the convention without having therefor the warrant of the Crown, we may note what Robert Baillie says of the discussions

¹ *Acts of the Parliaments of Scotland*, II., 595.

² *Id.*, II., 606.

³ *Id.*, II., 608.

⁴ *Id.*, III., 65-70, 77-81.

⁵ Napier, *Montrose*, I., 236.

that went on in the bodies which, in opposition to King Charles, were ruling Scotland on May 9, 1643:¹ "The nixt question was more hotlie handled, of their power to call the Estates. This Argyle and Warriston made clear by law and sundrie palpable practiques, even since King James's going to England, where the Estates have been called before the King was acquainted. . . . So tomorrow . . . verie unanimously they concluded a Convention of Estates at Edinburgh, June 22d." Another passage in Baillie's letters indicates the views entertained as to the powers of a convention. When the body came together on the date appointed, the Duke of Hamilton presented a letter from King Charles intended to restrict their actions, and especially to restrain them from military preparations. "Bot that," says Baillie,² "drew on the question of the House's constitution, whether absolutely or with limitation: when absolutelie had carried it, Hamilton came no more to the house."

Such was in 1643 the Scottish Convention of Estates. The points of resemblance between it and the English bodies we have been inspecting are manifest. As to the transference or borrowing of the term convention, it might readily happen that down to the outbreak of the Civil War the knowledge of such an institution as existing in North Britain was not common among Englishmen, nor had there been in England irregular parliaments for which the name might naturally be borrowed. But it was this very convention of 1643 which allied itself with England in the Solemn League and Covenant for the prosecution of the war against the king, and which cemented that union by joining in the institution of the Committee of Both Kingdoms. Those events must have made the essential features of the constitution of Scottish conventions widely familiar to English politicians of the Parliamentary party. If the

¹ *Letters and Journals of Robert Baillie*, II., 68.

² *Id.*, II., 77.

term convention, in the sense under which it has chiefly been discussed in this paper, came into the political vocabulary of Englishmen about this time, it is therefore not unlikely that it came from the northern kingdom.

It may be well to add that, immediately after the Restoration, the Scottish parliament of 1661 passed acts declaring that the power to call parliaments and conventions resided solely in the king, rescinding all acts made in a manner inconsistent with this prerogative, and declaring the convention of 1643 to have been unlawful.¹ Conventions thus restricted were held in 1665, 1667 and 1678. The last Scottish convention was that of 1689, which accomplished for Scotland the same revolution that was carried out by the English convention of 1689, and which is perhaps most familiarly kept in mind by the opening lines of the spirited song which Scott wrote to the air of "The Bonnets of Bonnie Dundee":

"To the Lords of Convention 'twas Claver'se who spoke."

¹ *Acts Parl. Scot.*, VII., 10, 16.

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