
JAMES W. HILLIARD

I. INTRODUCTION ................................................................. 270

II. STATE CONSTITUTIONS IN AMERICAN CONSTITUTIONAL LAW ...... 271
   A. HISTORICAL ROLE ......................................................... 272
   B. UNDERLYING POLITICAL THEORY .................................. 273
      1. Sovereignty of the People and Their Civil Liberty .......... 274
      2. People's Creation of Government and Retention of Power ......................................................... 278
   C. GENERAL PURPOSES .................................................... 282
      1. Declare/Guarantee Rights .......................................... 282
      2. Establish Government Framework/Structure ............. 285
      3. Institute Fundamental Policy ................................... 290
      4. Provide Means of Constitutional Change ................... 290

III. BACKGROUND OF 1970 ILLINOIS CONSTITUTION ............................. 293
   A. PREDECESSOR CONSTITUTIONS ...................................... 293
      1. 1818 Constitution ...................................................... 293
      2. 1848 Constitution ...................................................... 296
      3. 1870 Constitution ...................................................... 299
   B. PROBLEMS WITH THE 1870 CONSTITUTION ...................... 301
   C. SIXTH CONSTITUTIONAL CONVENTION (CON-CON) ......... 309
   D. RATIFICATION .......................................................... 312

IV. CONTENT OF THE 1970 ILLINOIS CONSTITUTION .............................. 313
   A. DECLARES/RECOGNIZES RIGHTS (ARTICLE I) ................. 314
   B. ESTABLISHES FRAMEWORK/STRUCTURE (ARTICLES II-VII) .... 320
      1. Structure .................................................................. 325
      2. Administration ......................................................... 325
      3. Supreme Court Jurisdiction ..................................... 326
      4. Supreme Court Districts .......................................... 326
      5. Appellate Court ....................................................... 327
   C. INSTITUTES FUNDAMENTAL POLICY (ARTICLES VIII-XIII) .... 332
   D. PROVIDES REASONABLE AMENDMENT PROCEDURE (ARTICLE XIV) ................................. 336

* J.D., University of Illinois College of Law, 1983; B.A., Northwestern University, 1980. The author is currently serving as a judicial clerk to Justice Charles E. Freeman of the Illinois Supreme Court. The author is grateful for the insight of Anthony C. Swanagan and P. Andrew Smith, and for the research assistance of Geoffrey Pelzek. The views expressed herein are those of the author alone.
V. ADAPTABILITY OF 1970 ILLINOIS CONSTITUTION .......................................................... 337
   A. RIGHTS .................................................................................................................. 338
   B. STRUCTURE ......................................................................................................... 339
   C. POLICY .................................................................................................................. 340
VI. 1988 AUTOMATIC CONVENTION CALL ................................................................. 341
VII. 2008 AUTOMATIC CONVENTION CALL ................................................................. 342
   A. “MISLEADING” NOTICE AND EXPLANATION OF PROPOSED CALL ............. 345
VIII. CONCLUSION ........................................................................................................ 348

I. INTRODUCTION

In American political theory, a state constitution is the supreme, or-
ganic, and fundamental law of a state. It represents the will of the sovereign
people of a state and derives its force directly therefrom. A state constitu-
tion recognizes fundamental rights that ultimately reside with the people.
The instrument establishes the structure and parameters of state govern-
ment. Also, a state constitution establishes fundamental government pol-
icy.1

Accordingly, a state constitution should serve as a well-tailored gar-
ment for its people. Of course, the instrument must be a “good fit” for the
present and the foreseeable future. Also, a state constitution must allow for
appropriate change to address evolving needs and conditions. For nearly
forty years, the 1970 Illinois Constitution has served Illinois as such a well-
tailored garment. The constitution itself ensures that it will not become a
straightjacket for the people of Illinois. The constitution directs that, at least
once every twenty years, the question of whether a state constitutional con-
vention should be called must be submitted to the voters.2 In 1988, the first
automatic proposed call for a constitutional convention overwhelmingly
failed.3 The second automatic opportunity for Illinois voters to call for a

---

2. Ill. Const. art. XIV, § 1(b) (“If the question of whether a Convention should be
called is not submitted during any twenty-year period, the Secretary of State shall submit
such question at the general election in the twentieth year following the last submission.”).
3. The Illinois Attorney General opined that the first automatic convention call
should be submitted to voters in 1988, rather than 1990, because a convention call was last
submitted to voters in 1968 and, therefore, 1988 would be the twentieth year following the
900,109 affirmative votes and 2,727,144 negative votes. See Illinois Blue Book 559
state constitutional convention was at the November 2008 general election, which also overwhelmingly failed.4

This article will explain the history, theory, and purposes of state constitutions in the American political system. The article will then recount the background, framing, and ratification of the 1970 Illinois Constitution and proceed to describe the contents of the Illinois Constitution, explaining how the document fulfills the general purposes of state constitutions. This article will demonstrate that the Illinois Constitution remains adaptable to new situations and changing circumstances and will also relate a controversy that ensued as a consequence of forgetting Illinois constitutional history. The article will conclude that Illinois voters in 2008 correctly voted "NO" in response to the call for a state constitutional convention because "if it ain't broke, don't fix it."5

II. STATE CONSTITUTIONS IN AMERICAN CONSTITUTIONAL LAW

The Sixth Illinois Constitutional Convention, locally known as "Con-Con," did not draft the 1970 Illinois Constitution in a vacuum. To the contrary, no previous Illinois constitutional convention had the benefit of such extensive preparation to facilitate its task.6 Several years prior to Con-Con, the Illinois General Assembly created three successive constitution study commissions, which ultimately produced several useful publications.7 Also, then-Governor, Richard B. Ogilvie, formed the Constitution Research Group to prepare research papers to serve as background on major constitutional issues. These papers, published as Con-Con: Issues for the Illinois Constitutional Convention, were issued to the general public8 and "proved invaluable to the delegates."9

5. GREGORY TITELMAN, AMERICA'S POPULAR SAYINGS 152 (2d ed. 2003) ("Any attempt to improve on a system that already works is pointless and may even be detrimental.").
8. CORNELIUS, supra note 7, at 151.
9. BURESH, supra note 6, at xv; see also People v. Tisler, 469 N.E.2d 147, 163 (Ill. 1984) (Ward, J., concurring) ("The research papers should not be overlooked in any search to determine the mind of the convention.").
Con-Con was free to draft any form of fundamental document it pleased, subject to federal constitutional limitations\textsuperscript{10} and ratification by Illinois voters;\textsuperscript{11} however, convention delegates were well aware of the historical role and underlying political theory of state constitutions. The delegates were also aware of the general purposes of state constitutions in American constitutional law.

A. HISTORICAL ROLE

Con-Con delegates knew that state constitutions play a crucial role in American constitutional law. The history of their development reveals how state constitutions shaped American constitutional government. Broadly speaking, a “constitution” can be defined as “that body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised.”\textsuperscript{12} Thus, the term “constitution” can generally refer not only to a written basic law, but also to “the fundamental principles which determine the structure and operation of government . . . . In this sense every people which is politically organized has a constitution, however much it may differ from the constitutions of other politically organized societies.”\textsuperscript{13}

But the term constitutional government is applied only to those [governments] whose fundamental rules or maxims not only locate the sovereign power in individuals or bodies designated or chosen in some prescribed manner, but also define the limits of its exercise so as to protect individual rights, and shield them against the assumption of arbitrary power. The number of these [governments] is not great, and the protection they afford to individual rights is far from being uniform.\textsuperscript{14}

In other words, a constitution embodies a living, evolving system of power relationships that have been effectively institutionalized. A living

\textsuperscript{10} U.S. CONST. art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).


\textsuperscript{12} THOMAS M. COOLEY, TREATISE ON CONSTITUTIONAL LIMITATIONS 4 (6th ed. 1890).

\textsuperscript{13} CARL BRENT SWISHER, AMERICAN CONSTITUTIONAL DEVELOPMENT 10 (2d ed. 1954).

\textsuperscript{14} COOLEY, supra note 12, at 5.
constitution can be written or unwritten; it can be embodied in several documents, or even in custom.\textsuperscript{15}

The concept of a written constitution, which defines the structure of government and enumerates the rights of the people as a restraint on the powers of government, has deep roots in Anglo-American history.\textsuperscript{16} American constitutional government neither appeared on a clean slate, nor arose as a counter-ideology to colonial government. Rather, American constitutional government “was the product of a political life that from the first decades of colonization had evolved in close conjunction with political developments in the mother country.”\textsuperscript{17} As history has shown, “the English colonists in America brought with them a constitutional heritage which molded colonial governmental institutions and continued in a high degree to guide those of the United States.”\textsuperscript{18} As will be explained, Great Britain does not have a written constitution in the American sense; however, “English history furnishes antecedents for the idea of reducing to writing, that all may see and know, fundamental propositions relating to the liberty of the citizen and determining the relationship between the government and the governed.”\textsuperscript{19}

B. UNDERLYING POLITICAL THEORY

The axioms of popular sovereignty and the delegation thereof to government establish the underlying political theory of state constitutions.\textsuperscript{20} This political theory, which Con-Con delegates understood, explains the necessity of state constitutions in the American federal system of government.

\begin{itemize}
  \item \textsuperscript{15} Carl J. Friedrich, \textit{Constitutional Government and Democracy} 29-30 (4th ed. 1968).
  \item \textsuperscript{16} Kauper, \textit{supra} note 11, at 1.
  \item \textsuperscript{17} Willi Paul Adams, \textit{The First American Constitutions} 8 (1980); see also Arthur E. Sutherland, \textit{Constitutionalism in America} 110-11 (1965) (“The colonists thought proudly of themselves as Englishmen; up to the eve of the War of Independence, their grievances were expressed as denials of an Englishman’s rights; their claims were documented by English precedent.”).
  \item \textsuperscript{18} Swisher, \textit{supra} note 13, at 9.
  \item \textsuperscript{19} Kauper, \textit{supra} note 11, at 1-2.
  \item \textsuperscript{20} The following discussion is based on James W. Hilliard, \textit{To Accomplish Fairness and Justice: Substantive Due Process}, 30 J. MARSHALL L. REV. 95, 96-100 (1996).
\end{itemize}
Sovereignty of the People and Their Civil Liberty

Sovereignty is defined as the supreme, absolute, and uncontrollable power; i.e., the absolute right to govern. Sovereignty in government refers to the public authority that sets the limits within which one may act. Sovereignty refers to the supreme power that governs all citizens, and resides in the person or body of persons in the state to whom there is no political superior. "A State is called a sovereign State when this supreme power resides within itself, whether resting in a single individual, or in a number of individuals, or in the whole body of the people." A comparison of the British theory of government to the American theory of government reveals the crucial importance of this underlying political theory in American constitutional law.

According to the British theory of government, sovereignty does not reside in the people. The struggle between the Stuart kings and Parliament for sovereignty demonstrates that British subjects never had it. Until the end of the seventeenth century, all attributes of sovereignty resided in the monarch, who exercised all governmental powers incident to sovereignty: executive, legislative, and judicial. According to the Stuart kings, all power, justice, and rights resided in the monarch and flowed therefrom. English subjects did not possess "rights," strictly speaking; rather, English subjects enjoyed mere privileges that directly or indirectly flowed by grace from the sovereign.

---

21. BLACK'S LAW DICTIONARY 1568-69 (4th ed. 1968); accord BLACK'S LAW DICTIONARY 1524 (9th ed. 2009) (defining sovereignty as "[s]upreme dominion, authority, or rule").

22. City of Bisbee v. Cochise County, 78 P.2d 982, 985-86 (Ariz. 1938); accord 2 BOUVIER'S LAW DICTIONARY 3096 (8th ed. 1914) (collecting definitions); COOLEY, supra note 12, at 4.


24. COOLEY, supra note 12, at 4.


Parliament eventually substituted itself for the monarch in wielding sovereign power.27 "In Britain, Parliament is sovereign, in the sense that there are no constitutional limits to its authority."28 "[S]ince Parliament is 'sovereign' it can, without any special procedure, and by simple Act, alter any law at any time, however fundamental it may seem to be."29 "Indeed, the sovereign power of Parliament is traditionally and correctly described as absolute, omnipotent, uncontrollable, and even transcendent."30 In the United Kingdom today, "there are no such things as ‘guaranteed’ rights—as there are in the U.S. Constitution—expressly safeguarded in a document of peculiar sanctity. Since Parliament is all-powerful it may do anything by a simple Act, and it may certainly deprive the individual of his rights . . . ."31 The civil liberties of British subjects do not rest on a written constitution, but rather on the common law. Fundamental rights "rest simply on the age-old assumption by British courts that citizens are free to do as they like provided they do not commit any specific breach of the law."32

Scholars have questioned whether the British approach adequately protects civil liberty.33 First, the government may violate a particular civil liberty where the law does not prohibit the violation.34 Second, common-law-protected liberty is especially subject to erosion.35 The common law merely recognizes that people are free to do anything that is not unlawful. The common law is powerless to prevent Parliament from enacting new restrictions.36 Further, the common law imposes many restrictions upon
civil liberty. Sometimes it is convenient for the government, in order to avoid enacting a statute that restricts civil liberty, to seek a judicial decision that will develop the law restrictively and create a generally applicable legal precedent.  

British constitutionalism was the impetus for the development of the American concept of a constitution. British colonists initially protested what they perceived to be violations of their rights under the constitution and laws of Great Britain; however, the colonists’ protest led them to question not only the authority of the British government, but eventually even the British concept of a constitution. The colonists formulated a new concept of a constitution that ultimately caused American political theory to differ fundamentally from British political theory.

British colonists settled in America pursuant to charters granted by the Crown. Upon their arrival, it became necessary to establish in each colony the basic framework of government according to the terms of that colony’s particular charter. Examples include the Fundamental Orders of Connecticut of 1639 and the Frame of Government of Pennsylvania of 1682. These colonial documents engendered the idea that a written document should incorporate the basic structure and organization of government, with a declaration of the rights of the people. Further, these documents were “recognized to have a basic and organic character and, indeed, to have the quality of a fundamental law superior to ordinary laws and enactments.” Significantly, the Mayflower Compact of 1620 “rested on the assumption that men may by compact among themselves determine how they shall be governed. The idea that a constitution is a compact resting on agreement and consent of the people is a fundamental facet of American political thinking.” Indeed, colonial charters were a major factor in the development of state constitutions. Colonists invoked these familiar documents against the

any legislation which has passed properly through Parliament, even if it clearly violates political rights and freedoms”).

37. WADE & BRADLEY, supra note 25, at 410-11.
38. ADAMS, supra note 17, at 8-9.
39. Id.
41. Kauper, supra note 11, at 2; see generally SUTHERLAND, supra note 17, at 111-14 (describing development and structure of colonial governments).
42. Kauper, supra note 11, at 2.
43. Id.
44. THE MAYFLOWER COMPACT (Mass. 1620).
45. Kauper, supra note 11, at 2.
arbitrary actions of royal governors. The colonists claimed the rights of freeborn Englishmen.46

The American colonists “imbibed deeply” the political theory of philosophers such as John Locke and Baron Montesquieu.47 “A new sense of legitimacy had to be created by satisfying the principle of popular sovereignty as well as the basic demand of constitutionalism: the limitation of the power of those in public office by a set of rules unalterable by the rulers.”48 The colonists “believed in natural law and the social contract, and they wished to see their rights guaranteed and their theories translated into action in the governments which they established. Written constitutions seemed to be the best way to accomplish all these objectives.”49

The colonial struggle with Great Britain during the Revolutionary Era provided a strong incentive for the colonies to adopt basic documents that provided: (1) more complete statements of individual rights, and (2) greater elaborations of forms of government resting on the consent of the people. These basic colonial documents were the immediate predecessor of modern state constitutions.50 In 1776 and 1777, “having declared their independence of England, all but two of the thirteen colonies fashioned their own constitutions.”51 “The written constitution thus became the expression of popular sovereignty and the people’s right of self-government.”52

In contrast to the British theory of government, the American theory of government posits that the people are the ultimate sovereign. All legitimate authority flows from the people; all governmental power vests in the people.53 Rather than merely enjoying privileges flowing from a monarch or a

47. Id.
48. ADAMS, supra note 17, at 21.
49. Walker, supra note 46, at 5.
50. Walter F. Dodd, The Function of a State Constitution, 30 POL. SCI. Q. 201, 202 (1915) (“Certainly the political philosophy of 1776 was based very largely on the notion of social compact and did not recognize the existence of inherent governmental power in either legislative, executive or judicial department.”); see also Kauper, supra note 11, at 2.
51. Kauper, supra note 11, at 2. Additionally, “Connecticut and Rhode Island continued to govern themselves under their old charters which had been liberally formed.” Id. at 2 n.5. Connecticut acquired its first constitution in 1818. CONN. GEN. STAT. ANN. pmble., at 39 (West 2007) (historical notes). Before the American Revolution, and until the state constitution was adopted in 1842, an interregnum existed during which Rhode Island was governed by its colonial charter granted by King Charles II in 1663. Carl T. Bogus, A Radical Decision by the R.I. Supreme Court, 48 R.I.B.J. 13, 13-15 (1999); James Marusek, Decaying Remnants of the Present Fabric: Rhode Island’s Inflated Legislature, 48 R.I.B.J. 9, 10-11 (1999).
52. Kauper, supra note 11, at 2.
53. Hawthorn v. Illinois, 109 Ill. 302, 306 (1883); accord Florida ex rel. Ayres v. Gray, 69 So. 2d 187, 193 (Fla. 1953); Field v. People ex rel. McClerand, 3 Ill. (2 Scam.) 79, 81-82 (1839); Indiana v. Shumaker, 164 N.E. 408, 409 (Ind. 1928); David F. Epstein,
Parliament, the sovereign people possess inherent and inalienable rights. The essential characteristic of our federal system of government, as opposed to European governments, is the recognition of individual rights against the state as a primary concern. Further, "Americans see a constitution as something which should rest upon a more certain basis than tradition, custom, and precedent. From the earliest days of the American experiment in government, the notion that the higher law should be written law became a fundamental pillar of our political system."

2. People's Creation of Government and Retention of Power

"American constitutional theory rests on the bedrock proposition that no government is entitled to the people's complete trust and faith. The founding generation understood the creation of any constitutional government to be an exercise in both necessity and distrust." Obviously, one of the purposes of government is to coerce people to behave as they should; however, because those who govern are no more perfect than the governed, it is equally obvious that government must be obligated to control itself.

As the ultimate sovereign, the American people created constitutional governments to protect themselves and their fundamental rights, and to promote the common good. The people endowed government with such powers and subjected it to such limitations as they saw fit. Judge Cooley's cogent description remains instructive:

The theory of our political system is that the ultimate sovereignty is in the people, from whom springs all legitimate authority. The people of the Union created a national constitution, and conferred upon it powers of sovereignty over certain subjects, and the people of each State created a

---

The Political Theory of the Constitution, in CONFRONTING THE CONSTITUTION 78 (Allan Bloom ed., 1990); Hilliard, supra note 20, at 97 n.14 ("The term 'the people,' as a practical matter, refers to qualified voters.").

54. Nunnemacher v. Wisconsin, 108 N.W. 627, 629 (Wis. 1906); see State ex rel. Brewster v. Knapp, 163 P. 181 (Kan. 1917) (observing that state legislature has no inherent power; rather, its power derives from the people through state constitution); Epstein, supra note 53, at 78-83.


56. CORNELIUS, supra note 7, at xi; accord SUTHERLAND, supra note 17, at 6 (observing that "the reduction of the fundamentals of our constitutional system to a written statement" is "deeply rooted in our constitutional theory").

57. JAMES A. GARDNER, INTERPRETING STATE CONSTITUTIONS 144 (2005).

58. See id. at 144-45 (quoting The Federalist No. 51, at 322 (James Madison) (Clinton Rossiter ed., 1961)).

State government, to exercise the remaining powers of sovereignty so far as they were disposed to allow them to be exercised at all.60

Essentially, "the people retain those aspects of sovereignty that they did not choose to delegate to the federal or state governments."661

The need for Americans to declare their retention of unenumerated rights after the formation of government is evidenced by references thereto in fundamental documents. Probably the most familiar is the Declaration of Independence: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness."662 Another familiar example is the Ninth Amendment to the United States Constitution, which provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."663 Although "courts have almost universally rejected the Ninth Amendment as a source of fundamental rights,"664 these documents are evidence of the political reality that the people retain rights outside of a written constitution.665 The failure to claim such rights does not make them disappear; the difficulty in implementing "such rights, even after they are proclaimed, does not invalidate them."666 Rights objectively exist; they flow

60. COOLEY, supra note 12, at 39; accord Kauper, supra note 11, at 4 (observing that, because government exists by consent of the people, "one may say that ultimate sovereign power is vested in the people of the United States who ordained and established the [C]onstitution and who by this document allocated the spheres of au[t]hority between the central government and the states").

61. Hilliard, supra note 20, at 98; see also City of Eastlake v. Forest City Enters., Inc., 426 U.S. 668, 672 (1976) ("Under our constitutional assumptions, all power derives from the people, who can delegate it to representative instruments which they create.").

62. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776). Additionally, Justice Brewer once stated,

While such declaration of principles may not have the force of organic law, or be made the basis of judicial decision as to the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence.

Gulf, Colo. & Santa Fe Ry. v. Ellis, 165 U.S. 150, 159-60 (1897).

63. U.S. CONST. amend. IX; see also ILL. CONST. art. I, § 24. Similar declarations are found in many state constitutions. Hilliard, supra note 20, at 99.

64. Hilliard, supra note 20, at 99.

65. Id. at 98-100; COOLEY, supra note 12, at 49 ("In considering State constitutions we must not commit the mistake of supposing that, because individual rights are guarded and protected by them, they must also be considered as owing their origin to them.").

66. FRIEDRICH, supra note 15, at 159.
existentially from the recognized nature of humanity, as do their corresponding freedoms.\textsuperscript{67}

Not only do the people of a state retain inherent and inalienable rights, but also, all legitimate authority flows from, and all governmental power vests in, the people.\textsuperscript{68} All state legislative power ultimately originates in, and resides with, the people of that state.\textsuperscript{69} The people's original and inherent legislative power is as full and unlimited as that of the British Parliament; the United States Constitution provides the sole restraint on this otherwise uncontrollable power.\textsuperscript{70}

This transcendent power remains with the people and is exercised by the people's representatives in the state legislature.\textsuperscript{71} The people delegated or vested the legislative power "in the most general and unlimited manner to the several state legislatures, saving only such restrictions as are imposed by the Constitution of the United States or of the particular state in question."\textsuperscript{72} Judge Cooley explained that the people, in creating a state legislature and "conferring upon it the legislative power," must be understood to have "conferred the full and complete power as it rests in, and may be exercised by, the sovereign power of any country, subject only to such restrictions as [the people] may have seen fit to impose, and [subject] to the limitations" that the Federal Constitution imposes.\textsuperscript{73} The state legislature is not a special agency that exercises specifically defined legislative powers, but

\begin{itemize}
\item \textsuperscript{67} Id. at 160.
\item \textsuperscript{68} State ex rel. Creighton Univ. v. Smith, 353 N.W.2d 267, 271 (Neb. 1984) ("Initially, the people have all legislative power.").
\item \textsuperscript{69} McFeeters v. Parker, 30 A.2d 300, 303 (Vt. 1943) ("The people must, of course, possess all legislative power originally.").
\item \textsuperscript{70} Hawthorn v. Illinois, 109 Ill. 302, 305-06 (1883); Cooley, supra note 12, at 102-03.
\item \textsuperscript{71} Jansky v. Baldwin, 243 P. 302, 303 (Kan. 1926) (observing that "[u]nder our form of government all governmental power is inherent in the people," who "exercise it through the legislative branch of government"); Pension Fund v. Schupp, 3 S.W.2d 606, 608 (Ky. 1928); Ludlow-Sayer Wire Co. v. Wollbrinck, 205 S.W. 196, 197 (Mo. 1918); Creighton Univ., 353 N.W.2d at 271; Pope v. Easley, 556 S.E.2d 265, 267 (N.C. 2001); State ex rel. Johnson v. Baker, 21 N.W.2d 355, 358 (N.D. 1945) ("When the legislature speaks, the people speak.").
\item \textsuperscript{72} Schupp, 3 S.W.2d at 608-09; McFeeters, 30 A.2d at 303; see Hawthorn, 109 Ill. at 304; Dodd, supra note 50, at 205.
\item \textsuperscript{73} Cooley, supra note 12, at 104.
\end{itemize}
rather is entrusted with the general authority to make laws at its discretion. Therefore, as the representative of the sovereign people, a state legislature does not look to a state constitution for power to act. After all "[t]he people can make and unmake constitutions." In theory then, a state constitution need not "grant" power to the state legislature. Rather, all the people need to do "is to place such limitations as are desired on the legislature’s otherwise unlimited power. This is normally done by a bill of rights, which is the ultimate ‘sovereign’ people’s reservation of governmental power, and by distributing powers among the three branches of government with accompanying checks and balances." Accordingly, the people restrict and limit legislative power through the state constitution.

In other words, the legislative powers that the people did not assign to the federal government remained with state legislatures, except for those rights the people withheld for themselves in state constitutions. The Tenth Amendment to the United States Constitution reflects this concept: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The reference to "the people" in the Tenth Amendment strengthens "the implication that gives value to the Ninth—that there are rights and powers belonging to the people, beyond those embraced in state or federal constitutions. These rights, whenever they can be defined, are not to be infringed by any government.

Two conclusions emerge from this discussion. First, it is generally understood that the people retain rights or civil liberties subsequent to the formation of government. It is fundamental that:

"Political power rests ultimately in the people, that the popular will is reflected in the constitution and the institutions of representative government designed to serve them ."

---

75. Hawthorn, 109 Ill. at 302.
76. Braden & Cohn, supra note 7, at 111.
79. U.S. CONST. amend. X ("[T]rust that all is retained which has not been surrendered."). The Tenth Amendment merely declared the relationship between the national and state governments, which was established by the Federal Constitution before the enactment of the amendment. The purpose of the Tenth Amendment was nothing other "than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers." United States v. Darby, 312 U.S. 100, 124 (1941).
... [T]he organs of government are subject to the limitations imposed by the people and by the rights retained by them.82

Second, it is historically and uniformly understood that a state legislature does not turn to the state constitution for power to enact legislation; rather, the state legislature looks to the state constitution and the Federal Constitution for restrictions upon its power to act.83 Thus, the state legislature may act in every area of government, subject to the state and Federal Constitutions.84

C. GENERAL PURPOSES

Subsequent to the formation of the American Federal Union, "the United States has constituted the greatest laboratory for constitutional government which the world has ever known."85 In addition to appreciating the historical role of written constitutions, and comprehending the underlying political theory of state constitutions, Con-Con delegates understood the general purposes of state constitutions. Generally, a state constitution declares and guarantees the rights and liberties of the people, establishes the framework or structure of government, and institutes fundamental policy.86 Also, a state constitution provides for its amendment or revision.87

I. Declare/Guarantee Rights

It is a principle deeply rooted in American constitutional experience that individual liberties are so important as to require recognition in the
fundamental law. The bills of rights of American state constitutions are testaments to the high regard in which both constitution-drafters and the people view individual liberties. State bills of rights also indicate the realization that individual liberties must be protected from the arbitrary exercise of government authority. Indeed, each of "the fifty state constitutions includes a bill of rights or a declaration of rights. In every instance, the bill of rights is placed in one of the first articles of the constitution, an indication of the great importance which has been attributed to it throughout state constitutional history."

We know from our experience—just as the framers of the Federal Constitution knew from theirs—that government may become arbitrary and, at times, even oppressive; that minorities may sometimes need protection against the tyranny of the majority; that the dissenter, the government critic, and the social theorist all need to be protected against the power of government and the imposition of any official or orthodox view of government. We know that a democratic society requires constant re-examination and constructive criticism for its sound growth and development. Further, the people, in their ordinary pursuits, must be protected against bureaucratic and administrative excesses, whether such excesses result from overzealousness or negligence, and whether conducted in the name of the public interest or based on other motives. Additionally, as has been explained, a state legislature may act in every area of government subject to constitutional limitations. Thus, the inclusion of certain individual rights and liberties in a state bill of rights places them beyond the reach of state government. Such rights and liberties are elevated to the highest level on the hierarchy of a state's laws.

One may ask if a state bill of rights is necessary in light of the Federal Bill of Rights. The Fourteenth Amendment to the United States Constitution already protects many individual rights from state impairment.

88. Kauper, supra note 11, at 15.
90. Frank P. Grad, The State Bill of Rights, in CON-CON: ISSUES FOR THE ILLINOIS CONSTITUTIONAL CONVENTION 30 (Samuel K. Gove et al. eds., 1970); accord Rankin, supra note 89, at 159 ("Unlike the Federal Constitution where the bill of rights is found as amendments, bills of rights in state constitutions constitute the first article—a position that attests to the importance and basic character of the subject matter.").
91. Grad, supra note 90, at 30. Accordingly, "in contrast with federal practice, states have not treated their bills of rights as sacrosanct but have amended them with some frequency." TARR, supra note 86, at 13.
92. See supra notes 50-71 and accompanying text.
93. Grad, supra note 90, at 31.
94. Id.; Rankin, supra note 89, at 163.
95. See U.S. CONST. amend. XIV.
fied in 1865, the Fourteenth Amendment guarantees, among other things, that no State shall "deprive any person of life, liberty, or property without due process of law." By interpreting the concept of "liberty," the United States Supreme Court has made most of the Federal Bill of Rights applicable against state government. Thus, many state bills of rights duplicate many of the important provisions of the Federal Bill of Rights.

"Undoubtedly the Fourteenth Amendment is a bulwark of protection against arbitrary state action but it has not removed the need for bills of rights in state constitutions. First, the federal rights that have been applied against state governments do not embrace all of the rights that state bills of rights recognize and protect. Also, a state may protect a certain right or liberty to a far-greater extent than is afforded under the Federal Constitution. Additionally, state governments exercise powers that affect the people more closely than that exercised by the federal government. Thus, when a state government abridges a person's rights, that person should be able to seek protection in his or her own state courts, invoking that person's own state constitution.

The provisions contained in state bills of rights may be grouped in three general categories. First, most state bills of rights contain introductory statements of the underlying political theory of the rights declared or recognized therein. For example, article I, section 1 of the 1970 Illinois Constitution declares: "All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed." Also found in these introductory statements are references to the rule of law and other broad principles of democratic government. At the time of Con-Con, the bills of rights of all

96. Id.
97. Grad, supra note 90, at 32.
98. Id.; Kauper, supra note 11, at 15; Rankin, supra note 89, at 163.
99. Rankin, supra note 89, at 164; accord Grad, supra note 90, at 33 ("[T]here is a clear, continuing justification for state bills of rights.").
100. Kauper, supra note 11, at 15.
101. Grad, supra note 90, at 33 ("The [F]ederal Bill of Rights as applied through the Fourteenth Amendment merely establishes the minimum amount of protection afforded, leaving the states free to impose more stringent requirements if they choose to do so."); accord Kauper, supra note 11, at 15; TARR, supra note 86, at 12-13.
102. Grad, supra note 90, at 33.
103. Id.
104. Rankin, supra note 89, at 160.
105. Id.
106. ILL. CONST. art. I, § 1.
107. BEARD, supra note 83, at 494-95; Rankin, supra note 89, at 160.
fifty states contained a provision similar to the Ninth Amendment to the United States Constitution declaring that the enumeration of certain rights are not all of the rights that the people retain.108 Further, the bills of rights of forty-seven states contained a provision similar to the Tenth Amendment, declaring that the people retain political power.109

The second general category of state bills of rights provisions are those "designed to protect personal and property rights."110 These guarantees include substantive rights—such as freedom of religion, speech, press, assembly, and petition—as well as procedural rights that secure equality before the law and a fair trial—such as the requirements of indictment by grand jury and trial by jury, as well as the prohibitions against unreasonable searches and seizures, excessive bail, and cruel and unusual punishment.111 Property rights are protected by declarations that private property cannot be taken for public use without just compensation.112 Third, state bills of rights contain "provisions that defy classification and must be lumped together in a miscellaneous group. Some are essential to the preservation of liberty; others are not."113 Therefore, "there is no debate over the inclusion of a bill of rights in a state constitution. Debate occurs only over the subject matter."114

2. Establish Government Framework/Structure

Also, it is standard practice for a state constitution to establish the principal organs of government and to distribute the powers of government among them.115 According to the common pattern, a state constitution usually addresses the legislative, executive, and judicial branches of state government, describing their structure, powers, and limitations.116 In addition to the familiar establishment and description of the three general branches of government, it is appropriate to specifically recognize two additional organs of government within an American state—the electorate and local government.117

---

108. Rankin, supra note 89, at 162.
109. Id.
110. Id. at 160.
111. See id.
112. BEARD, supra note 83, at 491-94; Rankin, supra note 89, at 161.
113. For example, "lobbying is not permitted," and "immigration should be encouraged." Rankin, supra note 89, at 161-62.
114. Id. at 175.
115. Walker, supra note 46, at 11.
116. BEARD, supra note 83, at 495; Fellman, supra note 86, at 139; TARR, supra note 86, at 15-19.
117. Fellman, supra note 86, at 139.
The principle of separation of powers, with its checks and balances, is a classic, even fundamental, part of American constitutional theory. The doctrine is a reaction to the parliamentary form of government under which colonial legislatures operated. Colonial legislatures were courts of last resort, hearing original actions or appeals from judicial judgments. Often, these legislatures simply set aside judicial decisions and ordered new trials or appeals. Further, during the Revolutionary Era, the increasingly radical populism of legislatures increased the frequency of legislative overturning of judicial judgments. The doctrine of separation of powers, with its system of checks and balances, evolved from the philosophy that unchecked power, whether wielded by a monarch or "the people," results in injustice and brutality, and threatens life, liberty, and the pursuit of happiness.

According to the doctrine of separation of powers, the powers of government can be categorized into three types: legislative, executive, and judicial. The distribution of power under this theory, with a system of checks and balances, inhibits any single branch of government from unduly extending its power. These three governmental powers are committed to their respective branches, and no branch "shall exercise powers committed to the other two" branches. The legislative branch enactment laws. The executive branch, however, can veto legislation and the judicial branch can declare legislation unconstitutional. The executive branch executes laws and the judicial branch interprets laws. Nevertheless, the legislative branch can limit the budget of those branches; enact laws restricting their authority in certain areas, within constitutional limitations; confirm many of their officers, and, when warranted, impeach their officers for illegal actions.

The principle of separation of powers remains generally valid. It is not the function of the executive branch of government to enact legislation,
nor is it the function of the legislative branch to conduct trials of persons accused of crime.\footnote{See id.} Despite the general validity of the doctrine, a rigid separation of powers is obviously not possible.\footnote{See id.} For example, administrative agencies within the executive branch of government often exercise all three government powers.\footnote{See id.} Thus, "any theory of complete separation of powers is untenable and unworkable."\footnote{See id.} Nonetheless, state constitutions commonly include a provision establishing a categorically-worded separation of powers.\footnote{See id.} At the time of Con-Con, approximately thirty state constitutions explicitly established the principle of separation of powers;\footnote{See id.} however, "[s]eparation of powers with checks and balances obtains in all the other states, of course, even without a specific provision therefor."\footnote{See id.}

The electorate appropriately constitutes an organ of government within a state. "The right to vote gives the people a regular and recognized influence in the determination of public affairs."\footnote{See id.} Indeed, voters in a state "are the primary organ of power, both because they in the end establish the constitution and because they elect the legislative representatives and other officers who operate the government."\footnote{See id.} However, "[s]tates have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised . . . absent of course the discrimination which the Constitution condemns."\footnote{Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45, 50 (1959).} Of course, the Federal Constitution imposes several limitations on states regarding voting. A state may not disenfranchise anyone "on account of race, color, or previous condition of servitude";\footnote{Id. amend. XV.} or "on account of sex";\footnote{Id. amend. XIX.} or "by reason of failure to pay any poll tax or other tax";\footnote{Id. amend. XXIV.} or on account of age, if the voter is at least eighteen years old.\footnote{Id. amend. XXVI.} Further, the Federal Constitution grants Congress the power to

\begin{itemize}
  \item \footnote{See id.} People v. Reiner, 129 N.E.2d 159, 162 (Ill. 1955).
  \item \footnote{See supra note 11, at 8; see Gardner, supra note 57, at 170-71.} Kauper, supra note 11, at 8; see Gardner, supra note 57, at 170-71.
  \item \footnote{See supra note 7, at 109.} See Braden & Cohn, supra note 7, at 109.
  \item \footnote{See id.} See id.
  \item \footnote{Kauper, supra note 11, at 12; see also Cooley, supra note 12, at 748 ("The authority of the people is exercised through elections, by means of which they choose legislative, executive, and judicial officers, to whom are to be entrusted the exercise of powers of government.").} Kauper, supra note 11, at 12; see also Cooley, supra note 12, at 748 ("The authority of the people is exercised through elections, by means of which they choose legislative, executive, and judicial officers, to whom are to be entrusted the exercise of powers of government.").
  \item \footnote{U.S. CONST. amend. XV.} U.S. Const. amend. XV.
  \item \footnote{Id. amend. XIX.} Id. amend. XIX.
  \item \footnote{Id. amend. XXIV.} Id. amend. XXIV.
  \item \footnote{Id. amend. XXVI.} Id. amend. XXVI.
\end{itemize}
make regulations, or alter existing state regulations, regarding the time, place, and manner of holding elections for members of Congress. This federal law, enforcing the Fourteenth and Fifteenth Amendments, prohibits the discriminatory use of literacy tests.

Absent these federal limitations, "the States have the power to impose reasonable citizenship, age, and residency requirements on the availability of the ballot." This conclusion is based on the orthodox reasoning that the Federal Constitution, including its amendments, establishing and regulating a government of limited and enumerated powers, does not bestow the right to vote. In other words, "the privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution." Illinois courts have long recognized that the right to vote is not an inalienable or absolute right. Rather, voting is a conditional right. The state legislature has the power to prescribe reasonable conditions on the right to vote, such as residency and registration requirements, polling place regulation, and voting methodology.

Based on the historic power of state government to regulate access to the ballot, it should be desirable, if not crucial, to memorialize principles, guidance, and limitations in the state constitution. "The suffrage article of a [state] constitution should do two things: it should provide for the qualifications for being allowed to vote and it should guarantee that those who have such qualifications can vote." At the time of Con-Con, the requirement of residency in the state, county, or election district prior to the election varied

146. Id. art. I, § 4.
148. Kramer v. Union Free Sch. Dist., 395 U.S. 621, 625 (1969); accord Carrington v. Rash, 380 U.S. 89, 91 (1965) (recognizing that states possess "unquestioned power to impose reasonable residence restrictions of the availability of the ballot. There can be no doubt either of the historic function of the States to establish, on a nondiscriminatory basis, and in accordance with the Constitution, other qualifications for the exercise of the franchise" (citation omitted)).
149. Pope v. Williams, 193 U.S. 621, 632 (1903), overruled on other grounds by Payne v. Tennessee, 501 U.S. 808 (1991); see also Griffin v. Roupas, 385 F.3d 1128, 1130 (7th Cir. 2004) ("The Constitution does not in so many words confer a right to vote, though it has been held to do so implicitly. Rather, it confers on the states broad authority to regulate the conduct of elections . . . ." (citations omitted)).
150. See, e.g., Tuthill v. Rendleman, 56 N.E.2d 375, 390 (Ill. 1944).
151. See Scribner v. Sachs, 164 N.E.2d 481, 490 (Ill. 1960); Clark v. Quick, 36 N.E.2d 563, 565 (Ill. 1941); Goodman, supra note 139, at 83-86.
152. BRADEN & COHN, supra note 7, at 388.
among the states, ranging from a few years down to ten days, with the trend towards shortening such requirements.\textsuperscript{153}

A local government constitutes an additional organ of government within a state. In American law, states create and regulate local governments, e.g., cities, villages, townships, and special districts. The state constitution and statutes determine the existence, form of government, function, and powers of local government.\textsuperscript{154} Generally, courts consider local governments to possess only those powers that the state expressly and specifically confers upon them, and those powers that are clearly implied in the powers expressly granted; this principle is known as "Dillon's Rule."\textsuperscript{155} Courts construe Dillon's Rule narrowly; a court should resolve any doubt as to the power of a local government against the local government and in favor of the state.\textsuperscript{156}

As an initial response to these restrictions on local government, state legislatures developed special charters for particular municipal corporations; however, the flexibility of the special-charter approach had several drawbacks to the detriment of municipal self-government, such as overlapping districts that caused complexity and confusion in providing government services.\textsuperscript{157} Eventually the demand developed for the inclusion of home rule provisions in state constitutions.\textsuperscript{158} "Home rule" refers to a constitutional allocation of local powers to local government, in an attempt to distinguish matters primarily of statewide concern from matters of local concern.\textsuperscript{159} Beginning with Missouri in 1875, by 1970, approximately thirty-five states guaranteed municipal home rule in various forms.\textsuperscript{160}

Almost all state constitutions include an article dealing, in one way or another, with local government.\textsuperscript{161} A state constitution article on local government should seek a constitutional balance that guarantees local self-
determination in all matters of purely local concern and that also guarantees state legislative jurisdiction in matters of common statewide interest.\footnote{162} More specifically, scholars have suggested three basic requirements. A state constitution article on local government should (1) promote local self-government by providing for a broad and unambiguous grant of power to local governments that will stimulate initiative and vigor in addressing new and expanding responsibilities; (2) permit maximum intergovernmental handling; and (3) liberate the state legislature from the burden of acting on a multitude of local bills, so that it may concentrate on matters of importance to the entire state.\footnote{163}

3. Institute Fundamental Policy

Also, most state constitutions include "articles of varying length and detail on a wide variety of additional subjects," such as education, revenue, and finance.\footnote{164} As earlier explained, the state legislature does not require authorization to address these and all other areas within constitutional limitations.\footnote{165} By the time of Con-Con, however, "documents reflect[ed] the modern interest in new social services by authorizing or even directing legislative activity in regard to welfare and health activities, care of the aged, social security, unemployment, workmen’s compensation, and the like."\footnote{166}

4. Provide Means of Constitutional Change

"State constitutions will change, although not so rapidly as many might desire or to so great a degree and in such fashion as others might like. Yet change there will be. In a dynamic society, time and circumstances will inevitably work their imperfect will on a state’s fundamental law."\footnote{167} As with a garment, a state constitution can be changed in three basic ways. First, the people can cut out and discard a portion of the document that no longer fits and, if necessary, replace it with a better-fitting piece. Second, the people can create an entirely new document out of whole cloth. Third, the judicial branch of state government, by interpreting a state constitution, can apply a patch to a specific area in the document where it is worn out.

As the establishment of a state constitution rests ultimately on the authority and will of the people, an expression of the same popular will

\footnotesize

162. Small, \textit{supra} note 154, at 244.
163. Ebel, \textit{supra} note 154, at 225; see Tarr, \textit{supra} note 86, at 20-23.
164. Beard, \textit{supra} note 83, at 495-96; Fellman, \textit{supra} note 86, at 139.
165. \textit{See supra} note 71 and accompanying text.
166. Fellman, \textit{supra} note 86, at 139.
should always be able to change a state constitution. A state constitution should allow opportunity for future amendment or revision and voter ratification thereof. The charter should describe the procedures for such amendment or revision. The process of constitutional change should not be too easy or too difficult. The process must not only preserve the constitution’s role as the state’s basic and fundamental law, but the process must also provide adequate channels for change. The two formal means of constitutional change are by amendment or revision. There is a “tendency to attempt piecemeal patching of a state’s fundamental law by amendment rather than to undertake the more onerous, though often obviously necessary, path of full-scale revision.”

Almost universally, a constitutional amendment must somehow be initiated, which voters must ultimately ratify. States employ three methods of initiating constitutional amendments. First, the legislature can initiate constitutional amendments. Second, in some states, the people can directly initiate amendments through the use of initiative petitions. Third, “[t]hough it is customary to think of a state constitutional convention primarily as an instrument for drafting an entirely new constitution or overhauling an old one, the convention is also used for the purpose of initiating amendments to an existing document.” No matter how the amendment is initiated, it is almost universal that voters must ratify the proposed amendment.

Constitutional defects can be cured by amendment, but if the necessary changes in a state constitution are too long delayed or cannot be accomplished by amendment or interpretation, then the document must be thoroughly revised or overhauled. The most generally used means of constitutional revision—the only means common to all fifty states—is the constitutional convention. The convention method consists of the people’s election of delegates for the specific purpose of constitutional revision. The convention method connotes an approval and a dignity absent in other methods. Historically and legally, a constitutional convention is the direct voice of the people in matters pertaining to the revision. Indeed, even in states where constitutions do not expressly provide for calling conventions, the rule is that the right to hold constitutional conventions is inherent in the

168. Beard, supra note 83, at 496; Kauper, supra note 11, at 18.
170. Id. at 25; see also Gerald Benjamin, Constitutional Amendment and Revision, in 3 State Constitutions for the Twenty-First Century: The Agenda of State Constitutional Reform 181-92 (G. Alan Tarr & Robert F. Williams eds., 2006).
174. Id. at 32.
people. The product of the convention, a proposed state constitution, is then normally submitted to voters for ratification. In sum, a state constitution evolves as a society evolves. The extent of constitutional change is the product of societal pressures.

The third method of constitutional change is by judicial interpretation. The doctrine of judicial review can be simply stated. A constitution vests "the judicial power" in the judicial branch of a government. The judicial power includes the power to explain and interpret the law. Accordingly, it is the specific province and duty of the judiciary to expound the law. A constitution is the fundamental and highest "law"; therefore, the judicial branch of government is the final arbiter of what the constitution means. Of course, members of the legislative and executive branches of government swear to uphold the constitution. In performing assigned constitutional functions, each branch must initially interpret the constitution, and the other branches must respect that interpretation; however, the final responsibility of interpreting the constitution rests with the judicial branch, because it is the province and duty of the courts to declare the law. Indeed, the principle that the judiciary is the final expositor of a constitution is deemed "a permanent and indispensable feature of our constitutional system."

State judiciaries have generally construed state constitutions strictly, stifling state constitutional change. Further, the detailed language of most state constitutions leaves little room for constitutional change by interpretation, and provides a judicial rationalization for strict constitutional construction; however, a particular word, phrase, clause, or even a section can change through judicial interpretation.

This article has discussed the history, theory, and purposes of state constitutions in American constitutional law and the American political system in general. Now, it is time to narrow the focus to Illinois. This arti-

175. Id.
177. Id. at 22-24.
cle will next recount the background, framing, and ratification of the 1970 Illinois Constitution.

III. BACKGROUND OF 1970 ILLINOIS CONSTITUTION

Although the 1970 Illinois Constitution "is progressively designed to meet the needs of the 20th and 21st centuries, it is a stable and permanent document, deeply rooted in Illinois history."\(^{183}\)

A. PREDECESSOR CONSTITUTIONS

Illinois has had four constitutions since achieving statehood.\(^{184}\) Scholars have described Illinois constitutional history as repeated episodes where the people create a constitution that imposes limitations on state government, which subsequently constitutes a straightjacket from which the people struggle to free themselves by way of a new constitution.\(^{185}\) The 1818 Constitution was written hurriedly with the goal of attaining statehood.\(^{186}\) The 1848 and 1870 Constitutions "created new problems while trying to resolve earlier ones."\(^{187}\) In 1969, Con-Con "overhauled the law of the land and engineered a political alliance to gain voter support. It was a major achievement in Illinois history and one of the best examples of the state's occasional ability to overcome its individualism to address a common problem."\(^{188}\)

1. 1818 Constitution

The first constitution "was a requirement for statehood and its creation was rushed because Illinois hoped to become a state before its neighbor, Missouri."\(^{189}\) At the request of the territorial legislature, Congress authorized the election of thirty-three delegates to a convention to form a state constitution and government.\(^{190}\) At that time, it was not clear whether Illinois would enter the Union as a free state or a slave state. For several years prior to 1818, the majority of the population of the Illinois Territory came

---

184. ILL. CONST.; ILL. CONST. of 1870; ILL. CONST. of 1848; ILL. CONST. of 1818.
186. Id. at 67; Witwer, supra note 183, at XXV.
187. GOVE & NOWLAN, supra note 185, at 65.
188. Id. at 65-66.
189. Id. at 67; see CORNELIUS, supra note 7, at 3-6.
190. 3 Stat. 428 (1818); see ILL. ANN. STAT., Organic Acts–Illinois, at 350 (Smith-Hurd 1971); Witwer, supra note 183, at XXV.
from southern states, bringing their customs and traditions with them. Indeed, at least two-thirds of the population either came from, or were in families with roots in, the South. Thus, at one extreme, some Illinoisans favored unrestricted slavery in the new state. At the other extreme, some would have completely eradicated every vestige of the institution. Most of the politicians and voters occupied a middle ground between the two extremes. This middle majority "had no particular desire to extend the power of slavery, but who felt that its strict prohibition would seriously hamper settlement; for the most part, they found the indenture law a comfortable compromise."

Voters (white males) elected delegates to the 1818 Constitutional Convention to frame a constitution for the proposed state. Because of the wide range of opinion on the subject of slavery generally, that portion of the constitution which dealt with slavery received the most attention. Scholars have separated convention delegates into three groups: slavery proponents, abolitionists, and "compromisers," who were those who preferred to maintain the existing indenture system, while at the same time giving to the state the appearance of a free constitution.

The First Illinois Constitutional Convention drafted, debated, and adopted a proposed constitution in three weeks. What resulted from the convention on the issue of slavery was article VI of the Illinois Constitution of 1818. Article VI prohibited formal slavery, but recognized existing indentures. Blacks might still be bound, but only while in a condition of "perfect freedom," and on condition that they received or were promised to receive a _bona fide_ consideration, and that the indenture did not extend

194. _See id._
195. _See supra_ note 190.
196. Alvord, _supra_ note 192, at 462; Mason Fishback, _Illinois Legislation on Slavery and Free Negroes_, 9 _Transactions of the Illinois State Historical Society_ 416 (1904); _see Davis, supra_ note 191, at 165 ("Slavery heated races for delegates to the constitutional convention.").
197. Harris, _supra_ note 191, at 21.
198. Cornelius, _supra_ note 7, at 10-11, 18; Gove & Nowlan, _supra_ note 185, at 65.
199. Ill. Const. of 1818, art. VI.
longer than one year.\footnote{199} Blacks who were indentured under the former territorial law would be held to the specific performance of their indentures; however, their children would become free, males at age twenty-one and females at age eighteen.\footnote{200} Further, no indentures made outside of the state could be enforced in the state.\footnote{201} Notably, the constitution did not forbid a subsequent amendment to allow formal slavery.\footnote{202} After the convention adopted the proposed constitution, the charter did not go to the voters for ratification, but rather, was submitted to Congress for its approval.\footnote{203} The congressional debates revealed that slavery was the only real issue.\footnote{204} On December 3, 1818, President James Monroe signed the congressional resolution thereby admitting Illinois into the Union.\footnote{205}

The slavery article in the 1818 Illinois Constitution is not easy to interpret. Some scholars believe that the slavery article "probably means simply that the people of the state were not ready to take a definite stand on the question."\footnote{206} Other scholars believe that the convention intended "to make Illinois ultimately a free state and to wipe out the territorial indenture system for the future, but to interfere in no way with existing property rights in slaves or indentured servants."\footnote{207} Most scholars, however, view article VI as a victory for the compromisers.

This compromise garnered votes from proslavery delegates, who knew not to push slavery too stridently, while it avoided antagonizing moderate and antislavery congressmen. Perhaps it was the best deal proslavery forces could get in 1818. It glossed over sensitive matters and left much unaddressed, postponing decisive battles. Although it assured current slave owners, it mortally wounded slavery masked as indentured servitude, heralded slavery’s eventual death, and ratified true indentured servants. Slaves working as indentured servants reflected a beleaguered in-

\begin{footnotes}
\item[200] Id. § 1. \item[201] Id. § 3. \item[202] ILL. CONST. of 1818, art. VI; see Paul Finkelman, An Imperfect Union: Slavery, Federalism, & Comity 96 (1981). \item[203] ILL. CONST. of 1818, arts. VI, VII. \item[204] Cornelius, supra note 7, at 18-19; Samuel K. Gove & Thomas R. Kitsos, Revision Success: The Sixth Illinois Constitutional Convention 2 (1974); Witwer, supra note 183, at XXV. \item[205] Buck, supra note 191, at 312-16; Fishback, supra note 196, at 417; Harris, supra note 191, at 25. \item[206] 3 Stat. 536 (1818). See ILL. ANN. STAT., Organic Acts–Illinois, at 356 (Smith-Hurd 1971). \item[207] Alvord, supra note 192, at 463. \item[208] Buck, supra note 191, at 282. \end{footnotes}
The compromise certainly eased statehood for Illinois. The 1818 Constitution provided for a bicameral legislature, and the separation of powers among the legislative, executive, and judicial branches of government. The governor was allowed only one consecutive four-year term, no exclusive veto power, and limited power of appointment. The constitution vested the power to appoint non-elected state officers in the legislature. The veto power was limited to the validity of legislation, and could be exercised only by the governor and supreme court jointly.

2. 1848 Constitution

By 1842, the shortcomings of the 1818 Constitution had become apparent: "The excessive power of the legislature, the weakness of the executive, squabbles between the two branches over appointments, an inadequate judiciary, life appointments for some officials[,] and the question of alien suffrage were some of the main faults cited as reasons for revision." The legislature was often clumsy in wielding its excessive power, and had even greater difficulty in working within the 1818 Constitution's highly restrictive banking provisions. As the state's economy grew, this situation led to a series of financial debacles. "The disastrous condition of government was seen by the state's leaders as due not to inexperience, public apathy, or determination by individuals to enrich themselves at the public's expense,

209. Davis, supra note 191, at 165.
211. Ill. Const. of 1818, art. VI, § 1 (separation of powers), art. II, § 1 (bicameral legislature).
212. See Ill. Const. of 1818, art. III.
213. Ill. Const. of 1818, art. III, §§ 19, 22; see Cornelius, supra note 7, at 11-18; Gove & Nowlan, supra note 185, at 67; Witwer, supra note 183, at XXV.
214. Gove & Kitsos, supra note 204, at 3; see also Gove & Nowlan, supra note 185, at 68 ("The first constitution gave the legislature so much power and the governor so little power that the system was ripe for abuse.").
215. The 1818 Constitution declared: "That there shall be no other banks or moneyed institutions in this state than those already provided by law, except a state bank and its branches, which may be established and regulated by the general assembly of the state as they may think proper." Ill. Const. of 1818, art. VIII, § 21.
216. Cornelius, supra note 7, at 27; Gove & Nowlan, supra note 185, at 68; see also Witwer, supra note 183, at XXVI ("[T]he State was in a perilous economic position because of ill-considered financial programs. State Banks failed twice, at considerable financial loss to the State. An expensive State railroad construction program collapsed.").
but rather to defects in the constitution, which could be corrected by the writing of a new document.\(^{217}\) Another impetus for constitutional change was the people's demand for more direct control of government through the direct popular election of state officials, based on the outgrowth of Jacksonian democracy.\(^{218}\)

In 1842, a convention call failed. "Although the [call] received a majority vote of those voting [for] it, [the call] did not meet the [restrictive] constitutional standard of a majority of those voting for representatives" in the state legislature.\(^{219}\) During the next four years, newspaper editors united to condemn the 1818 Constitution and to inform the public of the necessity for constitutional change. As a result of this aggressive campaign, at the 1846 general election, the constitutional call was approved by the required constitutional majority.\(^{220}\) "The delegates were elected [in] the following year . . . and the [Second Illinois Constitutional Convention] convened in June 1847.\(^{221}\)

The 1848 Constitution was longer and more detailed than the 1818 Constitution. Also, several issues in the 1848 charter were the result of political compromise because no political party could achieve all of its goals.\(^{222}\) The drafters of the 1848 Constitution "made a major effort to correct the mistakes of the 1818 Constitution. Their degree of success is questionable as many provisions quickly became obsolete."\(^{223}\) Indeed, "[t]he second convention provided more lessons in the difficulty of writing a good constitution. Delegates seeking to correct mistakes in the first document inserted restrictive language in the second, effectively tying the hands of future Illinoisans."\(^{224}\) For example, a strict state debt limit was imposed, and no state bank could thereafter be created.\(^{225}\) Further, the governor was given sole veto power, and judges were to be elected, rather than appointed by the Illinois General Assembly. Also, "[t]he 1848 Constitution provided a difficult alternative amending process, permitting proposals by the General Assembly."\(^{226}\) There was only minor opposition from any group to the rati-

---

\(^{217}\) CORNELIUS, supra note 7, at 28.
\(^{218}\) Id. at 27; accord GOVE & KITSOS, supra note 204, at 3.
\(^{219}\) Witwer, supra note 183, at XXVI; see also CORNELIUS, supra note 7, at 28; GOVE & KITSOS, supra note 204, at 3; GOVE & NOWLAN, supra note 185, at 68.
\(^{220}\) CORNELIUS, supra note 7, at 29; GOVE & KITSOS, supra note 204, at 3; GOVE & NOWLAN, supra note 185, at 68-69.
\(^{221}\) CORNELIUS, supra note 7, at 29-31; GOVE & KITSOS, supra note 204, at 3.
\(^{222}\) GOVE & KITSOS, supra note 204, at 3.
\(^{223}\) Id.
\(^{224}\) GOVE & NOWLAN, supra note 185, at 69.
\(^{225}\) ILL. CONST. of 1848, art. III, § 37 (debt), art X, § 3 (no state bank).
\(^{226}\) Witwer, supra note 183, at XXVI; see CORNELIUS, supra note 7, at 32-42; Witwer, supra note 183, at XX; see also ILL. CONST. of 1848, art. IV, § 21 (veto), art. V (election of judges), art. XII (amendment).
fication of the proposed constitution. In March 1848, the voters ratified the new constitution, which took effect April 1, 1848.227

The 1848 Illinois Constitution shows that while most Illinoisans were against slavery, "they were far from being abolitionists."228 The 1848 Constitution abolished the indenture system by simply omitting it. However, article XIV of the constitution also provided:

The [G]eneral [A]ssembly shall, at its first session under the amended constitution, pass such laws as will effectually prohibit free persons of color from immigrating to and settling in this state; and to effectually prevent the owners of slaves from bringing them into this state for the purpose of setting them free.229

The framers of the 1848 Constitution feared that opposition to the anti-immigration article would jeopardize the constitution's ratification.230 The article was opposed in northern Illinois, especially in Cook County.231 As a result, the article was submitted to the voters separate from the remainder of the constitution. The constitution was adopted by a margin of approximately 44,000 votes, while the anti-immigration article was adopted by a margin of approximately 28,200 votes.232

"Concern for further constitutional change came almost immediately after the approval of the 1848 Constitution."233 The problem was that "[s]o many details were included [in the 1848 Constitution], to correct past abuses, that . . . it soon became inadequate."234 In 1856, only eight years after the people ratified the "new" constitution, a call for a constitutional convention was submitted to the voters, who decisively voted in the negative.235 The defeat was partly due to limited voter awareness of the issues.236 Also, "voting was mainly along sectional lines, with [only] the northern [section] of the state strongly in support of the call."237

In 1860, the people successfully called for a constitutional convention. "Newspapers which in 1856 had hardly mentioned the convention call gave

227. Gove & Kitsos, supra note 204, at 3; see Cornelius, supra note 7, at 43-44.
228. Fishback, supra note 196, at 426.
229. Ill. Const. of 1848, art. XIV.
230. Fishback, supra note 196, at 427.
231. Id.
232. Id.
233. Gove & Nowlan, supra note 185, at 70.
234. Witwer, supra note 183, at XXVI.
235. 1855 Ill. Laws. 743 (submitting convention call to voters); see also Cornelius, supra note 7, at 45-46.
236. Gove & Nowlan, supra note 185, at 70.
237. Gove & Kitsos, supra note 204, at 3.
more attention to this one.\footnote{238} The legislature enacted the necessary enabling legislation, and convention delegates were elected from the same districts, by the same procedures, and in the same number as state representatives, seventy-five at that time.\footnote{239} In January 1862 the Third Illinois Constitutional Convention convened. Democrats, from the southern part of the state, dominated the convention leadership.\footnote{240} The nation was in a Civil War, the tides of war were running badly for Union forces, and a number of southern Illinoisans were sympathetic to the Confederate cause. During the convention, many delegates were accused of disloyalty.\footnote{241} “Moreover, the convention acted far beyond the scope of its authority.”\footnote{242} The convention adopted a partisan constitution containing provisions that were anti-bank, anti-corporation, anti-railroad, and pro-farmer.\footnote{243} The proposed constitution was adopted by only fifty-four of the original seventy-five delegates, including only three of the twenty-one Republican delegates.\footnote{244} Most Republican newspapers were against the proposed charter, while most Democrat newspapers defended it.\footnote{245} The proposed constitution was defeated at the polls by a vote of 125,052 for and 141,103 against.\footnote{246}

3. 1870 Constitution

As soon as the Civil War ended and Reconstruction began, agitation resumed for constitutional change. In 1867, Republican Governor Richard J. Oglesby urged the call for a constitutional convention, which the legislature approved.\footnote{247} In 1868, the people approved, by a narrow margin, the call

\begin{footnotes}
\footnote{238}{CORNELIUS, supra note 7, at 46.}
\footnote{239}{1859 Ill. Laws 217 (submitting convention call to voters).}
\footnote{240}{Of the seventy-five delegates elected, forty-five were regular Democrats, twenty-one were Republicans, seven were affiliated with other political parties, and two had unidentified political affiliation. CORNELIUS, supra note 7, at 46.}
\footnote{241}{Id.}
\footnote{242}{The Third Illinois Constitutional Convention “investigated the executive department, attempted to ratify a proposed amendment to the United States Constitution and to redistrict the state for representatives to Congress, and further attempted to issue bonds and enact laws by passing ordinances.” Howard R. Sacks & Peter A. Tomei, Report of the Committee on Constitutional Revision of the Chicago Bar Association on a Constitutional Convention for Illinois, 48 CHI. B. REC., Feb.-Mar. 1967, at 56, 71.}
\footnote{243}{GOVE & KITSOS, supra note 204, at 4; see also CORNELIUS, supra note 7, at 46-53.}
\footnote{244}{GOVE & NOWLAN, supra note 185, at 70.}
\footnote{245}{Id.}
\footnote{246}{CORNELIUS, supra note 7, at 54. Commentators have opined that voters rejected the proposed constitution due to popular aversion to the convention’s excesses, coupled with the popular belief that the charter favored the South rather than the North. Sacks & Tomei, supra note 242, at 71.}
\footnote{247}{GOVE & NOWLAN, supra note 185, at 70.}
\end{footnotes}
for a convention. In November 1869 delegates were elected, and they were divided almost evenly between Democrats and Republicans. In December 1869 the Fourth Illinois Constitutional Convention convened. The convention organized itself on a bipartisan basis; a mood of conciliation and compromise prevailed. Such an atmosphere was difficult to establish in the immediate post-Civil War period; however, the delegates remembered that partisanship had discredited and defeated the proposed 1862 Constitution. Accordingly, they made great efforts "in 1870 to refrain from bringing political animosities into constitution making." After five months of work, the convention adopted a constitution in May 1870.

The product of the Fourth Illinois Constitutional Convention was longer and more detailed than earlier charters, signifying the growth in complexity of the state's needs. Also, the delegates continued the practice of using the state constitution not only as a statement of fundamental principles, but also as an instrument of legislative policy. The proposed constitution resembled its 1848 predecessor in its excessive detail of matters that would have been best left to statute. Although the delegates removed many of the restrictions contained in the 1848 Constitution, they drafted other restrictions for the proposed constitution that were superfluous or harmful. The proposed constitution also provided for a multi-district house of representatives, with cumulative voting, which permitted minority representation. The charter conferred upon the governor full appointment powers and a stronger veto, expanded the supreme court to seven justices, and included a new public education article; however, "the amendment process became even more restrictive."

The Thirteenth Amendment to the United States Constitution was ratified in 1865, and the Fourteenth Amendment was ratified in 1868. These Civil War amendments effectively overruled article XIV of the 1848 Illinois Constitution, which prohibited the immigration of African Americans into the States, and the article remained on the books as a dead letter until it was omitted from the 1870 Illinois Constitution.

248. Gove & Kitsos, supra note 204, at 4; see also Cornelius, supra note 7, at 56-61.
249. Cornelius, supra note 7, at 62-64.
250. Gove & Kitsos, supra note 204, at 4-5.
251. Cornelius, supra note 7, at 64, 81.
252. Gove & Kitsos, supra note 204, at 5; Gove & Nowlan, supra note 185, at 70.
253. Cornelius, supra note 7, at 65.
254. Ill. Const. of 1870, art. IV, § 7 (multi-district house); see also Cornelius, supra note 7, at 65-81.
255. Witwer, supra note 183, at XXVI; see also Ill. Const. of 1870, art. V, § 10 (appointment), § 16 (veto), art. VI (courts), art. VIII (education), art. XIV (amendment).
256. U.S. Const. amend. XIII (1865); U.S. Const. amend XIV (1968).
257. See Fishback, supra note 196, at 431.
Most political leaders and major newspapers supported the proposed constitution. In July 1870 the people ratified the 1870 Constitution by a nearly 80% favorable vote. Two main factors were behind the overwhelming voter approval. First, the public was greatly dissatisfied with the performance of Illinois state government, and the public believed that constitutional changes would substantially improve the performance of state government. Second, the bipartisanship displayed at the convention and reflected in its product did not arouse any major opposition. The 1870 Constitution took effect on August 8, 1870.

B. PROBLEMS WITH THE 1870 CONSTITUTION

In the late nineteenth century, the 1870 Illinois Constitution was considered a reform document. Its restrictions and limitations, however, caused many problems for state officials, especially regarding finances; “[i]f example, because of strict constitutional limitations on local government debt,” the legislature established a large number of “special districts.” These entities would subsequently exemplify the state’s “parochialism and lack of coordinated planning.” Also, the 1870 Constitution provided that the General Assembly was not to appropriate out of the state treasury more than the aggregate sum of $3,500,000 for the new state capitol in Springfield. “As might have been expected, the money ran out and the statehouse was never completed according to the original plans.” Indeed, the excessive and extensive detail in the 1870 Constitution soon made many of its provisions obsolete.

Exacerbating the situation, the restrictive amendment process grew more so over time for two reasons. First, the 1870 Constitution required that a proposed constitutional amendment pass both houses by a two-thirds majority before submission to voters. However, the two-thirds majority was often difficult to achieve under the new constitutional system of cumulative

258. CORNELIUS, supra note 7, at 81-82; GOVE & KITSOS, supra note 204, at 6.
259. Witwer, supra note 183, at XXVI; see also CORNELIUS, supra note 7, at 83.
260. CORNELIUS, supra note 7, at 83-84; GOVE & KITSOS, supra note 204, at 6.
261. CORNELIUS, supra note 7, at 83-84; GOVE & KITSOS, supra note 204, at 6.
262. CORNELIUS, supra note 7, at 85.
263. GOVE & NOWLAN, supra note 185, at 71.
264. ILL. CONST. of 1870, art. IV, § 33.
265. GOVE & NOWLAN, supra note 185, at 71.
266. GOVE & KITSOS, supra note 204, at 5; Witwer, supra note 183, at XXVI. Another example lies with the Columbian Exposition of 1893 (i.e., the 1893 World’s Fair), which was held in Chicago. To overcome debt limitations, the constitution was amended in 1890 to allow Chicago to issue $5,000,000 worth of bonds to finance the fair. The constitution was burdened with another non-fundamental provision more suitable for a statute. See ILL. CONST. of 1870, art. IX, § 12.
267. ILL. CONST. of 1870, art. XIV.
voting for state representatives, which generated a permanently large minority.268

Second, if a proposed constitutional amendment eventually reached the voters, the ballot itself became an impediment to voter ratification. From 1848 to 1891, each political party printed its own ballots and distributed them to voters at elections.269 The party convention or committee established the party’s position on proposed constitutional amendments.270 Political parties distributed several alternative ballots, and some party ballots simply omitted any reference to a constitutional proposal.271 Other party ballots contained language that indicated both the affirmative and negative statement of the constitutional proposal, and required the voter to scratch out or delete the undesired choice.272 The failure to make a mark would constitute a non-vote on the proposition, which equaled a “no” vote.273 Other party ballots would include a phrase that indicated either voter consent to or rejection of the proposition; if the voter deposited such a ballot, without alteration, in the ballot box, it was a vote either for or against the proposition, whether or not the voter was aware of it.274 Under the party ballot system, “[a] measure approved by both parties had no trouble getting the popular vote necessary for approval . . . [since] the vote on proposed constitutional amendments often approximated the total number of votes cast in the election.”275

These ballots are proof enough how the methods of voting prior to 1891 made it relatively easy to adopt constitutional proposals in Illinois in that period, if the party leaders were generally in favor of them. The indifference and ignorance of so many voters on such proposals were turned into affirmative votes rather than permitted to be counted as negative voters. This was the method of voting known to those who drafted the constitution of 1870 and they did not con-

268. CORNELIUS, supra note 7, at 90.
270. See Sears, supra note 269, at 210-13; see also Powell, supra note 269, at 60-61.
271. See Sears, supra note 269, at 210-13; see also Powell, supra note 269, at 60-61.
272. See Sears, supra note 269, at 210-13; see also Powell, supra note 269, at 60-61.
273. See Sears, supra note 269, at 210-13; see also Powell, supra note 269, at 60-61.
274. See Sears, supra note 269, at 210-13; see also Powell, supra note 269, at 60-61.
275. CORNELIUS, supra note 7, at 89 (citation omitted).
template the very different method of voting adopted twenty-one years later.276

Accordingly, "[u]nder this system the adoption of constitutional amendments was not difficult, for, out of five proposed amendments, five were adopted."277

In 1891, however, the legislature enacted an official ballot law, under which a proposed constitutional amendment was printed on the ballot with blank spaces to indicate either consent or rejection. The voter was required to specifically mark the ballot to indicate the voter's choice; the failure to do so was considered a failure to have voted at all on the proposition, thereby effectively counting the vote as a "no."278 In each of the general elections of 1892, 1894, and 1896, at least 75% of those voting in the general election did not vote on a proposed constitutional amendment, which consequently failed to receive the necessary majority vote.279 The change in ballot format caused an increase of nonvoting on proposed constitutional amendments from an average of 23% prior to 1891 to an average of 78% subsequent to 1891.280

In reaction to these stark statistics, the legislature revised the election laws to provide for printing constitutional proposals on a separate ballot. The separate, or "little," ballot initially appeared to have its anticipated result, because the first two of the next five proposed constitutional amendments were ratified.281 Yet, it still remained difficult for a constitutional proposition to obtain the affirmative vote of a majority of those voting in an election. In 1929, the legislature repealed the separate ballot law and provided that proposed constitutional amendments be placed on the regular ballot to the left of the names of the candidates for office.282 "Thus, in a practical sense the method of amending the 1870 Illinois [C]onstitution was completely revolutionized as an unexpected by-product of a reform in the ballot law in 1891."283 What had previously been a reasonably simple method of "adopting amendments became an impossible method under the

276. Sears, supra note 269, at 211.
277. Charles V. Laughlin, A Study in Constitutional Rigidity I, 10 U. CHI. L. REV. 142, 152 (1943); see also Powell, supra note 269, at 61 n.5 (listing ratified constitutional amendments between 1870 and 1891).
278. CORNELIUS, supra note 7, at 90; see also GOVE & KITSOS, supra note 204, at 6.
279. Laughlin, supra note 277, at 151 (depicting voting statistics in Table 1).
280. Powell, supra note 269, at 61 n.6.
281. Id. at 62.
282. Laughlin, supra note 277, at 152-53; Powell, supra note 269, at 62-63.
283. Sears, supra note 269, at 211.
ballot law existing from 1891 to 1899, a difficult method under the little (separate) ballot law from 1899 to 1918, and a total failure" after 1924.284

In his 1893 inaugural address, Governor Peter Altgeld suggested a constitutional convention. The state senate adopted a resolution to that effect, but the house of representatives defeated the proposal.285 Attempts at constitutional change continued. In 1915, a statewide constitutional convention committee of the Citizens’ Association of Chicago replaced the Constitutional Convention League organized the previous year.286 “[T]his association continued to agitate for submission of a convention call to the voters.”287 Also, in 1916, Frank O. Lowden was elected governor. A reform-minded, progressive Chicago attorney and politician, Governor Lowden advocated for a constitutional convention.288 In his inaugural message to the legislature, he urged for a convention call. In 1917, the legislature approved the call and, in 1918, voters approved the call for a constitutional convention.289 In 1919, the legislature enacted enabling legislation for the convention.290 The election of delegates resulted in an overwhelming, one-sided Republican victory, producing eighty-five Republican and seventeen Democrat delegates.291

The Fifth Illinois Constitutional Convention convened in January 1920 and adjourned in September 1922. Because of its poor organization, “the convention became known for lengthy recesses and absenteeism among delegates.”292 The proposed 1922 Constitution “was a major revision that differed sharply in language and organization from that of 1870. It included many controversial matters, and was submitted as a single ‘package’ as

284. Id. Indeed, in a 1917 court challenge to the amendment ratification requirement of a majority of votes cast in the election, the Illinois Supreme Court relied on the plain language of the 1870 Constitution in construing “the relevant ‘majority’ to be a majority of the highest number of votes cast with respect to an office or a proposition in the general election.” Witwer, supra note 183, at XXVII (discussing People v. Stevenson, 117 N.E. 747 (III. 1917)).
285. CORNELIUS, supra note 7, at 88-89.
286. Id. at 94.
287. Id. at 94 (citation omitted).
288. Id. at 95-97.
289. S.J. Res. 1, 50th Senate (1917), 1917 Ill. Laws 805; see also CORNELIUS, supra note 7, at 95-97; GOVE & KITSOS, supra note 204, at 7; GOVE & NOWLAN, supra note 185, at 71.
290. 1919 Ill. Laws 60, 63.
291. See CORNELIUS, supra note 7, at 98; GOVE & KITSOS, supra note 204, at 7; see also GOVE & NOWLAN, supra note 185, at 71 (“Like the ill-fated convention of 1862, however, partisan lines were drawn and the Republicans this time came out on top.”).
292. GOVE & NOWLAN, supra note 185, at 71-72; accord CORNELIUS, supra note 7, at 103 (“The convention, officially in session for almost three years, spent only 140 days in actual convention work.” (citation omitted)); GOVE & KITSOS, supra note 204, at 7; Sacks & Tomei, supra note 242, at 71-72 (commenting that, despite extensive pre-convention preparations, the convention became “bogged down in detail and debate”).
contrasted to earlier constitutions that were submitted with several separate issues." It expressly permitted Bible reading in public schools, expressly guaranteed equal protection without regard to race or color, established a reapportionment plan that was generally favorable to downstate Illinois at the expense of Cook County, dropped the system of cumulative voting for state representatives, established a graduated state income tax, and notably, did little to relax the restrictive amendment procedures of the 1870 Constitution.

In December 1922 voters overwhelmingly defeated the proposed constitution in a very heavy turnout for a special election. Scholars have cited many factors for the crushing rejection, including "primarily the partisanship of the convention, the submission of the document as a whole, the loss of popular interest because of the length of the convention, the attempt to rewrite the entire constitution, and the lack of liberal amending procedures." Voters failed to ratify the proposed 1862 Constitution primarily because the Third Illinois Constitutional Convention alienated a single major group, i.e., the Republican Party; however, the Fifth Illinois Constitutional Convention "managed not only to alienate some Republican party members, but also most of the Democrats, labor unions, teachers, judges, and many other groups in the state, including most Cook County residents."

Subsequent to the "disastrous results" of the Fifth Illinois Constitutional Convention, state leaders repeatedly attempted, unsuccessfully, to amend the 1870 Constitution through its restrictive amendment procedure. In 1934, a call for a constitutional convention was submitted to voters. "The campaign for it was a modest effort; it was not a high-pressure affair. Yet, the proposal received a majority of 105,142 of those who voted on the proposal." Although the call received more "yes" votes than "no"

293. Gove & Kitsos, supra note 204, at 7.
294. Gove & Kitsos, supra note 204, at 7-8; see also Cornelius, supra note 7, at 111-12; Philip R. Davis, Defects and Causes of Defeat of the Proposed Constitution of 1922, 26 Chi. B. Rec. 276 (1945) (criticizing the proposed 1922 Constitution).
295. Gove & Kitsos, supra note 204, at 8; accord Cornelius, supra note 7, at 115; Peter A. Tomei, How Not to Hold a Constitutional Convention, 49 Chi. B. Rec. 179 (1968) (criticizing the Fifth Illinois Constitutional Convention).
296. Cornelius, supra note 7, at 115-16; see also Gove & Kitsos, supra note 204, at 8.
297. Cornelius, supra note 7, at 116; Gove & Kitsos, supra note 204, at 8.
298. Sears, supra note 269, at 209. For a discussion both for and against the convention call, see Floyd E. Thompson & David R. Clarke, Shall We Have a Constitutional Convention?, 16 Chi. B. Rec., Oct. 1934, at 9.
votes, 56% of those voting in the election did not vote on the proposal, and thereby caused its defeat. 299

Generally, by the late 1930s and 1940s, nineteenth-century state constitutions, like that of Illinois', were in great disrepute. 300 Their superfluous provisions and restrictions, in addition to their antiquated and faulty legal terminology, appeared to function mainly to impede needed progress and development. "In Illinois, a small group of constitutional scholars and political scientists kept the issue of constitutional revision alive." 301

Illinois, everything considered, is in the worst position of any state in the Union. A majority of its voters who have any ideas to express have frequently shown that they think that their constitution is in need of a general revision. But, owing to the rigid and restrictive provisions for a revision or amendment, Illinois flounders around in its constitutional morass. It is a ridiculous spectacle for what is supposed to be one of the great states in the United States. Only one judgment can be uttered: Illinois has been politically backward and heaven alone knows when it will become ashamed of itself and exhibit political astuteness. There are ways out of the morass whenever Illinois secures the political leadership that can overcome the forces that believe in a relatively static society. 302

These efforts resulted in a "gateway" to hoped-for constitutional reform.

In 1949, newly-elected Governor Adlai E. Stevenson, a Democrat, submitted to the Illinois General Assembly a package of proposed legislation that included a call for a constitutional convention, and which would have amended the election laws to facilitate its approval by the voters. 303 The governor's proposal was defeated in a close vote in the state house of representatives. 304 Republicans, however, introduced in the state senate the

299. See Laughlin, supra note 277, at 151-52 (describing in Table 1, Illinois voter statistics regarding the submission of seventeen amendments to the Illinois Constitution of 1870, and the two proposals to call a constitutional convention).

300. CORNELIUS, supra note 7, at 120.

301. Id.

302. Charles V. Laughlin, A Study in Constitutional Rigidity II, 11 U. CHI. L. REV. 374, 439 (1944); see also Samuel W. Witwer, Jr., A Constitutional Convention for Illinois, 37 ILL. B.J. 9, 10 (1948) ("That there is a need for major constitutional revision in Illinois is hardly open to question. Even among those who resist change for one reason or another, few will deny that the 1870 constitution is failing in many serious respects to meet the needs of our modern industrialized society.").

303. CORNELIUS, supra note 7, at 122-23.

304. GOVE & KITIOS, supra note 204, at 9. The proposed election law amendment would have placed the call on the ballot under the "party circle" (i.e., the position adopted by
“Gateway Amendment” as an alternative to the proposed convention call. First proposed in the 1892 general election, a “gateway amendment” sought to open “a gateway to the Constitution”\(^{305}\) by amending the article permitting amendment of the constitution to ease the restrictive voting requirement.\(^{306}\) This particular gateway amendment provided that voters could ratify state constitutional amendments by an affirmative vote of two-thirds of those voting on the amendment itself, or alternatively, by the formerly sole requirement of a majority of those voting in the election.\(^{307}\) With the governor’s support, the Gateway Amendment easily passed both houses of the Illinois General Assembly.\(^{308}\) The legislature also revised the election laws to require that constitutional proposals be submitted to voters on a separate blue ballot.\(^{309}\) Printed on the blue ballot was the notice: “The failure to vote this ballot is the equivalent of a negative vote.”\(^{310}\) As a result of the blue ballot and a strong campaign, the Gateway Amendment received an overwhelmingly affirmative vote in the November 1950 general election.\(^{311}\)

Generally, proponents of constitutional revision enthusiastically greeted the Gateway Amendment.\(^{312}\) Constitutional change through amendment appeared to be a better alternative than calling for a constitutional convention.\(^{313}\) The Illinois General Assembly employed the gateway procedure beginning in 1951; however, the enthusiasm for the amendment

---

305.  Powell, supra note 269, at 67; accord Proposed 1970 Constitution—Official Text with Explanation, in 7 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 2672 (1970) [hereinafter PROCEEDINGS] (observing that Gateway Amendment was “so-called because it was expected that it would open the way to easier constitutional change by amendment”).

306.  Gove & Kitsos, supra note 204, at 6; Powell, supra note 269, at 64. In the 1892 general election, the first proposed gateway amendment “was soundly defeated, primarily because 79 percent of the voters failed to mark their ballots on the question.” Cornelius, supra note 7, at 90; Laughlin, supra note 277, at 151 tbl.1; Powell, supra note 269, at 61 n.6.

307.  Gove & Kitsos, supra note 204, at 9; Gove & Nowlan, supra note 185, at 72-73. Also, the Gateway Amendment was narrow: “The proposal did not alter the requirement for calling a constitutional convention, which would still have to receive the favorable votes of a majority of all persons voting in a general election.” Cornelius, supra note 7, at 123.

308.  Gove & Nowlan, supra note 185, at 73.

309.  Id.

310.  Id.

311.  Cornelius, supra note 7, at 124-25; Gove & Kitsos, supra note 204, at 9; Gove & Nowlan, supra note 185, at 73.

312.  Gove & Nowlan, supra note 185, at 73.

313.  Id.
approach cooled due to the disappointing record of success.\textsuperscript{314} From 1952 through 1966, the legislature submitted fifteen constitutional amendments to voters, who ratified only six.\textsuperscript{315} Particularly discouraging were the three unsuccessful attempts to amend the revenue article.\textsuperscript{316} Only two of the six ratified amendments were far-reaching—the 1954 reapportionment amendment and the 1962 judicial article amendment.\textsuperscript{317}

Subsequent to the early 1960s, the cumulative effect of generations of effort to modernize the Illinois Constitution, which the Gateway Amendment temporarily diverted, again impelled the demand for a state constitutional convention.\textsuperscript{318} In 1965, the Illinois General Assembly created the first Constitution Study Commission.\textsuperscript{319} In 1967, the Commission recommended that the legislature submit a convention call to voters in the November 1968 election.\textsuperscript{320} Accepting the recommendation, the legislature voted overwhelmingly in favor of submitting a convention call to voters.\textsuperscript{321} Through the cooperation of concerned citizens and Governor Otto Kerner, the Illinois Committee for Constitutional Convention (ICCC) “came into being to develop favorable public opinion throughout the state.”\textsuperscript{322} The ICCC “became the clearinghouse for and manager of the referendum campaign... [and] operated what was perhaps the most vigorous and best planned campaign ever conducted for a constitutional proposal in Illinois.”\textsuperscript{323} The basic strategy for the campaign required the strong support of both political parties; the support of agricultural, business, civic, labor, and professional organizations; and the unremitting support of the mass media.\textsuperscript{324} This widespread support required an “issueless” campaign; i.e., Con-Con proponents attempted to avoid potentially divisive issues.\textsuperscript{325}

\begin{footnotes}
\item[314] Gove & Kitsos, supra note 204, at 10.
\item[315] Id.
\item[316] Gove & Nowlan, supra note 185, at 73.
\item[317] Cornelius, supra note 7, at 125-37; Gove & Kitsos, supra note 204, at 10-11; Gove & Nowlan, supra note 185, at 73.
\item[318] Witwer, supra note 183, at XXVIII.
\item[319] 1965 Ill. Laws 3059; see also Cornelius, supra note 7, at 139-40 (“The General Assembly gave the commission a broad directive to examine all sections of the constitution, to determine where revisions should be made, and whether such changes would best be accomplished by amendment or by the calling of a convention.”).
\item[320] Gove & Nowlan, supra note 185, at 73.
\item[321] See Cornelius, supra note 7, at 139-40; Gove & Nowlan, supra note 185, at 73; Witwer, supra note 183, at XXVIII.
\item[323] Cornelius, supra note 7, at 141; accord Witwer, supra note 183, at XXVIII.
\item[324] See Gertz & Pisciotte, supra note 322, at 27.
\item[325] See id. The call for Con-Con was not unanimous; however, opposition groups were uncoordinated and conflicting. See id. Although the AFL-CIO opposed Con-Con, the United Auto Workers and a few smaller unions endorsed Con-Con. Id. at 31. Some groups
\end{footnotes}
For example, the campaign for Con-Con benefitted from the full support of the organized Bar. Both the Illinois State and the Chicago Bar Associations supported the legislature’s submission of a convention call to voters and recommended voter approval.\(^{326}\) Indeed, in June 1968 the two bar associations held a joint luncheon to promote Con-Con.\(^{327}\) The associations invited the two gubernatorial candidates to appear and give their views on the convention call.\(^{328}\) Both candidates supported Con-Con.\(^{329}\) During this time, additional authors produced several articles supporting Con-Con.\(^{330}\)

Further, the Illinois Election Code “officially” dissuaded voters from abstaining on the proposed convention call.\(^{331}\) In precincts that used paper ballots, the Election Code required that the blue ballot be conspicuously identified and placed on top of all other ballots as they were handed to voters.\(^{332}\) In precincts that used voting machines, the Election Code required voters to vote the blue ballot and deposit it in the ballot box as a prerequisite to entering the voting machine.\(^{333}\) Approximately 4.7 million persons voted in the November 1968 general election. Approximately 2.9 million voters—60% of the total—voted in favor of the convention call.\(^{334}\) This was the greatest affirmative vote ever given to any constitutional proposal in Illinois.\(^{335}\)

C. SIXTH CONSTITUTIONAL CONVENTION (CON-CON)

Following the recommendation of the first Constitution Study Commission, the legislature created a second Constitution Study Commission to continue preparations in the event that voters approved the convention call.\(^{336}\) The second commission produced, among other things, recommendations for enabling legislation for the convention.\(^{337}\) In October 1969 the warned that business interests would control Con-Con, while other groups “warned of impending socialism.” See id. at 30.

\(^{326}\) Sacks & Tomei, supra note 242; Gerald C. Snyder, Committee on Constitutional Amendments, 56 ILL. B.J. 54 (Supp. 1968).


\(^{328}\) Ogilvie & Shapiro, supra note 327, at 1004.

\(^{329}\) Id. at 1007-09.


\(^{331}\) GERTZ & PISCOTTIE, supra note 322, at 31.

\(^{332}\) ILL. REV. STAT. ch. 24, §§ 16-6, 17-9 (1967).

\(^{333}\) Id. § 24-11.

\(^{334}\) CORNELIUS, supra note 7, at 144.

\(^{335}\) Witwer, supra note 183, at XXVIII.

\(^{336}\) 1967 Ill. Laws 2001; see CORNELIUS, supra note 7, at 144.

\(^{337}\) CORNELIUS, supra note 7, at 144.
legislature created a third commission to provide for the organization of, and temporary staff for, the convention. Following the recommendation of the second commission, the legislature passed the Enabling Act, which the governor signed in May 1969. The Enabling Act provided for the election of 116 delegates, two from each of the fifty-eight state senate districts, in a non-partisan election process. The Enabling Act also appropriated funds for the convention and for the compensation of delegates and officers. A September 1969 “primary” election narrowed the number of candidates down to four from each district. A November 1969 election finally selected each district’s two delegates.

On December 8, 1969, the Sixth Illinois Constitutional Convention (“Con-Con”) convened. The delegates adopted rules and elected a president, three vice presidents, and a secretary. The rules provided for nine substantive and three procedural standing committees. Con-Con vested the president with the power to designate the membership and chairpersons of these committees. The president, Samuel W. Witwer, had been quietly building trust and alliances during the previous twenty years. For the most part, Witwer formed twelve committees that were balanced and would not fall back on partisan lines; a single controversial issue would not overwhelm them. Although Con-Con convened without staff, it eventually

338. See Pub. Act 76-476, 1969 Ill. Laws 1110; see also CORNELIUS, supra note 7, at 144 n.6.
340. Id.; see also Witwer, supra note 183, at XXIX.
342. Witwer, supra note 183, at XXX.
343. Journal of Dec. 8, 1969, in 1 PROCEEDINGS, supra note 305, at 1-4; Delegate Biographies, in 1 PROCEEDINGS, supra note 305, at 853-910; Proposed 1970 Constitution—Official Text with Explanation, in 7 PROCEEDINGS, supra note 305, at 2770; see also CORNELIUS, supra note 7, at 144-47; GERTZ & PISCOTTE, supra note 322, at 10; Witwer, supra note 183, at XXIX.
344. GERTZ & PISCOTTE, supra note 322, at 36.
345. Id. at 36-64. Con-Con did not select a treasurer because the state auditor held all convention funds. Witwer, supra note 183, at XXIX.
346. GERTZ & PISCOTTE, supra note 322, at 67; see also Convention Rules, in 1 PROCEEDINGS, supra note 305, at 845 (providing a listing of all the rules and listing the Con-Con committees at Rules 14 and 15).
347. GERTZ & PISCOTTE, supra note 322, at 67; see also Convention Rules, in 1 PROCEEDINGS, supra note 305, at 845 (providing a listing of all the rules and listing the Con-Con committees at Rules 14 and 15).
348. GOVE & NOWLAN, supra note 185, at 74.
349. GERTZ & PISCOTTE, supra note 322, at 71; GOVE & NOWLAN, supra note 185, at 74.
assembled a staff of approximately one hundred persons. 350 Joseph Pisciotte, the executive director, "oversaw a small army of clerks, lawyers, writers, researchers, committee aides, a parliamentarian, messengers, and doorkeepers. This staff and structure were based on those of other states' conventions and help explain the volume and quality of work that was turned out by the delegates." 351

Con-Con recessed for the holidays and resumed on January 6, 1970. 352 Delegates submitted 582 proposals for constitutional reform. 353 The convention president assigned these proposals to the pertinent substantive committees. 354 Each committee researched, reviewed, and publicly debated these delegate proposals, as well as proposals initiated within the committee itself. 355 Although committees generally met in Springfield, the substantive committees held public meetings in seventeen Illinois cities. 356 A total of seven thousand citizens attended these regional hearings, at which over one thousand witnesses testified. 357 Another eight hundred witnesses testified in Springfield. 358 "The goal of this activity was to give Illinois citizens direct access to convention proceedings, and to keep the convention before the public as an open deliberative body, truly considering the issues as they were presented, not acting on decisions already made in back room party caucuses." 359

The committees then filed majority reports, which presented their recommendations for revising the 1870 Constitution and for proposed articles of a new constitution. 360 Any three committee members could file, as part of the committee report, a minority position with recommendations. 361 Con-Con met as a committee whole, gave full consideration to both the majority and minority positions, and then acted upon the recommendations. 362 Con-Con rules required three readings prior to the final adoption of any constitu-

350. Witwer, supra note 183, at XXIX.
351. GOVE & NOWLAN, supra note 185, at 74. For an extended discussion of Con-Con staff, see GERTZ & PISCiotTE, supra note 322, at 81-87.
352. 1 PROCEEDINGS, supra note 305, at 41 (including journal entry for December 17, 1969, showing adjournment until January 6, 1970); id. at 43 (including journal entry for January 6, 1970).
354. Witwer, supra note 183, at XXIX.
355. Id.
356. Id.
357. CORNELIUS, supra note 7, at 151-52.
358. Id.
359. Id. at 152.
360. Witwer, supra note 183, at XXIX.
361. Id.
362. Id.
tional provision or revision, which was accomplished by a majority of the roll call vote.\textsuperscript{363}

This process, briefly and categorically described, shows at once the potential for achieving a wise result. The built-in safeguards, the public attention focused upon the deliberations, the desire of each delegate to express himself fully and frankly, the general atmosphere that is part of a constitutional convention, all contributed to a result in which virtually every delegate took pride.\textsuperscript{364}

Con-Con adjourned on September 3, 1970.\textsuperscript{365}

D. RATIFICATION

Con-Con submitted to voters a main “package” pertaining to the proposed constitution and four separate proposals: (1) abolishing cumulative voting for multiple-member house districts in favor of single-member districts, (2) choosing between the election and the appointment of judges, (3) abolishing the death penalty, and (4) lowering the voting age to eighteen.\textsuperscript{366}

Con-Con submitted these proposals to voters on the blue ballot in a special referendum scheduled for December 15, 1970.\textsuperscript{367}

Many interest groups supported the proposed constitution, while a few others opposed it. Special interest groups formed to support or oppose cer-

\textsuperscript{363} GERTZ & PISCIO\textsc{t}E, supra note 322, at 102-08; Witwer, supra note 183, at XXIX.
\textsuperscript{364} GERTZ & PISCIO\textsc{t}E, supra note 322, at 103.
\textsuperscript{365} Journal of Sept 3, 1970, in 1 PROCEEDINGS, supra note 305, at 781-818; see GOVE & NOWLAN, supra note 185, at 74. For an extended discussion of the winding up of Con-Con, see GERTZ & PISCIO\textsc{t}E, supra note 322, at 310-26.
\textsuperscript{366} 1970 Constitution as Adopted by the Convention, in 7 PROCEEDINGS, supra note 305, at 2664; Proposed 1970 Constitution—Official Text with Explanation, in 7 PROCEEDINGS, supra note 305, at 2679-80; GOVE & NOWLAN, supra note 185, at 75-76; Witwer, supra note 183, at XXX. Voters would have been asked to choose between Options 1-A (cumulative voting) and 1-B (single-member districts) for the election of state representatives, and between Options 2-A (election) and 2-B (merit selection) for the selection of judges. CORNELIUS, supra note 7, at 155. Additionally, “[i]f neither option received a majority of those voting in the election, the 1870 provisions on each issue would have remained” controlling. CORNELIUS, supra note 7, at 155 n.24.
\textsuperscript{367} Witwer, supra note 183, at XXX. If Con-Con submitted the proposed constitution to voters at the 1970 general election, then the strict amendment provisions of the 1870 Illinois Constitution would govern, and a general election voter who failed to vote on the constitutional proposition would have the effect of a “no” vote. Id. This would pose serious doubts of securing the required majority vote of all those voting in the general election. Id. Therefore, Con-Con decided to hold a separate referendum. Con-Con chose December 15th because the 1870 Illinois Constitution required an election to be held from two to six months subsequent to convention adjournment. Id.
Voters ratified the proposed constitution by an affirmative 56% bipartisan vote. Regarding the separate side issues, voters retained cumulative voting for multiple-member house districts, an elected judiciary, and the death penalty, but rejected lowering the voting age to eighteen. The 1970 Illinois Constitution became effective July 1, 1971, except as provided in its schedules.

This article will now turn from the history of the 1970 Illinois Constitution to its content, explaining how the current constitution fulfills the general purposes of state constitutions.

IV. CONTENT OF THE 1970 ILLINOIS CONSTITUTION

"Many of the changes made in the 1970 Constitution were important; others were relatively minor." Indeed, by the time Con-Con delegates were finished,

hardly an article in the [1870 Constitution] was left unchanged despite the desire to alter only that which needed alteration. The delegates had cut four thousand or so obsolete words out of the old constitution . . . . Their aim was to write a constitution and not a statutory code, as much of the old constitution had been.

Thanks to the efforts of those who prepared the way for Con-Con, and the efforts of Con-Con delegates, the 1970 Illinois Constitution "is considered to be one of the most advanced [state constitutions] in the country." The 1970 Constitution (1) declares and guarantees the rights and liberties of the people, (2) establishes the framework or structure of Illinois state government, and (3) institutes fundamental policy. In addition, the 1970 Illinois Constitution establishes a more enlightened amendment procedure than its 1870 predecessor.

368. Gove & Nowlan, supra note 185, at 76.
369. Id.
370. 1970 Constitution as Approved by the Electorate, in 7 Proceedings, supra note 305, at 2775-85; see also Cornelius, supra note 7, at 161-63; Gove & Nowlan, supra note 185, at 76; Witwer, supra note 183, at XXX.
373. Gertz & Pisciotte, supra note 322, at 12.
376. For checklists of changes contained in the 1970 Illinois Constitution, see Gove & Kitsos, supra note 204, at 114-16 tbl.3; Gertz & Pisciotte, supra note 322, at 12-21.
A constitution begins with a preamble. Generally, a preamble to a state constitution repeats "certain first principles regarding the nature and purposes of government." Preambles have never evoked much political controversy and, strictly speaking, are not operative parts of a constitution. Con-Con delegates likewise viewed a preamble as hortatory and not creating any substantive rights. The preamble to the 1970 Constitution includes the declared aspirations of the 1870 Constitution, but adds aspirations "undreamed of in the middle of the nineteenth century, such as: 'eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual.' They are resounding phrases, reflecting great aims even if they are not operating but simply hortatory, constitutional sermons.

A. DECLARES/RECOGNIZES RIGHTS (ARTICLE I)

Article I of the 1970 Illinois Constitution contains the state bill of rights. The Illinois Bill of Rights fulfills the ancient constitutional purpose of limiting and restraining governmental power. Article I also accords with fundamental principles of American government by expressly recognizing that its "enumeration . . . of certain rights shall not be construed to deny or disparage others retained by the individual citizens of the State." The substantive changes to the Illinois Bill of Rights included several revisions. In addition to guaranteeing that no person shall be deprived of life, liberty, or property without the due process of law, the constitution now expressly guarantees the equal protection of the laws. Con-Con

377. Fellman, supra note 86, at 139; accord Braden & Cohn, supra note 7, at 1 ("[G]enerally, a preamble is intended to be a broad statement of purpose of the document which follows.").


381. Ill. Const. art. I.

382. Id. § 24; see also Helman & Whalen, supra note 379, art. I, § 24, at 503 ("Section 24 is new. It gives explicit recognition to the principle that the Bill of Rights is not an all-encompassing enumeration of a citizen's rights and immunities with respect to government action.").

383. Ill. Const. art. I, § 2; see also Helman & Whalen, supra note 379, art. I, § 2, at 62 ("The addition gives formal expression to a principle already well recognized and applied in Illinois. The Illinois courts have frequently held that persons shall not 'be denied equal protection of the law' as a matter of State law. Of course, the Federal equal protection clause also applies within the State." (citations omitted)).
added to section 6, the section pertaining to searches and seizures, "the right to be secure . . . against unreasonable . . . invasions of privacy or interceptions of communications by eavesdropping devices or other means."384 "Section 6 expands upon the individual rights which were contained in [s]ection 6 of [a]rticle II of the 1870 [Illinois] Constitution and the guaran-
tees of the Fourth and Fourteenth Amendments to the United States Consti-
tution."385

Section 7, concerning indictments and preliminary hearings, was changed in two notable respects. First, this section recognizes that the Illi-
nois General Assembly may not only abolish the grand jury, but by statute may also limit or otherwise alter its use.386 Second, it was recognized that any person accused of a crime punishable by death or imprisonment, and who was not indicted by a grand jury, has the right to a prompt preliminary hearing to establish probable cause.387

Section 12 guarantees the right to a legal remedy.388 This section was changed from its predecessor provision in the 1870 Constitution by replacing the phrase "ought to" in the 1870 Constitution with the word "shall."389 The intent of the word substitution was "to make the statement of the prin-
ciple more emphatic."390 Elmer Gertz, chair of the Bill of Rights Commit-
tee, explained to Con-Con that the provision is strengthened when the rather awkward words "ought to" are removed and the word "shall" is sub-
stituted. And I think the net result is either the meaning is exactly the same or is made more emphatic. It doesn't add any new element. It doesn't create any uncertainty. It makes simply a slight textual change in the public inter-
est.391

385. Helman & Whalen, supra note 379, art. I, § 6, at 3. The protection against unreasonable invasions of privacy "is new and is stated broadly." Id. The protections against unreasonable interceptions of communications by eavesdropping devices or other means are "intended to reach nonmechanical means of eavesdropping, such as listening with the unaided ear and intercepting written communications." Id. at 4. Furthermore, "[s]ection 6 was drafted to prohibit interceptions of communications by using new forms of technology unforeseeable in 1970." Id.
386. Id. § 7.
387. Id.
388. ILL. CONST. art. I, § 12.
389. Compare ILL. CONST. art. I, § 12 ("shall"), with ILL. CONST. of 1870, art. II, § 19 ("ought to").
Its effect, however, has been argued at the convention, and to this day, litigants unsuccessfully contend that the substitution of the word "shall" for "ought to" in the 1970 Illinois Constitution transformed section 12 into a mandatory provision. However, Illinois courts have consistently rejected this contention, holding that this rephrasing "has had, and was meant to have, no substantive effect on Illinois law." Section 12 remains "merely an expression of a philosophy and not a mandate that a certain remedy be provided in any specific form."

Section 14 concerns imprisonment for debt and has a predecessor section in the 1870 Constitution. Con-Con added the following sentence: "No person shall be imprisoned for failure to pay a fine in a criminal case unless he has been afforded adequate time to make payment, in installments if necessary, and has willfully failed to make payment." The purpose of the new provision is to eliminate the situation where indigent defendants are convicted and fined for an offense and are subsequently imprisoned because of an inability to pay the fine, while financially able defendants, in similar cases, are able to pay the fine and go free. Section 15, concerning eminent domain, eliminated the special treatment that land for railroad purposes received under the 1870 Constitution.

According to one member of Con-Con's Bill of Rights Committee: "The most important innovations in the 1970 [Illinois] Bill of Rights are found in the anti-discrimination provisions of Sections 17, 18 and 19. Sections 17 through 19 prohibit different forms of discrimination. Section 17 provides:

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national an-
cestry and sex in the hiring and promotion practices of any employer or in the sale or rental of property.

These rights are enforceable without action by the General Assembly, but the General Assembly by law may establish reasonable exemptions relating to these rights and provide additional remedies for their violation.401

As applied to governmental action, section 17 is redundant because this form of discrimination, "if committed by government, is unquestionably prohibited by the due process and equal protection clauses of the Fourteenth Amendment and the comparable provisions in the 1970 Constitution."402 Due to the pervasive problem of discrimination, Con-Con supplemented the equal protection clause and declared a state constitutional right to be free from discrimination by private persons in employment and in the sale and rental of property. Section 17 prohibits discrimination by private persons wholly apart from state action.403

Further, section 17 "reaches any transaction which involves the sale or rental of personal as well as real property... [and] may therefore come into play not only in the field of housing but in many other types of transactions as well."404 Section 17 limits the legislature to establishing "reasonable exemptions" relating to these rights, and that power "is intended to be narrow."405

Section 18 provides: "The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts."406 Section 18 complements the equal protection guaranty in section 2 by specifically prohibiting gender discrimination.407 Section 18 also complements the prohibition of discrimination in property transactions contained in section 17. Section 18 is narrower than section 17 in that section 18 addresses only governmental action that discriminates on the basis of gender.408 Section 18, however, is broader than section 17 in that section 17 is limited to discrimination in the area of property transactions.409 Also, section 19 provides: "All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and

401. ILL. CONST. art. I, § 17.
403. Id.
404. Weisberg, supra note 400, at 64.
405. Id. at 64-65.
408. Id.
409. Id.
promotion practices of any employer."\textsuperscript{410} When voters ratified the Illinois Constitution in 1970, sections 17 through 19 were "the strongest and broad-est in scope of any state constitutional provisions on the subject of dis-crimination."\textsuperscript{411}

Section 20 is new and provides: "To promote individual dignity, communications that portray criminality, depravity, or lack of virtue in, or that incite violence, hatred, abuse or hostility toward, a person or group of per-sons by reason of or by reference to religious, racial, ethnic, national or regional affiliation are condemned."\textsuperscript{412} Section 20 "is strictly hortatory . . . [and] is not intended to be legally operative or to vest any rights."\textsuperscript{413} The Bill of Rights Committee Report explained:

This provision seeks to encourage moderation in the use of language that impairs the dignity of individuals by dispar-ag ing groups to which they belong. It in no way qualifies or modifies the constitutional rights of free speech and press. The provision creates no private right or cause of action, and it imposes no limitation on the powers of Government. It is purely hortatory, "a constitutional sermon." Like a pre-amble, such a provision is not an operative part of the Constitution. It is included to serve a teaching purpose, to state an idea or principle to guide the conduct of govern-ment and individual citizens.\textsuperscript{414}

As one Con-Con delegate observed: "Section 20 seems likely to invite misunderstanding. The general public may well assume that conduct 'condemned' by the Constitution must be unlawful."\textsuperscript{415} This observation was prophetic. Subsequent to ratification, Illinois courts have had to remind litigants that section 20 does not create a cause of action for disparaging communications that impair individual dignity.\textsuperscript{416} Certainly, reasonable

\begin{footnotes}
\item[410.] ILL. CONST. art. I, § 19.
\item[411.] Weisberg, \textit{supra} note 400, at 64.
\item[412.] ILL. CONST. art. I, § 20.
\item[413.] Helman & Whalen, \textit{supra} note 379, art. I, § 20, at 498.
\item[414.] 6 PROCEEDINGS, \textit{supra} note 305, at 83; Helman & Whalen, \textit{supra} note 379, art. I, § 20, at 498.
\item[415.] Weisberg, \textit{supra} note 400, at 68.
\end{footnotes}
persons may question the utility of section 20.\textsuperscript{417} Perhaps, however, the reflection of Bill of Rights Committee chair Elmer Gertz summarizes the proper view of this section: "I feel strongly enough against the nasty and vicious habit of stereotyping and maligning people to welcome a constitutional sermon against it. What is wrong with telling bigots they are wrong, if you don’t create a cause of action in the process?"\textsuperscript{418}

Section 22 is new, providing as follows: "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed."\textsuperscript{419} By referring to "the individual citizen," section 22 affirms and guaranties an individual right, as well as a collective right, to possess and use arms, including firearms.\textsuperscript{420} Con-Con used both the verb "keep" and the traditional verb "bear" to further emphasize the individual nature of this right, which does not extend to non-citizens.\textsuperscript{421} Section 22, however, does not exempt or remove individual gun ownership from government regulation.\textsuperscript{422} The police power of government expressly limits this right. The language of section 22 incorporates case law holding that the police power extends to the regulation of firearms. In adopting section 22, Con-Con did not intend "to invalidate laws requiring the licensing of gun owners, the registration of firearms[, or the prohibition against carrying concealed weapons."\textsuperscript{423}

Lastly, section 24 is new and provides: "The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the individual citizens of the State."\textsuperscript{424} Section 24 expressly recognizes "the principle that the Bill of Rights is not an all-encompassing enumeration of a citizen’s rights and immunities with respect to government action."\textsuperscript{425}

\textsuperscript{417.} Weisberg, supra note 400, at 68 ("Racial and ethnic jokes have shown no sign of abating in Illinois since the Convention approved Section 20. Its likely fate is to be ignored, except for occasional notice as a relic in a museum of constitutional curiosities.").

\textsuperscript{418.} Gertz, supra note 393, at 170.

\textsuperscript{419.} ILL. CONST. art. I, § 22.

\textsuperscript{420.} Helman & Whalen, supra note 379, art. I, § 22, at 499-500.

\textsuperscript{421.} In 2008, the United States Supreme Court similarly interpreted the Second Amendment to the United States Constitution. See District of Columbia v. Heller, 128 S. Ct. 2783, 2799 (2008).

\textsuperscript{422.} Weisberg, supra note 400, at 67.

\textsuperscript{423.} See Helman & Whalen, supra note 379, art. I, § 22, at 500; Weisberg, supra note 400, at 68; see also Heller, 128 S. Ct. at 2816-17 (recognizing that the individual right to keep and bear arms is subject to reasonable government regulation). For a general discussion of the police power, see James W. Hilliard & Marjorie E. Johnson, \textit{State Practice Acts of Licensed Health Professions: Scope of Practice}, 8 DEPAUL J. HEALTH CARE L. 237, 239-40 (2004).

\textsuperscript{424.} ILL. CONST. art. I, § 24.

\textsuperscript{425.} Helman & Whalen, supra note 379, art. I, § 24, at 503; see supra text accompanying notes 53-57.
Articles II through VII of the 1970 Illinois Constitution establish the framework or structure of Illinois state government. Indeed, the first article following the Bill of Rights establishes the nature of Illinois state government. Article II, captioned "The Powers of the State," declares in section 1: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Further, lest there be any misunderstanding, section 2 declares: "The enumeration in this Constitution of specified powers and functions shall not be construed as a limitation of powers of state government."

Article III concerns "Suffrage and Elections." As discussed, this subject is appropriate in a discussion of the form or structure of state government. Thus, the 1970 Illinois Constitution recognizes the electorate as the primary organ of state governmental power prior to establishing the familiar tripartite governmental structure. Article III, inter alia, restored suffrage to persons convicted of crimes upon completion of their sentences, created a State Board of Elections that would have general administrative and supervisory authority over voter registration and elections throughout the state, and established a general election date.

Article IV concerns the legislature, the Illinois General Assembly, which consists of a Senate and a House of Representatives. There were several substantive changes made in the 1970 Illinois Constitution. For example, the age requirement for state senators is now the same as for state representatives—twenty-one years of age. Additionally, article IV allows for the filling of legislative vacancies by appointment as provided by law. If the federal decennial census requires reapportionment of state legislative districts, and if the Illinois General Assembly cannot agree on a redistricting plan, the federal court will hear the case.

---

426. ILL. CONST. art. II, § 1.
427. Id. § 2. This section merely incorporates the general principle that a state constitution does not grant specified powers and functions to the various branches of state government. "Rather, the Constitution is a limitation on the powers and functions where specified, but state government is not limited as to powers and functions which are not specified." Helman & Whalen, supra note 379, art. II, § 2, at 573.
428. See supra text accompanying notes 105-18.
429. ILL. CONST. art. III, § 2.
430. Id. § 5.
431. The general election "shall be held on the Tuesday following the first Monday of November in even-numbered years or on such other day as provided by law." Id. § 6.
432. ILL. CONST. art. IV, § 1.
433. Id. § 2. Under the 1870 Constitution, state senators had to be at least twenty-five years old, while state representatives had to be only twenty-one years old. ILL. CONST. of 1870, art. IV, § 3.
434. ILL. CONST. art. IV, § 2(d). The 1870 Constitution required the governor to "issue writs of election to fill such vacancies." ILL. CONST. of 1870, art. IV, § 2.
ing plan, article IV provides for reapportionment by a bipartisan commis-
sion with a tie-breaker procedure as a last resort.435

Turning to legislative procedure, article IV includes several innova-
tions. Article IV mandates annual, rather than biennial, legislative ses-
sions;436 allows the legislature itself, as well as the governor, to convene a
special session;437 and requires a two-thirds super-majority to close the pub-
lic legislative sessions, and commission and committee meetings.438 Article
IV replaces the Lieutenant Governor with the President of the Senate as the
presiding officer of the senate.439 Legislative commissions and committees
must now “give reasonable public notice of meetings, including a statement
of subjects to be considered.”440 Article IV establishes a veto procedure for
the governor’s expanded veto power, and in addition to the formerly-held
power to veto entire bills and line-items of appropriation bills, article IV
also grants the governor a “reduction veto” to reduce appropriations and an
“amendatory veto.”441

Article IV, section 14 provides for the impeachment of executive and
judicial officers:

The House of Representatives has the sole power to con-
duct legislative investigations to determine the existence of
cause for impeachment and, by the vote of a majority of the
members elected, to impeach Executive and Judicial offi-
cers. Impeachments shall be tried by the Senate. When sit-
ting for that purpose, Senators shall be upon oath, or af-
firmation, to do justice according to the law. If the Gover-
nor is tried, the Chief Justice of the Supreme Court shall
preside. No person shall be convicted without the concur-
rence of two-thirds of the Senators elected. Judgment shall
not extend beyond removal from office and disqualification
to hold any public office of this State. An impeached offi-
cer, whether convicted or acquitted, shall be liable to
prosecution, trial, judgment and punishment according to
law.442

435. ILL. CONST. art IV, § 3.
436. Id. § 5(a).
437. Id. § 5(b).
438. Id. § 5(c).
439. Id. § 6(b).
440. ILL. CONST. art. IV, § 7(a).
441. Id. § 9.
442. Id. § 14. The 1870 Constitution not only established impeachment procedure in
the legislative article, (ILL. CONST. of 1870, art. IV, § 24), but also separately provided a
legal standard in the executive article: “The governor, and all civil officers of this state, shall
Thus, by its plain language, the current impeachment provision “does not contain any explicit grounds for impeachment, but it simply entrusts the Illinois House with the right to impeach officials in the executive or judicial branch and charges the Illinois Senate with the duty to conduct trials of any impeached official.”

Article V of the 1970 Illinois Constitution, concerning the executive branch of state government, includes several substantive innovations. First, article V moves the election of executive branch officers to even-numbered, non-presidential election years. Second, article V lowers the age requirement for governor from thirty to twenty-five years old, and reduces the state residency requirement from five to three years preceding the election. Third, article V requires that the governor and lieutenant governor run for office as a team, which a voter would elect jointly in the general election. Fourth, article V transfers the canvassing of election returns from the Illinois General Assembly to the Secretary of State. Finally, article V allows the governor to reorganize executive agencies directly answerable to the governor. The lieutenant governor, who had formerly presided over the state senate, now only exercises the powers and performs the duties that the governor delegates and that the law otherwise prescribes.

be liable to impeachment for any misdemeanor in office.” ILL. CONST. of 1870, art. V, § 15 (“Officers liable to impeachment”). At Con-Con, delegates deleted this section in the executive article, preferring to rely on the legislative article as the “all-inclusive impeachment provision.” PROCEEDINGS supra note 305, at 1310-11.


ILL. CONST. art. V, § 2; see also Joseph A. Tecson, Article V—The Executive Article, 52 CHI. B. REC. 79, 80 (1970) (“The purpose is to avoid the ‘coattail effect’ of presidential campaigns and to focus on state issues rather than national issues.”).

Compare ILL. CONST. art. V, § 3, with ILL. CONST. of 1870, art. V, § 5.


ILL. CONST. art. V, § 11.

Compare ILL. CONST. art. V, § 14, with ILL. CONST. of 1870, art. V, § 18. In discussing the historical utility of the office of lieutenant governor, one set of scholars have discerned three arguments for the continued existence of the office: (1) it provides a stepping-stone for politicians who aspire to higher office; (2) if the governor becomes unable to serve, it guarantees a successor from the same political party; and (3) it provides for a suc-
Article VI of the 1970 Illinois Constitution establishes and describes the judicial branch of state government. A mere eight years prior to Con-Con, a successful amendment to the 1870 Constitution completely revised article VI. The Judicial Amendment of 1962 created a much-improved state judicial system, whose structure Con-Con did not alter.\footnote{451}

At the time of the 1962 judicial amendment, Illinois had "a complex and extensive judicial establishment, consisting of a large number of separate and independent units operating without semblance of co-ordination or over-all superintendence."\footnote{452} The 1818 Constitution vested the state’s judicial power "in one supreme court, and such inferior courts as the general assembly shall, from time to time, ordain and establish."\footnote{453} The 1848 Constitution vested the state’s judicial power in a supreme court, in circuit and county courts, and in justices of the peace, and authorized the legislature to establish additional municipal "inferior" courts.\footnote{454} The 1870 Constitution added to this list of constitutionally established courts "police magistrates, and such courts as may be created by law in and for cities and incorporated towns."\footnote{455}

Over the years, the legislature \textit{did} create such "other inferior courts," and all of these courts existed side-by-side.\footnote{456} Jurisdictional and administrative flaws developed. The circuit courts and the Superior Court of Cook County were the only trial courts of original and unlimited jurisdiction. The justice-of-the-peace courts and police magistrate courts exercised limited civil and quasi-criminal jurisdiction, and their decisions were retrievable de

\begin{itemize}
  \item \footnote{450} Because the legislature proposed the constitutional amendment in 1961, some writers have referred to the amendment as "the Judicial Article of 1961." See Harry G. Fins, \textit{Analysis of Illinois Judicial Article of 1961 and Its Legislative and Judicial Implementation}, 11 \textit{DePaul L. Rev.} 185, 188 (1962). However, because voters ratified the proposed amendment in 1962, other writers have alternatively referred to the amendment as the "1962 judicial amendment." See \textbf{Braden \& Cohn, supra note 7}; Rubin G. Cohn, \textit{The Illinois Judicial Department—Changes Effected by Constitution of 1970}, 1971 \textit{U. Ill. L.F.} 355 (1971). Further, because the effective date of the judicial amendment was January 1, 1964, there exist other writers who refer to the amendment as the "1964 Judicial Article." See Wayne W. Whalen, \textit{Article VI—The Judicial Article}, 52 \textit{Chi. B. Rec.} 88 (1970). Since voter ratification was the securing event, this article will refer to the amendment in terms of 1962.
  \item \footnote{451} Cohn, \textit{supra} note 450, at 355.
  \item \footnote{452} Samuel W. Witwer, Jr., \textit{The Illinois Constitution and the Courts}, 15 \textit{U. Chi. L. Rev.} 53, 63 (1947).
  \item \footnote{453} ILL. CONST. of 1818, art. IV, § 1.
  \item \footnote{454} ILL. CONST. of 1848, art. V, § 1.
  \item \footnote{455} ILL. CONST. of 1870, art. VI, § 1. Also, the 1870 Constitution's charter authorization for Chicago included authorization for the establishment of the Municipal Court of Chicago and the abolition of justices of the peace and police magistrates in Chicago. ILL. CONST. of 1870, art. IV, § 34; see \textit{supra} text accompanying note 204.
  \item \footnote{456} \textbf{Braden \& Cohn, supra note 7}, at 329-30; see Witwer, \textit{supra} note 452, at 64.
\end{itemize}
novo in either the county or circuit court at the instance of the losing party.\footnote{BRADEN & COHN, supra note 7, at 329-30; see Witwer, supra note 452, at 64.} Also, probate courts, municipal courts, and village and town courts all exercised a limited jurisdiction. Reviewing courts commonly voided judgments from these courts for lack of jurisdiction, sometimes after years of litigation.\footnote{BRADEN & COHN, supra note 7, at 329-30; see Witwer, supra note 452, at 64.} Additionally, the pre-1962 Illinois judicial system suffered from an administrative flaw.\footnote{BRADEN & COHN, supra note 7, at 330.} Many of these courts operated as independent and virtually autonomous units. For all practical purposes, there was no means to guide or coordinate this massive system of courts. Judicial resources were wasted at some locations, while courts were overburdened in other regions.\footnote{Id. at 332-33; see supra text accompanying notes 227-31.}

The voter ratification of the Gateway Amendment in 1950 "immediately inspired the movement for amendment" of the 1870 judicial article.\footnote{See BRADEN & COHN, supra note 7, at 327; see also supra text accompanying notes 227-31.} In 1951, the legislature created the Judicial Article Revision Commission to study the need for constitutional reform, evaluate suggestions, and draft a proposed constitutional amendment.\footnote{1951 Ill. Laws 362.} In 1952, a joint committee of the Illinois State and Chicago Bar Associations (Joint Bar Committee) began the process by submitting a judicial article amendment. For several years, the Legislative Commission and the Joint Bar Committee sought consensus on several versions of a proposed judicial article, which failed in the legislature. In 1957, the legislature adopted a proposed judicial article that was substantially revised and was the product of many compromises. At the 1958 general election, the proposed judicial article failed to garner the requisite constitutional majority for ratification.\footnote{1957 Ill. Laws 2909; see also BRADEN & COHN, supra note 7, at 327-28; Fins, supra note 450, at 186-88.}

In 1961, the Joint Bar Commission presented a new proposed judicial article to the legislature and resubmitted the proposed judicial article that failed in the 1958 general election.\footnote{Fins, supra note 450, at 188.} From these two proposals emerged a compromise judicial article that did not represent the first choice of any individual or group, but was acceptable "with the hope of improvement in the future."\footnote{Id.} The legislature adopted the proposed judicial article,\footnote{Id.} which voters ratified in the 1962 general election; it became effective January 1, 1964.

\footnotesize
457. BRADEN & COHN, supra note 7, at 329-30; see Witwer, supra note 452, at 64.  
458. BRADEN & COHN, supra note 7, at 329-30; see Witwer, supra note 452, at 64.  
459. BRADEN & COHN, supra note 7, at 330.  
460. Id. at 332-33; see supra note 452, at 64-65.  
461. See BRADEN & COHN, supra note 7, at 327; see also supra text accompanying notes 227-31.  
462. 1951 Ill. Laws 362.  
463. 1957 Ill. Laws 2909; see also BRADEN & COHN, supra note 7, at 327-28; Fins, supra note 450, at 186-88.  
464. Fins, supra note 450, at 188.  
465. Id.  
466. 1961 Ill. Laws 917.
The 1962 judicial article was "viewed in objective professional circles as one of the most far-reaching and constructive reforms in the history of state constitutional efforts to establish a modern and efficient system for the administration of justice."\textsuperscript{467} The amended judicial article improved the Illinois judicial system in at least five areas.\textsuperscript{468}

1. Structure

The 1962 judicial article radically simplified the structure of the Illinois judicial system. Indeed, the amended article began by declaring: "The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts."\textsuperscript{469} This single sentence (1) streamlined the Illinois constitutional judicial structure, (2) withdrew the power of the Illinois General Assembly to add courts to this simplified structure, (3) constitutionally established the appellate court, and (4) abolished the above-described hodgepodge of courts of limited inferior jurisdiction.\textsuperscript{470} Further, the 1962 judicial article conferred upon circuit courts unlimited "original jurisdiction of all justiciable matters," and such powers of review of "administrative action as may be provided by law."\textsuperscript{471} These new trial courts were available to the people of every county.\textsuperscript{472}

2. Administration

It would not have been enough to consolidate the pre-1962 inferior courts into circuit courts without also providing for their administration. The 1962 judicial article vested general administrative authority over all Illinois courts in the Illinois Supreme Court, to be exercised by the Chief Justice with the assistance of an administrative director and staff. Further, the 1962 article vested administrative responsibility over each circuit court in the chief judge of the circuit, subject to the authority of the supreme court.\textsuperscript{473} Considered together, experts were satisfied that these provisions provided a coordinated and efficient general administration of the judicial system, adapted and applied to local conditions.\textsuperscript{474}

\textsuperscript{467} BRADEN \& COHN, supra note 7, at 329.
\textsuperscript{469} ILL. CONST. art. VI, § 1.
\textsuperscript{470} BRADEN \& COHN, supra note 7, at 330.
\textsuperscript{471} ILL. CONST. art. VI, § 9.
\textsuperscript{472} Id. § 8 ("There shall be at least one associate judge from each county.").
\textsuperscript{473} Id. §§ 2, 8.
\textsuperscript{474} BRADEN \& COHN, supra note 7, at 333, 351-52; Chandler, supra note 468, at 659-60.
3. Supreme Court Jurisdiction

Before the 1962 judicial article, the Illinois Constitution imposed upon the supreme court mandatory appellate jurisdiction "in all criminal cases, and cases in which a franchise, or freehold, or the validity of a statute is involved, and in such other cases as may be provided by law." Thus, as a practical matter, the court had little flexibility in controlling or limiting appeals to it. "Indeed, the quality of cases before it for appellate review virtually destroyed its capacity to function efficiently as a true supreme court, dealing with important and novel issues of law." The 1962 judicial article attempted to deal drastically with this problem by severely restricting appeals as of right from the circuit and appellate courts to the supreme court. Further, the supreme court was authorized with the discretion to hear appeals from the circuit and appellate courts. It was hoped that this combination of discretionary jurisdiction and limited mandatory appellate jurisdiction would allow the supreme court to fulfill its function of resolving the issues of greatest importance to the state.

4. Supreme Court Districts

The 1870 Constitution established seven judicial districts, from each of which one supreme court justice would be elected. One of these districts was composed of Lake, Cook, Du Page, Will, and Kankakee Counties. The legislature could alter the boundaries of these districts based on equality of population, as nearly as county boundaries would allow. However, Cook County generated more than half of the state's litigation and possessed approximately half of the state's population. Consequently, there were substantial political and professional pressures to equalize the representation of the single district encompassing Cook County.

475. ILL. CONST. of 1870, art. VI, § 11.
476. BRADEN & COHN, supra note 7, at 340; Cohn, supra note 450, at 357.
477. The 1962 judicial article limited appeals as of right from circuit courts to final judgments in cases that involved the following: (1) revenue, (2) federal or state constitutional questions, (3) habeas corpus, and (4) death sentences. The 1962 judicial article limited appeals as of right from the appellate court to cases in which (1) a federal or state constitutional question arises, and (2) a division of the appellate court certifies that a question of such importance is involved as justifies a decision by the supreme court. ILL. CONST. art. VI, § 5.
478. BRADEN & COHN, supra note 7, at 340-41; Chandler, supra note 468, at 660-62.
479. ILL. CONST. of 1870, art. VI, § 5.
480. Id.
481. BRADEN & COHN, supra note 7, at 337. According to the 1960 census, 59% of the state's population resided in this single judicial district and the remaining 41% resided in the other six judicial districts throughout the state. Chandler, supra note 468, at 663.
disparity in population among these supreme court districts that developed
subsequent to 1870 was deemed "shocking to any sense of fairness."\(^{482}\)

The 1962 judicial article addressed this issue by (1) reducing the num-
ber of supreme court judicial districts from seven to five, (2) establishing
Cook County alone as one of the five districts, and (3) reallocating the
seven supreme court justices so that three justices would be elected from
Cook County, and one justice each from the other four districts.\(^{483}\) Increas-
ing the number of justices elected from Cook County to three, three-
sevenths of the total, was seen "as accepted as a reasonable adjustment."\(^{484}\)

5. **Appellate Court**

The 1870 Constitution provided that, after 1874, the legislature could
create intermediate appellate courts, consisting of circuit court judges. The
legislature could provide by law for the size, locations, and terms of the
appellate court. Further, the 1870 Constitution provided that no judge sit-
ting on the appellate court could review cases that he or she decided, nor
could a judge receive additional compensation for appellate court service.\(^{485}\)
By law, the supreme court appointed judges to serve on the appellate
courts.\(^{486}\) "Having neither a permanent constitutional status nor its own judici-
ary, it lacked the independence and prestige essential to a properly
conceived judicial system."\(^{487}\)

In response, the 1962 judicial article established an appellate court, or-
ganized that court within the five supreme court judicial districts, and pro-
vided for appellate court judges, whose selection was coordinated with that
of supreme court judges.\(^{488}\) It was hoped that the new appellate court would
fulfill "promptly and efficiently its role as the court of final decision in a
large majority of the cases appealed. And the trial courts will no longer

\(^{482}\) Based on the 1960 census, six of the seven supreme court justices represented
only 41% of the state's population, while only one justice represented 59% of the state's
population. This disparity led one expert to conclude: "There is no semblance of equality in
the present apportionment." Chandler, *supra* note 468, at 663.

\(^{483}\) *ILL. Const.* art. VI, §§ 3-4.

\(^{484}\) *BRADEN & COHN, supra* note 7, at 337; *see also* Chandler, *supra* note 468, at
664 ("A fairer apportionment could not be conceived. It conforms with the legitimate inter-
ests for representation in the Supreme Court of both Metropolitan Chicago and the commu-
nities downstate.").

\(^{485}\) *ILL. Const.* of 1870, art. VI, § 11. For details of the pre-1962 appellate courts,
see *ILL. Rev. Stat.*, ch. 37, ¶ 29 (1959) (Appellate Court Act).

\(^{486}\) *ILL. Rev. Stat.* ch. 37, ¶ 29 (1959) ("The supreme court of this state shall
assign twelve of the judges of the circuit court of this state to duty in the appellate courts.");
*see BRADEN & COHN, supra* note 7, at 343; Chandler, *supra* note 468, at 662.

\(^{487}\) *BRADEN & COHN, supra* note 7, at 344.

\(^{488}\) *ILL. Const.* art. VI, § 6.
have the energy of many of their best judges drawn off for work as reviewing judges. 489

Although Con-Con did not alter the state's new judicial structure, Con-Con nevertheless added significant improvements. The 1962 judicial article attempted to alleviate the supreme court's burdensome caseload by drastically restricting the court's mandatory appellate jurisdiction. 490 This remedy, however, proved to be inadequate. One of the post-1962 appeals as of right, cases involving federal or state constitutional questions, did not deter industrious counsel from raising constitutional questions to gain mandatory supreme court review. 491

Section 4 of article VI of the 1970 Illinois Constitution limits appeals as a right from circuit courts to the supreme court to judgments imposing death sentences; all other appeals from circuit courts to the supreme court are left to the supreme court's rulemaking power. 492 "The new provision was drafted to make explicit that the authority over the Supreme Court's jurisdiction is subject only to the Court's rule making powers and not to legislation." 493

Although the 1962 judicial article abolished masters in chancery and other fee officers, elected associate judges and appointed magistrates were retained. 494 The 1970 Illinois Constitution continued the streamlining of the state judiciary by abolishing the distinction between circuit and associate judges, and referring to them as circuit judges. The office formerly known as "magistrate" was renamed "associate judge." 495 The new associate judges are appointed by circuit judges for four-year terms. The supreme court provides by rule for the manner in which circuit judges appoint associate judges and the matters to be assigned to them. 496

Also, the 1962 judicial article inadequately addressed the issue of judicial discipline. It provided for an ad hoc commission of judges to be appointed to hear and determine complaints against judges and to impose sanctions. 497 This commission could be convened only by the chief justice on order of the supreme court, or at the request of the state senate. 498 Soon, however, this scheme proved to be structurally and procedurally inadequate. Structurally, the commission had no continuity of existence or
authority. Procedurally, the 1962 judicial article failed to provide the com-
mission with any investigative, administrative, or enforcement staff.\textsuperscript{499}

The 1970 Illinois Constitution establishes a two-tiered structure de-
voted to judicial discipline. The first tier is a Judicial Inquiry Board, which
receives and investigates grievances regarding a judge and, if warranted,
files a formal complaint against the judge with the Courts Commission,
which is the second tier of this structure. The Courts Commission is respon-
sible for taking appropriate action on the complaint, including removal
from office if justified.\textsuperscript{500}

Article VII of the 1970 Illinois Constitution pertains to local govern-
ment. The local governments of Illinois “may be divided into two catego-
ries: general purpose units, such as counties, townships, and municipalities;
and those for a special purpose such as school, hospital, drainage, and water
districts.”\textsuperscript{501} Under Dillon’s Rule, a local government is deemed to possess
only those powers that were specifically granted to it by the state constitu-
ion or by statute.\textsuperscript{502} Article VII significantly modifies Dillon’s Rule in sev-
eral respects. While article VII’s provisions regarding home rule were “the
most talked-about part of the [a]rticle, there is more to it than that.”\textsuperscript{503} Arti-
cle VII achieves a proper constitutional balance that guarantees local self-
determination in local matters and also guarantees state legislative authority
in matters of common statewide concern.\textsuperscript{504}

The 1870 Constitution granted only municipalities the authority to
make local improvements—for example, to pave streets, install sidewalks,
streetlights, and sewer and water systems—by imposing a special assess-
ment.\textsuperscript{505} The 1870 Constitution further specified that a municipality could
assess and collect only taxes that were “uniform in respect to persons and
property.”\textsuperscript{506}

Article VII grants the power to make local improvements by special
assessment to all counties, regardless of home rule status.\textsuperscript{507} Further, article

\begin{itemize}
\item \textsuperscript{499} Cohn, \textit{supra} note 450, at 379.
\item \textsuperscript{500} ILL. CONST. art. VI, § 15; see Cohn, \textit{supra} note 450, at 385-88; Helman & Whalen, \textit{supra} note 379, art. VI, § 15, at 216-18.
\item \textsuperscript{501} KENNEY & BROWN, \textit{supra} note 3, at 143. Illinois has 102 counties. ILLINOIS BLUE BOOK 421-38 (Jesse White, ed., 2005-2006). At the time of Con-Con, Illinois had approximately 1256 municipalities, 1432 townships, 1350 school districts, and 2313 other special purpose districts. Ebel, \textit{supra} note 154, at 206.
\item \textsuperscript{502} See \textit{supra} text accompanying notes 119-21.
\item \textsuperscript{503} John C. Parkhurst, \textit{Article VII—Local Government}, 52 CHI. B. REC. 94 (1970).
\item \textsuperscript{504} See \textit{supra} text accompanying note 127.
\item \textsuperscript{505} ILL. CONST. of 1870, art. IX, § 9. Section 9 did not “vest the authorities of coun-
ties or townships with power to make local improvements by special assessment.” People \textit{ex rel.} Van Slooten v. Bd. of Comm’rs, 77 N.E. 914, 915 (ILL. 1906).
\item \textsuperscript{506} ILL. CONST. of 1870, art. IX, § 9.
\item \textsuperscript{507} ILL. CONST. art. VII, § 7.
\end{itemize}
VII abandons the "uniformity" concept by expressly granting to all counties and municipalities the authority "to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services."508 Under article VII, "for the first time in Illinois, municipalities and counties may impose additional property taxes on certain areas to pay for special services or special improvements which benefit only a part of the whole district."509

Also, under the 1870 Constitution, units of local government were required to obtain statutory authorization for each cooperative venture.510 Article VII provides for self-executing, intergovernmental cooperation. Under section 10 of article VII, units of local government may contract or otherwise associate among themselves, with the State, with other states and their units of local government, with school districts, and with the federal government. Through these arrangements, units of local government may share services, combine their powers and functions, and use their collective resources, revenues, and credit to provide local services and solve local problems, in any manner not prohibited by statute or ordinance.511 Con-Con's Committee on Local Government "was confident that this is the most acceptable, economical and efficient approach to the solution of regional and area problems that extend beyond corporate boundaries, and are too big or too complex to be solved by any single unit of local government, acting alone."512

Undisputedly "one of the most novel provisions" in the 1970 Illinois Constitution, section 6 of article VII constitutes a "bold, even revolutionary" grant of home rule powers to qualifying municipalities.513 As the Illi-

508. Id. § 6(l)(2) (home rule units); id. § 7(6) (counties and municipalities other than home rule units).
509. Parkhurst, supra note 503, at 95. For example, a county can provide fire or police protection to a new residential development and tax only the property benefited by the service. The area taxed need not uniformly include the widely dispersed farms in the county that do not need special fire or police protection, for which they should not be charged. Id.
511. ILL. CONST. art. VII, § 10.
512. Parkhurst, supra note 503, at 97.
nois Supreme Court explained, the concept of home rule adopted under the provisions of the 1970 Illinois Constitution "was designed to drastically alter the relationship which previously existed between local and State government. Formerly, the actions of local governmental units were limited to those powers which were expressly authorized, implied or essential in carrying out the legislature’s grant of authority." Prior to 1970, Illinois adhered to Dillon’s Rule, which provided that local governments possessed only those powers that the legislature granted to them.

Section 6, however, reverses the legal philosophy of Dillon’s Rule. Section 6(a) of article VII provides:

A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

Section 6(a) was intended to grant home rule units the broadest powers possible. Section 6 additionally provides: “Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the Illinois General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State’s exercise to be exclusive.” Further, “[p]owers and functions of home rule units shall be construed liberally.” As a result of these constitutional provisions, home rule units draw their power to regulate for the protection of public safety directly from the constitution. This power does not depend on


516. GOVE & NOWLAN, supra note 185, at 75; see supra text accompanying notes 119-25.
517. ILL. CONST. art. VII, § 6(a).
518. Helman & Whalen, supra note 379, art. VII, § 6, at 266.
519. ILL. CONST. art. VII, § 6(i).
520. Id. § 6(m).
any grant of authority by the Illinois General Assembly, as was the case prior to 1970. Home rule units now possess the same powers as the state legislature, except where the legislature limits such powers.\textsuperscript{521} "The long and short of it [article VII] was that local government in Illinois had clearly entered a new age."\textsuperscript{522}

C. INSTITUTES FUNDAMENTAL POLICY (ARTICLES VIII-XIII)

Articles VIII through XIII of the 1970 Illinois Constitution instituted several fundamental policies of state government. Article VIII, the finance article, is new, having no predecessor in the 1870 Constitution. The Committee on Revenue and Finance at Con-Con explained that, in the 1870 Constitution, several provisions pertaining to various aspects of the state's fiscal procedures appear in the legislative and executive articles; however, the committee concluded that many of these provisions were archaic and restrictive. The committee proposed, which Con-Con adopted and the people ratified, a relatively simple and flexible finance article, which allocated the responsibility for fiscal decision-making between the executive and legislative branches of state government and opened the entire fiscal process of state and local governments to public scrutiny.\textsuperscript{523}

Article VIII declares that public funds are to be used only for public purposes, and that state financial records are public records available for public inspection.\textsuperscript{524} Article VIII directs the governor to prepare and submit to the Illinois General Assembly an annual balanced budget.\textsuperscript{525} The article creates the position of auditor general, who is appointed by the legislature pursuant to a three-fifths vote of each house for a ten-year term. The auditor general shall audit state funds and report his or her findings to the General Assembly and the governor.\textsuperscript{526} Also, article VIII requires the legislature to enact laws prescribing the manner in which local governments account and report the use of public funds.\textsuperscript{527}

Article IX pertains to revenue. The first sentence of the revenue article provides: "The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution."\textsuperscript{528} This sentence establishes long-recognized political philosophy as constitutional

\textsuperscript{521.} Triple A Servs., Inc. v. Rice, 545 N.E.2d 706, 711 (Ill. 1989); Kanellos v. County of Cook, 290 N.E.2d 240, 243 (Ill. 1972).
\textsuperscript{522.} GERTZ & PISCOTT, supra note 322, at 261.
\textsuperscript{524.} ILL. CONST. art. VIII, § 1.
\textsuperscript{525.} Id. § 2.
\textsuperscript{526.} Id. § 3.
\textsuperscript{527.} Id. § 4.
\textsuperscript{528.} Id. art. IX, § 1.
policy. The State possesses the sovereign power to tax. This inherent power resides in the legislature; the power of the legislature to tax is plenary and is restricted only by the federal and state constitutions.529 This constitutional policy is intended to foreclose any judicial limitation of the legislature’s inherent power to impose any type of tax.530 The only constitutional limitations on the legislature’s power to tax are expressly stated in the constitution, and they are exclusive.531

Article IX contains several notable provisions. The article provides that the Illinois General Assembly may grant property tax exemptions only for two classes of property: (1) property owned by state and local governments; and (2) property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery, and charitable purposes.532 The article establishes safeguards with respect to real estate tax sales.533 Also, article IX permits state debt within prescribed constitutional limitations.534

Article X pertains to education. The education article of the 1870 Constitution required the legislature to establish a system of “good common school education,” that was “thorough and efficient,” available to all Illinois children, and free.535 In 1958, the Illinois Supreme Court construed the term “common school education” to imply the capacity as well as the right to receive a common school education. The court concluded that then-existing legislation did not require the state to provide a free educational program, as part of the common school system, for mentally incompetent children who were unable to receive a “good common school education.”536 The education article of the 1870 Constitution received little criticism because most legal experts had not given attention to the topic; however, “the most insistent demands for change came from educational experts, who had long been seeking various reforms [for] which they . . . hoped a constitutional convention could accomplish.”537

531. Helman & Whalen, supra note 379, art. IX, § 1, at 457.
532. ILL. CONST. art. IX, § 6.
533. Id. § 8.
534. Id. § 9.
535. ILL. CONST. of 1870, art. VIII, § 1.
537. BURESH, supra note 6, at 4.
Con-Con's Committee on Education found that the 1870 Constitution's education article inadequately expressed the importance of education and "its critical influence on the common welfare."\(^{538}\) The committee agreed with many witnesses who urged that the education article "be in harmony with the rising expectations of the people of Illinois for the maximum development of persons of every level of competence, highest to lowest, and be consistent with the expansion of educational experiences that may occur in the decades ahead."\(^{539}\)

Section 1 of article X of the 1970 Illinois Constitution provides:

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be other such free education as the General Assembly provides by law.

The State has the primary responsibility for financing the system of public education.\(^{540}\)

The Committee on Education recognized that the constitutional objective of the first paragraph "would require expansion beyond the traditional public school programs."\(^{541}\) The committee explained that the first paragraph "recognizes the need of the person with a physical handicap or mental deficiency who nevertheless is educable. Adults, too, may profit from further formal education. The objective is to provide each person an opportunity to progress to the limit of his ability."\(^{542}\) Regarding the third paragraph, Con-Con proceedings conclusively establish that it was not intended to impose a specific command to or obligation on the Illinois General Assembly. Rather, its purpose was to state only a commitment, purpose, goal,

\(^{538}\) 6 PROCEEDINGS, supra note 305, at 233.
\(^{539}\) Id.
\(^{540}\) ILL. CONST. art. X, § 1.
\(^{541}\) 6 PROCEEDINGS, supra note 305, at 234.
\(^{542}\) Id.; Elliot v. Bd. of Educ., 380 N.E.2d 1137, 1142 n.3 (Ill. App. Ct. 1978) ("Some commentators have noted that article X, section 1 of the Constitution of 1970 supersedes the opinion in Haas."); see Helman & Whalen, supra note 379, art. X, § 1, at 603. However, the Illinois Supreme Court has held that the first paragraph "is a statement of general philosophy, rather than a mandate that certain means be provided in any specific form." Pierce v. Bd. of Educ., 370 N.E.2d 535, 536 (Ill. 1977).
or objective.\textsuperscript{543} Also, article X creates a State Board of Education, which shall appoint a chief state educational officer.\textsuperscript{544}

Article XI of the 1970 Illinois Constitution pertains to the environment. Section 1 declares: “The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.”\textsuperscript{545} By the time of Con-Con, the right of each person to enjoy a healthful environment had been recognized in several state constitutions and state legislation.\textsuperscript{546} Section 2 of article XI further provides: “Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.”\textsuperscript{547} This provision supersedes the judicially imposed requirement in litigation that the complainant must have suffered “special damage” in order to have standing to bring an action against alleged polluting activities or persons, or to protect the environment.\textsuperscript{548} The Committee on General Government, which proposed article XI, emphasized that this article does not establish a new remedy; rather, it merely declares that individuals have standing to assert violations of this right.\textsuperscript{549}

Article XII institutes the state militia.\textsuperscript{550} “Article XIII is a ‘catch all’ for miscellaneous provisions. Some of these provisions are carryovers from the old document, some are revisions and some are completely new.”\textsuperscript{551} Section 2 of article XIII requires all candidates for, or holders of, state offices and all members of constitutionally created boards and commissions to file a verified statement of their economic interests as provided by law. Further, the legislature by law may impose a similar requirement upon candidates for or holders of local government offices.\textsuperscript{552} Section 4 of article XIII abolishes the common law doctrine of sovereign immunity, except as
the legislature may provide by law. The remaining sections of article XIII pertain to various aspects of public concern: disqualification for public office, oath or affirmation of office, pension and retirement rights, corporations, public transportation, and branch banking.

D. PROVIDES REASONABLE AMENDMENT PROCEDURE (ARTICLE XIV)

Lastly and importantly, article XIV of the 1970 Illinois Constitution significantly liberalizes the constitutional amendment procedure to facilitate revision by constitutional convention. Indeed, the history of the 1870 Constitution and the efforts leading to Con-Con demonstrated that the amendment procedure of the 1870 Constitution was too restrictive.

Con-Con retained the two amending methods in the "post-Gateway" 1870 Constitution: legislative proposal and constitutional convention, but with some variation in the prior procedures and requirements to ease the requisite majorities and to impose safeguards against hasty and ill-considered action. Con-Con reduced the number of legislators required to propose a constitutional convention or a constitutional amendment from a two-thirds majority to a three-fifths majority. A convention will be proposed or an amendment will be approved if, on a separate ballot, voters approve by three-fifths of those voting on the issue or by a majority of those voting at the election. Further, once a constitutional convention submits a proposal to the voters, only a simple majority vote is required to ratify. Con-Con reasoned that the three-fifths requirement to approve a convention call, the special election to choose convention delegates, the lengthy deliberative process of a constitutional convention, the required compromise on a multiplicity of issues, and the publicity and public involvement that a convention generates, all contribute in guarding against ill-considered ac-


554. ILL. CONST. art. XIII, §§ 1, 3, 5-8.

555. *See supra* text accompanying notes 202-33.

556. 7 PROCEEDINGS, *supra* note 305, at 2267.

557. ILL. CONST. art. XIV, §§ 1 (calling for a constitutional convention), 2 (proposing an amendment by General Assembly); *see also* Peter A. Tomei, *Articles III and XIV and Separate Question No. 4—Suffrage, Elections and Constitutional Revision*, 52 CHI. B. REC. 71, 74 (1970) ("Under the three-fifths test, 11 of the 15 constitutional amendments submitted to the voters since 1950 would have passed, as opposed to 6 out of 15 that actually were adopted.").

558. ILL. CONST. art. XIV, § 1(g).
tion and, consequently, make a simple majority voter ratification require-
ment reasonable.559

Additionally, article XIV expands the convention method of constitu-
tional amendment by including the periodic and automatic placement on the
ballot of the question of whether a constitutional convention shall be
called.560 A convention call must be submitted to voters at least once every
twenty years.561 "This provision is based on the premise that the people
should have a recurrent opportunity to decide whether they want to make a
wide-ranging review of the structure and organization of their govern-
ment."562

The foregoing discussion of the 1970 Illinois Constitution demon-
strates that the current fundamental document of Illinois does what a state
constitution is supposed to do—i.e., (1) declare and guarantee the rights and
liberties of the people, (2) establish the framework or structure of Illinois
state government, and (3) institute fundamental policy. Also, the 1970 Illi-
nois Constitution provides for a more enlightened amendment procedure
than its 1870 predecessor.

The efficacy of the 1970 Illinois Constitution's amendment procedure
can be measured by its adaptability. Indeed, the efficacy of the constitution
as a whole can be measured by examining the amendments to the 1970 Illi-
nois Constitution.

V. ADAPTABILITY OF 1970 ILLINOIS CONSTITUTION

"The test of time has shown that the package approved in 1970 seems
to be working for the people and the special interests of Illinois; no major
efforts have been initiated to discard it."563 A constitutional amendment
initiated in the Illinois General Assembly must receive a three-fifths ap-

559. Tomei, supra note 557, at 75.

Con-Con recognized that the general assembly would unlikely propose changes
to the constitutional article pertaining to itself (i.e., article IV). Accordingly, section 3 of
article XIV provides a very limited voter initiative for proposing amendments to article IV.
Voters may propose amendments to article IV by a petition signed by at least 8% of the total
votes cast for governor in the preceding election. Such a proposed amendment must be lim-
ited to matters that are both structural and procedural and must include substantive matters.
Also, the subject matter of the proposed amendment must be found in the legislative article.
ILL. CONST. art. XIV, § 3; see Chi. Bar Ass'n v. State Bd. of Elections, 641 N.E.2d 525, 528
(Ill. 1994); Chi. Bar Ass'n v. State Bd. of Elections, 561 N.E.2d 50, 55 (Ill. 1990); Coal. for
Political Honesty v. State Bd. of Elections, 359 N.E.2d 138, 144 (Ill. 1977); Helman &
Whalen, supra note 379, art. XIV, § 3, at 686.

560. 7 PROCEEDINGS, supra note 305, at 2267, 2278-79.

561. ILL. CONST. art. XIV, § 1(b).

562. Tomei, supra note 557, at 74.

563. GOVE & NOWLAN, supra note 185, at 76.
proval in each house, and voter ratification by either three-fifths of those voting on the amendment or by a majority of those voting in that election.\textsuperscript{564} As of this writing, the Illinois General Assembly has proposed seventeen amendments to the 1970 Illinois Constitution and, of these, voters have ratified ten. Serving the general purposes of state constitutions, these amendments (1) declare and guarantee the rights of the people, (2) establish the framework or structure of government, and (3) institute fundamental policy.\textsuperscript{565}

A. RIGHTS

The legislature has proposed four amendments to article I of the 1970 Illinois Constitution—the Illinois Bill of Rights—all involving criminal procedure. The third amendment,\textsuperscript{566} ratified in 1982, amended section 9 to add to the list of nonbailable offenses those offenses for which a life sentence could be imposed.\textsuperscript{567} The fourth amendment, ratified in 1986, further expanded the list of nonbailable offenses.\textsuperscript{568} The seventh amendment, ratified in 1992, added “Crime Victim’s Rights” to the Illinois Bill of Rights.\textsuperscript{569} This section establishes that crime victims have rights including the right to communicate with the prosecution, notification of court proceedings, make a statement to the court at the defendant’s sentencing, and restitution.\textsuperscript{570} Further, the section clarifies that the Illinois General Assembly may enact enforcement legislation,\textsuperscript{571} and that the section or any supporting legislation shall not “be construed as creating a basis for vacating a conviction or a ground for appellate relief in any criminal case.”\textsuperscript{572} The eighth amendment, ratified in 1994, amended section 8—“Rights after Indictment”—to substitute a defendant’s right “to be confronted with the witnesses against him or her” for the original right “to meet the witnesses face to face.”\textsuperscript{573}

\textsuperscript{564} ILL. CONST. art. XIV, § 2.
\textsuperscript{565} See supra text accompanying note 73.
\textsuperscript{566} The Illinois Blue Book lists in chronological order the ratified amendments to the Illinois Constitution. ILLINOIS BLUE BOOK, supra note 501, at 533-34, 566-67.
\textsuperscript{567} ILL. CONST. art. I, § 9 (amended 1982).
\textsuperscript{568} Id. (amended 1986) (expanding the list of nonbailable offenses to include felony offenses “when the court, after a hearing, determines that release of the offender would pose a real and present threat to the physical safety of any person”).
\textsuperscript{570} Id.
\textsuperscript{571} Id. § 8.1(b).
\textsuperscript{572} Id. § 8.1(d).
\textsuperscript{573} Id. § 8 (amended 1994).
B. STRUCTURE

The legislature has proposed a total of five amendments to the 1970 Illinois Constitution pertaining to the framework or structure of Illinois state government. Of these, voters have ratified four. The first amendment, ratified in 1980, is popularly known as the “Cutback Amendment.” It amended the legislative article to reduce the size of the state house of representatives and eliminate cumulative voting. The fifth amendment, ratified in 1988, amended the article on suffrage and elections to lower the voting age from twenty-one to eighteen years of age and lowered the voting residency requirement from six months to thirty days. The ninth amendment, ratified in 1994, amended the legislative article to encourage the Illinois General Assembly to enact legislation sooner. Bills passed after May 31 are not effective until June 1 of the following year, unless passed by a three-fifths supermajority. The tenth amendment, ratified in 1998, amended the judicial article to add citizens, appointed by the governor, to the Illinois Courts Commission.

A proposed amendment relating to the structure of state government failed. In 1974, the legislature proposed an amendment in response to a perceived abuse of the amendatory veto. The proposed amendment would have significantly curtailed the amendatory veto as Illinois governors had historically used it. Governor Ogilvie used the amendatory veto “vigorously from the time it was first available to him in 1971. Governor Walker continued that practice in 1973 and thereafter, and he gave the amendatory veto a new spin when he held an important bill hostage to secure approval of changes he had proposed in another.” The proposed amendment would have restricted the governor’s power to return bills to the legislature to “technical errors or matters of form.” The proposed amendment failed to receive approval from a constitutional majority of those voting in the 1974 November general election.

574. GOVE & NOWLAN, supra note 185, at 77; ILLINOIS BLUE BOOK, supra note 501.
575. ILL. CONST. art. IV, §§ 1-3 (amended 1980).
576. Id. art. III, § 1 (amended 1988).
577. Id. art. IV, § 10 (amended 1994).
578. Id. art. VI, § 15 (amended 1998).
580. KENNEY & BROWN, supra note 3, at 84. Although the governor may not use the amendatory veto to replace the bill passed by the legislature with an entirely new bill, the governor is not limited to correcting formal or technical errors. Kane County v. Carlson, 507 N.E.2d 482, 493 (Ill. 1987).
582. RYAN’S ILLINOIS BLUE BOOK, supra note 3, at 559.
C. POLICY

The legislature has proposed a total of eight amendments pertaining to the fundamental policy of Illinois state government. Of these, voters have ratified two. The second amendment, ratified in 1980,\footnote{ILL. CONST. art. IX, § 8 (amended 1980); see ILLINOIS BLUE BOOK, supra note 501, at 533.} and the sixth amendment, ratified in 1990,\footnote{ILL. CONST. art. IX, § 8 (amended 1990); see ILLINOIS BLUE BOOK, supra note 501, at 533.} both modified the availability and parameters of delinquent property tax sales. Voters, however, have rejected six additional proposed amendments relating to Illinois fundamental policy.\footnote{See infra notes 586-92 and accompanying text.} In 1978, the legislature proposed two amendments to the revenue article. One proposed amendment would have deleted the constitutional mandate that the legislature abolish the personal property tax as of January 1, 1979.\footnote{80th Ill. Gen. Assem., 1978 Sess., 2 Legis. Synopsis & Dig. 1808-09; see ILL. CONST. art. IX, § 5(c).} Another proposed amendment would have allowed the legislature to grant a property tax exemption to property used for veterans' organizations.\footnote{80th Ill. Gen. Assem., 1978 Sess., 2 Legis. Synopsis & Dig. 1815-17; see ILL. CONST. art. IX, § 6.} Voters failed to ratify both proposed amendments at the 1978 November general election.\footnote{RYAN'S ILLINOIS BLUE BOOK, supra note 3, at 559.} In 1984 and again in 1986, the legislature proposed an amendment that would have allowed the grant of a veterans' organization property tax exemption.\footnote{House J. Res. Const. Amend. 2, 1984 Ill. Laws 4529; S. J. Res. Const. Amend. 11, 1986 Ill. Laws 4900.} In 1988, voters failed to ratify the proposed amendments.\footnote{RYAN'S ILLINOIS BLUE BOOK, supra note 3, at 559.} In 1992, voters failed to ratify a proposed amendment to the education article that would have declared education to be a fundamental right, guaranteed equal educational opportunity, and established that “[t]he State has the preponderant financial responsibility for financing the system of public education.”\footnote{S. J. Res. Const. Amend. 130, 1992 Ill. Laws 4582; see ILL. CONST. art. X, § 1; RYAN'S ILLINOIS BLUE BOOK, supra note 3, at 559.}

Generally, constitutional changes are “the result of many interacting social, economic, and political forces. And conversely, the blocking of constitutional changes will be the result of the interactions of other social, eco-
The successful and unsuccessful attempts to amend the 1970 Illinois Constitution clearly exemplify this truism. Considering that the legislature has proposed only seventeen constitutional amendments, of which voters have ratified only ten, constitutional amendment in Illinois apparently is neither too easy nor too difficult.

VI. 1988 AUTOMATIC CONVENTION CALL

"The strongest measure of the value of the staying power of the 1970 convention is that voters rejected an opportunity to call for a new convention." Section 1(b) of article XIV of the 1970 Illinois Constitution provides: "If the question of whether a Convention should be called is not submitted during any twenty-year period, the Secretary of State shall submit such question at the general election in the twentieth year following the last submission." The Illinois Attorney General opined that the first automatic convention call should be submitted to voters in 1988, rather than 1990. The attorney general explained that a convention call was last submitted to voters in 1968, which resulted in Con-Con; therefore, 1988 would be the twentieth year following the last submission.

The Illinois General Assembly convened a "Committee of Fifty" to re-examine the Illinois Constitution. The committee was a voluntary organization composed of the governor, the president of Con-Con, and others including scholars, government officials, and legal experts. The legislature's mandate to the committee was to help advise the legislature and the public on constitutional issues. The legislature directed the Committee of Fifty to reconvene Con-Con delegates to assess the 1970 Illinois Constitution, hold open meetings throughout the state for discussion of constitutional issues, and prepare public reports with commentary and recommendations on government structure and operation. The Committee of Fifty fulfilled its mission. It reconvened Con-Con delegates, who did not express any sentiment in favor of another constitutional convention. Also, in the spring of 1988, the committee held eight public meetings throughout the state.

593. Bartley, supra note 167, at 22.
594. Gove & Nowlan, supra note 185, at 77.
595. ILL. CONST. art. XIV, § 1(b).
597. See supra text accompanying note 3.
599. Id.
600. See Gove & Nowlan, supra note 185, at 77; Kenney & Brown, supra note 3, at 237; Ronald C. Smith, Another Con-Con? Just Say "No," 77 ILL. B.J. 82, 96 n.88 (1988). To be sure, Con-Con delegates expressed concern regarding the document that they drafted. They generally agreed that the State had failed in implementing the anti-discrimination provisions in the Bill of Rights (ILL. CONST., art. I, §§ 16-18), and in undertaking the pri-
Further, during this time, various interest groups expressed opposition to a convention for various reasons. Some groups believed that the 1970 Constitution had served the state well; other groups questioned the cost of another convention. Convention opponents eventually formed a “Committee to Preserve the Illinois Constitution.” This broad-based coalition included historically unlikely allies, such as the Illinois State Chamber of Commerce and the Illinois AFL-CIO. This coalition raised approximately $600,000 to fund its anti-convention campaign, and spent most of it for television and radio advertising during the week prior to the election. The committee emphasized the following dangers of a convention: the guarantee of equal rights to women, minorities, and the handicapped might be lost; and that divisive issues, e.g., abortion, gun control, school prayer, would dominate convention proceedings. At the 1988 November general election, voters rejected the convention call by approximately a three to one margin of those who voted on the question.

VII. 2008 AUTOMATIC CONVENTION CALL

The reasons expressed in 1988 for rejecting a convention call remained valid against a 2008 convention call. One must first consider Con-Con and its product, the 1970 Illinois Constitution. Con-Con must be recognized as a unique event in Illinois political history:

The 1970 Con-Con was a success for a great many reasons including the social and political milieu of the late [1960s], a supportive legislature, over 20 years of scholarly research and debate, good luck, a balanced body of delegates, an overriding concern that the Illinois Constitution shed 100 years of rags and chains, and a proposed constitution which was widely hailed as balanced and progressive.
Indeed, Con-Con’s ultimate product, the 1970 Illinois Constitution, was a substantial improvement over its 1870 predecessor.

Most importantly, the 1970 convention did what its proponents promised it would do. It eliminated the defects of the 1870 Constitution, reordered the delicate balances within Illinois government, reformed and strengthened each branch of government, improved the bill of rights, delegated power to major municipalities, and maintained the status quo where either desirable or expedient. The 1970 Constitution provided Illinois with a modern, flexible, and progressive constitution—a constitution which was designed to last for generations and not just for the passing hour.608

Any perceived flaws in the 1970 Illinois Constitution exist because the document was the result of much compromise between many competing interests. In sum, the 1970 Illinois Constitution “is a sound document which by no means requires the type of overhaul which a convention would be inclined to make.”609

As early as the autumn of 2007, magazines and newspapers began to remind—or inform—Illinois voters of the upcoming 2008 automatic convention call.610 During the following months, many articles explained the “pros” and “cons” of a 2010 state constitutional convention.611 Proponents contended that only constitutional revision could satisfy their grievances against allegedly unnecessary township government,612 excessive gubernatorial power,613 inequitable taxation and other revenue practices,614 and ex-

608. Id. at 87.
609. Id. at 96.
cessive accumulation of power by a few government leaders. A constitutional revision could have established sought-after structural changes such as referendum and recall, term limits, and the appointment rather than the election of judges, and found solutions to any number of various causes.

However, the ability to correct any perceived flaws in the 1970 Illinois Constitution through the convention process was weighed against the disadvantages and risks of a constitutional convention. Con-Con delegates were each paid a $5000 base salary in eight monthly installments of $625, a $75 per diem salary plus modest travel, lodging, and meal expenses at the prescribed government rate, and a $120 postage allotment. Alone, this initial appropriation totaled $2,083,849. Costs of statewide primary and run-off elections for Con-Con delegates, salaries and expenses of convention staff, housing, statewide public hearings and mailing of the official explanation, and the December 1970 referendum, constituted additional expenses. The grand total appropriated was $14,764,778, of which $13,924,063 was spent. It is axiomatic that, accounting for inflation, these expenses would be much greater today.

To economize in planning a future state constitutional convention generally, the legislature could pay delegates low salaries, which would attract only a limited range of delegate candidates and discourage delegate diversity, as occurred at the 1920 Fifth Illinois Constitutional Convention. Those delegates who were independently wealthy were unable or unwilling to devote their time exclusively to the proceedings. Conversely, those delegates who were not wealthy were required to continue to pursue their normal livelihoods as a matter of economic necessity.


620. Smith, supra note 600, at 86.

621. Opponents of a 2010 constitutional convention estimated its projected cost as high as $78 million; however, proponents estimated the projected cost as low as $23 million. See, e.g., Ferrell, supra note 611; Guinane, supra note 610; Pearson, supra note 611.

622. Smith, supra note 600, at 92.

623. Tomei, supra note 295, at 183-84.
costs of a constitutional convention, the legislature could provide for minimal staff and other resources, but this would engender such inefficiency and delay in the proceedings as to induce voter apathy or hostility.624

A 2010 constitutional convention not only had the above-described disadvantages, but also had attendant risks. It could have been either a "runaway" or a legislature-controlled "rubber-stamp" convention. Either type would have done some "serious surgery" on many constitutional provisions that resulted from compromise between interests, ideologies, and groups statewide. These disadvantages and risks would have produced the ultimate risk—voter rejection of a proposed constitution.625 "Given the risks, the realities and the expense, the conclusion [was] . . . apparent. Just say 'No.'"626

Opponents of a 2010 constitutional convention, including labor unions and business organizations, formed "The Alliance to Protect the Illinois Constitution."627 Members of the Alliance included the Illinois AFL-CIO, the Illinois Business Roundtable, Illinois Chamber of Commerce, Illinois Retail Merchants Association, Illinois Trial Lawyers Association, and the League of Women Voters of Illinois.628 This collection of diverse special interests agreed that the solution to the problems of state government was not convening a constitutional convention, but rather to elect better leaders.629 The Alliance was expected to raise approximately $3 million for its campaign in opposition to a convention.630

A. "MISLEADING" NOTICE AND EXPLANATION OF PROPOSED CALL

Unfortunately, by forgetting the Illinois constitutional history as herein recounted, the political debate regarding the 2008 automatic convention call spilled over into the courts. Whenever circumstances require a convention call, the Illinois Secretary of State is required by law to include on the convention call ballot a notice and a brief explanation of the proposed call.631 Further, at least one month prior to the election, the Secretary of State must

624. Smith, supra note 600, at 93.
625. Id. at 92-94.
626. Id. at 96.
628. Id.
629. Id.
631. 5 ILL. COMP. STAT. ANN. 25/1 (West 2006); 10 ILL. COMP. STAT. ANN. 5/16-6 (West 2006).
publish this notice and explanation in local newspapers and also in a pamphlet that is mailed to every mailing address in the state.632

Pursuant to these statutory requirements, the Secretary of State mailed to voters the explanation of the 2008 proposed call, which would appear on the ballot as follows:

Explanation of Proposed Call

This proposal deals with the call for a state constitutional convention. The last such convention was held in 1969-70, and a new Constitution was adopted in 1970. The 1970 Illinois Constitution requires that the question of calling a convention be placed before the voters every 20 years. In 1988 the electors rejected the call for a constitutional convention, with 75% voting against calling a convention and 25% voting in favor of calling a convention. If you believe the 1970 Illinois Constitution needs to be revised through the convention process, vote “YES” on the question of calling a constitutional convention. If you believe that a constitutional convention is not necessary, or that changes can be accomplished through other means, vote “NO” on the calling of a constitutional convention.633

On the ballot, this explanation was preceded by the following statutory language:

NOTICE

THE FAILURE TO VOTE THIS BALLOT IS THE EQUIVALENT OF A NEGATIVE VOTE. (THIS IS NOT TO BE CONSTRUED AS A DIRECTION THAT YOUR VOTE IS REQUIRED TO BE CAST EITHER IN FAVOR OF OR IN OPPOSITION TO THE PROPOSITION HEREIN CONTAINED.)634

This notice is required by section 16-6 of the Election Code, which was enacted in 1949 as part of the drive to enact the “Gateway Amendment” to the 1870 Illinois Constitution.635

632. 5 ILL. COMP. STAT. ANN. 25/1 (West 2006).
634. See 10 ILL. COMP. STAT. ANN. 5/16-6 (West 2006).
635. See supra text accompanying notes 227-31.
On September 19, 2008, plaintiffs, the Chicago Bar Association, Lieutenant Governor Pat Quinn, and individual voters, filed a declaratory judgment action in the circuit court of Cook County against defendants, the Illinois Secretary of State and various election officials. Plaintiffs challenged the notice and the italicized language in the explanation. Plaintiffs contended that the notice would misinform voters that leaving the ballot blank would have the effect of voting against a convention. Plaintiffs argued that the notice was correct under the 1870 Illinois Constitution, which was in effect when the notice was created in 1949; however, plaintiffs argued that the notice is incorrect under the 1970 Illinois Constitution.

Plaintiffs also posited that the explanation must be solely explanatory, and not unfair or biased. Plaintiffs argued that the italicized language in the explanation was not explanatory because it told voters nothing about the 2008 convention call, and that this language was biased in that it suggested alternatives to holding a convention.

The circuit court found that the contested language was inaccurate and misleading; however, election officials testified that there was not enough time to correct the ballot itself prior to the November 4, 2008 election. On October 6, 2008, the circuit court formulated a remedy in its final order. The circuit court directed defendants to distribute a “corrective notice” to voters along with the ballot. This corrective notice provided a new explanation of the proposed call, in which the italicized language was deleted, and which directed voters simply to vote “yes” to support the calling of a convention, or to vote “no” to oppose it.

Plaintiffs filed a notice of appeal that same day. On October 15, 2008, the appellate court heard oral argument. Plaintiffs argued that the correct notice did not remedy the infirmities in the ballot. Plaintiffs asked the appellate court to order defendants to issue new and separate ballots for voters. On October 16, 2008, the appellate court entered a judgment affirming the circuit court. On October 28, 2008, the appellate court filed an opinion explaining that the circuit court’s chosen remedy under the circumstances was not an abuse of discretion. At the November 2008 general election, voters overwhelmingly rejected the call for a state constitutional convention, which received 1,493,203 affirmative votes and 3,062,724 negative votes.

637. Id. at 1106.
638. Id. at 1107-08.
639. Id. at 1105.
640. Id. at 1104.
641. White, 898 N.E.2d at 1105.
642. Id. at 1104.
VIII. CONCLUSION

In urging voter ratification of the 1970 Illinois Constitution, Delegate Tomei observed: "If the 1970 Constitution proves over the years to be a generally acceptable expression of fundamental law, and if the legislature is responsive in placing before the electors such amendments as from time to time may be needed, voter approval of a constitutional convention should be rendered unnecessary." Nearly forty years later, this observation remains persuasive. This article has explained the history, theory, and purposes of state constitutions in the American political system. The article recounted the background, framing, and ratification of the 1970 Illinois Constitution, and the controversy that ensued as a consequence of forgetting that history. This article then described the contents of the Illinois Constitution, and explained how the document fulfills the general purposes of state constitutions. This article has demonstrated that the Illinois Constitution remains adaptable to new situations and changing circumstances. "A constitutional convention cannot succeed unless it is really needed and wanted, as was the Sixth Illinois Constitutional Convention. If one is not sure that new deliberations will lead to a better charter, there is little point in starting this long, involved, and frequently frustrating process." Based on the foregoing, voters correctly voted "No" for the call for a state constitutional convention at the November 2008 general election.

644. Tomei, supra note 557, at 74; accord Kenney & Brown, supra note 3, at 231 ("If [constitutional] change can occur by amendment as needed, there should be little reason for the voters to opt for a convention when the question is presented to them.").
645. Gertz & Pisciotta, supra note 322, at 341-42. It is axiomatic that "[a]ny attempt to improve on a system that already works is pointless and may even be detrimental." Titelman, supra note 5, at 152 (defining the popular phrase: "If it ain't broke, don't fix it").