

CONstitutional CONcepts

Number 8

A series of condensations of the scholars' research papers prepared by the Illinois Constitutional Research Committee which was appointed by Governor Richard B. Ogilvie to furnish background material for delegates to the Constitutional Convention.

SUFFRAGE

William Goodman

Who should vote?

Are residence requirements too restrictive?

Should election procedures be specified in a constitution?

What about initiative and referendum?

Should state elections be held at a different time than are Federal elections?

These are questions raised by William Goodman in his paper "Suffrage" — prepared for the Governor's Constitution Research Group. This will be one of the background materials available to the Constitutional Convention delegates.

This is an abbreviated summary of the original, and does not purport to contain all the detail of the original. (See the back page for further information.)

A government which derives its powers from the consent of the governed must provide the broadest possible participation in voting. The power to determine who can or cannot vote remains with the individual state, but this power is limited somewhat by provisions of the U.S. Constitution and Acts of Congress, and United States Supreme Court decisions based upon these.

To be eligible to vote, certain standards must be met: One of these is *Maturity*, setting minimum age standards. A second standard is *Familiarity With Candidates and Issues*, measured by citizenship and residence requirements. A third standard is *Mental and Moral Competence*, excluding convicted criminals and persons of unsound mind. Other standards may include the exercise of literacy

or educational requirements. How standards should be spelled out in a constitution and what should be left to law is a tricky question.

Federal Limitations on Suffrage Laws

While suffrage determination initially was largely a matter of state determination, recent history indicates a national approach. As proof of this observe new U.S. Constitutional amendments (elimination of the poll tax), new Federal laws (based on race, color, 15th Amendment), Women Suffrage (the 19th Amendment invalidated the Illinois Constitution limitation of suffrage to males), new laws curbing literacy requirements and a series of court decisions involving one-man one-vote policy.

This new Federal "look" may well determine that some provisions now in our 1870 Constitution should be left to law.

Citizenship

National citizenship before suffrage is universal among the states. Only in West Virginia is state citizenship required. The present Illinois Constitution (Article VII, Section 1) does not require a minimum period of citizenship prior to an election. Obviously, mechanical procedures of registration and preparation for an election mean that citizenship could not be obtained one day and the new citizen vote the following day. Federal law now prohibits anyone from voting in a general election who was naturalized less than 60 days before that election.

Residence

The 1870 Illinois Constitution (Section 1) requires a residence of 30 days in the election district, 90 days in the county, and a year within the State. Such an election district requirement is necessary to meet registration requirement problems and the Illinois provision is less severe than in most states. The Model State Constitution of the National Municipal League leaves local residence requirements up to the legislature as long as the requirement does not exceed three months.

The Illinois county residence requirement follows that of 35 other states, having requirements ranging from 30 days to six months. The Model State Constitution has no provision for county residence. It should be noted that such a requirement can disqualify a voter from voting for state officers as well as the county officers whom he may not know as well.

The 1870 Illinois Constitution provision for state residence is the same as in 31 other states. However, a recent State law permits a voter with 60 days residence to cast a vote for president, if he meets other requirements. The U.S. House Constitution proposal of 1969 for electoral reform authorizes Congress to set uniform national residence standards for voting in presidential elections.

Absentee Voting

The 1870 Illinois Constitution is silent on absentee voting; debates of that convention indicated the delegates' belief that this question should be left to the General Assembly. Only 17 states have such a constitutional provision and the Model State Constitution is silent on the subject.

Age

All but 4 states have established 21 as the voting age. Georgia and Kentucky have 18, Alaska has 19 and Hawaii has 20 as the legal voting age. Attempts in the November, 1969 elections to lower voting ages in New Jersey and Ohio were defeated. Montana, Connecticut and Ohio will vote to reduce ages in the 1970 elections. The author of this paper presents the following arguments for lowering voting ages:

The voting age should be the same as the age of men subject to the draft. Citizens between 18 and 20 years of age are rated as adults in such matters as taxation, court prosecution, marriage and full-time

employment. Younger people have grown increasingly politically-aware and informed. Youthful idealism and enthusiasm would be beneficial influences on government. And, it would encourage you to channel discontent into efforts toward reform.

In opposition, the author states:

Serving in the armed forces and voting are two different things—one requires physical, the other political and social maturity. Younger voters are not emotionally as stable as older voters. Hitler and Mussolini exploited this inexperienced group in rising to power. Those under 21 are not mature enough to be fully responsible for their own actions, and are so treated by many laws, including contracts. If voting ages are lowered, what about holding office and jury duty? Practice in foreign states supports the age 21. Voting should not be a training ground for citizenship—voters should be mature enough to assume citizenship responsibilities.

Registration and Literacy

The 1870 Constitution is silent as to registration, which has been left to legislative enactment. The flexibility resulting has enabled registration provisions to be changed from time to time, including the adoption of permanent registration. The Model State Constitution specifically authorizes the legislature to deal with this matter by statute. In some states, registration is required by constitution.

Neither does the 1870 Illinois Constitution carry any reference to literacy; such a requirement is in 17 other states' constitutions. The Illinois Supreme Court has ruled that under our present constitution, neither physical disability nor illiteracy can be a bar to voting. The 1965 Act of Congress previously noted makes it necessary to question the possibility of inclusion of any literacy requirement in a constitution.

Disqualifications

The General Assembly must exclude from voting "persons convicted of infamous crimes." Almost every other state has a similar constitutional provision. Exclusion for mental incompetency is universal also, and, if not provided for in the constitution or statute, is enforced by judicial decision, as was done in Illinois.

Ballots and Methods of Voting

The 1870 Constitution requires "all votes shall be by ballot"—intending to prohibit *viva voce* voting. (The Australian ballot was adopted by statute a number of years later.) The Illinois courts have upheld the use of voting machines, finding the real purpose of the provision was to protect secrecy and it would be appropriate to change "ballot" to "secrecy." However, the Model State Constitution leaves disqualification for both "mental incompetency" and "conviction for a felony" to the legislature.

Election Calendar

By constitutional provision, Illinois elects its state officers for four-year terms at the same time as presidential elections, except for the Superintendent of Public Instruc-

tion and Treasurer, who are elected on the even years between presidential elections. Arguments have been made to the effect that election of state officers would assume greater importance if separated from National elections. Conversely, it is intended that fewer voters will vote in non-presidential election years.

Initiative and Referendum

Initiative and referendum were popular reforms in the Progressive Era, but only Alaska has added this concept since 1917. Carried to its extreme as in California or Louisiana, as many as 30 or 50 items may be placed before the electorate at a single election.

The initiative, authorized in 20 states, permits citizens who wish some specific proposal adopted, and who obtain a minimum number of signatures on a petition, to place the proposal upon the ballot for referendum decision by the voters. Twenty-two states provide for a referendum which, upon obtaining sufficient signatures to a referen-

dum, prevents a law which has been passed by the legislature from going into effect until voted upon by the electorate.

Illinois has never had such general provisions in its law, and an attempt to enact them by legislation during the early part of this Century was rebuffed by the Illinois Supreme Court. The 1920 Illinois Constitutional Convention rejected similar proposals. An Illinois statute does permit the General Assembly to submit proposals on public policy to the electorate—this, however, is advisory only.

The present Illinois Constitution does, however, have six specific provisions for referendum: (1) For change in county boundaries (Article IX, Secs. 2, 3); (2) To move the county seat (Sec. 4); (3) To determine township organization (Sec. 5); (4) To authorize taxes (Sec. 6); (5) To change the banking law (Art. XI, Sec. 5); and (6) To amend the Constitution.

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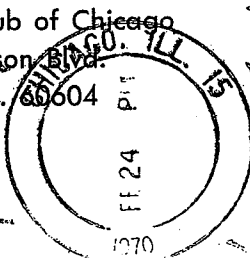
Preparing for a constitutional convention requires advance background and research. Accordingly, Governor Richard B. Ogilvie called upon a group of scholars to prepare research papers for the use of delegates and appointed Dr. Samuel K. Gove, director of the Institute of Government and Public Affairs of the University of Illinois as project director. Sixteen papers on various aspects of state government are being assembled. These will be issued in condensed form in continuing issues of Constitutional Concepts. A sincere attempt has been made to retain the concepts and ideas of the writers whose papers run from up to 80 pages or more. Any errors which result from the condensations clearly

are not those of the scholars originating the research.

As no public funds were available to the Constitution Research Group, the Union League Club of Chicago made an initial grant of \$10,000 to the group so the work might proceed. The Club took no part in the selection of the scholars nor the topics to be researched; made no effort to influence either research or conclusion; and did not, in any manner, direct the group. Nor does the Club necessarily endorse any suggestions, proposals or ideas expressed by the scholars.

This is one of a series of condensed research papers, prepared and published as a public service by the Public Affairs Committee of the Union League Club of Chicago.

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