The Suffrage, Elections and Constitutional Revision Articles of the 1970 Illinois Constitution

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THE SUFFRAGE, ELECTIONS AND CONSTITUTIONAL REVISION ARTICLES OF THE 1970 ILLINOIS CONSTITUTION

Staff Introduction

John Jackson, Dean of the College of Liberal Arts at Southern Illinois University, discusses Article III and Article XIV of the 1970 Illinois Constitution in this paper. Article III deals with suffrage and elections, and Article XIV details the process of constitutional revision.

The 1970 Constitutional Convention placed the question of lowering the voting age on the ballot as a separate question because it had been the subject of much controversy. Although the voters chose to retain the minimum voting age of 21, a subsequent U.S. Supreme Court decision lowered the voting age to 18. This is not likely to be a subject of controversy if the voters choose to call for another constitutional convention.

Article III establishes a six-month residency requirement, something which may be the subject of convention debate in the wake of a Supreme Court decision that indicates a strong preference for residency requirements of no more than 30 days.

The 1970 Constitution established a state board of elections, empowering it to supervise elections and registration procedures. The determination of the size, manner of selection, and compensation of the board was left to the General Assembly, with the stipulation that no party was to have a majority of members. The General Assembly provided for an eight-member board, appointed by the governor, with four names selected from a list prepared by an executive branch official of a party other than the governor's. During convention debate, most Chicago Democrats opposed the board's establishment, and it is possible that the board and the manner of its members' appointment will be a subject of debate at any future convention.

The 1870 Constitution was extremely difficult to amend, and legislative attempts to ease the amending process failed. Consequently, frustration was a major factor in calling for a new constitutional convention. Article XIV eased the process by allowing voters to amend the constitution by a three-fifths vote of those voting on the question, or a simple majority of those voting in the election. An amendment may originate in either house of the General Assembly, and must pass both houses by a three-fifths majority.

Since 1970, nine amendments have been submitted to the people, and four have passed. One of these was the cutback amendment, which reduced the size of the General Assembly, another dealt with delinquent tax sales, and two involved bail for crime suspects.

Another provision of Article XIV provides for the calling of constitutional conventions. During any twenty-year period, if the General Assembly does not call for the convention question to be placed on the ballot, the Secretary of State must place it on the ballot during the general election in the twentieth year following the last submission of the question.

Proposed amendments to the U.S. Constitution require the same vote as that needed to put an Illinois amendment on the ballot: a three-fifths vote of each house of the General Assembly is required for ratification. The attorney general and several courts have argued that the General Assembly is not bound by this requirement, because the U.S. Constitution does not authorize such a super majority for the ratification of federal constitutional amendments. The three-fifths vote, too, may be a subject of debate at a future constitutional convention.

One certain subject of debate is the initiative and referendum. The 1970 Constitution allows voters to amend the legislative article by initiative, a provision which led to the cutback amendment. However, the constitution does not permit a broader use of the initiative process. The initiative was the subject of much debate in 1970. The twenty-year provision mentioned above was, in fact, offered as an alternative to the initiative and referendum. Proponents of the initiative and referendum believe that it encourages legislators to respond to the will of the people. Opponents believe that it is an unwise usurpation of the legislature's authority, and point to states where the people have by-passed the legislature and have voted for amendments which were responses to passion, fear or anger. In any event, the General Assembly is not likely to propose an amendment allowing the initiative, and it will undoubtedly be an issue during a constitutional convention.

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Introduction

Periodic free elections are central to any democratic system. Elections are the most essential link between those who govern and those who are governed. Elections provide the opportunity for citizens to make their leaders accountable and for new leaders to be selected. It follows that suffrage laws are crucial. No society of any complexity allows every member of the society to participate in the selection of its leaders. Thus suffrage laws are necessary to define who will and who will not be eligible to participate in those decisions. This definition is provided by our suffrage laws, which usually deal with such matters as age, residency, and citizenship.

Both the conduct of elections and the definition of suffrage are fundamental matters facing any polity. If one assumes that a constitution is the organic or fundamental law of the state, then it is clear that the constitution should provide some basic structure to the elections and to the suffrage laws of the state. This is what the 1970 Illinois Constitution does in Article III.

The Major Provisions of Article III

Article III, Section 1 deals with voting qualifications. It requires that a person be 21 years of age in order to have the right to vote, and sets six months permanent residency in the state as a minimum requirement for voting. Section 2 deals with voter disqualifications. A convicted felon loses the right to vote, but that right is restored upon completion of the sentence. This is a standard voter disqualification, and all states provide the loss of voting privileges upon conviction of a felony.

The most controversial section in the whole article was the one dealing with the age of qualification (Kenney, Chapter III, p. 6). The 1970 Constitutional Convention was held during an era of intense national debate over the proper age for suffrage. This was the era of the Vietnam War, campus-based protests, and political activism among the young. All but four states required voters to be 21 at that time, but the issue was intensely debated nationally as well as at the constitutional convention. The outline of the debate is familiar: when is a person old enough to vote intelligently? If a person is old enough to be drafted and die in war, why then is he or she not old enough to vote? The Vietnam War seemed to make this a particularly telling argument.

There were various proposals in the 1970 Illinois Constitutional Convention to make 18, 19, 20, and 21 the age of suffrage (Journal, Vol. I). There was even one proposal, by delegate Father Francis Lawlor, to let everyone have suffrage, although presumably this was offered as a part of his larger right-to-life strategy. The two major contending positions centered on 18 versus 21. The Committee on Suffrage and Constitutional Amendment recommended that the proposed constitution specify 21 years of age and that

the proposal for 18 years of age be submitted to the people as a separate question. The Committee felt the 18-year-old vote would be highly controversial and could contribute to the rejection of the whole constitution. Delegate Richard M. Daley introduced a proposal to make 18 the age of suffrage. His proposal lost by 51 to 58. The Committee position then prevailed by a vote of 75 to 28 (Kenney, Ch. III). The separate submission of the 18-year-old vote provision was rejected by the voters in the December 1970 referendum.

Nevertheless, the national debate continued and national action ultimately prevailed. The age of suffrage was originally lowered to 18 in the 1970 Voting Rights Act. Then the U.S. Supreme Court held that this action could be taken by Congress by statute for federal elections; however, the court then held that it was unconstitutional for Congress to make this change by statute for state and local elections. This decision resulted in the passage of the 26th Amendment to the U.S. Constitution in 1972, giving 18-year-olds the right to vote in all elections.

Thus, Article III, Section 1 of the 1970 Illinois Constitution is now obsolete. It is one section which could be updated; however that is not really necessary, since in any case the U.S. Constitution's provision prevails over the Illinois Constitution.

There was some mild discussion over the residency requirements. Residency requirements as long as one year and as short as 30 days were debated. The debate is usually centered on such issues as how long it takes for a person to become familiar with the issues and personalities of a given state and thus able to cast an intelligent ballot, and how long the residency requirement needs to be in order to insure the honest and orderly administration of the eligible voter lists. Those who want to keep the residency requirements short usually want to increase turnout, and to encourage as many people as possible to vote. Those who want the residency requirement longer are more concerned with the orderly administration of the elections and guarding against potential voter fraud. The 1970 Constitution settled on six months and allowed the General Assembly to define other residency requirements by statute.

This provision, too, is one where the Illinois Constitution is slightly out of sync with national law. The 1970 Federal law provided a 30-day residency requirement for voting in presidential elections. In 1972, in the case of Dunn vs. Blumstein (405 U.S. 330 [1972]), the U.S. Supreme Court invalidated Tennessee's one-year residency requirement for voting in state elections and indicated a strong preference for requirements of not more than 30 days. Here, too, the federal statutes and decisions take precedence. This section may become a matter of contention in the event of a new constitutional convention.

Section 3 deals with elections with the simple words: "All elections shall be free and equal." This section expresses the abstract requirements of any election in a democracy. Substantially the same wording was included in the 1870 Constitution, and there was relatively little debate about this section in the 1970 Constitutional Convention. While this is a somewhat vague phrase, it has not produced a great deal of subsequent controversy. The Annotated Illinois Constitution provides this account of the phrase and subsequent cases where the court has interpreted its meaning:

It means that any qualified voter may freely vote and one person's vote is to have the same influence as any other's -- a principle that in the last two decades has been enforced by federal reapportionment decisions. (Baker v. Carr, 369 U.S. 186, 1962 . . .and its progeny). This section prohibits holding a town meeting where one's political opponents are excluded (Thompson v. Conti, 39 Ill. 2nd 160, 1968), and submitting to the voters a referendum question that combines issues sufficiently different that voters might approve one but reject another. [Village of Deerfield v. Rapka, 54 Ill. 2nd 217 (1972)]

These two Illinois cases interpreting the meaning of the section are not particularly unusual for a relatively vague section. The federal reapportionment decisions to which the annotations refer are relevant, and have generally established the "one-person-one-vote" standard which the courts enforce in reapportionment for federal or state legislative districts. These cases illustrate some actions which are prohibited under the Court's interpretation of this section.

Two other Illinois cases illustrate actions which were taken and challenged under this section and were deemed by the Court not to contravene the free and equal elections provisions. In the case of Bridgewater v. Hotz (51 Ill. 2nd 102 [1972]), the Illinois Supreme Court considered the question of whether all voters must be given identical opportunities or choices. In that case the Court"...upheld statutes that provided different amounts of time for registering voters during the spring primary season, in two classes of counties, depending on population and form of government" (Illinois Annotated Constitution).

In the case of Taylor v. the County of St. Clair (57 Ill. 2d 367 [1974]), the Court upheld a statute, "...that limited the group of persons who could be elected county board chairmen to board members who were partway through their terms thus giving no chance of electing a chairman in a given year to districts where seats were up for election in that year" (Illinois Annotated Constitution).

These cases illustrate the fact that not every claim of a violation of this "free and equal elections" provision is likely to be upheld by the Supreme Court. If there is a reasonable basis for the difference in treatment of various voters, the Court is likely to entertain the distinction so long as different classes of voters are not discriminated against and treated unequally on arbitrary grounds like race, sex, and political persuasion.

In general, these cases involve relatively minor instances of the Court having to spell out in detail what a vague provision of the constitution means in actual practice. They have not created a body of case law which would lead to the conclusion that the basic constitution itself is flawed, and they have not generated any sustained political controversy that would be likely to surface in a new constitutional convention.

The only current political conflict which could conceivably relate to this section involves third parties and their treatment under the election laws and the constitution. (For instance, the requirement of more signatures on the petitions of "third parties" than the petitions of the two major parties has been a point of litigation recently.) Adlai Stevenson's Solidarity Party

and the spate of third party activity surrounding the Chicago mayor's race in February and April 1987, could ultimately involve questions relevant to this section. Again, these questions seem to be transitory and not indicative of basic constitutional defect.

Section 4 states that the General Assembly by law can provide for residency requirements, the secret ballot, facilitate registration and voting, and ensure the equal protection of the suffrage laws. These sections were relatively non controversial then and remain so today.

Section 5 provides for a State Board of Elections. The Board was given the right of general supervision over registration and elections. The General Assembly was given the right to determine the size, manner of selection, and compensation of the Board. No party was to have a majority of the membership of the Board.

The debate over Section 5 was somewhat controversial in the 1970 Constitutional Convention. There was some opposition to the establishment of such a statewide Board and to its overseeing local election officials (Kenney, Chapter III, p. 10). The Chicago regular Democrats, for example, were not supportive of this proposal. Nevertheless, the proposal passed by a comfortable margin of 71 to 30.

Section 5, establishing the Board of Elections is one instance where subsequent legislation and litigation have been necessary to define the meaning of the constitution. The General Assembly was clearly given the right in Section 5 to "determine the size, manner of selection and compensation of the Board." No political party shall have a majority of the members of the Board.

The General Assembly in 1973 acted to fulfill this mandate. They created a four person Board of Elections, with two nominations from:

(1) the House majority and minority leaders; and

(2) the Senate majority and minority leaders.

The Governor then had to choose one person from each two nominations from each legislative leader. Partisan deadlocks were to be settled by a random selection of one member who was deprived of a vote.

In 1976 these sections of the law were held to be unconstitutional because:

(1) the Board of Elections is primarily an executive agency and the constitution prohibits the General Assembly from electing or appointing officers of the executive branch (separation of powers), and

(2) the tie-breaker method was a violation of the provision that no political party have a majority on the Board (Walker vs. State Board of Elections, 65 Ill. 2d 543 [1976]).

The General Assembly then amended the unconstitutional sections to provide for an eight-member Board, all appointed by the Governor but four of whom would have to be picked by the Governor from a list of names selected by an executive-branch official of a different party than the Governor. [Illinois Annotated Constitution]

The State Board of Elections has become a fixture in Illinois politics since 1970. While details of its operation and debates over some of its specific decisions are sometimes controversial, the board itself has been widely accepted. Any potential convention debate would probably center on the manner of appointment to the Board and whether its powers should be expanded, rather than over the basic provisions of Section 5.

Article XIV
Constitutional Revision

Introduction

A constitution is supposed to be the fundamental law for a state or nation. It provides for the basic structure and powers of the government. It should not provide for detailed matters which are less fundamental and which tend to become obsolete; such legislative detail should be spelled out in statutes instead. Thus, it is ordinarily held that a constitution should be more difficult to amend than statutes, which are potentially subject to change during any legislative session. The issue is just how difficult a constitution will be to amend, in face of the need to keep it current, in order to respond to the changing times.

The need for a realistic amending process was one of the problems with the 1870 Constitution which ultimately led to the movement for the 1970 Constitutional Convention (Journal, Chapter 1). The extraordinary majorities required to amend the 1870 Constitution meant that numerous amendments were proposed but most of them lost at the polls. The original problem was that the 1870 Constitution required a two-thirds majority of those voting in that election measured by those voting for the highest office listed (usually governor or president). This meant that those who did not vote on the constitutional amendment (and the fall-off from the top of the ballot is usually severe) were, in effect, voting "no" on the constitutional amendment. In 1950 a so-called "gateway amendment" to the 1870 Constitution was passed. It provided that either a two-thirds majority of those voting on the constitutional amendment question or a simple majority of those voting in the election as a whole could pass a constitutional amendment. This was a relative liberalization of the amendment process and resulted in some amendments passing. Nevertheless, the movement for constitutional reform soon stalled. Eight proposals were submitted between 1956 and 1966, and only one was approved (Kenney, Chapter 1, pp. 2-3). So, dissatisfaction with the 1870 Constitution and difficulty with amending it helped to produce the 1970 Constitutional Convention.

Major Provisions of Article XIV

The 1970 Constitutional Convention was acutely aware of this history. They tried to walk a tight rope between making the constitution easy enough to amend to keep it current, versus making it so easy to amend that it attracts a wide variety of amendments. They settled on what was approximately a middle ground. That is, they required a vote of three-fifths of the members of the General Assembly in order to submit a constitutional amendment to the voters. Then, three-fifths of those voting on the question or a simple majority of those voting in that election could approve an amendment (Sections 1 and 2). They also required that no more than three amendments could be submitted at any one election. There have been nine amendments to the 1970 Constitution submitted to a vote of the people, three of them dealing with the same issue (tax exemption for property used for veteran's affairs). Only four of the amendments have passed. (One was the cutback amendment, one dealt with delinquent tax sales, and two involved bail for crime suspects.) Thus, one might conclude that the 1970 framers struck a reasonable balance between the need for currency versus the need for stability.

Finally the 1970 Constitution provides that a new constitutional convention could be called in the same manner as any amendment proposal. In addition, if a vote on a new constitutional convention has not been submitted to the people "it shall be submitted to the voters by the Secretary of State 20 years after the last vote" (Section 1). This provision was somewhat controversial and generated debate in the 1970 Constitutional Convention. One proposal was offered to remove it. This motion failed by a vote of 34 to 70. Evidently the 1970 Constitutional Convention believed in Thomas Jefferson's injunction in favor of a constitutional revolution every 20 years or so. This provision is, of course, the occasion for the work now being done by this body.

Constitutional Initiative

The 1970 Constitutional Convention also considered the potential for constitutional amendments to be adopted by the device known as "initiative and referendum." This is a well-known procedure used in several other states which allows the voters themselves to change their constitutions, or to adopt statutes directly. They are required to present petitions containing a certain number of signatures, and then the question is submitted to the voters in a referendum - usually in the next general election.

The rationale behind the initiative and referendum goes to the heart of direct democracy. The philosophy of representative democracy was mentioned briefly in the introduction to this paper. It calls for representatives to be elected to exercise political power and to make public policy. It assumes that direct democracy is basically unworkable in the modern nation state. Proponents of representative democracy doubt that the mass public will be interested enough to become well-informed about the details of legislation or constitutional amendments.

Nevertheless, the supporters of initiative and referendum counter that all wisdom may not reside in legislative bodies nor in constitutional conventions. They maintain a trust in the people to do what is ultimately right for the polity as a whole. At the least, they see the power of initiative and referendum as providing a safety valve, forcing political leaders to act in extreme circumstances when they would otherwise ignore public opinion. Thus, initiative and referendum becomes a sort of final resort for the people to use against unresponsive political leaders.

The 1870 Constitution did not provide for the right of initiative and referendum. The 1970 Constitutional Convention debated these philosophical points and ultimately rejected an unrestricted right of initiative and referendum.

What they did adopt, however, was a more limited version applicable only to the legislative article (Article IV). The rationale here is that the General Assembly is the gatekeeper of constitutional revision. If they become unresponsive, the people ought to have a way to force change. This position prevailed in the 1970 Constitutional Convention and the 1970 Constitution thus includes the right of initiative and referendum with respect to the legislative article. Section 3 allows the initiative process to address "structural and procedural subjects contained in the Legislative Article" (Article IV). Two cases and two proposed constitutional amendments have tested and defined what this section means.

In a 1976 case the Illinois Supreme Court interpreted the phrase quoted above to mean that a proposed amendment by initiative must include both structural and procedural changes in order to be valid. The court held that proposed amendments to tighten the dual-officeholding restriction in art. 4, subsec. 2(a), to prohibit a legislator from voting who has a "conflict of interest," and to prohibit payment of salary to legislators in advance were not within that limitation and so could not go onto the ballot. However, in 1980 the court allowed on the ballot a proposed amendment by initiative to art. 4, secs. 1 through 3 to decrease the number of House seats from 177 to 118 and abolish cumulative voting for representatives. [Illinois Annotated Constitution (underlines added)]

Section 3 ultimately was used in one of the most controversial campaigns of the post-1970 era. This campaign resulted in the passage of the so-called "cutback amendment" which reduced the size of the Illinois House by one-third and eliminated cumulative voting.

This campaign illustrated well the advantages and disadvantages of initiative and referendum. It is a debate which will undoubtedly surface again in any future constitutional convention. Members of the General Assembly and their supporters are especially likely to want to remove this section from the 1970 Constitution if the debate is reopened.

Amendments to the U.S. Constitution

Finally Article XIV deals with amendments to the U.S. Constitution. It requires basically the same vote as needed for putting an Illinois Constitutional Amendment on the ballot, i.e., a three-fifths vote of each House of the General Assembly to ratify (Section 4).

This provision may have seemed innocuous enough at the time and occasioned little debate in the convention. Later it became quite relevant and quite controversial when the equal rights amendment (ERA) to the U.S. Constitution was debated in Illinois. At one time or another the necessary three-fifths vote in favor of the ERA was achieved in each body of the General Assembly; however, the three-fifths majority was never achieved at the same time in both bodies. Thus, Illinois became one of the states never to ratify the ERA despite numerous votes and much controversy. In light of the ERA experience, this requirement, too, is likely to become a source of much debate in any new constitutional convention. There are multiple amendments to the U.S. Constitution now being debated. The Reagan Administration has supported four such amendments. Proponents of these and other amendments will undoubtedly look to Illinois if a new constitutional convention is held.

Sources Used:

NOTE: Appreciation is extended to Dr. David Kenney, Professor of Political Science at Southern Illinois University-Carbondale, and an original member of the 1970 Constitutional Convention, for his help on this paper. His unpublished manuscript, The Making of a Modern Constitution, was an invaluable source and is cited throughout this paper.

(1) Record of Proceedings: Daily Journals of the Sixth Illinois Constitutional Convention, December 8, 1969 - September 3, 1970, published by Secretary of State in 7 volumes, July 1972.

(2) David Kenney, The Making of a Modern Constitution, Unpublished Manuscript.

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