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## Preface, 11 J. Marshall J. Prac. & Proc. 253 (1978)

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## PREFACE

SAMUEL W. WITWER\*

On July 1, 1976, just days before the nation celebrated its two hundredth birthday, the state of Illinois observed the fifth birthday of its fourth constitution. It is fitting to note that the new constitution became effective almost on the eve of the American Bicentennial. Surely no people on earth has ever had as many constitutions or been as devoted to its constitutions as we Americans. We have had one enduring federal constitution, almost as old as the Republic, which has been the pride of our country and the basis for our state constitutions.

Our fifty states have each had at least one constitution, most of them modeled, at least to some extent, after the federal constitution. Each state constitution plays a preeminent role in the life of each state, since each constitution is the basic document, the bedrock, so to speak, upon which the state is built. It divides the state government into branches, determines the membership, powers and duties of those branches, divides power between the state and local governments and, perhaps most important, establishes the basic rights of the citizens of the state. Yet many citizens have ignored their state constitutions and few have realized the importance of their state constitutions to their states. Surprisingly, many scholars also have ignored the underlying influence of state constitutions, and until recently there was scant literature on the subject. In the last two decades all this has changed.

After the Reapportionment Cases, beginning with *Baker v. Carr* in 1962,<sup>1</sup> compelled the states to elect legislators on the more equitable "one man-one vote" basis, state government came to be recognized as a strong but silent force in public affairs. After the heyday of "big federal government" began to wane in the late 1960's, state government also came to be seen as a long-neglected and much-abused silent partner in the governing of this country; today's "new federalism" is just one recognition of this development. People began to see the untapped potential

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1. 369 U.S. 186 (1962).

of state government and to seek ways to make it more effective and responsive.

One method was state constitutional revision. Many state constitutions, including the Illinois Constitution of 1870, were written in the post-Civil War era when all too many state officials, particularly state legislators, were notoriously corrupt. Ensuing scandals produced the predictable reaction against government in general; consequently, many state constitutions, including that of Illinois, were drafted largely to restrict the powers of the legislature. In addition, many of the earlier constitutions were drafted to meet the needs of agrarian communities, not an increasingly urban and industrialized society. By the twentieth century, these strictures had become so tight that legislatures either sought devious ways to evade them or simply failed to respond adequately to modern problems.

In Illinois the decade-long and ultimately successful campaign for constitutional reform culminated in the public's approval in 1968 of a call for a constitutional convention to revise the old state charter. When the convention opened in Springfield on a cold, blustery day, December 8, 1969, 116 remarkably talented and highly dedicated men and women assembled to swear the oath that would make them members of the convention.

The members, or "delegates," as they were called, were both optimistic and realistic about the great task before them. They were optimistic because although the recent conventions in New York and Maryland had been unsuccessful, Michigan had managed to adopt a new constitution, and the fact that the pro-reform forces in Illinois included people from all backgrounds, all parts of the state and all points on the political, social and philosophical spectrum boded well for the success of their enterprise. They were realistic, however, because they knew that if their efforts over the next nine months failed to produce a document acceptable to a majority of voters, not only would their labors have been in vain, but also any serious effort toward major constitutional revision would be discouraged for at least another generation. It was indeed a time of historic decision.

While the new constitution may not be the model document that some political reformers had hoped it would be, I think that we produced the best document that could be adopted in this politically diverse state. The delegates frequently compromised in order to achieve workable solutions. No delegate obtained everything he wanted in the constitution. In the end, no voter in the state saw the precise document he wanted either, but enough voters were pleased with enough in the proposed consti-

tution that they came out on another cold, blustery day, December 15, 1970, and voted to approve a new constitution. At the victory celebration that evening, we who had labored so many years savored that moment and found the ratio of the final vote—11 to 8 for approval—almost too good to be true. Maryland's proposed 1968 constitution, a good reform rejected by the voters, has been called "the magnificent failure." Considering the social unrest of the time, it was indeed remarkable that Illinois could rewrite its basic law, resolving so many complex and controversial issues in such an inauspicious climate. As President of the Sixth Illinois Constitutional Convention and one of the 116 "fathers" of the constitution, I hope I may be permitted a bit of paternal pride, then, when I call the Illinois Constitution of 1970 "the magnificent miracle."

Magnificent miracle, I hope; but perfect, certainly not. No constitution is ever perfect. Nor can we say that a miracle, once accomplished, is sure to endure. A constitution, like any human institution, must be alive and continue to grow and develop and be open to improvement, if it is to survive. It was precisely because our 1870 constitution could not meet new and changing conditions that it finally withered and had to be replaced.

The legislative, executive and judicial branches of state government, local officials, civic leaders and particularly members of the Illinois bar have since struggled to interpret, implement and apply the new constitutional provisions. I am pleased, therefore, that the scholarly and legal communities of Illinois have not neglected the Illinois Constitution of 1970. The law reviews, bar journals, public affairs magazines and political science journals have risen to the challenge and been of great assistance to those seeking a proper understanding of the new constitution.

The John Marshall Law School has been in the forefront all the way. Building upon its long tradition of scholarship in Illinois constitutional law, the *John Marshall Journal* has undertaken an ambitious program of publishing studies of the new constitution, one which has been unequalled to date by any other publication. Professor Ann Lousin, a staff member of the 1970 Illinois Constitutional Convention and a specialist in Illinois constitutional law, has provided able assistance in bringing the *Journal* to this status. In 1973 the *Journal* published its first symposium issue on the Illinois Constitution of 1970, for which I also offered introductory words. A second symposium issue followed in 1975, and this is the third symposium issue. In addition, the *Journal* has regularly published articles, comments and casenotes on the new constitution in other general issues. Anyone who has faced the problems of researching the convention record, the

many important attorney general's opinions, statutes, rules and secondary authorities can be grateful to the *Journal* for invaluable time-saving research and exposition.

The range of topics covered in *Journal* issues to date is exceptionally wide. The current issue is an example. Michael J. Polelle, Professor of Law at John Marshall and a noted authority on defamation law, cogently argues that the convention erred in retaining truth as only a qualified defense in libel cases. Elmer Gertz, distinguished chairman of the Bill of Rights Committee of the convention, analyzes the potentially far-reaching effects of the principal antidiscrimination provision in the constitution and suggests ways in which victims of discrimination could make effective use of this provision, which has been described as the strongest state guarantee of freedom from discrimination in the country.

Charles R. Bernardini, who helped the General Assembly legislatively implement the suffrage and elections article, in a timely writing traces the development of the State Board of Elections and delineates the constitutional limits on the new Board. Gerald L. Gherardini, another highly respected research assistant at the convention, explains the effective date of laws provision and shows how anyone can, with relative ease, determine the effective date of a particular bill. Gordon R. Levine, able counsel to the successful plaintiffs in the recent case of *Gertz v. State Board of Elections*, assesses the impact of that case upon future Illinois constitutional revision by the initiative method.

John Nelson Walters contributes a student comment on the use of the Governor's new and controversial amendatory veto power and suggests ways in which the Governor and legislature can use it for accommodation, not confrontation. Thomas E. Grace, in his student casenote, analyzes *People ex rel. Scott v. Briceland*, a recent and leading case on the powers of the Illinois Attorney General.

With these articles, the number of essays directly on the new constitution published in the *Journal* rises to thirty-four. Including the studies in this issue, there have been treatments of almost every article and most of the chief provisions of the constitution.<sup>2</sup> There have been eight studies of article I—Bill of Rights;<sup>3</sup> one of article III—Suffrage and Elections;<sup>4</sup> four of

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2. Only article II—The Powers of the State; article VIII—Finance; article X—Environment; and article XII—Militia have not been treated to date.

3. In addition to the articles by Professors Polelle and Gertz in this issue, the *Journal* has published Gertz, *Hortatory Language in the Preamble and Bill of Rights of the 1970 Constitution*, 6 J. MAR. J. 217 (1973); Gertz, *The Making of the Illinois Constitution of 1970*, 5 J. MAR.

article IV—The Legislature;<sup>5</sup> three of article V—The Executive;<sup>6</sup> two of article VI—The Judiciary;<sup>7</sup> four of article VII—Local Government;<sup>8</sup> four of article IX—Revenue;<sup>9</sup> two of article X—Education;<sup>10</sup> one each of section 4—Sovereign Immunity,<sup>11</sup> section 5—Pension and Retirement Rights<sup>12</sup> and section 6—Corporations<sup>13</sup> of article XIII—General Provisions; and one of article XIV—Constitutional Revision.<sup>14</sup> Moreover, the *Journal* has published two articles on more general Illinois constitutional problems, those of determining the intent of the convention<sup>15</sup> and enacting anticipatory legislation.<sup>16</sup>

J. 215 (1972); Hanson, *Illinois and the Right of Privacy: History and Current Status*, 11 J. MAR. J. 87 (1977); Comment, *Post-Indictment Preliminary Hearings?*, 9 J. MAR. J. 499 (1976); Comment, *Does the Illinois Cannabis Control Act Violate the Right to Privacy Enunciated in the Illinois Constitution?*, 9 J. MAR. J. 280 (1975); Note, *Rape in Illinois: A Denial of Equal Protection*, 8 J. MAR. J. 269 (1975).

4. The article by Mr. Bernardini in this issue.

5. In addition to Mr. Gherardini's article and Mr. Walters' comment in this issue, the *Journal* has published Johnston, *The Legislative Process Under the 1970 Constitution*, 8 J. MAR. J. 251 (1975); Note, *State Statutes: The One-Subject Rule Under the 1970 Constitution*, 6 J. MAR. J. 359 (1973).

6. In addition to Mr. Grace's casenote in this issue, the *Journal* has published Favoriti, *Executive Power Under the New Illinois Constitution: Field Revisited*, 6 J. MAR. J. 235 (1973); Nauert, *The Comptroller: Illinois' Chief Fiscal Control Officer*, 8 J. MAR. J. 225 (1975).

7. Fins, *Need for Coordination of Illinois Statutes with New Constitution and Supreme Court Rules Effective July 1, 1971*, 5 J. MAR. J. 1 (1971); Note, *People ex rel. Stamos v. Jones: A Restraint on Legislative Revision of the Illinois Supreme Court Rules*, 6 J. MAR. J. 382 (1973).

8. Anderson & Lousin, *From Bone Gap to Chicago: A History of the Local Government Article of the 1970 Illinois Constitution*, 9 J. MAR. J. 697 (1976); Biebel, *Home Rule in Illinois After Two Years: An Uncertain Beginning*, 6 J. MAR. J. 253 (1973); Note, *Intergovernmental Cooperation: Does the 1970 Illinois Constitution Give Units of Local Government the Green Light?*, 8 J. MAR. J. 295 (1975); Note, *Oak Park Federal Savings and Loan Association v. Village of Oak Park: The Foundation Begins to Crumble on Home Rule in Illinois*, 6 J. MAR. J. 395 (1973).

9. Gardner, *Judicial Developments in the Taxation of Real Property Since the Adoption of the Illinois Constitution of 1970*, 9 J. MAR. J. 333 (1976); Watling, *Taxation of Real Property in Cook County Under the Constitution of 1970*, 6 J. MAR. J. 87 (1972); Comment, *The "Individual" Exemption from Illinois Personal Property Tax*, 9 J. MAR. J. 424 (1976); Note, *State Debt Under the 1970 Constitution: The Legislature Unbound*, 6 J. MAR. J. 407 (1973).

10. Kamin, *The School Finance Language of the Education Article: The Chimerical Mandate*, 6 J. MAR. J. 331 (1973); Comment, *State Aid to Nonpublic Elementary and Secondary Schools: Stymied in a Constitutional Cross Fire*, 7 J. MAR. J. 265 (1974).

11. Note, *Sovereign Immunity Under the 1970 Illinois Constitution—The Abolition of a Feudal Notion*, 6 J. MAR. J. 430 (1973).

12. Comment, *Public Employee Pension Rights and the 1970 Illinois Constitution: Does Article XIII, Section 5 Guarantee Increased Protection?*, 9 J. MAR. J. 440 (1976).

13. Comment, *Cumulative Voting for Corporate Directors Under the Illinois Constitution*, 8 J. MAR. J. 327 (1975).

14. Mr. Levine's article in this issue.

15. Lousin, *Constitutional Intent: The Illinois Supreme Court's Use of the Record in Interpreting the 1970 Constitution*, 8 J. MAR. J. 189 (1975).

16. Note, *People ex rel. Ogilvie v. Lewis: A Procedure for the Enactment of Anticipatory Legislation in Illinois*, 6 J. MAR. J. 347 (1973).

Surely this is an impressive record of legal research and contribution to the interpretation, implementation and ultimate improvement of our young constitution. Indeed, I can think of no worthier contribution that a law review could make, and on behalf of all of us who are watching the constitution evolve and witnessing its increasingly vital role in Illinois life, I thank the John Marshall Law School and the *John Marshall Journal* for this significant public service.