

Spring 1973

Introduction, 6 J. Marshall J. of Prac. & Proc. 213 (1973)

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Recommended Citation

Samuel W. Witwer, Introduction, 6 J. Marshall J. of Prac. & Proc. 213 (1973)

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INTRODUCTION

by SAMUEL W. WITWER*

That the new Illinois Constitution of 1970 is far better than the old, both in its capacity to meet the needs of government and in its closer adherence to accepted standards of draftsmanship, can scarcely be questioned. Many students of constitutional government have spoken highly of the quality of our new charter. Some have acclaimed its adoption as a monumental achievement, having in mind the failures throughout this century in other American states which sought to achieve major constitutional reform.

Of course, the new constitution is not a model document, as some political reformers wished it to be, nor perfect in form or content. Had the work-product of the Sixth Illinois Constitutional Convention been of such excellence, I suspect we would today be referring to it as "The Magnificent Failure". From the outset, the convention delegates were reminded, with an eye to ultimate voter approval, that their task was to write not the best possible constitution but rather the best constitution that could possibly be adopted in this politically complex state. I believe that we came close to that goal. But such a choice implies unmet governmental needs and continued opportunities for further constitutional reforms.

Only under the most literal and simplistic view of our constitutional system could it be thought that the job of constitution-making ended September 3, 1970 when the convention adopted the new charter and adjourned sine die. Rather than ending the process, in a real sense that date marked the opening of a new era in the development of the state's organic law. A great opportunity awaits the bench and bar, legal scholars, students of government, legislators and concerned citizens. Interpreting the new constitution, resolving ambiguities in it which surface, choosing newly available constitutional options, and, for that matter, amending those provisions which time shows to be imperfect, will be an integral part of the continuing process. This is a continuous effort — to strike a balance in the never-ending confrontation between the forces of political continuity

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and the forces of political change. Our new charter, like other constitutions, now awaits wise legislative implementation, sound judicial interpretation, and the determination of citizens to secure effective utilization of new capabilities.

In this context, objective studies such as are presented in the 1970 Illinois Constitution Symposium Issue of the *Journal* are highly important. Several of the lead articles have been prepared by outstanding members of the constitutional convention who write from the background of their personal experiences. Other scholarly contributors present the results of their studies and experiences as outside observers of the convention's work. Both vantage points are, of course, important.

Elmer Gertz, the respected Chairman of the Bill of Rights Committee of the Convention, in his article "Hortatory Language in the Preamble and Bill of Rights of the 1970 Constitution" focuses on the importance of constitutional phraseology and provides valuable insights concerning the evolution of certain "hortatory" provisions as they came from his committee to the convention floor. Another distinguished delegate writing for the Symposium Issue is Malcolm Kamin, a leading member of the Education Committee of the convention. Dealing with the problems of unequal educational opportunity due to the state's continued reliance on local property taxation in financing public education, Mr. Kamin points out that the new Education Article substantially extends state responsibilities in education not only in finance, but in other important respects.

Richard Favoriti's article, "Executive Power under the New Constitution: *Field* Revisited", thoughtfully focuses upon the authority of the governor to issue executive orders in light of the *Field* decision and also deals with new constitutional provisions regarding ethics. Paul Biebel's paper, "Home Rule in Illinois After Two Years: An Uncertain Beginning", is a timely review of recent Illinois Supreme Court decisions interpreting the unique home rule provisions of the 1970 Constitution. He points up the broad concept envisioned by the delegates to the convention and the crucial importance of the early interpretations which will come from the courts.

Of course, no single issue of any law review or bar journal could do more than touch upon a few of the many problems of interpretation and implementation which will arise under the new constitution. The major studies referred to and the student notes which also appear in the Symposium Issue are valuable not only in their own right, but also as illustrations for others of

the challenge to legal scholarship posed by the 1970 Constitution. It is to be hoped that other law journals and publications will now undertake similar studies early in the life of the new Illinois charter. These, too, will contribute to a fuller understanding of its meaning and purposes and an awareness of the new opportunities it affords for better government and the protection and development of the individual rights of our citizens.

I can think of no worthier project for members of a community of legal scholars. The *Journal* is to be commended for its pioneering work.

