Circular 1157

THE ILLINOIS CONSTITUTION

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THE ILLINOIS CONSTITUTION

On December 15, 1970, Illinois voters approved a new constitution. This constitution replaced one that had been adopted by Illinois voters in 1870, five years after the end of the American Civil War.

State constitutions are written documents that establish the form of government for citizens of a state. Generally, states have all the powers to govern that are not reserved to the federal government by the U.S. Constitution. The state constitution defines, limits, and describes the manner in which these powers will be used.

Division of Power

Although the individual states have almost always had three branches of government — legislative, executive, and judicial — power has not always been divided among the three in the same manner. The division of power has reflected the sentiments and concerns of the times in which the documents were written. Some of the earliest constitutions did not establish governors, fearing an office like that of the powerful British colonial governors. The constitutions written soon after the Civil War were designed to prevent abuses of power by the kind of strong legislatures created by the earlier constitutions. The nineteenth-century legislatures, for instance, had invested state funds in private corporations that built railroads and canals and established banks, and many of these enterprises were highly speculative and eventually failed. As a result, post-Civil War constitutions were designed to limit the powers of legislatures so they could not participate in such investments.

The new Illinois Constitution was adopted in convention on September 3, 1970, ratified by the people on December 15, 1970, and became effective July 1, 1971. The constitution ballot was in several sections, which are shown in Table 1 along with the number of votes cast on each issue.

Having been approved by a majority of the electors voting at the election, the constitution and propositions 1A and 2A were adopted. Propositions 1B and 2B, and the proposals to abolish the death penalty and to lower the voting age to 18 were not approved by a majority of the electors voting at the election, and therefore were not adopted.

The delegates to constitutional conventions also feared constitutions — like the Illinois Constitution of 1870 — that severely limited the powers of state government. For example, the Illinois Constitution of 1870 contained specific limits on the amount of debt the state and its local govern-

Table 1. Votes Cast for Various Issues on the Illinois Constitutional Revision Ballot, 1970

Issue	Number of votes
(Total number of electors voting at the election = 2,017,717)	
Do you approve the proposed 1970 constitution?	
Yes	1,122,425
No	838,168
1A. Election of members of the house of representatives from multi-member districts	1,031,241
1B. Election of members of the house of representatives from single-member districts	749,909
2A. Election by the voters of judges nominated in primary elections or by petition	1,013,559
2B. Appointment of judges by the governor from nominees submitted by judicial nominating commissions	867,230
Do you approve of abolishing the death penalty?	
Yes	676,302
No	1,218,791
Do you approve of lowering the voting age to 18?	
Yes	869,816
No	1,052,924

ments might incur. It named the officers to be elected by each unit of government and it limited the kinds of taxes, the types of expenditures, and the methods of borrowing money available to the state government. Governors were given veto powers over legislative actions, but they could not organize the executive branch. The constitution also established other elected executive officers, such as the auditor and secretary of state, to share executive power with the governor.

All of these limits on the actions of state government were devised at a time when the problems confronting state and local governments were not as complex as they are today. The framers of the 1870 constitution could not foresee that, by 1970, Illinois would have a population of 11 million people — with a majority living in urban areas.

The major result of the restrictions on legislative and executive power was that the state and its local governments had increasing difficulty in adjusting to the financial and service needs of their constituents. The rigidity of the constitution led to calls for revision in order to free the state government to take needed actions and to raise sufficient revenues. Amending the Illinois Constitution was a difficult process and it was not

until 1950 that revision was simplified by the so-called Gateway Amendment. However, even the simplified amendment process led to only limited changes and did not solve all of the problems. In 1968 the people approved the calling of a constitutional convention in order to modernize Illinois government.

1970 Constitutional Convention

The 1970 Illinois Constitutional Convention did not depart from the previously established form of government. Rather, it retained the three branches of government — the legislative, executive, and judicial. The constitution written by the delegates to the 1970 convention is a blend of the old and the new. As with the 1870 constitution, not everyone is happy with everything in the 1970 constitution. This displeasure is partly a reaction to changes that disrupt established routine, and is also a result of differences of opinion between urban and rural area representatives.

A major problem in writing a state constitution is trying to decide what limitations to put on the powers of the government. A constitution should be flexible, yet it should also ensure that constant changes will not be made in the form of government and rights of the people. Finding the proper balance is a difficult task.

City dwellers, farmers, labor leaders, and others have different ideas about what things need to be protected from hasty change by the legislature. At a constitutional convention these groups press for particular kinds of constitutional provisions. To win public approval, a constitution must also deal with some of the current concerns of people. In this respect the 1970 constitution is little different from the 1870 constitution — it reflects the period in which it was written.

Convention Procedure

When the convention's 116 nonpartisan delegates (two from each state legislative district) met in Springfield in 1970, they first had to examine the old constitution and sort through hundreds of suggestions for new clauses and amendments to it. The work was done by committees; each committee was responsible for a certain subject-matter area such as revenue or local government.

Each committee heard testimony from interested groups, received reports from constitutional experts, and, after deliberation, made a report to the full convention, giving the basis for the committee's proposals. The convention then debated the reports, made changes, and finally adopted the 14 separate articles of the constitution.

Article I — Bill of Rights

One of the major aims of a constitution is to guarantee the rights of the individual citizens of the state. This objective is ordinarily accomplished in the form of a bill of rights. A bill of rights is considered an important guard against tyranny because it guarantees the rights of individuals against arbitrary government actions. Courts will judge government actions against individuals to see if the rights of the individual have been violated. In the U.S. Constitution the Bill of Rights is found in the first ten amendments. In the Illinois Constitution it is the first article, containing 24 sections.

The Bill of Rights of the Illinois Constitution contains two kinds of rights for individuals — first, the traditional rights (sometimes called "expanded rights"), similar to those guaranteed by the federal constitution, and second, the rights of the individual to call on the government to intervene in certain matters, such as housing discrimination.

Traditional Rights

Many of the rights of individuals provided by the Illinois Constitution will sound very familiar because they are rights enumerated in the U.S. Constitution. Those provisions which are the same or very similar in both constitutions are listed below.

ILLINOIS CONSTITUTION

Section 2. Due Process and Equal Protection.

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

UNITED STATES CONSTITUTION

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property without due process of law;* nor shall private property be taken for public use, without just compensation.

Amendment XIV. Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they

reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

Section 5. Right to Assemble and Petition.

The people have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances.

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; *or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

Section 8. Rights after Indictment.

In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation and have a copy thereof; to meet the witnesses face to face and to have process to compel the attendance of witnesses in his behalf; and to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Section 9. Bail and Habeas Corpus.

All persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great. *The privilege of the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion when the public safety may require it.*

Article 1, Section 9.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Section 10. Self-Incrimination and Double Jeopardy.

No person shall be compelled in a criminal case to give evidence against himself nor be twice put in jeopardy for the same offense.

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; *nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;*

	nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
Section 16. Ex Post Facto Laws and Impairing Contracts. No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.	Section 10. Article I. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.
Section 21. Quartering of Soldiers. No soldier in time of peace shall be quartered in a house without the consent of the owner; nor in time of war except as provided by law.	Amendment III. No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.
Section 24. Rights Retained. 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.	Amendment IX. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Expanded Rights

If so many of the same rights are already guaranteed by the federal constitution, why does Illinois need to have a separate Bill of Rights?

1. A state may include in greater detail rights already in the U.S. Constitution. The additional detail often reflects court decisions that have defined the scope of these rights.

2. A state bill of rights may include rights not stated in the federal Bill of Rights.

On some points the Illinois Constitution tries to be more precise than the federal constitution (sometimes this avoids problems that have arisen in interpretation of the federal provisions). In some instances the Illinois provisions actually expand the rights stated in the U.S. Bill of Rights.

Freedom of Speech. In guaranteeing freedom of speech, the Illinois Constitution states that:

Section 4.

All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

The federal provision is as follows:

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Illinois provision states the principle that freedom of speech is not absolute; citizens are to be held responsible for abuses of this freedom. The federal provision is an apparently unqualified right to free speech. However, federal cases interpreting this provision have established that the right stated in the federal constitution does have limits.

What are abuses of freedom of speech? If an individual says things that upset his audience and causes them to yell and interrupt his talk, does this automatically mean that he has exceeded the limits of his right to free speech? In considering this problem the U.S. Supreme Court has said [Justice Douglas in *Terminiello* v. *Chicago,* 337 U.S. 1 (1949)]:

> A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with things as they are or even stirs people to anger. . . . That is why freedom of speech, though not an absolute, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest.

The Illinois provision on freedom of speech admits that free speech is not the absolute it first appears to be and makes it clear that individuals are responsible for abuses of the right to free speech.

Freedom of Religion. In stating the right to religious freedom, the Illinois Constitution is again more detailed than the federal Bill of Rights.

ILLINOIS CONSTITUTION	UNITED STATES CONSTITUTION
Section 3. Religious Freedom.	Amendment I.
The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby	Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference by [be] given by law to any religious denomination or mode or worship.

Both provisions prohibit establishment of a so-called "state" religion, or any form of preference for an established religion. What is included in the concept of "establishment" has been the subject of recent controversy, particularly over whether public aid can be given to parochial schools.

The Illinois provision defines in detail the essential principles of religious freedom. As with free speech, it also states the fact that this right is not absolute and that the government has the power to protect the public against abuses of this freedom. The courts have established that these limits exist with respect to the federal provision as well. A person cannot be denied any of the other rights enumerated in the Bill of Rights by reason of belonging to a particular religious sect. Nor can an individual abuse those rights in the name of religion. Specifically, freedom of speech has the same limits whether a speech is made in the name of religion or politics.

Search and Seizure. The Illinois provision on search and seizure (Section 6) follows the language of the federal provision (Amendment IV) but expressly provides additional rights reflecting concerns with invasions of privacy.

ILLINOIS CONSTITUTION

Section 6. Searches, Seizures, Privacy and Interceptions.

The people shall have the right to be secure in their persons, houses, papers, and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

UNITED STATES CONSTITUTION

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Again this is not an absolute ban on all searches and seizures. It is a ban, in both constitutions, on unreasonable searches and seizures and on

those made without presentation of adequate information to justify them. The government needs the right to search and to seize evidence if it is to catch and prosecute criminals. Citizens, however, must be protected from random or unreasonable invasions of their homes, offices, cars, and so on.

In 1970 Illinois added to its search and seizure provision a right against interceptions of citizen communications by eavesdropping or other means. This is not an absolute ban on wiretapping but a ban on wiretaps without a proper warrant. What constitutes reasonable grounds for intercepting communications remains to be defined by the legislature and the courts.

A direct right to freedom from unreasonable invasions of privacy was also incorporated into the 1970 Illinois Constitution. There is no such directly stated right in the federal Bill of Rights. The exact nature of this right will have to be determined by the legislature and the courts.

Right To Bear Arms. The right to keep and bear arms as stated in the Illinois Constitution is quite different from the right stated in the U.S. Bill of Rights.

ILLINOIS CONSTITUTION	UNITED STATES CONSTITUTION
Section 22. Right to Arms.	Amendment II.
Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.	A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

The U.S. Constitution deals with the collective right of individuals to bear arms in order to maintain a militia or citizen army. The right to keep and bear arms can be regulated under this provision as long as the regulations do not impair the organization and effectiveness of a militia.

The Illinois provision makes no reference to a militia. It provides that individuals may keep and bear arms only subject to those regulations necessary to keep peace and order.

"The substance of this right," according to the constitutional convention committee that drafted the provision, "is that a citizen has the right to possess and make reasonable use of arms that law-abiding citizens might commonly employ for purposes of recreation or the protection of person and property." [Sixth Illinois Constitutional Convention, Record of Proceedings, Committee Proposals, Report of the Committee on the Bill of Rights, p. 87.]

This right is not without limits. The police power — the power of the state to maintain order — probably permits a number of gun regulations (such as a ban on possession of weapons by minors and incompetents, or a ban on carrying concealed weapons). However, the provision does mean

that the state cannot directly or indirectly ban all possession and use of arms.

Criminal Offenses. Both the Illinois and the U.S. Bill of Rights make it clear that individuals may not be tried for serious crimes unless there is sufficient evidence to justify a trial. They differ in regard to the procedures required to determine whether sufficient evidence exists.

Both constitutions provide for a grand jury to hear evidence and determine if there is enough evidence to warrant a trial. The federal provision extends this right to those accused of crimes punishable by death or "other infamous crimes." The Illinois provision makes the same guarantee but adds that a preliminary hearing before a judge may be substituted for a grand jury. The right to a preliminary hearing covers the same crimes as those going before the grand jury — that is, cases where the crime is punishable by death or imprisonment in a penitentiary. A grand jury indictment is not necessary, however, in cases in which the punishment is by fine or by imprisonment other than in the penitentiary, in cases of impeachment, and in cases arising in the militia when in actual service in time of war or public danger. The Illinois Constitution gives the state legislature the authority to modify or abolish the grand jury.

Bail — Cruel and Unusual Punishment. The provisions of both the Illinois and the U.S. Bill of Rights establish the right to bail. Illinois states specific limits for crimes involving the death penalty but does not use the phrase "excessive bail." Illinois judicial law on bail generally prohibits excessive bail.

ILLINOIS CONSTITUTION

Section 11. Limitation of Penalties After Conviction.

All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. No conviction shall work corruption of blood or forfeiture of estate. No person shall be transported out of the State for an offense committed within the State.

Section 9. Bail and Habeas Corpus.

All persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great. The privilege of the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion when the public safety may require it.

UNITED STATES CONSTITUTION

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Illinois provision on punishment contains outmoded language regarding forfeiture, and so on, in contrast to the simpler federal ban on cruel and unusual punishments. The 1970 constitution did add a clause stating that the objective of penalties was to restore the offender to useful citizenship. The U.S. Constitution contains no comparable statement.

Eminent Domain. The Illinois Bill of Rights acknowledges that where private property is taken for public use, such as a highway or a park, the owner must be compensated for the loss. A similar provision is found in Article V of the U.S. Constitution.

ILLINOIS CONSTITUTION

Section 15. Right of Eminent Domain.

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

Jury Trial. The right to trial by jury is a fundamental right in a free society. Neither the Illinois nor the federal provision actually extends this right to all types of legal proceedings. The Illinois provision retains the same conditions concerning jury trials as existed prior to the 1970 constitution. The U.S. Constitution imposes a limit on civil suits, which is not imposed by the Illinois Constitution.

ILLINOIS CONSTITUTION

Section 13. Trial by Jury.

The right of trial by jury as heretofore enjoyed shall remain inviolate.

UNITED STATES CONSTITUTION

Amendment VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Rights Relating to Freedom From Discrimination

The Illinois Bill of Rights enumerates a number of rights not expressly stated in the U.S. Bill of Rights. Some of these are social rights which state the right of the individual to call on the government to intervene on his behalf in matters concerning some types of discrimination.

ILLINOIS CONSTITUTION

Section 17. No Discrimination in Employment and the Sale or Rental of Property.

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry 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.

Section 18. No Discrimination on the Basis of Sex.

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.

Section 19. No Discrimination Against the Handicapped.

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 promotion practices of any employer.

These social rights are already indirectly guaranteed to Illinois citizens under the U.S. Constitution. The Fourteenth Amendment clause guaranteeing all citizens equal protection of the laws has been used to cover matters such as racial discrimination in education.

The prohibitions on discrimination on the basis of sex, race, religion, and so on are statements of public policy clearly indicating that these are areas of concern to the people of the state. They give the legislature the authority to make laws putting these bans into effect, and they give an individual a clear right to demand equal treatment and to appeal to the courts in order to obtain it.

Imprisonment for Debt. This is another provision of the Illinois Constitution for which the U.S. Constitution does not state a comparable right.

ILLINOIS CONSTITUTION

Section 14. Imprisonment for Debt.

No person shall be imprisoned for debt unless he refuses to deliver up his estate for the benefit of his creditors as provided by law or unless there is a strong presumption of fraud. 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 second clause prevents imprisonment for failure to pay a fine in a criminal case, unless adequate time has been allowed and the individual has willfully failed to make payment This clause was designed by the 1970 constitutional convention to prevent imprisonment of the poor for lack of money for payment of fines in criminal cases. Provision is made for installment payments if this is the only way for an individual to pay a fine.

Constitutional Sermons

The remaining four provisions of the Illinois Bill of Rights that do not appear in the U.S. Constitution read as follows:

ILLINOIS CONSTITUTION

Section 1. Inherent and Inalienable Rights.

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.

Section 20. Individual Dignity.

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 persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation are condemned.

Section 23. Fundamental Principles.

A frequent recurrence to the fundamental principles of civil government is necessary to preserve the blessings of liberty. These blessings cannot endure unless the people recognize their corresponding individual obligations and responsibilities.

Section 12. Right to Remedy and Justice.

Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.

These provisions do not seem to convey any new liberties to the citizens of Illinois. Instead they remind citizens of the rights they already have, and thus have been called constitutional sermons. However, one constitutional expert suggests that Section 12 may be the source of substantive rights.

The section on inherent and inalienable rights is familiar because the words are taken directly from the Declaration of Independence. The section on fundamental principles is a suggestion to citizens that they remember their role in maintaining their own freedoms. The section on the right to remedy and justice reminds citizens that this is a government of laws, not men, and that they will find a remedy for injuries and wrongs in these laws.

Age and the Right To Vote

Whether to give 18-year-olds the vote was a controversial issue at the constitutional convention, perhaps because the convention met at a time when there was much unrest among young people.

Historically, the minimum voting age has been based on (1) maturity sufficient to understand the political process, (2) interest in the subject-matter of politics, and (3) awareness of the issues being voted on. There was disagreement about whether 18-year-olds fulfilled these criteria, and the constitutional convention concluded that the issue should be decided directly by the people. It was voted on separately from the constitution

itself, and the majority voting were against allowing 18-year-olds to vote (see Table 1).

Only three months after adoption of the Illinois Constitution, the Congress proposed an amendment to the U.S. Constitution giving 18-year-olds the right to vote. This amendment — the twenty-sixth — was ratified by the necessary 38 states by June 30, 1971, and it says that states cannot deny citizens 18 years old or older the right to vote on account of age. While the Illinois Constitution establishes 21 as the legal voting age, it is now bound by the U.S. Constitution to allow 18- to 20-year-olds to vote.

Suffrage

Age is not the only criterion established by state constitutions to determine who is eligible to vote. Other criteria include (1) residence, (2) citizenship, and (3) registration. Besides being 18 or older, individuals must have lived at their present address for a specified period of time, be a U.S. citizen, and have registered to vote.

In establishing voting qualifications, it is necessary to examine their impact in terms of how many people may be prevented from voting by the qualifications established. For example, if people move frequently, a lengthy residence requirement prevents them from voting.

When adopted, the 1970 Illinois Constitution reduced the minimum state residency requirement for voters from one year to six months. However, in the years following, several court decisions challenged the six-month state residency requirement as being unreasonable. (Courts were of the opinion that long residency requirements were not justified by either the greater ease of record-keeping or the greater awareness of issues that possibly accompanied lengthy residence.) In the face of these decisions, the state board of electors published Regulation 1974-5 (September 13, 1974) which provides that the only residency requirement for Illinois voters is 30 days' residency in the election district. Thus, a person 18 years old or older who permanently resides in an election district for 30 days or longer may become a registered voter regardless of how long he has lived in the state. Because of the shorter residence requirements and the enfranchisement of 18- to 20-year-olds, about 500,000 people have been added to the number of qualified voters in Illinois.

Conduct of Elections

The 1970 Illinois Constitution establishes a state board of elections to exercise general supervision over administration of the registration and election laws throughout the state. Prior to this provision, there was no

statewide machinery for looking at election procedures and there were three different sets of laws governing elections: one for Cook County, one for all other counties, and one for cities that established a board of election commissioners. The constitutional requirement that all election laws be uniform means that there can be only one set of election laws governing all elections in the state.

Taxes and Tax Policy

One of the most important and controversial articles in the Illinois Constitution is the one dealing with taxes — Article IX, called the revenue article.

The Power To Raise Revenue

By constitutional provision, the General Assembly of the state has the exclusive power to raise revenue by law. However, other constitutional provisions do dilute some of this power. For example, local governments are also given the power to impose property taxes on real property. Other constitutional provisions also limit, in various ways, the legislative power to raise revenue.

Kinds of Taxes

The 1970 constitution does not limit the kinds of taxes that may be levied. The article is broad and relatively flexible in regard to nonproperty taxes. Because of a 1932 Illinois Supreme Court decision, the 1870 constitution was interpreted to prohibit the use of an income tax. Although the Illinois Supreme Court reversed this decision in 1970, the drafters of the 1970 constitution were aware of the kinds of problems a restrictive clause could produce. Thus the only basic requirement of the clause pertaining to the levy of non-property taxes is that any law that classifies nonproperty taxes must create reasonable classes and tax the objects or subjects of each class uniformly.

Tax on Income. Perhaps as a result of the problems with the income tax under the 1870 constitution, the 1970 revenue article contains a specific provision for the income tax, limiting the way in which the tax may be imposed. (These limitations have already been criticized and it is quite possible that the first attempt to amend the constitution will relate to these limitations.) The tax must be imposed at a flat rate as opposed to a graduated rate. The federal income tax is an example of a graduated rate — as income increases, the percentage of tax increases. The Illinois rate in 1973 was 2.5 percent for individuals and 4 percent for corporations.

The article also limits the tax that may be imposed on corporations. The rate on corporations may not exceed the rate on individuals by more than a ratio of 8 to 5. In 1977, for example, the ratio was 8 to 5 — 4 percent for corporations and 2.5 percent for individuals. Since the ratio is now 8 to 5, if the legislature wishes to raise the corporate income tax rate, the individual rate must be raised also. However, the individual rate may be imposed at a higher rate than the corporate rate.

Tax on Real Property. Illinois local governments depend substantially on proceeds from the real property tax to support their functions. Although the revenue article does not restrict the imposition of this tax to local governments, the state government does not at present tax real property. The tax is on land and permanent improvements (such as houses, apartments, and business buildings) on the land.

The constitution requires the tax to be uniform by valuation. This basically means that, if any property is taxed, all property must be taxed, and the tax must be levied at a uniform rate. The tax rate is applied to the assessed valuation of the property.

One major difference between the revenue articles of the 1870 and 1970 constitutions is that the new constitution does permit a county (subject to limitations imposed by law) that has a population exceeding 200,000 to classify real property. This means that a county may assess certain classes of property at different levels. For example, farm real estate might be assessed at 25 percent of fair market value, single family residential real property at 30 percent, apartments and multifamily dwellings at 40 percent of fair market value, and so on. The classification must be reasonable, and farm real property may not be assessed at a higher level than single-family residential real property.

Tax on Personal Property. The section permits the classification of personal property for purposes of taxation. As in classification of real property, this allows the General Assembly to define what types of personal property may be assessed at differing levels. Most important, the constitution specifically requires the General Assembly to abolish all personal property taxes by January 1, 1979. At the time of abolition, the General Assembly must replace the resulting loss in revenue to school districts and units of local government by imposing a statewide tax on something other than real estate. This tax must be charged against those who are relieved of paying personal property taxes by act of the General Assembly. On the effective date of the revised constitution, personal property taxes on individuals had already been abolished by an amendment to the 1870 constitution. Therefore, subsequent abolition of the personal property tax affects corporations, partnerships, and fiduciaries. (Note: The

statement in the Constitution requiring abolition of the personal property tax is a mandate. If the legislature refused to act as required, it is doubtful it could be forced to do so.)

Exemptions From Property Taxation. The General Assembly, by law, may exempt from property taxation the following: property of the State of Illinois, units of local government, and school districts, property used exclusively for agricultural and horticultural societies, or property used for school, religious, or charitable purposes.

The General Assembly is also given the power to grant homestead exemptions or rent credits.

Changes in Well-Known Institutions

The outlines of state and local government under the 1970 Illinois Constitution remain much the same. There is still a general assembly, a governor, and a supreme court. There are still counties, townships, and municipalities. Yet, in response to problems under the old constitution, some important changes have been made in these well-known institutions.

Education

Appointed Chief Education Officer. There will no longer be an elected state superintendent of public instruction. Article X provides for an appointed state board of education which, in turn, appoints a chief education officer. (This was to occur as soon as a vacancy resulted upon expiration of the superintendent's term of office — at the latest, 1974.) Appointing a superintendent is designed to substitute professional qualifications for political qualifications.

County Superintendent of Schools. The constitution no longer contains a provision allowing each county to have its own superintendent of schools. Although all counties formerly had a county superintendent, it was not a requirement under the old constitution. (In 1969 the General Assembly created the office of regional superintendent, a position wherein one superintendent serves several counties and is elected jointly by them.)

Financing Education. The state is given the primary responsibility for financing the system of public education. However, the Illinois Supreme Court has decided this does not mean that the state must pay more than 50 percent of the costs of local school districts. What it does mean is not yet clear.

Aid to Parochial Schools. The so-called education article contains the following provision concerning the use of funds for church-related purposes:

Article X. Section 3. Public Funds for Sectarian Purposes Forbidden.

Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the state, or any such public corporation, to any church, or for any sectarian purpose.

This is the same provision as that in the earlier constitution. While it sounds as if no public funds may ever be given to church-operated schools, it is not as restrictive as it appears. Court interpretations of the U.S. and Illinois constitutions have permitted public funds to be given for some kinds of programs, generally those where the aid goes directly to students and not to the school. Aid programs in Illinois include the hot-lunch program, money for pupil transportation, aid to handicapped students, and, at the college level, state scholarships for use at private colleges. The only programs constitutionally sanctioned, at this time, are public transportation and textbooks.

Courts

The structure of the courts remains unchanged in the 1970 constitution — that is, there are 21 circuit courts and 5 districts for the appellate and supreme courts. This number is not, however, constitutionally mandated.

The office of magistrate has been abolished by the 1970 constitution and former magistrates have become appointed associate judges of the state circuit courts.

Other circuit, appellate, and supreme court judges continue to be elected, first running as candidates of one of the political parties and then running against their own performance in office for reelection. The people voted that all judges continue to be elected rather than appointed (see Table 1).

There is still a circuit judge for each county; however, this may be changed by the General Assembly. Some small counties may lack sufficient business to maintain a full-time judge; in the future it is possible that the General Assembly may provide for one judge to be elected by two or more counties.

Executive Branch

Election of Lieutenant Governor. The governor and lieutenant governor are now elected together in the same way the President and Vice

President of the United States are elected. Under the old system, Illinois sometimes had a governor of one party and a lieutenant governor of another.

Shared Powers. Six elected officials share executive power with the governor. Each elected officer is responsible for his own department. The governor, lieutenant governor, treasurer, attorney general, secretary of state, and comptroller are all elected for four-year terms and all may succeed themselves in office. A new officer, the comptroller, replaces the auditor of public accounts. To increase voters' concern with state issues, beginning in 1978 the state elections no longer will be held in the same year as the presidential elections.

Veto Power. The governor's power to affect legislation is strengthened by the 1970 constitution. His veto power has been changed, allowing him to reduce the total budget of an agency without disrupting its business, and he may also recommend changes in legislation to the General Assembly which become effective if the General Assembly agrees to them.

The governor now has the power to reorganize the number, names, and duties of departments, agencies, and boards in the executive branch — a power previously shared with the legislature.

Legislative Branch

The Illinois legislature, called the General Assembly, is composed of a 59-member senate and 177-member house of representatives. The General Assembly meets annually beginning the second Wednesday of January.

Legislative Size and Elections. All 177 members of the house of representatives are elected for two-year terms in even-numbered years. Since the legislature must redraw its districts every 10 years, the terms of 59 senators also have been set up so that there will be three senatorial elections in each district each 10-year period (previously senators had staggered four-year terms). The senators from each district serve one two-year term and two four-year terms in one combination or another. Every 10 years the entire senate is elected all at one time from the new districts. Senators and representatives are elected from the same 59 legislative districts (Table 2). This pattern is repeated every 10 years. The senate districts in each group are to be distributed evenly around the state.

To serve as a legislator an individual must be a U.S. citizen, at least 21 years old (the difference between this and the voting age is constitutional), and a resident of his legislative district for two years. Since redis-

Table 2. Election of Senators, Illinois General Assembly, With Length of Term

Election in November		1972 Term (years)	1974 Term (years)	1976 Term (years)	1978 Term (years)	1980 Term (years)	1982 Term (years)
Group	Senators						
I	20	4		4		2	4
II	20	4		2			4
III	19	2	4		4		2

Source: Posey, R. B., *The Constitution of Illinois/1970.* New York: Harper & Row, 1971.

tricting, he may run in any district created from part of his former district even if he does not live there. However, to be reelected from a district he must have resided there at least 18 months prior to that election.

Legislative Problems. Illinois has had two problems in selecting representatives to its legislature: reapportionment and cumulative voting.

Reapportionment. Reapportionment means ensuring that the legislative districts contain approximately equal numbers of voters. For more than 50 years the legislature declined to reapportion the districts, even though the Illinois Constitution required that districts be equal in population and redrawn every 10 years. This resulted in underrepresentation in growing urban areas. In 1954 a constitutional amendment provided new procedures for redrawing districts. In 1963 these procedures failed to produce new districts, however, and in 1964 the voters faced what is now called the "bedsheet ballot" when each voter had to select all 177 members of the house of representatives, rather than the 3 members usually selected from each district.

The 1970 constitution attempts to prevent such a situation from arising again. It provides for establishing a redistricting commission if the General Assembly cannot redistrict itself, and for a tie-breaking vote if the commission is unable to agree on a redistricting plan. The provision for a cumbersome at-large election has been eliminated.

Cumulative Voting. Cumulative voting is an unusual manner of selecting representatives to the General Assembly, designed to ensure representation of minority political parties in every district. Three representatives are selected from each district. Each voter has three votes and may cast one vote for each of three candidates, or three votes for one candidate, or distribute them among the candidates as the voter sees fit. Cumulative voting was designed so that minority parties could cast their com-

bined votes for a single candidate, thereby increasing the candidate's chances for election. If there were only one representative to a district, the minority almost never would elect a representative. Frequently, however, the parties got together and limited the total number of candidates to three (two from the majority and one from the minority party). This guaranteed each party its proportionate representation, but it gave the people no choice in their voting.

Criticism of this arrangement and of cumulative voting in general led the constitutional convention to offer the voters a choice between retaining cumulative voting or having a more conventional system providing for one representative to a district. The people chose to retain the cumulative voting system (see Table 1). However, each political party is now required to nominate at least two candidates in every district.

How a Bill Becomes a Law

Procedure for the passage of laws in Illinois is much like that of the U.S. Congress.

1. Bills on any subject may originate in either the house of representatives or the senate; they may be amended or rejected by the other house. Both houses must agree on any amendments to the original bill.

2. To prevent rushing, bills must be read to the members on three different days before they may be voted on. The title of a bill may be read instead of the entire text, but members must have a printed copy of the bill with any approved amendments before the final vote is taken. This is to make certain that members are aware of the content of the bill.

3. A bill must deal with only one subject. This means that no "riders" may be attached to bills. Riders are amendments or clauses that do not deal with the main subject of the bill; they often concern unpopular subjects and are attached to popular bills to improve the chance for passage.

4. A majority of the total membership elected to each house — not simply a majority of those present when the vote is taken — must approve a bill. The vote of each member must be recorded at the final vote.

5. After a bill is passed, it is sent to the governor for his approval or disapproval. If the governor approves the bill, he signs it and it then becomes law on a specified date.

6. If the governor disapproves of a bill, he may do a number of things to prevent its enactment. One is to return it to the proposing house with a message explaining why he will not sign the bill into law, which is called a veto.

7. By passing the bill a second time in both houses, the legislature may make a bill law even if the governor has vetoed it. The second passage requires approval of three-fifths of the members of each house.

8. If the governor wishes not to be on record as either favoring or opposing a bill, he may refuse to make a decision for 60 days, after which the bill becomes law without the governor's signature.

9. If the governor believes a spending bill asks for too much money, he may reduce or delete specific-purpose sums, which is called a reduction veto. The governor may then sign the bill with the reduced appropriation. If the legislature still wants the agency to have the original amount of money, a simple majority (50 percent plus one) of each house can restore the funds. Prior to the 1970 constitution, a governor could remove only an entire item from a spending bill — such as salaries, travel expenses, and so on — and could not reduce the amount of the item.

10. If the governor desires to change a bill that is not a spending bill, he may list the desired changes and return the bill to the legislature. This is called an amendatory or conditional veto. The legislature, if it agrees to the governor's suggested changes, passes the revised bill by a record vote of a majority of the members elected to each house.

Local Government

Counties

New powers given to counties by the 1970 Illinois Constitution include the right to elect a chief executive officer (similar to a governor or mayor) and by referendum to determine the number of elected or appointed officials necessary to carry out the responsibilities of the county. This power is a substantial change from the 1870 constitution which required the election of a large number of county officials. Officers other than the sheriff, county clerk, and county treasurer may, in some instances, be appointed rather than elected. In addition, the county, by ordinance, may provide duties and powers for these offices in addition to those provided by state law.

One of the most significant changes in the powers of counties concerns taxing and indebtedness limits of counties, which will now be set by the General Assembly — not by the constitution.

Townships

The 1970 constitution in no major way changed the functions or powers of township government. Township tax rates and indebtedness limits are set by the General Assembly and not by the constitution. Per-

haps the most controversial provision requires referendum approval in each township affected, before any township may be dissolved, divided, consolidated, or merged. However, all townships in a county may be dissolved if such a proposition is approved by a countywide referendum.

Municipalities

Municipalities are given the power to adopt, alter, or repeal their form of government and, by referendum, to provide for their officials, their manner of selection, and terms of office. Also, like counties, they may incur debt and levy taxes except as limited by the General Assembly.

School Districts and Other Local Units

School districts and other units of local government have basically the same power under the 1970 constitution as they did under the 1870 constitution. The General Assembly determines the indebtedness and taxing limits.

Salaries and Fees of Officers

Under an express provision of the 1970 constitution, fees collected from services may not be expended for the payment of salaries for officers and employees of local government or for office expenses of local governments.

Very importantly, local government units are prohibited from collecting fees based upon the amount of funds paid out or collected, or upon the levy or extension of taxes. This collection was a common practice prior to the 1970 constitution, and some local government units are having budgetary problems because of the loss of this fee income.

Intergovernmental Cooperation

The intergovernmental cooperation clause is an important tool given local governments. It essentially permits all units of local government and school districts, without permission from the legislature, to contract or associate among themselves and, with the state or federal government, to provide or share services which they are permitted to provide by law.

Home Rule

Qualifying Units of Government. The 1970 constitution gives certain units of government the powers of home rule. A county that has an elected chief executive officer as provided by the General Assembly quali-

fies as a home rule unit. Municipalities with populations of more than 25,000 are automatically home rule units, and any other municipality regardless of population may elect by referendum to become one.

Powers. A home rule unit has broad governing powers. It may generally perform any function that relates to its government and its affairs. Such a unit may decide what services to offer without first receiving permission from the General Assembly. The home rule unit's spending for a particular service is a local decision and not based on General Assembly limitations.

Limitations. Home rule units do not have unrestricted powers, for the constitution provides some protection against the abuse of the broad powers given them.

1. Such a unit by referendum may elect not to be a home rule unit.
2. It has no power to define or provide for punishment of a felony.
3. It may levy an income tax or a tax on occupations or license for revenue only with the permission of the General Assembly.
4. By a three-fifths vote of the members of each house of the General Assembly, a home rule unit's power to tax or to perform any other power or function may be limited or denied.
5. The General Assembly by a majority vote may elect to exercise exclusively any power or function of a home rule unit other than the taxing power and several other special limited powers related to taxation.
6. Within specified limits, the General Assembly may also limit the debt that may be incurred by home rule counties and municipalities.

Special Services Tax. Any county or municipality may impose additional taxes upon an area within its boundaries, to finance special services provided for that area and not offered to all areas of the governing body's jurisdiction. For example, this provision permits a county to provide sewer, light, recreation, and water services to a small subdivision not within the boundaries of an incorporated municipality.

Important Sections Covering Current Concerns

The 1970 Illinois Constitution contains several new sections that reflect contemporary social concerns.

Environment

Concern for protection and preservation of the state's natural environment is covered as follows:

Article XI. Environment.

Section 1. Public Policy — Legislative Responsibility.

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.

Section 2. Rights of Individuals.

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.

Section 2 gives individuals a special legal position — a right to sue governments, individuals, or companies in order to secure a healthful environment. Without this constitutional provision, individuals would have to prove damage to themselves or their property in order to sue a polluter. According to this provision, an individual only needs to prove general damage to the environment and the individual is allowed to sue in the name of the public — a right usually reserved to the state Attorney General. The provision was designed "to give practical impact to the constitutional expression of the individual's right to a healthful environment . . ." [Sixth Illinois Constitutional Convention, Record of Proceedings, Vol. 6, p. 702]. The General Assembly may make reasonable regulations concerning this right, which allows the General Assembly to prevent an excessive number of suits that might slow down other judicial business, and to provide orderly procedures for handling suits.

Public Transportation

Article XIII. General Provisions.

Section 7. Public Transportation.

Public transportation is an essential public purpose for which public funds may be expended. The General Assembly by law may provide for, aid, and assist public transportation, including the granting of public funds or credit to any corporation or public authority authorized to provide public transportation within the state.

The provision for public transportation at first appears to be the kind of detailed matter that overcrowded the Illinois Constitution of 1870. Why is public transportation any more important than sewage disposal, regional planning, or health services? This provision is designed to avoid a problem the convention feared. The constitution, in the finance article (Article VIII, Section 1), provides that public funds, property, or credit may be used only for public purposes. The convention wanted to make it clear that the General Assembly could use public funds to assist privately owned public transportation. Without this statement, public transportation might

be considered a private or special use and state aid would be prohibited. This provision clears any doubts about future use of public funds by the state government to assist public transportation. There was no question that regional planning or sewage disposal were legitimate public purposes.

Pension and Retirement Rights

Article XIII. General Provisions.

Section 5. Pension and Retirement Rights.

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

Section 5, on pension and retirement rights, is another section of the constitution where the right stated is probably covered by the more general statements prohibiting impairment of contracts in the Illinois Bill of Rights (Article I, Section 16). The exact meaning of this section is unclear. Its presence may offer reassurance to the groups mentioned that the General Assembly will make no law reducing the amounts of their pensions. Some groups of public employees feared that without such a right the pension fund might run out of money and their pensions would disappear. This provision limits the power of the General Assembly to reduce the amount of a pension, but it in no way prohibits increases in pensions.

Constitutional Revision

All state constitutions provide methods for making future changes in the constitution. They specify procedures both for changing one particular subject area and for revising the entire constitution. Illinois provides three methods of initiating constitutional change: (1) special convention, (2) legislative proposals, and (3) citizen petitions. Proposals made by any of these methods must be approved by the voters before any changes may take effect.

The ease of changing a constitution is meant to be a balance between the need for permanence and the need for change. Constitutions should be more permanent than ordinary legislation, yet they must be changed to meet new problems.

Convention Method

A constitutional convention may be called after a favorable vote of 60 percent of those voting on the question or a majority of those voting

in the election. The call for a convention is placed on the ballot by the General Assembly when approved by a three-fifths (60 percent) vote of each house. If the question of calling a convention has not been submitted to the people by the General Assembly within any 20-year period, the secretary of state submits the question to a vote at the next general election.

The mechanics of a constitutional convention are left largely to the General Assembly. Delegates to the 1969 convention were elected without party labels following a decision of the legislature. The constitution provides that two delegates are to be elected from each state senatorial district. The time and place of election is left up to the General Assembly. To be eligible as a delegate, a person must be a U.S. citizen, at least 21 years old, and a resident of his district for two years prior to his election. These are the same qualifications as those required for membership in the General Assembly.

A convention may submit to the voters either a series of amendments or a completely revised draft of the constitution. The changes proposed by a convention must be approved by a majority of those voting on them.

Legislative Amendment

The legislature is limited to proposing amendments to only three articles of the constitution at a time. A 60-percent majority is required in each house for the General Assembly to propose a constitutional amendment. A three-fifths majority of those voting on the amendment, or a majority of those voting in the election, is required for approval of a legislative amendment.

Popular Initiative

Popular initiative is a new method of amending the Illinois Constitution and is the most limited of the three methods. Under this system, amendments may be proposed only to the legislative article, which gives the electorate a new opportunity to affect the content of the constitution. To amend the legislative article by popular initiative, a petition must be submitted, signed by 8 percent of the number of voters who voted for governor at the last election. An amendment proposed in this way must be approved by either three-fifths of those voting on it or a majority of those voting at the election.

The initiative method is included in the constitution to overcome any reluctance the General Assembly might have to change its own structure or procedures. Just as the General Assembly once avoided reapportionment because it meant that some members would lose their positions, so

it is assumed that the General Assembly will not desire to alter the way in which its members are elected.

Federal Constitutional Amendments

The state legislatures also are responsible for considering amendments to the U.S. Constitution. The convention felt there was a need for safeguards against hasty consideration of amendments prepared by Congress. A new section of the Illinois Constitution calls for a 60-percent majority of the members of each house to approve an amendment to the U.S. Constitution, or to call a state convention to ratify a proposed amendment. Under the 1870 Illinois Constitution a simple majority of the members present at a legislative session could approve a federal amendment. (There is a legal question whether a three-fifths majority may be required because no mention of it is made in the federal constitution.) This meant that amendments were given the same consideration as ordinary legislation.