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California Justices who have recently ordered sterilization are not evidence enough as to the fallacy of this assumption, they might do well to note a 1963 decision of the Delaware Supreme Court which found that a penal statute providing for whipping was not cruel and unusual punishment.¹⁸⁵

In coming years, the problems of our society will not be so much how to get along with each other, but rather how to live with the progress science has brought without subjecting the individual to a subservient and degrading role. Huxley, some twelve years after writing *Brave New World* and seeing its reality begin to take shape, had cause to remark:

Unless we choose to decentralize and use applied science not as the end to which human beings are to be made the means, but as the means to producing a race of free individuals we have only two alternatives to choose from, either a number of national militarized totalitarianisms . . . or else one supra-national totalitarianism, called into existence by the social change resulting from rapid technological progress in general, . . . and developing under the need for efficiency and stability, into the welfare-tyranny of Utopia.¹⁸⁶

These alternatives to a race of free individuals are not attractive. Huxley, realizing this, and that we are the masters of our own destiny, observed that "[y]ou pays your money and you takes your choice."¹⁸⁷

Walter H. Birk

¹⁸⁵ Cannon v. State of Delaware, 55 Del. 597, 196 A.2d 399 (1963).

¹⁸⁶ Huxley, *Foreword* to HUXLEY, *supra* note 1, at XIV.

¹⁸⁷ Huxley, *Foreword* to HUXLEY, *supra* note 1, at XIV.

THE PROBLEMS OF CONSTITUTIONAL REVISION AS A METHOD OF REFORMING LIMITED SUFFRAGE

Reduction of the minimum age for voting and elimination of the residence requirements are two of the most frequently discussed changes to the 1870 Illinois Constitution. When considering them as revisions to constitutional provisions establishing who shall vote, however, it is first of primary concern to ascertain what qualities are essential to any constitutional provision which is to insure proper administration of elections and protection of the right to vote. These requisite qualities of a suffrage article must be seen in terms of demands which stem from questions relating to social pragmatism as well as political theory. Seen as a question of milieu¹ and not solely political theory, the establishment of the suffrage article in the Constitution of the State of

¹ The term milieu as used in the behavioral sciences pertains to a view of environment which incorporates sociological, political, psychological, cultural and economic factors.

Illinois² is the product of a body politic whose deliberations reflected conditions in 1870. Accordingly, the issue determining the current need for revision is whether conditions almost a century later are sufficiently dissimilar to render prior considerations no longer pertinent or to merit examination of different problems.

The basis of the political demand for a suffrage article is manifest in the regard which is given to the right of suffrage as a fundamental article of republican government.³ Yet during the first half of this nation's history, congressional action in this area was limited. Until the time of the Civil War, political theory emanating from the federal level of government played a relatively small role in the establishment of actual voter qualifications. As late as the first quarter of the twentieth century it was felt that the substantive federal right to vote was, by virtue of Article I, section 2 of the United States Constitution⁴ in conjunction with the seventeenth amendment,⁵ to be qualified via state provisions.⁶

Subsequent to the Civil War, however, federal political theory incorporated pragmatic considerations to cope with the detrimental effects of prejudicial discrimination. Essentially this federal activity took the form of two basic demands on state suffrage articles: there shall be no denial of franchise on the basis of sex⁷ or race.⁸ To enforce these requirements several federal enactments then became necessary.⁹ These requirements have a pronounced effect

² ILL. CONST. art. VII, § 1 reads as follows: "Every person having resided in this state one year, in the county 90 days, and in the election district 30 days next preceding any election therein, who was an elector in this state on the first day of April, in the year of our Lord 1848, or obtained a certificate of naturalization before any court of record in this state prior to the first day of January, in the year of our Lord 1870, or who shall be a male citizen of the United States, above the age of 21 years, shall be entitled to vote at such election."

³ See THE FEDERALIST No. 52, at 327 (Lodge ed. 1888) (Hamilton).

⁴ U.S. CONST. art. I, § 2 reads as follows: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors in the most numerous Branch of the State Legislature."

⁵ U.S. CONST. amend. XVII, concerning the qualifications for voters in Senate elections, contains language identical to art. I, § 2.

⁶ Breedlove v. Suttles, 302 U.S. 277, 283 (1937); Guinn v. United States, 238 U.S. 347, 362 (1915).

⁷ U.S. CONST. amend. XIX.

⁸ U.S. CONST. amend. XV.

⁹ Four federal enactments have been passed to protect the right to vote per se: Civil Rights Act of 1957, 71 Stat. 634 (codified in scattered sections of 5, 28, 42 U.S.C.); Civil Rights Act of 1960, 74 Stat. 86 (codified in scattered sections of 18, 20, 42 U.S.C.); Civil Rights Act of 1964, 78 Stat. 241 (codified in scattered sections of 5, 28, 42 U.S.C.); Civil Rights Act of 1965, 79 Stat. 437, 42 U.S.C. 1973. Antipoll tax legislation in 1940 was not strictly a "qualification" within the meaning of U.S. CONST. art. I, § 2 or amend. XVII.

on the process whereby Illinois would determine whether there is a need for revision and what that revision might incorporate. In 1870, the fundamental questions pertinent to the establishment of specific requirements as to who shall vote were delegated solely to the individual states. Today, in addition to reflecting change in the individual state's evaluation of how this pre-1870 concept of suffrage would now be best implemented, state provisions must also be indicative of changes in perspective concerning the federal or politically theoretical evaluation of the substantive right to vote.

Assuming for the moment that a change in suffrage policy is desired and within the permissible scope of state regulation, it is equally important to determine the vehicle to be used. Is it a task for the state constitution or state legislation? The question of the relative need for constitutional revision must closely take into account the possibilities of adequate legislative measures in supplemental areas. The federal constitution provides that the legislature of the state, and not the people, by adopting a constitution may prescribe times, places, and manners of electing senators and representatives in Congress.¹⁰ Yet, it has been considered improper to have the basic definition of the right of suffrage subject to legislative representation.¹¹ This would seem to indicate that qualifications which serve to silhouette the substantive definition of suffrage are to be established constitutionally; whereas, procedural matters are within the province of election codes. The delineation is not so clear-cut; separating election procedure from substantive constitutional guarantees is not simple. For example, residence requirements, which have been subjected to frequent criticism for their shortcomings with regard to presidential elections,¹² have been dealt with as a substantive issue accounted for under constitutional provisions, yet they are also regulated by procedural qualifications of registration under election codes. Accordingly, some states, including Illinois, have rectified defects in constitutional provisions through the establishment of procedural controls in election codes;¹³ whereas others have reduced the stringency of the requirement per se.¹⁴

The objectives of this analysis are therefore to compare the milieu of 1870 with that of today in order to evaluate development and to determine whether

¹⁰ *Shiel v. Thayer*, 1 Bart. El. Cas. 349 (1834). *Contra Baldwin v. Trombridge*, 2 Bart. El. Cas. 46 (1836).

¹¹ *Supra* note 3.

¹² Ogul, *Residence Requirements as Barriers to Voting in Presidential Elections*, 3 *MIDWEST J. POL. SCI.* 254 (1959).

¹³ During the decade of the fifties, numerous states made efforts towards suspension of residence requirements in presidential elections. *See, e.g.*, California, Delaware, Michigan, Minnesota, New Hampshire or North Carolina state laws.

¹⁴ *E.g.*, Alabama, Louisiana, New Jersey, North Carolina, Rhode Island or Tennessee state laws. The result of a decade of activity has been overlap, inconsistencies, and, in general, the absence of a uniform national policy.

changes of suffrage policy are appropriate; to characterize the desired revisions as federal or state in nature; and finally to decide whether state revisions would best be facilitated via state constitution or the election code. With this task set out, it becomes appropriate to look at the setting of the 1870 Constitution in which Illinois' present suffrage article was established.

ILLINOIS CONSTITUTIONAL CONVENTION 1869-1870

Since emphasis is placed on conditions of the time, it is proper to first consider what Illinois was like in 1869. The most pervasive factor affecting Illinois in the latter half of the nineteenth century was a marked period of industrial expansion which, in conjunction with the extending of railroads, led to rapid urban growth.¹⁵ By the early seventies there was a noticeable changing aspect of school and pulpit indicative of the incorporation of new ideas and a widening outlook on life.¹⁶ Awakening social consciousness brought political, social, religious and racial conflict.¹⁷ Three incidents of the period, characteristic of the fundamental structural forces at work, were especially pertinent to the determination of who would vote. First, indicative of changing social consciousness, the women of the state were actively demanding the right to vote. Second, the period immediately following the Civil War posed the explosive question of how to relate the franchise of Negroes to the suffrage right. States stepped cautiously when issues arose involving individual state implementation of federal guarantees. Finally, the inevitable increase in mobility after a war and the simultaneous expansion of industry and employment put Illinois in the position of rapidly becoming a center for a substantial foreign born population.¹⁸

The outstanding events which shaped social structure during this period were manifested by demographic groups, and the issues most fiercely debated during the constitutional convention's discussion of the franchise privilege corresponded to extension of suffrage to these groups. Accordingly, it was the contention of the constitutional convention that four segments of the population demanded serious consideration: native white males, foreign born white males, women and Negroes.¹⁹ The debates regarding the limits to which the franchise would be extended to these groups were bitter and heated.²⁰ Con-

¹⁵ BOGART AND THOMPSON, 4 CENTENNIAL HISTORY OF ILLINOIS 1 (1920).

¹⁶ *Id.* at 28.

¹⁷ *Id.*

¹⁸ *Id.* at 13.

¹⁹ *Id.*

²⁰ The degree to which opinion differed is indicated by the fact that the committee on the right of suffrage was unable to agree even among itself and was forced to submit one majority and two minority opinions. The majority report made no mention of

trovcrsy was encountered at the convention, placing in issue the role that was to be given to the Negro in American society and government.²¹ Even more serious consideration was given to women's suffrage.²² Finally, the political status of nonnaturalized males was also a source of prolonged debate.²³ The result of these debates, a restriction of the franchise to male citizens of the United States, is frequently taken for granted, but it did not come about easily.

The influx of foreign born males was partially responsible for the establishment of residence requirements. But of more importance, the establishment of residence qualifications, not only in Illinois but in all states, clearly indicated how conditions of society affected the considerations which were to be given to a suffrage article which was to pragmatically extend and enforce the franchise. Sound reasons prompted the establishment of residence requirements. They were the product of a period when only common acquaintance among the members of a community served to identify eligible voters and provide familiarity with election issues.²⁴ The argument that a voter should have roots in the community of sufficient permanence to insure adequate familiarity with local issues and candidates was persuasive in a period when the mass media were relatively undeveloped. Furthermore, residence requirements reflected the nineteenth century concepts of federalism, which in effect embodied state dominance of the voting process regardless of whether the offices were national or local.²⁵ A more realistic function of residence requirements, however, was their effect as a barrier against election fraud:

Before the enactment of registration laws, it was not unusual for armed men to appear at the polls and demand the right to vote. After voting, they quickly rode away, never to be seen again . . . [or] gangs of 'repeaters' were hauled from

Negroes or women; four of the six members who signed this, however, submitted two separate reports, one restricting franchise to white males and the other proposing that the question whether franchise should be extended to women be put before the voters of the state. 1 DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION 1869-1870 856 further indicates that this same committee also questioned whether limitations on the extension of franchise should be by legislation or constitutional ratification by the currently qualified voters of the state.

²¹ There was condemnation of the fifteenth amendment, and its supporters were criticized.

²² Enemies at the convention tried to stop debate entirely. At first they relied on the argument that mere discussion of the right of women to vote was degrading to womanhood; when that failed, they resorted to ridicule, charging that the women's suffrage question was the product of unbalanced minds and that its adherents were chiefly, "long haired men and short haired women." BOGART, *supra* note 15, at 22.

²³ Some could not defend extending the franchise to Negroes while denying it to foreign born whites, but the majority subscribed to a different view.

²⁴ Goldman, *Move—Lose Your Vote*, 45 NAT'L MUNIC. REV. 6 (1956).

²⁵ Schmidhauser, *Residency Requirements for Voting and the Tensions of a Mobile Society*, 61 MICH. L. REV. 823 (1963).

precinct to precinct and voted under different names. Sometimes the same person would vote several times at each precinct, changing coats or hats between times. The early registration lists were often padded with bogus names of persons who had died or moved or were checked off and voted by the corrupt precinct election officers.²⁶

To defeat fraudulent practices such as these or "colonizing voters,"²⁷ residence requirements of some nature were a practical necessity.

With the single exception of the extension of the franchise to women, which was accomplished by federal rather than state amendment,²⁸ the Illinois suffrage article has remained basically unchanged²⁹ as an extension of the right to vote to all male citizens regardless of race, provided they have reached the age of twenty-one and prior to the election day have satisfied certain minimum residence requirements. This 1870 suffrage article can most significantly be characterized as an enfranchisement offered as a constitutional right pertaining to groups of the populace. The manner in which these groups were considered as potential voting populace and the function of residence requirements as a deterrent to election fraud indicate that the 1870 provision was more concerned with preservation of the political system within the ecology of the period than promotion of individual rights and liberties. Furthermore, with the exception of the age requirement, individual capacity is not placed as a condition precedent to the right to vote.

ILLINOIS CONSTITUTIONAL CONVENTION 1969-1970

Are conditions sufficiently dissimilar from those in 1870 to render the prior considerations no longer applicable or to merit new or different approaches in determining who shall vote? It is the opinion of the Constitutional Study Commission for the State of Illinois that:

The Constitution of 1870 was written before the development of today's problems

²⁶ HARRIS, REGISTRATION OF VOTERS IN THE UNITED STATES 6 (1929).

²⁷ A procedure whereby hoodlums were rounded up, lodged for the night in various lodging houses, registered to vote, and then taken en masse from poll to poll on the day of election.

²⁸ The adoption of the nineteenth amendment to the Federal Constitution had the effect of erasing the limitation of suffrage to male citizens. 1921-22 OP. ATT'Y GEN. 47. However, the nineteenth did not grant suffrage, but merely denied states the power to discriminate with respect to the right to vote because of sex. *Murray v. Holmes*, 341 Ill. 23, 173 N.E. 145 (1930). Even prior to the adoption of the amendment, statutory provisions existed in Illinois whereby qualified women were given the right to vote in certain elections. *Saddoris v. Walker*, 305 Ill. 477, 137 N.E. 493 (1922).

²⁹ In 1963 a proposal was introduced suggesting that suffrage be restricted to those who sufficiently satisfied the minimum burdens of citizenship (*i.e.*, disfranchisement of those on public relief). This proposal did not, however, receive adequate support to be submitted to the electorate for ratification.

of community conservation, inter-governmental relationships, emphasis on local government and the influence of the federal government. A convention would want to consider what constitutional provisions are needed to meet current and developing problems not anticipated in 1870 and which [render] provisions . . . obsolete by today's standards.³⁰

The conclusion of this statement is founded upon three contentions: that the emphasis on local government is disproportionately greater today; that the influence of the federal government is distinctively different; and that current problems regarding development of the milieu did not exist in 1870. The increased concern of the federal government which gave rise to the post-Civil War Amendments and the extension of suffrage to women has been acknowledged, but the role of local government has not disproportionately increased, and current problems to a significant extent differ only in the degree to which conditions manifest themselves.

Illinois remains no less the sovereign over local governmental agencies, and local affairs can hardly be said to have greater import to a citizen in the age of jet travel than they did to the man who lived in an age when twenty miles meant a full day's travel. Furthermore, the technology of problems allegedly not anticipated in 1870 perhaps was not foreseen, but the substance of the problems is not different. In 1870 industry was said to be expanding under the pressures of technological changes which forced increased mobility on skilled and unskilled workers. Today Illinois is faced with problems such as the atomic energy facilities being constructed at Weston, which is expected to create a city of greater than a million people within twenty years. In 1870, Illinois confronted railroad growth; today Chicago with the "world's busiest airport" already seeks a location for a third major air terminal. In 1870 the problem was city growth; today it is megalopolis—a difference of degree, not substance. In many situations concerning governmental structure, this quantitative change has become qualitative, but with regard to the voter and the state's relationship to that role, positions are relatively unchanged.

Awakening social consciousness was said to have brought about political, social, religious and racial conflict in 1870. Would this have created headlines then that would be different today? A *Chicago Tribune* editorial declares, "We are fallen upon a time of agitation . . . there is a general shaking up of the virtues and the vices, and the pools of society are being vigorously stirred by the angels of reform."³¹ This could be a comment upon today's "Yippie" generation, but in fact the editorial was printed in 1874.

Yet, there are distinctive differences between the two periods. When the 1870 constitution was drafted, no person seriously considered questioning the

³⁰ REPORT OF THE CONSTITUTION STUDY COMMISSION 21 (1967).

³¹ BOGART, *supra* note 15, at 35.

establishment of twenty-one as a minimum voting age,³² but shortly after World War I, the cry, "old enough to fight, old enough to vote!" was sounded. This chant has pulsed in proportion to major national military conflict:³³ World War I, World War II, Korea, and it should not be unexpected following the battles in Viet Nam. A second difference concerns the need for residence requirements. Whereas in 1870 voter identification and voting fraud may have necessitated stringent residence requirements, the development of personal identification methods such as finger printing and photography or common identification systems such as driver's licenses are in wide use, making feasible a properly developed identification system which would render previous residence qualifications outmoded.³⁴

Noticeable change has also taken place in the demands upon the voter. Election issues now reach further and with greater impact. In the past voters have concerned themselves with domestic issues: tax reforms, community morals, or raising children in a fit environment. Today the narrowing proximity to once distant places finds the voter confronted with complex issues such as Viet Nam or civil rights. Furthermore, through increases in the technology of communications and the general awareness of the public, the foundations of government and governing have also been exposed. The correlative widespread prominence of election issues cuts away at the underpinnings of the argument that a minimum period of local residence is necessary to become informed about candidates and issues. An additional consequence may be that the prominence of these complex issues will force suffrage policy, which in 1870 did not concentrate on individual capabilities, to recognize that the ability to grasp complex ideas is essential to an enlightened electorate, and reading without comprehension will no longer be deemed adequate.

REDUCTION OF THE MINIMUM VOTING AGE

The issue which has received the most frequent attention in Illinois is whether the voting age should be lowered. At almost every recent session of the Illinois General Assembly there has been at least one proposal for a constitutional amendment reducing the voting age. This is not a situation unique to Illinois, however. A proposal of this nature has come before the legislature of almost every state, with soundings of such sentiment dating back to the period immediately following World War I. This is largely attributable to the major use of conscription during that war. Since then the movement favoring this proposal has gained powerful support through veterans' groups, and

³² Abraham, *Reduce the Voting Age to 18?*, 43 NAT'L MUNIC. REV. 11 (1954).

³³ *Id.*

³⁴ *Supra* note 24.

advocates of reducing the age qualifications to eighteen are readily found in both Republican and Democratic camps.

There are two methods of accomplishing reduction, and both are of constitutional dimension. The first alternative involves federal amendment, but because of great reluctance against federal intervention in what has traditionally been felt to be the state's right to establish suffrage provisions, state constitutions have been the most frequently sought vehicle. It should be noted, however, that although the call for reduction of the minimum voting age through state constitutional amendment has been extensive, rarely has it received the affirmative response of actual amendment.³⁵

Proponents none the less continue to present three fundamental rationales in an effort to convince legislatures that reduction is desirable. First, the participation of younger, unregimented voters with their idealism and fresh viewpoint would prevent thought from stagnating and would interject new dimensions of awareness. Second, it is important that young people exercise their training in citizenship at the earliest opportune time. The student population of high schools is deeply conscious of government and anxious to participate in it. The lapse of three or four years without an active voice, it is argued, brings about either frustration or loss of interest, and the result ultimately is a proportionate reduction of participation. The third point has been couched in the traditional slogan: "old enough to fight, old enough to vote!" The underlying rationale which supports this argument basically is that twenty-one is not a magic age at which a boy suddenly develops manly characteristics, and that if at eighteen a person is old enough to fight, then presumably he is old enough to know why he is fighting. Accordingly, if he knows what he is fighting for, then he should be permitted to vote.³⁶

Opponents of the movement to reduce the minimum voting age deny these presumptions and consider the argument as an emotional and inadequate analysis of the problem.³⁷ The first point is attacked on the basis that a

³⁵ Voters rarely have the opportunity to ratify such an amendment. One reason for this may be the prohibition against submitting amendments to more than three articles together with a prevalent feeling that having too many propositions on the ballot has an adverse effect on them all. These factors have caused members of the legislature to be reluctant to vote for submission of the amendment when there is another proposed amendment which they consider as having a higher priority, resulting in the failure to receive two-thirds vote in both houses necessary for submission of amendment to the electorate by the General Assembly.

³⁶ Twenty-one has traditionally been accepted throughout the world as the age at which suffrage is granted. It may be noted, however, that in Australia exception is made for men and women who are under twenty-one and in military service. Their civilian counterparts are not given the right to vote.

³⁷ One of the dangers in affirmatively answering the appeal to reduce the voting age to eighteen is that because it is based upon an emotional appeal it is subject to exploitation. Especially susceptible to this is this is the serviceman, traditionally found to

young and inexperienced electorate might be susceptible to fear, impulse, instability, inconsistency or radicalism. The opposition thus rebuts the call for fresh and unregimented perspectives with the contention that this fresh viewpoint might need a bit more seasoning. The second line of reasoning which holds that the gap between high school and the twenty-one year old's first election causes the loss of a participating citizenry is countered with the argument that significantly greater numbers of students are going beyond high school to colleges where stimulation of interest is continued, and with regard to those who do not continue, if the interest is properly instilled in high school, it will not die during the short interim. Finally, opponents point out that the demands of physical fitness and discipline are forms of service which are hardly comparable to prowess in analyzing and reasoning which is necessary for voting. Physical maturity should not be confused with emotional maturity, and physical qualifications for military service cannot be seen ipso facto as qualifications for voting. Representative government is fundamental to our system; it is not an unreasonable policy then to have the wishes of the servicemen under twenty-one years of age represented at the polls by his family.

In summary, opposition takes the position that over a span of more than seventy years, the difference between eighteen and twenty-one does not mean much, yet it may well constitute the difference between impulse and more closely reasoned decisions. Life is filled with the necessity of "line-drawing." On the basis of the foregoing reasoning, the line drawn at twenty-one remains valid.

REFORM OF THE RESIDENCE QUALIFICATION

Although the problems of industry and a mobile population were present in 1869, the state of advancement attained during the twentieth century has been sufficiently extensive so as to render requirements based upon conditions a century ago no longer adequate, and residence requirements have become the second most frequently considered change in the Illinois suffrage policy. The reason for this is readily apparent; there are more mobile voters, and consequently the problem of disfranchisement is more serious.

Population surveys indicate that prior to World War I only about twelve per cent of the population was normally mobile.³⁸ However, with the loosening of personal and family roots caused by the high rate of conscription and movement either to service in defense plants or areas of high employment, by 1954 the "mover" ranks had increased almost fifty per cent.³⁹ Eighteen

blame the government for the conflict he is fighting, rather than to attribute his immediate predicament to the enemy.

³⁸ *Supra* note 24, at 7.

³⁹ *Supra* note 24, at 8.

million people were mobile fifteen years ago; it was predicted that five million of them would be disfranchised.⁴⁰ By 1960 the estimated number of disfranchised voters had increased to eight million.⁴¹

The acuteness of the need for modern residence requirements in Illinois becomes more meaningful when demographic characteristics of the state are compared to factors established by population surveys as significantly affecting mobility. The first and second highest percentages of persons living in states where they were not born has been found in urban (29.4%) and rural non-farm (22.1%) settings.⁴² Illinois is a large urban state with highly organized and competitive industry. One result is that the volume of movement across boundaries is substantial. The concentration of population in the greater metropolitan Chicago area falls squarely within the designated classes of high population mobility. This concentration of population with the proportionate predictable rate of disfranchisement⁴³ should be sufficient to merit reconsideration of the adequacy of prior qualifications.

A second defect in the present residence qualifications is that limitations placed on the scope of the suffrage article are inconsistent with the rationale that ostensibly underlies it. A citizen is required by the constitution to reside in a community for a period sufficient to familiarize himself with issues and candidates before he can become a voter; but this requirement is only applicable to elections provided for in that constitution.⁴⁴ Accordingly, residence requirements of the suffrage article do not apply to *purely local* elections, where the understanding of issues and candidates most crucially relies on the duration of residence. Furthermore, because in federal elections the right to vote is predicated upon state established qualifications, it would appear that the most frequent use of state residence qualifications is in elections regarding candidates and issues of national scope. The ironic result is that the citizen who moves across town may be disfranchised in a gubernatorial election because he has not been in residence long enough to be familiar with candidates or issues even though he may have lived all his life in Illinois, and a recent arrival to Illinois may vote in a school district election if the community to which he has moved has not chosen to establish its own residence requirements.

Because a minimum period of residence necessary for voters to familiarize themselves with election questions has not been considered germane to presi-

⁴⁰ *Supra* note 24, at 9.

⁴¹ *Supra* note 25, at 829.

⁴² *Supra* note 25, at 824.

⁴³ Five per cent; *supra* note 24, at 46.

⁴⁴ *Scofield v. Board of Ed. of Community Consol. School Dist. No. 181*, 411 Ill. 11, 103 N.E.2d 640 (1952).

dential elections,⁴⁵ residence requirements have been criticized as capricious discrimination against interstate movers. Reform to combat this discrimination originated in Wisconsin and Connecticut. Under the Wisconsin plan, newcomers to the state who would have retained the right to vote in a presidential election had they remained at their prior residence would be permitted to vote in Wisconsin for that election.⁴⁶ Connecticut, on the other hand, permitted voters who had recently departed that state to retain their franchise through the use of absentee ballots. The Wisconsin plan has been received with greater popularity, and in 1963 Illinois adopted a program consistent with this approach.⁴⁷

This 1963 Illinois enactment provides a key to rectifying defects of the present residence provisions while at the same time preserving their function as a fraud deterring device. The first step is to recognize legislation via the registration process in the election code as a viable option. Second, modern methods of technology in identification and recordation should be utilized to create an accurate voter registration system. For example, a board of election commissioners in the community just departed could sufficiently identify voters and guarantee that the newcomer is not a voter in his former residence;⁴⁸ or voter registration cards could be issued with expiration dates and provisions for renewal. The goal here is not to establish a complete blueprint for this procedure, but to indicate that duplicate voting can be prevented without residence requirements. The danger is, however, that the system which would permit abolition of residence requirements has not been developed. Illinois legislation could establish a system whereby it would be as easy for a citizen to vote as it now is for him to purchase gasoline by merely presenting a credit card to a station attendant; and with an Illinois originated certification system as a pattern for other states, reciprocal recognition systems could become possible, establishing for voters the freedom of movement known now by state licensed automobile drivers. All of this could be done, but it has not occurred yet. Until it does, residence requirements are still necessary, and their abolition is only a dangerous half-measure.

This is not a satisfying position for those who recognize the defects of disfranchisement caused by the present provisions, but the 1963 presidential provisions do point towards a temporary solution until registration can be ade-

⁴⁵ *Supra* note 12.

⁴⁶ *See* The Milwaukee Journal, Dec. 26, 1954, part 5, at 2, col. 1, for a critical analysis of this provision.

⁴⁷ ILL. REV. STAT. ch. 46, § 3-1: "A person who . . . was a qualified elector in another state or county immediately prior to his removal to this state or his present county of residence . . . or would have been eligible to vote in such other county or state had he remained there until such election, is entitled to vote for presidential and vice-presidential electors in such election, but for no other office or on any proposition."

⁴⁸ *Supra* note 24, at 46.

quately developed. The same principle that is utilized in presidential elections can be implemented on an intrastate level. Moves within intrastate governmental districts can be accommodated, and significantly, this may be done without constitutional revision until a time when abolition may safely be performed.

LITERACY REQUIREMENTS

No analysis of the change in conditions would be complete without consideration of increased demands upon the capacity of voters to comprehend. Since 1869, limitations upon individual capacity have been raised under provisions of the election code.⁴⁹ Only when limitation based upon capacity touches the fundamental right of suffrage as extended to *groups* rather than individuals does capability as manifested by individuals become pertinent to the constitutional delineation of franchise.⁵⁰

Although the age level was not questioned in 1869, its establishment none the less was indicative of a belief that the attainment of a designated age in years reflects acquisition of certain experience necessary to cope with election issues. In 1969 the increased complexity of election issues, if only through quantitative development of milieu, may be seen to require additional skills. As age reflects accumulated experience, the attainment of certain degrees of formal education may indicate the acquisition of these additional skills necessary to provide a comparably effective electorate. Correlatively, in the twentieth century, dependence upon the printed word to communicate relatively complex issues may advance the demand upon the electorate to sufficiently alter the nature of the voting process to justify literacy requirements.⁵¹ The voting process may evolve into a decision making process which cannot effectively be performed by an individual without his acquiring information to supplement instinct. In this context, demands expressed in terms of capacity would be so extensive as to be fundamental to the very nature of the right *per se*, and therefore germane to the fundamental delineation within the suffrage article.

⁴⁹ The suffrage article has been construed to secure to every citizen having the requisite qualifications the right to vote, regardless of whether he can read, write or understand the English language. *Drennan v. Williams*, 298 Ill. 86, 131 N.E. 270 (1921). However, individual physical capacity or mental capacity of the citizen adjudged *non compos mentis* has been held to be outside the purview of the suffrage article. *Welsch v. Shumway*, 232 Ill. 54, 83 N.E. 549 (1908).

⁵⁰ *Welsch v. Shumway*, *supra* note 49. Accordingly, an idiot may qualify under the suffrage article of the constitution yet be barred from voting.

⁵¹ Literacy tests have been defined as any test of the ability to read, write, understand or interpret any matter. CIVIL RIGHTS ACT of 1964, 78 Stat. 241, 42 U.S.C.A. §1971 (1964).

The validity of literacy requirements, as another instance when "line-drawing" is a pragmatic necessity, is founded upon the belief that comprehension of the written word may be efficacious in promoting good government.⁵² It must none the less be realized that the benefit of literacy tests frequently is only superficial. They have been criticized as one of the most destructive weapons against the basic ideals of democratic equality.⁵³ In the real world the effect of this theoretically purposeful requirement has been to implement a sophisticated form of discrimination which has disfranchised a large portion of the nation's population on the basis of race and not by virtue of the intended purpose of the requirement. As a result, the literacy test has been made forbidden fruit; federal enactment has suspended its use.⁵⁴

CONCLUSION

The determination of who shall vote requires answers to two questions. Who shall possess the right to suffrage? Which individuals possess the capacity to properly exercise this privilege? It is the task of a suffrage article to answer only the first question, and the determination of the need for revision rests upon whether the present suffrage article adequately does this.

Despite the fact that formal education of the young is more extensive and conscription into military service more widely used, neither of these guarantee that awareness or good judgment will occur at an earlier age; it may well be argued that these factors might even impede such personal development. Furthermore, when the age limit was established it was without controversy, and there has been no convincing explanation of why reduction is more pressing now than it was then. Extensive debate on this has been carried on for half a century with impressive arguments expressed on both sides, but to date there has not been a clear and convincing argument sufficient to attain the overwhelming support necessary for amendment. Illinois should guard against opening the less difficult pathway of revision by incorporating reduction of the minimum voting age in a "package deal" with constitutional revision containing provisions in other areas that Illinois does need.

The residence requirement, though less frequently discussed officially, might

⁵² The New York literacy requirement, before it was suspended, was considered one of the most successful instances of a state being able to put reasonably objective criteria to purposeful use.

⁵³ By 1956 nineteen states had some form of literacy requirement as a voting qualification. However, in jurisdictions where there was permanent voter registration, the effect was to secure a position of political dominance for those registered prior to the institution of the tests. *See, e.g.*, *United States v. Ramsey*, 331 F.2d 824, 837 (5th Cir. 1964).

⁵⁴ 42 U.S.C.A. §1973(b) (1965).

well merit greater consideration because of the extensive disfranchisement which it brings about. Originally these requirements were well founded, but conditions have changed sufficiently to render them outmoded. There are only three options: retention, reduction, or abolition. As discussed, retention is only viable as a temporary provision until effective registration eliminates the need for a deterrent against duplicate voting. Reduction of the residence period, no matter to what degree, would still disfranchise substantial numbers of the population, and accordingly is only a half-measure providing partial relief. Abolition without a substitutional provision to guard against election fraud is premature. If either of the first two is chosen as a temporary expedient, then the election code may be considered as a means of providing relief from the defect of disfranchisement (*i.e.*, intrajurisdictional movers may be declared to have satisfied residence requirements if they would have done so had they not moved). Additionally, the election code offers benefit as a tool to implement governmental structuring through a written and ostensibly permanent constitution; periodic legislation (via the election code) provides flexibility. A solid plan for the elimination of the defects in residence therefore requires a combination of the above, involving establishment of provisions in the election code for intrajurisdictional recognition of residence⁵⁵ until a time when registration is adequately developed. At that point abolition of the residence period will be appropriate.

The need for a literacy requirement should be recognized. Regardless whether it is 1870 or 1970, voters are not well informed. Caprice and emotion play a significant role in the decision making process of a voter; this has been true and it will probably continue to be true, despite our political theory's fundamental assumption that the voter shall evaluate and select an intelligent preference either for representatives to government or legislative actions of that body. A literacy test would promote a comprehending if not enlightened electorate, which hopefully would in turn prevent the gap between political reality and perception from widening in the future to a disproportionate degree that would immobilize our electoral process. States have been forbidden to satisfy this need, however. Literacy qualifications which set up a system whereby one individual decides whether another citizen is literate and therefore may vote, are an exception to the principle that suffrage qualifications should go towards demographic groups rather than individuals, and as such have been seen as inherently facilitating prejudicial discrimination. Because potential discrimination in many instances became a reality, federal enactment suspended state literacy tests.

Illinois cannot controvert this, and a current constitutional convention can-

⁵⁵ For example, any *intrastate* mover would be permitted to vote in a gubernatorial election, or any move within a congressional district would not bar the otherwise qualified citizen from voting for that district's congressional representative.

not propose a literacy test. Illinois can, however, put pressure on the federal government to continue the job. This, then, is the second alternative to constitutional revision; the first was the role of the election code in resolving defects of residence requirements, and now federal enactment is seen as a pathway when state avenues are closed.

The opening for federal action rests upon the proposition that "every government ought to contain in itself the means of its own preservation."⁵⁶ Congress could permit states to resume the use of literacy tests, and then working within the presumption of nondiscriminatory state standards, Congress could provide procedural safeguards to insure the validity of this presumption by asserting remedies for discriminatory state actions which belie it. Congress also has the power to pass "appropriate legislation"⁵⁷ to enforce the fifteenth amendment, as well as the equal protection clause,⁵⁸ which has been used to invalidate statutes which effect a "naked and arbitrary power to give or withhold consent"⁵⁹ even though the statute is nondiscriminatory on its face.⁶⁰ Thus, Congress might seek to eliminate, alter or equate state standards with easily provable federal requirements when state standards are found to be discriminatory.

In the United States suffrage has undergone metamorphosis from oligarchy, where franchise was of only four per cent, to the yet imperfect representation of today. Contrary to public clamor, the better reasoned argument is that the minimum voting age of twenty-one is adequate, but eventual abolition of residence qualifications is needed, and careful establishment of a federally sanctioned literacy test is advised. A constitutional convention will consider only two issues: whether the present age of twenty-one and periods of residence should be retained. With regard to the first issue, the answer should be affirmative; but concerning the second matter, residence requirements should be maintained only until a more viable proposition can feasibly replace the present standard. Admittedly, an affirmative response on both counts will leave the task of revitalizing contemporary suffrage policy only partially complete, but the possibilities of constitutional revision as a method of reform portend questionable and even more limited relief.

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⁵⁶ THE FEDERALIST No. 52, at 327 (Lodge ed. 1888) (Hamilton).

⁵⁷ *South Carolina v. Katzenbach*, 383 U.S. 301, 304 (1966).

⁵⁸ The equal protection clause was first used for policing residence requirements in *Pope v. Williams*, 193 U.S. 621 (1904).

⁵⁹ *Yick Wo v. Hopkins*, 118 U.S. 356, 366 (1886).

⁶⁰ *Id.*