
The Shape of the Illinois Constitution

Samuel W. Witwer

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Recommended Citation

Samuel W. Witwer, *The Shape of the Illinois Constitution*, 17 DePaul L. Rev. 467 (1968)
Available at: <https://via.library.depaul.edu/law-review/vol17/iss3/1>

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact wsulliv6@depaul.edu, c.mcclure@depaul.edu.

DE PAUL LAW REVIEW

Volume XVII

SUMMER 1968

Number 3

THE SHAPE OF THE ILLINOIS CONSTITUTION

SAMUEL W. WITWER*

WHILE scholars differ concerning the ideal form of a constitution, and definitions are plentiful, one may safely assert that a constitution is a document establishing the structure of government of a state, granting and limiting the powers of the legislative, executive and judicial branches and guaranteeing the rights and liberties of the people. There is general agreement that it is above all a people's document. Every American state constitution, with one exception,¹ expressly recognizes that all political power is derived from the sovereign people. Thus, the Illinois Constitution, in section 1 of its Bill of Rights adopts the very words which open the Declaration of Independence, proclaiming that ". . . to secure these rights . . . governments are instituted among men, deriving their just powers from the consent of the governed. . . ." ²

In this context of consent, one would expect the people of all states to be afforded the opportunity, at reasonable intervals, to re-examine the shape of their constitutions in the light of changed and changing conditions of life. Thirty-eight states provide specifically in their con-

** MR. WITWER, a member of the Illinois Bar, received his Ph.B. from Dickinson College and LL.B. from Harvard Law School. He is a senior partner in the firm of Witwer, Moran & Burlage of Chicago. Author of numerous articles in law reviews and journals relating to the Illinois Constitution, he led successful state-wide campaigns for the adoption of the Gateway and Reapportionment Amendments, and was a leader in the campaign resulting in adoption of the Judicial Amendment of 1962. He is a public member of the Illinois Constitutional Study Commission and is presently volunteering his services as General Counsel of the Illinois Committee for Constitutional Convention, the joint civic committee now campaigning for the adoption of the convention call at the November, 1968 election. He is a former chairman of the Committee on Constitution Revision of the Chicago Bar Association and an Illinois director of the American Judicature Society.*

¹ New York is the only state which does not expressly recognize in its constitution the sovereignty of the people, although it is clearly implied.

² ILL. CONST. art. II, § 1.

stitutions for the calling of conventions, while the other twelve have held constitutional conventions upon the initiative of their legislatures.³ Constitutional conventions have been the principal means utilized in writing new constitutions and revising old ones, and it is said that Americans have staged over two hundred state constitutional conventions.⁴

Whatever the experience elsewhere, the people of Illinois have had but limited chance in this century to reshape their constitution through delegates of their own choosing. The only convention since Illinois adopted its constitution of 1870, almost a century ago, was held in 1920. The revisions proposed by that convention were decisively rejected.⁵ The latest opportunity to call a convention was afforded in 1934 when a majority of voters failed to vote one way or the other, and the convention call failed dismally.⁶

In the intervening years, tremendous changes have taken place. These have included a depression of world-wide magnitude, a global war of unsurpassed destruction, revolutionary advances in communications, transportation and technology, the dawning of the Atomic Age and a major migration of population from rural to urban areas, to mention but a few. It has been said that these phenomenal changes alone have accounted for most of the problems which now confront the state in almost every branch of government.⁷

With the notable exception of the judicial branch of government, which underwent almost total reorganization under the Judicial Amendment to the Constitution adopted in 1962, Illinois' basic government has remained static since 1870 when the present Constitution was adopted. This fact in no sense evidences public satisfaction with the Constitution, but is due to the state's feeble ability to amend and

³ NATIONAL MUNICIPAL LEAGUE, SALIENT ISSUES OF CONSTITUTIONAL REVISION 51 (1961).

⁴ *Id.*

⁵ For analyses of the reasons underlying rejection of the 1922 revised constitution, see Davis, *Defects and Causes of Defeat of Proposed Constitution of 1922*, 26 CHI. BAR REC. 276 (1945); Dodd, *Illinois Rejects a New Constitution*, 7 MINN. L. REV. 177 (1923); Tomei, *How Not to Hold a Constitutional Convention*, 49 CHI. BAR REC. 179 (1968).

⁶ In the 1934 general election, the vote for the constitutional convention resolution was 691,021 and the vote against was 585,879. The measure was not adopted because 1,658,292 electors (56%) who voted in the general election failed to vote on the measure. Publication 85, Illinois Legislative Council, December, 1947, at 14.

⁷ 13 ILLINOIS POSTWAR PLANNING COMMISSION, REPORT OF THE COMMISSION ON ORGANIC LAW AND LEGISLATION (1945).

revise its Constitution in the twentieth century except on relatively rare occasions. Section 1 of Article XIV requires that if a constitutional convention be called, the proposal must receive, for adoption, a majority of all votes cast for any measure or person in a general election, as distinguished from a simple majority of the votes cast on the issue itself. This procedure is practically unworkable as long as many voters refuse or neglect to vote on constitutional questions and are, therefore, in effect counted as "no" voters.⁸ This is the severe hurdle which must be overcome in the forthcoming referendum if Illinois is to have a constitutional convention.

For the foregoing reasons, the November, 1968 convention referendum⁹ will constitute a long-overdue and highly important consultation of the citizens of Illinois concerning the shape of their constitution and their satisfaction with state government. Hopefully the referendum will be but the first step in a consultation extending over the next few years. If the call is approved, there will follow an election of two delegates from each senatorial district in an election to be scheduled by the General Assembly. Within three months following their election, the delegates will convene and the convention will proceed to its business. Finally, upon the close of its deliberations, the convention's proposals for revision of the constitution will be submitted to the voters for ratification or rejection.¹⁰

Each of these steps subsequent to the November election will raise many important public questions such as the partisan versus the non-partisan election of delegates, the organization of the convention, participation of public officials as delegates, the form of the specific revisions to be proposed, and the manner of submission of revisions to the

⁸ Since the 1891 adoption of the Official Ballot Act, "party ticket" voting has not been permitted on constitutional measures as was the case before 1891 when amendment of the Constitution was not a difficult process. In the intervening years, only one convention call out of two proposals and seven constitutional amendments out of thirty-one submitted have been approved by a majority of voters voting in the elections. Two amendments were adopted under the Gateway two-thirds test. See Ketsos, *Constitutional Amendments and the Voter, 1952-1966*, INSTITUTE OF GOVERNMENT AND PUBLIC AFFAIRS, (U. Ill. 1968); also Ill. Leg. Council Pub. 85, *supra* note 6.

⁹ Illinois Senate Joint Resolution No. 2, 75th General Assembly was adopted May 16, 1967 by vote of 50 to 0 in the Senate and 150 to 14 in the House of Representatives. It resolves "that a convention is necessary to revise, alter or amend the constitution of this state and that the question of calling such a convention shall be submitted to the electors of this state at the next general election, as provided in Article XIV of the present constitution."

¹⁰ ILL. CONST. art. XIV, § 1.

electorate for approval or rejection, to list a few. While all such questions will merit full discussion and debate, they have no logical place in the consideration of the call itself and their consideration would be premature, hypothetical and irrelevant in that context. Considering the extreme severity of the voting requirements of Article XIV, section 1, injection of such issues would be irresponsible if not mischievous, undermining chances for a fair expression of the popular will on the initial question of calling a convention. It is the purpose of this paper to deal with the two questions which in the view of the writer will be the only relevant issues before the electorate in the November, 1968 referendum, namely: Is the Illinois Constitution of 1870 in need of revision? If so, is a convention the best means of accomplishing the needed revision?

Mr. Justice Cardozo once wrote, "A constitution states, or ought to state, not rules for the passing hour but principles for an expanding future."¹¹ The Illinois Constitution was not so drafted. Instead it was fashioned as an instrument calculated to shackle the hands of those entrusted with public authority, reflecting the popular distrust in 1870 of the executive, legislative and judicial departments of government. Weighed down with statutory detail and restrictive provisions, the document embodies not only the traditional and wise federal system of checks and balances, but also an inner structure of additional checks and balances. Written in the context of a rural and agrarian society, it was fashioned to meet the needs of those times and not intended for the complex urbanized and industrialized society of the twentieth century.

In fairness to the draftsmen of the 1870 Illinois Constitution, it must be said that the state's failure to adopt needed amendments and revisions of the constitution permitting a break-out from the legal straight jacket imposed by the excessive statutory detail, was not planned by the framers. The rigidity was an unforeseen by-product of a reform of the ballot laws in 1891 substituting the secret Australian ballot in place of the then prevailing method of casting "tickets" prepared by the political parties. Unwittingly, the innovation has since deprived the amending process of the aid of "party ticket" voting and direct partisan support. Coupled with a doubtful decision of the Supreme Court of Illinois, which held in effect that electors going to

¹¹ B. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 83 (1921).

the polls but failing to vote in a constitutional referendum are to be counted as voting "no,"¹² the constitution became most difficult to revise. The combined specificity and rigidity of the constitution have cost the state dearly in terms of effective and efficient government. Twenty-five years ago, the late Professor Kenneth Sears, a leading constitutional scholar said, "Illinois, everything considered, is in the worst position of any state in the Union."¹³ His challenge remains valid today.

Without intending to advocate here the writing of a totally new constitution, it is safe to predict that a constitutional convention would review most of the articles of the existing document and find a number of them in substantial need of revision. Although the articles of most critical concern would appear to be the Legislative Article (IV), the Executive Article (V), the Revenue Article (IX) and the Amending Article (XIV), few provisions of the document have escaped criticism by scholars, legislators, administrators and civic groups. No attempt will be made here to catalog all asserted defects nor to do more than summarize the more important problems arising under the various articles. There exists in Illinois a helpful literature of constitutional revision and many studies have been published to which reference should be made for a more comprehensive analysis than is within the scope of this article.¹⁴

The Preamble and Article I on "Boundaries" are presumably satisfactory. Relatively little criticism of Article II has been heard. This

¹² *People v. Stevenson*, 281 Ill. 17, 117 N.E. 747 (1917).

¹³ Sears and Laughlin, *A Study in Constitutional Rigidity*, 10 U. CHI. L. REV. 142 (1943), 11 U. CHI. L. REV. 344, 439 (1944).

¹⁴ CHICAGO BAR ASSOCIATION, *A CONSTITUTIONAL CONVENTION FOR ILLINOIS* (1947); CHICAGO BAR ASSOCIATION, *REPORT OF THE COMMISSION ON CONSTITUTIONAL REVISION, A CONSTITUTIONAL CONVENTION FOR ILLINOIS* (1967); ILLINOIS CONSTITUTIONAL STUDY COMMISSION REPORT (1967); INSTITUTE OF GOVERNMENT AND PUBLIC AFFAIRS, *THE ILLINOIS CONSTITUTION* (U. Ill. Bull. 1962); LEAGUE OF WOMEN VOTERS OF ILLINOIS, *COMMISSIONS FOR STUDY OF CONSTITUTIONAL REVISION* (1960); LEAGUE OF WOMEN VOTERS OF ILLINOIS, *A CONSTITUTIONAL CONVENTION FOR ILLINOIS* (1959); Bergstrom, *Why a Constitutional Convention for Illinois*, 58 ILL. B.J. 634 (1968); Cedarquist, *The Continuing Need for Judicial Reform in Illinois*, 4 DEPAUL L. REV. 153 (1955); Cummings, *Amending the Revenue Article of the Illinois Constitution*, 29 CHI. BAR REC. 259 (1948); Cushman, *The Proposed Revision of Article IX of the Illinois Constitution*, 1952 U. ILL. L.F. 226; Farwell, *Gateway to What?*, 10 DEPAUL L. REV. 274 (1961); Sears, *Constitutional Revision: A Must*, 38 ILL. B.J. 247 (1950); Sears, *Constitutional Revision and the Party Circle Bills*, 14 U. CHI. L. REV. 200 (1946); Witwer, *A Constitutional Convention for Illinois*, 37 Ill. B.J. 9 (1948); Witwer, *The Illinois Constitution and the Courts*, 15 U. CHI. L. REV. 53 (1947).

may be due less to a feeling that no problems exist than to a fear that the public would misconstrue any criticism leveled at the venerated Bill of Rights. As a consequence, little attention has been given the revision of this particular type of article of state constitutions, in Illinois and other states. Constitutional reformers have found it difficult enough to secure revision of articles involving a more pressing need of revision. Convention inquiries concerning the Illinois Bill of Rights would include: the desirability of continuing to require a unanimous verdict from a trial jury; the impact on the administration of criminal justice of those provisions making so secure a person's body from search and seizure as to render most difficult convictions for carrying concealed weapons; and whether there are reasonable alternatives to the cumbersome common law grand jury system. Certainly the medieval provision for imprisonment for debt should be eliminated as has been done in other states.¹⁵

Article III—the Distribution of Powers—is seldom cited as an example of an important need to revise the Constitution. It simply is not enforced as written. Action under it is another example of the technique developed in Illinois to evade, circumvent and side-step constitutional provisions not workable in the modern context. The article is antebellum in origin, adopting language in vogue before the Civil War. At some time it ought to be rewritten. In present form, it offers an excuse for courts to render antiquated judgments on questions involving the separation and delegation of powers.¹⁶

Article IV—the Legislative Article—is patently in need of comprehensive review and substantial revision. The first nine sections, relating to legislative apportionment, should be revised without delay to provide a state constitutional basis for the election of the Illinois Senate. Sections 6, 7, and 8 were added in 1954 by the Reapportionment Amendment, which came before the decisions of the United States Supreme Court in *Baker v. Carr*¹⁷ and related cases applying the "one-man, one-vote" principle. Section 6 providing for senatorial districts, based primarily on area rather than population, is a dead letter under decisions of the United States Supreme Court in *Germano*

¹⁵ See Mo. CONST. art. I, § 11: "That no person shall be imprisoned for debt, except for non-payment of fines and penalties imposed by law."

¹⁶ See the annotations to this article. ILL. ANN. STAT. Const. art. III (Smith-Hurd 1961).

¹⁷ 369 U.S. 186 (1962).

*v. Kerner*¹⁸ and the Supreme Court of Illinois in *People ex rel. Engle v. Kerner*.¹⁹ Until Illinois revises section 6, the Illinois Senate will be without constitutional basis other than the fiat of the state and federal courts. The provisions of section 8 prohibiting periodic reapportionment of the Senate are also clearly invalid under the Federal Constitution. Whether the tripartite distribution of representation between the City of Chicago, the suburban parts of Cook County and the remaining "downstate" counties, as established in section 6, is constitutional remains in doubt, although there is dictum in the *Engle* case supporting the unusual division. The provisions of section 8 purporting to mandate periodic redistricting of the House by requiring elections "at large," in the event of a deadlock within the apportionment commission appointed to serve following a legislative failure, have not served their intended purpose and certainly should be reviewed. Other questions involving the "apportionment" sections of the article would include these: Should a unicameral legislature be considered in Illinois? What are the advantages and disadvantages of single-member districts compared to the system of multi-member districts? Should Senate and House districts have the same boundaries? Should Illinois' system of cumulative voting be retained?

In its report to the 75th General Assembly, the Illinois Constitution Study Commission found that the "non-apportionment" sections of Article IV likewise need revision. The Commission found in broad terms that "the present constitution serves to impede and obstruct the legislature in the performance of its duties and that such impediments and obstructions do not afford significant protection to the people."²⁰

Much criticism has been heard concerning the requirements of bi-annual regular sessions of the General Assembly and two-year budgeting. Even in normal times, to say nothing of years of economic change or upheaval, the difficulty of forecasting tax receipts and public expenditures two years in advance has resulted in deficiency appropriations in some departments, and over-appropriations and over-spending in others. Section 22 prohibiting local and special laws is another illustration of the practice which has developed of circumventing the Constitution. The statute books abound with provisions

¹⁸ 378 U.S. 560 (1964), *rehearing denied*, 379 U.S. 875 (1965).

¹⁹ 33 Ill. 2d 11, 210 N.E.2d 165 (1965).

²⁰ ILLINOIS CONSTITUTIONAL STUDY COMMISSION REPORT 15 (1967).

actually applicable only to Chicago. These avoid the naming of names and consequent outright violation of section 22 by declaring their applicability only to "cities over 500,000." Section 22 should be rewritten to harmonize honestly the constitutional language with the many court decisions interpreting the present section.

Section 34, the so-called Chicago Amendment, was long ago described as "sadly out of date and . . . a challenge to anyone to produce a worse example of draftsmanship."²¹ Re-examination of this section would highlight the consideration of constitutional home-rule for Illinois municipalities. Review of other "non-apportionment" sections would prompt inquiries into the manner in which the Illinois legislature goes about its work, its budgeting and appropriation procedures, the need for a constitutional debt limitation, the length and frequency of legislative sessions, and the role of the legislature in overriding gubernatorial vetoes. The many problems calling for study under Article IV alone would warrant the holding of a constitutional convention.

Article V establishes the executive department, or more accurately, seven separate, autonomous departments headed by the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Superintendent of Public Education and Attorney General. Needless to say, there is a lack of unified leadership and a dispersion of responsibility. Aside from an 1884 amendment permitting "item" vetoes and a 1954 amendment enlarging the Treasurer's term from two to four years, the article has remained unchanged and bears the unmistakable earmarks of 1870. Increasing criticism is being voiced in responsible quarters urging more appointive and fewer elective state offices, the joint election of the Governor and Lieutenant Governor, and the election of state officers on non-presidential election years. It would seem desirable to adopt without delay provisions assuring the continuity of executive leadership in the event of a major nuclear catastrophe.²² Because it relates so intimately to the fundamental concept of separation of powers and affects so directly the inherent strength of a major branch of government, the article merits careful examination by a convention to determine the nature of needed revisions.

Article VI—the Judicial Article, recently the subject of extensive

²¹ Sears, *Constitutional Revision and the Party Circle Bills*, 14 U. CHI. L. REV. 200, 205 (1947).

²² CHICAGO BAR ASSOCIATION, REPORT OF COMMITTEE ON CONSTITUTIONAL REVISION 5 (1967).

revision by the 1962 constitutional amendment—is in the best position of any article of the Constitution. Illinois' new court system has been widely acclaimed and is "functioning smoothly."²³ While the continuing case backlogs in Chicago and several other cities are a disappointment, that problem relates more to proper utilization of judicial manpower and statutory solution than to further constitutional change. The focus of criticism of the new article is on the unchanged system of selecting judges in partisan elections. Proponents of the Judicial Amendment of 1962 sought to eliminate the elective method of selection of judges which has prevailed since adoption of the Illinois Constitution of 1848²⁴ and to substitute an appointive system similar to the so-called "Missouri Plan."²⁵ Continuation of the elective system was a compromise without which the Judicial Amendment would have failed to secure the necessary legislative approval for its submission to the electorate. Since the bulk of the article is new, it is unlikely that the proposed constitutional convention would find Article VI a concern, although it would probably be asked to make a re-examination of the prevailing method of initial selection of judges.

Article VII—the Suffrage Article—unlike most other articles is relatively brief and specific. Its shortcomings are due to failure to keep abreast of social and political change. Obviously it should be revised to accord with the provisions of Article XIX of the Constitution of the United States granting women the right to vote, a privilege the state constitution withholds. It has been urged that existing age and residence requirements be re-examined, having in mind our highly mobile population and the consistent reduction in average age of our citizens.

Article VIII—the Education Article—has received little attention from constitutional reformers. Such criticisms of the article as have been heard challenge the elective method of picking the Superintendent of Public Instruction, County Superintendents of Schools, and the Trustees of the University of Illinois. The article has gone unamended. Considering the vital role of public education and its impact on the budgets of state and local government, this article would seem to warrant thorough re-examination.

Article IX—Revenue—has been the subject of criticism for decades.

²³ ADMINISTRATIVE OFFICE OF ILLINOIS COURTS, 1966 ANNUAL REPORT TO SUPREME COURT OF ILLINOIS 5, 17 (1966).

²⁴ Witwer, *The Illinois Constitution and the Courts*, 15 U. CHI. L. REV. 53, 55 (1947).

²⁵ Kohn, *The 1955 Judicial Article Amendment*, 36 CHI. BAR REC. 229 (1955).

Seven unsuccessful attempts have been made to amend this article in the last fifty years, the most recent being in 1966. Because of the archaic and unworkable requirement that all property be assessed and taxed uniformly and at the same rate, whether real estate or personal property, the article has fostered official and individual evasions, violations of law and a general disrespect for the constitution.²⁶ The five percent limit on bonded indebtedness of municipal corporations (section 12) has led to a great proliferation of separate governments. The technique of evasion is simple but costly. Since a municipality is limited in the amount of indebtedness it may incur, a new municipal corporation is created when new public services are demanded. Hundreds of new municipalities have been created, each with its own five percent debt limit.

The most fundamental charge is that the present article requires unfair distribution of the burdens of taxation, making real estate taxes and the Retailers' Occupational Tax the principal sources of revenue and the mainstays for support of government. The basic question in revising Article IX will be whether, and to what extent, the legislature should be given new or enlarged taxing powers. That there are deep cleavages of attitude concerning new and enlarged taxing authority is evident from the history of the repeated attempts and failures to amend Article IX. The greatest challenge to a convention will be to bridge the cleavages and to establish a more equitable and satisfactory revenue system than now prevails. The attempt should be made.

Article X—Counties—is viewed by some critics as perhaps the most antiquated of all articles. The structure of county government is not unlike that which prevailed in 1870, strikingly different from modern local governments adopted in other states. In the past, criticism has related to the lack of centralized executive authority, the popular election, rather than appointment, of certain county officers, the archaic fee system of compensating officers, the prohibition against immediate re-eligibility of sheriffs and treasurers, the granting in Cook County of administrative responsibility to a committee of judges of the Circuit Court with respect to employees of certain "fee" offices, and the lack of any constitutional home rule provisions for municipalities other than Chicago. A new and cogent argument for review of Article X is that stated in a recent report of the Committee on Constitutional Revision of the Chicago Bar Association:

²⁶ Cushman, *The Proposed Revision of Article IX (The Revenue Article) of the Illinois Constitution*, U. ILL. L.F. 226 (1952).

The burgeoning growth of enormous metropolitan areas, led by Chicago with an estimated metropolitan population of 8.6 million by 1980, has drastically altered historical state-local relationships and opened wholly new dimensions in federal-local as well as inter-local relationships. Increasing complexity in the provision of traditional health, safety, educational and transportation services, together with new demands for air and water pollution control, neighborhood development and land use planning, and general improvement in the quality of metropolitan environment, have been accompanied by increasing demands for broader citizen participation and local control. The Committee believes it essential that our present Constitution be reviewed and, if necessary, changed in order to ensure the necessary flexibility that will permit whatever new legal mechanisms may be required to cope with the problems of contemporary and future metropolitan life.²⁷

Article XI—Corporations, Article XII—Militia, and Article XIII—Warehouses—are examples of ordinary legislation finding a way into a constitution. While of popular concern in 1870, these matters have no need for constitutional status at present.

Article XIV—Amendments—is subject to the grave criticism that since 1891, it has impaired the state's capacity for self government. There could be no better illustration of the impact on government of the "dead hand of the dead past" than in the requirement of the article that a convention or amendment must secure the favorable vote of a majority of the voters voting in an election. Three-quarters of a century is altogether too long for any state government to be forced to remain static in a constitutional straitjacket. Of course, a constitution too easily amendable is not desirable, requiring voters to pass frequently on intricate proposals which even political scientists find difficult to vote on intelligently. Most states have found a satisfactory middle course between the extreme rigidity exemplified by the Illinois Constitution and the "constant therapy of additional amendments" required to keep some state constitutions in running order.²⁸

The remaining problem to be considered is whether a convention is the best method of achieving needed constitutional reform. This necessarily raises for consideration the efficacy of the Gateway Amendment. Is the process of separate or piecemeal amendment a reasonable alternative to the convention method and perhaps a better way of accomplishing revision?

In 1950, recently described as one of the most important dates in

²⁷ *Supra*, note 22.

²⁸ Louisiana amended its 1921 constitution at least 462 times as of 1958. California's constitution was amended 343 times in its first sixty years. Since 1938, the New York constitution has been amended fifty-six times. See DESHMAN, STATE CONSTITUTION, THE SHAPE OF THE DOCUMENT, National Municipal League (Pub. 22, 1960).

the history of constitutional amendment in Illinois,²⁹ Illinois voters approved the Gateway Amendment which was expected to make the process of amendment easier and to end any further need for calling a constitutional convention. The Gateway Amendment was presented as a means of overcoming the "veto" effect of non-voting mentioned above. It amended section 2 of Article XIV by establishing an additional and alternative test for adoption of an amendment at the referendum stage, so that henceforth an amendment proposal became effective if it secured the affirmative vote of two-thirds of those voting on the issue even if it failed to receive the vote of a majority of those voting in the election. From 1952 through 1967, fifteen constitutional amendments were proposed by the legislature, only six of which were adopted. The most notable—the Judicial Amendment of 1962—was adopted under the pre-Gateway alternate test. Two amendments of lesser importance, one pertaining to County Officers' compensation, the other the Banking Amendment, were narrowly adopted in 1952 under the two-thirds Gateway test alone. The other three amendments were the Reapportionment, the State Treasurer's (Tenure), and the Illinois-Michigan Canal (Land Disposal) Amendments, all approved in 1954, meeting the requirements of both voting tests.

If the Gateway Amendment has significantly liberalized the amending procedure, it is indeed difficult to discern in what respect. It is evident that the piecemeal approach to constitutional revision in Illinois remains a long, arduous and highly unpredictable procedure.³⁰ Those who have observed the tremendous and often unsuccessful efforts of thousands of citizens to solve Illinois' constitutional problems during the past twenty years need no further demonstration that Gateway simply has not worked as planned.

It is a ridiculous spectacle reflecting on the political backwardness of Illinois that the restrictive provisions of Article XIV should have been permitted so long to thwart needed improvement in Illinois government. Whatever else a convention may do in revising the constitution, it is unthinkable that Article XIV would go unchanged.

Finally, what should be the response to the question raised whenever an effort is made to secure constitutional reform in Illinois: "Why a convention—does not Illinois get along reasonably well under the pre-

²⁹ Ketsos, *supra* note 8 at 3.

³⁰ *Id.*

sent constitution?" The answer is simple and clear. The state does not "get along" at all well under the 1870 constitution. At best, it "gets by" under a system of evasions, subterfuges and downright violations. The late Adlai E. Stevenson once described this system of open evasion as follows:

In another environment, the energetic ingenuity we have developed here in Illinois to avoid the anachronisms of our Constitution might be amusing but it cannot be amusing when it concerns basic principles of our form of government. A Constitution, as Americans look at things, is to be respected and obeyed, not evaded and flouted. The system of public and private subterfuge, evasion and easy virtue which characterizes our efforts "to get along" under the Constitution of 1870 has a pervading effect upon political and governmental morality in Illinois, and its spread is as difficult to measure as it is to check.³¹

Paradoxically, this system of open evasion may prove to be the key to a successful referendum calling a constitutional convention. It has been said that constitutional reform is not likely to occur in any state until great numbers of voters realize that there is no alternative to revision other than flagrant constitutional evasion. Traditionally Americans have had a deep and widely held belief in the basic and inviolable nature of a constitution and do not countenance lightly its dishonor through subterfuge or evasion.³² If this be so, then indeed the stage is set in Illinois for comprehensive constitutional revision.

³¹ Address before Illinois League of Women Voters, Chicago, Ill., Oct. 8, 1948.

³² INSTITUTE OF GOVERNMENT AND PUBLIC AFFAIRS, THE ILLINOIS CONSTITUTION 2 (U. Ill. Bull. 1962).