



CONstitutional CONcepts

Number 11

A series of condensations of the scholars' research papers prepared by the Illinois Constitutional Research Committee which was appointed by Governor Richard B. Ogilvie to furnish background material for delegates to the Constitutional Convention.

REPRESENTATION IN THE GENERAL ASSEMBLY

David Kenny

Should the legislature have one or two chambers?

How many legislators should there be and how long should their term of office be?

In elections of the House of Representatives, should the voter continue to choose three members from each district and should the cumulative voting system be retained?

How should the problem of reapportionment be solved?

These and other questions are the subject of the paper, "Representation in the General Assembly," by David Kenny, Director of the Public Affairs Research Bureau and Professor of Government at Southern Illinois University. This is one of a series of papers commissioned by the Governor's Constitution Research Group and is one of the background materials for the Constitutional Convention delegates.

The following is a summary of the original and does not purport to contain all the detail of the original. In particular, this paper does not necessarily represent the views of the Union League Club. (See the back page for further information.)

In a mass society involving millions of people, direct democracy is impossible. Only through representation can goals and aspirations of the public be sought after and realized. When systems of representation fail, the idea of democratic government also fails as people become disillusioned with the political process.

One House or Two?

Since it became a state in 1818, Illinois has had a bicameral legislature consisting of two distinct chambers. The bicameral tradition of this country was established by the English colonies from the example of their motherland. By the time of the American Revolution, the idea of "checks and balances" provided another reason for bicameralism.

The Populist and Progressive reform movements of late 19th and early 20th centuries virtually eliminated bicameralism in city councils. Nebraska's adoption of a single house came during the 1930's and was combined with a referendum for repeal of prohibition and legalization of horse racing.

The chief justification of bicameralism in state legislatures was to provide one house proportional to representation and the other to give greater weight to size of area. This concept was shattered by the United States Supreme Court's one man-one vote decision. Since this decision, several constitutional conventions have given attention to adoption of a unicameral system but none have actually so proposed.

Two advantages have been claimed for unicameralism:

First, it commands concentration from the public and news media. Second, legislative procedures are simplified and legislative expenses can be reduced.

Much of the efficiency claimed for unicameralism could be achieved within a bicameral frame if conscious pursuit of such a goal were undertaken. Increased legislative efficiency could result from the election of fewer members, the use of joint committee hearings and conference committees, and greater attention to the elimination of duplicate bills.

How Large Should the Legislature Be?

Illinois has the 5th largest legislative body in the United States with 235 members. It is exceeded by two smaller, more rural states, New Hampshire and Georgia, and by two large industrial states, Massachusetts and Pennsylvania. The Illinois lower house is also 5th in size, with 177 members, and the Illinois upper house ranks third, with 58 members.

It can be argued that 235 legislators are necessary to represent Illinois' population of over ten million people. Presently, each Illinois Senator represents 174,000 people; in only six other states do Senators have larger constituencies. Illinois Representatives are elected from constituencies of 170,000 people, although the voters elect three Representatives from each district. Only California House districts are larger.

However, it can be maintained that a small legislature provides the people with better representation than a large one. Chambers of several hundred members generally prove too cumbersome for effective operation. The greater expense reduces practicality of prolonged annual sessions and hinders efforts to raise the salaries of legislators to a level at which they might serve full time. California has proved the feasibility of a small legislature with a 40-seat Senate and an 80-seat House. An advantage of the bicameral system is that it increases the total number of legislators, while each house may be kept reasonably small.

How Long Should the Terms Be?

There is perhaps more uniformity among the states in regard to terms of legislators than in most other matters. Forty-five states, including Illinois, specify two-year terms for the lower chamber; four states provide four year. Thirty-seven states, including Illinois, provide four-year terms for upper chambers; twelve provide two year. In New Jersey, a unique new "decade pattern" provides senate terms of two, four, and four years during the span of each ten-year period, to conform to one man-one vote rulings and the decennial census pattern. Terms of legislative office have not changed in Illinois since 1818.

It has been suggested that if terms were longer, legislators would, on the average, tend to have more experience. Longer terms would mean reduced campaign costs in time, energy, and money. This might help recruit and retain more able members.

The Illinois Constitution provides that half of the Senate seats come up for election every two years, but with the court-prescribed Senate reapportionment of 1965 that practice was abandoned. Staggered or overlapping terms insure experience, continuity, and reduce the extent to which public opinion can, in the short run, affect legis-

lative behavior. One argument for bicameralism is that it can provide not only short terms and responsiveness to public opinion in one chamber but also long terms and independence of judgment in the other.

The two-year term for representatives tends to minimize the extent to which persons seek to move from the lower to the upper chamber. Any representative seeking to be elected to the Senate would have to forego running for reelection to the House. If House terms were four years, and terms for both houses staggered, representatives might be more inclined to run for the Senate since they could still retain their House seats if defeated.

Multi- or Single-Member Districts?

In Illinois a single Senator is chosen from each Senate district and three Representatives are chosen from each House district. In other states, various combinations of single- and multi-member districts are employed.

Kenny argues for the single-member district as follows:

"It reduces the burden on the voter. It makes the legislator more visible to the public because he shares the public attention with no one else from his district. Single-member districts allow a greater range of interest representation. That is, a large district electing three legislators might consistently choose all three from the dominant party, interest, or ethnic group, while division of the same area into three districts might result in the election of one or more of the three legislators from a minority group or groups. In this way the single-member district plan gives maximum opportunity for groups that tend to be segregated by residence, to elect representatives who are especially their own. Single-member districts make it easier for political parties to put together more heterogeneous slates of candidates since minorities grouped by residence can more easily be offered in each case an acceptable candidate. In multi-member districts which elect legislators at large it is difficult for minority groups to obtain representation which they can feel is effectively their own. With single-member districts the public is less confused, more aware of the identity of its representatives, and less alienated from the whole process than might otherwise be the case."

Cumulative Voting

Illinois is unique among the states in employing a system of "cumulative voting" in elections to its House of Representatives. Illinois now has 59 House districts, and from each one 3 Representatives are elected at large. Each voter has 3 votes which he may divide among 2 or 3 candidates or cast totally for one. The paramount effect of this is that it insured the minority party in each district of electing one of its three representatives, because minority voters can each "cumulate" their three votes for a single candidate. Similarly, the minority group may achieve representation that would otherwise be impossible in a single-member district.

Cumulative voting was prescribed by the 1870 Constitution as a means of reducing intensive sectionalism of partisan politics. The effect of political events of the 1850's and the Civil War was to make the northern part of the

state heavily Republican and the southern heavily Democratic. Cultural patterns also tended to be different in north and south as a result of differing streams of migration. The additive effect of these circumstances threatened to divide the state into two conflicting groups. Thus, cumulative voting was authorized by the constitution making possible the election from each district of at least one member of its minority party. The system worked surprisingly well. (It has mitigated against overwhelming control by one party or the other and has more truly represented the division of party vote which in Illinois is usually divided within a few percentage points. Houses composed of single-member districts are frequently one sided in party control as is the Illinois Senate.—Editor)

The General Assembly has by statute permitted each political party to determine the number of candidates it offers to the public in each district. Obviously, if the minority party nominates only one candidate, he will be sole beneficiary of cumulative voting and will be almost certain of election. On the other hand, with little chance to elect more than two representatives in a given district, its majority party often sees little advantage in nominating more than two.

Limiting the number of candidates to three denies the public any real alternative in the election of representatives (in 1968 in 20 of the 59 Representative Districts there was no contest at the final general election) but the electorate could participate in the primary and thus have an effective choice among those who seek the party nomination.

It has been said that cumulative voting invites collusion between the parties by agreeing that one party will nominate only one and the other only two. In fact, the parties usually have chosen to nominate the number of candidates which party strength has indicated they can reasonably hope to elect.

“Cumulative voting tends to confuse the voter; it is not unusual to find him attempting to vote cumulatively for other offices. . . . The . . . little or no real choice in many cases tends to separate and alienate voters from those who at least in theory are their representatives. The election of three legislators at large from each representative district has the effect of preventing representation of diverse minority interests as might occur if the same total number of representatives were chosen from single-member districts . . .” Kenny argues. “Cumulative voting was adopted at a time when sectionalism and partisanship threatened seriously to divide the state. This is no longer the case and the question whether cumulative voting has outlived its real purpose cannot be avoided. Its defects have been suggested above. In its behalf, it must be said that it has the advantage of tradition and long-continued practice. It is difficult, however, to find other advantages which it confers, which could not be found in other arrangements lacking its defects,” Kenny concludes.

Reapportionment

Reapportionment is the process by which districts are periodically redrawn or the number of legislators peri-

odically reassigned in order that population movements may be taken into account and one man-one vote relationship may be maintained. The 1870 Constitution provided that legislative districts should be substantially equal in population and specified that district lines should be redrawn every ten years.

By 1910 population growth in Chicago and its environs was substantial and controlling downstate elements ceased to bring in a redistricting statute following each decennial census. By 1950 Cook County had 52% of the state's population but only 37% of the membership of the General Assembly.

In 1954 the voters were offered a reapportionment amendment, the chief support of which was urban; the chief opposition rural. It was approved by a substantial margin. Representation in the House was to be according to population and to be reapportioned after every decennial census, beginning in 1963. In the 59 Senate districts, “area” was to be the determining factor, with 24 districts arbitrarily assigned to Cook County and 18 of those to Chicago. How the machinery failed to work, the “at large” house election which followed, and the court intervention is too lengthy a story for inclusion in this summary.

The districts agreed upon by court and commission action in 1965, and still in effect, are reasonably equal in population. For the House of Representatives, for example, in terms of 1960 census figures, the largest district contained 185,563 persons, the smallest 156,645 and the average for all was 170,867. The maximum deviation above that average was 8.6%; below, 8.32%; average deviation 2.54%.

For Senate districts, figures were quite similar for those given above with the average deviation slightly greater and maximum and minimum deviations slightly less. For the House, the minimum population which in theory could elect a majority of representatives—a significant measure in judging the equity of districting—was 49.09% and in the Senate the comparable figure was 50.36%.

The chief difficulties in legislative redistricting arise out of the struggle between the principal political parties for advantage, and the understandable desire of individual members to preserve the districts from which they were elected. It is doubtful that in the future the General Assembly will itself be able to deal adequately with reapportionment problems.

There are reasonable alternatives to legislative redrawing of district lines. The device of a commission, of the sort prescribed by the present constitution in case of legislative failure, could be used from the start. The commission might be most effective if its members were chosen for competence in fields such as law, statistics, and computer applications, rather than the arts of politics.

Other jurisdictions handle the problem in a variety of ways. The division of seats among the states in the House of Representatives is accomplished every ten years through a semi-automatic process in which the Congress shares but cannot frustrate. The responsibility for redistricting could be made a function of an executive official, thus being subject to writ of mandamus and insuring the action is accomplished.

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WHY these DIGESTS?

Preparing for a constitutional convention requires advance background and research. Accordingly, Governor Richard B. Ogilvie called upon a group of scholars to prepare research papers for the use of delegates and appointed Dr. Samuel K. Gove, director of the Institute of Government and Public Affairs of the University of Illinois as project director. Sixteen papers on various aspects of state government are being assembled. These will be issued in condensed form in continuing issues of Constitutional Concepts. A sincere attempt has been made to retain the concepts and ideas of the writers whose papers run from up to 80 pages or more. Any errors which result from the condensations clearly

are not those of the scholars originating the research.

As no public funds were available to the Constitution Research Group, the Union League Club of Chicago made an initial grant of \$10,000 to the group so the work might proceed. The Club took no part in the selection of the scholars nor the topics to be researched; made no effort to influence either research or conclusion; and did not, in any manner, direct the group. Nor does the Club necessarily endorse any suggestions, proposals or ideas expressed by the scholars.

This is one of a series of condensed research papers, prepared and published as a public service by the Public Affairs Committee of the Union League Club of Chicago.

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