
Elmer Gertz

Follow this and additional works at: http://repository.jmls.edu/lawreview

Part of the Law Commons

Recommended Citation

http://repository.jmls.edu/lawreview/vol5/iss2/1

This Article is brought to you for free and open access by The John Marshall Institutional Repository. It has been accepted for inclusion in The John Marshall Law Review by an authorized administrator of The John Marshall Institutional Repository.
THE MAKING OF THE
ILLINOIS CONSTITUTION OF 1970
by Elmer Gertz*

As Edward S. Gilbreth phrased it in the *Chicago Daily News*
at the beginning of June, 1970, battle lines were being formed
at the Convention as the long-awaited Bill of Rights Report was
coming up for consideration on so-called first reading. (There
were to be three readings in all.) Our committee, as Gilbreth
said, had "wrestled" with the "hottest issues." Now the Con-
vention as a whole would face the day of judgment on such basic
matters as abortion, gun control, the death penalty, free speech,
right of privacy, search and seizure, and eminent domain, not to
say such other explosive matters as non-discrimination, prelimi-
nary hearings for those accused of felonies, a new preamble —
the inventory of fireworks was almost inexhaustible. There were
twenty-seven proposed sections and the preamble, ten with mi-
nority reports. How long would it take the convention to battle
its way through the agenda? The optimists, according to Gil-
breth's soundings, were saying two weeks: the pessimists a
month. And the Convention could not really spare that time.
President Samuel Witwer was constantly reminding us that we
were a month behind schedule. There were rumors of deals
between Downstate delegates and Cook County Democrats, be-
tween this group and that, on various proposals. Deals could
not stop oratory under the generous rules of the Convention.
When the rules were originally submitted to the Convention for
a vote, they had been considerably more generous in the amount
of time permitted each delegate for speech-making. I had made
the successful motion lopping off five minutes from the proposed
time allotment. As time had gone on, I had regretted that I
had not attempted to reduce the allotment further. Of course,
I favored full debate, but I felt that the orators, of whom we

* Mr. Gertz, an instructor at John Marshall Law School, was chairman
of the Bill of Rights Committee at the 51st Illinois Constitutional Convention.
This article is a chapter for his forthcoming book, *For the First Hour of
Tomorrow — The New Illinois Bill of Rights*, being published by the Uni-
versity of Illinois Press later this year. This chapter is copyrighted by the
Board of Trustees of the University of Illinois.
had a God's plenty, including one of His priests, could learn to be less prolix; they could say more in less time.

Victor Arrigo gave a foretaste of what was to come well before his individual dignity section was presented. There was a proposal to delete mention of the World’s Columbian Exposition of 1893 from the new Constitution. Of course, everyone, including Arrigo, knew that the provision was no longer necessary. It had fulfilled its function and those many, like Thomas Kelleghan, who found each word and phrase of the 1870 language sacred and immutable, were reconciled to its disappearance from the basic charter. Arrigo organized a mock protest, in which he drew in virtually all of the delegates as honorary Italians, protesting all affronts to that noble race of descendants of the Romans. He declared that removing the provision would give support to “scurilous claims” that Columbus was not the true discoverer of America. For fifty-five minutes, by the solemnly moving clock, Arrigo recited the valorous deeds of gallant Italians, and twenty (presumably of Italian descent) momentarily passed their votes in protest against kissing off the Columbian Exposition. Thomas J. McCracken, almost every discerning person’s favorite Daley Democrat, consoled Arrigo that “none of us are anti-Columbian, although in political philosophy some of us are accused of being pre-Columbian.”

Thus was the stage set for the debate to come on individual dignity, with further flurries when anyone was so unwise as to refer to the Latins, Romans, Italians, Sicilians or other designations, noble or ignoble, of Arrigo’s proud ethnic group. Once a clergyman, in his invocation to the Convention, dared speak disparagingly of some specimens of the Italian group. That meant more Arrigo oratory; and one could be sure that it would be stored up for the ultimate perorations.

On May 22, 1970, the Report of the Bill of Rights Committee, its Proposal No. 1, was formally presented to the Convention. One week later, on May 29, the first action with respect to it was taken by the Convention in what is called the Committee of the Whole. After the chairman and some of the members of the committee had outlined various sections and answered questions from the floor, President Witwer asked that some of the less controversial sections be voted on. Although this was contrary to the procedure that the committee had insisted on, I acquiesced. Five sections with no changes from the 1870 Constitution were approved — Section 1 (Inherent and Inalienable Rights), Section 3 (Religious Freedom), Section 15 (Subordination of Military Power), Section 16 (Quartering of Soldiers), and Section 18 (Free and Equal Elections). No section as to
which any delegate raised any question or suggested the consideration of amendments was voted on. Then the convention recessed for the weekend.

On June 2, consideration of the Bill of Rights resumed. Six sections were approved, in some instances with amendments and in other instances without change. Section 4 (Freedom of Speech) was approved with the defeat of the minority report to delete the clause on truth as defense in libel actions. Section 5 (Trial by Jury) was approved after being amended to provide that the General Assembly may authorize juries of not less than six nor more than twelve. Lewis Wilson had proposed the amendment, largely on the recommendation of Chief Justice Underwood of the Illinois Supreme Court, made in his letter to the chairman of the Committee. Section 9 (Rights after Indictment) and Section 10 (Protection against Self-incrimination) were approved as submitted. Section 11 (Limitation of Penalties) was amended, on motion of Leonard Foster, to add the previously defeated in committee objective of rehabilitation of offenders, and then approved, after the defeat, 54 to 50, of an amendment to prohibit the death penalty. Section 20 (Fundamental Principles of Civil Government) was approved after the addition of a statement on individual responsibility, proposed by Dwight Friedrich and previously defeated in committee.

The next day, June 3, five more sections were approved on first reading: Section 8 (Indictments), Section 14 (Ex Post Facto Laws), Section 17 (Right To Assemble and Petition), Section 19 (Right to Remedy and Justice), and Section 23 (Preliminary Hearings). The minority report urging the deletion of Section 23 was defeated. The portion of Section 14 relating to the State's immunity to suit was postponed to June 17 and, at that time, ruled out of order by reason of the adoption of a General Government proposal on the same subject. The change in Section 17, the phrase, "to associate freely," was deleted.

The following day, June 4, only two highly controversial sections — 2 (Due Process of Law and Equal Protection) and 6 (Searches, Seizures, Interceptions and Privacy) were approved. As to Section 2, the minority report, urging the deletion of the phrase, "including the unborn," was approved, 80 to 32, after an extensive and exciting debate, of which we shall have more to say later. Four amendments to Section 6 were defeated before first reading approval of the section.

On June 5, Section 15 (Right of Eminent Domain) was amended to delete the reference to "impaired use" as the basis for compensation and amended, also, to delete the requirement for compensation to "full extent of loss"; then the section was
approved after the minority report was withdrawn, its purposes having been achieved by the floor amendments. The same day the majority preamble was approved after the defeat of the minority report.

On June 9, four sections were considered, some with extended debate. Section 21 (Rights Retained) was readily approved. Section 22 (Freedom from Discrimination in Employment and Property) was approved with relative ease, 90 to 6, despite the prior fears that it might face the difficulties that open housing and fair employment proposals always encountered in the General Assembly. Section 24 (Public Employment) was deleted, after a struggle, when the minority report against any provision on the subject was approved. Section 25 (Basic Needs) failed to obtain the 59 votes required by the Convention rules and was sent back to the Committee, which took no further action on it.

The next day, June 10, two sections — Section 26 (Individual Dignity) by a vote of 60 to 27 after acrimonious debate, and Section 7 (Bail and Habeas Corpus) by a vote of 82 to 0 — were approved. The approval of Section 26 was preceded by the defeat of the minority report which urged that no such section be added to the Bill of Rights. Despite the unanimous approval of Section 7, it had been preceded by a debate on the minority report, subsequently defeated, which favored the liberalizing of the bail provisions.

The same day, June 10, the authors of the unsuccessful report on bail, Gertz, Albert Raby and Bernard Weisberg, prevailed with their minority report on liberalized provisions as to fines in criminal cases, and Section 12 (Imprisonment for Debt) was approved as amended by the minority report.

The next day, June 11, there was a classical debate on Section 27 (Right to Arms). The minority report of Gertz, Raby and Weisberg, opposing such provision, was defeated, and the majority Section 27 approved 86 to 16. The minority made more noise than the vote indicated.

The same day, the suggested sections on consumer protection, proposed by David Stahl, and individual privacy, proposed by Paul Elward, were defeated.

Now the Preamble and Bill of Rights were in the hands of the Committee on Style and Drafting and Submission to prepare for second reading.

But after this cursory summary of the Preamble and Bill of Rights on first reading, it will be well to retrace the story and tell some of the more exciting episodes of the floor debate.
Space does not permit a full account of the debate on each section, or, indeed, on many. Only the flavor may be savored.

Some of the motivation that went into the strong vote on the right to arms provision was described for me by delegate Ralph Dunn, from Du Quoin in Southern Illinois. Dunn called himself and J. Lester Buford, Robert Butler, Henry Hendren and David Kenney the “Mountaineers.” Dunn felt, instinctively, regardless of his own beliefs, that the people in this area would not be too enthusiastic about the new rights that we set forth in the Bill of Rights, save for the gun section. But he knew that our Committee was one of the true sights of the Convention, and he made it a point to have his visiting constituents spend time with us. He would point out Father Lawlor, Raby and myself as “a distinguished and famous group” and tell of my activities in the Leopold and Ruby cases and, “if it was a proper audience,” of Father Lawlor’s exhibit of a fetus in a bottle. Dunn is not a gun owner nor a hunter, but he knows his people. So when some of his constituents — the Pinckneyville Business and Professional Women’s Club — were in the visitors’ gallery, he made his famous speech in support of the gun section, knowing that word of it would be taken to the folks back home. He said, in the highly personalized fashion that distinguished him:

“People in Southern Illinois perhaps are closer to frontier days than some of you urban dwellers. Many of our ancestors came from Virginia through Tennessee and Kentucky and settled in Illinois not too many generations ago. If someone tried to take my grandfather’s gun away from him, that person would have suffered bodily harm!

“And I’m sure you know, people in our district are very much opposed to the present gun-owners registration law. Representative Gale Williams has won great fame and honor in his district by leading the fight for repeal of this onerous law. Had this proposed amendment never been offered, no one would have felt injured, but since it has been proposed, to not pass it will make the people of Southern Illinois feel that a right has been taken away. I submit the feeling among our people is that gun registration is a first step toward confiscation of weapons.

“I submit that guns still serve many useful purposes in Southern Illinois: many a father has a shotgun in his closet that is used on certain social occasions. I certainly don’t want to deny him that privilege.”

I had assumed that the Cook County Democrats would oppose the provision when the Corporation Counsel of Chicago, Richard L. Curry, the Mayor’s own cousin, sent Marvin Aspen, a highly regarded personal representative, to the Bill of Rights
Committee to correct the impression given by Leonard Foster that the proposed gun provision was agreeable to him. He and the Chief of Detectives of Chicago, Michael Spiotto, made it clear that they favored the most rigid gun control. But Paul Elward, for long an advocate of such control in the General Assembly, declared, with amazing conviction: “For the first time we are getting constitutional underpinning for gun control legislation. This invalidates no existing law or ordinance.” He added, piously: “We need less violence in our society, verbal as well as physical.”

That was the very reason I could not understand why the “Daley cohorts,” as I described them in an appeal to the Convention, were going along with the gun proponents. I read some comments by Daley in the morning press when gun violence against the police was reported. Guns will be used when they are around, I stressed. Weisberg made a more eloquent plea in behalf of our minority report, as did some of the best men and women at the Convention. We were fortunate to receive as many as forty votes for our report, considering the unnatural ganging up against us. That was our high tide. Following the defeat of our report, the majority proposal won 86 to 16. That was what almost invariably happened at the Convention. Once the opposition was downed, many who had favored its viewpoint would swing to the majority viewpoint. That is why one must study the interim votes in order to size up a situation accurately.

The Mayor’s own son, Richard Daley, with whom I had enjoyed an excellent personal relationship, reacted strongly to my use of the phrase, “Daley cohorts.” He read into it a critical spirit that was not intended, and I thought it politic to say so in a speech in response in which I stressed my long-time support of Daley, despite our differences. On another occasion I reminded the party stalwarts, such as Elward, that I had been a registered Democrat for forty years, while some of them were non-voting youngsters. This prompted young Michael Madigan to come up to me and say, “Elmer, do me a favor — don’t register as a Democrat next time.” The most serious debates were relieved by such by-plays. For myself, I was content to be judged by such staunch Democrats as Thomas McCracken and Philip Carey, rather than the shrill partisans, who made it so difficult to reach a consensus on any issue.

While the first-reading debate was still going on in the Convention Committee of the Whole as to the Bill of Rights, the Chicago Sun-Times published one of its numerous editorials on our work. It said:
"We have found occasion for both criticism and praise, because the Bill of Rights contains sensitive, controversial, even volatile, matter. Still to be debated, for instance, is an unfortunate freeing up of the right to keep and bear arms. Our stand there is well known. We favor more control, not less.

"Nonetheless, we think it proper that the committee which constructed the proposed Bill of Rights be credited for a difficult job well done."

It told of the dedicated spirit in which we had worked, on committee and in the general sessions of the Convention. It concluded:

"We commend the Bill of Rights Committee, a disparate group of individuals, for doing as well as it has with this basic democratic task."

There is much that can be said about the effort to abolish the death penalty, and, for clarity, it should be said in one place, rather than broken up in segments. I have always had great moral fervor against the ancient and barbaric institution of capital punishment. I have filed amici curiae briefs in death cases in the United States Supreme Court in behalf of the American Civil Liberties Union, various religious denominations and others, and have made countless speeches and written many articles on the subject. Naturally, I filed a Member Proposal on abolition, but I gave hard thought to the advisability of impairing the chances of the approval of the proposed Constitution by pushing abolition. I talked over the matter with Bernard Weisberg, who felt as strongly as I did and whose judgment I respected. Despite the strong and moving testimony that was introduced, we decided against going through with a committee vote.

Then the section on penalties after conviction came up before the Convention, and Wayne Whalen, seconded by Robert Canfield, a former State's Attorney and a Republican, and Philip Carey, a Daley Democrat, moved an amendment to ban the death penalty. Now that the issue was raised, I felt under the moral compulsion to support the amendment and I did as much as anyone in its behalf. Much to my amazement, we lost by a narrow vote, 54 to 50, despite the strong opposition of Paul Elward and other retributive-minded delegates. As I left the chamber following the vote, a number of delegates, including Lewis Wilson, volunteered that if there were a separate submission on abolition, (that is, a choice given to the voters) they would support it. For the first time, I developed a degree of optimism and began to work diligently toward adoption of a separate submission proposal. Although it remained the
The John Marshall Journal of Practice and Procedure

Whalen-Canfield-Carey proposal, I think that my role was at least as important in lining up support. Clifton Kelley, a young black delegate, was of the greatest help to us. Almost all of the blacks were with us, including organization stalwarts like Odas Nicholson. On second reading we prevailed. By third reading, I personally was able to win over some of the opponents, as we won handily. This was fortunate, as some of the supporters were not around when the vote was taken. Thus are issues decided in any deliberative body! For the first time, I permitted myself a large degree of optimism.

Then came the time when we were supposed to line up popular support for abolition. The Illinois Committee for the Abolition of Capital Punishment mounted a campaign for the proposal, with the renowned lawyer, Albert Jenner, Jr., as honorary chairman, and Hans Mattick, Willard Lassers and myself as the active leaders. We had a budget and a staff and probably the best literature on any proposal. We used the radio and television, the churches and the black community. There was no active campaign against the proposition. Neither political party took a stand. For years public opinion polls had shown an increasing percentage of the people against the death penalty — until the law-and-order syndrome set in. I debated with the State's Attorney of Cook County over television and seemed to win on points. But when the votes were counted, abolition suffered a worse defeat than any proposition. It was a disaster. The reasons? Perhaps, because I was the only delegate to devote considerable effort to the campaign; a few others did a bit, but only a bit. Wayne Whalen, quite properly, was too busy on the judicial selection proposition. It may have been the Speck case, the times. At any rate, we lost badly.

One of those who participated most effectively in the debate on the section relating to preliminary hearings on felony charges was John M. Karns, Jr., chairman of the Committee on Finance and Revenue, who, when State's Attorney of his county, had employed a member of our Committee, William Fennoy, as an investigator. Karns and Fennoy did not look at the preliminary hearing proposal in the same light. Feeling it important to incorporate the views of Karns on this important matter, I elicited this comment from him, which brought forth some of the "secret history" of the Convention:

"As you will recall, I testified before your committee and was also active in debate before the Convention on the inclusion of a provision requiring a preliminary hearing as a matter of constitutional right.

"My thoughts on this can be summed up briefly: to my
knowledge, no other state constitution nor the Constitution of
the United States (see *Coleman v. State of Alabama*) requires
a preliminary hearing as a matter of constitutional right; addi-
tionally, I felt the matter was adequately covered in the Illinois
Code of Criminal Procedure.

"I understand that the committee did include such a pro-
vision in its report on first reading, largely at the insistence of
my fellow delegate, William Fennoy, who in my opinion, had
some mistaken notions about the efficacy of a preliminary hearing
as an important protection of the rights of accused.

"On first reading, I moved the deletion of the provision
which I recall then carried. In argument supporting my motion,
I advanced the idea that certain investigations are only effective
if brought initially before a grand jury, particularly those deal-
ing with crimes of public officials and certain types of organized
criminal activities such as gambling, and to require preliminary
hearings in such instances would legally destroy the grand jury
as an effective investigative tool in those types of investigations.

"After the provision was initially deleted, Delegate Park-
hurst moved a substitute provision that presently appears as
Paragraph 2, Section 7 of the Bill of Rights. I was curious at
that time about John's interest in these matters and was later
informed that he did this at the request of President Witwer
who, for some reason, was interested in some provision regard-
ing preliminary hearings appearing in the Bill of Rights.

"I might add, the matter was further complicated by the
decision of the Supreme Court in the *Coleman* case, which held
that a preliminary hearing is a critical stage of the prosecution
and may require the appointment of counsel to an indigent
defendant in some circumstances. It should be noted, however,
that *Coleman* does not hold that a preliminary hearing is a con-
stitutionally mandated requirement.

"I might add, that I don't particularly have a strong feeling
in the matter since I feel that the provision as written adds
nothing to the requirements already contained in the Illinois
Code of Criminal Procedure. I would assume that this is a right
which the defendant may waive, and in my experience, usually
would waive."

David Stahl, Mayor Daley's administrative assistant, was
one of the most hard-working and effective delegates. At times,
rarely it is true, he strayed from his organization colleagues on
his votes and in the proposals he put forth. Feeling that a per-
sonal note from him might lend intimacy to this narrative, I
wrote to Stahl for his comments. He replied:
"As your parenthetical note indicates, my activities with respect to your committee centered principally around the consumer rights issue, although I did introduce several proposals regarding the arts which, as I recall, were referred to your committee.

"I suspect that the transcript of the Convention and the roll call on first reading says all that really needs to be said about the consumer rights effort. As you will recall, my proposal was first referred to the Rules Committee where it almost died. With the intervention of several friends on the Rules Committee it was referred to the Legislative Committee rather than dying in Rules. With the consent of George Lewis and yourself, it was informally reassigned to the Bill of Rights Committee but because of the excitement which your committee was constantly creating, it never got a hearing before your committee. The transcript should reflect President Witwer's impatience with my amendment as well as the concern he expressed to me that the whole debate and consideration of the matter not take more than an hour. As I recollect, we spent an hour and fifteen minutes on the floor discussing consumer rights although many of those who spoke for the amendment did much more by way of presentation of their remarks.

"While I don't regard the loss of the consumer rights section as a great calamity, it would have been another reason for people to vote for the new Constitution. With regard to specifically what we proposed, I must admit we had a terrible time getting the right language and I suspect it was defeated because we didn't ever get the right solution to the semantics problem of saying what we really meant."

Stahl expressed a dilemma that beset others. If he who was so articulate — he was chairman of the Convention's Public Information Committee — had such difficulty, imagine the difficulty of others.

The delegates were an introspective group, often analyzing themselves and others as if they were characters in a Russian novel. Still, they were Americans, with great faith in gadgets and computers, and thought that statistical tables, questionnaires, polls and mere numbers had great meaning. They, especially the members of the Bill of Rights Committee, were all intrigued when rumbles arose as to an ideological rating of delegates by the young Vice President of the Convention, John Alexander, somewhat of a political pundit. He took seven pivotal issues that were voted on in the course of the first reading of the Bill of Rights and for each favorable vote on each of them he gave one point. The perfect liberal would have seven
Illinois Constitution

points; the fewer points you had, the less liberal you were. It was simplicity itself. Charles N. Wheeler, III told the whole story in an exclusive feature article in the Chicago Sun-Times.

Paul F. Elward called it "a silly waste of time and not an accurate reflection of anybody's political philosophy," but he had voted liberal, according to Alexander's test, only once. Convention Vice President Thomas G. Lyons, who also had voted liberal only once, commented: "I don't think my liberal record is going to be tarnished by this survey." On the other hand, young Jeffrey R. Ladd, who considered himself a "conservative, responsible Republican," was disturbed that he was found to be in the upper levels of liberalism with a 6. "The study is very unscientific," he said. Did this lead him ultimately to cast the one vote against the Bill of Rights on final reading? The human psyche is sometimes peculiar, to say the least. I, who rated a 7, naturally thought Alexander's study "basically sound." I observed, smugly: "It's the most interesting document to come out of the Convention so far." Thomas C. Kelleghan rated 0 by the Alexander test.

According to Alexander, you were a liberal if you voted as to each of the following:

FOR: 1) the elimination of the allegedly federally unconstitutional clause in the freedom of speech section; 2) abolition of capital punishment; 3) extending the right of collective bargaining to public employees.

AGAINST: 1) deletion of the provision requiring a prompt preliminary hearing for persons charged with felonies; 2) including the unborn in the due process section; 3) an amendment to the anti-discrimination section intended to protect property owners' rights; 4) the right to bear arms section.

The majority of the Convention had favored the liberal position on three of the issues and had voted against on four. Ultimately, it had restored the balance somewhat by voting for separate submission on capital punishment.

The members of the Bill of Rights Committee rated as follows:

Those from Chicago

Victor A. Arrigo 2
Leonard N. Foster 4
Elmer Gertz 7
James Kemp 5
Father Francis S. Lawlor 2
Albert A. Raby 7
Bernard Weisberg 7

1972
Suburban Members

John E. Dvorak 5
Thomas C. Kellegan 0
Arthur T. Lennon 2
Virginia B. MacDonald 4
Roy C. Pechous 3

Downstate Members

William F. Fennoy, Jr. 2 (plus two absences)
Matthew A. Hutmacher 1
Lewis D. Wilson 5

Thus, as might have been expected, Gertz, Raby and Weisberg, who so often joined in minority reports, were at the top as liberals, with 7 points each; Kelleghan was the least liberal, with no points, closely followed by Hutmacher with 1 point, Arrigo, Father Lawler and Lennon each with 2 points (omitting Fennoy because of absences); in the center were Kemp, Dvorak and Wilson, each with 5 points. One could play with these figures, as Alexander did, and come up with such interesting facts as that the Republicans and Democrats as a whole were 3.1 in rating, just below the middle; independents as a whole were near the top with 6.3; suburban delegates were somewhat more liberal than Chicago delegates — 4 to 3.3, while downstaters were 3.1; the women averaged 5.3, while the men averaged 3.1; overall the Convention delegates rated about neutral — 3.4.

What this meant at the time, or would mean as the Convention progressed, was not readily foreseeable. Other ratings were made, the most scientific by David Connor, the banker delegate from Peoria. He had his computer show how each delegate compared in voting with every other delegate on first, second and third readings. The ratios differed somewhat from reading to reading, but they told a significant story. There was no effort by the computer, or by Connor, to describe anyone as liberal, conservative, radical or reactionary; but there was raw material for all sorts of analogies. At one point, for example, Albert Raby and President Witwer had the greatest degree of similarity in voting patterns; on one reading I was closest to Weisberg, on another to Dawn Clark Netsch and Frank Cicero. The latter, Italian in origin like Arrigo, had petulently passed his vote on the Bill of Rights on one occasion, as I recall, because of his disgust over Arrigo's individual dignity provision.

I have already stressed my great confidence in Lewis Wilson, despite our very considerable differences in political philosophy. In writing to me after the Convention was over and the Constitution adopted, he pointed out certain things
about our committee that I may not have stressed sufficiently:

"I believe the striking characteristic of our committee was the diversity in background and experience of its fifteen members. I doubt that this was equalled by any other committee.

"We had Republicans, regular Democrats, Independent Democrats; Jews, Catholics and Protestants; blacks and whites; one woman; ultra-conservatives (I believe I am in this category) and liberals; strong 'party' people (e.g. Arrigo, Lennon, MacDonald) and those who were not; at least one strong labor man (Kemp) and at least one who had always been allied with the management side (myself).

"Only geographically was such complete diversity lacking. There were seven members from Chicago itself and five more from the Chicago metropolitan area — a total of twelve of the fifteen. That left three of us from downstate. All of us were from cities along the Mississippi and at least two of us (Fennoy and I) were from industrial areas — and the same is true of Hutmacher to a somewhat less extent. Outside of Fennoy, possibly, there was no member of the committee from that great portion (geographically) of the State from Springfield south to the Ohio river.

"I assume the answer to this is that most of the Bill of Rights problems arise in the Chicago area, for obvious reasons and, therefore, this area should have predominant representation. I am not sure, however, that this is a wholly good answer.

"I think it is in order to note that two of the committee members opposed the Constitution as finally adopted (Kelleghan and Kemp) . . . . In view of the fact that only a very few of the total number of delegates opposed the Constitution, I would feel our committee had a higher percentage of its members in opposition than did any other committee."

On July 2, 1970, the Bill of Rights Article came out of the Committee on Style, Drafting and Submission very little changed from first reading form, but lacking for the time being the Preamble, still being considered by that committee. In the last weeks of the Convention, this committee, chaired by the brilliant and resourceful young battler from Hanover, Wayne W. Whalen, was probably the busiest and most successful of all the committees of the Convention. Whalen, elected as a Democrat, was part of the independent block which included Gertz, Raby and Weisberg of the Bill of Rights Committee. These independents and their associates and sometime allies frequently conferred and often coordinated their efforts. Each was a distinct personality, conscientious and independent in a
thoroughgoing sense. Yet, on basic matters, they generally followed a similar voting pattern, however their reasoning and manner differed.

Lewis Wilson was Vice Chairman of Whalen’s committee and, in a sense, the representative of the Bill of Rights Committee on Style and Drafting. The chairman and counsel of Style and Drafting conferred with me on all proposed changes in the Bill of Rights and, to be sure that there would be no uproar, they also conferred with other members of the committee. They were trying to make certain that some sort of consensus would be achieved.

Style and Drafting suggested that the old section on subordination of military power be moved to the Militia article and that the section on elections be moved, as suggested by Peter Tomei, to the article on Suffrage and Elections. Nobody objected and the removals were accomplished as a matter of course. Whether or not the changes in location had any effect constitutionally remains to be seen, but is extremely doubtful.

Style and Drafting also contemplated the removal of Dwight Friedrich’s language about individual obligations and responsibilities to the Preamble; but, in the end, it remained in the section on Fundamental Principles, (Section 23) where it had initially been placed and where it really belonged.

The section on preliminary hearing in criminal matters was added to the section on indictment, as suggested by the Bill of Rights Committee. It was obviously a good decision.

For the rest, the proposed changes were truly stylistic, as contemplated when the role of the Style and Drafting Committee was delineated. Punctuation was added, subtracted or changed; words of greater clarity were substituted for those of lesser clarity; in all, the language was tightened up, so that the meaning of each section became self-evident. Where the exigencies of Convention realities required it, the sometimes archaic language of the older sections, redolent with tradition, were retained.

One change in the order of language in the amended section on searches, seizures, privacy and interceptions strengthened the section substantively, I thought. By placing the phrase “invasions of privacy” after “seizures,” instead of at the end of the sequence, I thought the phrase was given body and blood. It was no longer a dangling and perhaps useless limb.

There followed discussions, proposed amendments and substitutions and votes on second reading. The Bill of Rights and Preamble remained substantially as on first reading, with a few important changes, referred to later.
The Report of the Style, Drafting and Submission Committee, following the completion of second reading in the Committee of the Whole, encompassed the entire new Constitution, including proposed separate submissions, Committee recommendations and the Transition Schedule. Very little in the way of textual changes was proposed for the Preamble and the Bill of Rights. There was again new language to clarify the meaning of preliminary hearings in criminal cases. The new concept of the goal of rehabilitation in penalties was phrased more precisely. The new section on discrimination on the basis of sex ("women’s lib"), proposed and approved on the floor of the Convention, was rephrased to conform with the requirements of other articles — on local government and the schools. Otherwise the language changes were minor.

In conformity with the floor vote on second reading, there were two separate submissions with respect to the Bill of Rights — whether to add the sentence, "No penalty shall prescribe death," in Section 11 on Limitation of Penalties after Conviction, and whether to add a new section with respect to non-discrimination for the physically or mentally handicapped. It was already apparent that the latter proposed separate submission, forced by some who should have favored the inclusion of the section in the body of the Constitution, was creating troubled spirits and rebellion. Many regarded it as insulting to those already suffering sufficiently. There was bound to be much discussion of the matter on third, the final, reading.

This was the stage in the proceedings in which substantial amendments and substitutions were no longer freely permitted. For such changes the rules required, in the first instance, suspension of the rules by a constitutional majority of 59, and then passage by at least the same vote. When Style, Drafting and Submission presented its report, under date of August 26, 1970, with very little time left for us to complete our work, it was doubtful that the Convention would tolerate many suspensions of the rules. But surprise is the overriding rule of conventions, as well as of life, and one could look forward to fireworks, whether confidently or tensely.

The Transition Schedule declared that any rights, procedural or substantive, created for the first time by the Bill of Rights Article, shall be prospective and not retroactive. There could be no objection to this; and it was probably implicit, anyway, in due process. Section 17, relating to non-discrimination in employment and property, was to become effective on July 1, 1971, reasonable in view of the then circumstances and the newness and far-reaching consequences of the rights cre-
ated. Of course, later the Constitution as a whole was made effective as of that date.

On August 27, 1970, Wayne Whalen, as Chairman of the Style, Drafting and Submission Committee, presented the proposed new Constitution with the changes made by his committee, following the approvals on second reading of each of the articles and sections. Point by point he first took up the Preamble and the Bill of Rights, pointing out exactly what was done by his committee and why. Questions were raised by the always active Thomas McCracken as to whether or not a substantive change was inadvertently made in the section on discrimination with respect to sex. Delegates Frank Cicero, Mary Lee Leahy, John Parkhurst, and Malcolm Kamin rose to the defense of the committee. It appeared probable that the Convention was going to be bogged down again on some relatively unimportant detail at the very time when it was necessary for it to proceed with greater speed than at any time in its deliberations. At that point, I, as Chairman of the Bill of Rights Committee, suggested that we vote on the rest of the Preamble and Bill of Rights and reserve judgment on the section that had aroused the controversy. This was approved by the Convention and at last, as far as language was concerned, approval was voted.

The next day, August 28, 1970, on further consideration, I withdrew my earlier request for a division as to the section in question and moved that the Preamble and Bill of Rights be approved at third and final reading and for preparation for enrollment. Yet, again, there were impediments to speedy action. David Connor had been interrogated by the Chief of Police in Peoria as to the section which incorporated the ban on unreasonable invasions of privacy and interceptions of communications. He wanted to know what invasion of privacy meant, how it would affect visual surveillance by the police, how it would affect the performance of other ordinary duties by those charged with law enforcement. The Chief of Police had thought that the provision might impair the efficiency of law enforcement agencies. I tried to explain, as best I could, why I felt that the fears were unreasonable. I was referred to a case then pending in the United States Supreme Court and, since then, decided adversely to the contention of those who wanted a complete ban on all electronic surveillance and interceptions. I pointed out that Bernard Weisberg and other members of our committee felt that single party consent would still govern and thus the police might in certain designated circumstances intercept communications. Leonard Foster was
not sure that my explanation was correct. I did not agree with much of what he said, but I felt it inadvisable to spell out my differences and simply pointed out that we would all have to wait for court interpretation of the provision.

Past the hurdle, Leonard Foster now confronted us with another hurdle. He wanted us to combine the three sections on non-discrimination. Regretfully, I raised a point of order — the necessity for suspension of the rules, and was sustained by President Witwer. Foster moved for suspension of the rules. The suspension of the rules failed. Section 19 relating to non-discrimination with respect to the physically and mentally handicapped had been added to the Bill of Rights the previous day. It was no longer a matter of separate submission. Some of the shame of our earlier action was wiped out.

The clerk proceeded with the roll call of delegates on the motion for the final passage of the Bill of Rights and Preamble and all went on swimmingly until Odas Nicholson was reached. She was troubled because I had withdrawn my motion for a division which separated Section 18 (the Women's Lib section) from the total package. Miss Nicholson disagreed with me that there was no longer need for a division. The roll call was suspended and she was given leave to make whatever point she chose to make. Thomas Lyons was presiding at that time. Because of further parliamentary maneuvers, it was necessary to vote formally as to whether or not the roll call would be suspended to allow Miss Nicholson to speak. By a narrow margin this was done. Miss Nicholson said she wanted to have the changes made by the Style, Drafting and Submission Committee replaced by the language that had appeared in the section when it was adopted on second reading. Wayne Whalen explained again why he thought this was wrong. Miss Nicholson was not persuaded. There followed an exchange between the two, which was not always clear to the other delegates. I tried to resolve the matter again by pointing out that equal protection of the laws would protect women in this area completely. Foster agreed that there was nothing in Section 18 that was not already covered by the due process and equal protection of the law section. Miss Nicholson made cutting remarks with respect to Foster's pronouncement. We seemed to be stalled once more. I moved that we proceed with the roll call and, to my relief, there was no objection. But Gloria Pughsley remarked that she had to pass, when roll call was resumed, because she did not want the matter to be railroaded through without satisfying Miss Nicholson's question. Finally, the Preamble and Bill of Rights were approved with only one
nay vote but with 14 passing. Those of us on the Bill of Rights Committee had thus accomplished our objective more readily than we had dared hope when the Convention began months previously.

As the three readings went on in the Convention, with the ensuing excitement of debate and votes and public discussion on the reports of the various committees, it became increasingly clear that the early impression of our committee was changing. Where once there was hostility, amusement, bewilderment and the feeling of impending disaster, there was now friendliness, admiration and a sense of triumph. This was reflected in the media and even more in the conversation of delegates. Constantly, men and women would come up to me to express their regard for what we had done and how we had handled ourselves in the Convention. It was not alone those in our own camp who were almost buoyant in what they had to say. That arch-conservative, Ted Borek, talked almost in wonderment as to how the Bill of Rights Committee had prevailed, where others had failed. It was not that Borek was in agreement with us; quite the contrary. But he admired a workmanlike job. Thomas McCracken, on more than one occasion said to me, “Elmer, I admire you, even when I disagree. You know what you want, and you are not diverted.” And Victor Arrigo, in that deep, resonant voice of his, would constantly coo over how we had handled ourselves. “We are models for the Convention,” he intoned.

This was not wholly fortuitous. I had made up my mind, before our report came before the Convention, that I would studiously avoid affronting those upon whom we depended for votes. Despite my strong feelings on many issues, I determinedly restricted my participation in the debate — until our report was under consideration. Then I utilized all of the built-up goodwill. I tried to field the discussion. On the microphone and away from it, I put forth the most persuasive arguments I could muster. But I did not monopolize the time of the Convention or, indeed, of the committee. I pushed forward everyone who could help, whether it was Foster, Lennon, Weisberg, Wilson or anyone else. So a new reputation was created, and we all basked in it.

A number of sections were born on the floor of the Convention or outside of Springfield, rather than in committee. An intriguing example of this is the provision which is now Section 5 (Pension and Retirement Rights) in the General Provisions Article of the Constitution. Late in the life of our committee
I began to receive an extraordinary number of communications on the pension and retirement rights of government employees, particularly those connected with state universities. These people were sold the idea that their rights were imperiled and that they would be left destitute or, at the very least, prejudiced, unless the Bill of Rights contained a protective provision in their behalf. I received hundreds, if not thousands, of letters and petitions from them. No delegate received more communications on any one theme than I received on this one. I was almost overwhelmed, and troubled. It became a subject of conversation among delegates and the staff. I had the matter researched by a bright young staff assistant, and wrote to all of the many who had written to me. Frankly, I was not sure as to what could properly be done in the Constitution, assuming, as was not certain, that there was really a problem. Suddenly delegate Helen Kinney came up with a proposal on the matter, listing several sponsors but not myself! After insistence on my part, my name was added to the list, and the proposal was approved by the Convention. There was much pride of authorship at the Convention. Success or failure would often depend upon whose name was signed to a proposal; likewise approval or disapproval back home.

Chapters could be written about each battle as to each provision on the Convention floor, during each of the three readings, and in the secret conclaves and caucuses where delegates foregathered. The temptation is great to spin out the fascinating tale in its manifold details, telling about the heroes and villains and fainthearted in each struggle. Some decisions were close, some overwhelming, some unexpected, some according to plan.

Two sections proposed by the Bill of Rights Committee — on basic needs and the rights of public employees — were eliminated completely; basic needs because a constitutional majority was not obtained, the rights of public employees because the Cook County Democrats joined with certain downstaters. Two ancient sections, on free and equal elections and subordination of military power, were transferred to other articles; and two new sections — no discrimination on the basis of sex and no discrimination against the handicapped were added, the first with virtually no struggle and the second after considerable maneuvering and pressure. As to some sections there were very considerable debates, but, in the end, the sections were left largely as we had recommended them; other sections were expanded or contradicted and considerably modified on the floor.
It proved to be easier than anticipated to get rid of the mischievous phrase, "including the unborn," in the due process clause; the women and the blacks, the Independents, most Republicans and most downstate Democrats united against it, while the bulk of the Cook County Democrats and very few others joined in the futile fight for the phrase.

It is worth telling the story. On June 4, 1970, Father Lawlor offered the invocation, significant in view of the day's business. The grim priest preached on the sacredness of life. "Help us," he implored, "to respect this right to life which you give to all others." He gave, in brief compass and in the guise of a prayer, the arguments against destroying "those in need, the poor, the blind, the lame, the lepers" and, by implication, although he did not directly say so, the human fetus. Some minutes later, we sat as a committee of the whole, and President Witwer called upon me to proceed with the discussion on the work of the Bill of Rights Committee. I aroused laughter by saying: "We don't have dissenting votes on invocations, but it was a very stirring invocation and the start of the debate I take it."

It was now Arthur Lennon's task to defend the use of the words "including the unborn" in the due process and equal protection section. Lennon, a very shrewd and resourceful debater, made the most of the troublesome phrase, largely in terms of the majority report, but spelling out why he contended that the language was not revolutionary or extreme and consistent with what he deemed the law to be. Other delegates quickly interrogated Lennon, starting with the brilliant young man from Evanston, Frank Cicero, one of the group of independents. The interrogation became a debate, improper at that phase of the proceedings, in which Leonard Foster and I expressed differences as to whether the phrase applied only to due process or as to equal protection as well. I asked Lennon if the phrase, "including the unborn," includes "the very moment of conception." He hedged, I thought uncomfortably, in his response. I asked if the provision was self-implementing or if it would require legislation. Again, I thought he hedged.

Now one after the other delegate got into the fray; their questions, as mine and Cicero's, being a form of argumentation. It was clear that almost everyone wanted to say something on this highly controversial subject in which the Convention was taking sides so noticeably. The women, the blacks, the independents and downstaters were sharply opposed to the proposed language; the Daley Democrats strongly for it. Lennon fielded the questions with great skill, but he was persuading only the persuaded. Dwight Friedrich got to the heart of the matter at
once. He pointed out that Father Lawlor suggested that life begins with fertilization, and Rabbi Hershman, who one day had given the invocation, said that in the Jewish faith life begins when the baby's head protrudes from the womb. Did this not make it a religious question, and was that not undesirable?

Again, I wanted to inquire as to what facts or circumstances caused Lennon as an individual to sponsor the inclusion of the phrase. He thought I was arguing with him and he would not answer the question. Helen Kinney wanted to know the effect of the phrase on laws relating to abortion. Lennon would not give an unequivocal response.

The questions concluded for the moment, Lewis Wilson presented the minority views, I thought quite persuasively. He did not hedge. He was blunt in stating his belief that the supporters of the majority report were intent upon preventing legislation to permit abortions. His argument for the minority report was supplemented by Bernard Weisberg, as always shrewd in his analysis of constitutional, legislative and practical issues. It was easy to understand why his coldly rational tone disconcerted those as emotionally involved as Kelleghan.

Now Father Lawlor interposed what he regarded as questions and what President Witwer believed to be argumentation, scheduled to come at a later stage. Father Lawlor stressed his interest in life — when did it arise, when and how was it to be protected. Now Wilson, now Weisberg, answered questions, as Father Lawlor persisted in his line of quasi-interrogation. Others joined in, some with much heat.

The questions on the minority report concluded, I moved the substitution of the minority report, which excluded the words, "including the unborn," for the majority report which included those controversial words. One delegate was applauded when he inquired why we could not proceed to a vote at once, since everyone had obviously made up his mind on the subject. President Witwer properly insisted that the only way to test the matter was to ask who wanted to discuss the matter, as permitted by the rules.

With great emotion Clyde Parker, who was opposed to capital punishment, declared that by reason of the same respect for life, he was for the majority report, which he said was on the side of life. Father Lawlor quickly joined in. He complained about the effort to stifle debate; then went on and on in his deeply felt defense of life against those who would trifle with it. As he had exceeded the ten minutes allowed by the rules, President Witwer interrupted him. "The system must go
on,” the Father commented. “Thank you.” Witwer, stung, assured him that he would have further opportunity for debate.

When the debate resumed after the luncheon recess, Leonard Foster proclaimed that he agreed completely with the statements made by Father Lawlor, but disagreed completely with his conclusion. Kelleghan inveighed against those like Paul Ehrlich who would equate life with pollution. Life to him was sacred, and he would protect it by safeguarding the due process rights of the unborn. Rev. Joseph Sharpe, a black delegate strongly seconded Kelleghan in the name of God. He was answered by Albert Raby. Once again the convention had the opportunity to observe the moderation and reasonableness of Raby in contrast to his reputation in some corners as an extremist.

Paul Mathias wanted to move the previous question, so that debate would be terminated. President Witwer feared that this would indicate an unwillingness to hear out arguments on both sides. He did not put the question. Young Peter Tomei, a devout Catholic, rose to state his conviction that matters of conscience should not be ruled out in the manner of the majority report. He was for the minority position. So the debate went on, some almost trembling with emotion, others having at least the outer aspect of calm and reasonableness. Father Lawlor took the floor once more in his defense of life against those who would destroy it. Clifford Kelley rose to question Father Lawlor’s right to speak again; but the president, following the advice of the parliamentarian, said that Lawlor was in order, and he went on, eloquently, obviously unable to see how there could be differences of opinion on the subject.

Betty Howard, a tall, lovely and articulate delegate from the suburbs, did oppose him “as a woman, a wife, a mother, and a Christian.” Henry Hendren pleaded that the matter go to a vote. President Witwer asked Lennon to sum up for the majority and he did so in a manner that seemed to create differences in viewpoint between himself and Lawlor, whether of strategy or conviction one could not be sure.

Then debate on this important subject was interrupted while Harold Nudelman complained of the camera lights of the media and President Witwer attempted to explain why freedom of the press could not be interfered with. Nudelman was unsatisfied. John Knuppel tried to talk without being recognized by the chair, and his microphone was cut off. Thus did tempers rise with the tenseness of the discussion.

The motion to substitute the minority report for the committee majority was carried by 80 to 32. Despite all the debate,
it was not even close. The motion to approve the minority report, as substituted, a technical necessity, was then carried 92 to 8. The convention had overcome what might have been one of the greatest obstacles towards the approval of any new constitution.

Despite the support of the Catholic Bishops for the retention, intact and unchanged, of the Religious Freedom Section, there was a group, largely Catholic in composition, that persistently sought to amend the section, as well as the section in the Education article against the use of public funds for sectarian purposes, by substituting the general language of the First Amendment of the federal constitution or some other language. Some professed to be Constitutional purists; others were frankly in favor of giving assistance to parochial schools. The Bishops thought that this could be done through the present language; some delegates wanted to make this doubly certain. None of them reckoned sufficiently with the United States Supreme Court.

There was much less of a struggle than anticipated on the section against discrimination in employment and the sale or rental of property. In the end there were no more votes against the provision in the Convention than in committee — a mere half-dozen. This can be described as one of the miracles of our nine months.

Our section on eminent domain was somewhat mangled, largely because of those like Charles Young and James Strunck who were extremely sensitive to the problems of public agencies, because they had long represented the government in condemnation matters.

In the end we came up with this Preamble and this Bill of Rights:

**Constitution of the State of Illinois**


**Preamble**

We, the People of the State of Illinois — grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy and seeking His blessing upon our endeavors — in order to provide for the health, safety and welfare of the people; maintain a representative and orderly government; eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest
development of the individual; insure domestic tranquillity; provide for the common defense; and secure the blessings of freedom and liberty to ourselves and our posterity — do ordain and establish this Constitution for the State of Illinois.

ARTICLE I
BILL OF RIGHTS

SECTION 1. INHERENT AND INALIENABLE RIGHTS
All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.

SECTION 2. DUE PROCESS AND EQUAL PROTECTION
No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

SECTION 3. RELIGIOUS FREEDOM
The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference by* given by law to any religious denomination or mode of worship.

* Probably should read “be.”

SECTION 4. FREEDOM OF SPEECH
All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

SECTION 5. RIGHT TO ASSEMBLE AND PETITION
The people have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances.

SECTION 6. SEARCHES, SEIZURES, PRIVACY AND INTERCEPTIONS
The people shall have the right to be secure in their per-
sons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

SECTION 7. INDICTMENT AND PRELIMINARY HEARING

No person shall be held to answer for a criminal offense unless on indictment of a grand jury, except in cases in which the punishment is by fine or by imprisonment other than in the penitentiary, in cases of impeachment, and in cases arising in the militia when in actual service in time of war or public danger. The General Assembly by law may abolish the grand jury or further limit its use.

No person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the initial charge has been brought by indictment of a grand jury or the person has been given a prompt preliminary hearing to establish probable cause.

SECTION 8. RIGHTS AFTER INDICTMENT

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

SECTION 9. BAIL AND HABEAS CORPUS

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

SECTION 10. SELF-INCRIMINATION AND DOUBLE JEOPARDY

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

SECTION 11. LIMITATION OF PENALTIES AFTER CONVICTION

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

SECTION 12. RIGHT TO REMEDY AND JUSTICE

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

SECTION 13. TRIAL BY JURY

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

SECTION 14. IMPRISONMENT FOR DEBT

No person shall be imprisoned for debt unless he refuses to deliver up his estate for the benefit of his creditors as provided by law or unless there is a strong presumption of fraud. No person shall be imprisoned for failure to pay a fine in a criminal case unless he has been afforded adequate time to make payment, in installments if necessary, and has willfully failed to make payment.

SECTION 15. RIGHT OF EMINENT DOMAIN

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

SECTION 16. EX POST FACTO LAWS AND IMPAIRING CONTRACTS

No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privilege or immunities, shall be passed.

SECTION 17. NO DISCRIMINATION IN EMPLOYMENT AND THE SALE OR RENTAL OF PROPERTY

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer or in the sale or rental of property.

These rights are enforceable without action by the General Assembly, but the General Assembly by law may establish reasonable exemptions relating to these rights and provide additional remedies for their violation.

SECTION 18. NO DISCRIMINATION ON THE BASIS OF SEX

The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts.
SECTION 19. NO DISCRIMINATION AGAINST THE HANDICAPPED
All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer.

SECTION 20. INDIVIDUAL DIGNITY
To promote individual dignity, communications that portray criminality, depravity or lack of virtue in, or that incite violence, hatred, abuse or hostility toward, a person or group of persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation are condemned.

SECTION 21. QUARTERING OF SOLDIERS
No soldier in time of peace shall be quartered in a house without the consent of the owner; nor in time of war except as provided by law.

SECTION 22. RIGHT TO ARMS
Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

SECTION 23. FUNDAMENTAL PRINCIPLES
A frequent recurrence to the fundamental principles of civil government is necessary to preserve the blessings of liberty. These blessings cannot endure unless the people recognize their corresponding individual obligations and responsibilities.

SECTION 24. RIGHTS RETAINED
The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the individual citizens of the State.