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The Procedure of State Constitutional Change – With Special Emphasis on the South and Florida

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THE PROCEDURE OF STATE CONSTITUTIONAL CHANGE—WITH SPECIAL EMPHASIS ON THE SOUTH AND FLORIDA

Albert L. Sturm*

I. INTRODUCTION

Provisions for amendment and revision of state constitutions are among the most important contents of these documents. Unfortunately, constitution makers often overlook the importance of such provisions, which in large measure determine whether a constitution possesses the flexibility and stability essential for an effective basic instrument of modern state government. Stability is necessary for the ongoing processes of public policymaking and implementation. But when developed to an excessive degree, stability results in rigidity that inhibits government from responding to popular demands. Flexibility, although obviously a necessary feature of constitutions, also can be carried too far. Amendment and revision procedures that raise constitutional changes little above the level of ordinary legislation tend to produce documents with much statutory minutiae. The goal of constitution makers, therefore, should be to provide balanced procedures for change that insure optimum stability and flexibility and are specially designed to fulfill the needs of a particular state. The extent of constitutional restrictions and the relative adaptability of a constitution to changing conditions largely determine whether a state government can fulfill the needs of the people.2

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This paper identifies the methods of adapting state constitutions to changing needs, outlines the salient features of the legal methods of altering these documents, and focuses special attention on the amendment and revision procedures in the constitutions of Florida and the other southern states.8

II. ADAPTATION OF FEDERAL AND STATE CONSTITUTIONS

Constitutions may be adapted to the changing requirements of government in several ways—by elaboration through the legislative process, by interpretation of persons in the executive and judicial branches who carry out public policy, by usage and custom, and by legally designated methods of constitutional change. Interpretation has been the most important mode of national constitutional adaptation. Although there are twenty-six amendments to the United States Constitution, it has been formally amended only seventeen times during the 189 years of its effective operation, the first ten amendments having been approved at the same time.4 The vast edifice of national constitutional power is primarily the product of legislative, executive, and judicial interpretation of a basic document containing broad and general grants of power.

Unlike the federal Constitution, state constitutions are primarily bundles of limitations on state governments.5 Almost without exception, today's state constitutions are much longer than their federal counterpart. This is attributable both to the basic nature of state constitutions as a series of limitations on state government and to the growing complexity of modern society. Early state constitutions were brief and their restrictive provisions usually were expressed in general terms, thus permitting change through interpretation by the three branches of government.6 Later documents contain limitations that are

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8. These include: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

4. The First Congress submitted twelve amendments to the states. I P. Poore, Federal and State Constitutions of the United States 24 (1924). Ten were ratified and became effective in 1791. Id. at 21. U.S. Const. amend. I-X.

5. See, e.g., In re Apportionment Law Senate Joint Resolution No. 1305, 263 So. 2d 797 (Fla. 1972), supplemented, 281 So. 2d 484 (Fla. 1973).

6. For summaries of early state constitutional developments, see F. Green, Constitutional Development in the South Atlantic States, 1776-1860: A Study in the Evolution of Democracy (1966); A. Nevins, The American States During and After the Revolution, 1775-1789, at ch. IV-V (1924). For leading works on more recent develop-
much more detailed, especially regarding legislative authority. These documents not only restrict the freedom of the people's representatives in making desirable adjustments, but also result in the proliferation of amendments. The greater the amount of detail contained in a constitution, the greater is the need for amending procedures that permit changes essential for fulfilling the ever-increasing requirements of a complex society.\(^7\)

The detailed and restrictive language of most state constitutions leaves far less freedom for constitutional growth by interpretation than do the relatively flexible provisions of the federal document. While some adaptation of state constitutions by interpretation has occurred, changes often have been restrictive rather than enabling in nature.\(^8\) In consequence, legal methods of constitutional change have been much more important in the states than on the national scene.

### III. Legal Methods of Constitutional Change

The degree of constitutional change ranges from amendment of a single section, through revision on a small or extensive scale, all the way to rewriting the entire instrument. Regardless of the extent of alteration, two principal phases are involved: proposal and adoption. Until recently, the organic laws of the fifty states expressly authorized one or more of only three procedural techniques for amendment, revision, and rewriting. These are (1) proposal by legislative action, (2) the constitutional initiative, and (3) the constitutional convention.\(^9\)

In 1969, however, when the present Florida constitution took effect,\(^10\) Florida became the first state to give constitutional status to constitutional commissions as a formal method of initiating constitutional changes.\(^11\) The present Florida constitution is the only state organic law expressly providing for all four methods of initiating alterations.\(^12\)

\(^{7}\) For sources describing the substantive features of modern state constitutions, see \textit{J. Dealey, Growth of American State Constitutions} (1915); \textit{Major Problems in State Constitutional Revision} (W. Graves ed. 1960).


\(^{9}\) Analyses of the legal methods of constitutional reform include: T. Allen, Jr. & C. Ransone, Jr., \textit{Constitutional Revision in Theory and Practice} (1962); \textit{Contemporary Approaches to State Constitutional Revision} (A. Clem, ed. 1970); \textit{Methods, supra} note 2; \textit{Thirty Years, supra} note 2; \textit{Trends, supra} note 2.

\(^{10}\) The present Florida Constitution became effective January 7, 1969. See \textit{Fla. Const.} art. XVII, § 4 (1885).

\(^{11}\) See \textit{Fla. Const.} art. XI, § 2.

\(^{12}\) See \textit{Fla. Const.} art XI.
Regardless of the method of proposal, in the vast majority of the states all proposed amendments or revisions must be approved by the people.

With the exception of the initiative, which is generally used only for very limited alterations, the various legal methods of constitutional change may be used in various states under differing provisions to propose all degrees of constitutional modification up to and including revision or replacement of an entire document. Proposal by legislative action and the constitutional initiative are normally used for minor changes; traditionally, constitutional conventions have been called in the great majority of states for major overhaul purposes. In recent years, however, constitutional commissions have been employed increasingly as staff arms of state legislative bodies or to assist constitutional conventions in initiating general revisions, as well as lesser alterations.\textsuperscript{13} To date, constitutional commissions have not submitted proposals for constitutional change directly to the voters; their work products have been submitted to lawmaking bodies—state legislatures and constitutional conventions.\textsuperscript{14} Thus, the Florida experience in 1978 will establish a unique precedent since the work of the Constitution Revision Commission will be submitted directly to the electorate.

Table 1 shows the numbers of constitutional changes proposed and adopted by the three legal methods of proposal used during the eleven-year period 1966–76, inclusive. For comparison, data are included for all fifty states, the fifteen southern states, and Florida. The data include proposed changes in all constitutions effective in each state during the past eleven years; thus, the figures for Florida apply both to the 1885 and 1968 constitutions. The changes range from minor alterations to the proposal of entire documents. By far the most popular method is proposal by legislative assemblies, followed in all states except Delaware by submission to the voters for approval or rejection.\textsuperscript{15} In all of the states collectively, legislative proposals achieved the highest level of voter acceptability; the constitutional initiative was the least successful of the three methods. In the South, the percentage of acceptance of convention proposals exceeded that of legislative proposals.

\textit{A. Proposal by Legislative Action}

All state constitutions now authorize the state lawmaking body to propose amendments.\textsuperscript{16} With the single exception of Delaware, in

\textsuperscript{13} See generally State Constitutions \& Constitutional Revision, in XVI–XXI \textit{The Book of the States}, supra note 7 (1966–77).

\textsuperscript{14} See, e.g., Fla. Const. art. 17, § 4 (1885).

\textsuperscript{15} See Del. Const. art XVI, § 1.

\textsuperscript{16} Constitutional Amendment Procedure: By the Legislature, in XXI \textit{The Book of the States} supra note 7, at 175 (Table 2) (1976–77).
<table>
<thead>
<tr>
<th>Method of Initiation</th>
<th>Number of States Involved</th>
<th>Total Proposals</th>
<th>Total Adopted</th>
<th>Percentage Adopted</th>
<th>Total Proposals</th>
<th>Total Adopted</th>
<th>Percentage Adopted</th>
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<td>1,160</td>
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<td>15</td>
<td>58</td>
<td>16</td>
<td>27.6</td>
<td>3</td>
<td>6</td>
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<tr>
<td>Totals</td>
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<td>1,836</td>
<td>70.8</td>
<td>1,469</td>
<td>1,066</td>
<td>72.6</td>
</tr>
</tbody>
</table>

*This table was assembled by the writer. Similar tables covering specific periods appear in Thirty Years, supra note 2, at 29-31; Trends, supra note 2; State Constitutions and Constitutional Revision, in XVI-XXI The Book of the States (1966-77), supra note 7.

**For the purposes of this article, the 15 southern states include: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.
which approval by a two-thirds vote in each of two successive sessions of the General Assembly is sufficient to amend the constitution,17 all states require proposed changes to be submitted to the voters.18 The articles on amendment and revision in state constitutions contain a wide variety of procedural requirements for both proposal and adoption.

The following restrictions on proposal of changes are illustrative: the size of the legislative vote required to propose amendment is a simple majority of the membership in seventeen states, a two-thirds majority in eighteen states, and a three-fifths majority in nine states (including Florida), with variations of these specified majorities in the remaining six states.19 In fifteen states consideration during two sessions is required, and four states limit the number of amendments that may be submitted at one election.20 The size of the popular vote required for ratification likewise varies.21 Although forty-four states, including Florida,22 require approval by a majority voting on the amendment(s),23 three states require a majority of the total votes cast in the election.24 New Hampshire requires two-thirds of the votes cast on the proposal for approval.25 Other common limitations relate to such matters as publication requirements, form and manner of submission, restrictions on proposal procedure, and the effective date of the amendment.26

The general pattern of state constitutional provisions for legislative proposal of constitutional amendments is approximately as follows:

18. Constitutional Amendment Procedure: By the Legislature, in XXI The Book of the States supra note 7, at 175 (Table 2) (1976-77).
19. Id.
20. Arkansas, and Illinois limit the number of amendments to three; Kansas and Kentucky limit the number of amendments to five and two, respectively. Ark. Const. art. 14, § 1; Ky. Const. § 256.
21. See The Book of the States, supra note 7, at 177 (Tab 6) (1976-77). For a more detailed analysis, see Methods, supra note 2.
22. Fla. Const. art. XI, § 5; art. X, § 12. The Florida Constitution is the only one that does not specify the size of the vote necessary in the amendment article itself. Rather, the rules of construction listed in article X, § 12, provide for the majority vote.
23. In Louisiana if five or fewer political subdivisions of the state are affected by the amendment, a majority in the state as a whole and also in the affected subdivision(s) is required; in Nebraska, the majority vote on the amendment must be at least 35% of the total vote cast in the last election; and, in New Mexico, amendments concerning certain elective franchise and education matters require approval by three-fourths of the electors voting in the state and two-thirds of those voting in each county. La. Const. art. XIII, § 1(c); Neb. Const. art. XVI, § 1; N.M. Const. art. XIX, § 1.
24. Minn. Const. art. IX, § 1; Tenn. Const. art. II, § 3; Wyo. Const. art. 20, § 1.
Proposals are made by a two-thirds vote of members elected to each house of the legislative assembly in a single session. The voters are informed of such measures by publication in the press, with counties as the unit of publicity, beginning three months prior to the election. Details of publication are left to legislative discretion. Prevailing practice on ratification is submission to the electorate at the next general election following proposal and on a separate ballot. Amendments are submitted in such form that they can be voted on separately; size of the popular vote required for approval is a majority of the electors voting on the question. The effective date is not specified in the constitution.

The Model State Constitution provides for proposal "by record vote of a majority of all of the members" of the legislature. In addition, each measure "shall be submitted to the voters at the first regular or special statewide election held no less than two months after it has been agreed to by the vote of the legislature." It shall be submitted by "ballot title, which shall be descriptive but not argumentative or prejudicial"; approval is by "a majority of the votes cast thereon," and the measure becomes effective thirty days after the referendum unless it provides otherwise.

Extensive use of legislative proposal of amendments clearly reflects a continuing need to modernize state constitutions, and also the willingness of state lawmaking bodies to respond to this need. Although legislative proposal followed by popular referendum is normally used to make limited constitutional changes, some states attempt to keep their constitutions in tune with the times by numerous piecemeal amendments, rather than full-scale revision. Wisconsin, Iowa, and Nebraska are recent examples. In most states, however, the piecemeal amendment technique has failed to provide the kind of organic law that best can meet modern demands on government.

A few state constitutions, such as those of Florida and Georgia, ex-

27. A. STURM, AMENDMENT AND REVISION OF STATE CONSTITUTIONS WITH SPECIAL REFERENCE TO FLORIDA, supra note 1, at 4.
29. Id. § 12.02(a).
31. MODEL STATE CONST. § 12.02(b).
32. In Wisconsin, at five consecutive ballotings through 1969, the voters approved 20 constitutional amendments without a rejection; during the period of this analysis, Iowa voters approved all 14 proposals. Since the Report of the Nebraska Constitutional Commission was issued in 1970, the legislature has presented a series of amendments to the voters, which collectively have effected extensive changes in the state's organic law. XVI–XXI THE BOOK OF THE STATES, supra note 7 (1966–77).
pressly authorize the legislature to propose an entire new constitution. In 1976, Georgia voters approved an editorially revised constitution proposed by the Georgia General Assembly in the form of a single proposition. During the past decade, an increasingly popular method of constitutional reform has been legislative proposal of a new or extensively revised constitution drafted initially by a constitutional commission and approved by the legislature. There would often be various changes made by the legislature before submission to the voters. The use of constitutional commissions is discussed later in this paper.

In support of constitutional modernization by the method of legislative proposal, advocates cite as major advantages the existence of an elected body of legislators whose function is lawmaking, the availability of a permanent staff, the comparatively high interest of legislators in legal matters and public affairs, the strong preference of legislators for this method, and the economy of using existing lawmaking resources. The most notable recent example of constitution making by legislators was the 1974 Texas Constitutional Convention whose members were the 181 elected members of the Texas Legislature. This seventh Texas convention, composed of legislator-delegates for whose work $3.8 million had been appropriated, was unable to agree on the draft document and failed to submit any proposal to the electorate. In November, 1975, Texas voters overwhelmingly rejected eight legislative proposals, which were based on the convention docu-

33. FLA. CONST. art. XI, § 1 provides: "Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature." The Georgia Constitution is equally explicit: "A new Constitution or amendments to this Constitution may be proposed by the General Assembly or by a constitutional convention" GA. CONST. art. XII, § 1.

34. Although a few substantive changes were made in the Georgia Constitution of 1976, the principal purpose was to rearrange and to integrate related provisions dispersed throughout the 1945 Constitution to permit substantive revision later on an article-by-article basis. Provisions for amendment and revision were altered expressly to facilitate such revision. Compare GA. CONST. art. XII, § 1 with GA. CONST. art. XIII (1945).

35. The Commission’s submission of its work product to the legislature is commonly called an indirect revision method. See text accompanying notes 48-50 infra. See also text accompanying notes 88-97 infra.

36. See, e.g., T. ALLEN, JR. & C. RANSONE, JR., CONSTITUTIONAL REVISION IN THEORY AND PRACTICE ch. 1 (1962); W. DODD, THE REVISION AND AMENDMENT OF STATE CONSTITUTIONS ch. 4 (1971); Thirty Years, supra note 2, at ch. 2; TRENDS, supra note 2, at 13-17.

37. See generally J. MAY, THE TEXAS CONSTITUTIONAL REVISION EXPERIENCE IN THE ’70s (1975); TEXAS CONSTITUTIONAL REVISION COMMISSION, A NEW CONSTITUTION FOR TEXAS, TEXT, EXPLANATION, COMMENTARY (1973); Bebout, Unique Road to a New Constitution, 64 NAT’L. CIVIC REV. 385 (1975); May, Texas Constitutional Revision: Lessons & Laments, 66 NAT’L CIVIC REV. 64 (1977).
ment but which excluded most of its controversial provisions.\textsuperscript{38} This experience may have reflected some voters' distrust of a proposed organic law drafted by members of the legislative branch who have a vested interest in, and whose powers are affected by, the substantive contents of the constitution.

The case against the piecemeal amendment approach to constitutional modernization is strong. Legislators usually are overburdened with current problems and often have inadequate staff; furthermore, they are not specifically elected for the important function of framing a new fundamental law. Many amendments are designed to meet particular pressing problems of the present with little attention to future needs, or to their effect on other parts of the constitutional system.\textsuperscript{39} Often they tend to breed additional amendments and add further complications to existing inadequacies. Many are written in technical language difficult for even the most informed citizens to understand.\textsuperscript{40}

In some southern states, numerous amendments are of local effect only and have no proper place in a constitution.\textsuperscript{41} These additional measures on the ballot tend further to diminish voter interest in constitutional issues. Almost invariably the vote cast on constitutional matters is far less than that for candidates, resulting in public decision making by a small minority of the electorate. Election cost is another factor.\textsuperscript{42} The heavy burden placed on voters in some states, particularly

\textsuperscript{38} XXI The Book of the States, supra note 7, at 170 (1976-77). See J. May, supra note 37; Bebout, supra note 37; May, supra note 37.

\textsuperscript{39} The problem has been best summed up as follows: [T]he piecemeal amending procedure's fragmentary approach to constitutional problems has not demonstrated that it possesses much fitness for dealing with such fundamental and highly complicated problems as streamlining the organization and procedures of the three branches of government, of the tax and fiscal system and the system for constitutional revision itself—all of which must be effectively dealt with if constitutional modernization is going to be anything more than an idle dream.


\textsuperscript{41} A local amendment affects a single local area or a restricted number of governmental units; it does not have statewide applicability. During the eleven-year period 1966-76, 806 local amendments were proposed in six of the fifteen southern and border states, of which 592 were adopted. These states, with the number of local amendments proposed and adopted, were Alabama (91 and 74), Florida (3 and 3), Georgia (447 and 346), Louisiana (90 and 30), South Carolina (148 and 120), and Maryland (27 and 19).

Trends, supra note 2, (app. A); State Constitutions & Constitutional Revision in XVI-XXI The Book of the States (1966-77), supra note 7.

\textsuperscript{42} Election cost is a most significant factor if a special election is called. For
in the South, has aroused increasing opposition. This resistance amounted to a general refusal to approve constitutional amendments in Louisiana in November, 1970, and led eventually to the calling of a constitutional convention and adoption of a new constitution.\(^{43}\)

**B. The Constitutional Initiative**

Proposal of amendments by initiative petition signed by a specified number of registered voters is a second method of proposing changes in state constitutions. The constitutional initiative, which was first adopted by Oregon in 1902,\(^{44}\) is now authorized in seventeen states, including Florida.\(^{45}\) To propose an amendment by this method, sixteen states require that a specified percentage of the voters who participated in a designated previous election must sign the initiative petition;\(^{46}\) the North Dakota Constitution specifies 20,000 signatures.\(^{47}\)

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\(^{43}\) The small proportion of the electorate who voted on constitutional amendments turned down 22 general and 31 local amendments submitted at the 1970 general election. The average percentage of persons registered who voted on the amendments was only 23.6, the lowest level of participation in the fall election since 1958. General Election, November 1970, PAR Analysis, Number 169, at 11 (Public Affairs Research Council of Louisiana, 1970) (copy on file with author).


\(^{45}\) FLA. CONST. art. XI, § 3 reads as follows:

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment shall embrace but one subject and matter connected directly therewith. It may be invoked by filing with the secretary of state a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight per cent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

Two other southern states—Arkansas and Oklahoma—authorize constitutional initiative. ARK. CONST. amend. 7, § 1; OKLA. CONST. art. 5, § 2. The other fourteen states authorizing constitutional initiative are Arizona, California, Colorado, Illinois, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, and South Dakota. Constitutional Amendment Procedure: By Initiative, in XXI THE BOOK OF THE STATES, supra note 7, at 176 (Table 3) (1976–77). In Illinois, the constitutional initiative may be used to amend only article IV of the constitution, which pertains to the Legislature. See ILL. CONST. art. 14, § 3.

\(^{46}\) The percentage of voters necessary varies from three to fifteen percent. XXI THE BOOK OF THE STATES, supra note 7, at 176 (Table 3) (1976–77); METHODS, supra note 2.

\(^{47}\) N.D. CONST. art. XV, § 202.
In operation, the constitutional initiative may be either direct or indirect. It is direct if, after verification of the signatures by the secretary of state or some other designated officer, it is submitted to the electorate without presentation to the legislature. It is indirect if popularly initiated proposals must be referred to the legislature before submission to the voters. The permissible scope of legislative action on such proposals depends on powers mandated by the constitution. The direct initiative is by far the most popular form; only Massachusetts and the Model State Constitution exemplify the indirect form. The model also authorizes the legislature to establish a procedure for withdrawal of an initiative petition by its sponsors at any time prior to its submission to the voters.

From 1966 through 1976, the constitutional initiative was used in fifteen states in which fifty-eight proposals were submitted to the voters. Only sixteen were approved for an average of 27.6%. The statistics show that Colorado has used this amendment technique more than any other state. In five states all initiative proposals were rejected during this period, despite sixteen attempts. In Florida, the first and only constitutional initiative proposal submitted to the electorate was adopted in 1976.

The principal advantage of the constitutional initiative is its availability as a popular weapon to counter failure by legislative assemblies to initiate constitutional change. It serves as a "gun behind the door" to be used in emergency situations. Besides providing a method of overcoming legislative inertia and irreconcilable political impasse, it may potentially contribute to public education and stimulation of popular interest in public issues.

Critics of the constitutional initiative, on the other hand, say that it encourages proposals by selfish interests, that many popularly pro-

49. MASS. CONST. amend. art. 48, pt. 3-4; MODEL STATE CONST. § 12.01.
50. MODEL STATE CONST. § 12.01. For a more detailed analysis of constitutional initiative provisions, see METHODS, supra note 2, at 61-80; Crouch, The Constitutional Initiative in Operation, 33 AM. POL. SCI. REV. 634 (1939).
51. The 15 states using the constitutional initiative during 1966-76 and the number of proposals submitted and adopted were: Arizona (2-1), Arkansas (2-0), California (7-1), Colorado (12-6), Florida (1-1), Massachusetts (1-1), Michigan (6-2), Missouri (3-1), Montana (2-1), Nebraska (2-1), Nevada (1-0), North Dakota (1-0), Ohio (9-0), Oklahoma (3-0), Oregon (6-1). See TRENDS, supra note 2; NAT'L CIVIC REV., which publishes a yearly summary analyses of state constitutional developments.
52. NAT'L CIVIC REV., supra note 51.
53. NOW FLA. CONST. art. II, § 8.
54. Illinois has recognized this effect by permitting use of the constitutional initiative only when the legislature has failed to act. ILL. CONST. art. 14, § 3.
posed measures are poorly drafted and cannot be well integrated into the existing system, and that initiative proposals may add undesirable statutory matter to the basic law. They also point to the relatively poor record of performance of the constitutional initiative technique as compared with other methods of proposing constitutional changes.55

Appraisal of the arguments and of recent use of the initiative tends to indicate that it has fallen short of fulfilling the expectations of its advocates. Its performance during the past decade adds little strength to the arguments for its continuing viability as an effective technique for constitutional reform. Certainly no extensive use of the constitutional initiative is expected or desirable as long as the legislature is responsive to public needs. Nevertheless, it has served a useful purpose in some states.56 If properly controlled and limited,57 this technique affords a workable supplement to proposal of constitutional amendments by state lawmaking bodies.

C. Constitutional Conventions

In American states, the traditional method for extensively revising an old constitution or writing a new one is the constitutional convention. This method is indigenous to the United States.58 Since the formation of the Union at least 227 such bodies have been convened

55. See Methods, supra note 2, at 79.
57. The initiative must be properly controlled and limited in light of experience indicating that many initiative proposals are not well grounded or well stated. See note 40 supra; Methods, supra note 2, at 61–80; Thirty Years, supra note 2, at 26–27.
in the states.59 This method of initiating constitutional change is available in all the states.60 Forty-one state constitutions expressly authorize the use of constitutional conventions,61 and they have been sanctioned extra-constitutionally by judicial interpretation and practice in the remaining nine states.62

Most state constitutions leave to legislative discretion the initiation of the procedure for calling a constitutional convention. In a few states the legislature may provide for a convention without popular approval,63 but normally the question of calling a convention must be submitted to the people.64 The South Dakota and Montana constitutions authorize the calling of a constitutional convention by initiative petition and require a majority of the votes on the question for approval.65 A convention call in Florida is by initiative only.66


60. Thirty Years, supra note 2, at ch. 4.


62. See, e.g., In re Opinion to the Governor, 178 A. 433 (R.I. 1935). The nine states that do not expressly authorize constitutional conventions are Arkansas, Indiana, Massachusetts, Mississippi, New Jersey, North Dakota, Pennsylvania, Texas, and Vermont. XXI THE BOOK OF THE STATES, supra note 7, at 177 (Table 4) (1976–77).

63. These states are Alaska, by majority vote; Georgia, Louisiana, South Carolina, and Virginia, by a two-thirds majority in each house; Maine, by a two-thirds concurrent vote of the two houses; and South Dakota, by three-fourths of the members in each house. ALA. Const. art. VIII, §§ 1–2; GA. CONST. art. XII, §§ 1–2; LA. Const. art. 13, § 2; ME. Const. art. IV, pt. 3, § 15; S.C. Const. art. 16, § 3; S.D. Const. art. XXIII, § 2; VA. Const. art. XII, § 2.

64. See, e.g., ALA. Const. art. XVIII, § 286.

65. MONT. Const. art. XIV, § 2; S.D. Const. art. XXIII, § 2.

66. Fla. Const. art. XI, § 4 provides:

(a) The power to call a convention to consider a revision of the entire constitution is reserved to the people. It may be invoked by filing with the secretary of state a petition, containing a declaration that a constitutional convention is desired, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to fifteen per cent of the votes cast in each such district respectively and in the state as a whole in the last preceding election of presidential electors.

(b) At the next general election held more than ninety days after the filing of such petition there shall be submitted to the electors of the state the question: "Shall a constitutional convention be held?" If a majority voting on the question of the affirmative, at the next succeeding general election there shall be elected from each representative district a member of a constitutional convention. On the twenty-first day following that election, the convention shall sit at the capital, elect officers, adopt rules of procedure, judge the election of its member-
Ordinarily, when the convention method is used, voters participate at three stages: (1) action on the question of calling the convention, (2) election of delegates, and (3) approval or rejection of convention proposals. Of the three, the second is the only one universally required. The membership of a few recent constitutional conventions, however, has included some ex officio and/or appointed delegates.

Usually the legislature alone may take the initiative in calling a convention, as was the case under the 1885 Florida constitution. The natural reluctance of legislatures to initiate such action has led fourteen states to require periodic submission to the voters of the question of whether a convention shall be called. Failure in some states to follow this constitutional mandate has prompted constitution makers to vest in administrative officers the duty to submit the question at the stated interval. It is difficult to compel legislative bodies to act, but administrative officers are generally subject to mandamus.

In addition to providing for the calling of conventions, amendment and revision articles contain a wide variety of provisions covering procedural details relating to constitutional conventions. These include such matters as the legislative vote required for submission of the convention question, publicity requirements, place and time of assembly, selection and qualification of delegates, organization and procedure, and fix a time and place for its future meetings. Not later than ninety days before the next succeeding general election, the convention shall cause to be filed with the secretary of state any revision of this constitution proposed by it.

71. See, e.g., Fla. Const. art. XVII, § 2 (1885).

72. Periodic submission of the convention question is required at least every twenty years in Connecticut, Illinois, Maryland, Missouri, Montana, New York, Ohio, and Oklahoma. Conn. Const. art. 13, § 2; Ill. Const. art. XIV, § 1(b); Md. Const. art. XIV, § 2; Mo. Const. art. XII, § 3(a); Mont. Const. art. XIV, § 3; N.Y. Const. art. XIX, § 2; Ohio Const. art. XIV, § 3; Okla. Const. art. 24, § 2. Michigan requires submission of the question every sixteen years. Mich. Const. art. XII, § 3. The question must be submitted every ten years in Alaska, Hawaii, Iowa, New Hampshire, and Rhode Island. Alas. Const. art. XIII, §§ 3; Hawaii Const. art. XV, § 2; Iowa Const. art. X, § 3; N.H. Const. pt. 2, art. 100; R.I. Const. art. XLII, § 2.

73. For example, the Hawaii Constitution provides: "If any ten-year period shall elapse during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the first general election following the expiration of such period." Hawaii Const. art. XV, § 2. The Alaska Constitution requires the secretary of state to submit the question. Alas. Const. art. XIII, § 3.

74. See Buckwalter v. City of Lakeland, 150 So. 508 (Fla. 1933).
procedure of the convention, method of approving proposals, effective date, and various other details. These matters are appropriate subjects for a major treatise and cannot be examined in detail here. Nevertheless, they are important and merit the careful attention of constitution makers.

One of the more significant procedural developments during the past two decades has been the growing popularity and use of "limited" constitutional conventions. These bodies, having authority to propose constitutional change limited to stated subjects, are far more palatable to state legislatures than "unlimited" conventions over which they have far less control. Legal opinions differ about the extent to which a legislature can limit the power of a constitutional convention, which is generally regarded as a constituent assembly vested with sovereign power derived from the people. The prevailing view is that a constitutional convention is bound by its popular mandate but not by legislatively imposed restrictions on its proper powers. To avoid legislative limitation of convention authority, the Alaska Constitution provides that: "Constitutional conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention." Similarly, the Montana Constitution of 1972 authorizes only the calling of "an unlimited convention."

Between 1966 and 1976, sixteen constitutional conventions were convened in fifteen states, including two in Rhode Island. Ten of these were unlimited; that is, there were no restrictions on their power to propose revisions. The six remaining constitutional conven-

75. See generally Bibliography, supra note 2 and sources cited therein; XXI THE BOOK OF THE STATES, supra note 7, at 177 (Table 4) (1976-77); METHODS, supra note 2, at 80-120; THIRTY YEARS, supra note 2, at ch. 4; J. Wheeler, Jr., supra note 58.

76. See State Constitutions and Constitutional Revision in XVI-XXI THE BOOK OF THE STATES, supra note 7 (1966-77). For a discussion of the limited constitutional convention, see METHODS, supra note 2, at 103-04.

77. See Sproule v. Fredericks, 11 So. 472 (Miss. 1892); In re Wood's Appeal, 75 Pa. 59 (1874); Wells v. Bain, 75 Pa. 39 (1873); McMullen v. Hodge, 5 Tex. 34 (1849); METHODS, supra note 2, at 101-03; White, Amendment and Revision of State Constitutions, 100 U. PA. L. REV. 1132 (1952). But see Advisory Opinion of the Justices, 6 Cush. 573 (Mass. 1853).

78. METHODS, supra note 2, at 101-03; See White, supra note 77, at 1184-35, 1142.

79. ALAS. CONST. art. XIII, § 4.

80. MONT. CONST. art. XIV, §§ 1-2. When the calling of a constitutional convention is approved by the electorate, the presumption is that it has plenary power and is an unlimited convention. Advisory Opinion of the Justices, 6 Cush. 573 (Mass. 1853); METHODS, supra note 2, at 103. However, this presumption does not apply where there is a clear intention in the constitution to limit the function of the convention. Id.

81. Unlimited conventions between 1966 and 1976 were held in Arkansas (1969-70), Hawaii (1968), Illinois (1969-70), Maryland (1967-68), Montana (1971-72), New Hamp-
tions were limited to stated areas or subjects. No conventions were operative in 1975 or 1976, but in 1976 the voters of Arkansas, Hawaii, and Tennessee approved convention calls. It is noteworthy that the constitutions of seven of the fifteen states in which conventions were held from 1966 through 1974 contained no express provision for a convention.

More constitutional conventions have been held since midcentury than during any comparable period since the Civil War and Reconstruction. This activity not only attests to concern for modernizing the foundations of state government but also points to the need to modernize the procedures by which basic governmental reforms are accomplished. General appraisal of the varied pattern of procedure for use of the convention method indicates needed improvements in many states. The following are illustrative of suggestions that appear to merit careful assessment: mandatory periodic submission of the convention question by administrative officers, thus strengthening popular control and providing a means of overcoming legislative inaction; replacement of present extraordinary majority requirements on both calling and approving conventions by provisions for a simple majority vote, thus supplanting government by minority and reinstating the principle of majority rule; inclusion in the constitution of self-executing provisions for authorizing and assembling conventions, thereby affording safeguards against legislative refusal to enact enabling legislation; and mandatory submission of all proposals for constitutional change to the voters for their approval or rejection.

Furthermore, the importance of basic research in preparation for constitutional reform has been so conclusively demonstrated by recent...
experience that serious consideration should be given to inclusion of a mandatory provision in the constitution for establishment of a preparatory commission before any constitutional convention is called. The latest edition of the Model State Constitution includes such a provision. The following section summarizes recent use of these preparatory bodies.

D. Constitutional Commissions

Increasing use of the constitutional commission as an auxiliary device for initiating both major and minor changes is one of the most significant developments in the procedure of modernizing state constitutions. Constitutional commissions were developed initially, and have been used primarily, as auxiliary staff arms of state legislative assemblies. Their principal function has been to provide expert advice on constitutional problems and issues and to propose and draft amendments, revisions, and even entire constitutions. The 1968 Florida Constitution was the first state organic law to accord constitutional status to the commission as a formal method of proposing constitutional change. No other state has accorded the same recognition to the commission technique.

The popularity of constitutional commissions has continued to increase. The increase is attributable largely to their general acceptability to state legislators, who prefer to rely on auxiliary bodies over whose proposals they have control. Commission recommendations may generally be accepted, modified, or rejected at the discretion of the lawmaking body. Additional significant factors accounting for recent heavy reliance on constitutional commissions are the dampened enthusiasm for constitutional conventions because of voter rejection of some proposed documents, and the failure of the traditional piecemeal amendment process to fulfill the need for constitutional modernization.

Constitutional commissions have generally been created by statute, legislative resolution, or executive order. Classified according to purpose of creation, these bodies are usually designated study commis-

87. MODEL STATE CONST. § 12.03.
88. For more detailed analyses of the nature and use of constitutional commissions, see METHODS, supra note 2, at 121-47; THIRTY YEARS, supra note 2, at ch. 3; TRENDS, supra note 2, at 27-41; periodic summary analyses in NAT'L CIVIC REV., supra note 51; and State Constitutions and Constitutional Revision, in XVI-XXI THE BOOK OF THE STATES, supra note 7 (1966-77).
89. See FLA. CONST. art. XI, § 2.
90. This reasoning would not apply in the case of Florida’s revision commission which the legislature has relatively little direct power to control.
sions or preparatory commissions, with some performing both functions. Study commissions, which comprise by far the larger group, typically are mandated to study the constitution, determine what changes are needed, and submit recommendations to the legislature. Preparatory commissions are charged with the responsibility of making actual preparations for a constitutional convention.

Table 2 shows the number of constitutional commissions and constitutional conventions operative in all states and in fifteen southern states during the eleven-year period from 1966 through 1976. Com-

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*This table was assembled by the writer. Similar tables covering specific periods appear in THIRTY YEARS, supra note 2; STATE CONSTITUTIONS AND CONSTITUTIONAL REVISION, in XVI-XXI THE BOOK OF THE STATES, supra note 7 (1966-77).

**The 15 southern states on which data are provided in this table include: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia.

aFour of these (Illinois, New Hampshire, Texas, and Washington) had both study and preparatory responsibilities.
bOne of these (Texas) had both study and preparatory responsibilities.

missions and conventions are classified by major subtypes. The most striking feature of this tabulation is the exceptional amount of constitutional reform activity during the period. Although the popularity of conventions diminished in the late sixties as the use of commissions increased, use of both methods was exceptionally high. Of the forty-two commissions in thirty-two states, fifteen were active in twelve southern states.91 In the South, Arkansas, Oklahoma, and Texas each had two commissions; the nine southern states with a single commission each were Alabama, Florida, Georgia, Kentucky, Louisiana, Maryland, North

91. Establishment of nine commissions in 1969 marked the high point in creation of these bodies during a single year. Illinois and Washington led all states with three commissions each during the eleven-year period. Six states each had two commissions: Arkansas, Montana, Nebraska, North Dakota, Oklahoma, and Texas; twenty-five states had one commission each. See TRENDS, supra note 2 (App. C); STATE CONSTITUTIONS AND CONSTITUTIONAL REVISION, in XX-XXI THE BOOK OF THE STATES, supra note 7, (1974-77).
Carolina, South Carolina, and Virginia. The six preparatory bodies functional during 1966-76 did the groundwork for conventions in Arkansas, Illinois, Maryland, Montana, New York, and Pennsylvania. The New Mexico Constitutional Revision Commission was primarily a study commission, but its proposed revision was used extensively by the 1969 convention. Legislative service agencies performed preparatory duties for the Hawaii and New Jersey conventions.

A composite general pattern of the constitutional commissions of the past decade includes the following salient characteristics: wide variation in formal authority and mandate; average membership of approximately twenty, mostly appointed by legislative, executive, and judicial officers, with a small number serving ex officio, widely representative of major constituent interests; a chairperson with extensive experience in public life, typically designated by the governor; establishment of a committee structure and employment of a professional staff; part-time service of members who meet at varying intervals at the state capital; public financing, usually by legislative appropriation; varying duration, with an average of approximately sixteen months; reports of varied scope, content, and format ranging up to a draft constitution with commentary.

The greatest value of most constitutional commissions results from securing expert advice and suggestions from competent persons concerning matters that legislators have little time to study and about which they may have minimum knowledge. Commissioners have rendered invaluable service to state legislatures in performing one of their constitutional duties—proposing constitutional changes. With very few exceptions, all legislatures that proposed new or revised constitutions from 1966 through 1976 were assisted at some stage by constitutional commissions. In some states, the constitutional commission has been used as a device to sustain a reform movement that has encountered political resistance. Occasionally, commissions have received mandates to make a continuing study of the constitutional system and to propose changes deemed advisable. They may serve as instruments of popular education on governmental problems, but they may also be used for legislative “buck passing” to evade the issue of constitutional reform.

As a substitute for the constitutional convention, the constitutional commission has both advantages and disadvantages. Positively, its

93. Id.
94. Id.
95. Id.
96. Thirty Years, supra note 2, at ch. 3.
smaller size may facilitate freer discussion and quicker action. It is appointive, thus theoretically permitting designation of the ablest persons. In addition, it is usually more acceptable to legislative bodies, and it is more economical.

Critics offer these major objections to its use: appointed members may not be as representative as elected members of a convention; the appointed commission is subject to political handpicking and coloration; some commissions avoid controversial issues and tailor their recommendations to fit legislative desires; and commissions stimulate less public interest than conventions. On balance, the mounting popularity of constitutional commissions appears to be attributable largely to their subordination to legislative control with consequent preference to lawmakers.

IV. Amendment and Revision of Florida's Constitutions

A. The First Four Constitutions

The Florida constitutions of 1838, 1861, 1865, and 1868, collectively, provided two basic methods for constitutional change—by constitutional convention and by legislative action—followed, in one constitution, by popular referendum. The 1838 constitution authorized the general assembly to call a constitutional convention by a two-thirds vote in each house. It also provided for amendment by legislative action alone by the same two-thirds majority during each of two successive sessions with an intervening election of legislators. In contrast, the 1861 constitution provided for constitutional change only by a convention called by a two-thirds vote in each house of the general assembly without popular referendum. This same provision was carried over in the Florida Constitution of 1865.

97. Illustrative of the views of some critics of constitutional commissions is the statement by a minority member of the Vermont Constitutional Commission characterizing the majority report as "mere fiddling with the past during a time which demands our creating a political framework necessary for our survival as a people. "This goal," he asserted, "has been subverted by the majority's attempt to shape its report in terms that it felt the General Assembly would accept." Report to the General Assembly of the Vermont Constitutional Commission at 58 (January 5, 1971) (copy on file with author).

98. Provisions for amendment and revision in these documents were as follows: FLA. CONST. art. XIV, §§ 1, 2 (1838); FLA. CONST. art. XIV §§ 1–3 (1861); FLA. CONST. art. XIV, §§ 1–3 (1865); FLA. CONST. art. XVII, §§ 1–2 (1868). The Constitution of 1868 provided for referendum in the amending process. Id.

The constitutions of 1861 and 1865 were adopted by legislative enactment. 2 W. SWINDLER, SOURCES AND DOCUMENTS OF UNITED STATES CONSTITUTIONS 287 (1973). The other documents were adopted by the electorate. Id.

99. FLA. CONST. art. XIV, § 1 (1838).
100. Id. § 2.
101. FLA. CONST. art. XIV, § 2 (1861).
102. FLA. CONST. art. XIV, § 2 (1865).
The Constitution of 1868 was the first to provide for popular participation in the amending process, but only on amendments proposed by the legislature. This document authorized two methods of constitutional change—by legislative proposal and by constitutional convention. A two-thirds vote of all members elected to each house was required to initiate a legislative proposal, followed by the same minimum vote in a second session with an intervening election of legislators. When so initiated, the proposed amendment was then submitted to the electorate. Ratification was by a majority voting on the proposal. Under the 1868 document, a constitutional convention could be called by the same general procedure as was used for the legislative proposal of amendments, except that only a simple majority of the members elected to each house was required. No popular referendum was specified for convention proposals.

Thus, under Florida's first four constitutions, the role of the legislature was dominant in initiating constitutional change. The electorate had no direct voice in approving proposed constitutional changes except under the procedure for legislative proposals in the 1868 document. Legislative control over the amendment and revision procedure was continued in the Florida Constitution of 1885.

B. The Constitution of 1885

Like its predecessors, the Florida Constitution of 1885 provided two basic methods of amendment and revision: proposal by the legislature, and revision by constitutional convention. By a three-fifths vote of the members of each house, the legislature was authorized to propose "the revision or amendment of any portion or portions" of the constitution. Legislative revision initiative, however, was limited by the provision that "no amendment shall consist of more than one revised article." In 1964 the voters approved an amendment adding

103. **Fla. Const. art. XVII, § 1 (1868).**
104. *Id.*
105. *Id.* § 2.
106. *Id.* § 1.
107. *Id.*
108. *Id.*
109. *Id.* § 2.
110. **Fla. Const. art. XVII (1885).**
111. *Id.* § 1.
112. *Id.* In Rivera-Cruz v. Gray, 104 So. 2d 501 (Fla. 1958), the Florida Supreme Court removed fourteen proposed interlocking amendments from the ballot prior to referendum. Each of the fourteen resolutions provided that it would not become effective unless all amendments were approved by a majority of the votes cast. The court reasoned that the legislature was attempting to use the amendment procedure to enact a revision of the entire constitution, rather than following the more complicated procedure to
a new section authorizing the legislature to propose "a revision of the entire constitution or a revision or amendment of any portion or portions thereof."113 The 1885 constitution required all proposed amendments to be submitted to the voters for ratification or rejection, either at the next general election, or at a special election when authorized by three-fourths of the elected members of each house.114 Ratification occurred upon approval by a majority of the electors voting on the proposed amendment or revision.115 Additional provisions specified requirements for publication of proposed changes.116

Initiation of the second method of constitutional change—revision by constitutional convention—was authorized when two-thirds of the membership of each house determined that a revision of the constitution was necessary and then submitted the question of revision to the voters after specified notice.117 If approved by a majority of the electors voting on the question, the legislature was required to provide by law for a convention within six months after enactment of such legislation, which would include provision for "the conduct and rules of such convention."118 Specified membership of the convention was the same in number as that of the house of representatives and apportioned among the counties in the same manner.119 Until amended in 1966, the 1885 document included no requirement for submission of a proposed revision by a constitutional convention to the people.120 The 1966 amendment required such a referendum and provided that when approved by a majority of the electors voting on it, a revised constitution would take effect immediately.121

C. The Legislature and Constitutional Revision

Significantly, amendments modifying the procedure of constitutional


115. Id.

116. Id.

117. Id. art. XVII, § 2 (1885, amended 1966).

118. Id.

119. Id.

120. Id.

121. Id.
revision under the 1885 constitution not only retained total legislative initiative in proposing constitutional change, but also extended this power to authorize submission of a complete constitutional revision to the voters. Thus, the 1885 Florida Constitution gave the electorate power only to act on proposals submitted by the lawmaking body. The voters were not authorized to participate by direct action in initiating changes in the basic law. In 1965, before reapportionment of the Florida Legislature, this writer stated the resulting basic issue as follows:

The key role of proposing amendments and more extensive alterations in the fundamental law of the state therefore rests solely with one of the three branches of government, which theoretically are subject to control by the voters in the exercise of their constituent power. Limitation of the electorate's role to disposing of proposed changes by the legislature leaves only one additional formal constituent control, namely, that of voting for legislators. When the legislature is inequitably apportioned so as to enable less than a fourth of the state's potential voters to elect a majority of the membership of both houses, the effect is to vest power in the hands of a legislative majority representing a minority of the electorate, not only to control the routine processes of government, but also the legal foundation upon which the state's entire political structure rests.

The "reapportionment revolution" not only brought more equitable representation to the Florida Legislature in the late 1960's, but extensive constitutional reform followed in the aftermath.

Traditionally, legislative assemblies have been distrustful of constitutional conventions because of the potential threat that a new or revised constitution poses to the existing power structure, especially to a malapportioned legislature. In many states, legislative reapportionment broke the logjam of traditional legislative opposition to constitu-

122. Id. § 4 (1885).
126. At this juncture, it is interesting to note that single-member versus multi-member districts are an issue before the current Florida Constitution Revision Commission. See, e.g., Tallahassee Democrat, July 17, 1977, at B-1, col. 1.
tional reform during the late 1960's and early 1970's. Some relied on the traditional unlimited constitutional convention as the instrument of reform. Others resorted to the limited convention, which is subject to greater legislative control and hence is more acceptable to lawmakers as a means of going part way without jeopardizing other vested interests withheld from the convention's mandate. Still others elected to retain legislative control over constitutional revision, but to rely heavily on constitutional commissions to study the constitution and to propose reforms, which could then be modified by the lawmakers before submission to the electorate. Florida was one of the states that, prior to 1968, elected to retain legislative control over all proposals submitted to the people.

D. The Constitution of 1968

The thirty-seven-member Constitution Revision Commission, created by the Florida Legislature in 1965, submitted its report, in the form of a proposed draft constitution, to the lawmaking body in January, 1967. Delayed by legislative reapportionment and other problems, the Florida Legislature did not complete action on the proposed draft until July 3, 1968. As reworked by the Legislature, the proposed constitution was presented to the voters at the November 1968 general election in three parts. The voters approved all three.

A major feature of the new constitution, which became effective January 7, 1969, is significant change in the amendment and revision procedure. As amended to date, Article XI, entitled “Amendments,” provides four methods of proposing constitutional changes. The new Florida document is the only state constitution that provides expressly for the use of all four methods.

127. See generally Thirty Years, supra note 2, at ch. 5; Trends, supra note 2, at 1-7.
131. The proposed new constitution left unaltered the judiciary article adopted in 1956. The first part of the three proposals embodied the ten articles of the “basic document”; the second comprised the revised suffrage and elections article; and the third, a new local government article.
132. The votes on the three proposals, respectively, were (1) 645,233 to 518,940; (2) 625,980 to 497,752; and (3) 625,347 to 508,962. State Constitutions and Constitutional Revision, XVIII The Book of the States, supra note 7, at 11 (1970-71).
133. Availability of these methods in state constitutions is discussed in earlier
As in the 1885 constitution and in the constitutions of other states, proposal by the legislature is the principal method of proposing amendments, and provisions for its use are stated in Section I. But, unlike such provisions in most other state constitutions, the Florida Legislature is authorized to propose "[a]mendment of a section or revision of one or more articles, or the whole, of this constitution . . . ." This authority was carried over from the 1885 document, which extended the Legislature's power to "propose by joint resolution a revision of the entire constitution or a revision or amendment of any portion or portions thereof" by amendment in 1964. All changes initiated by the legislature must be proposed by joint resolution agreed to by three-fifths of the membership of each house. In few states does the legislative assembly have such extensive power to initiate constitutional change. This authority was carried over from the 1885 document, which extended the Legislature's power to "propose by joint resolution a revision of the entire constitution or a revision or amendment of any portion or portions thereof" by amendment in 1964. All changes initiated by the legislature must be proposed by joint resolution agreed to by three-fifths of the membership of each house.

The second method of proposing constitutional changes intended for alterations of a limited nature is the constitutional initiative. Florida joined fifteen other states authorizing this technique when it was included in the 1968 document for the first time in any of the state's six constitutions. As amended in 1972, the provision for the constitutional initiative reserves to the people the power to propose revision or amendment of any portion or portions of the constitution, but such proposal "shall embrace but one subject and matter directly connected therewith." Proposals are initiated by petition signed by eight percent of the electorate in a specified number of districts and participating in a stated election. Floridians have added a constitu-

sections of this paper. They are (1) proposal by the legislature, now available in all states, section IIIA supra; (2) the constitutional initiative, authorized in seventeen constitutions, section IIIB supra; (3) the constitutional convention, which is expressly authorized in forty-one constitutions, but may be used in all states, section IIIC supra; and (4) the constitutional commission, authorized expressly only in the 1968 Florida document, see Fla. Const. art. XI, § 2 and section IIID supra.

135. Indeed, it has been argued that this power can be easily abused. See Note, Legislative Efforts to Amend the Florida Constitution: The Implications of Smathers v. Smith, 5 Fl. St. U.L. Rev. 747 (1977).
138. XVIII THE BOOK OF THE STATES, supra note 7, at 21 (Table 3) (1970-71).
139. Fla. Const. art. XI, § 3. Seventeen states now authorize this method. XXI THE BOOK OF THE STATES supra note 7, at 176 (Table 3) (1976-77).
140. Fla. Const. art. XI, § 3. The "one subject" rule has had a limiting effect. For example, in Adams v. Gunter, 238 So. 2d 824 (Fla. 1970), the Florida Supreme Court refused to permit an initiative for a unicameral legislature to appear on the ballot. The court held that the initiative would require the amendment of other sections of the constitution and thus violated the "one subject" rule. In 1972 article XI, § 3 was amended to allow initiative petitions of the type proposed in the unicameral initiative.
141. Invocation is by petition containing a copy of the proposal filed with the
tional amendment through initiative only one time—in 1976 they approved the “Sunshine Amendment” to the constitution.\textsuperscript{142}

Another innovation in the procedure for constitutional change is the reservation to the people of the “power to call a convention to consider a revision of the entire constitution.”\textsuperscript{143} In most states, the procedure for calling a constitutional convention is for the legislature, after approval by a specified majority of the membership of both houses, to submit the question of the convention call to the voters. Approval is by a majority voting on the issue.\textsuperscript{144} The legislature is then mandated to enact the necessary enabling legislation for election of delegates and the support and assembly of the convention. Although article XI, section 4 provides for a referendum on the convention question after it is initiated, the stated procedure in the 1968 document for calling a convention is far more difficult than legislative initiation of the convention call provided in most state constitutions because of the nature of the popular initiative process and the relatively large number of signatures required on the initiating petition.

A convention call may be initiated by petition signed by fifteen percent of the electorate in a specified number of districts who voted in a designated election.\textsuperscript{145} Submission of the convention question is “at the next general election held more than ninety days after the filing of such petition.”\textsuperscript{146} A majority voting on the question is required for approval, which is followed by election of one delegate to the convention from each Florida House of Representatives district.\textsuperscript{147} Additional provisions specify the time and place for convening the convention, procedure for organizing it, and the time limit for filing any convention proposal with the secretary of state.\textsuperscript{148}

secretary of state, signed by electors numbering at least eight percent of the votes cast for presidential electors at the last election for such electors in each of one half of the congressional districts, and of the state as a whole. FLA. CONST. art. XI, § 3.

142. The “Sunshine Amendment,” which added § 8 to article II, requires public officials and candidates to disclose their financial interests and campaign finances and provides for an independent commission to investigate complaints concerning breach of public trust. FLA. CONST. art. II, § 8 (as amended 1976). See generally note 56 supra.

An earlier initiative drive would have placed a proposal for a unicameral legislature before the electorate. It was short-circuited by judicial decision. See note 140 supra.


144. XXI THE BOOK OF THE STATES, supra note 7, at 177 (Table 4) (1976–77).

145. The required number of petition signatures is 15% of the number of votes cast for presidential electors at the last such election in each of one half of the congressional districts, and of the state as a whole. FLA. CONST. art. XI, § 4.

146. Id.

147. Id.

148. On the twenty-first day following election of convention delegates,
Most unique and innovative of all the changes in the procedure for constitutional change in the 1968 Florida document is section 2 of article XI, which provides the fourth method of proposal. Section 2 authorizes, for the first time in any state constitution, independent direct proposal of "a revision of this constitution or any part of it" by a constitutional commission without intervening legislative consideration and action.

The specified composition of the commission includes one member ex officio, the attorney general, and thirty-six appointive commissioners chosen as follows: fifteen members selected by the governor, who also designates the chairperson; nine members selected by the speaker of the house of representatives; nine members selected by the president of the senate; and three members chosen by the chief justice of the supreme court with the advice of the justices. Vacancies will be filled in the same manner as provided for original membership.

Section 2 mandates establishment of the commission "[w]ithin thirty days after the adjournment of the regular session of the legislature convened in the tenth year following that in which this constitution is adopted, and each twentieth year thereafter." The commission is further mandated to convene at the call of its chairman, to "adopt its rules of procedure, examine the constitution of the state, hold public hearings, and, not later than one hundred eighty days prior to the the convention shall sit at the capital, elect officers, adopt rules of procedure, judge the election of its membership, and fix a time and place for its future meetings. Not later than ninety days before the next succeeding general election, the convention shall cause to be filed with the secretary of state any revision of this constitution proposed by it.

Id.

149. The size of the present commission conforms to that of two former commissions. In 1955 the Florida Legislature provided for a thirty-seven member constitution advisory commission to submit revision recommendations to the governor and the legislature prior to the 1957 session. Act of June 6, 1955, 1955 Fla. Laws 1246 (S. Con. Res. 555).

In 1965, acting on Governor Haydon Burns' recommendation, the Legislature enacted Senate Bill 977, Act of June 24, 1965, ch. 65-561, 1965 Fla. Laws 1776, creating the Constitution Revision Commission that prepared the initial draft of the document, which as modified by the legislature was adopted in 1968. This body also was composed of thirty-seven members as follows: the attorney general, ex officio; one member of the supreme court designated by the chief justice, who also designated four additional persons who were not members of the supreme court; ten members appointed by the governor, one of whom he designated as chairman; eight members of the senate selected by the president of the senate; eight members of the house of representatives designated by the speaker; and five members appointed by the president of the Florida Bar and confirmed by its board of governors.

150. FLA. CONST. art. XI, § 2(b).

151. Id. § 2(a).
next general election, file with the secretary of state its proposal, if any, of a revision of this constitution or any part of it."

Although provision for the revision commission apparently was designed to provide a method of proposing constitutional revision independent of control by the legislature, the presiding officers of the two houses of the legislature designate eighteen members, or half the entire membership, exclusive of the attorney general, who is the only ex officio member. There is no requirement, however, for the appointment of legislators—by any of the appointing officers. But, at least potentially, the influence of the legislature may outweigh that of either of the other two branches of the government.

In addition to sections dealing with the four methods of amendment and revision, article XI, section 5, of the Florida Constitution deals with "amendment or revision elections." The next general election held more than ninety days after any proposal is filed with the secretary of state is the time specified for submission to the voters, unless an earlier special election is authorized by law. Appropriate publication of each proposed amendment is required twice before the vote. If "approved by vote of the electors," the proposal becomes effective "on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision." The size of the vote required for approval by the electorate is not specified.

V. The 1977 Constitution Revision Commission

A. Establishment of the Commission

On November 19, 1976, Governor Reubin O'D. Askew wrote to the Chief Justice of the Supreme Court of Florida for an advisory opinion on the proper procedure for discharging his duties under

152. Id. § 2(c).
153. Such special election must be held more than ninety days after filing, "pursuant to law enacted by affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision . . . ." Id. § 5.
154. Fla. Const. art. XI, § 5(b) provides:
Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, shall be published in one newspaper of general circulation in each county in which a newspaper is published.
155. Id. § 5(c).
156. However, the rules of construction set forth in article X, § 12(d) provide that "vote of the electors" in this context means vote of a majority of those voting on the proposal.
article XI, section 2, of the Florida Constitution. As previously noted, article XI, section 2 provides for establishment of a revision commission within thirty days after adjournment of the regular session of the legislature "convened in the tenth year following that in which this constitution is adopted"; it further requires the governor to initiate the procedure for convening the commission by appointing fifteen members and designating the chairman during the thirty-day period. Basic questions raised by Governor Askew were:

1. Should the commission members be appointed in 1977 or 1978?

2. When should the final report of the commission be filed with the secretary of state?

3. Should the commission's report be submitted to the voters at the 1978 or the 1980 general election?

Appointment and convening of the constitution revision commission in 1978, which is the tenth year following the adoption of the 1968 constitution, and submission of the commission's revision to the electorate at the 1978 general election, could not be accomplished in conformity with the constitution because of apparent irreconcilable conflicts between article XI, section 2, and various other sections of the constitution. Yet the Governor felt that to defer submission of the

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157. In re Advisory Opinion of the Governor Request of November 19, 1976 (Constitution Revision Commission), 343 So. 2d 17 (Fla. 1977). The Governor's request was submitted pursuant to his power to "request in writing the opinion of the justices of the supreme court as to the interpretation of any portion of this constitution upon any question affecting his executive powers and duties." Fla. Const. art. IV, § 1(c).

158. 343 So. 2d at 17.

159. Article III, § 3(b) and (d) require the legislature to convene its regular session in even-numbered years on the first Tuesday after the first Monday in April, or such other date as may be fixed by law, and to continue in session for not more than sixty consecutive days. This section would require that the 1978 legislature adjourn about June 3, 1978. Article VII, § 5, mandates that a general election be held on the first Tuesday after the first Monday in November of each even-numbered year. Article XI, § 5, requires that proposals for constitutional change be submitted to the electors at the next general election held more than ninety days after the report of the revision commission is filed with the secretary of state. Finally, Article XI, § 2(c), requires the Constitution Revision Commission to file its proposals with the secretary of state at least 180 days prior to the general election. Thus, this section requires that the proposal be submitted on or before May 11, 1978. These requirements are irreconcilable within the time frame of one year: the commission's report would be due in the secretary of state's office on May 11, 1978, but the commission itself could not be appointed until June 3, 1978.

The incompatibility of the time requirements was caused by a disruption in the original schedule for adoption of the constitution. When the constitution was drafted, it had been intended to be presented to the electorate for adoption in 1967. If this had occurred, article XI, § 2 would have required appointment of the Constitution Revision Commission following adjournment of the 1977 regular legislative session; the commission proposal would have been due on or before May 11, 1978. See In re
commission's proposals until the 1980 general election would be "contrary to the manifest constitutional intent that the people have an opportunity to review the constitution at the general election held exactly ten years after its adoption at the general election held in November of 1968." He suggested the alternative of appointing the commission in 1977 promptly after adjournment of the 1977 legislature and convening it within thirty days on call by the chairman.

Some of the state's ablest constitutional scholars, representing leaders of the executive and legislative branches and organizations known for their dedication to the public interest, presented briefs supporting the Governor's suggestion.

In the advisory opinion issued on February 15, 1977, a majority of five justices of the Supreme Court of Florida agreed that there was no way to reconcile the contradictory provisions and declared that the court must look outside the document to determine the intent behind periodic review of the constitution. The majority held that the better policy would be to resolve the issue by an early vote of the electorate rather than to defer its resolution until 1980. Their advice to the Governor, therefore, was (1) that the commission be appointed

Advisory Opinion of the Governor Request of November 19, 1976 (Constitution Revision Commission), 343 So. 2d at 21.

However, legislative deliberations on the 1965 Constitution Revision Commission's proposal were disrupted by the United States Supreme Court's 1967 decision in Swann v. Adams, 385 U.S. 440 (1967), which invalidated Florida's legislative apportionment and required special legislative elections. The time sequence for appointment of the Constitution Revision Commission was never revisited in light of the changed date of ratification. The carefully planned time sequence thereby became internally inconsistent. See In re Advisory Opinion of the Governor Request of November 19, 1976 (Constitution Revision Commission), 343 So. 2d at 21. In effect, the court's majority opinion approved the original 1977-78 revision schedule.

160. 343 So. 2d at 20.

161. Of potential relevance to this case is the following statement by Justice Holmes in dissent, quoted in a footnote in the majority opinion of this case:

> Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend.


162. 343 So. 2d at 18, 21, 23. All of the appointing authorities except the chief justice of the Florida Supreme Court were represented before the court and all supported Governor Askew's recommendation for a 1977 appointment date. Id. at 23. Amicus curiae included Judge Thomas H. Barkdull, Jr., and Richard T. Earl, Jr., members of the 1965 Constitution Revision Commission; the League of Women Voters of Florida; the Center for Governmental Responsibility of the University of Florida College of Law; and the Florida Bar. Id. at 18, 21.

163. Id. at 22.
in 1977, (2) that the chairman be directed to file the commission's proposal(s), if any, with the secretary of state not later than May 11, 1978 (which is 180 days prior to the 1978 general election), and (3) that the proposal(s) be submitted to the voters on November 7, 1978. The majority opinion concluded by sketching the constitutional timetable for future commission revisions.\textsuperscript{164}

Justices Karl and Adkins, dissenting, expressed the view that the members of the Constitution Revision Commission should be appointed in 1978 and its product presented to the voters at the 1980 general election.\textsuperscript{165} They declared that constitutional provisions should be so interpreted "that all provisions may stand and have effect,"\textsuperscript{166} which the longer timetable would permit. Furthermore, the minority found no support in the constitution for the contention that the people who voted to adopt the 1968 constitution intended to vote on revision proposals in 1978, ten years hence.\textsuperscript{167}

The advisory opinion provided legal support to the Governor and other appointing officers for initiating establishment of the Constitution Revision Commission mandated by article XI, section 2, of the 1968 constitution. On May 30, 1977, Governor Askew named as chairman of the Commission former State Representative Talbot D'Alemberte, a Miami lawyer,\textsuperscript{168} thus initiating the organization for the first extensive review of the 1968 constitution.

\textbf{B. Issues of Amendment and Revision Procedure}

Issues relating to the procedure of constitutional change are among the most important of those facing the Constitution Revision Commission. They merit careful attention because both the stability and flexibility of a state constitution are largely dependent on the provisions for its amendment and revision. Moreover, the article providing the methods of constitutional change is the focal point in the organic law for organizing and channeling the exercise of the constituent power, which is the power to make and alter constitutions.

\textsuperscript{164} Id. at 23–24.
\textsuperscript{165} Id. at 24 (Karl & Adkins, JJ., dissenting).
\textsuperscript{166} Id.
\textsuperscript{167} Id.
\textsuperscript{168} St. Petersburg Times, May 31, 1977, at B-6, col. 1. Technically, the Governor could only announce his intention to make the appointment following the 1977 legislative session. The Florida Supreme Court had ruled that the Governor should appoint the chairman and his quota of 15 members "during the 30 day period following adjournment of the 1977 Legislature." \textit{In re} Advisory Opinion of the Governor Request of November 19, 1976 (Constitution Revision Commission), 343 So. 2d at 23.

As a state representative, Talbot D'Alemberte had participated in the 1968 constitution revision. He wrote the commentary to the 1968 constitution which appears in the Florida Statutes Annotated. He authored the introduction to this symposium.
Listed below are issues relating to the procedure of constitutional change as provided in article XI of the 1968 Florida Constitution suggested for consideration by the Commission. Stated as a series of questions, they range from basic general concerns to more specific provisions that are not necessarily mutually exclusive.

(1) Since the Florida Constitution became effective in 1968, what, if any, basic problems have arisen in the operation of the procedure for amendment and revision? On the whole, have the present revision provisions served the basic purpose of enabling Floridians to maintain a solid constitutional foundation for responsive state government?

(2) Is the power to propose constitutional changes effectively allocated to preserve ultimate control by the people? Is the real power to initiate change vested in any organ(s) of government that is/are affected by constitutional mandates and restraints and may have a vested interest in maintaining the status quo? If so, has such allocation obstructed adaptation of the constitution to fulfill public needs?

(3) Should the legislature, an organ of government subject to constitutional limitations and established primarily for the purpose of statutory lawmaking, be authorized to propose general revision of the constitution?

(4) Is there ample justification for retaining the extraordinary majority vote now required (three-fifths) for legislative proposal of amendments, or should a simple majority be substituted, thus restoring decision making by majority?

(5) To assure consistency with, and effective integration into, the constitutional system, should consideration be given to adding a requirement that legislative proposals of constitutional amendments be submitted to the attorney general for review and suggestions of an editorial or documentary nature before final legislative action is taken?

(6) Has experience with the constitutional initiative indicated its usefulness as a technique for proposing constitutional change by the people when other available methods have proved to be ineffective?

(7) Is the procedure for calling a constitutional convention, which may be initiated only by petition signed by fifteen percent of the electors in a specified number of districts and is followed by submission of the convention question to the voters, unduly restrictive? Does the inherent difficulty involved in collecting signatures from a specified high percentage of the voters make it exceptionally difficult to call a constitutional convention? Should the legislature be authorized to initiate the procedure, as is expressly authorized in the constitutions of most of the states? Are there circumstances under which it would be desirable for the legislature to call a convention without prior submission of the question to the voters?
(8) Should the constitution include self-executing provisions for authorizing and assembling constitutional conventions, thereby affording safeguards against legislative failure to enact enabling legislation?

(9) To assure periodic consideration by the electorate of the need for general revision of the constitution, should provision for submission of the question of calling a constitutional convention to the voters at stated intervals be included in the procedure for constitutional change? If the legislature should fail to follow such a constitutional mandate, should provision be made for submission of the convention question by an administrative officer who is subject to mandamus?

(10) Would inclusion of a specific requirement for a preparatory commission to assemble information on constitutional issues prior to any extensive constitutional revision facilitate and strengthen the procedure?

(11) Should the size of the vote required to approve a proposed change in the constitution be specified in the "Amendment and Revision" article (article XI), as in most state constitutions rather than in the "Miscellaneous" article (article X)?

(12) Are present provisions for altering the constitution to meet possible "emergency" conditions adequate? Does experience with existing procedure indicate any abuse?

(13) Does the experience with a thirty-seven-member constitution revision commission as a means of proposing constitutional revision during 1965–66 and 1977–78 justify its continued status and use as a method of constitutional modernization? Are any modifications indicated, in size, representativeness, or other features?

In undertaking its study of Florida’s sixth organic law and the preparation of proposals for revision, the Constitution Revision Commission will be performing a function unique in American state constitutional development. For the first time, a predominantly appointive state constitutional commission with an express constitutional mandate will study an operative state constitution, hold hearings, and prepare a proposed revision for submission directly to the electorate without legislative review. The schedule calls for the Commission’s proposals to be filed with the Secretary of State not later than May 11, 1978, and for submission to the state’s electors at the general election.

169. An example of an emergency condition was the calling of the Michigan Constitutional Convention of 1961–62, which resulted largely from the state’s financial difficulties in the late 1950’s and the inability of the governor and the legislature to agree on a tax program. See A. STURM, supra note 56, at 20–21. Another example of an emergency condition was the voters’ rebellion in Louisiana in 1970 when the small proportion of the electorate who voted on constitutional amendments turned down all fifty-three proposals, including twenty-two general and thirty-one local amendments. See TRENDS, supra note 2, at 15. See also PA. CONST. art. XI, § 1(a).
on November 7, 1978.\textsuperscript{170} Students of American constitutions throughout the nation, as well as Floridians, will undoubtedly follow with keen interest the progress of this Florida innovation in constitutional revision.

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170. The Commission's Rules Committee recommended that no revision be submitted that does not have backing of at least two-thirds of the Commission's members. Tallahassee Democrat, Sept. 26, 1977, at 1, col. 3. However, the Commission has decided that a majority vote is adequate to propose a revision. Tallahassee Democrat, Sept. 28, 1977, at 21, col. 3.
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