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## THE PROPOSED ARKANSAS CONSTITUTION OF 1970

Robert W. Meriwether\*

*As pointed out in Professor Swindler's article, most state constitutions are bulky, severely outmoded documents which are badly in need of revision. However, in recent years a number of states have moved toward constitutional revision. One of these was the state of Arkansas, which in 1967 launched a commission to study, and propose revisions to, the Arkansas Constitution of 1874. This step was taken only after a number of earlier attempts had failed. It appeared that Arkansas would be able to bring itself out from under the problems pointed out by Professor Swindler. In the article which follows, Professor Meriwether reviews the proposed Arkansas Constitution, and sheds some light on why it failed to receive the endorsement of the Arkansas voters despite its apparent widespread support.*

At the November 1970 general election the voters of Arkansas decisively rejected a revised state constitution. The proposed Arkansas Constitution of 1970 had been drafted by the Seventh Arkansas Constitutional Convention and had been endorsed by ninety-eight of its one hundred delegates. Both major political parties, both major party candidates for governor, the two leading state newspapers, and such influential groups as the Arkansas Bar Association, the State Chamber of Commerce, the Arkansas Farm Bureau Federation, the League of Women Voters, the Arkansas Jaycees, the National Association for the Advancement of Colored People, and some thirty other statewide organizations had all endorsed the proposed charter. The group formed to campaign for the proposed constitution was headed by a former Democratic governor and the incumbent Republican lieutenant governor. "Arkansans FOR the Constitution of 1970" spent \$130,000 in cash on the campaign and received "in kind" contributions of at least \$20,000 more; local committees and supporting organizations spent hundreds more and contributed many man-hours of labor.

In contrast, the opponents of the proposed charter seemed disorganized and few in number. The American Independent Party

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spent some of its time in denouncing the revised constitution, but its gubernatorial candidate polled less than seven percent of the votes in the general election. A statewide organization consisting of a few lawyers and judges, supported by some Little Rock real estate interests, spent only a fraction of the sum expended by the proponents: less than \$20,000. And yet, the proposed constitution was approved by the voters in only eleven of the state's seventy-five counties, and by a respectable margin in only three of these. What went wrong? This article will attempt to answer that question.

## I

The Constitution of 1874 is Arkansas' fifth constitution. The first charter was drafted in 1835 and went into effect the following year when the state was admitted into the Union. Subsequent constitutions were adopted when the state joined the Confederacy, under "Presidential Reconstruction," and under "Radical Reconstruction."

The Constitution of 1874 was written in reaction to the real and imagined corruptions in state and local government during Reconstruction. As such, it is rather typical of state constitutions adopted during this period, especially in the South.<sup>1</sup> Highly restrictive and detailed, it was perhaps very well suited to the needs and expectations of Arkansans in the 1870's; however, many of these restrictions seem unnecessary and even detrimental to those who want vital and responsive state and local government in the 1970's.

The original 1874 Constitution has some 21,500 words; its fifty-three amendments have more than doubled its length to some 46,000 words. It is easy to amend, especially after the adoption of the constitutional initiative in 1910. Most amendments, however, have perpetuated its restrictive detail: raising a property tax limit a few mills, increasing a salary a few hundred dollars, creating a new constitutional agency, altering slightly a feature of the state's electoral laws, or changing the duties of a county official. At some periods in the state's history amendments have been frequent (six were adopted in 1938), while at other times amendments have fared poorly. Since 1958, only one of the fifteen amendments proposed by the Arkansas General Assembly has been approved by the voters; three other successful amendments were proposed through the

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<sup>1</sup> For the best analysis of the 1874 Constitution, see W. Nunn, *Revision of the Arkansas Constitution*, 1966 (unpublished Master's dissertation in Department of Political Science, University of Kansas).

initiative. Typically, these last four amendments were necessary to (1) permit the use of voting machines, (2) establish a voter registration system, (3) permit the establishment of community colleges supported in part by local property taxes, and (4) permit the establishment of kindergartens and adult education programs in the public schools.

Several abortive efforts have been made to revise the 1874 Constitution. Prior to 1969, the greatest effort was made in 1917-1918 when the Sixth Arkansas Constitutional Convention drafted a document which was rejected overwhelmingly by the voters in a special election. It is of some interest to note that of the twenty-four major changes proposed by this convention, twenty were instituted by statute or constitutional amendment within the next decade.<sup>2</sup>

## II

As in many other states, interest in constitutional revision was reactivated in Arkansas in the early 1960's. In the general assembly a small group of advocates was led by Representative Virgil Butler and included the present U.S. Congressman from the Fourth District, David Pryor. Interest was spurred by the Dean of the School of Law at the University of Arkansas, Ralph C. Barnhart,<sup>3</sup> and by the foremost academic authority on Arkansas government, Henry M. Alexander,<sup>4</sup> a professor of government at the University.

Efforts toward constitutional revision were stifled by the generally negative attitude of Governor Orval Faubus, but in 1966 the people of Arkansas elected their first Republican governor since Reconstruction, Winthrop Rockefeller. Rockefeller had called for constitutional reform during his election campaign. Among the measures he presented in 1967 to the overwhelmingly Democratic legislature was a bill to create a study commission. With the support of Butler and other Democratic legislators, a statute was passed creating the Arkansas Constitutional Revision Study Commission.<sup>5</sup>

The thirty-member study commission was given a little less than ten months to make its report. Ten members were appointed by the governor, and five each by the speaker of the house, the president *pro tem* of the senate, the Chief Justice of the Arkansas Supreme

<sup>2</sup> Collins, *Reminiscences of the Constitutional Convention of 1917-18*, 1 ARK. HISTORICAL Q. 117-23 (1942).

<sup>3</sup> Barnhart, *A New Constitution for Arkansas?*, 17 ARK. L. REV. 1-15 (1962).

<sup>4</sup> The late Dr. Alexander was the author of the only recent book on Arkansas government: *GOVERNMENT IN ARKANSAS* (1962).

<sup>5</sup> Act 121, Regular Session of the Arkansas General Assembly (1967).

Court, and the president of the Arkansas Bar Association. There was mild surprise when Rockefeller appointed only two Republicans to the commission; as a result, the commission had twenty-seven Democrats and one "independent." Among the more prominent members were Robert A. Leflar, dean emeritus and distinguished professor at the University of Arkansas School of Law, Edward F. McFaddin, recently retired associate justice of the supreme court, and Representative Butler.

The commission elected Leflar as its chairman and, with a \$100,000 appropriation, went at its work with dispatch and diligence.<sup>6</sup> A Little Rock attorney, George Campbell, was hired as executive secretary and headed a staff of three researchers and one secretary. Meeting frequently in the state senate chamber during the summer and fall, the commission reached its January 1st deadline with a thorough 150 page report which not only contained detailed recommendations for the calling of a constitutional convention, but also a complete revised constitution for the consideration of a convention.<sup>7</sup>

Governor Rockefeller called a special session of the general assembly in February 1968. Among the measures submitted by the governor were two prepared by the study commission: a bill submitting to the voters at the 1968 general election the question of whether to call a constitutional convention,<sup>8</sup> and another bill providing for the holding of such a convention if approved by the people.<sup>9</sup> The general assembly passed both bills with relatively few alterations, but one change had considerable significance: any proposals submitted by the convention to the people would be voted upon at the general election in 1970 rather than at a special election in 1969.

A small organization, "Arkansans for a Revised Constitution," was formed to secure a favorable vote on the call for a constitutional convention at the November 1968 general election. Rockefeller, run-

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<sup>6</sup> There are two studies on the work of the Commission: J. Jordan, *The Arkansas Constitutional Revision Study Commission: A Case Study*, 1969 (unpublished senior honor paper in Department of History and Political Science, Hendrix College) and Nunn, *The Commission Route to Constitutional Reform: The Arkansas Experience*, 22 ARK. L. REV. 317-39 (1968).

<sup>7</sup> ARKANSAS CONSTITUTIONAL REVISION STUDY COMMISSION, *REVISING THE ARKANSAS CONSTITUTION* (1968).

<sup>8</sup> Act 3, First Extraordinary Session of the Arkansas General Assembly (1968).

<sup>9</sup> Act 42, First Extraordinary Session of the Arkansas General Assembly (1968).

ning for reelection, supported the call and helped finance the campaign from his personal resources. By adroit maneuvering, the convention supporters induced the Democratic gubernatorial nominee, Marion Crank, to make a last minute endorsement. The convention call passed by the narrow margin of 227,429 to 214,432. Nearly 240,000 Arkansans who voted in the presidential and gubernatorial contests failed to mark their ballots for or against the convention.

At the same general election the voters elected one hundred delegates to the convention from the same districts as were elected members of the Arkansas House of Representatives. Since few people really thought the convention call would pass, and because of the great interest in the presidential and gubernatorial contests, many delegate races were either uncontested or of low voter interest.

The Seventh Arkansas Constitutional Convention held a two day organizational meeting in the house of representatives on January 6th and 7th, 1969. Eleven members of the old study commission had been elected as delegates, including chairman Leflar, vice-chairman C. Randolph Warner, and executive secretary Campbell. These men had also been the three members of the Constitutional Convention Advisory Commission, which had been created by the legislature to prepare for a convention. It was a foregone conclusion that Leflar would be elected president of the convention. These circumstances, plus the presence of the study commission's recommended revised constitution, gave rise to fears that the members of the study commission would dominate the convention. To forestall this possibility, a group of non-commission delegates formed a coalition.

Leflar was elected president, as expected, but then the coalition pushed through changes in the proposed rules which limited the authority of the president by transferring some power to the Administrative Committee. Election contests for the convention's four vice-presidencies and membership on the Administrative Committee developed between study commission members and nonmembers. Warner was elected one of the vice-presidents and Campbell was elected to the Administrative Committee, but the coalition was generally successful in gaining control of the important posts. Leflar showed his administrative and political skill by cooperating with the coalition so that, after a short time, the distinctions and suspicions between study commission members and nonmembers largely ceased to exist.

The convention created eleven substantive committees to study various parts of the 1874 Constitution and make recommendations.

All delegates were polled as to their choice of substantive committee assignments and, after the appointments were made by the Administrative Committee, each delegate was given the opportunity to request a change. Only one did so, and the convention approved the change before adopting the Administrative Committee's appointments. The committee chairmen and vice-chairmen were also designated by the Administrative Committee, and the convention gave unanimous approval. Four former study commission members were made substantive committee chairman, but only one (Butler on the Legislative Branch Committee) was thought to chair a really significant committee.

The procedural committees, and their duties, were as follows:

*Administrative.* Chaired by the president and consisting of the four vice-presidents (one from each Congressional district) and seven members elected by Congressional districts, this was the most influential committee. The committee chose Little Rock attorney Philip E. Dixon as secretary-director (this appointment was confirmed by the convention) and supervised the selection of the staff; it supervised the budget; it served as the committee on committees; it supervised the general day-to-day operation of the convention and made the long range plans. It was particularly proud of the fact that more than \$120,000 of the \$605,200 appropriated for the convention was returned to the state treasury.<sup>10</sup> All of its decisions were subject to the review of the convention, but the delegates never overturned an Administrative Committee decision. Its major difficulty concerned the work of the convention reporter and the preparation of the transcript.

*Rules and Resolutions.* The rules, originally proposed by the Constitutional Convention Advisory Commission, were revised by this committee and approved by the convention.<sup>11</sup> Further minor revisions occurred from time to time. On several occasions the presiding officer called on the Rules Committee chairman to help straighten out procedural snarls, but there were few, if any, parliamentary "tricks" or delaying tactics. Individuals and minorities were heard; majorities worked their will. On only one occasion was

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<sup>10</sup> Pages for the convention were supplied through the offices of the Arkansas Association of Student Councils on a volunteer basis. Not only did this save the convention money, but the high school students made excellent pages.

<sup>11</sup> The rules of the Arkansas Convention and of 18 other state constitutional conventions held since 1943 may be found in a collection reproduced by the National Municipal League: CONSTITUTIONAL CONVENTION RULES (1970).

debate terminated abruptly; the issue was the abolition of capital punishment and the question was never raised again.

*Public Information.* This committee never really "got off the ground," to a large extent because many delegates, including the president, felt that no public funds should be expended for publicity purposes. The rules provided that all convention sessions and committee hearings and meetings be open to the public. Press coverage by the state's two major newspapers, the *Arkansas Gazette* and the *Arkansas Democrat*, was thorough, accurate, and favorable. Radio and television coverage was as superficial as such local news coverage usually is; the few "in depth" shows were aired either late at night or on Sunday morning. Local newspaper coverage, generally supplied by the wire services, varied considerably according to the inclination of local editors. The Arkansas general public was not well informed about the activities of the convention, but this was primarily because the public was not interested and little, if anything, was done to make them interested.

In an effort to stir up public interest and participation, the convention held a number of regional hearings throughout the state. These were usually sparsely attended and resulted in little local news coverage.

*Agenda.* This committee, with the president as chairman, was created when it appeared that the placement of measures on the calendar would be difficult. In actual practice this did not develop and the Agenda Committee really did not function frequently as a committee.

*Style and Drafting.* This was a very important, hard working committee. Before measures were brought up on second or third reading they were subjected to thorough study by this committee. Revisions made by the committee were reported to the convention, and occasional votes were taken when it was alleged that substantive changes had been made. Fortunately, the convention learned it could trust this committee, which is almost a must.

*Committee to Prepare the Report to the People* (also called the "Comments" Committee). The last committee appointed, this committee did much of its work after the convention adjourned. It prepared the report which contained the text of the proposed constitution and an explanation, supposedly without bias, of each provision.<sup>12</sup> The explanation generally consisted of comparisons with

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<sup>12</sup> SEVENTH ARKANSAS CONSTITUTIONAL CONVENTION, PROPOSED ARKANSAS CONSTITUTION OF 1970 WITH COMMENTS: A REPORT TO THE PEOPLE OF THE STATE OF ARKANSAS (1970).



the 1874 Constitution. Four hundred thousand tabloid and 150,000 booklet copies of the report were printed for distribution (there were around 800,000 registered voters). Despite efforts by the delegates,<sup>13</sup> the convention staff, and the supporters of the proposed charter, over half of the reports still sit in a storeroom in the basement of the state capitol. Most of the bulk disposition went to schools and through the Farm Bureau. Generally speaking, the people of Arkansas showed little interest.

In addition to the two day organizational meeting in January 1969, the convention met in regular session for three months during the summer and for thirty days in January and February of 1970. During the four month break in the autumn the convention, with the cooperation of the *Arkansas Democrat*, distributed thousands of tabloid editions of the proposed constitution as it appeared after second reading. Hopes of the delegates that the people would respond to the proposals and offer criticism were soon dashed; the voters of Arkansas were just not interested. Generally, the changes made on third reading were few in number and were designed to meet the more vehement objections of certain pressure groups.

With only one black and seven (later eight) women delegates, the convention could not be characterized as a cross section of Arkansas voters. Although elected on a nonpartisan basis the membership was overwhelmingly Democratic, with five or six Republicans, a scattering of independents, and one member of the American Independent Party. In political philosophy, however, the group did range from conservative to liberal; it might best be characterized as a "moderate-to-conservative" assembly which was representative of the political philosophies of at least the Arkansas white middle class voters. Nearly half the delegates were licensed attorneys.

The two organizations which worked the hardest, and were the most successful, in getting their members elected as delegates were the Arkansas Chamber of Commerce and the Arkansas Farm Bureau Federation. Only one delegate was a member of a labor union; he was appointed during the convention as the state labor commissioner. Business and banking interests were well represented, and the convention proved particularly responsive to pressure from professional groups such as the medical doctors. There were also a handful of professional educators, including the president and two committee chairmen.

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<sup>13</sup> Two delegates had 10,000 tabloids distributed by the local newspapers in their three-county district.

The convention was markedly free from personal invective. Groups which formed on one issue would divide on the next, though, naturally, delegates found themselves frequently allied with the same fellow delegates. Despite the presence of a former governor (Ben T. Laney, 1945-1949), a future federal district judge (G. Thomas Eisele), the next attorney general (Ray Thornton), and a few experienced politicians, the convention was not strong in practical, grass roots politics. This was amply demonstrated during the ratification campaign when most of the delegates were unable to reach the "average" Arkansas voter.

### III

The proposed Arkansas Constitution of 1970 was composed of twelve articles and a three part schedule, with 13,573 words in the main body and 3,190 words in the schedule. Following is a resume of the major points and changes in the document, with special emphasis on those which figured prominently in the ratification campaign.

*Preamble.* There was no change from the 1874 Constitution preamble, which includes the statement that the people of Arkansas are "grateful to Almighty God." Later, when the foes of the proposed document were complaining of the omission of "Almighty God" from the freedom of religion provision, the supporters ran television and radio spots which began with a quotation from the preamble with emphasis on the reference to the Deity.

*Principles of Government.* A minor innovation of the proposed charter was the inclusion of a separate article containing the usual state constitutional provisions about the source of political power, inherent and inalienable rights, the separation of powers, etc. These were thus distinguished from the individual rights contained in the Declaration of Rights.

One addition, which proved unfortunate, was the "powers of the state" provision recommended in the Model State Constitution.<sup>14</sup> Opponents of the proposed constitution seized upon this and claimed that it gave unprecedented and dangerous power to the state. Supporters of the document were never able to explain this provision satisfactorily to the voters.

*Declaration of Rights.* Among the relatively few substantive changes made from the 1874 Constitution were a protection against

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<sup>14</sup> NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION 36-38 (6th ed. 1963).

unreasonable invasions of privacy, the guarantee of preliminary hearings in felony cases, a clearer expression of protections of the accused in the areas of right to counsel and double jeopardy, and a broader ability of individuals to file taxpayers' suits.

In an effort to broaden the protections of the freedom of religion section, the convention dropped the reference to the Deity from the phrase "All men have a natural right to worship *Almighty God* according to the dictates of their own consciences." The proposed constitution also omitted the provision in the 1874 Constitution which prohibited atheists from holding public office or witnessing in court, which, insofar as is known, has never been enforced. Opponents of the proposed document made much of these omissions. In a state like Arkansas, where people are quite conscious of the symbols of piety if not the practice, there is no doubt that this hurt on election day.

*Legislative Branch.* This article made several significant changes.

1. It permitted, but did not require, annual sessions of the general assembly.

2. It required single member districts and provided for a three to one ratio between House and Senate seats (102-34) in order to facilitate apportionment.

3. It allowed the general assembly to call itself into special session.

4. It required a three-fifths vote, rather than a simple majority, to override the governor's veto.

5. It allowed the general assembly to set its own salaries.<sup>15</sup>

6. It required a three-fifths vote to levy or raise all taxes. Under an amendment adopted in 1934, the general assembly could raise some taxes, for example, the income tax, only by a three-fourths vote, while it takes only a simple majority to raise others, such as the sales tax.

7. It required open meetings of the general assembly and its committees.

With the exception of the salary provision, this article did not cause much opposition. The present general assembly has included

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<sup>15</sup> An amendment adopted in 1958 sets legislators' salaries at \$1,200 per year, plus \$20 per day for regular sessions, \$6 per day for special sessions, and 5¢ per mile round trip once each session. The general assembly gets around the parsimonious sum by voting "expense allowances" and "public relations" sums.

an amendment very similar to this article as one of the three it will submit to the people at the 1972 general election.

*Executive Branch.* Among other things, this article combined the elective offices of lieutenant governor and secretary of state (the new officer would not preside over the state senate) and those of auditor and treasurer; the state land commissioner would no longer be elected. The two officers, along with the governor and attorney general, would be elected for four (instead of two) year terms and their salaries would be set by the general assembly rather than in the constitution.<sup>16</sup> The governor would be limited to two consecutive terms.

A highly controversial provision in this article mandated the reorganization of the executive branch<sup>17</sup> into no more than twenty principal departments, with the educational, quasi-judicial, and professional licensing and disciplining boards exempted unless required by the general assembly. Several professional groups objected to this section, which was also opposed by leaders in the educational establishment. It is interesting to note that, at the strong insistence of newly elected Governor Dale Bumpers, the general assembly in February 1971 reorganized the executive branch into thirteen principal departments, although excluding the professional licensing and disciplining boards.

Against its better judgment, the convention continued the provisions of two constitutional amendments, adopted in 1944 and 1952, which give a high degree of independence to the state game and fish commission and the state highway commission. To have tampered with these two "sacred cows" would, no doubt, have insured the defeat of the proposed constitution.<sup>18</sup> Despite these concessions, many of the most sincere opponents of the revised charter felt that it gave the governor too much power and encouraged the building of a powerful state political machine.

*Judicial Branch.* A good case could be made that the provisions of this article were the most damaging to the fate of the proposed constitution. Briefly, the changes were as follows:

<sup>16</sup> An amendment adopted in 1946 set the governor's salary at \$10,000 per year, the lowest in the nation. The lieutenant governor receives \$2,500, the attorney general \$6,000, and others \$5,000 per year.

<sup>17</sup> There are now some 180 boards, commissions, bureaus, and departments in the state executive branch.

<sup>18</sup> Recently, Governor Bumpers expressed his regret that these two agencies could not be included in his reorganization plan. Noting their independence from the governor, the general assembly, and the people, Bumpers commented that, evidently, the two commissions "look only to God."

1. The Arkansas Supreme Court was given increased supervisory control over the lower courts, including some powers which now are exercised by the general assembly.

2. Circuit, chancery, probate, and county courts were combined into district courts.<sup>19</sup> The boundaries and subject matter jurisdiction of these courts were to be determined by the supreme court. The present circuit judges and chancellors would become district judges.

3. County trial courts were created in each county to have the functions of municipal, juvenile, mayors', police, and justice of the peace courts. Arkansas juvenile courts are presently presided over by the county judge, an official who need not be a lawyer and who is usually elected on his ability to build and maintain county roads and bridges. The present municipal judges would all have become county trial court judges.

4. A Judicial Ethics Commission was created with the power to investigate charges against judges and to recommend their removal by the supreme court.

5. Payment to all court officials from fees and fines was prohibited.

6. A court of appeals (an intermediate appellate court) could be created by the joint action of the supreme court and the general assembly.

7. District attorneys (now styled "prosecuting attorneys") would be prohibited from the private practice of law.<sup>20</sup> The supreme court, by classification, could prohibit the private practice of law by county trial court judges.

8. Magistrates, limited to preliminary criminal processes and proceedings, could be appointed by the district judges. Commissioners could be appointed by the district judges in those counties which did not have a county trial court judge.

The most spirited and learned debate in the convention took place on whether some variation of the Missouri Plan should be adopted in place of the popular election of judges. In large part because it knew such a change would be almost impossible to sell

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<sup>19</sup> Arkansas is one of 4 states with separate courts of law and equity. See Smith & Nixon, *La Dolce Vita—Law and Equity Merged at Last!*, 24 ARK. L. REV. 162-81 (1970). The entire Summer 1970 edition of the *Arkansas Law Review* was devoted to the proposed constitution.

<sup>20</sup> A provision in the executive branch article also prohibited the attorney general from the private practice of law.

to the voters, the convention retained the elective system, although on a nonpartisan basis and with some increase in the length of terms.

Many of the changes in the judicial article had been proposed by an Arkansas Judiciary Commission study in 1965,<sup>21</sup> and the Constitution of 1970 was approved without a dissenting vote at the annual convention of the Arkansas Bar Association in June 1970. But the lawyer opponents of the proposed charter were simply biding their time and, when the autumn campaign began, many attorneys worked effectively on a local level to defeat the document. The most open opposition came from some of the chancery judges. Significantly, no judicial officeholder at any level came out publicly in support of the revised constitution. Even the endorsement of the incumbent President of the American Bar Association, Edward L. Wright of Little Rock, failed to rally significant support for the proposed document from the Arkansas legal fraternity.

*Local Government.* This article contained provisions concerning both counties and municipalities, which will be treated separately.

1. *County government.* It would take a lengthy dissertation to discuss the many provisions of the 1874 Constitution and its amendments which pertain to the operation of Arkansas counties and to indicate how these were altered by the proposed constitution. Although the revised charter increased the terms of elective county officials from two to four years, eliminated the \$5,000 annual salary limitation, created a true county legislature with real authority,<sup>22</sup> increased the taxing powers of counties, and included just about all of the recommendations of a publication of the National Association of Counties,<sup>23</sup> it was effectively opposed by the great majority of county officials in Arkansas. Many objected to the provision that county officials would no longer be paid on the basis of fees, a practice which is almost universally used to get around the salary limitations. The county judges were reluctant to lose the judicial immunity they enjoy by issuing warrants against the county treasury as an order of the county court. Most county officials viewed the proposed county legislative body with suspicion. And, county

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<sup>21</sup> ARKANSAS JUDICIARY COMMISSION, 2 REPORT TO THE 1965 GENERAL ASSEMBLY 163-68 (1965).

<sup>22</sup> At present, the Arkansas justices of the peace form the quorum court, which is limited to levying county taxes already approved by the voters and making appropriations over which it has very little discretion. Any Arkansas county judge who cannot control his quorum court is in a bad way. The Pulaski County quorum court has over 350 members.

<sup>23</sup> H. DUNCOMBE, COUNTY GOVERNMENT IN AMERICA (1966).

officers simply feared any changes which might upset their way of doing business. As was the case in Maryland in 1967-1969,<sup>24</sup> first the convention and then the supporters of the revised constitution failed miserably in communicating and working with the Arkansas county officials.

2. Municipal government. The convention and its product were definitely oriented toward the needs and the future of Arkansas municipalities. "Dillon's rule" was specifically reversed, municipal tax limitations were removed, and other sources of taxation were opened. Some municipal powers could be withheld by the general assembly only by a three-fifths vote.

The removal of the municipal property tax limitation<sup>25</sup> was one of the major issues which helped defeat the proposed charter. Prominent Little Rock real estate interests led and helped finance the opposition. The Arkansas Municipal League was rather ineffective in rallying the mayors and city councils in support of the proposed constitution.

Again it is interesting to note that, again with the support of Governor Bumpers, the 1971 general assembly has passed statutes repealing "Dillon's rule" and granting municipalities the authority to levy income and payroll taxes.

The possibility that cities might levy sales taxes was one factor in the lack of enthusiasm of the state AFL-CIO for the proposed charter. Ironically, organized labor had actively supported the calling of the convention and had long advocated constitutional reform. The possibility of a municipal sales tax, plus the inclusion of the "right to work" provision (to be discussed later), kept the AFL-CIO officially neutral during the ratification campaign, though there is some evidence that the leadership and rank and file were opposed.<sup>26</sup>

The possibility that cities might levy a sales tax and that both municipalities and counties might raise their property taxes also bothered top officials in the state department of education and the Arkansas Education Association. They reasoned that any increased tax income for other local governmental units would lessen that

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<sup>24</sup> J. WHEELER, JR. & M. KINSEY, *MAGNIFICENT FAILURE: THE MARYLAND CONSTITUTIONAL CONVENTION OF 1967-68* 211-12 (1970).

<sup>25</sup> The 1874 Constitution limits Arkansas municipalities to a 5 mill property tax for general operations. Property is supposed to be assessed at 20% of its market value.

<sup>26</sup> The Arkansas council of the American Federation of State, County, and Municipal Employees would probably have supported the revised charter, but was prohibited from taking any political stand separate from the state AFL-CIO Committee on Political Education.

which would be available for the public schools. Although the AEA Board of Directors, in response to the opinions of many "civic minded" teachers, eventually endorsed the proposed constitution, support for the document was noticeably lacking among educational leaders on both the state and local levels.

*Finance and Taxation.* Several of the provisions concerning finance and taxation have been discussed, above, under "Legislative Branch" and "Local Government." The convention attempted to bring together and clarify, with slight modifications and "reforms," the many detailed provisions of the 1874 Constitution and its amendments concerning property assessment, bonds, bond and tax elections, industrial development bonds, etc. Even the delegates were perplexed by many of the provisions, and scarcely one percent of the voters could reasonably be expected to comprehend all of the technical language and its practical implications.

However, the opponents of the proposed constitution were successful in attaching a "high tax" label to the document during the ratification campaign. Detailed, often strained, and sometimes not altogether truthful explanations by the supporters fell on confused or deaf ears. The average voter had to take the claims of proponents and opponents on faith, not reason. The general attitude might be summed up: "We don't want higher taxes; the Constitution of 1970 permits higher taxes." The result: "Against."

*Education.* This article of the proposed charter contained little of substance which differed from the 1874 Constitution. However, two "minor" alterations—one which lessened the independence of the state institutions of higher learning, and the other which altered a provision in the recently-adopted "kindergarten" amendment—served to increase the distrust of some educational leaders for the entire document.

*Suffrage and Elections.* The convention witnessed a colorful fight to lower the voting age and ended up with a compromise: keeping the voting age at 21 but allowing the general assembly to lower it to 18. Surprisingly, and in contrast with the experience of other states, the question was not an issue in the ratification campaign.

One interesting change was to require that, in order to be elected in a general election, a candidate must receive a majority of all votes cast for that office. This provision reflected the entry of the American Independent Party into Arkansas politics and was considered by some delegates as insurance that the AIP would not elect a "minority" candidate. Although the AIP fought the proposed constitution, this provision was not mentioned.



The 1874 Constitution requires the numbering of paper ballots, and there have been many alleged abuses of the system.<sup>27</sup> The convention adopted a "secret ballot" provision which many delegates hoped would attract wide support. Its main effect seemed to be to give some county politicians another reason to fight the entire charter.

*Initiative and Referendum.* This article contained no substantial changes from the amendment adopted in 1920.

*General Provisions.* This important "catchall" article contained several provisions which figured prominently in convention debates and/or the ratification campaign.

A rather innocuous provision making the general assembly "the guardian and conservator of the water resources of the state" was attacked during the campaign by a state senator who said that "by the time a farmer gets a permit to dig a well from the legislature, all his cows will be dead." The entire natural resources section aroused opposition which was quite surprising to the delegates.

The usury provision, which effectively limits the interest on all contracts to no more than ten percent, stayed in the revised document. Portions of the Arkansas business and banking community made strong efforts to get the convention to soften this section and would have succeeded if an offer by the Arkansas Bankers Association to finance the campaign for ratification had not backfired.

The so-called "right to work" amendment adopted in 1944 stayed in the proposed constitution despite an effort by organized labor to at least get the provision out for a separate vote. The main reason labor had worked for the calling of a convention was to remove this provision, and their failure to influence the convention went a long way toward labor's disenchantment with the final product.

An amendment to the 1874 Constitution in 1956 makes lawful pari-mutuel wagering on horse racing at Hot Springs. Rather than court massive opposition from Garland County voters, the convention decided to leave the provision in the revised constitution. Mindful of the public's dislike for legal casino gambling, the past inclination of the general assembly to be influenced by professional gamblers, and the exhortations of a group of Methodist ministers who wanted the delegates to take a stand on this "moral" issue, the convention voted to outlaw all forms of gambling except that presently authorized. Then, as a result of adroit vote swapping and

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<sup>27</sup> In 1970, Arkansas began using a "black patch" to cover the numbers and provide a more secret ballot.

ardent lobbying, the Crittenden County delegates got the Convention to give constitutional sanction to the currently authorized pari-mutuel wagering on dog races at West Memphis. Surprisingly, the gambling issues never became important in the campaign, but the forces for the proposed constitution allegedly received a substantial contribution from Crittenden County.

*Constitutional Amendment and Revision.* The 1874 Constitution contains no article on amendment and revision and is one of the few in the nation which does not authorize the calling of a constitutional convention. This article in the proposed constitution contained no novel or controversial provisions.

*Schedule.* A Committee on Schedule and Transitional Provisions, which was composed of members from each of the ten other substantive committees, had general jurisdiction over the schedule; however, in practice, the convention and its committees worked directly on this part of the document.

Ray Thornton, who was later to be the successful Democratic candidate for attorney general, was the delegate largely responsible for the idea of a "three part" schedule: (I) provisions which could be changed by a majority vote of each house of the general assembly; (II) provisions which could be changed by a two-thirds vote of each house; and (III) temporary provisions which provided for the transition from the 1874 to the 1970 Constitution.

Little would be gained here by a detailed description of the many different items in the schedule, but its perusal is recommended to drafters of revised state constitutions. Not only is the three part schedule the one major innovation of the proposed Arkansas charter, but the convention used the schedule to do a little "legislating"—most of which created more enemies than friends.

Four items in the schedule allegedly figured in the financing of the pro- and anti-constitution organizations, but were not campaign issues as far as the general public was concerned:

1. A Schedule I item gave some relief to Arkansas fish farmers from the supposedly authoritarian decrees of the state game and fish commission.

2. Another Schedule I section voided all laws fixing prices of consumer goods, thus incurring the wrath of the wholesale and retail liquor dealers who have for years enjoyed the protection of the state's so-called "fair trade" liquor law.<sup>28</sup> Later it was discovered

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<sup>28</sup> At the insistence of Governor Bumpers, the fair trade liquor law was repealed by the 1971 General Assembly.

that the section also struck down fair trade laws on milk and cigarettes, to the discomfiture of some wholesale grocers.

3. A Schedule II provision eliminated the practice of "bond conversion," which is practiced only in Arkansas. This provision was opposed by the state's large bond brokers.

4. Another Schedule II section provided for the "nondiversion" of revenue collected from highway users to any other use except for highways, etc. Major highway users, contractors, etc., were ardent advocates of this provision.

The provisions of the schedule designed to provide for a smooth transition from one constitution to another seemed to be adequate, but, since the proposed charter failed, we will never know for sure. The committee also did some work on legislation which would have been necessary if the proposed constitution had been adopted.

#### IV

The Seventh Arkansas Constitutional Convention adjourned *sine die* on February 10, 1970, nearly eight months before the November general election. During the convention, few delegates had given much thought to an organization in support of ratification. During the next several weeks there were phone calls and informal meetings to see if some sort of an organization could be started. Finally, Governor Rockefeller called a meeting of several civic and political leaders from both major parties. Eventually an organization known as "Arkansans FOR the Constitution of 1970" was formed to promote the document. Former Democratic Governor Sid McMath and the Republican Lieutenant Governor, Maurice "Footsie" Britt, agreed to serve as co-chairmen. The author, a college professor with no previous campaign experience who had served on the study commission and as a delegate to the convention, was the unpaid director. Mrs. Shirley McFarlin, a former president of the state League of Women Voters, a study commission member and convention delegate, and an active worker in the campaign to call the convention, volunteered to work part-time and organize a speakers' bureau. The chief full-time employee was Walter H. Nunn, who had been on the staff of the study commission, the Constitutional Convention Advisory Commission, and the convention.<sup>29</sup>

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<sup>29</sup> Nunn and Miss Kay Collett of the University of Arkansas are currently writing a book-length study of the constitutional revision movement in Arkansas for the National Municipal League.

"FOR" hired one of the state's leading public relations firms to handle its campaign and utilized the services of the state's most well-known pollster to advise it on campaign techniques and issues. Two Little Rock business and civic leaders headed the finance committee. Although he was in a tough, and eventually losing, campaign for a third term, Governor Rockefeller made substantial cash and "in kind" contributions. FOR was assisted materially by the state Farm Bureau organization<sup>30</sup> and, to a lesser extent, the state Chamber of Commerce. Outside of the League of Women Voters, none of the other thirty-odd supporting groups contributed much toward the campaign in money or manpower—the lack of enthusiasm of the Arkansas Jaycees was particularly disappointing.

The campaign for adoption of the proposed constitution never really got off the ground. The director later characterized the effort as "amateurish, uninspiring, and ineffective." Although following the advice of the pollster and advertising firm, the campaign caught no one's attention or imagination. The speakers' bureau helped provide scores of speeches, all to civic groups who were generally disposed in favor of the constitution anyway. Indications were that the proposed charter had the support of about forty percent of the voters in February, May, and November.

The FOR organization relied mainly on "endorsement" advertisements which went into little detail about the constitution itself. The supposition was that the "average voter" would not read a detailed explanation of so complicated a document, and would not understand it if he did. Therefore, he would depend on the endorsement of political and civic leaders and organizations. There is little evidence that this sort of campaign picked up any support. Local groups were organized in about fifteen counties, usually on the initiative of convention delegates. Some worked diligently, but the proposed constitution seemed to fare no better in most of these counties than it did where there was little visible local activity.

Governor Rockefeller and the state Republican Party actively supported the ratification campaign, but with the Democrats it was a different story. Democratic gubernatorial candidate Dale Bumpers sincerely wanted the constitution to be ratified, and, after his un-

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<sup>30</sup> The Farm Bureau was the one major state organization which fought the calling of a convention, because it feared that the proposed document would be too "liberal" and "urban-orientated." Pleasantly surprised with the convention's product, the Farm Bureau supported it strongly, believing that if it failed another convention ten years later would advance a much less acceptable charter.

expected primary victory over former Governor Orval Faubus, hopes ran high. However, the opposition of local Democratic officeholders at the Democratic State Convention in September forced a watered down endorsement of the charter in the party platform. The Democrats did not make the constitution an "article of faith" on either the state or local level, and the FOR organization received no cooperation or support from the Democratic leadership during the last two months of the campaign. One result was that the constitution suffered two of its worst defeats in the home counties of Bumpers and Thornton, the party nominee for attorney general, while the candidates were racking up impressive majorities over the Republicans and the AIP.

The question "For" or "Against" the proposed Constitution of 1970 was on the ballot between two other issues. One was an initiated act to repeal the state's 1907 railroad "full crew" law. The campaign for "Act 1" was heavily financed and easily tripled in volume the advertisements for the proposed constitution. Toward the close of the campaign the railway brotherhoods and other labor groups launched a massive attack against Act 1. There is some indication that union men, conducting an active door to door campaign against Act 1, also used the opportunity to oppose the constitution.

The other issue concerned the issuance of bonds for the construction of a state library building and a trifling corporation tax to pay for the bonds. No one came out in opposition to the two measures, both of which had to pass before the project could be undertaken.

Act 1 and the two state library propositions went down to defeat with the revised constitution as thousands of voters marked "Against" right down the ballot.

The campaign against the proposed constitution seemed splintered. An eastern Arkansas lawyer announced the reactivation of a committee to oppose the document, but the "committee" seemed to limit its work to one county. A municipal judge and a state senator in central Arkansas also formed a "committee." Outside a few appearances on television panel shows, this "committee's" work seemed confined to personal contacts.

Former supreme court associate justice Edward F. McFaddin, who had been a member of the study commission, headed the main group in opposition to the proposed charter. McFaddin, who said the document was the "first step toward a Fascist state" and that it would "destroy the finest state court system in the country," was

assisted by a few Little Rock lawyers and real estate brokers. Other identified members of "Save Present Constitution" included two chancery judges and the one convention delegate who had voted against adoption of the constitution, Miss Patsy Robinson, a south Arkansas attorney. The group taped two television shows and ran a number of radio spots and newspaper advertisements, plus some hand literature. These stressed primarily the "high tax" issue. Several of their charges were characterized by the advocates of the constitution as half-truths or outright lies.

The other major group openly opposing the proposed constitution was, as previously mentioned, the American Independent Party. The AIP stressed taxes, "Almighty God," and a few other relatively minor points. Colonel John Norman Warnock, the only delegate who was a member of the AIP, had abstained on the final vote when the convention approved the proposed constitution, 98-1, but he later came out in opposition. Warnock was the AIP candidate for attorney general, but he spent most of his time and effort fighting the revised charter. Warnock considered the omission of the delineation of the state's boundaries a serious defect and a blow at "states' rights." Although the convention had also omitted the so-called "interposition" amendment adopted in 1956 (but never implemented), this was not an open issue in the campaign.

A few small county newspapers were in opposition to the document. The large Palmer chain in southwest Arkansas stayed neutral, but was generally considered to be opposed. At the last minute, the influential Don-Rey chain in northwest Arkansas came out in opposition, primarily over the tax issue. With these exceptions, practically all of the so-called "leading" local newspapers supported the constitution.

As mentioned earlier, the most effective opposition to the constitution came from county and judicial office holders who felt their positions threatened. Few came out in open opposition, but they worked quietly and effectively behind the scenes, primarily with voters who never heard the civic club speeches made by the proponents.

On November 3, 1970, the voters of Arkansas defeated the proposed Arkansas Constitution of 1970 by a vote of 223,334 to 301,195 (42.6% "For"). Approximately 85,000 persons who voted in the governor's race did not go down to the middle of the ballot to vote on the constitution. If they had, the great majority would probably have voted "Against." Thus the proposed charter was saved from a worse defeat by being "buried" on the ballot.

## V

Why was the constitution, which had so much going for it, defeated? Some critics believe that a separate vote on some controversial issues might have defused opposition to the main document. The convention considered three "separate issues": the voting age, the usury provision, and "right to work." The first was not a damaging issue, and the separation of the second and/or third would probably have brought more opposition than support. One observer said that the constitution was defeated by "God and taxes." Should these have been the separate issues?

Some observers believe that the voters of Arkansas were unable to give sufficient attention to the constitution in a general election which saw well over one million dollars spent on the governor's race and an additional half-million on the "full crew" repeal. Press, radio, and television coverage of the gubernatorial race dwarfed the relatively few references to the constitutional question. Explanations and advertisements on the proposed constitution were lost in the tremendous outpouring of political propaganda on other races, state and local. And, what people do not understand, they vote "Against."

To this author, there is one obvious conclusion: the voters of Arkansas were not convinced that they suffered appreciably under the 1874 Constitution or that they would be benefitted by the proposed 1970 Constitution. Another thing seems obvious: state constitutional revision—from the inception of the idea, through study commissions, legislative enactments, constitutional conventions, educational programs, ratification campaigns, or what have you—requires more political sophistication and maturity than any other type of state political endeavor. Arkansas, in 1967-1970, just didn't have it.