

Adopting a New Constitution

Lessons from Virginia

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“The earth belongs always to the living generation.”¹ So said Thomas Jefferson in developing a constitutional theory that included the belief that Virginia’s Constitution should be revised at regular intervals “so that it may be handed on, with periodical repairs, from generation to generation. . . .”²

Despite such advice, some generations of Americans have shown more interest than others in revising their state constitutions. For about a quarter of a century—from the 1920s into the 1940s—no American state adopted a new constitution. By midcentury, however, interest in revising these fundamental laws had burgeoned. So widespread was the movement for constitutional revision that by 1970, a leading student of the subject commented that there was at that time “more official effort directed toward revising and rewriting state constitutions than at any time in the nation’s history with the possible exception of the Civil War and Reconstruction era.”³

Some of these revision efforts were notably successful, for example, the rewriting of the Hawaii Constitution, which was approved by the people of the state in November 1968. Other revisions ended in failure, perhaps the most conspicuous instances being those of New York in 1967 and Maryland in 1968. Indeed, in modern times, many states have found it more difficult to secure popular approval of a revised constitution. When Virginians went to the polls in November 1970 to vote on a new constitution for the Commonwealth, those who hoped the result would be favorable had before them the unfortunate experience of a number of sister states. Although some states had succeeded in at least partial revision, since 1967 the voters

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of New York, Rhode Island, Maryland, New Mexico, Oregon, Arkansas, and Idaho had rejected proposed new charters for their states. Yet when Virginia voted on four questions comprising a revised Constitution, each one passed, and by percentages ranging from a low of 63 percent to a high (on the main body of the Constitution) of 72 percent.

Why some states have been successful in updating their constitutions and others have failed turns on a complex range of factors. The reasons for success and failure lie partly in circumstances peculiar to a given state and partly in patterns that tend to emerge whenever constitutions are revised. The account relates Virginia's experience to that of several other states which undertook to rewrite their constitutions during the years immediately before and after Virginia's action.

REVISING THE CONSTITUTION OF VIRGINIA

When Virginia undertook the constitutional revision which had its successful climax in the voting of November 1970, it had been forty years since the Virginia Constitution had been the subject of any thorough study. Even that previous revision, which took place in 1928, was a limited one, concerned largely with housekeeping changes. In fact, the document, as of 1968, was largely the product of the Constitutional Convention of 1901–02.⁴ The Constitution that that body wrote was heavily influenced by late nineteenth-century attitudes tending to produce documents more nearly resembling detailed statutes than constitutions. As a result, by the late 1960s there was a rising realization that the Virginia Constitution was long overdue for updating.

The initiative for revision in 1968 came from Governor Mills E. Godwin, Jr. Realizing the need to bring Virginia's fundamental law into line with the Commonwealth's needs and aspirations, Governor Godwin, in his welcoming address to the General Assembly in January 1968, called attention to the effect of the "inexorable passage of time" on the Virginia Constitution. He therefore proposed that the Assembly authorize him to create a commission to recommend revision.⁵

By joint resolution the Assembly authorized the Governor to create an eleven-member Commission on Constitutional Revision.⁶ Governor Godwin forthwith named eleven distinguished Virginians to the Commission, which was chaired by former Governor Albert S. Harrison, Jr.,

a Justice of the Supreme Court of Virginia, and which was in every sense a “blue-ribbon” body.⁷

Moving promptly to their task, the commissioners appointed a University of Virginia law professor, A. E. Dick Howard, as executive director, who, in turn, organized the Commission’s staff. The Commission was divided into five subcommittees corresponding roughly, but not precisely, to major areas of the Constitution. Each subcommittee was assigned legal counsel, drawn either from the practicing bar or from one of the law faculties in Virginia. Further to support the work of the Commission and its subcommittees, various individuals, mostly law students, were engaged to work during the summer of 1968 and produced about 150 research memoranda.

The Commission actively solicited the views of Virginia citizens. In April 1968 a letter signed by the chairman was distributed widely to individuals and organizations, inviting their ideas on any aspect of the constitution. Announcements of this invitation were given via newspapers, radio stations, and television stations throughout Virginia. Moreover, in June and July a series of five public hearings were held at different locations in the Commonwealth.

Most of the subcommittee work was done during the summer of 1968. The full Commission met with increasing frequency to deliberate proposals coming from the subcommittees, and by late fall a tentative draft for a revised constitution had taken shape. In addition to approving the text of the revisions, the Commission sifted and approved detailed commentaries to explain its proposals to the governor, the General Assembly, and the public at large. On January 1, 1969, the Commission concluded its work by delivering to the Governor and Assembly a 542-page report.⁸

Among the Commission’s more notable proposals were those that would commit the Commonwealth to quality education for its youth and would include education among the fundamentals recognized by the Bill of Rights. To finance needed capital improvements, the Commission recommended allowing some state borrowing, the ceiling to be tied to the Commonwealth’s general fund revenues. For the first time in Virginia’s history, a clause forbidding discrimination on the basis of race, color, or national origin would be added to the Bill of Rights. The period of residence required for voting in Virginia would be reduced. Apportionment of seats in Congress and in the General Assembly would be based on population, and districts would be contiguous and compact. To remedy a gap

in the old Constitution the Commission proposed a provision (modeled after the Twenty-fifth Amendment to the Federal Constitution) dealing with problems of a disabled governor. All cities and those counties over 25,000 population would be able to adopt and amend their own charters and to exercise all powers not denied them by the Constitution, their charters, or statutes enacted by the General Assembly. In keeping with rising concern about environmental quality, the Commission proposed a new conservation article.

In addition to these and other specific recommendations, the Commission overhauled the Constitution in general. Obsolete sections, such as those dealing with dueling and with the poll tax, were deleted. Applying the principle that a constitution embodies fundamental law and that unnecessary detail ought to be left to the statute books, the Commission proposed excising vast amounts of such statutory matter, especially in the lengthy and cumbersome corporations article. The revised Constitution also represented a general reorganization, so that closely related subjects would be dealt with together. Overall, the result was a crisper, more coherent document half the length of the existing Constitution (which was about 35,000 words).

Called into special session in March 1969, the General Assembly approved, with some significant changes, the bulk of the Commission's proposals. In some ways the Assembly was more cautious than the Commission, in other ways bolder. While the legislators agreed that the Commonwealth's capacity to issue general obligation bonds for capital projects should be expanded, they scrapped the Commission's notion that at least part of such a debt might be incurred without popular referendum. Sensitive to legislative prerogatives, the Assembly rejected a Commission recommendation that the governor have the authority to initiate administrative reorganization of the executive branch, subject to legislative veto. The legislature dropped the Commission's approach to greater autonomy for local government.

In other respects the General Assembly went further than had the Commission. Preserving the concept of a commitment to quality education, the legislators put teeth in the education article by way of a mandate of the localities to come up with their share of the cost of supporting public schools. The Assembly recognized that the time had come for annual legislative sessions, a step that the Commission had been unwilling to take. The legislators rewrote and strengthened the new conservation article, took a first step toward limiting the traditional appointing powers of

judges, and enhanced the Assembly's control over the sometimes controversial State Corporation Commission.

There were those who had held their breath at the idea of a legislature writing a constitution. Many observers associated the legislative process with lobbying, horse-trading, and the representation of special interest. Some people would have preferred the calling of a constitutional convention, elected for the express purpose of rewriting the Constitution. But when the General Assembly had finished its work, much of the skepticism heard before the session had vanished. The *Washington Post*, for example, which confessed its doubts about the job the Assembly might do, had to admit that the revision, while hardly perfect, was a good one, perhaps even better than the draft that the Commission had submitted. "The General Assembly," concluded the *Post*, "has risen above itself. It has produced a document that, with all its shortcoming, would have been inconceivable in Virginia a decade or even five years ago."⁹

The revisions took the form of amendments to the existing Constitution. To become effective, an amendment must be approved by two sessions of the General Assembly, separated by an election of delegates, and then agreed to by the people in a referendum. Therefore the amendments that passed the 1969 special session were acted on a second time at the regular legislative session in 1970. At the 1969 session, steps had been taken to separate questions thought to be more sensitive or controversial into distinct items which could be voted on individually on the referendum ballot. The 1970 session, therefore, had before it the main body of the Constitution, which encompassed the bulk of the revisions, and five separate questions—two involving state borrowing, one that would repeal the constitutional prohibition on lotteries, one that would allow state aid to handicapped children in private schools whether church-related or not, and one that would allow the General Assembly, by special act, to change the boundaries of the Capital City.

The main body of the revisions was readily approved at the 1970 session, as were the questions touching lotteries and, despite some lingering "pay-as-you-go" sentiment, the provisions liberalizing state borrowing. The other two questions—those regarding aid to children in private schools and the Capital City's boundaries—were defeated. Thus four questions would go on the ballot in November 1970.

At the time it approved the Virginia revisions, the General Assembly was aware of recent experience in other states, notably Maryland, where new or revised constitutions had been soundly defeated at the polls.¹⁰ One

lesson learned from some of those referenda was the danger of presenting the voters with a take-it-or-leave-it package in which they were obliged to approve or disapprove all the constitutional changes in a single question.¹¹ The Virginia legislature deemed it wise to have questions thought to be more controversial, especially those regarding state debt, voted on separately. Thus the Virginia voter, in November 1970, would be entitled to vote “yes” or “no” on any or all of the four questions in any combination he or she saw fit.

The ballot was designed to be simple and straightforward. Each of the four questions had not only a number (as is customary) but also a brief title—“Main Body of the Constitution,” “Lotteries,” “General Obligation Bonds,” and “Revenue Bonds—making it easier for the press and the public to talk about the propositions individually. The questions on the ballot were drafted so as to avoid legalese and to use instead ordinary English perfectly comprehensible to the layman. The ballot questions were brief and to the point and simply asked the voter to vote “yes” or “no” on each proposition.

In the spring of 1970, the first steps were taken toward the creation of a committee to inform the people of Virginia about the revisions on which they would vote in November. The committee was designed to be an entirely private effort, funded by private contributions. Governor Linwood Holton asked A. E. Dick Howard, who had been executive director of the Commission on Constitutional Revision and had served as counsel to the 1969 and 1970 sessions of the General Assembly, to create such a committee. He in turn assembled a staff for what came to be known as “Virginians for the Constitution.” Since no state money was involved, a fund-raising effort was necessary, and James C. Wheat, a Richmond stockbroker, agreed to chair a finance committee to solicit private contributions.

In the campaign for ratification of the new Constitution, several objects were conceived. First was the task of informing and educating the public about the revisions, making fair and factual information available through pamphlets, the press and media, and whatever other channels might be available. Thus, those who wanted to study the amendments in detail would have full opportunity and encouragement to do so. In addition, on the assumption that many voters would not delve into the specifics of the revisions, admittedly a complex matter, it was thought important to foster a general climate of acceptance. The proponents hoped that a voter not completely informed on the details of the revisions, but seeing the state and local leaders with whom he or she identi-

fied supporting the new Constitution, would have less reason to mistrust the idea of accepting the proposed changes. Finally, it was thought that the campaign should work within the political process. Lest the campaign be too removed from grassroots sentiment, the active support and cooperation of political parties and leaders—Democratic, Republican, and independent—was sought at state and local levels alike.

A statewide steering committee for Virginians for the Constitution was assembled. Symbolizing the broad consensus of support which the revisions enjoyed, former Governor Godwin (then also active in the reelection campaign of independent U.S. Senator Harry F. Byrd, Jr.) would be honorary chairman, and his Republican successor, Linwood Holton, would be the campaign's chairman. The committee itself was remarkable for the diversity of the people it drew together. Named to the steering committee were all three men who had sought the nomination for governor in the 1969 Democratic primary—William C. Battle, Henry E. Howell, Jr., and Fred Pollard—men thus representing the full sweep of factions in that party. (The Republican candidate, the winner in 1969, was, of course, already represented, as the referendum committee's chairman.) Also named to the steering committee were the Republican and Democratic candidates for lieutenant governor and attorney general in the 1969 general election. Represented also were Democratic and Republican leaders from both houses of the General Assembly.

Joining the politicians were leaders from other walks of life—labor, business, education, youth, blacks, civic groups, agriculture, and local government. Named to the committee, for example, were the presidents of such major groups as the Virginia State AFL-CIO, the Virginia Congress of Parents and Teachers, the Virginia Municipal League, the Virginia Association of Counties, the Virginia Education Association, and the Virginia Federation of Women's Clubs.

The state steering committee came into being essentially to demonstrate the consensus for approval of the new Constitution, a spectrum of support cutting across party and faction lines. The work of day-to-day campaigning, however, had to be done at the local level, and could not be accomplished from Richmond. Hence an early step in organizing the effort of Virginians for the Constitution was the creation of campaign committees in the cities and counties of Virginia.

Just as the state steering committee was meant to reflect the major political and interest groups among Virginia's citizens, so were the local committees intended to mirror the character of the particular locality.

The executive director of Virginians for the Constitution or one of the several area coordinators contacted local political and other leaders to initiate a local effort. Special efforts were made to emphasize the nonpartisan character of the pro-constitution campaign. To the fullest extent possible, well-known Republicans, Democrats, and—because of the independent candidacy of Senator Byrd—supporters of Byrd were prominent in each local committee. In addition, the committee reflected the demography of that area, including as appropriate, farmers, businessmen, ethnic leaders, educators, and other representative persons. Typically state legislators and locally elected officials, such as councilmen, supervisors, and constitutional officers, were either formally on the local committee or publicly associated with it.

Normally a local committee had a chairman or cochairman who, selected for his or her stature in the community, might not necessarily do the day-to-day work of organizing the local campaign. Often a young lawyer, Jaycee, or some other young person was asked to serve as executive director of the local campaign. It was with the local executive director that the state office of Virginians for the Constitution and the area coordinator worked, and to him or her they looked for the marshaling of local resources.

Some things were best done at the state level, some in the localities. Virginians for the Constitution took the lead in creating themes for the campaign, printing information brochures, producing such paraphernalia as lapel buttons and bumper stickers, securing billboard space, buying television advertising time, and otherwise supplying most of the basic materials of a campaign. The state office looked to the local committees for the more personal effort best undertaken at the grass roots, including working with local civic groups, canvassing voters, arranging local press coverage of events, handling local newspaper and radio advertising, and manning the polls on election day.

To assist the local committees, Virginians for the Constitution created a manual giving ideas on local organizing. The manual suggested the creation of committees to be responsible for liaison with local organizations (such as service clubs, women's clubs, trade groups, etc.), for voter contact both before election day (as by mass mailings and door-to-door canvassing) and on election day (as by manning the polls and handing out sample ballots), for furnishing speakers to local groups, for handling local publicity and advertising, and for raising money to cover local campaign expenses. With the manual were included sample spots for radio advertisements, sample news releases, and other guides for local publicity.

At the state level, Virginians for the Constitution set out to reach the voters in a variety of ways. One of the first steps was to establish contact with major statewide organizations, such as the Jaycees, the AFL-CIO, the Retail Merchants, the Virginia Education Association, the Crusade for Voters, the League of Women Voters, the Virginia State Bar Association, and many others. Virtually every major group that was asked for a formal endorsement of the revised Constitution gave such backing, the chief exceptions being those service clubs (such as the Rotarians and Kiwanians) whose policies preclude stands on issues which, even if nonpartisan, are political.

In addition to giving endorsements, many of the statewide organizations took an active part in the campaign to inform the voters, by using their newsletters and other means to get information about the new Constitution to their own membership. Active support of the revised Constitution often came after action by an executive committee authorized to take such action, by vote of a statewide convention, or occasionally by a referendum within the organization statewide. An instance of such a poll was the vote taken by Jaycee chapters in Virginia; more than 92 percent of the Jaycees voting endorsed the main body of the Constitution, while slightly lower percentages endorsed the three separate questions.

The role of the press and media in informing the public was obvious. During the summer of 1970 the executive director of Virginians for the Constitution traveled throughout the state, visiting the editors and staff members of Virginia newspapers. At sessions sometimes lasting half a day, information was conveyed and questions answered, so that local papers could help voters evaluate the revised Constitution. Near the end of the campaign, in October, at the request of the *Richmond News Leader*, the executive director prepared a series of ten signed articles for publication in that newspaper; they appeared as well in papers in several other Virginia cities.

Virginians for the Constitution created a speaker's bureau. Any local group, such as a service club, which wanted a speaker on the Constitution could contact the Virginians' Richmond Office, and a speaker would be supplied. The roster of speakers included legislators, lawyers, college presidents, and many others. Approximately a thousand speaking engagements were filled in response to requests received at the Richmond office. Countless other talks were given by speakers arranged for by local campaign committees. To assist the speakers, Virginians for the Constitution prepared a package of speakers' notes, supplemented by fact sheets on specific questions that tended to arise in question-and-answer periods.

Yet another vehicle for reaching and informing the public was brochures that were distributed in large quantities to local committees to be mailed out, left at doorsteps, and used at public meetings. Virginians for the Constitution produced an attractive red-white-and-blue brochure that explained how the four questions would appear on the ballot and summed up the highlights of the proposed changes. Probably 500,000 of these brochures were printed and distributed. For those people who might want a more detailed analysis of the revisions, several publications were available: the full text of the Constitution, an article-by-article summary of the revised Constitution, and a factual question-and-answer sheet published by the Extension Service at Virginia Polytechnic Institute and State University.

In addition to conveying specific information about the Constitution, the proponents deemed it essential to create a general climate of awareness that there was in fact a revision underway and that the people would be asked to vote on it in November. The greatest misfortune would be for large numbers of voters to arrive at the polls in November and, on being handed a ballot, for the first time discover that constitutional amendments were being voted on. Since constitutional revision lacks the popular impact of a candidate's race, Virginians for the Constitution undertook to use a variety of means to stimulate general awareness so that voters would be in a position to make informed judgments at the polls. The animating spirit of the campaign was that apathy and indifference would likely be more formidable problems than would hostility and opposition.

A positive theme had to be evolved that people would identify with the new Constitution. Working with a Richmond advertising agency, Virginians for the Constitution evolved a "yes" theme—a red-white-and-blue "yes" with stars and stripes suggesting a Fourth of July spirit. This "yes" logo was used throughout the campaign—on brochures, lapel buttons, bumper stickers, billboards, window cards, and wherever visual identification was important. (Some young women who wore the "yes" button reported that not everyone who saw the button realized that it was limited to constitutional revision.)

In reaching particular groups of voters, special committees were created. A fifty-three-member group known as Rural Virginians for the Constitution was formed from distinguished citizens well known in rural areas, such as past presidents of Ruritan International and of the Future Farmers of America in Virginia. On the theory that many voters regularly

read the sports page, whatever else they may read, there was formed Sportsmen for the Constitution, including tennis star Arthur Ashe, football pro Ken Willard, golfer Vinnie Giles, stock car driver "Runt" Harris, and all of the players on both the Virginia Squires basketball team and the Richmond Braves baseball team.

The campaign was scheduled for early summer through election day. The summer was spent largely laying the groundwork by creating a staff, establishing contact with statewide organizations, preparing copy for brochures, and making initial contact with people who might carry forward with the creation of local committees. Public campaigning before Labor Day, such as speech-making and advertising, would have been wasted effort, being simply too far ahead of the actual election date. It was agreed that the major effort at reaching and informing voters should take place during September and October, so that the campaign, like any other campaign, would not "peak" too early and thus be dissipated by election day.

Throughout there was emphasis on the nonpartisan nature of the revision effort. Governors Godwin and Holton, for example, appeared together in early October at a luncheon session arranged by the Virginia Council on Legislation. The climate of consensus for the new Constitution was heightened by the frequent appearances of well-known political leaders of every ideological hue—all in accord on the merit of the revisions. An especially poignant moment in the campaign came when the popular Lieutenant Governor J. Sergeant Reynolds, who had been hospitalized for treatment of a brain tumor, used his first public appearance to urge Virginians to vote in favor of the revisions.

As the campaign progressed, themes began to emerge. At first, Virginians for the Constitution had been using the rather bland appeal. "For a better Constitution, vote 'yes.'" As the Virginians' executive director and others began to go on the hustings to speak to local audiences, they frequently encountered a spirit of disenchantment with government at all levels—local and state as well as federal—engendered by the feeling that governmental decisions were increasingly being taken out of the hands of the people. Because the new Constitution would in a number of ways enhance popular government, the proponents of the Constitution fashioned a new theme: "Bring government closer to the people; vote 'yes.'" This theme was picked up widely, in speeches, on editorial pages, and elsewhere. It came as close as any one statement that emerged in the campaign to capturing the spirit of the new Constitution.