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JUDICIAL REFORM FOR ILLINOIS†

W. F. Zacharias*

The topic suggested by the title assigned to this paper contains within itself two basic assumptions; one, that there are courts and judges in Illinois, a fact so evident as to call for no further elaboration for the moment, and second, that there is something wrong with the present system which evokes a need for reform. The frequency with which plans have been proposed to produce judicial reforms of one kind or another, the amount of energy which has been expended in furthering such plans, and the countless thousands of words which have been written and spoken on the second point will serve as attesting witnesses to the fact that there has been a breakdown in the service function for which courts were created and which they are supposed to perform in a modern community. It is not unfair, therefore, to assume that something must be wrong with the present-day judicial structure in Illinois before proceeding to ascertain what that something is and what can be done about it.

† Based upon address delivered before the Calvin Club of the Fourth Presbyterian Church, Chicago.

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1 Most notable in that connection, except for the procedural reforms produced by the adoption of the Illinois Civil Practice Act of 1933, are the proposals of Professor Kales in his article entitled "Methods of Selecting and Recalling Juges," 5 Journ. Am. Jur. Soc. 133 (1928); the suggestions contained in the draft of a proposed constitution submitted but defeated on a referendum in 1922; and the work done by a Joint Committee of the Illinois State and Chicago Bar Associations leading to a proposed new judicial article intended to replace Article VI of Ill. Const. 1870. As to the latter, see Zacharias, "The Proposed Illinois Judicial Article," 30 CHICAGO-KENT LAW REVIEW 303-38 (1962), and Sears, "A New Judicial Article for Illinois," 40 A. B. A. J. 755-8 and 804-7 (1964).
I. The Ideal to be Achieved.

Before so proceeding, a yardstick is needed by which to measure the performance of courts and judges. Such a measuring rod could then be used not only to support the thesis that the present system is deficient in its day by day accomplishments but would also serve as a testing device by which to check the validity of current or future proposals for reform. At the base lies a thought which was once best expressed by Blaise Pascal, a French philosopher-mathematician of the Seventeenth Century. He wrote:

It is right that what is just should be obeyed; it is necessary that what is strongest should be obeyed. Justice without might is helpless; might without justice is tyrannical . . . We must then combine justice and might, and for this end make what is just strong, or what is strong just.  

These words disclose the ideal toward which all civilized men must strive if they are ever to attain the highest of possible goals. Over the centuries, therefore, well-meaning people have struggled to develop institutions, generally summed up in the loose term "government", in the firm belief that it is only through the concentrated power of organized society, at least when operating within a given geographic area, that "might" can be made just and "right" can be made strong.

It should be unnecessary to detail the historical pattern of this development or to record the groping steps taken to achieve the ideal. Men at one time looked to emperors and to absolute monarchs to provide the tools. In a more modern age, they have turned to democratically operated governments of the people, working and acting through constitutional forms, to insure respect for the ideal. Particularly is this true in the United States, and in each of its components, for there, to prevent perversion of the


3 Zane, The Story of Law (Ives Washburn, New York, 1927), provides a simple but graphic account. The English story is told in more erudite fashion in Holds-
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ideal through the possible tyranny of too much power in the hands of one or a few, the governmental power has been defined in written charters and distributed among the three conventional departments with the injunction that no one department shall usurp the function and authority of the others. Each branch of the government, whether state or federal, has its own peculiar tasks to perform and a knowledge thereof provides the second measuring rod by which to evaluate performance.

To the judicial department of the state government, through the vague-sounding description of an authority to exercise the "judicial power," the people have delegated the right to adjudicate controversies, to hear and determine cases, not by whim but according to law, to the end that the strong may not be permitted to oppress the weak; the cunning may not be allowed to impose upon the trustful; and the rich may be prevented from using the power of their wealth to do injustice to the poor. Men have finally come to say, at least within national and state confines, that their fellows shall no longer rely on uncontrolled force to settle their disputes, as was once the case. Instead, the resolution thereof must be left to trained, independent, impartial judges.

worth, History of English Law (Little, Brown & Co., Boston, 1922), particularly Vol. 1. Millar, Civil Procedure of the Trial Court in Historical Perspective (National Conference of Judicial Councils, New York, 1952), furnishes an excellent discussion of the procedural devices through which the courts have worked to effectuate their part of this task. See also Kinnane, Anglo-American Law (Bobbs-Merrill Co., Inc., Indianapolis, 1952), 2d Ed.

4 Ill. Const. 1870, Art. III.
5 Ibid., Art. VI, § 1.
6 Justices of the Supreme Court of the United States and all lower federal court judges take an oath, in part, to "administer justice without respect to persons, and [to] do equal right to the poor and to the rich." See 28 U. S. C. § 453. The oath administered to judges elected to the Illinois judicial department is not so elaborate: Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, §§ 11, 72.2, 174, 302, 366 and 451. See also ibid., Ch. 79, § 8.
8 Independence on the part of judges is insured, to some degree, by granting them fairly long terms of office, up to as much as nine years in the case of judges serving on the bench of the Illinois Supreme Court according to Ill. Const. 1870, Art. VI, § 6, and also by constitutional restraint against any diminution in the compensation of judges during such term: ibid., Art. VI, § 7.
9 Impartiality is guaranteed not only by denying to any man the right to serve
persons presumed to be skilled in law hence learned in the right way of life. To these men has been given the authority to find and apply suitable solutions for the conflicts which are apt to be generated among imperfect human beings while living together in a social state.

Litigation, the process through which these solutions are attained, is no longer an armed conflict fought on the field of battle but a sublimated form of contest, one waged in the courtroom, where reason, logically and impartially applied, should and does, so far as is humanly possible, control the outcome. In that arena, the only force which ought to be tolerated is the power of the state, of the people acting collectively, to compel obedience to the decisions so attained. It is a proud but also a civilized community which, understanding this fact, yields submissively to the admonition of a single man, or to the words of a bench of three, five, seven, nine or more men, then garbed in judicial robes, as he or they declare the law of the case. In that respect, the record of the American public has been, in general, a happy and an exemplary one.

So that none of these things may be lost to sight, expression has been given thereto in the fundamental documents often de-

as judge in his own cause, a principle enunciated in Canon 29 of the Canons of Judicial Ethics of the American Bar Association, but also by providing the litigant with the means of procuring a change of venue in case bias or prejudice is believed to be present: Ill. Rev. Stat. 1955, Vol. 2, Ch. 146, § 1.

10 Generous resort to a right of appeal or the like is usually given to the end that the possibility of individual error by a single judge may be eliminated. In the case of a conviction for murder accompanied with a death sentence, this right may extend to the point of placing the burden on the county to pay for the cost of securing this review, which cost may include attorney's fees: Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 730a and § 769a. In all felony matters, a defendant who is unable to pay the cost of procuring the necessary record to support his appeal may shift the cost onto the public treasury: Griffin v. Illinois, 351 U. S. 12, 76 S. Ct. 585, 100 L. Ed. 891 (1956), and Ill. Sup. Court Rule 65—1. Even in civil cases, there is opportunity for the use of less costly methods of presenting the case to the reviewing tribunal than by the conventional printed form: Ill. Rev. Stat. 1955, Vol. 2, Ch. 110, § 101.40 and § 201.8.

11 The method of outlawry, once used as a coercive measure to induce compliance with the community judgment, has long since disappeared from Anglo-American law. For an explanation thereof, see Pollock and Maitland, op. cit., Vol. 1, pp. 43, 49 and 476-8. Today, the writ of execution on a law judgment or the threat of contempt process for violation of an equity degree, with an occasional resort to a body execution in the few limited instances described in Ill. Rev. Stat. 1955, Vol. 1, Ch. 16, § 1, and Ch. 77, § 5, has generally proved to be sufficient.
scribed as Bills of Rights. As early as 1818 in Illinois, using words reminiscent of six centuries earlier when an English king had been forced to seal a Magna Carta, the drafters of the first state constitution declared:

Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay.\(^1\)

Embodied in these words is another version of the same yardstick as the one aforementioned. Put differently, the measure is one as to whether or not the courts can and do see to it that might is made to do right, that what is just is made strong, to the end that all shall have justice without being obliged to purchase it and may expect it promptly and without delay. While courts were originally established for this purpose, the energy of the founding fathers and of their successors, however, has tended to outrun their wisdom. By multiplying institutions in an effort to insure that justice could be so obtained, they have actually worked to impede its due administration.

II. THE PRESENT JUDICIAL STRUCTURE.

A brief glimpse at the existing structure of the state judicial department will illustrate the fact. Starting with some English models developed between the Eleventh and the Seventeenth centuries, the drafters of the 1818 constitution provided the state with a fairly simple system of courts.\(^2\) At the township level, the smallest geographic unit of the state, stood the justice of the peace. Originally intended to be a man, not necessarily a lawyer, charged with the responsibility of imposing punishment on petty

1. The text is taken from the provision in its present form in Ill. Const. 1870, Art. II, § 19. The language of this provision, with but slight modification, first appeared in Ill. Const. 1818, Art. VIII, § 12, and was carried forward into Ill. Const. 1848, Art. XIII, § 12.

2. Actually, the 1818 Constitution provided for one supreme court and for "such inferior courts as the general assembly shall, from time to time, ordain and establish." See Ill. Const. 1818, Art. IV, § 1. The courts of the Illinois Territory of the type here mentioned were, however, continued in existence. See Dupuy, "The Earliest Courts of the Illinois Country," 1 Ill. L. Rev. 1 and 81 (1906).
criminal offenders, that worthy was also given a minor jurisdiction over certain small civil suits. At the county level, the principal geographic unit of government in a "horse and buggy" age, were to be found the county courts; each presided over by a county judge who, if a lawyer, often found it necessary or desirable to augment his judicial salary and fill out his time with the fees and labor to be found in private practice. While these county courts operated on a more dignified plane than that of the justices of the peace, the work done was still of limited character. In criminal matters, the power to punish was restricted to fine or imprisonment otherwise than in the penitentiary. Civil jurisdiction was limited by a maximum figure as well as confined to suits of particular specified types.

Above these courts and serving as the principal trial court of the state was the circuit court, operating over an area made up of a number of combined counties, with the circuit judge

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14 His authority was, at one time, restricted to criminal proceedings: Holdsworth, op. cit., Vol. 1, pp. 285-98. The Illinois justice of the peace may now punish offenders by imposing a fine not to exceed $500 in amount or may imprison in the county jail for up to one year: Ill. Rev. Stat. 1955, Vol. 1, Ch. 79, § 165. He may, of course, also serve as a committing magistrate: ibid., Vol. 1, Ch. 38, § 662 et seq.

15 The details of this civil jurisdiction have varied both in kind and in amount. Present particulars may be found in Ill. Rev. Stat. 1955, Vol. 1, Ch. 79, § 16.

16 The only limit thereon is that the judge may not serve as attorney in the court in which he is commissioned or appointed: Ill. Rev. Stat. 1955, Vol. 1, Ch. 13, § 10. For the rule as to circuit judges, see Schnackenberg v. Towle, 4 Ill. (2d) 561, 123 N. E. (2d) 817 (1955).


18 Where the suit is one of ordinary civil cognizance, the amount claimed or the value of the property in controversy must not exceed $2,000, as fixed by Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 177. A county court proceeding to confiscate property as contraband is not so limited: People v. 123 Punch Boards, 11 Ill. App. (2d) 31, 135 N. E. (2d) 820 (1956).

19 Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 177, contains no precise list of cases but makes reference to "that class of cases wherein justices of the peace now have or may hereafter have jurisdiction." The scope of the civil jurisdiction of the county courts can be established by reference to Ill. Rev. Stat. 1955, Vol. 1, Ch. 79, § 16. In addition thereto, the county court is entitled to entertain adoption proceedings pursuant to ibid., Vol. 1, Ch. 4, § 1—1; has exclusive jurisdiction in inheritance tax proceedings by virtue of ibid., Vol. 2, Ch. 120, § 388; and acts in connection with a wide variety of special statutory proceedings.

20 The 1870 Constitution merely directed that, except as to Cook County and other counties having a population of 100,000, the state should be divided into judicial circuits to be formed of "contiguous counties, in as nearly compact form and as nearly equal as circumstances will permit, having due regard to business, territory and population." Ill. Const. 1870, Art. VI, § 13. Except for changes which may have been made at the current session of the General Assembly now in progress, there are 17 such circuits exclusive of Cook County: Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 72.1.
travelling through these several counties so as to bring justice to the litigant rather than to bring the litigant to justice. The circuit court possessed full civil jurisdiction over all types of cases without regard to the amount involved and could impose the most severe penalties provided by law for all types of criminal offenses. To these tribunals of well-defined English origin, American genius added a single reviewing tribunal, here called a Supreme Court, with state-wide authority, to pass on all appeals and the like, which were then taken to it as a matter of right. This court could, and still does, also exercise a limited degree of original or trial jurisdiction in a few highly important instances.

With increases which came in population and with the growth of cities, the frequent demand upon the legislature for more and better judicial service was answered not alone by providing more judges, whether more skilled or not, but also by providing a multiplication of courts with specialized functions to perform. First came city courts, established approximately between 1850 and 1875, in twenty-nine of the cities which were, to some degree,

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21 Ill. Const. 1870, Art. VI, § 12, states: "The circuit court shall have original jurisdiction of all causes in law and equity, and such appellate jurisdiction as is or may be provided by law." The "appellate" jurisdiction referred to has generally been confined to granting trial de novo in cases carried to the circuit court on appeal from justices of the peace, from probate courts, and from county courts in the manner directed by Ill. Rev. Stat. 1955, Vol. 1, Ch. 3, §§ 454-7; Ch. 37, § 294; and Ch. 79, § 116. The circuit courts also exercise a degree of supervision over state administrative agencies, either under the general Administrative Review Act, Ill. Rev. Stat. 1955, Vol. 2, Ch. 110, § 264 et seq., or by virtue of particular special statutes, as is true in workmen's compensation matters: ibid., Vol. 1, Ch. 48, § 138.19(f)(1). Jurisdiction in relation to statutory proceedings of the nature of adoption, eminent domain or the like has not been cataloged.

22 For the convenience of litigants, the Illinois Supreme Court, in the period from 1848 to 1897, conducted divisions of its sessions in three locations, at Mount Vernon, Springfield and Ottawa. Since 1897, all regular terms have been held at Springfield: Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, §§ 5-6.

23 Ill. Const. 1870, Art. VI, § 2. The original jurisdiction in relation to revenue matters and mandamus has existed since Ill. Const. 1818, Art. IV, § 2; that relating to habeas corpus was added by Ill. Const. 1848, Art. V, § 5. See also Stanley and Severns, "The Original Jurisdiction of the Illinois Supreme Court, 22 Chicago-Kent Law Review 169-96 (1944)."

24 The population, at time of statehood, was estimated at about 18,000. By 1850, shortly after the adoption of the second constitution, the population had expanded to 851,470. It had grown to 2,539,891 in 1870, the date when the current constitution was ratified, and is now estimated to be in the vicinity of 8,750,000. This ten-fold increase in the past one hundred years has, quite naturally, increased the amount of work to be done by the judicial department.

25 City courts are presently operating at Alton, Aurora, Beardstown, Benton, Blue Island, Calumet City, Canton, Carbondale, Charleston, Chicago Heights,
remote from the county seat where the regular courts of the state were to be found in operation. To serve the city inhabitants, these courts were, in effect, miniature circuit courts possessed of full civil and criminal jurisdiction but restricted, at least originally, to persons living within or causes arising inside city limits. These were followed, beginning in 1877, with probate courts, at least in the larger counties, which specialized in matters concerned in the handling of the estates of deceased persons, or minors, and of incompetents. The 1870 Constitution also recognized the existence of certain police magistrates who had become established in varying municipalities to handle the police and other work previously performed therein by the justices of the peace. The last major development in the fabrication of a court system came in 1905-6 when the legislature and the people of Chicago collaborated to abolish the justice of the peace system within the limits of the city and to substitute in lieu thereof a Municipal Court, one of unique type and possessed of an expanded civil and criminal juris-

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26 Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 333. These courts are denied jurisdiction over adoption proceedings: ibid., Vol. 1, Ch. 4, § 1-1. The holding in Werner v. Illinois Central R. R. Co., 379 Ill. 559, 42 N. E. (2d) 82 (1942), which placed sharp limitations on the power of city courts, was later nullified by the determination in the case of Turnbaugh v. Dunlop, 406 Ill. 573, 94 N. E. (2d) 438 (1950), so these courts may now hear cases based on transitory causes of action arising outside of municipal limits provided other jurisdictional and venue requirements are observed.

27 Courts of probate had been established in Illinois as early as 1829, pursuant to Laws 1829, p. 37, but lasted only for a few years when, by Laws 1837, p. 176, they were abolished and their jurisdiction was transferred to probate justices of the peace in each of the counties. The present set of courts owe their existence to Laws 1877, p. 79, as amended: Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 299 et seq.

28 Fourteen such courts exist and are to be found in Cook, DuPage, Kane, Lake, LaSalle, McLean, Madison, Peoria, Rock Island, St. Clair, Sangamon, Vermilion, Will and Winnebago counties. In the other counties of the state, the probate jurisdiction is exercised by the county courts pursuant to Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 175.

29 See Ill. Const. 1870, Art. VI, § 1. The authority for the existence of police magistrates prior to that time had depended upon the particular terms of the several special acts under which various city and town governments had been established. Courts of this character are now authorized by the general Cities and Villages Act. Ill. Rev. Stat. 1955, Vol. 1, Ch. 24, particularly § 9—73.
diction. That court statute served as the model for still another statute authorizing the creation of comparable municipal courts of the type to be found in the neighboring suburbs of Evanston and Oak Park.

Where completely new courts were not created, the work being done by already established tribunals was broken up and fed out in pieces, under a fragmentary approach, to still other judicial bodies. Thus, at the trial level and particularly in Cook County, some of the work of the circuit court was turned over to a Criminal Court. Other parts of its jurisdiction, relating to the treatment and control of dependent, neglected or delinquent children, were assigned to a Juvenile, now called a Family, Court.

30 See, in particular, Ill. Const. 1870, Art. IV, § 34, as amended in 1904, and Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 356 et seq. The jurisdiction of the Municipal Court of Chicago, set forth in ibid., Ch. 37, § 357, is comprehended within six classes of cases. Cases of the First, Second and Fourth Class are of civil cognizance which arise from designated types of conduct constituting legal wrongs. No equity jurisdiction has been conferred. The principal difference between First and Fourth class cases lies in the amount recoverable. Fifth Class cases include all quasi-criminal actions except bastardy proceedings. The court, in connection with Sixth Class cases, serves more or less as an examining magistrate would. The power to adjudicate criminal cases is found in relation to Third Class cases and extends to punishment by fine or by imprisonment otherwise than in the penitentiary but is limited by the requirement that the offence must occur within municipal limits.

31 Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 442 et seq. Care should be exercised to avoid confusing the general Municipal Court Act, which was enacted in 1929, with the special statute relating to the Municipal Court of Chicago, referred to in note 30, ante. There are differences between the two. Thus, a general municipal court may exercise jurisdiction over tort claims for personal injury without regard to the amount involved whereas the jurisdiction of the Municipal Court of Chicago in such matters is subject to a maximum monetary limitation. Compare the holding in Starck v. Chicago & North Western Ry. Co., 4 Ill. (2d) 616, 123 N. E. (2d) 826 (1955), noted in 33 CHICAGO-KENT LAW REVIEW 263, with Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 357, particularly as the same refers to First and Fourth Class cases.

32 The Municipal Court of Evanston has two elected judges who handle a volume of approximately 16,000 cases a year. The single judge of the Municipal Court of Oak Park, which court was established in 1955, deals with about 10,000 cases a year.

33 Ill. Const. 1870, Art. VI, § 26, provided that a petty criminal sessions in Chicago known as the Recorder's Court should be continued with its name changed to the Criminal Court of Cook County and its jurisdiction enlarged to comprehend "all cases of criminal and quasi criminal nature" arising in the county. To avoid a conflict with the constitutional power vested in circuit judges generally by Ill. Const. 1870, Art. VI, § 12, the enlarged court was not provided with a staff of separate judges but it draws from the bench of the Circuit and Superior Courts of Cook County, the judges of which courts are declared to be ex officio judges of the Criminal Court of Cook County.

34 State concern with dependent, neglected or delinquent children was manifested by the passage of Laws 1899, p. 31, which statute, as amended, appears in Ill. Rev. Stat. 1955, Vol. 1, Ch. 23, § 190 et seq. Jurisdiction over proceedings under this
Even more remarkable was the action by which a city court then operating in Chicago became the Superior Court of Cook County. The latter is not particularly superior in any degree but is a direct rival, with equivalent jurisdiction, of the circuit court existing in that county. The existence of this court furnishes an example of the ultimate in governmental folly, that of providing a complete duplication of an already existing and sufficient facility at taxpayer expense.

The practice of fragmentation so noted was not restricted to courts at the trial level but was carried over in relation to the matter of providing review on appeal. Recognizing, in 1877, that the work load of the state Supreme Court was pressing beyond the limit of human endurance, the legislature provided for the creation of four comparable but independent Appellate Courts, one to serve in each of the four districts into which the state was divided for this purpose. No one could express any justifi-
able criticism over the basic legislative purpose in relieving the Supreme Court of the pressure of work which had besieged it, but the precise realignment of the reviewing function was not worked out on any realistic basis. In certain instances, appeals and the like still proceed directly from the trial court to the state Supreme Court; in others, the appeal has to be carried to the appropriate Appellate Court from whence, after review before that tribunal, the matter might still proceed to the highest court in the state for its further consideration.

With this increase in the number of courts has come a parallel increase in the number of judges. An estimate made in 1956 indicates that the people of the state have over 3800 judges, at various levels, currently empowered to hear and determine cases.

The present boundaries of these districts are those disclosed in Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 25. The three last-mentioned courts, however, still sit at Ottawa, Springfield and Mount Vernon, respectively, and review, to the extent noted, the determinations of the trial courts located within their areas; Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 40.

The several Appellate Courts exercise no more than a reviewing function, being completely without original or trial jurisdiction; Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 32. They do, in general, pass on all appeals and the like except in those cases which, by ibid., Ch. 38, § 780½ and Ch. 110, § 75(1), are designated as matters which should proceed directly to the Illinois Supreme Court. Under the present scheme, review might be obtained directly before the Supreme Court in a case involving a small vacant lot of land worth a few hundred dollars, because a freehold might be involved, but the appeal in a case involving a contract between two large corporations, where millions of dollars might be at stake along with highly important matters of commercial concern, would have to go at least in the first instance, to one of the appellate courts and might never reach the Supreme Court.

Cases may reach the state Supreme Court after determination of the appeal by one of the four Appellate Courts but such further consideration is not insured as a matter of right. The possibility of further review is restricted by the necessity that the aggrieved party either secure a certificate of importance signed by a majority of the appellate judges concerned or be able to induce the Supreme Court to grant leave to appeal to it, in which last instance the case, if one for money damages, must involve $1,500 or more; Ill. Rev. Stat. 1955, Vol. 2, Ch. 110, § 75.

The circumstances and process by which a case may come before the United States Supreme Court after full consideration before state trial and reviewing courts goes beyond the scope of this article and is not discussed.

A chart of the Illinois judicial system, compiled by Citizens of Greater Chicago, would indicate that in 1956, the total judicial personnel included 7 Supreme Court judges; 18 Appellate Court judges; 92 circuit and superior court judges, exclusive of the 18 assigned to sit in the Appellate Courts; 102 county court judges; 14 probate court judges; 29 city court judges; 40 municipal court judges; approximately 2900 justices of the peace; and some 590 police magistrates.
It can be anticipated that, by the end of the current session of the General Assembly, the size of the bench will be still larger for a number of measures have been introduced, some have even been passed, calling for the subdivision of certain of the judicial circuits and for the creation of additional judgeships. The total of the personnel serving in the judicial department of the state would run into many hundreds more for no count has been attempted of such supernumaries as the masters in chancery and the referees, not to mention the clerks, deputy clerks, sheriffs, deputy sheriffs, bailiffs and the rest who participate, to some degree, in the exercise of the judicial power. No taxpayer should be unconscious of the fact that, except where the litigant is obliged

44 As each circuit and superior court may, at some time or another, have occasion to hear one or more equity matters, it has been considered appropriate for there to be at least one master in chancery in each county and as many masters in Cook County as there are judges in the two courts located there: Ill. Rev. Stat. 1955, Vol. 2, Ch. 90, § 1. These functionaries perform the customary duties of that office, which may be described as serving as assistants to the chancellors, i.e., the judges assigned to hear equity matters.

45 See, in general, Ill. Rev. Stat. 1955, Vol. 2, Ch. 117, § 1 et seq. A referee is an official assigned to serve in a law court in a manner comparable to the master in chancery of the equity court. The services of referees are utilized extensively in the Municipal Court of Chicago, both in connection with traffic violations and in citation proceedings to discover assets of judgment debtors. See, in that connection, Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 363.

46 Each court will need the services of a clerk to keep its records, which official would also then perform certain minor judicial functions, such as administering oaths, authenticating court papers and the like. The general powers of these clerks, most of whom are elected officials, are described in Ill. Rev. Stat. 1955, Vol. 1, Ch. 25, § 1 et seq. See also, ibid., Ch. 37, §§ 27, 310, 339, 369 and 453.

47 Ill. Const. 1870, Art. X, § 8, provides for the election of a sheriff in each county of the state who shall serve for a term of four years. While the sheriff performs certain police functions, in connection with which he may invoke the aid of a posse comitatus, he also serves the several state courts by carrying out the command of all judicial writs, by being in attendance at all court sessions, and by exercising custody over the court house and the jail: Ill. Rev. Stat. 1955, Vol. 2, Ch. 125, particularly §§ 14, 15 and 19. The Illinois Supreme Court is served by a comparable official designated as the marshall: ibid., Vol. 1, Ch. 37, § 16.

48 The municipal courts are served by bailiffs who, within the court area, perform services analogous to those performed by the several sheriffs: Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, §§ 371 and 456. The justice of the peace has the benefit of the services of one or more constables: ibid., Vol. 1, Ch. 79, § 1.
to bear the cost, the expense of operating a judicial department of this magnitude is paid out of tax funds.

III. DEFECTS IN PRESENT SYSTEM.

The foregoing brief summary of the present structure of the judicial system in Illinois should prove to be helpful in pointing up the fact that, in this welter of courts, there is room for the existence of not one but a number of evils. In the first place, it should be obvious that the state is plagued with an unnecessary duplication of expensive, and frequently equivalent, facilities. One simple illustration should suffice. An unpaid employee, living in Cook County, asserting a claim for unpaid wages in an amount not exceeding $500.00, might choose to enforce his remand before any one of approximately 125 justices of the peace or he might turn for help to any of the 90-odd police magistrates. He might, for that matter, provided jurisdictional and venue requirements were observed, use either of the three city courts; select from among the three municipal courts, one of them staffed with 37 judges; place his claim before the county court; or call upon either the Circuit Court or the Superior Court of Cook County.

49 In addition to the payment of standard filing fees and the like, charged to all litigants except those who can demonstrate indigence, a party who has recourse to the services of a master in chancery may have to pay such master for the rendition of his peculiar services: Ill. Rev. Stat. 1955, Vol. 2, Ch. 90, § 9. The details of the "compensation" there referred to may be ascertained by reference to ibid., Vol. 1, Ch. 53, § 38. In a complicated case, these costs may run into a sizable figure. In periods of depression when equity business relating to foreclosure of real estate mortgages is apt to be of substantial volume, the annual earnings of a busy master may outrank the salary paid to the judge whom he assists. Except for the justice of the peace, the master in chancery is the sole remaining "fee" officer of the state judicial department, that is one not serving on a fixed salary.

50 Certain of the courts are either self-supporting from the fees and costs charged for their services or may even produce an annual surplus, which is paid to the public treasury. This is understood to be the case with respect to the Probate Court of Cook County and the Municipal Court of Chicago. Others may be in the same class, but the cost of operating most of the courts exceeds the amount derived from fees and costs.


52 Ibid., Vol. 1, Ch. 37, § 333.

53 Ibid., Vol. 1, Ch. 37, § 357 and § 444.

54 Ibid., Vol. 1, Ch. 37, § 177, when read in conjunction with ibid., Vol. 1, Ch. 79, § 16.

for assistance. The existence of a degree of competition among business enterprises and commercial establishments may be a good thing. But one may well ask if the same thing is necessarily true where government agencies are concerned.

Aside from the waste involved in the mere duplication of available facilities, there is the further danger that, at the time of making a selection of the tribunal to whom he will apply for the purpose of securing justice, the litigant or his lawyer may overlook or confuse one or more of the jurisdictional factors circumscribing the competence of the particular court to provide him with relief. It should pass without comment that only a court which has been authorized to hear and determine a particular kind or type of case, whether by constitutional grant or by legislative fiat, may consider such a matter, for otherwise judges would be able to arrogate to themselves powers which the people might not wish them to possess. The extent of a given court's jurisdictional power, however, is not always an obvious fact and may not be determinable until after protracted delays and the expenditure of large sums of money. Again, one simple illustration should be sufficient.

Some time ago, a railroad employee who had lost a leg while working in a switch yard at Decatur in Mason County instituted a suit to recover damages from his employer before the City Court of Granite City, located in Madison County. His case was tried and he secured a verdict in his favor. For reasons not here important, this verdict was set aside by the trial judge. Appeals from that holding were considered successively by the Appellate Court for the Fourth District and by the state Supreme Court with the result the case was sent back to the trial court for further proceedings. After return and while his case was still pending, the Illinois Supreme Court, in an entirely independent suit involving other parties, announced it to be the rule that city courts were without power to entertain cases involving transactions which occurred beyond city limits. Upon learning of this fact, the injured

57 377 Ill. 405, 36 N. E. (2d) 555 (1941).
switchman asked the city court to transfer his case to the Circuit Court of Madison County, a court which would clearly have power to act. The case was transferred but the circuit court thereafter dismissed the action on the theory that no valid suit had been instituted until the moment when the transfer became complete and, as this happened about six years after the date of the injury, the claim was barred by limitation.

Again the injured switchman sought review and his case appeared in the Illinois Supreme Court for the second time. This time the high court agreed with the trial judge and affirmed the dismissal of the suit. The plaintiff, fortunately for him, was able to interest the United States Supreme Court in his plight. That court, on the initial hearing, expressed some uncertainty as to the basis for the holding of the Illinois Supreme Court so it directed that clarification be secured. The case was again presented to the Illinois Supreme Court for the third time and it provided the desired clarification. The federal Supreme Court returned to the problem and concluded that, for this purpose, the action was sufficiently "commenced" to prevent rise of the defense of bar by limitation at the time it had been originally instituted, even though begun before a court which was actually unable to proceed to judgment, so the earlier decisions were ordered reversed. Upon return of the record to the Illinois Supreme Court for the fourth trip, it coincided with this determination and ordered the Circuit Court of Madison County, after almost ten years of delay involved in these many maneuvers, to retake the case and grant a hearing. The irony of it all lies in the fact that, within four more years, the Illinois Supreme Court changed its mind on the basic point and agreed that city courts were not

60 Cert. granted: 321 U. S. 759, 64 S. Ct. 786, 88 L. Ed. 1058 (1944).
61 324 U. S. 117, 65 S. Ct. 459, 89 L. Ed. 789 (1945). Justice Black wrote a dissenting opinion which was concurred in by Douglas and Murphy, JJ. Justice Rutledge also wrote a dissenting opinion.
62 392 Ill. 151, 64 N. E. (2d) 318 (1945).
64 392 Ill. 138, 64 N. E. (2d) 519 (1946).
so confined and might, in appropriate instances, hear cases which arose from events occurring outside of municipal limits.\textsuperscript{65}

It is true the particular switchman referred to eventually suffered no irremediable harm from his choice of a tribunal yet he would no doubt assert that the delay he experienced fell far short of compliance with the command to grant prompt justice. For that matter, he must also feel that he was being obliged to purchase justice at an excessive cost. This illustration, while bordering on the extreme, could be multiplied by a score or more of other instances every year, both at the trial and at the appellate level,\textsuperscript{66} for not even after a hundred and more years of experience with a complicated judicial structure has it been possible to obviate all of the jurisdictional hurdles which stand between the litigant and the justice which he seeks.

Mention has been made of the financial waste present each year in the operation of the many competing and duplicative tribunals, each with its staff of paid public servants. It would be impossible to indicate the overall cost for while some of these employees are paid from state funds others draw their compensation from county budgets\textsuperscript{67} or from municipal treasuries.\textsuperscript{68} Not

\textsuperscript{65} See the holding in Turnbaugh v. Dunlop, 406 Ill. 573, 92 N. E. (2d) 438 (1950), for a determination with reference to a city court, and in United Biscuit Co. of America v. Voss Truck Lines, Inc., 407 Ill. 488, 95 N. E. (2d) 439 (1950), for a similar result with reference to the Municipal Court of Chicago.

\textsuperscript{66} In the period from 1953 to 1956 for example, as disclosed from a check made of the eight most recent bound volumes of the reports of the Illinois Supreme Court designated 1 Ill. (2d) to 8 Ill. (2d) inclusive, 17 appeals taken to the Supreme Court were ordered transferred to the appropriate Appellate Court because the jurisdiction of the highest state tribunal had been improperly invoked, principally because of a misunderstanding as to whether or not a freehold in land was involved in these cases. In 20 other instances in the same period, the Supreme Court was obliged to spend time passing on jurisdictional objections even though in 13 of these instances the objections ultimately proved to be groundless. Of the remaining seven instances, 3 of the appeals were dismissed because the issues had become moot; 1 was dismissed because in fact no constitutional issue was involved; in 2 instances, the court found that it had improperly granted leave to appeal so eventually dismissed the matters from further consideration; and in the other case it concluded that the debatable point had been settled by recourse to the principle of \textit{res judicata}, hence justified refusal of further consideration.

\textsuperscript{67} Judges of the Circuit and Superior Courts of Cook County, after being paid a uniform salary equal to that paid the other circuit judges of the state out of the state treasury, receive an additional allowance of compensation from county funds: Ill. Const. 1870, Art. VI, § 25.

\textsuperscript{68} Judges of municipal courts are, by law, to be paid fixed salaries from city treasuries: Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, §§ 363 and 450. Police magistrates, where not on a fee basis, are likewise paid from the municipal treasury: ibid., Vol. 1, Ch. 24, § 9—73.1.
even the legislature knows the full financial burden placed on the taxpayers of the state nor, for that matter, does it seem to care whether the public receives full value for every dollar that is spent. If a business operated on that basis it would soon become bankrupt, either because hidden leaks exhausted its funds or because, the full cost being known, it would be pricing its product above what the market would bear. The attainment of justice is not, of course, a matter to be calculated solely in terms of dollars and cents, but when the government deals with the taxpayer's money no one seems to care until the breaking point has been reached.

Worst of all, each of the many courts which form the structure of the judicial department of the state is an empire unto itself with the judge sitting in the position of a petty tyrant who is accountable to no one, except as he may be accountable to an uninformed electorate on election day, for the operation of his tribunal. There is no periodic reporting to any central authority for work done or left undone;\textsuperscript{69} no punching of the time clock;\textsuperscript{70} no obligation to demonstrate to a superior authority whether the degree of service rendered justifies the continued existence of the tribunal;\textsuperscript{71} and no considered duty to help out other courts which

\textsuperscript{69} Court statistics are usually limited to such matters as (1) the number of cases pending at the beginning of the period, (2) the number of new suits filed during the period, and (3) the number of cases which remain pending at the close of the period. The manner of disposition of those cases which are tabulated as being terminated, whether the disposition came by way of settlement, trial, or dismissal for want of prosecution, is not usually recorded.

\textsuperscript{70} Court rules usually prescribes the hour at which the sessions of the court are scheduled to begin at the opening of the judicial day. The duration of the sessions, the interval for luncheon, etc., is not usually fixed and is typically announced from the bench. Trial sessions do not generally run beyond ordinary business hours but may be, and have been, carried on into evening hours. Where agreement cannot be reached to take a sealed verdict, a judge may be obliged to remain on hand until late at night to receive the verdict and discharge the jury. It is not advocated that a time clock should be installed in every court house but, if a record was kept of the amount of time actually devoted to judicial duties, the record might prove to be an astonishing one.

\textsuperscript{71} Except as to circuit judges who are required by the state constitution to report periodically to the general assembly as to the number of days on which they have held court in the several counties composing the circuit, the only obligation on the part of the judges of courts of record is to report annually to the Illinois Supreme Court "such defects and omissions in the laws as their experience may suggest," to the end that the Supreme Court may make a similar report to the governor, together with appropriate forms of bills to cure such defects and omissions: \textit{Ill. Const. 1870, Art. VI, §31}. 
may be overburdened and falling behind in their work.\textsuperscript{72} It is true that many judges serve faithfully, work longer hours than the public might suspect, and strive earnestly to see to it that the ideal of justice is served to the fullest measure, but what as to the rest? Business enterprises come quickly to recognize the presence of indifference or incompetence on the part of their employees and deal swiftly with these problems. Impeachment of judges on the other hand is a laborious and a difficult, if not impossible, goal to attain.\textsuperscript{73}

The net result, then, is that in too many instances, the socially desirable ideal that justice should be promptly attained is not presently being observed. Where not actually a matter of some doubt,\textsuperscript{74} justice is achieved too frequently only through inefficient means, at excessive cost, and after such long delays as to make it no justice at all.

These complaints are not local to Illinois but have been expressed elsewhere. A special committee of the Association of the Bar of the City of New York, within the past few months, has issued a report in which it has stressed the desirability of a long-overdue reform in and reorganization of the court system of New York. This report points out, what has been said before in

\textsuperscript{72} Ill. Rev. Stat. 1955, Vol. 1, Ch. 37, § 72.29, indicates that the several circuit judges "may interchange with each other" whenever they find it "necessary or convenient." Similar provision exists in Ch. 37, § 297, with respect to county judges, and in Ch. 37 § 338, for judges of city courts, who may interchange not only with one another but may also serve in other courts of the state. These provisions are no more than permissive at best. Whether a trial judge will make an interchange is left entirely to his discretion.

\textsuperscript{73} The process of impeachment, fixed by Ill. Const. 1870, Art. VI, § 30, requires not only that cause for removal shall exist but that three-fourths of all the members elected to each house of the general assembly shall concur in the resolution.

\textsuperscript{74} Reference has been made on more than one occasion to the suggestion that the letters J. P., the common abbreviation for justice of the peace, should be reversed, so as to stand for "plaintiff's judge." The argument is that the official in question, from expediency or otherwise, rarely decides adversely to the person who brings the suit. It is true that if the plaintiff had not elected to proceed before the particular justice of the peace, the latter would have lacked an opportunity to earn the fees fixed by law for his services, hence his office might have proved to be an unprofitable one. A litigant with a large volume of business might well expect to receive some form of preferential treatment, failing which he would be inclined to take his business elsewhere. In the absence of statistics to conform or refute the underlying assumption, the suggestion has become something of a common jest.
this state,\textsuperscript{75} that there are three essential requirements for an effective court system, to-wit: jurisdictional unity, administrative unity, and fiscal unity. As to the first of these, the committee states:

If a citizen has a legal case, he should be able to go to court and get that case decided, quickly and completely. He should not have to run the risk of discovering too late that he has picked the wrong court, or that the court he has picked can decide only part of his case, and that he must go to another court to obtain the justice to which he is entitled. . . . Fragmentation of jurisdiction not only thwarts justice . . . it makes necessary an army of part-time judges to man the specialized courts. . . . Jurisdictional unity at one stroke will eliminate this catalogue of defects in the present court system.\textsuperscript{76}

On the point of administrative unity and its significance in a well-operated judicial system, the committee remarks that if the average citizen is only dimly aware of the way in which cases are decided in the courts, he is probably far less aware of the way in which the system of courts is administered. If a judge in one court has little to do and another court is overloaded, can that judge be assigned to the overloaded court? Under our present system, the answer is no. . . . Can cases be transferred from one court to another, in order to even out the work load? Again the answer is almost always no. . . . What about the judge's supporting staff of legal assistants, court clerks, probation officers, etc.? Are they paid throughout the state at the same rate for the same type of job? Not under the present system. It is demoralizing as well as inefficient for a court official in a busy court in one area to be paid substantially less than what a colleague in a less active court is paid for the same job. . . . Some judges have no assistants;

\textsuperscript{75} See note 1, ante.

\textsuperscript{76} See a report by the Special Committee on the Administration of Justice of the Association of the Bar of the City of New York entitled "Court Reform and the Citizen—1957," pp. 3-5.
others have more than they can use. These are only samples of the inefficiencies of our present non-integrated court system. . . . The problem of administrative unity is intimately bound up with the problem of jurisdictional unity. As long as there is chaos in the jurisdiction of the courts, unity and efficiency of administration is very difficult to achieve.\footnote{Op. cit., pp. 5-6.}

Financial matters were not neglected by the New York Committee. After noting that the total expense of the court system operated there ran in the neighborhood of $70,000,000 a year, it appended the thought that, their being no overall budget, it was imperative that there be one budget and one fiscal control for the judicial system, covering all courts, judges and court personnel. The citizen as taxpayer is entitled to know the cost of justice. The Legislature in voting appropriations should be able to find out what the money is going for. An overall budget for fiscal control goes hand in hand with administrative control.\footnote{Op. cit., p. 6.}

While the Committee offered no prediction as to the operating cost of the reformed judicial system which it advocated for that state, it could be inferred that the consolidation of the courts, the elimination of duplicating facilities, the reduction in the number of the required staff, and the abolition of part-time servants and services would reduce the overall cost. No precise estimate has been compiled for use in Illinois but the indication is that the present staff of more than four thousand judicial officers, together with the untold number of their clerical and other assistants, could be reduced to as much as one-fifth of that number,\footnote{The proposed revision of the judicial article of the state constitution contemplates an overall bench consisting of 7 Supreme Court judges; 20 judges at the intermediate appellate level; approximately 200 trial judges with full rank; and possibly 400 associate judges to serve, in special types of proceedings, in the circuit courts distributed throughout the state. The circuit courts will exercise unlimited original jurisdiction in all justiciable matters. To avoid constitutional difficulties, existing judges sitting in county, probate, city and municipal courts, together with all justices of the peace and police magistrates, will be permitted to complete their terms of office by being covered into the new judicial system at appropriate levels. The offices of master in chancery and referee will be abolished. The quality of the bench would, to some degree, be enhanced by a proposed requirement that all judges be duly admitted lawyers. While most judges, at least in courts of record, are such, the specific qualification of admission to law practice is imposed only in rare instances.} par-

\footnote{77 Op. cit., pp. 5-6.} \footnote{78 Op. cit., p. 6.} \footnote{79 The proposed revision of the judicial article of the state constitution contemplates an overall bench consisting of 7 Supreme Court judges; 20 judges at the intermediate appellate level; approximately 200 trial judges with full rank; and possibly 400 associate judges to serve, in special types of proceedings, in the circuit courts distributed throughout the state. The circuit courts will exercise unlimited original jurisdiction in all justiciable matters. To avoid constitutional difficulties, existing judges sitting in county, probate, city and municipal courts, together with all justices of the peace and police magistrates, will be permitted to complete their terms of office by being covered into the new judicial system at appropriate levels. The offices of master in chancery and referee will be abolished. The quality of the bench would, to some degree, be enhanced by a proposed requirement that all judges be duly admitted lawyers. While most judges, at least in courts of record, are such, the specific qualification of admission to law practice is imposed only in rare instances.}
ticularly so if all served the needs of the state in a full-time capacity. The possibilities for a reduction in the cost of administering justice should alone command attention but the efficiency of a reformed system would be worth it even if the cost was greater than it is at present.

IV. The Prospects for the Future.

It is hard to conceive that two of the greatest states in the nation, among the many others similarly beset, should be so plagued by the inefficiencies of an antiquated system in an era of jet-type propulsion in most other respects. At a time when so much energy is being directed toward the modernization of trade and commerce and to the improvement of the products of business enterprise, the judicial department of the government has been standing relatively still. While the techniques of doctors and surgeons have been refined, while the boundaries of scientific knowledge have been pushed farther and farther outward, the high political art of resolving the conflicts which develop among men living in an organized society has generally been left to stagnate. If progressive measures are not soon adopted, that art will perish, bringing ruin in its train.

Fortunately, that prospect should not serve to dismay for long. Thinking men have answered to the challenge and have fabricated plans for reform.\textsuperscript{80} Such plans have been shaped and tested not only in the crucible of the human mind, after hours of earnest discussion, but in the actual experience of other states, notably in New Jersey\textsuperscript{81} and in Missouri.\textsuperscript{82} These plans call for no extended discussion at this late date and they now lie before the General


\textsuperscript{81} The adoption of Article VI in the New Jersey Constitution of 1947 has resulted in giving that state an integrated and simplified judicial structure which has produced a high degree of efficiency. See Harrison, "New Jersey's New Court System," 2 Rutgers U. L. Rev. 60 (1948), and Karcher, "New Jersey Streamlines Her Courts," 40 A. B. A. J. 759-62 (1954).

\textsuperscript{82} The so-called "Missouri plan," by which a judge, after a period of judicial service, runs for re-election against his own record rather than against a political opponent, is, to some degree, incorporated in the Illinois proposal.
Assembly of Illinois for the third time. Given effective and proper public support, they will yet be enacted into law.

ADDENDA.

Subsequent to the preparation of the foregoing material, the 70th General Assembly adopted a substitute proposal for the one aforementioned, officially designated by it as Senate Joint Resolution 47. In essence, the substitute proposal follows fairly closely along the lines of the original draft prepared by the Joint Committee of the Illinois State and the Chicago Bar Associations but with enough deviation to warrant the making of further comment as it is not enough to say that the planned structure of the judicial department will result in a much simpler form of organization.

I. THE PROPOSED SUPREME COURT.

There is to be, as would be expected, a single supreme court, one composed of seven judges, three of whom are to be drawn from Cook County, which will comprise the First Supreme Court District for this purpose, and two from each of two other districts extending over the balance of the state.

83 On the first attempt, in 1953, the proposals passed the state Senate but failed to secure the necessary two-thirds vote in the House. In 1955, the measure met with rough treatment at the hands of the Executive Committee of the House and failed in passage. The proposal was introduced, for the third time, in both branches of the 70th General Assembly on February 27, 1957, and has been designated as Senate Joint Resolution 17 and House Joint Resolution 17.

84 Senate action thereon occurred on June 20, 1957. The House concurred, with amendments, on June 25th. A conference committee report, approved by both houses on June 27, 1957, carried by more than the necessary two-thirds vote.

85 The text of the 1953 proposal is set forth in 30 CHICAGO-KENT LAW REVIEW 303-13. It varied from SJR 17, referred to above at note 83, only slightly and then only with respect to the manner of selecting judges. For all practical purposes, therefore, the following comparisons are based on the contrast provided between the text published earlier, hereinafter referred to as Original Draft, and the final text of SJR 47.

86 SJR 47, § 4, provides for this division of the state "by law," subject to the qualification that the districts shall be of "substantially equal population, each of which shall be compact and composed of contiguous counties." Original Draft, § 4, specified the counties to be included in the districts by name. Neither proposal made provision for any subsequent redistricting, so it is possible, once districting has occurred, that the population aspect of the formula may, at some future time, get out of balance.
will be needed to constitute a quorum and the concurrence of four will be needed for any decision. The chief justice is to be selected by, and from among, the judges of the court, and is to serve in that capacity for a term of three years or for the remainder of his judicial term, whichever shall be the shorter.\textsuperscript{87} One demonstrable and startling weakness, however, lies in the fact that judicial tenure, presently fixed at a term of nine years for supreme court judges,\textsuperscript{88} is to be such, for all judicial officers, as may be “provided for by law,”\textsuperscript{89} thereby exposing the state to the possibility of subsequent legislative interference with the judicial arm of the state unless an informed and alarmed electorate should rise in protest over the threat.

The reconstituted supreme court is to be given general administrative authority over all courts, including the power to make a temporary assignment of any judge to some other court, provided the chief judge of the transferee court can be prevailed upon to consent thereto,\textsuperscript{90} and in the exercise of this administrative authority the court is empowered to appoint an administrative director, with staff, to serve at its pleasure.\textsuperscript{91} It is to be the repository of the rule-making power in matters concerning practice and procedure for all courts,\textsuperscript{92} but again the legislature seems to have yielded power grudgingly for the rule-making power is declared to be “subject to law and laws hereafter enacted.”\textsuperscript{93} The

\textsuperscript{87} SJR 47, § 5. Original Draft, § 14, contemplated appointment of the chief justice by the governor, for a term of six years, from a panel of two names submitted by a judicial nominating commission. The chief justice was there declared to be eligible for re-appointment. While SJR 47 is silent, re-appointment should be a possibility since there is no express prohibition against it.

\textsuperscript{88} Ill. Const. 1870, Art. VI, § 6. Under Original Draft, § 17, it was planned to increase the term to twelve years.

\textsuperscript{89} SJR 47, § 11. By that section, the terms of all judicial officers will be at the whim of the legislature, except that existing judges shall continue to hold office until their terms expire and, until changed by law, the term for a supreme court judge is to remain at nine years; SJR 47, Schedule, ¶4 and ¶4(g).

\textsuperscript{90} SJR 47, § 2. The administrative authority is to be exercised by the chief justice in accordance with court rule.

\textsuperscript{91} Original Draft, § 2, placed the appointing power in the chief justice rather than in the court as a whole.

\textsuperscript{92} Local rules for lesser tribunals are not prohibited provided they are not inconsistent with the general rules and any pertinent statutes.

\textsuperscript{93} SJR 47, § 3.
court is also made responsible for the holding of an annual judicial conference for the purpose of considering the business of the several courts, suggesting improvements in the administration of justice, and for the making of a report with respect thereto in each legislative year.94

Insofar as the judicial work of the supreme court is concerned, it is to be authorized, but not required, to exercise the same limited degree of original jurisdiction presently conferred on that court, to which has been added the power to issue original writs of prohibition95 and to exercise so much other original jurisdiction as may be needed for the complete determination of any cause on review. As would be expected, the principal judicial function will lie in the exercise of appellate jurisdiction. Direct appeal from the circuit court as a matter of right has not been drastically revised96 except that two new heads have been added with respect to cases involving "revenue," presumably the public revenue, and over writs of habeas corpus, with power in the court, "subject to law hereafter enacted," to provide by rule for direct appeal in other cases.97 Supervisory power over the determinations of the several appellate courts as of right has been expanded to include cases in which certification is made, by an unstated number of judges of a division of such court, that the question is sufficiently important to require supreme court consideration.98 Further review in matters heard by the appellate court, presently given only in case leave to appeal should be granted,99 has been left untouched by anything in the proposed constitutional revision.

94 SJR 47, § 17. No provision for reporting was contained in Original Draft, § 22, inasmuch as Ill. Const. 1870, Art. VI, § 31, directs the Supreme Court to report in writing to the Governor by January 1st in each year as to defects and omissions in the law of the state.
95 SJR 47, § 6. For elaboration on this point, see 30 CHICAGO-KENT LAW REVIEW 303, at p. 317, note 21.
96 SJR 47, § 6, second paragraph, still contains the provision for direct appeal by a defendant from sentence in a capital case which was criticized in 30 CHICAGO-KENT LAW REVIEW 303, at p. 317, note 23.
97 The possibility is visualized that the legislature, acting under the influence of pressure groups, may expand upon the list.
98 SJR 47, § 6. Compare with Original Draft, § 6, paragraph three, and Schedule, ¶ 3, annexed thereto, set out in 30 CHICAGO-KENT LAW REVIEW 303, pp. 305 and 310, respectively.
II. THE PROPOSED APPELLATE COURT.

Mention has been made of the fact that it was believed that the state should be served by one intermediate reviewing tribunal, to be organized in three convenient districts and with such number of internal divisions as might prove to be necessary, to be staffed by fifteen judges, sitting in panels of three. The legislature has seen fit to disagree with this proposal in certain respects for it insists upon a continuation of the present four-fold division of the state for purpose of appellate court districts and has expressed the belief that the total bench should consist of 21 judges. Twelve of the judges are to serve in the First District, with three others in each of the remaining three districts, but authority has been given the supreme court to make re-assignment provided a majority of the judges in any district consents thereto. Considering the work load which will probably fall on the shoulders of this court by reason of the imminent reduction in the appellate jurisdiction of the supreme court, the proposed expansion would seem to be a justified one.

The jurisdiction of the revised appellate court will be little different from that originally contemplated since it is to extend, as a matter of right, to all cases in which final judgments have been reached by the several circuit courts, excluding those in which direct appeal to the supreme court would be proper, and may be made to extend, by supreme court rule, to non-final judgments and determinations. While expeditious and inexpensive appeals are to be encouraged by some suitable supreme court rule, the provision for “review by informal proceedings in designated

1 30 CHICAGO-KENT LAW REVIEW 303, at p. 323. The planned tenure of these appellate judges was set at twelve years by Original Draft, § 17, in lieu of the six-year term presently applicable to them in their capacity as judges of the circuit court. The legislature has, by SJR 47, Schedule, ¶ 4(g), agreed to a nine-year term but it is subject to the reserved power to establish the tenure of all judges “by law.” See SJR 47, § 11.

2 Cook County is to constitute the First Appellate Court District, but the proposed boundaries of the other three are to be fixed by law, under SJR 47, § 4, subject to the proviso that, until so changed, the boundaries are those fixed in ¶ 3(a) of the Schedule thereto.

3 See, in that connection, 30 CHICAGO-KENT LAW REVIEW 303, at p. 325, note 70.
types of cases" has been deleted. One limitation, seeming to proceed from an excess of caution, has been added. It specifies that "after a trial on the merits in a criminal case, no appeal shall lie from a judgment of acquittal." Except for the possibility of an increase in the case load by reason of the retention of the provision for "direct review of administrative action as may be provided by law," the sections relating to the proposed appellate court probably could pass without criticism.

III. THE PROPOSED CIRCUIT COURT.

No better illustration of the art of political compromise could be found than in the sections relating to the several circuit courts. The outstanding concept for reform of the judicial structure rested on the premise there should be one trial court possessed of unlimited original jurisdiction over all justiciable matters, with such powers of review over administrative actions as may be provided by law, in place of the present confused scheme of trial courts. The legislature acquiesced therein so, with popular approval, the aforementioned evils stemming from the present involved arrangement of competing, conflicting, and independent courts should come to an end as these tribunals go out of existence. Abolition of all fee officials serving on the staff of the judicial department also seems about to be accomplished. The number of the judicial circuits, outside of Cook County which is to remain a judicial district by itself, together with the size thereof and the essential staff of each, is to remain, as it probably should because of the possibility of change in local conditions, a matter for legislative attention. Internal administrative control has, appropriately,

4 Compare SJR 47, § 8, with Original Draft, § 8.
5 This language appears in both Original Draft, § 8, and SJR 47, § 8.
6 SJR 47, § 10, is the same as Original Draft, § 10.
7 Both SJR 47, § 9, second paragraph, and Original Draft, § 9, declare: "There shall be no masters in chancery or other fee officers in the judicial system." The Schedule to Original Draft, ¶ 12, directed that existing masters in chancery and the like should be continued "until the expiration of their terms." The Schedule to SJR 47, ¶ 8, contains the same language but adds they may thereafter, "by order of court, wherever justice requires, conclude matters in which testimony has been received."
been left to the chief judge of the circuit. But at about this point, the views of the drafters of the original proposal and those serving in the 70th General Assembly seem to diverge.

The Joint Committee of the two bar associations had deemed it to be appropriate that the trial bench of the state should be made up of circuit and associate judges, at least one of each of the latter in each county, to be selected for substantial terms, possessed of suitable qualifications, prohibited from engaging in private law practice or other non-judicial work, paid a uniform salary from the public treasury, plus necessary expenses when serving beyond the county boundary, and protected against diminution in salary during their terms of office. They were to be assisted, where the need arose, by such number of magistrates as might be prescribed by the supreme court, which was to have power to limit and define the matters to be assigned to them. These magistrates were expected to possess the same qualifications as needed for judges and were also expected to be full-time judicial servants. Existing judges whose terms had not expired were to be brought into the reformed judicial structure at appropriate levels and were to be given an opportunity to seek a renewal of those terms, if deemed qualified, under a system which would have eliminated many of the objectionable features to be found in a general election.

In place thereof, the legislature has offered the public a proposed system under which each of the trial courts will be staffed by publicly elected judges and associate judges, who are to be nominated by party convention or at a primary election held for the purpose, whose terms of office will be subject to the pleasure of the legislature, and who will be assisted by such number of magistrates, appointed by the circuit judges, acting under whatever restrictions the legislature may see fit to impose. In Cook County, at least twelve of the associate judges are to be drawn from the county area outside of Chicago with at least thirty-six

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8 See, in general, Original Draft, §§ 9, 17-20.
9 SJR 47, § 11.
of them originating inside of Chicago, and the same proportion is to be maintained with respect to the magistrates. While the judges are to measure up to the aforementioned qualifications and be full-time officials, the magistrates are not to be so subject, hence a class of part-time and perhaps non- legally trained officials will probably continue in the service of the judicial department, exercising whatever jurisdiction the legislature may see fit to specify. About the only constitutional guarantees incorporated in the proposal and designed to secure judicial independence would appear to be (1) judicial salaries may not be diminished during any term of office, and (2) no change made in the area of a judicial district is to be permitted to affect the tenure of an incumbent judge. The specter of courts dominated by politics will, therefore, remain to haunt the state.

Other miscellaneous provisions have met with a degree of legislative approval. The plan to permit of a simpler system for handling the matter of the retirement, suspension, and removal of judges has been accepted subject to the proviso that the commission designated to pass on such matters is to be convened either by order of the supreme court or "at the request of" the state senate. Clerks of the several courts may, dependent on the

10 The twelve are designated to "run at large," until the system is changed by law. The proposal is silent as to the appropriate area of an election district for the thirty-six, hence it could be possible, by law, to divide Chicago into as many districts as there are associate judges to be elected and hold an election for a single associate judge in each.

11 The legislature deleted, from SJR 47, § 14, all reference to the prohibition against any judge or magistrate giving direct or indirect "financial contribution" to any political party which had been contained in Original Draft, § 19.

12 SJR 47, § 9. Existing police magistrates and justices of the peace are, by SJR 47, Schedule, ¶ 4(e), to become the first magistrates of the revised trial courts; are to be free to continue to perform their non-judicial functions; and, until change occurs, will exercise a jurisdiction equivalent to that already possessed by them. Original Draft, Schedule, ¶ 5, contemplated the integration into the new system of only those judicial officers who had been "elected prior to the adoption" of the Article and who were "in office on its effective date." SJR 47, Schedule, ¶ 5, by contrast, makes it to be the sole condition that they be "in office" on the effective date. Query: Is there room here for a sudden and last-minute expansion in the staff of the judicial department after it has become known that the proposal is acceptable to the electorate?

13 SJR 47, § 15. Original Draft, § 20, directed that salaries as to "each class of judicial officer shall be uniform within each circuit," but this suggestion has been disregarded. Provision has been made, however, for preserving a salary differential in favor of judges in Cook County, with the additional compensation being drawn from county funds.

14 SJR 47, § 13.

15 Compare SJR 47, § 16, with Original Draft, § 21.
action of the legislature, be selected by the judges thereof or be elected, but there will be no opportunity for any reduction in the number of state's attorneys as one such official is to be elected in each county rather than one for each judicial district. If approved, the revised constitutional article is to become effective on July 1, 1959, with all laws and court rules in effect on that date being continued in operation, to the extent not inconsistent with the changes thereby accomplished, until superseded in an appropriate manner.

If any conclusion is to be drawn from the foregoing, it could only be one to the effect that the state legislature, composed as it is of elected officials, is not, nor could it be expected to be, willing to abrogate the Jacksonian principle which declares that, since all public officials are public servants, they must, at periodic intervals, seek approbation from the electorate by standing for reelection. To expect that some future legislative body would muster the necessary two-thirds vote of each house to adopt some other proposal calling for a different method to be used in selecting judges would strain credulity beyond limit. Nevertheless, if perfection is not to be attained, there is enough good to be accomplished by the adoption of the proposed revision of the constitutional article that, when taken with the bad, it should receive fair support. To deny that support would require one to dispute with the common adage which affirms that half a loaf is better than no bread at all. One could well wish the members of the Illinois General Assembly were far better bakers than the half-loaf product they have turned out would indicate them to be.

16 SJR 47, § 18. With the legislative emphasis on the public election of judges, it is unlikely that it will yield the appointing power in this instance to the courts.
17 SJR 47, § 19.
18 Original Draft, § 24, while providing for a continuation of the existing system with respect to state's attorneys, did purport to authorize a change in the manner of selecting, and a reduction in the number of, such officials, if the legislature wished to exercise the privilege.
19 SJR 47, Schedule, ¶1 and ¶2.
20 SJR 47, § 11. While a vote of two-thirds of the members of each house is there specified as a condition for the enactment of any law designed to change either the method of selecting judges or their tenure in office, only a majority of those voting upon the question when it is submitted to the electorate is considered necessary to effectuate the change instead of the normal constitutional majority. This departure from constitutional standards reflects an endeavor to prevent change rather than to facilitate it, one based on an artful compromise worked out by certain of the Cook County delegation to the General Assembly which, since redistricting, now dominates one of the houses.