

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.

Organized opposition to the new Constitution was most vocal in Northern Virginia and in the Richmond suburbs, but resistance to constitutional change probably ran deeper in Southside Virginia. There the two debt proposals ran into long-held views about the virtues of a “pay-as-you-go” approach to state services. While most of the changes embraced in Proposal No. 1 (the main body of the Constitution) provoked no general opposition, the greater focus on the state’s role (vis-à-vis the localities) in public education did stir resentment and apprehension. *The Farmville Herald*, for example, said that, whatever the merit of the other changes, it thought that under the Constitution the state could “prescribe the curriculum, the textbooks, the teachers, the schools, and take complete control of the schools and your child.” Hence the *Herald* editorial writer intended to vote “no” on Proposal No. 1.¹²

Much of the Southside opposition was attributable to traditional conservatism. In the suburban areas of Richmond and Northern Virginia, however, there appeared a small but vocal band of opponents rather like those who have taken arms in constitutional referenda in Maryland and other states. These opponents entertained what may be called the “conspiracy” theory of government—that the new Constitution was a socialist plot designed to strip the people of Virginia of their rights. As one opposition pamphlet put it: “Why are these ruthless exploiters disguising more debt, more taxes, big bureaucracy, and approaching serfdom on individuals as needed constitutional change?” Over and over, opposition literature hammered away at the “conspiracy” theme—that the Constitution had been changed through “stealth and trickery,” that the process of revision had been unconstitutional and a “transparent fraud,” that the revisions were being sold through a campaign of “deception and misrepresentation.” These opponents labeled it a “mail-order” constitution, drafted (depending on which opponent was speaking) in Chicago by the Council of State Governments, in Washington by the Department of Health, Education, and Welfare, or in New York by the United Nations.

To counter opposition arguments, Virginians for the Constitution prepared “fact sheets” which, in parallel columns, set out the opposition charges and the pro-ratification rebuttals. In a more general fashion, the proponents were able to appeal to conservative opinion by having at the fore of the campaign, state and local, unimpeachable conservatives, many of them active at the same time in the Byrd campaign. An amusing moment came when the chairman of the “Save our State Committee” of Northern Virginia, an opposition group, challenged the revision propo-

nents to a debate. The challenge was accepted, and, when the debate took place, the affirmative case for the so-called socialist constitution was put by no less prominent a conservative than James J. Kilpatrick, the nationally syndicated columnist.

By the close of the campaign, endorsement for the new Constitution was overwhelming. Prominent political leaders of both major parties had lent their support. Almost all important statewide organizations backed its ratification, and while a few newspapers had voiced doubts about or opposition to the revisions, editorial support on a statewide basis was resounding. The *Richmond Times-Dispatch*, for example, declared that “Virginians who want to provide their state with a strong governmental framework on which to build for progress in the latter third of the 20th century will vote ‘Yes’ in the constitutional referendum next Tuesday.”¹³ The *Roanoke Times* called passage of the new Constitution “absolutely essential.”¹⁴ The *Washington Evening Star* urged its readers across the river to “[r]ally to this cause in the coming week, lest a priceless opportunity for advancement be lost.”¹⁵

On November 3, the new Constitution was overwhelmingly adopted. All four propositions were approved. The largest margin of approval went to Proposal No. 1, the main body of the Constitution, which received the assent of 72% of those who voted.¹⁶ Support for the Constitution was especially strong in Northern Virginia and in Tidewater. In Alexandria, for example, Proposal No. 1 carried by 84 percent of the vote, in Fairfax County, by 82 percent. In Tidewater the picture was similar; in Norfolk 82 percent of the voters approved Proposal No. 1. Such a strong showing at the two ends of Virginia’s urban corridor was not surprising. What was perhaps more unexpected was the high margins in the traditionally more conservative Valley of Virginia, where Proposal No. 1 garnered 85 percent of the vote in Harrisonburg and a remarkable 91 percent in Lexington.

The areas of greatest weaknesses were some of the largely rural areas of Southside Virginia. Lunenburg County, for example, buried Proposal No. 1 with an almost two-to-one “no” vote, and the two debt questions fared even worse. Statewide, only nine counties and one city (Danville) rejected Proposal No. 1. The full measure of the success of the campaign for ratification is underscored when one tallies the results by congressional districts. With four questions on the ballot in ten congressional districts—a total of forty possible vote combinations—only one question lost in only one district (Proposal No. 4 lost in the Fifth Congressional District, a Southside district).

SUCCESSES AND FAILURES AMONG THE STATES:
THE COMPARATIVE EXPERIENCE IN THE
ERA OF VIRGINIA'S REVISION

That Virginia's voters would approve a new constitution was not a foregone conclusion. Defeats of new constitutions in other states—perhaps the most publicized being that in Maryland in 1968—would make one cautious about predicting the success of any constitutional revision. That major political and civic leaders had endorsed Virginia's new Constitution was no guarantee; the backing of a "who's who" of such leaders in Maryland had not saved the proposed Maryland Constitution. The new Virginia charter was attacked on many of the same grounds, including regional government and governmental spending, which had been used in Maryland. One opposition pamphlet reminded its Virginia readers, "Marylanders have done it . . . Virginians can do it too." Moreover, if Maryland's proposed Constitution was hurt by extraneous events—notably the riots of April 1968 in Washington and Baltimore—Virginia's political climate in 1970 was hardly uneventful, especially when there was a U.S. Senate race without precedent, featuring Senator Byrd running as an independent against nominees of the two major political parties. And while enough private money was raised to run a respectable informational campaign, money was tight enough that some important items had to be cut—there was, for example, no television advertising in Northern Virginia.

Despite the problems, the final vote was overwhelmingly "yes." A number of factors played a part in producing the highly successful outcome, and Virginia's experience may usefully be compared with that of other states—especially those which sought to revise their constitutions around the time of the Virginia revision—to shed some light on reasons why constitutional revisions succeed or fail.¹⁷

To begin with, how the groundwork for revision is laid, and by whom, is a significant factor. Constitutional revision in Virginia was, from start to finish, a highly deliberative process. Having the groundwork laid by a blue-ribbon study commission meant that, when the General Assembly met, the issues which it would debate had already been sharply defined by the Commission's report and commentary. Conscientious preparation may seem a simple enough goal to achieve,¹⁸ yet in New York and Rhode Island a lack of planning and issue-sharpening have been suggested as reasons for defeat of revised constitutions.¹⁹ In addition, both conventions had an image of being dominated by politicians.²⁰ Those who

comprised the Virginia commission, on the other hand, were widely recognized as among the most talented, respected, and nonpartisan figures in the Commonwealth. Their prestige helped to put the General Assembly in an affirmative and responsive frame of mind when the legislators received the Commission's report.

There are two major methods by which states typically revise a constitution—by constitutional convention or by the state legislature. Either vehicle is usually preceded by a study commission. Whichever means, convention or legislature, is used, a keynote of the revision process must be political realism. One of the lessons to be gleaned from a study of constitutional revision among the states is that a new constitution can be killed by an overdose of partisan politics—partisanship that divides the revisors and voters alike. But a new constitution can also be killed by too little politics—a process which, through an excess of idealism or naïveté, is insulated from political reality.

One of the simplest lessons the Virginia revisors learned was that it was dangerous to make unnecessary enemies. A proposed change should be weighed to be sure that the benefits to be derived sufficiently outweigh the cost in terms of alienation of those who may oppose the change. A change of largely theoretical value may not be worth the electoral price paid for making it. For example, many state constitutions contain unenforceable, hortatory language in their bills of rights.²¹ Reformers often scoff at such language and urge that it be removed.²² The reformers who comprised the Maryland convention did excise the hortatory language of Maryland's Declaration of Rights. Having done so, they found themselves saddled with the opposition charge that the rights of Marylanders were being taken away.²³ It is hard to conclude that the change—of theoretical value at best (and even that can be argued)—was worth the cost.

Another rule often found in the textbooks is that only policy-making offices should be filled through popular election. Following this precept, the Maryland revisors stripped many of that state's constitutional officers, such as the clerks and the registrars of wills, of their constitutional status. The price of this decision was the spawning of a vigorous and vocal source of opposition to the new Maryland charter in every courthouse in Maryland.²⁴ Not only did the local officials oppose the Constitution, but many citizens, especially in rural areas, considered it important that such officers be elected rather than be appointed by other politicians.²⁵

Another costly move by the Maryland convention was the decision not to require that a local referendum be held before legislative creation

of regional governments.²⁶ There are valid policy reasons why regional government should not invariably be subject to local veto, but it is evident that the Maryland convention's decision badly hurt the revision effort in Baltimore County.²⁷ The regional government provision made it easy for opponents to appeal to racial fears in the area around Baltimore City, and the resulting negative vote in the county has been termed by one demographic analyst to be a principal cause of the statewide rejection.²⁸ Ordinarily these suburbanites could have been relied on to support the constitution, just as did those in the Washington suburban counties of Montgomery and Prince George's.²⁹

In Virginia, by contrast, the revisors retained the philosophical language of the Bill of Rights, they avoided any direct assault on the constitutional status of local officers such as sheriffs and clerks (though making it possible through local referendum to abolish or alter such offices), and while recognizing the concept of regional government, they wrote in a requirement of referendum in the localities affected. As the *Washington Post* observed at the close of Virginia's 1969 legislative session, "The political realism so painfully missing in retrospect in Maryland a year ago and so prominent in Virginia's new effort gives the proposals a healthy chance of survival."³⁰

How are the prospects for success in constitutional revision affected by the form the revision process takes? Specifically, are there reasons to prefer a convention on the one hand, or legislative revision on the other? Having a prestigious study commission prepare a draft and then having the legislature refine the document in the perspective of their own understanding of the political process was one of the greatest strengths of the approach to revision in Virginia. But Virginia's experience may or may not be the best guide for other states.

Much could be said about the relative merits of having revisions undertaken by conventions or having legislatures tackle the job. Conventions are thought to be more representative of the people, are frequently composed of highly able, civic-minded citizens, are less political (because they are less highly structured than are legislatures),³¹ are more focused on the task of constitutional revision (because they are called into being for that specific task), and are likely to be more willing to make fundamental changes.³² On the other hand, they may be out of touch with political reality or may be dominated by ambitious politicians. Commissions, being smaller, may be able to work faster, and they may have more expert talent because they can be appointed from among the state's ablest citi-

zens. Commissions are commonly more acceptable to legislatures than wide-open conventions because their proposals can be vetoed by the legislature if it wishes.³³ When the legislature, composed of politicians, has the final say, there is the risk, however, that the majority party will seek advantage for itself,³⁴ or at least that the legislators as a body will try to gain advantage over other branches of government.

Generalization about the relative merits of conventions or legislatures as revisors is difficult, because an examination of the behavior of conventions and legislatures in a number of states indicates that the circumstances of the particular state are crucial. In Maryland, to be sure, the convention operated in a political vacuum,³⁵ producing a document that took insufficient account of what the people or the interest groups would think of their work. Though they produced an excellent model constitution, they lacked that very closeness to the people which is considered one of the major advantages of using a convention.³⁶ The same tendency was present in the Connecticut convention, but more realistic delegates managed to curb the reformers and achieve a reasonable document which the voters accepted.³⁷

In other states' conventions, there has been the danger of partisanship. In Michigan, though the convention began in a bipartisan spirit,³⁸ it ended with the Republicans, who formed a majority of convention delegates, agreeing among themselves on a constitution and producing a straight party line vote on the document.³⁹ Though that document was approved, partisan conventions in New York and Rhode Island found the people repelled by their behavior.⁴⁰ On the other hand, in such diverse states as Pennsylvania,⁴¹ New Jersey,⁴² and Hawaii⁴³ conventions met in a bipartisan spirit, recognized the need to compromise in order to achieve success, and produced documents that satisfied the major interests in those states. Indeed, in Pennsylvania, though the Republicans controlled the convention, the Republican president insisted on equal representation for Democrats on all convention committees.⁴⁴ Strong, conciliatory leadership has been suggested as one reason compromise was possible in some of these states;⁴⁵ conversely, weak leadership was a factor in producing a convention that bogged down in partisan wrongdoing.⁴⁶ The representativeness of the delegates, their responsiveness to the constituency, and their willingness to compromise their own wishes and those of their parties in order to win others over to the revisions were factors in successful revision efforts by conventions in Missouri,⁴⁷ Pennsylvania,⁴⁸ and Hawaii.⁴⁹ These revisions stand in contrast to the unrepresentative character and consequent unresponsiveness of the

Maryland convention and the partisanship displayed by New York and Rhode Island delegates.⁵⁰

In Virginia the General Assembly proved that a legislature is not incapable of reform.⁵¹ Its members did not fall prey to the evils of partisanship. They put their understanding of the citizenry into the effort, deciding, after much debate, to eliminate the potentially divisive handicapped children and Capital City boundary amendments, which could have provoked sectarian and racial feelings respectively. The legislators restrained themselves from using the Constitution to reflect the desires of the lawmakers' favorite interest groups. The members of the General Assembly approached their task with an understanding of the difference between constitution-making and ordinary legislating.

It seems, then, that, given favorable conditions, either a convention or a legislature can undertake a successful constitutional revision. Equally, given the wrong conditions, either can fail. As one observer has noted:

With favorable prevailing winds and strong cooperative leadership, each structure appears capable of performing successfully in both the drafting and marketing stages. . . . Theoretical advantages, in brief, do not appear to have the political muscle that would make an extended comparative analysis of these structures very meaningful.⁵²

The comparative lessons to be learned from other states' revisions seem to lie not so much in the particular method chosen (though this can be crucial in a particular state) as in factors of leadership, both within the body that shapes the revision and in the state at large when the proposals are laid before the people.

Political realism and a spirit of bipartisanship are important in creating an atmosphere of consensus. The absence of emotionally charged issues in Virginia made possible a consensus of political leadership backing the new Constitution. This spectrum of support was a key factor in the document's success at the polls. Not within memory have political leaders of such divergent views—indeed, often the bitterest of enemies in the political arena—combined so cordially and publicly in a common political undertaking. The symbolism of the liberal, moderate, and conservative factions of both major parties uniting behind the revised Constitution could not be lost on anyone with even a passing understanding of Virginia's political scene. As the *Roanoke Times* commented on the eve of elec-

tion in 1970, "Surely if such arch political foes as Henry Howell and Mills Godwin can agree that constitutional changes are worthwhile, the rest of us can be certain that a yes vote is a vote for good government."⁵³

Support by the political leadership of both major parties is not a guarantee of success. The leaders of the major parties supported the reform effort in Arkansas⁵⁴ and Maryland,⁵⁵ yet the effort failed for other reasons. Nor is a consensus of support absolutely essential to victory. In Michigan, for example, the state's Democrats strongly opposed the new Constitution for a number of reasons; for instance, because the Republican-dominated convention had apportioned the legislature so as to keep themselves in power.⁵⁶ The neutrality of the Republicans in Hawaii,⁵⁷ probably induced by such factors as provisions for collective bargaining by state employees,⁵⁸ did not lead to defeat of that Constitution or even of that provision. In Michigan, leadership in the ratification drive by the popular new governor, and convention vice-president, George Romney, may have overcome Democratic hostility. In Hawaii, the form of the ballot and the generally conciliatory nature of the convention may have offset any ill effects of the lack of general political consensus. Still, the lack of bipartisan support has undoubtedly influenced the vote in some states. For example, Republicans helped defeat the products of the Rhode Island⁵⁹ and New York conventions,⁶⁰ and the Democrats campaigned strongly against the ill-fated constitution drafted by the Republican-dominated legislature in New Jersey in 1944.⁶¹

Factors like bipartisan and grass roots political support, the endorsement of major newspapers of such disparate philosophy as the *Washington Post* and the *Richmond Times-Dispatch*, and the deletion of disruptive controversial issues indicate that the compromises made by the Virginia constitution-makers were widely accepted. Proposed constitutions in some states have been defeated because of the opposition of important blocs of voters whose interests were not protected. Experiences of other states have shown that offending one of the major parties can hurt, and that local officeholders can have an important impact as well. Conservation groups (New Mexico),⁶² the Civil Liberties Union (New York),⁶³ and civic leaders and newspapers alienated by the self-interest shown by legislative draftsmen (Rhode Island)⁶⁴ have also been instrumental in the defeat of proposed constitutions. Of course, the political and economic interests of a state have much to do with who takes part in drafting a constitution, and the relative strengths of each no doubt have an effect on whether compromises are made.

The support of political leadership at the local level is an important consideration in seeking electoral approval of a revised constitution. In Virginia, all five associations of constitutional officers—the clerks, the sheriffs and sergeants, the Commonwealth’s attorneys, the commissioners of revenue, and the treasurers—went on record in support of the new Constitution. Other local officials, such as councilmen, mayors, and supervisors, were often publicly active in support of the revisions. Added to these political voices were those of civic, business, labor, and other leaders, again not only at the state level but also in the counties and cities across the state. The result was a climate of support that tended to resolve, in favor of voting “yes,” the voters’ natural hesitations about constitutional revision.⁶⁵ The value of grassroots support in Virginia contrasts not only with the Maryland experience, but also with the unsuccessful revision efforts in Arkansas, Rhode Island, and New Mexico, which appear to have been damaged by the lack of support of civil groups, local government officials, and government workers.⁶⁶

An aggressive campaign for ratification was another important factor in the result in Virginia. An observer of the Maryland experience has noted that the campaign there tended to be intellectual and sober,⁶⁷ not the sort of campaign likely to roll away the ennui with which most voters will regard a constitutional referendum.⁶⁸ The Virginia proponents set out, like those in Hawaii,⁶⁹ in the spirit that ignorance and apathy were likely in the end to be greater enemies than overt opposition. This was particularly a problem in Virginia because a commission and the legislature, rather than a more highly publicized convention, had drafted the document.⁷⁰ An early start,⁷¹ organized along the lines of a statewide gubernatorial or senatorial campaign, and adequate (though by the standards of a statewide race for office, laughably modest) funding were components of the successful campaign in Virginia.

A catalyst of Virginia’s referendum effort was the superb work of the local campaign committees. In some communities, one or more individuals were the spark plugs. In others, a local organization—oftentimes the League of Women Voters or the Jaycees—made the local campaign go. Some of the variation in votes from one community to another turned on predictable demographic characteristics, but in many cases a highly favorable vote in a community (especially in areas thought less receptive to innovation) was in good measure a function of an active local committee.

The Virginia campaign also succeeded in getting more usable information before the voters than is customary in a referendum effort. Not

only was such a massive educational campaign probably without precedent in Virginia, a special effort was made throughout the campaign to translate the rather dry abstractions of constitutional revision into issues that touched the lives of individual citizens—education, environmental quality, consumer protection, and taxes. And there is reason to think that the central theme that evolved in the campaign—“Bring government closer to the people”—struck a responsive chord in citizens. In contrast, the Arkansas proponents never successfully translated the dry abstractions dealing with the structure of state and local government into terms the voters could understand. They never made the voters see that the new Constitution would mean something to them personally. Observers have assigned this as a major reason for the defeat in that state.⁷²

Not only did the proponents in Virginia mount an effective campaign, but also the opponents of the revision never developed much popular support. In conservative Arkansas, the opposition was successful in confusing the voters with technical and insubstantial criticisms⁷³ and in convincing them that the increased flexibility of government would lead to increases in taxes.⁷⁴ Proponents committed the fatal error of responding defensively to the charges rather than explaining the benefits to be derived from the new document.⁷⁵

Opponents in Virginia tried similar tactics, but they did not succeed. One reason is that the proponents were prepared to meet and rebut opposition attacks. Exposing half-truths requires, of course, an effective way to get the message to the people. In Maryland, the opponents could charge that rights had been eliminated when they had merely been rearranged,⁷⁶ or that the new Constitution would cost a lot of money⁷⁷ when realistic estimates showed it would cost just a fraction of what they claimed,⁷⁸ or that the new Constitution would enfranchise D.C. residents to vote in Maryland elections when an examination of the document would reveal the contrary.⁷⁹ They made effective use of such charges because of the inability of the proponents rapidly to respond.⁸⁰ In Virginia, by contrast, the proponents met opposition charges with fact sheets and other materials promptly put in the hands of local campaign committees, speakers, editors, and others, to rebut the attacks.

The Maryland opponents were also able to wrap themselves in a cloak of conservatism without fear of contradiction by conservative state leaders, since few Maryland leaders had unquestioned conservative credentials. In Arkansas, the conservative American Independent Party opposed the new document. This not only drained off support from the far right