
**The Education Article of
the 1970 Illinois Constitution**

by
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**A Background Paper for the
Committee of 50 to Re-examine the Illinois Constitution**

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EDUCATION AND THE 1970 ILLINOIS CONSTITUTION

Staff Introduction

Article X of the 1970 Illinois Constitution states, "A fundamental goal of the People of the State is the educational development of all persons to the limit of their capacities."

In this paper Donald Sevener, associate editor of Illinois Times, compares the education articles in the 1870 and the 1970 Illinois State Constitutions and surveys current issues which could become part of the agenda for a new constitutional convention, in the event that the voters call for one. The following are among the most significant changes made by the 1970 Constitution.

- The 1970 Constitution contains a provision that public education be free through high school; however the 1970 Constitution, like its 1870 predecessor, is silent on the question of college and university education.
- The 1970 Constitution creates a State Board of Education, leaving to the General Assembly the question of whether or not the Board members should be elected or appointed. The Board appoints a chief state educational officer. The Constitution states that the Board shall be regional, but the number of members, their terms of office, their qualifications, and the manner in which they are elected or selected are all matters left to the General Assembly.
- The 1870 Constitution stated only that the state had a duty to provide a free education to its children. This is amplified in the 1970 Constitution, which embraces education as a "fundamental goal" of the state and includes the education of "all persons to the limit of their capacities."

Education would certainly be an important item on any agenda for a new constitutional convention. These items are likely to surface during debates on the education article:

- Should the State Board of Education be elected or appointed (as it is at present)?
- Should higher education have a place in the state Constitution?
- Should the educational system in Illinois be overseen by a single board, covering education from the preschool or kindergarten level through the university level?
- Given the Constitution's statement that it is a "fundamental goal" of the state to educate all citizens "to the limit of their capacities," what are the state's educational responsibilities to vocational students, older students, and other nontraditional students?
- Beyond the statement that education through the secondary level must be free, there is no definition of a specific state percentage of financial responsibility for education. There might be an attempt to define the state's financial responsibility for education.

Any one of these issues will, of course, involve a number of related questions. For example, if there is to be a place for higher education in the state Constitution, there will no doubt be pressure to eliminate the present separate university systems and a movement toward unification. Similarly, if the state's educational responsibility is to all of its citizens, does it extend to day care, or to workers displaced by economic change and in need of retraining? Education for employment is an increasingly important public concern. Community colleges attract a greater share of students than ever before, and the State of Illinois currently spends more than \$1 billion annually on vocationally-oriented programs conducted in settings that range from state and local agencies to community colleges.

The 1970 Constitution retained the provision forbidding the state to fund sectarian education. Given a few recent court challenges based on creationist education in public schools and the use of textbooks considered offensive by fundamentalist parents, this section may also be a focus of controversy.

These are, of course, only a few of the questions likely to face the delegates to a constitutional convention. It is clear that education would be a major agenda item, and a controversial one, given the number of citizens who are directly affected by state education policy.

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by Donald Sevenser

Constitutions safeguard rights and establish rules, duties, and powers. Rarely do constitutions enter into the often controversial and usually evanescent questions of public policy.

The Illinois Constitution contains, for example, no guarantee of a stipend from the state; it is silent on public aid. There is no mention of incarcerating criminals, or even protecting their rights; no mention of farming or tourism or high-sulfur coal or highways or economic development or drug abuse or child abuse or caring for the elderly. There is, however, the assertion right at the beginning of Article X, Section 1 that "A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities."

So fundamental is this goal that education is one of the few matters of public responsibility to enjoy a constitutional status, and it has for more than a century.

Education in the 1870 Constitution

The system of public schooling was in early adolescence when first adopted by a constitutional convention. Its entry into the 1870 Constitution came twenty-five years after the origin of education as a public responsibility in 1845. Expenditures on public schools were pushing \$7 million in the late 1860s; more money, one convention delegate noted, than the entire state government received in revenues. It was time, the convention determined, to place so important, or at least so costly, a duty of government in its governing document.

Section 1 of Article VIII of the 1870 Constitution stated: "The General Assembly shall provide a thorough and efficient system of free schools whereby all children of this State may receive a good common school education." But even this modest admonition (given the more exalted claim that would come 100 years later) did not come without controversy. Janet Cornelius reports in Constitution Making in Illinois, 1818-1970 that delegates from northern counties which had a higher proportion of taxable property than their proportion of school-aged children resisted the recommendation to use their money to educate youngsters statewide. But the appeal of southern delegates prevailed and the convention agreed with James Allen of Crawford County that "the well-being of the children was the concern of the state rather than of individual counties."

Orville Alexander, a Southern Illinois University professor, wrote in Con-Con, Issues for the Illinois Constitutional Convention in 1970 that the debates during the 1869 convention suggested that the constitutional provision promised an education only for the state's children -- not its adults. The words "good common school education" suggested, Alexander speculates, that the delegates did not want to saddle the state with responsibility for sponsoring collegiate education. Court decisions later expanded the meaning of common school beyond its initial focus on the elementary grades to include secondary schooling as well.

The encompassing declaration of Section 1 assumed that its mandate applied to children of all races. Delegate James M. Washburn argued for a resolution to allow a vote of the people to decide whether schools should be segregated by race. Washburn argued it was "impolitic and unjust" to use the tax dollars of one race to educate the children of the other. But his resolution, which was supported primarily by Democratic delegates from southern Illinois, was tabled by the convention. The constitutional provision prompted school boards throughout the state to accept hundreds of black children into their classrooms, although the issue of desegregation would visit state education leaders again during the 1970s.

The 1870 Constitution erected a barrier between public funds and parochial schools. "Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the state, or any such public corporation, to any church, or for any sectarian purpose." Although the language of the section seems unequivocal, the convention was not unanimous. Some delegates noted the fact that thousands of parents paid taxes to support public education but enrolled their children in parochial schools.

Many delegates, according to Cornelius, favored explicit constitutional permission for Bible reading in the public schools. James G. Bayne of Woodford County proposed a provision that the legislature "effectually prevent school officers ... from excluding the Bible" from common schools, contending that the Bible "is the only book now extant in the world by which man can have any definite idea of its origin or his creation." Others disagreed, arguing that Bible reading belonged in the home or the church, but not the school. Joseph Medill noted that the U.S. Constitution did not contain such a provision nor did the constitutions of any other state, and constitutionally protected classroom use of the Bible was excluded.

Another section of the document barred teachers or other officers from an economic interest in the schools, an apparent attempt to prevent teachers from writing textbooks to be sold to the districts. Some delegates complained this was class legislation aimed at teachers ("a humble class but a very worthy one"), but the provision was adopted anyway.

The 1870 delegates preferred that their education officials be elected. A statute enacted in 1854 provided that the state superintendent of education be appointed by the Governor to a two-year term. In the Constitution's executive article, the convention changed the title and, more importantly, the manner of choosing, instead providing for the election of a state superintendent of public instruction. The superintendent served for four years and stood for election in off-years from the Governor, presumably to divorce the official from partisan politics. One convention delegate raised reservations about popular election of the superintendent, contending that "the qualification of that officer depends on his education and upon his experience in the whole matter of schools and teaching . . ." -- a concern that would prove prophetic.

It was the decision to elect the chief state school officer that became within a few decades the most controversial educational issue of the 1870 Constitution.

Education in Illinois from 1870 to 1970

In 1969, when Illinois convened the Sixth Constitutional Convention, Illinois and Wisconsin were the only two states without a state board of education. The creation of a state board, however, had been recommended for years.

A series of studies by official commissions, beginning in 1907, complained that the election of the state superintendent was an impediment to professional management and urged creation of a state board of education to oversee state services and the appointment of a chief administrative officer.

The General Assembly created the Illinois School Problems Commission in 1947. The commission's seventeen members included legislators, gubernatorial appointees, and the state superintendent. Although it became a powerful and respected force in education finance and policy-making, the commission itself saw its authority limited to issues that could be resolved legislatively.

In 1963, the school problems commission proposed creation of a state board of education and urged that the Constitution be amended to permit the board to appoint the superintendent of public instruction. Even if the constitutional amendment was rejected, the commission said, a board should be established to develop education policies, set standards for the operations of schools, devise and interpret rules and regulations affecting local districts, hear complaints, and arbitrate disputes. The commission noted that similar boards with similar roles existed in all but two of the twenty-two states with elected superintendents.

State Superintendent Ray Page favored the commission proposal, but disagreed over the manner of selecting the state board. He favored election, the commission wanted the board appointed by the Governor as was done in thirty-one other states (eleven states had elected boards, eight had various combinations of choosing board members). The controversy over the method of selecting the state board scuttled the proposal and in 1969 the school problems commission discharged the issue. "This perennial question has been raised frequently during the many hearings. It is nearly always related to the selection of the Superintendent of Public Instruction. The Commission feels that this question should be faced and solved by the Constitutional Convention."

The 1969 convention had as much trouble as previous conventions in wrestling with the issue of governance of state education policies.

There was strong sentiment -- backed by decades of official studies, trends among other states, and even the support of the incumbent elected state superintendent -- for appointment of the state's chief school official by a state board of education. The local model of education governance, a board of lay citizens hiring a professional educator to administer its policies, was imitated by thirty-one states, twenty of them having joined the ranks within the previous fifteen years. There apparently was little support for placing education policy-making under the auspices of the Governor, an approach used by only five other states at the time of the convention.

Little agreement, in fact, no consensus characterized convention thinking on the selection of the state board members. There were essentially two schools of thought. One suggested board members be elected, as local school board members were with the exception of Chicago's, because election would ensure an independent body accountable to and controlled by the citizens. The other argued that gubernatorial appointment would produce a board of lay citizens of high standing who might be unwilling to give the time or submit to the rigors of the campaign trail. Confronted with diverse and divisive convictions, the convention decided not to make a decision.

The convention's education committee recommended the creation of a state board of education with authority to appoint the state superintendent. It did not recommend a manner for selecting the state board. "We thought about electing," Delegate J. Lester Buford of Mount Vernon told the convention. "Half of the members of our committee favor election of that state board; the other half favor appointment of that state board. So we were perfectly willing to leave this matter of whether it would be elected or appointed to the General Assembly."

"Are we passing the buck?" asked Delegate Robert Butler of Marion, who proposed an amendment to elect the board. "It would appear so. Unless this amendment is adopted, we quite unnecessarily run the risk of leaving the way clear for the installation of another layer of insulation between the state superintendent and the people he must serve." Dwight Friedrich, a Centralia delegate who would long pursue a campaign to elect the state's education leadership, endorsed Butler's suggestion. "We see here an open distrust of the people's ability to govern themselves and turn it over to -- and I want to quote this [from the committee report] -- 'the wise, the virtuous, and the well-born,' and that doesn't include me and you. It includes that little group that wants to take government away and have a hierarchy up here that runs it."

Delegate Anne Evans of Des Plaines countered: "I think that it has been the view of most of the groups that have been supporting an appointive superintendent over the years . . . that this would relieve him of the burden of having to go out and politic to be re-elected, which is, of course, it seems to me, an obvious interruption of his professional duties as chief administrative officer for the state educational system."

Butler's amendment fell two votes shy of passage, although the convention advised the General Assembly in Section 2(a) of Article X of the proposed 1970 Constitution that the state board could be "elected or selected" on a regional basis. Most everything else about the state board -- save its explicit authority to appoint the superintendent -- was left to the legislature to determine as well. The size of the board, its terms of office, the qualification of members would all be fixed by statute. The convention said the board "may establish goals, determine policies, provide for planning and evaluating education programs and recommend financing." The legislature, the convention decided, could limit or expand upon that role by law.

In part, the vague declaration of the state board's responsibilities reflected the tradition of drafting a document that was sufficiently elastic to survive changing conditions and needs. In part, it represented the conviction that the legislature would be the state's real board of education. Friedrich noted that the General Assembly "will fix the policies, it will decide the programs, how much money you've got to spend, how you can spend it -- have you considered that?" Buford, who was a local school superintendent, said, "We want it that way. We want the General Assembly to be the final school board. But we think that the General Assembly would be willing to take some advice -- some words -- from a board of education it has confidence in."

Perhaps exhausted by the controversial nature of Section 2, the governance provision, the delegates devoted far less emotion, debate, or conflict to the remainder of the education article, Sections 1 and 3. They did haggle over whether education was the "paramount" goal of the state. "I do know what Patrick Henry did not say," one delegate observed, "and he did not say 'Give me education or give me death.'" The convention decided on the more modest declaration that education is a "fundamental" state goal.

The most fundamental imperative of Section 1 was the declaration that schooling through the secondary level would be free and that "the state has the primary responsibility for financing the system of public education." However, "free" has not meant free. And "primary" has not meant principal. Court rulings have held that schools may charge parents for textbooks and other supplies and that the state should strive to be the primary source of education funding, although it is not constitutionally obliged to be.

Similarly, courts have ruled that Section 3, the convention's verbatim adoption of the 1870 Constitution's prohibition against public funds for sectarian purposes, is not without loopholes. Judicial decisions have permitted parochial school students to ride on public school buses and to take advantage of special education services.

Paul E. Mathias, chairman of the education committee, summarized the education article in the final weekly report of the convention. "The objective that all persons be educated to the limits of their capacities requires expansion beyond the traditional public school system," Mathias wrote in September 1970. "The special needs of the handicapped and of the mentally deficient educable child, the need for vocational training and for adult education are recognized. Institutions of higher education and educational services are encompassed. The Article emphasizes the importance of education in our democratic society. Implementation, of course, is left to the General Assembly."

Education in Illinois Since 1970: Issues for the Future

The adoption of the 1970 Constitution obligated the General Assembly to flesh out the skeletal state education apparatus constructed by the constitutional convention. It would prove no easier a task for legislators than it did for delegates, and the initial effort in 1972 failed. In 1973, the deadlock over selection of the state board was finally resolved when the Republican-controlled legislature endorsed a School Problems Commission bill that called for gubernatorial appointment of the seventeen board members. "The way we held Republicans in line," Representative Gene Hoffman of Elmhurst says, "was we convinced them an elected board would be controlled by the teacher unions. They were the ones with the stake in the board and the money for campaigns."

The emergence of teacher unions as a powerful force in electoral politics and legislative decision-making was a sudden and unexpected development that, to a significant degree, undermined the goal of constitutional authors who drafted the 1970 education article.

Michael Bakalis, the last elected state superintendent and now dean of the School of Education at Loyola University, notes that Section 2 of Article X represented a victory of "common wisdom and good government groups who were saying you've got to get education out of the partisan political process. But at the same moment we were depoliticizing the state education entity, everywhere else education was becoming more political."

In 1970, Bakalis recalls, he sought the support of the Illinois Education Association in his race for state superintendent and was politely told the IEA did not involve itself in political campaigns. Within two years, he says, "they had become major actors in the election of Dan Walker as Governor. That's how quickly things turned around. The IEA just totally shifted gears and decided to go political all the way. Unions have become more politically astute, involved, and sophisticated."

The shift caught education policy-makers by surprise and, Bakalis contends, "has caused some problems. It has not allowed the state office of education to function in the political arena when in fact the major decisions are political decisions made by the Governor and legislature. Those who participate fully in the political process come out better." When lobbyists for school administrators or local boards or the state board are up against teacher unions, Bakalis says, "the teachers come out on top. They have the money and they work for candidates."

Although he favored the change to an appointed superintendent, Bakalis now sees the move as a mistake. An elected school chief, he argues, would have an independent political base that would better counter the influence of unions, provide a measure of accountability directly to citizens, and offer a high-profile officer as an education leader. "Seventeen people who serve part-time can't be leaders," he says, adding that the subservient role of the state superintendent limits his or her leadership potential. "The nature of the system does not allow the superintendent to be a visible advocate for education."

Illinois' experience with the Board suggests otherwise; or at least suggests that systemic shortcomings alone do not foreclose a visible or effective role for state education leaders. Indeed, the first appointed superintendent, Joseph Cronin, played a prominent and strong part in pushing local school districts to desegregate their classrooms. In fact, Cronin and the state board were so conspicuous and unyielding on the issue that efforts in the General Assembly (the "real" state board) to place a constitutional amendment before voters to revert to an elected superintendent came within ten votes of passing the legislature.

The tenure of Cronin's successor, Donald G. Gill, perhaps better underscores Bakalis' claim. During Gill's tenure the board's budget recommendations were virtually ignored by the Governor and the General Assembly, and the Illinois Education Association had a much greater influence on the legislature where such substantive issues as the board's attempt to redefine curriculum mandates were concerned.

Though the board was less effective at the political level than it might have been during this period, it demonstrated the usefulness of having an independent and professional education agency in other areas, such as the examination of the state's educational policy. The board sponsored a series of well-documented, highly respected studies of all facets of education. The studies examined the school curriculum, the preparation and quality of teachers and other personnel, school finance, and the relationship between the state and local districts. The studies served no political agenda, but rather an educational one, and became the basis for significant legislative changes when the General Assembly considered school reform in 1985.

It was not Gill but his successor, incumbent Superintendent Ted Sanders, who shepherded the state board's legislative program into law. Sanders was able to work effectively with the Governor's office, the unions, and the General Assembly; a demonstration that political sophistication is more than a function of electoral politics.

Nelson Ashline, executive deputy superintendent for the state board since its inception and the guiding force behind many of the education policy studies, does not believe an elected superintendent or state board would have had a greater or quicker impact on school reform. But he wonders whether an alternative governance structure might have. "I see no future for an elected board or superintendent," he says. "Nobody knows who elected state board members are, just as voters don't know the candidates for University of Illinois trustees. And it does no good to have a Democrat elected superintendent serving with a Republican Governor." Still, if the General Assembly serves as the ultimate school board, Ashline suggests, the Governor is something of super-superintendent. "I think public education pays a high price for not having a direct relationship with the Governor," he says. "If we had been part of the Governor's planning staff, more of the things we proposed would have been more expeditiously implemented."

Bakalis says placing education under the auspices of the Governor would be his second choice for a governance change, behind returning to an elected superintendent. "What we have now is the worst of both worlds."

The former state superintendent says education is fragmented not only politically, but educationally as well. "I was an advocate [at the constitutional convention] of creating one state board for all of education -- elementary-secondary, community colleges, and universities," Bakalis says. He believes that position was and remains a sound one. "Education planning and budgeting must go on at one level. Take vocational education as an example -- who teaches at what level? What is the relationship between elementary-secondary schools and higher education? What standards should there be, what requirements? There is a need for overall coordination. Expenditures on education are too great to continue to be uncoordinated."

There was, and remains, opposition to such a plan. Bakalis notes that a "strong constituency beat down" the proposal for a "super board" of education. It was the same constituency -- the separate university systems -- that resisted efforts to create a coordinating body when the Illinois Board of Higher Education was established. "There was massive resistance by the higher education community," Bakalis recalls. "Each system was doing its own negotiation with the General Assembly."

Richard Wagner, executive director of the Board of Higher Education (BHE), agrees that university systems each engaged in legislative "free-lancing" to push for their own engineering school or law school or other programmatic expansion. Creation of the IBHE has largely, but not totally, alleviated the every-campus-for-itself approach.

Wagner acknowledges the present structure is not fail-safe (Northern Illinois University, for example, got law and engineering schools over the objections of the IBHE), but he says a "super board" would not be an improvement. "With a super board you have a tendency toward more centralization and thus toward more bureaucracy." In the decentralized structure that governs higher education, he says, "the locus of responsibility is placed quite appropriately with the faculty and administration that deliver educational programs. There is no one way to deliver education programs. Each campus must determine the proper mix of research, public service, and working with students."

Wagner says University of Illinois officials would like the status which might come from incorporating higher education in the Constitution, but he has discerned no other sentiment for such a change. It might make little practical difference anyway. Paul Lingenfelder, former deputy director of the IBHE and now with the MacArthur Foundation, says he studied higher education organization for a doctoral dissertation. "I examined higher education decision-making in Michigan, where there is no centralized coordination or governance; Wisconsin, where there is a centralized system; and Illinois," he says. "The structure didn't make any difference on decision-making. The decisions were all very predictable and stable."

Of greater concern than a change in governance is changing demographics -- from kindergarten through graduate school. "By 1992, the majority of college students will be twenty-five years old or older," says Wagner. "They will not be full-time students. They will be place-bound and won't live in the areas where our major institutions are located. The delivery of programs to the non-traditional student will be a major issue."

The concern reflects the trend toward some level of higher education becoming a more universally expected credential. At one time a high school diploma was the ordinary certification for a decent job. Increasingly, the Associate's degree is necessary. The average age of students is much higher now, and there is an emphasis on education for employment. "Higher education is no longer the elitist province of few people like it used to be," says Bakalis. "Higher education is now a mass institution. Thirty years ago, no one claimed a college education as a right. Now high school students assume they have a right to a college education. It's a question of how you define rights and how far the state responsibility goes. As people are trained for jobs and then retrained and retrained again -- what is the responsibility of the state to do that?"

The demographic concerns at the front end of the educational system are a bit different. Ashline of the state board notes two separate but, when taken together, troubling trends. "We know from available numbers that we are approaching a time when half the population will be beyond the age of having children in school. We also know that based on birthrates and migration patterns, there will be rising numbers of Blacks and Hispanics in schools.

Each will be a growing segment of the population, concentrated geographically, that will rely on public education." A diminishing number of taxpayers with school-age children," says Ashline, argue "a very dim future for maintaining high levels of financial support for schools locally." The rising number of people who traditionally have been the most politically disenfranchised, he adds, will not have "sufficient leverage to make up the difference from the state. I would argue that the state should pay at least 80 percent of the cost of education. The Constitution now says the state should be the primary source of funding. I'd define 'primary' as 80 percent of the cost of an 'adequate' education, which would still be vague enough to provide some latitude."

About as vague, in fact, as declaring that "a fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities," to quote paragraph one of Section 1 of Article X.

Bakalis sees some potential liability from that seemingly innocuous declaration, especially given our increasingly litigious society. "The 'limits of their capacities'? What if people mount a campaign challenging the state for not providing the opportunities to be educated to the limits of their capabilities? What about the high school graduate who can't read? Can he sue the state because the state did not guarantee what the Constitution says is guaranteed?"

He may have a point. It is hard to conclude that education is a very fundamental goal in a state where one of every four students who enters ninth grade drops out before graduation; where the dropout rate in thirty-two high schools exceeds 50 percent; where there are two schools where less than one-quarter of ninth graders leave four years later with diplomas. Education hardly seems fundamental in a state where teachers in some high schools -- more than 10 percent -- earn less than custodians in others. "Fundamental" scarcely seems an appropriate description for the values of a state that ranks thirty-third in per capita spending on education; where, adjusting for inflation, state aid per pupil was less in 1986 than in 1976.

In retrospect, the constitutional quarrel over whether education was the state's "paramount" goal or merely a "fundamental" one was revealing. It discloses not just the varying degrees of importance placed on education but suggests an equally diverse range of attitudes about the mission of schools.

"I've heard conflicting messages from people about what they want from higher education," say Paul Lingenfelder. "On the one hand, they want it to be something apart, a meritocracy, an ivory tower. And then they see tremendous social problems eating us alive and they wonder: 'why can't higher education solve some of these problems -- better trained teachers, for example.' We really do want it both ways. Higher education must do better at celebrating and honoring the more mundane functions, that is, turning out good teachers. It's got to be more involved with elementary and secondary education. It's got to get its research function back into perspective."

As unsettled as Lingenfelder's comments suggest higher education's mission may be, its role is immutable compared to the demands placed on elementary and secondary schools. Says the IBHE's Wagner: "There's AIDS education and sex education and all the things that at other times might be considered parental responsibilities. The elementary-secondary mission is so diffuse and the expectations are so diverse, they spend half their time just deciding what they're all about."

Ashline betrays no such uncertainty:

There are fundamentals that drive everything and have forever and will forever. Essentially, we keep coming back to the fundamental of a liberal education. In a world where the only constant is change, you look for the verities, for what it is that gives us adaptive abilities. Consumer education is not a bad idea -- what is bad is equating that with mastery of the English language [in the required school curriculum]. Vocational education has always thrived despite the fact that every study that has ever been done of voc-ed shows it has never been successful. You ask a businessman what he wants in an entry-level employee and he'll say he wants an educated person, a flexible, informed human being. A constitution has to be concerned with the bedrock -- that there is in fact this essential body of knowledge characterized by its validity for everyone over time. And what the legislature ought to be concerned with is the problems that arise as issues of the moment.