

THE INDIANA CONSTITUTIONAL CONVENTION OF 1850-1851

Donald F. Carmony
Master's Thesis,
Indiana University, 1931

*A publication of the Indiana Supreme Court's
"Courts in the Classroom" project*

Indianapolis, Indiana

Prepared for publication by
Bethany L. Natali & Elizabeth R. Osborn



TABLE OF CONTENTS

Introduction	v
Editors' Note	vii
Author's Biography	ix
<i>Indiana's Constitutional Convention of 1850-1851</i> <i>by Donald F. Carmony</i>	
Preface.....	xi
CHAPTER I	
Constitutional Origins.....	1
CHAPTER II	
Influences Leading to the Convention.....	9
CHAPTER III	
The Referendum and Election of Delegates.....	19
CHAPTER IV	
Organization and Structure.....	31
CHAPTER V	
Political Changes	45
CHAPTER VI	
Economic and Social Changes.....	75
CHAPTER VII	
The Constitution Before the People	89
CHAPTER VIII	
The Changes Made: Conclusion	99
APPENDIX I	
The Constitution of 1851	109
APPENDIX II	
Address to the People.....	139
APPENDIX III	
Sources Relative to the Union of Surviving Members in 1885	153
APPENDIX IV	
Convention Referendums	193
APPENDIX V	
Miscellaneous Material	207
Bibliography.....	237
For Further Reading	245
Selected Individual Index.....	249
Selected Subject Index	255



AUTHOR'S BIOGRAPHY

I was born on a farm in Shelby County, Indiana, in 1910, near where my great, great, paternal grandfather and family had settled in the 1820s. They arrived soon after various Indian tribes had ceded much of central Indiana to the United States. For a year or so after my paternal grandmother died, my parents lived with grandfather in the double log cabin where my father was born. A frame lean-to along its back provided two additional rooms, making four rooms for three adults and three small children. The dug well was between the cabins and the log barn, with its frame addition, and the outhouse was nearby on the other side of the cabins.

My elementary education was completed in seven years in four one-room, red brick schoolhouses, which offered grades one through eight, taught by my father. I was one of nineteen who graduated from Manilla High School, across the line in Rush County, in 1925. Because I had never missed a day since entering the first grade, the county superintendent gave me a medallion.

During the teens and twenties I did a variety of chores and labor on the family farm before mechanization and electricity revolutionized farming and farm life. Despite long hours and much hard work, I enjoyed these years, which in some respects resembled the pioneer life, about which I write in this book, more than life of the 1990s.*

In the fall of 1925 I entered Indiana Central College, now the University of Indianapolis, expecting to major in mathematics and probably combine farming and teaching at the high school level as my career. Soon my interest in history exceeded that in mathematics, and I completed majors in both subjects, graduating *cum laude* in June, 1929. During the summer I was invited to teach history at Indiana Central College on a part-time basis, while pursuing the doctorate in history from Indiana University. I soon became full-time, and continued on its faculty for a decade.

As a graduate student at Indiana University during the thirties, I became much interested in Indiana history under the capable and charming teaching of Logan Esarey. From 1939 until “retirement” in 1980, I was a member of the faculty in history at Indiana University, teaching at the Fort Wayne, South Bend, and Indianapolis Extension Centers, but principally on the Bloomington campus. I began teaching Indiana history while on the faculty of Indiana Central College, but the transfer to Indiana University gave me much more time for its study and teaching. I received the Ph.D. in history from Indiana University in 1941. The pioneer era has long been my area of principal interest. From 1954 until 1975 I edited the *Indiana Magazine of History*.

From service on several state commissions and committees, including that as chair of the Indiana Sesquicentennial Commission, 1959-1967, I gained valuable insights about politics, politicians, and government. This experience increased my understanding of and appreciation for the role that politicians exercise in local, state, and national government.

- DONALD F. CARMONY, 1998

*Reprinted with permission from the Indiana Historical Bureau & Indiana Historical Society. Donald F. Carmony, “Preface,” in *Indiana 1816-1850: The Pioneer Era*, vol. II, *The History of Indiana* (Indianapolis: Indiana Historical Society, 1998), ix-x.



Photo Courtesy Allen County/Fort Wayne Historical Society

This aqueduct is a part of the Wabash and Erie Canal project near Fort Wayne, Allen County.

Aqueducts and canals were a common sight in Indiana in the 1830s and 1840s. Attempting to imitate the financial success of New York's state-funded Erie Canal project, states around the country entered into a flurry of canal construction. Most of these projects were poorly planned, rarely completed, and led states to the brink of bankruptcy. Indiana's ill-fated canal building project, resulting in extreme financial duress, was one of the best-publicized and most often cited reasons for convening a new constitutional convention.

CHAPTER I



CONSTITUTIONAL ORIGINS

Every government, past and present, has been or is based upon a constitution. A constitution consists of all the rules, forms, usages, principles, conventions, and traditions which determine the structure of a government and define its powers. The difference between written and unwritten constitutions is merely one of degree. In a written constitutional system most of these rules, usages, forms, and traditions have been set to writing; in the unwritten constitutions these rules and customs are to be found in precedents which have become established. In the United States both the national and state governments are built upon the written constitutional system. They have become so deeply imbedded in the American system of government that one who criticizes them adversely may be charged with political heresy. It is difficult for the average American to see that the unwritten British system has many advantages. However, either system may be adaptable to some conditions which the other is not.

Lord Bryce lists rigid or so-called written constitutions as one of “the three chief contributions which the United States has made to political science regarded as an Applied Science or Practical Art.”¹

This is merely another way of saying that “a written constitution is an American institution.”² The written constitution is a product of the modern age of history. However, in both the ancient and medieval periods of history there was a distinction between laws which were regarded as fundamental and permanent and those which were regarded as temporary and changeable.³ This distinction is the fundamental step in constitutional evolution. Written constitutions were not used in the United States first but their adoption here “represented the first successful attempt of a people to create, consciously and deliberately, a system of government, and to enact the principles of a political philosophy into law.”⁴ They were the product of a long evolutionary process, with roots in the ancient and medieval periods, which found a favorable environment in the new world. Here they burst forth into full bloom as a result of the conditions created by the revolt of the thirteen colonies from the British Empire.

Written constitutions, in this country, were a development of colonial experience and an outgrowth of the embryo system of popular government which developed in the democratic environment of the frontier.⁵ The first mainspring for their development came from the charters originally granted to various trading companies.⁶ Since these companies began as business agreements, the executive was given extensive powers. Each colony had at least one charter and was familiar with such a system of government. These charters were often very liberal and the fact that they were written in black and white made them bulwarks of popular and individual liberty when the public opinion of the people called for their observance. In debates and struggles with the agents of the Crown the colonial assemblies had often found that a threat to reread the charter and study it was sufficient to gain what they desired.⁷ This feeling that a written constitution would serve as bulwarks of popular liberty was perhaps the greatest single factor leading to the adoption of written constitutions by every colony when the revolution began. These colonial charters furnished the idea or model upon which these first constitutions

were built.⁸ Furthermore, these written constitutions were helpful in fostering the growth of popular government as they made it possible for the people to exert a greater influence in forming policies of government. They made it possible to establish a representative democracy. A written constitutional system was also favored because it tended to become more rigid and conservative. This was in accord with the negative philosophy of government, which was ushered in as a part of the colonial revolt from Great Britain.⁹ The colonial experience and environment greatly enriched and modified colonial and state institutions but, as Dr. Channing has so aptly stated, "The political institutions of all of the colonies were bottomed on those of England."¹⁰ The French and continental influences played a minor part.

The early American written constitutions did not become a craze of governments for a brief period and then pass into oblivion, as had other previous attempts. The English Civil War had produced three written constitutions. One of these, the "Instrument of Government" drawn up by Cromwell's officers in 1653, was in actual operation for about three years;¹¹ this was the "earliest written organic law to be put into actual everyday use."¹² The adoption of written constitutions, based upon the colonial charters, by all of the thirteen colonies gave these instruments a favorable opportunity for growth. The liberals of Europe soon came to regard a written constitution as necessary in a liberal political system. During the French Revolution several written constitutions were used for various periods of time. The reactionaries after the Congress of Vienna, under the leadership of Prince Metternich, made sporadic attempts to suppress these written documents, which had become attached to the general movement for more representative democracy. The restored French Bourbon Louis XVIII was forced to grant a constitution to his subjects (Charter of 1814). Later written constitutions were adopted in Belgium (1831), Switzerland (1843), the North German Confederation (1867), and many other countries. Since the World War, the number of written constitutions has further increased. In the early

part of the last century Latin American countries began to adopt written constitutions, which show the influence and imprint of the American example. A written constitution lies at the basis of almost all of the Occidental systems of government and has made inroads into the other systems. The British unwritten constitution is the outstanding exception. It is example enough to show that a written constitution is not absolutely essential to a liberal system.

The purpose of a constitution is to determine the structure and machinery of government, to distribute the powers and functions of government, and to provide the necessary organs and officials to give effective motivating power. A written constitution usually contains four or five general provisions. First is an outline of the framework of government. This, in American practice, calls for the establishment of three separate departments: an executive, a bicameral assembly, a court system, and the other common boards and commissions. In the second place a constitution makes provision for both territorial and functional distribution of powers. In the forty-eight American commonwealths this territorial distribution recognizes the existence of national, state, and local units. Functional distribution apportions power among the so-called executive, legislative, and judicial departments. A third field includes articles dealing with such topics as finance, education, corporations, banking, public utilities, monopolies, taxation, and industrial legislation. In the early constitutions such articles were either in embryo or altogether missing. In the last century these articles have increased in length and number because of the growing complexity of economic and social life plus the distrust of the people toward the work of legislatures. A fourth field usually makes provision in regard to the extent of the franchise, the time and manner of holding elections, and to regulate evils in elective machinery and methods. Another part of the constitution usually makes provision for revision or amendment; revision for basic changes and amendment processes for minor alterations. Lastly, and often included among the very first articles of the constitution, is a bill of rights, regarded as necessary to protect individual rights

and liberties. These six general provisions are usually found in the constitutions of every state in the United States.¹³ Today many students of political science have come to place less emphasis upon written constitutions and to attach a greater importance to evolving better methods of securing efficient and more effective machinery and officials. It is very possible that written constitutions may someday be discarded as hindering progress in political evolution. The trend is apparently in this direction but its realization, if it comes into being, would take a long period of political readjustment. At present written constitutions have about as much influence in democracies as the Bible has among some religionists who have a feeling that one should stay close to the "written word."

The development of written constitutions is only the foundation of constitutional origins in the United States. The constitutional convention has been the agency which has made these written documents adaptable to applied political science. A constitutional convention is a body whose primary, if not sole function, is to frame a new organic law for the state or to formulate amendments to the existing constitution. However, its work usually consists of thorough revision of the already existing constitution; minor changes are often made by amendment. Such an assembly, which is an unicameral body, is usually given more than ordinary attention by the electorate. It is often said that its members are better qualified and more concerned in the public welfare than the members of state legislature. Perhaps partisan influences are less active in these than in regular law-making bodies. Among those elected as delegates are lawyers, farmers, professional politicians, journalists, businessmen, and since the nineteenth amendment women have served in this capacity.

Every state constitution, now in operation, was framed by constitutional convention. The constitutional convention is the generally accepted method of revision. In this convention (and contrary to the general trend) it is interesting to note that the first constitution of Indiana provided for change only through the medium of a constitutional convention; the present constitution

does not even mention the calling of a convention although it is generally recognized that such a right exists.¹⁴

The modern practice in constitution making is the result of three fundamental steps.¹⁵ The basic step came with the development of the distinction between constitutional and statutory law as has already been discussed. This distinction was recognized in colonial government and many laws were set aside on the basis. The second step came in the development of the constitutional convention as a body distinct and separate from the legislature. This development came during and immediately after the American Revolution. It was later fostered by both the Jeffersonian Republicans and Jacksonian Democrats. The third and final step came in the adoption of the practice of submitting the work of the convention to the people for approval or rejection. This was a much nearer approach to true representative democracy. With the adoption of this third step, which is generally used, democracy was made more real in affairs of government.

Since 1776 there have been more than two hundred of these conventions or an average of one convention for each state for every generation; that is as far as averages are concerned but some states have had but one and others have had several.¹⁶ According to this schedule Indiana is already long past due a revision in the organic law.¹⁷ There is evidence to warrant a belief that the next two decades will usher in a period of considerable constitutional changes in order to meet the new problems of government, caused to a great extent by the complexities of industrial life. It is important, especially in this age when the state is supreme over other institutions, that the people understand the background of constitution making. It is the state that exerts the strongest power over the people.

This chapter has been included only to serve as a background of constitutional history and has no direct bearing on the immediate circumstances involved in connection with the constitutional convention of 1850-1851.

The Indiana Constitutional Convention of 1850-1851

¹ James Bryce, *Modern Democracies* (New York: McMillan Company, 1921), 2:27.

² William W. Cook, *American Institutions and Their Preservation* (Norwood: Norwood Press, 1927), 21.

³ Charles Grove Haines and Bertha Moser Haines, *Principles and Problems of Government* (New York: Harper & Brothers Publishers, 1921), 189; William F. Willoughby, *The Government of Modern States* (New York: Century Company, 1919), 95.

⁴ Raymond Garfield Gettell, *History of American Political Thought* (New York: Century Company, 1928), 299.

⁵ Claude Halstead Van Tyne, *The Causes of the War of Independence* (Boston: Houghton Mifflin Company, 1922), ch. 2; Frederick Jackson Turner, *The Frontier in American History* (New York: H. Holt and Company, 1920), chs. 1, 9, and 13.

⁶ Edward Channing, *The American Revolution*, vol. 3, *History of the United States, 1761-1789*, (New York: McMillan Company, 1912), 434; Max Farrand, *Fathers of the Constitution* (New Haven: Yale University Press, 1921), 40-41; Van Tyne, *The American Revolution 1776-1783* (New York: Harper & Brothers Publishers, 1905), 137.

⁷ Van Tyne, *War of Independence*, 33-36. Gives typical examples of this struggle.

⁸ The constitution of Rhode Island was exactly like the colonial charter except for a few details and lasted until after the Dorr Rebellion; likewise, the first constitution of Connecticut was based upon the charter and lasted until 1818.

⁹ Frederic Austin Ogg and P. Orman Ray, *Introduction to American Government* (New York: Century Co., 1922), 86; Van Tyne, *The American Revolution*, 145; Gettell, *History of American Political Thought*, 329.

¹⁰ Channing, *The American Revolution*, 431.

¹¹ Ogg and Ray, *Introduction*, 25.

¹² Channing, *The American Revolution*, 434-435.

¹³ Any standard college textbook in political science discusses these provisions more in detail.

¹⁴ Section one, article one, of the constitution says: “. . .the people have, at all times, an inalienable right to alter and reform their government.”

¹⁵ Walter Farleigh Dodd, *Revision and Amendment of State Constitutions* (Baltimore: Johns Hopkins Press, 1910), 30.

¹⁶ Arthur N. Holcombe, *State Governments in the United States* (New York: The MacMillan Company, 1926), 471.

¹⁷ The first constitution of Indiana went into effect in 1816; the second in 1851.