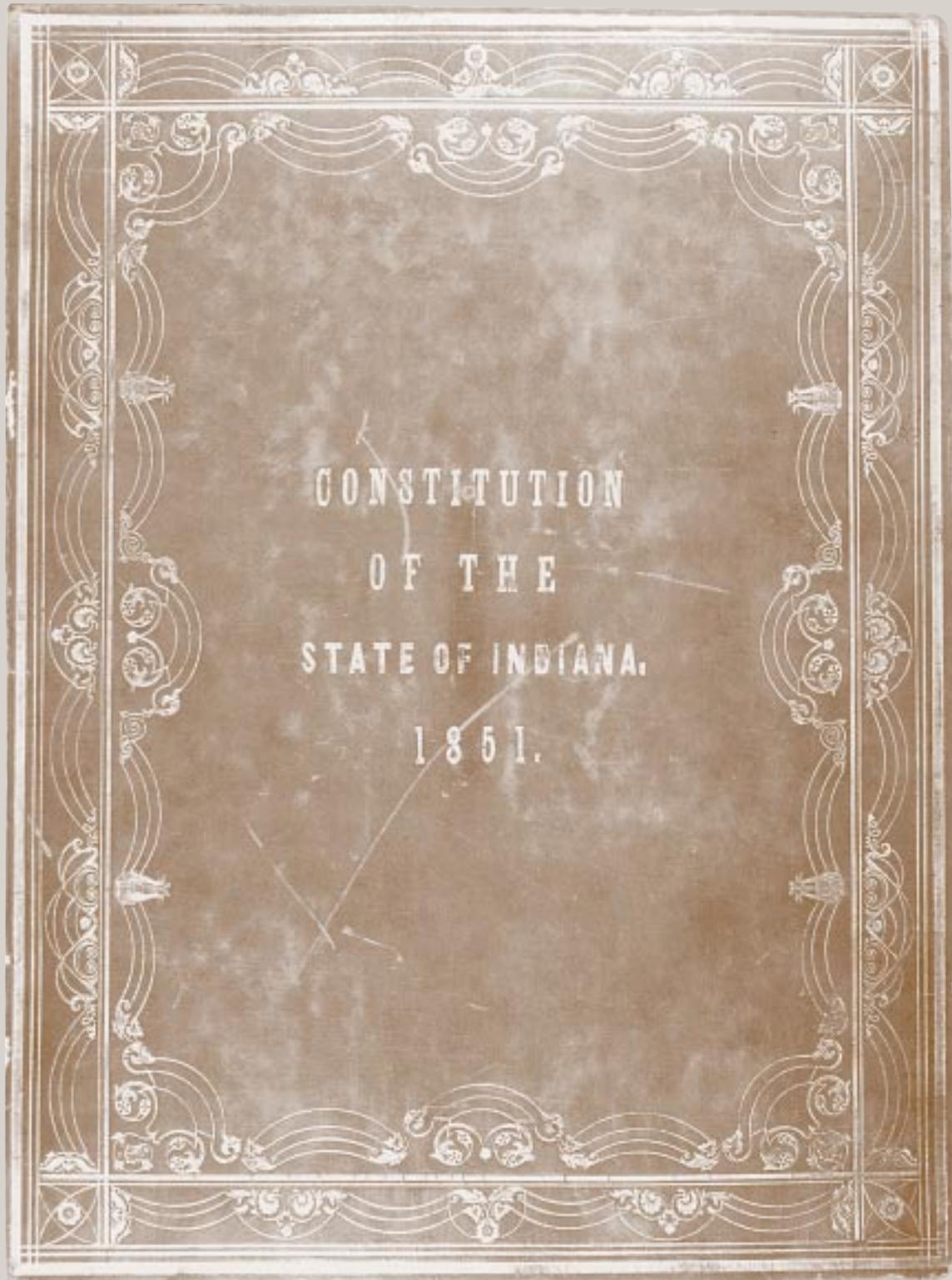


Indiana Constitution

The Indiana Historian

A Magazine Exploring Indiana History



Focus

A conference celebrating the 150th anniversary of Indiana's Constitution was held in November 2001. Speakers at this sesquicentennial celebration noted the renewed interest of the Indiana Supreme Court and Court of Appeals in the Constitution. One speaker emphasized that the Constitution needs "to be in the hearts and minds of every citizen." He noted that the aspirations of the people are in the Constitution and that "every generation moves to achieve those aspirations." He admonished the audience to "spread the conversation."

This issue of *The Indiana Historian*, we hope, will help to fulfill that call. It provides only a brief introduction to an extensive topic, worthy of further investigation.

The articles on pages 3 and 4 explore why and how the voting citizens of Indiana finally called for amendment of the Constitution of 1816.

"The setting of the convention" is the focus on page 5; the organization of the convention is covered on page 6.

An overview of "delegates to the convention" is presented on page 7 in words of one of the members.

On pages 8-9, an excerpt from a contemporary satirical sketch of the convention is presented.

On pages 10-11, the issues of the convention and how the Constitution of 1851 has fared over time are briefly discussed.

A chart on pages 12-14 summarizes the content of the 1851 Constitution and major changes from the 1816 Constitution.

On page 15, there is the usual list of bibliography and resources.

Readers are encouraged to access the Historical Bureau Web site <www.IN.gov/history> for extensive resources related to the 1851 Constitution and convention.

Cover: When the convention adjourned February 10, 1851, the original handwritten constitution was given to the Secretary of State (Barnhart and Carmony, *Century*, 15). The photograph on page 1 shows the leather cover of one of two handwritten versions of the 1851 Constitution located at the Indiana State Archives. Both the 1851 Indiana Constitution and the 1816 Indiana Constitution are displayed in the rotunda of the State House annually during regular sessions of the Indiana General Assembly.

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The Indiana Historian provides resources and models for the study of local history to encourage Indiana's citizens of all ages to become engaged with the history of their communities and the state of Indiana.

The Indiana Historian (formerly *The Indiana Junior Historian*) is issued occasionally. Back issues are available at individual and bulk pricing.

Some back issues of this magazine are available to visually impaired patrons in audio format, courtesy of the Indiana History Project of the Indiana Historical Society. Tapes are available through the Talking Books Program of the Indiana State Library; contact the Talking Books Program, 317-232-3702.

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You be the historian

- Invite a local attorney or judge to speak about the Indiana Constitution and its importance to citizens today.
- Invite your legislators to speak about how the Indiana Constitution governs their actions in the Indiana General Assembly.
- Investigate the Bill of Rights contained in Article I of the Constitution. Compare the rights it provides to Indiana citizens to the rights provided by the U.S. Constitution.
- Use available printed and Internet resources:
 - examine in more detail the changes made from the 1816 Constitution to the 1851 Constitution. Why were changes made or not made in 1851? Both original Constitutions are on the Historical Bureau Web site <www.IN.gov/history>.
 - examine in more detail the changes made to the 1851 Constitution in the last 150 years. See <www.IN.gov/legislative/ic/code/

const>. How do some changes reflect changes in society? Why have other changes been made?

- examine in more detail the convention delegates from your area; check your local historical society or public library for resources. A searchable database of delegates is on the Historical Bureau Web site <www.IN.gov/history>.
- Organize a convention and write a constitution for your classroom or school.
- Using the printed *Debates and Journals* from the 1850-1851 convention, create a reenactment of discussions of issues that remain of interest today. Perhaps have a person of the twenty-first century debate a delegate of the nineteenth century.
- Using materials from the Indiana Close Up program, consider and debate contemporary issues related to the Indiana Constitution.

Calling for a new state constitution

Indiana's 1816 Constitution specified in Article VIII that every twelfth year at the general election for governor, a poll should be taken to determine if electors favored calling a constitutional convention. Although there was much debate, this provision was interpreted to mean that the General Assembly could call for a convention at any time.

There were many attempts to call for a convention. The question of calling a constitutional convention, however, actually was submitted to voters only five times.

In 1823, the question of calling a convention was widely discussed in the popular newspapers of the day. The issues included:

- substituting biennial or triennial sessions for the annual sessions of the Indiana General Assembly;
- authorizing the Governor to call special or emergency sessions of the General Assembly;
- the impeachment of local officials by circuit courts rather than the State Senate;
- giving authority to grant divorce to circuit courts rather than General Assembly; and
- reorganizing the Indiana Supreme Court.

As the chart on this page indicates, voters did not vote in favor of a new state constitution until 1846. The convention was not called, however, since the closeness of the vote indicated that a true public mandate did not yet exist. In addition, there were questions about the validity of the vote, which was small compared to the total votes in the election.

The change in popular opinion reflected in the 1846 vote has been credited to several factors:

- the state's financial disaster as a result of the Internal Improvement Act of 1836;
- increasing support for biennial sessions of the General Assembly and for strict limitations on passage of local and special legislation by that body;

Article VIII, Indiana Constitution of 1816

Sect. 1. Every twelfth year, after this constitution shall have taken effect, at the general election held for Governor there shall be a poll opened, in which the qualified Electors of the State shall express, by vote, whether they are in favour of calling a convention, or not, and if there should be a majority of all the votes given at such an election, in favour of a convention, the Governor shall inform the next General Assembly thereof, whose duty it shall be to provide, by law, for the election of the members to the convention, the number thereof, and the time and place of their meeting; which law shall not be passed unless agreed to by a majority of all the members elected to both branches of the General assembly, and which convention, when met, shall have it in their power to revise, amend, or change the constitution. But, as the holding any part of the human Creation in slavery, or involuntary servitude, can only originate in usurpation and tyranny, no alteration of this constitution shall ever take place so as to introduce slavery or involuntary servitude in this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted.

Source: Kettleborough, 1:111-12

- a desire to end the monopoly of the Second State Bank; and
- the growing popularity of Jacksonian democracy which emphasized individual rights, popular election, restrictions on legislative bodies, and private enterprise.

Popular interest and demand for a constitutional convention continued to grow. When the Indiana General Assembly of 1848-1849 assembled, Governor James Whitcomb recommended calling a constitutional convention to address several important issues:

- uncontrolled growth of local and special legislation that the General Assembly was forced to deal with;
- biennial rather than annual sessions of the General Assembly; and
- prohibition of public debt.

The General Assembly responded with appropriate legislation calling for another constitutional referendum. Governor Paris C. Dunning signed the act on January 15, 1849. On August 6, 1849, voters favored the referendum by an indisputable majority.

On December 4, 1849, Governor

Dunning addressed the General Assembly and called for legislation to implement the people's will.

Sources: Carmony, *Pioneer Era*, 405; Kettleborough, 1:xxxv, xlii, li, lxiii-lxxii, lxxiii, lxxv-lxxvii, 111.

State population and votes in referenda to call for a constitutional convention

Year	population	in favor	opposed
1810	24,520		
1820	147,178		
1823		2,601	11,991
1828		10,092	18,633
1830	343,031		
1840	685,866	12,666	62,714
1846		32,468	27,123
1849		81,500	57,418
1850	988,416		

Sources: Kettleborough, 1:lii, lvii, lxi, lxvi, lxxvi; Madison, *Indiana Way*, 325-26

Calling the convention



Indiana Historical Bureau.

Paris Chipman Dunning was elected lieutenant governor in 1846 and became governor in December 1848 when Governor James Whitcomb was elected to the U.S. Senate. On December 4, 1849, Dunning addressed the Indiana General Assembly calling for legislation to determine the process for calling a constitutional convention. (Barnhart and Carmony, Indiana, 1:406; Kettleborough, 1:1xxvii)

On January 18, 1850, the Indiana General Assembly approved an act, which outlined the process for calling for a constitutional convention. The act contained seventeen sections; the major points are summarized below.

Election to be held first Monday in August next [August 6, 1850, the day of the general election]

- Number of delegates equals number of members of General Assembly
- Voters (white males, at least 21 years old, living in Indiana for one year) eligible to be elected delegate

Tally of votes

- Election of delegates shall be held the same as for General Assembly
- Board of county canvassers in each county counts votes and declares winners
- Clerk of circuit court makes certificate of election for each delegate; Sheriff delivers them to elected delegates
- Clerk mails certified list of names of delegates to Secretary of State

Delegates shall report to Indianapolis on first Monday in October [7th]

- Same day, delegates elect a president and all officers needed
- Secretary of State receives credentials of delegates
- Immediately after General Assembly adjourns, State Librarian gets Hall of House of Representatives ready for convention

Delegates shall be duly sworn to uphold the Constitution of the U.S.

- Delegates have same rights and privileges as General Assembly and are allowed to use books in State Library
- Members get \$3.00 a day while actually attending convention
- Members get same compensation for travel as members of General Assembly
- Stenographer shall be appointed by Governor to report debates

Secretary of State shall provide convention all papers, statistics, records and public documents, etc. requested by convention

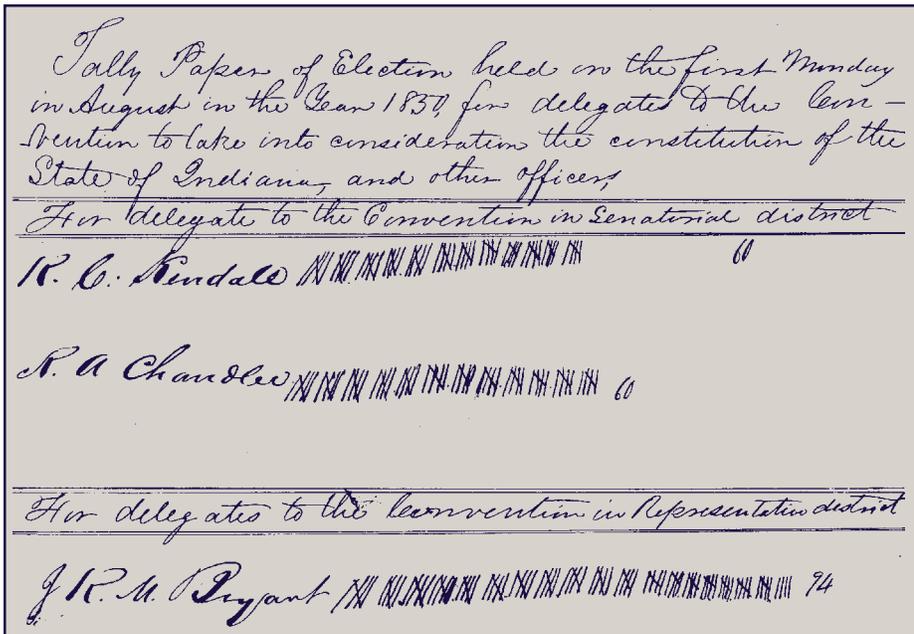
- Stationery shall be provided convention same as for General Assembly
- President and Secretary of convention give draft of amended Constitution to Secretary of State
- Secretary of State enters Constitution in files, records in his office, and delivers certified copy to Governor, who takes to General Assembly; General Assembly passes all laws necessary to submit it to voters for approval or rejection, and to organize government if ratified.

3,000 copies of this act with appendix, (calling for a convention) shall be printed

- Secretary of State mails not less than 20 and no more than 30 copies to each county clerk
- Sheriff of county delivers one or more copies to each inspector of elections
- Sheriff gives notice of election same as election of General Assembly

On January 19, 1850, the Indiana General Assembly passed an appropriations bill allowing \$40,000 to defray the costs of the convention.

Sources: Kettleborough, 1:1xxvii-1xxix, 202-7, 209.



Indiana State Library, Indiana Division.

Shown above is part of a tally paper listing the results of voting for delegates to the constitutional convention. This particular election took place somewhere in Warren County. James R. M. Bryant was elected as the representative delegate from Warren County and Robert C. Kendall was elected as the senatorial delegate representing Warren, Benton, White, and Jasper counties. (Kettleborough, 2:639-41; Walsh, 749, 750)

The setting of the convention

Indianapolis in the Mid-1800s

When the delegates came to Indianapolis in October 1850, they saw a city of contradictions. It was small, surrounded by forests with primitive roads and streets, and yet it was a bustling community with businesses, hotels, churches, and schools. The people were active socially and politically.

W. R. Holloway provides a description of the city in the late 1840s: "Stumps and mud-holes were ugly disfigurements of the streets . . . Side-walks were not common off Washington Street, and elsewhere were merely strips of gravel with depths of mud on either hand. Large spaces of open ground, or common, could be seen in all directions covered by 'dog-fennel' of luxuriant growth . . . In any proper sense we had no streets. They were merely openings which might be used or not, as the weather made them impassable mud or insufferable dust. The town was gathered in a loose way, in the center of the donation, huddled pretty closely together for four or five streets, divided by Market Street, and sprangling off in clumps of settlement at other points, while much of the 'donation' outside of the original plat was pretty good

hunting ground for quails and squirrels." (William R. Holloway, *Indianapolis: A Historical and Statistical Sketch* [Indianapolis, 1870], 85)

Growing up in 1850s Indianapolis

John H. Holliday was a child in Indianapolis during the 1850s. He later wrote this description: "Let it be understood that I write as an artist must paint—as I saw it. It was a great place to be born in and a good place to live in. . . . Its people were homogeneous, holding and striving for high standards and exhibiting the best traits engendered in a simple democracy. . . . The community was small . . . Almost every one owned their own houses with more or less ground in which there was usually a garden and fruit trees that contributed to the family living, assisted often by the ownership of a cow, a pig and chickens . . . It was a working

community and the work was often hard and long. Stores were opened by 6 o'clock generally, sometimes before . . . Factories and mechanics began work at seven and quit at six . . . Doctors, lawyers and public officials were at work early and the banks ran from eight to four . . . The town was large enough to have advantages over small ones or villages, but not large enough to forbid contact with the country and rural life. There were plenty of good swimming holes . . . in Fall Creek and Pogue's Run . . . The town was surrounded by woods that afforded plenty of opportunities for hunting rabbits, squirrels and birds . . . In the winter there was ice on the streams and as few streets were improved there were many ponds all over the town where the boys could slide and skate." (Jacob P. Dunn, *Greater Indianapolis, 2 vols.* [Chicago, 1910], 1:196-200)

Newspaper advertisements from
State Sentinel,
October 31, 1850 and
November 14, 1850.

 <p>DR. P. G. C. HUNT, RESIDENT DENTIST, INDIANAPOLIS, INDIANA. <i>Office on Market street, opposite the 2d Presbyterian Church.</i></p>	
<p>J. K. SHARPE, DEALER IN LEATHER, OIL, AND SHOE FINDINGS, <i>Opposite the Branch Bank,</i> INDIANAPOLIS. ALSO: Carriers' Tools, Patent Leather, Morocco, Shoe Thread, Boot Web, &c.</p>	
D. CRAIGHEAD.	E. BROWNING.
<p>CRAIGHEAD & BROWNING, Dealers in all kinds of Drugs, Medicines, Surgical Instruments, Paints, Oils, Chemicals, Varnishes, Dye-Stuffs, Glassware, Win- dow Glass, Brushes, Cosmetics, Spices, Cigars, Tobacco, Perfumery, &c. &c. <i>Washington street, Indianapolis, Indiana.</i></p>	
THOS. A. ROSS.	CHAS. A. RAY.
<p>ROSS & RAY, Wholesale and Retail Dealers in Books and Stationery, Periodicals and Paper Hangings <i>One Door West of Browning's Hotel.</i></p>	
<p>NEW PUBLICATIONS RECEIVED BY EXPRESS.</p>	
M. SEATON.	G. C. HOLMAN.
<p>SEATON & HOLMAN, Wholesale and Retail Dealers in Staple and Fancy Dry Goods, Groceries, Boots, Shoes, Hats, Caps, Carpets, &c. <i>No. 6, Washington Street,</i> INDIANAPOLIS.</p>	

Indianapolis to Buffalo in Fifty-Eight Hours, and Logansport to Buffalo in Forty-Two Hours.

THE WESTERN STAGE COMPANY are running Four-Horse Coaches daily between Logansport, Ind., and Niles, Mich., leaving Logansport at 7 1/2 A. M., and arriving at Niles at 11 P. M., same day, connecting with the 12 o'clock train to Detroit, and continuing on to Buffalo, in best class boats, without detention. This line will be run, in the best style, in new Troy Coaches, and passengers may rely upon arriving at Detroit, Buffalo, and New York without delay.

Through Tickets can be secured at the Stage Offices in INDIANAPOLIS, LOGANSPORT, and LAFAYETTE.

N. B. Extras furnished at all times. July 27—Em-weow

LITTLE'S HOTEL.

M. & I. LITTLE have the pleasure to announce to the traveling public and members of the Constitutional Convention, in particular, that their New Building on Washington street, in the Eastern part of the city of Indianapolis, is now entirely completed, containing, in addition to their former Hotel, which was capable of containing a large crowd, a large number of its good rooms, particularly adapted to members of the Convention, as ever found in the city.

They flatter themselves that no one who favors them with their custom will go away disappointed, as they intend to make their business permanent by further additions next season. They invite members of the Convention to give them a call and see their rooms.

Indianapolis, Sept. 28, 1850.—tr.

Organizing the convention

At 10:00 a.m., October 7, 1850, elected delegates of the constitutional convention met in the Hall of the House of Representatives in the State Capitol in Indianapolis. Charles H. Test, Indiana Secretary of State, called the convention to order.

After the delegates swore an oath to uphold the U.S. Constitution and perform their duties to the best of their abilities, Secretary Test announced the convention ready to proceed to the business of organization.

George W. Carr, Lawrence County, was elected president, and William H. English, Scott County (not an elected delegate to the convention), was elected principal secretary of the convention. Three assistant secretaries were also elected by delegates; doorkeepers and sergeants-at-arms were appointed.

A committee was appointed to find larger, more convenient quarters for the convention.

Some discussion occurred concerning the employment of a stenographer to record the debates of the convention. Milton Gregg, Jefferson County, expressed his belief that the entire population of the state would agree with him that “the employment of a Stonographer [sic] here is as a useless expenditure of money and the publication of the debates of the Convention in an embodied form, as the consummation of human folly.” Robert Dale Owen, Posey County, replied: “I know of no State in which a Convention has recently been held, which has not provided for the reporting of their debates; and I doubt very much whether any publication will be read with more interest by the people of the State than the reports of our debates. It cannot be denied that they will be eminently useful, as a commentary on the Constitution which we are about to form.”

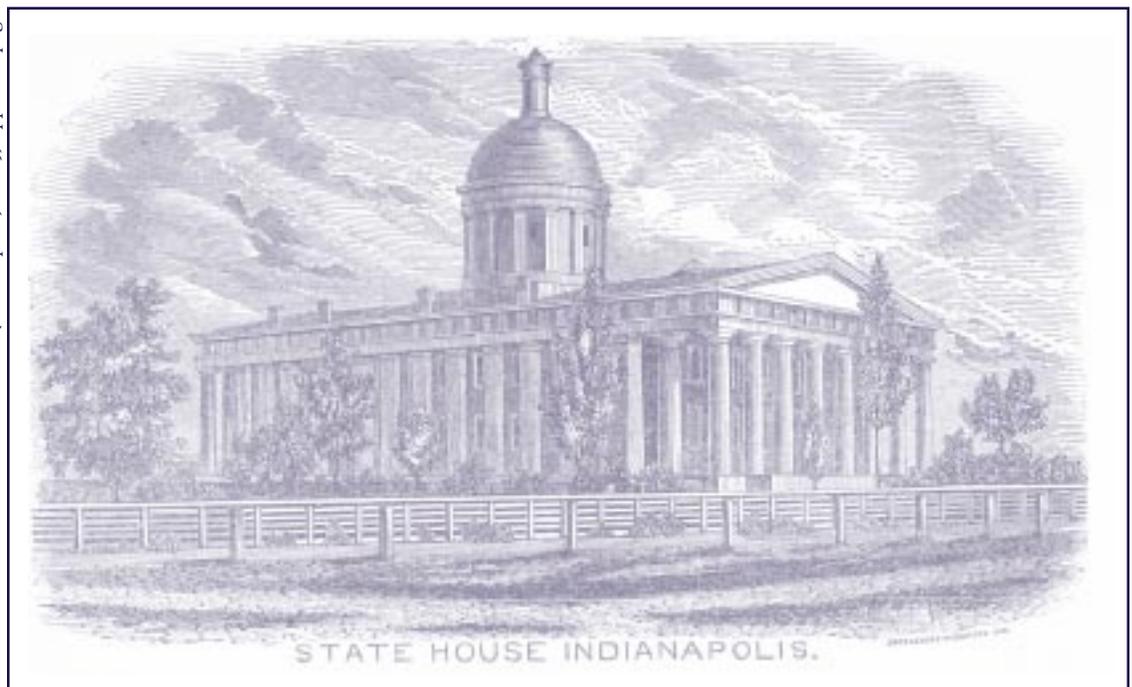
It was decided to record the debates. Later that same day, the convention directed the State Librarian to procure copies of the debates or journals of the constitutional conventions of New York, Kentucky, and Wisconsin.

By October 14, a plan had been adopted creating twenty-two standing committees to consider and draft sections of the new Constitution, and members had been assigned. Also on that day, rules of order for the government of the convention proceedings were approved.

The real business of the convention began in earnest.

Sources: *Journal of Convention*, 3-4, 21-25, 52-58; *Report of Debates*, 1:30, 31-32, 41, 59-62.

The Indiana Gazetteer (Indianapolis, 1850), opp. title page.



This State Capitol, located on the site of the present capitol building, was completed in 1835. Delegates to the constitutional convention met in the Hall of the House of Representatives in this building from October 7 until December 25, 1850. The opening of the session of the General Assembly forced the convention to move to the Masonic Hall. (Report of Debates, 2:1226, 1311, 1312; Indiana's State House [Indianapolis, 2000], 6; Kettleborough, 1:lxvix)

The delegates to the convention

[Schuyler Colfax, South Bend, an elected delegate to the convention, was a newspaper editor; his columns about the convention appeared frequently in his paper. A original copy of the broadside referred to in this excerpt from one of his columns is in the Indiana State Library.

**Excerpt from
St. Joseph's Valley Register
October 24, 1850**

Indianapolis, Oct. 18, 1850

The list of members of the Convention, with their ages occupation, place of nativity, &c., has been printed and appeared in the Hall yesterday. Some of its statistics may be considered worth reading, and I have therefore made a schedule of the principal points for the readers of the Register.

Kentucky is the birth place of more of the Delegates than any other State, and Virginia comes next. Nearly one third of the members were born in these two States.—The list stands Kentucky 23, Virginia 20, Pennsylvania 19, New York 16, Ohio 16, Indiana 12, North Carolina 10, Tennessee 7, Maryland 7, Massachusetts 4, South Carolina 4 . . . Ireland 3 . . . Scotland 3 . . . Connecticut 2 . . . N. Hampshire 1 . . . Vermont 1 . . . Delaware 1 . . . New Jersey 1 . . . This shows that 72 Delegates were born in the Free States, 72 in the Slave States, and 6 in foreign lands.

The occupations are as follows: farmers 63, lawyers 37, physicians 18, merchants 10, printers 5, manufacturers 2, surveyor 2, accountant 1 . . . tanner 1 . . . joiner 1, millwright 1, teacher 1 . . . professor 1 . . . clerk of county 1 . . . recorder 1 . . . bricklayer 1 . . . miller 1 . . . banker 1 . . .

The Delegates who have been longest in the State are Mooney of Jackson,

who has lived in Indiana 44 years, and is 46 years old, Newman of Wayne, a resident 43 years, and is 45 years old, and G. W. Carr, the President, who was born in the State and is 43 years old . . . The Delegate who has lived the shortest time in the State is Col. Taylor of Michigan City, who has resided in Indiana but 4 years. . . .

The married Delegates number 137, the single ones 10, 3 not stated on list. . . .

As regards age, 12 are under 30. . . . From 30 to 40 years of age, there are 42 Delegates; from 40 to 50, 57 Delegates; from 50 to 60, 24 Delegates, and over 60 the following [6]

The convention, yesterday by a large vote, elected Austin H. Brown, the publisher of the Sentinel, as their printer. . . . S. C. [Schuyler Colfax]

The Locomotive, November 16, 1850.

The Cholera has again made its appearance in our midst, but as it was brought here by a man from Kentucky, and as all the cases have been confined to the house in which he stopped, there is no fear entertained of its spread.

The man that brought it arrived on Thursday evening, and died on Thursday night, at 2 o'clock. A colored barber, named Johnson, who waited on him, took it and died at his house on Monday, and Mr. J. Van Benthuyzen, the Delegate to the Convention from Shelby county, aged 72 years, the oldest delegate, took it on Sunday and died on Wednesday night. His remains were taken to Shelby county on Thursday.

These are all the deaths—it was reported that S. Colley had it, but we believe without foundation, as he is now able to be about. It was also reported that S. McKenzie, Sergeant at Arms to the Convention has it—he is recovering, and as he has been troubled with the diarrhea more or less, ever since he was in Mexico, it is more than likely that that was his complaint.

These are all the cases, and all the facts that we can learn, and we think no fear need be entertained of its spread, especially as there are no symptoms whatever in the community generally.

Messrs. M. & I. Little, at whose house it appeared, have refused to accommodate any travellers until all signs of the disease, and all chances of its contagion have been removed.

Cholera epidemics swept through Indiana and much of the rest of the U.S. in 1832, 1833, 1834, 1849, and 1854.

The morning after delegate James Van Benthuyzen's death, the convention assembled, and Mr. Richey rose and made the announcement. The committee formed to make arrangements recommended "that the members will testify their respect for the memory of the deceased by wearing the usual badge of mourning for thirty days." (Report of Debates, 1:491-93; Public Health in Indiana, Indiana Historical Society Publications, Vol. 7, No. 6 [1923], 276-77, 284, 290)

A satirical sketch of the convention

[This brief excerpt from *The Locomotive*, an Indianapolis periodical, was written by Berry R. Sulgrove (1828-1890) under the pseudonym Timothy Tugmutton. The description of the convention activities is satirical. It is designed to make the readers laugh by poking fun at people and actions regardless of the serious purposes of the convention. The complete article is on the Historical Bureau Web site.

Sulgrove was an Indianapolis lawyer who wrote often for newspapers. He headed the editorial department of the Indianapolis *Journal* 1855-1863. During the Civil War, he was private secretary to Governor Oliver P. Morton.

Source: *R.E. Banta, comp., Indiana Authors and their Books, 1816-1916* (Crawfordsville, 1949), 309.

***The Locomotive*, February 1, 8, 1851**

[February 1, 1851]

.....
An occasional attendant during the session has heard some good speeches, learned something of the intellectual

resources of the state, and the position, talents, and influence of many of the members; but as the knowledge must have been purchased at the expense of enduring very many very bad speeches, many uninteresting proceedings, and the calling of innumerable lists of ayes and noes The first time the visitor will learn who the most prominent men are, and how they look

Then, reader, let us go down to the Masonic Hall As it approaches 9 o'clock, we see the members singly, and in squads of from three to a dozen, going too—some talking very confidentially, with their heads so close together that their cigars knock the ashes off each other—others talking quite loud, especially if they think they are saying anything smart

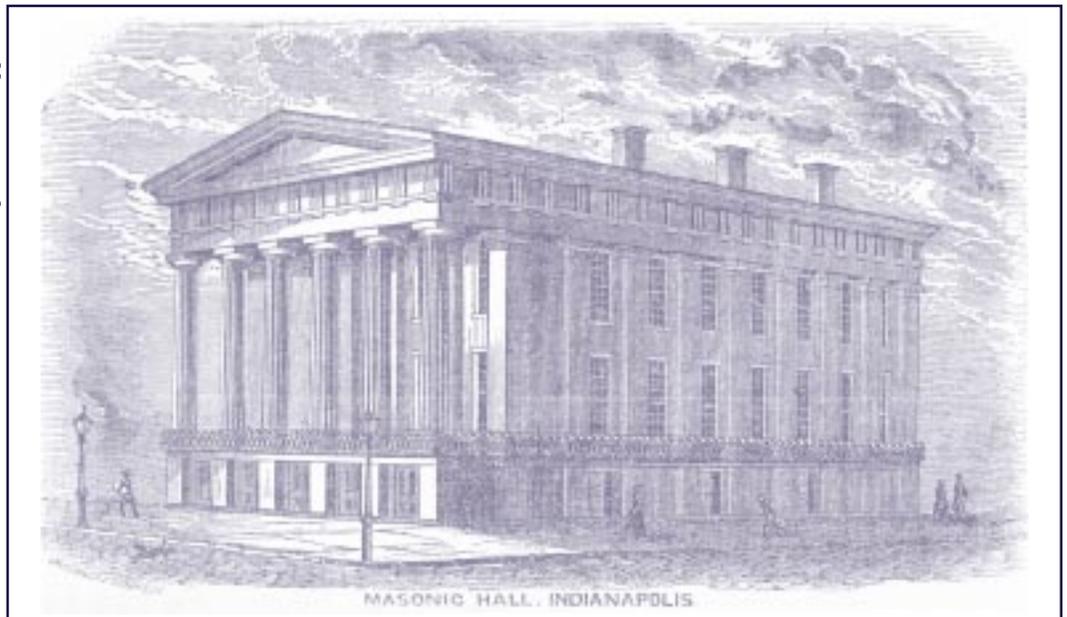
. . . After some jostling we get inside without material damage, and may now look around a little. . . .

The Convention is not called to order yet, and the members are standing about in knots talking, or sitting around the stoves smoking. In that group a little down from the door, towards the president's stand, you notice a tall man, with a blue cloak, gold spectacles, eyes that look as though they might have been blue once but had faded to no color in particular, and a very large mouth . . . that is Prof. Read, of Bloomington, a good speaker, and one of the best scholars in the State. . . .

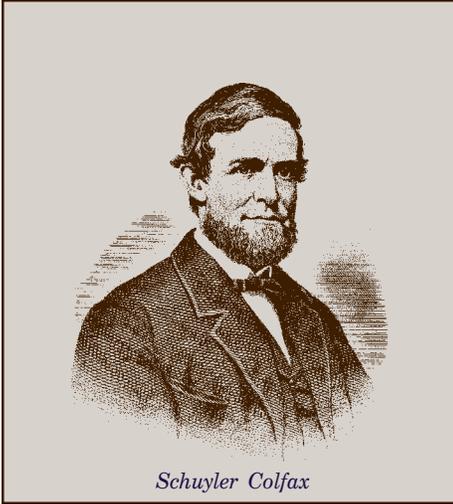
But the President is hammering for order, and being now a little less noisy than before, one of our clergymen opens the session with prayer. . . .

Listen to the preacher, he is praying the Almighty to induce the people to adopt the constitution the Convention may give them—an odd sort of a petition, but offered up probably under the apprehension that nothing short of

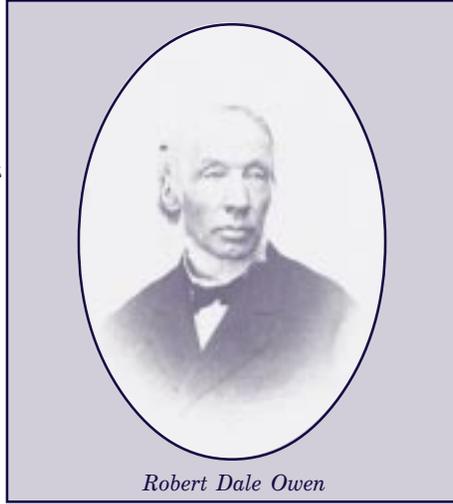
The Indiana Gazetteer (*Indianapolis, 1850*), opp. 329.



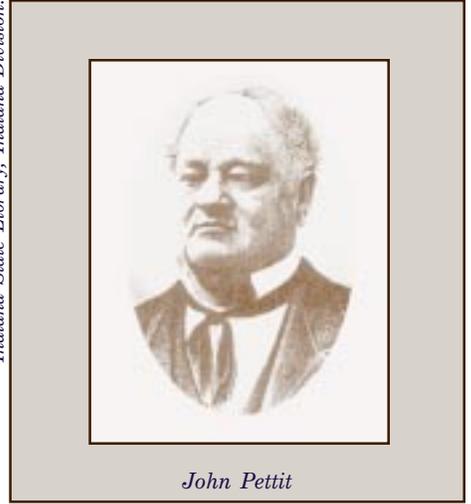
The Masonic Hall was completed in the spring of 1850 and became the venue for public entertainment in Indianapolis. Timothy Tugmutton described this hall: "The chandeliers, you observe, these three big dark green things, like great dropsical spiders, swinging by gigantic cobwebs from the ceiling—are too clumsy, too low down, and really disfigure the Hall. Those red settees, and cross-legged poplar tables, like foldup cots, only not so clean, arranged with aisles between, for the convenience of approach, and whittled and inked all over like school-boys desks, are the member's seats, and stands—where the members write if they happen to be taken industrious. . . . Those seats along the east wall are often full of ladies, when the Convention is in session, and it then looks like an oblong dirty apron, with a bright border down one side." (*The Locomotive*, February 1, 1851; Berry R. Sulgrove, *History of Indianapolis and Marion County, Indiana* [Philadelphia, 1884], 256)



Schuyler Colfax



Robert Dale Owen



John Pettit

a special interposition of Providence will effect that result. Prayers over, the Clerk begins reading the journal of yesterday, but as nobody listens to it, we will take a look among the members while he is at it.

You see that short, fat man walking up the aisle towards us, with spectacles, a cane in his hand, and his hair frizzled up all around a bald place on the top of his head, that looks like a miniature prairie surrounded by bushes, with a slight limp in one leg, and a strong squint in one eye, dressed in black, and a very keen sagacious looking man at a close view,—that is John Pettit . . . an earnest, energetic speaker. As he passes along he nods to a man sitting next to the aisle, with a light blue overcoat on, and dark blue breeches—his hair sprinkled with gray, and gray whiskers; his chin retreating as though it were afraid of the thick lips that protrude above it—gray eyes that appear to have been scared half out of his head, and forgot to go back, and a nose . . . of an order of architecture that might be denominated the “shovel plough!” His hair is combed very smoothly down in front, and badly tangled up behind. But over all this rough casting, there is a mild, benevolent expression, that half redeems the plainness of the features on which it rests, and Nature, to compensate for her carelessness in carving his face, has given him an

intellect worth a regiment of pretty faces—that is Robert Dale Owen, by all odds, the ugliest man in the Convention. In speaking, Mr. Owen is constantly in motion, turning to all parts of the house, and jumping about in a manner very incompatible with the maintenance of any great degree of dignity,—strongly reminding one of a jaybird.

.....

You will notice that quite a number of the members appear to be very young, a thing we would be unlikely to expect in such a body. But some of them are talented, influential men, while others are no better than boys generally of the same age. That pale, stoop shouldered young man, with very little beard . . . is Mr. Colfax, one of the former class. . . . But as they are beginning to call the ayes and noes, in which, by the way, one fourth of the time is consumed, and it is very dull work, we will leave . . .

[February 8, 1851]

.....

When we came away we left the Secretary calling the ayes and noes . . .

We take a seat at the back end of the Hall, among the apple boys . . .

.....

. . . you see a rather small man rising to the right of the President . . .

that is Mr. Badger, who has made himself somewhat famous by his determined uncompromising hostility to “women’s rights”

That . . . is Mr. Cole of Noblesville, an excellent man, of clear, good sense, and sound judgment, remarkable for not having made a single speech in the Convention—a rather unaccountable eccentricity, that if imitated by about one hundred and forty other members, would increase the popularity and efficiency of that body materially.

You have heard of Judge Borden, of course,—well, now, you will hear himself. He is standing to the left of the President He is saying now, that he don’t expect to address the Convention again during the session, whereat, the members rejoice uproariously, and cry “consent”

That tall, slim young man walking backwards and forwards across the house, with a large head of hair, and a look of discomfort, like he had got into the Convention by mistake, and didn’t know how to get out; and felt like a live eel in a sand wagon, rather out of his element, is Mr. Hovey, a man of no great force, rather combative, and fond of Roman history

.....

We won’t have a chance to go again . . . but we have gone twice, which we took for granted the limit of visitation—and the Convention will adjourn (“mirabile dictu”) before we can go again

The new Constitution

The Indiana Constitution of 1851 was formed from the various sections of the 1816 Constitution, provisions of constitutions of other states (especially Illinois and Wisconsin), resolutions submitted by members on their own or at the request of constituents (a total of 333 resolutions were offered), and recommendations of committee members and other delegates.

The constitutional convention met for the last time at 6:00 a.m., Monday, February 10, 1851. The completed Constitution was read. President Carr gave his farewell address. The convention ordered 50,000 copies of the new Constitution printed in English and 5,000 printed in German. Seventy-nine members of the convention were present. The convention had been in session for 127 days at a cost of \$88,280.

Some of the Issues

“There was never any question that the Convention would provide for biennial sessions of the legislature instead of annual sessions, or that it would do away with legislative divorces, elections and impeachments, or that it would abolish local legislation and associate judges, or several other things that had been complained of for years.

Delegates took little time to agree that more state officials should be elected by the voters rather than appointed by the General Assembly. State support for free public elementary education passed with little debate. The state was prohibited from contracting any public debt except to meet casual deficits in revenue, pay interest on state debt, repel invasion, suppress insurrection, or provide for public defense.

A much longer and more complex debate developed about banking in Indiana. Delegates eventually compromised by giving the General Assembly

Property rights for women

“No subject of greater importance than that to which they refer has come up, since we met here. No subject of greater importance will engage our attention, till we close our labors and go hence, As in estimation next to the right of enjoying life and liberty, our Constitution enumerates the right of acquiring, possessing, protecting property. And these sections refer to the latter right, heretofore declared to be natural, inherent, inalienable, yet virtually withheld from one-half the citizens of our State.”
Source: Robert Dale Owen, *Report of Debates*, 1:462

“If we establish the principle that the pecuniary interest of women is separate and distinct from that of men, we should establish also their right of representation, and their right of suffrage: it would be but just, that their separate interest should be represented. Let us look but for a moment at this position. When it concerns the election of a Legislative Assembly, we give the right of voting only to those who have the confidence of the people for exercising it.

The choice made by persons who have not the confidence of the people would weaken their confidence in the Legislative Assembly.

The necessary degree of political knowledge cannot be presumed to exist in women, who, by their domestic duties, are led away from the consideration of the affairs of the State and the affairs of the nation.

The natural employment of women in all ages and in all stages of civilization, is of that peaceful, affectionate, and domestic character—that necessarily limits their knowledge in matters of civil government.”
Source: W. R. Haddon, *Report of Debates*, 1:469

the discretion to do whatever it pleased—establish free banking, or a state bank with branches, or both of the former, or none of the above.

Property rights for women

Another issue that consumed much time and elicited emotional opinions was that of giving married women the right to their own personal property. Robert Dale Owen, chairman of the Standing Committee on the Rights and Privileges of Inhabitants of the State introduced a section to secure such rights to Indiana married women.

The issue of women’s property rights came before the convention four different times. Three times a provision was adopted and later recalled and eliminated. Owen’s efforts did set the

stage for legislative action in 1853.

Negroes and Mulattoes

A full range of Hoosier attitudes towards Negroes and Mulattoes also prompted lengthy, heated debates about their immigration to Indiana.

No delegates favored full equality for Negroes and Mulattoes, and Article XIII of the new Constitution (prohibiting their immigration to Indiana) was approved by the convention by a vote of 93 to 40. The convention also agreed that Article XIII should be voted on separate from the rest of the Constitution.

Approval of Constitution

A few days before adjournment, the Convention set November 1, 1851 as the effective date for the new Constitu-

tion, if adopted by the voters.

On August 4, 1851, voters overwhelmingly approved the new Constitution—113,230 in favor and 27,638 against. Voters were even more approving of Article XIII prohibiting Negroes and Mulattoes from immigrating to Indiana—113,828 in favor and 21,873 against.

The test of time

Citizens began campaigning for changes to the Constitution almost immediately following its adoption. Voting issues and common schools were the most pressing concerns in the 1850s. In the general election of October 11, 1859, a proposal calling for a new constitutional convention was defeated overwhelmingly.

The first amendment to the Constitution ratified by voters and adopted in 1873, prohibited the General Assembly from assuming any liability connected with the Wabash and Erie Canal. In 1881, a group of amendments was adopted which among other things struck out the clauses banning black residence and voting, bringing Indiana into conformity with the U.S. Constitution.

Frustrated with the complex amendment process for the Constitution, Governor Thomas Marshall, in 1911, persuaded the Indiana General Assembly to adopt and submit to the people an entirely new constitution. However, in July 1912, a Marion County Circuit Court judge granted an injunction preventing the referendum. The Indiana Supreme Court upheld the lower court's decision, and Governor Marshall withdrew the proposal.

In 1913, the Indiana General Assembly adopted twenty-two amendments named after sponsor Senator Evan Stotsenburg of New Albany which copied much of the Marshall constitution. At its next session, however, the General Assembly failed to pass the Stotsenburg amendments. In 1914, voters defeated a call for a constitutional convention. In a special election

in September 1921, voters ratified an amendment granting women the right to vote.

A 2001 study of the Constitution of 1851 provides some interesting data. From 1932 to 1968, voters approved thirteen amendments. In 1935, the Indiana Supreme Court reversed its long-held opinion on what constituted a majority of votes on a constitutional referendum, making the amendment process somewhat easier.

In 1966, an amendment was adopted allowing more than one amendment to be considered during the amendment process. In 1967, the Indiana Constitutional Revision Commission began a comprehensive review of the Constitution resulting in several recommendations. Twenty-one amendments have been ratified since 1970.

Today the Constitution of 1851—as amended—continues to serve as the foundation of Indiana's government. It is the eighth oldest state constitution; it is one of the shortest in length (10,230 words); and it is one of the least modified. In recent years, the Indiana Supreme Court and Court of Appeals have placed increasing emphasis on the importance and meaning of Indiana's Constitution for its citizens.

Sources: Barnhart and Carmony, *Century*, 11-12; Carmony, *Pioneer Era*, 429-30, 436-39, 449, 450; Dunn, *Indiana and Indianans*, 1:443, 444, 496; Kettleborough, 1:clxxv, ccii, 221, 352, 410, 2:3; Madison, *Indiana through Tradition*, 36; McDowell, 26-29; Philips, 18, 110-13, 120; Thornbrough, 67.

Immigration of Negroes and Mulattoes

The Indianapolis *Indiana State Sentinel* on November 28, 1850 printed the following viewpoint "A proposition is before the Convention, now in session, to prevent their [Black and Mulatto] further emigration into this State, and to prohibit their acquiring or holding real estate in future. This is the sentiment of our people, and we trust that some such measure will be inserted in our Constitution, and we shall be pleased to see a separate vote of the people for this provision. . . ."

Source: as quoted in Thornbrough, 65

Schuyler Colfax provided an eloquent minority viewpoint: "The slave States drive the free negroes from their borders, and the free States declare they shall not come within their limits. Where shall the negro go? He has not the means to transport himself to his native land, or rather the land of his ancestors, whence, Mr. President, let us remember—we *must* remember—he came not of his own will. The lust and avarice of the white man stole them from their homes, herded them in the slave factories, doomed them to the horrors of the 'middle passage,' and landed them on our shores to live the bondman's life of unrequited toil. He was dragged from his home, and now by the accidents of life a portion of the race find themselves free but ordered off the earth by constitutional provisions, like the one now before this Convention. Where shall the negro go? Into the Ohio river!

. . . Let us not adopt such measures as we shall hate to look back upon, from the future; such provisions as we shall burn with shame to see inscribed on the first page of our organic law. Let us do equal and exact justice, regardless of creed, race, or color. If we value liberty let us not step beyond the Declaration of Independence and declare its sublime truths a living lie."

Source: *Report of Debates*, 1:458

The 1851 Constitution

On February 8, 1851, Robert Dale Owen reported for the select committee an address "To the People of Indiana," summarizing major changes in the proposed Constitution, "as may aid in securing its adoption." The convention concurred in the document, which was then made available throughout the state. The address points out that the voters of Indiana "alone can give it vitality" by voting in favor of the Constitution. The address closes with a justification for the length of the convention: "the deliberations of a numerous body necessarily proceed slowly; and it would have been a culpable violation of duty, for the sake of

ephemeral popularity, hastily, or without the fullest and most deliberate consideration, to pass upon great questions, involving the dearest rights and most vital interests, not of the present generation alone, but of others that are to succeed." Information and quotations in the column of the chart labeled "Major changes from 1816 Constitution" are from this address. On August 4, 1851, the electors accepted the Constitution by a vote of 113,230 to 27,638. The Constitution took effect on November 1, 1851. Sources: *Journal of Convention*, 963, 971, 972; Kettleborough 1:295-368; 2:3, 617-18.

Article	1851 Subject and later changes	Major changes from 1816 Constitution
<p>I Bill of Rights</p>	<p>Rights of conscience, free speech, due process of law, trial by jury, bail, habeas corpus, assembly, right to bear arms, emigration; freedom of religion, separation of church and state, no unreasonable search or seizure, compensation assessed and tendered before property taken, equality of all citizens, no ex post facto law, rule of law, civilian over military, no slavery or indenture. In 1984, in several sections masculine references ("men") were changed to gender neutral ("people") and in Section 37 reference to "indenture," "Negro," and "Mulatto" were removed. In 1996, rights of victims added to rights of accused.</p>	<p>Separation of church and state: that no person can be rejected as a witness due to his religious beliefs; compensation for property that is taken shall be "first assessed and tendered"; debtor shall be left with a reasonable amount of property; legislature may "continue, modify or abolish the Grand Jury System"; right of trial by jury for all civil and criminal cases; no citizen or class of citizens shall be granted special privileges or immunities by the General Assembly.</p>
<p>II Suffrage and Election</p>	<p>Free elections, defined voting requirements - every white male citizen 21 years and over and male noncitizens; specifically prohibited Negroes and mulattos from voting; and specified the day of election. In 1881, eliminated race as a voting qualification and changed election day to first Tuesday after first Monday in November; in 1921, eliminated gender as a voting qualification and disfranchised noncitizens; in 1976, lowered voting age.</p>	<p>Foreigners who meet certain requirements can vote: "This liberal provision will undoubtedly tend to increase the wealth and population of our State, by attracting emigrants towards it"; certain postmasters may be elected to the legislature and in some counties, several offices may be held by the same person; "No one who gives or accepts a challenge, or carries to another a challenge, to fight a duel, shall be eligible to any office of trust or profit."</p>
<p>III Distribution of Powers</p>	<p>Powers of the government are divided into three separate departments; the Legislative, the Executive, and the Judicial - same as in 1816 Constitution</p>	
<p>IV Legislative Department</p>	<p>Defines legislative authority, number of members of each body, length of terms, districts for elections, requirements to serve, biennial sessions, bill procedures; specified local or special laws were prohibited. Amendment in 1881 removed reference to race; 1970 replaced biennial session with annual sessions; 1984 removed gender language and references to counties as units, and removed length of sessions which are now set by statute.</p>	<p>Regular sessions of 61 days every 2 years instead of every year; "expense of the sessions of our General Assembly, including printing of laws and journals, has averaged, for the last ten years, upwards of forty thousand dollars annually"; changes in handling of legislative bills.</p>

Major changes from 1816 Constitution**Article 1851 Subject**

V**Executive**

Governor and lieutenant governor elected for four year terms; term restrictions; election regulation; defined eligibility to run for office; veto power change. In 1972, amended to allow governor to serve two successive terms; in 1974, vote for governor and lieutenant governor together; in 1984, gender language changed.

Term of governor and lieutenant governor is 4 years to correspond to biennial sessions of legislature (instead of 3 years); term restrictions; veto power change.

VI**Administrative**

Defines election of state and county officials; state and county officials residency requirements and removal defined. In 1984, amendments dealt with terms and term limits. In 1998, amendment mandated governor must reside at seat of government.

Secretary of state, auditor, and treasurer elected by people for a two-year term with term restrictions; county clerk, auditor, and recorder serve four-year terms with term restrictions.

VII**Judicial**

Established Supreme Court, Circuit Courts, and inferior courts; defined number of judges, districts, jurisdictions, and procedures; General Assembly to appoint 3 commissioners to undertake legal reform and recodification of laws. A 1932 amendment repealed section 21 allowing everyone of good moral character to practice law. The 1970 amendment restructured Article VII; and the 2000 amendment related to the types of cases the Supreme Court will hear.

Supreme Court and Circuit Court judges elected by people instead of appointed by governor with approval of legislature; elected judges are ineligible to any other than a judicial office; prosecuting attorney for each Judicial Circuit elected by the people; voters with good moral character may practice law; law reform provision "calculated to diminish the cost and to correct the delay of law proceedings."

VIII**Education**

Prescribed a system of common schools and specified funding details; voters shall elect a state superintendent of public instruction with a two-year term.

Abolition of county seminaries, with their funds now going to common schools; establishment of uniform system of free common schools; superintendent of public instruction elected by people for 2 year term.

IX**State Institutions**

General Assembly will provide support for educational institutions for the "Deaf and Dumb, and of the Blind; and also, for the treatment of the Insane"; provide houses of refuge for juvenile offenders; establish asylums for people suffering misfortune. The 1984 amendment changed the wording to "deaf and mute."

Benevolent institutions are "perpetuated by constitutional provision"; and the houses of refuge for correction and reformation of juvenile offenders are established.

X**Public Finance**

Equal rate of property assessment and taxation; state income shall pay the principal of the public debt; "No law shall authorize any debt to be contracted, on behalf of the State, except in the following cases: to meet casual deficits in the revenue; to pay the interest on the State debt; to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for the public defense." Amendments: 1873 forbade state from assuming liability related to Wabash and Erie Canal; 1932 instituted an income tax; 1966 concerned property assessment, taxation, and excise tax.

Legislature may not incur any debt (with a few exceptions). "Had this provision, brief and simple as it is, been inserted in the Constitution of 1816, it would have saved the State from a loss of six millions of dollars. . . . such a Convention as that which has been engaged, for the last four months, in framing a constitution, which shuts out for the future, all possibility of similar folly." The state may not take on any county or town debt.

Article	1851 Subject	Major changes from 1816 Constitution
XI Corporations	Regulated state and other banks; corporations. Amendments in 1940 repealed sections which held bank stockholders personally responsible for loss and that required banks to cease operations after 20 years.	Legislature may establish banks with certain restrictions. "In addition to the above restrictions, applying specially to banks, it is provided, as to corporations generally, that they shall not be created by special act, but may be formed under general laws."
XII Militia	Describes the militia—who can serve, appointments, terms, organization, and conscientious objectors. The 1936 amendment removed the racial distinction and the 1974 amendment removed the gender distinction.	
XIII Negroes and Mulattoes	No Negro or mulatto is allowed to settle in Indiana or be party to a contract; emigration should be encouraged. [Federal Civil Rights Act of April 9, 1866 conferred citizenship on Negroes. The Civil War amendments to the U.S. Constitution (13, 14, 15) essentially nullified this article.] In 1881, Article XIII was amended to address political and municipal corporate indebtedness.	"This article . . . is to be submitted separately to the people." "A majority of the Convention were of opinion, that the true interests alike of the white citizens of this State and of its colored inhabitants, demanded the ultimate separation of the races; and that, as the Negro cannot obtain, among us, equal social and political rights, it is greatly to be desired that he should find a free home in other lands, where public opinion imposes upon color neither social disabilities nor political disfranchisement."
XIV Boundaries	Boundaries of the state are defined.	Article XI, Section 17 of the 1816 Constitution had the same boundaries.
XV Miscellaneous	Instructions for how to make appointments; duration of offices; office holders shall take an oath or affirmation; there will be a state seal; no county reduced to less than 400 square miles; no lottery shall be authorized; state-owned lands in Indianapolis shall not be sold or leased; General Assembly shall enclose and preserve the Tippecanoe Battle Ground. The lottery provision was repealed in 1988.	
XVI Amendments	Either branch of the General Assembly may propose an amendment. If a majority in both branches agree to the amendment, it is referred to the next elected General Assembly. If they agree to the amendment, the amendment is submitted to the electors of the state. If a majority ratifies the amendment, it becomes part of the constitution. If more than one amendment is submitted, they will be voted upon separately. No additional amendments may be proposed until this process is completed. This last provision was deleted in 1966; the 1998 amendment simplified the wording.	The 1816 constitution had no way to submit separate amendments to the people. "The advantage of the provision is, that, without the expense of a Convention, the new Constitution, if found faulty or deficient in any of its parts, may be amended and perfected."

Note Regarding Resources: Items are listed on this page that enhance work with the topic discussed. Some older items, especially, may include dated practices and ideas that are no longer generally accepted. Resources reflecting current practices are noted whenever possible.

Selected Resources

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• Thornbrough, Emma Lou. *The Negro in Indiana before 1900: A Study of a Minority*. Indianapolis, 1957.

Provides background and effect of 1851 Constitution.

• Walsh, Justin E. *The Centennial History of the Indiana General Assembly, 1816-1916*. Indianapolis, 1987.

Additional Resources

• Barnhart, John D. *Valley of Democracy: The Frontier Versus the Plantation in the Ohio Valley, 1775-1818*. Bloomington, 1953.

General overview of how Kentucky, Tennessee, Indiana, Illinois, and Ohio obtained statehood.

• Biographies of convention delegates can be located in many county histories available at the Indiana State Library and various local libraries.

• Indiana Historical Society, William Henry Smith Library.

English, William Hayden, Collection, 1741-1926. Extensive primary sources on Indiana legislators including daguerreotype images.

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• Esarey, Logan. *A History of Indiana from Its Exploration to 1850*. Vol. 1. Fort Wayne, 1924.

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• Select Committee on the Centennial

History of the Indiana General Assembly. *A Biographical Directory of the Indiana General Assembly*. Vol. 1, 1816-1899. Indianapolis, 1980.

Biographies of many convention delegates.

Internet Resources

• Current Indiana Constitution as amended
<<http://www.IN.gov/legislative/ic/code/const/>>

• Original 1851 Indiana Constitution and 1816 Constitution
<<http://www.IN.gov/history>>

Selected Student Resources

• Website—The PBS Kids Democracy Project: How Does Government Affect ME? <<http://www.pbs.org/democracy/kids/mygovt/school.html>>

How local, state, and federal governments affect us in everyday life.

• Collier, Christopher, and James Lincoln Collier. *Creating the Constitution, 1787*. New York, 1999.

Events and personalities involved; for intermediate readers.

• Feinberg, Barbara Silberdick. *Local Governments*. New York, 1993.

For intermediate students; includes reference and index.

• Feinberg, Barbara Silberdick. *State Governments*. New York, 1993.

Examines what governors, legislators, judges, and other state officials do and how their powers differ from state to state.

• Fritz, Jean. *Shh! We're Writing the Constitution*. New York, 1987.

Writing and ratification of the U.S. Constitution; for intermediate readers.

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Reasons for writing a constitution; for intermediate readers.

CONSTITUTION
 OF THE
 STATE OF INDIANA,
 AND THE
 ADDRESS
 OF THE
 CONSTITUTIONAL CONVENTION.

NEW ALBANY, IA.
 KENT & NORMAN, PRINTERS.
 1851.

Before the convention adjourned, it ordered 50,000 copies of the Constitution printed in English and 5,000 copies printed in German (Dunn, 496). The new Constitution was also published in many newspapers throughout the state. (Barnhart and Carmony, Indiana, 99)

Constitution des Staates Indiana.

Einleitung.

Zu dem Zwecke, daß Gerechtigkeit geübt, die öffentliche Ordnung erhalten und die Freiheit gesichert werde, verordnen Wir, das Volk des Staates Indiana, kundbar gegen den Minderjährigen Staat für die freie Wahlung des Rechts unserer eigenen Regierungsform zu wählen, die folgende Constitution.

Artikel 1.
 Recht.

SECT. 1. Wir erklären, daß alle Menschen gleich erschaffen sind; daß sie von ihrem Schöpfer mit gewissen unveräußerlichen Rechten ausgestattet sind, unter welchen das Leben, die Freiheit und das Streben nach Glück; daß alle Macht dem Volke eigen ist, und daß alle freien Regierungen auf diese Materie gegründet sind oder dem Rechte nach sein sollen, sowie ein Gesetz für seine Ruhe, seine Sicherheit und Wohlfahrt. Zur Befestigung dieses Gesetzes hat das Volk, zu allen Zeiten, ein unveräußerliches Recht, seine Regierung zu ändern und neu zu stellen.

SECT. 2. Jedermann soll in dem natürlichen Rechte beschützt werden, den Minderjährigen Gott nach Willkür der Fortbewegung seines eigenen Gewissens zu verehren.

SECT. 3. Kein Gesetz soll in irgend einem Falle die freie Ausübung religiöser Meinungen beschränken oder sich in Gewissenssachen mischen.

SECT. 4. Kein Glaube, keine religiöse Gesellschaft oder Art der Gottesverehrung soll vor dem Gesetze den Vorzug haben, und Niemand soll gezwungen sein, gegen seinen Willen irgend ein Gotteshaus zu besuchen, es zu errichten oder zu unterstützen, oder zu irgend einem kirchlichen Zwecke beizutreten.

SECT. 5. Es soll kein religiöser Testis zur Befähigung für ein öffentliches oder Civis- Amt erforderlich sein.

SECT. 6. Es soll kein Geld zum Heben religiöser oder theologischer Anstalten aus dem Schatze gezogen werden.

SECT. 7. Niemand soll wegen seiner Meinungen über religiöse Gegenstände zur Trugschuldfrage unfähig gemacht werden.