

## CONTRIBUTIONS

### The Laws of Indiana as Affected by the Present Constitution

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THE first Constitution of the State of Indiana was completed and adopted June 29, 1816, and the State was admitted to the Union the 11th of the following December. The second Constitution was completed February 10, 1851, and went into force the 1st day of the following November.

The Constitution of 1851 was not secured without a struggle which extended over many years. The Constitution of 1816 provided that every twelfth year the question of calling a convention to revise or amend it should be submitted to the voters at the general election, held for the election of Governor. The first twelfth year came in 1828, when only ten counties reported, 8,909 votes being cast on the subject. Of these, 3,329 were in favor of and 5,580 against calling a convention. At the election in 1840 only 38 counties reported, and 41,823 votes were cast, 7,489 for and 34,334 against a convention.

This provision of the Constitution requiring a vote every twelfth year was regarded as only directory, and not to prohibit a vote on the question of revising at any election held to elect a governor. Under this interpretation of that provision a vote was taken in 1846; votes cast, 62,018, with 33,175 favoring, and 28,843 against. While a majority of all votes cast on the question was in favor of the convention yet the Constitution required that the number should be a majority of all votes cast at the election; and as 126,123 were cast for the gubernatorial candidates the number voting in favor of the convention was not a majority of all votes cast at the election. In 1849 the question was a fourth time submitted, the result being a vote of 81,500 in favor of the convention to 57,418 against it—a majority of 6,612 votes over all votes cast at the election for all the candidates for any one office.

The causes that prompted the calling of the Constitutional Convention of 1850 are reflected in its provisions, and have left their

imprint on all subsequent legislation. The territorial laws were often very crude, and not infrequently is this also true of those adopted under the constitution of 1816. In 1824, 1832, 1838 and 1843 general revisions of these State laws took place. That of 1824 was almost wholly the work of Benjamin Parke, and was a marked improvement over the laws that preceded it, but the revisions of 1832 and 1838 were largely re-prints of laws already enacted, while that of 1843 was so radical in form and introduced so many changes as to be quite unsatisfactory.

**Causes Leading to New Constitution** The first legislature after the adoption of the constitution of 1851 revised the entire body of our laws. That instrument required the appointment of commissioners to revise, simplify and abridge the rules, practice, pleadings and forms of the court, and to provide for abolishing distinct forms of action then in force, that justice might be administered in a uniform mode of pleading and the distinction between law and equity preserved.\* The constitution made it the imperative duty of the legislature to bring about these changes through the agency of a commission. It also authorized it to empower the commission to revise the entire body of our statute laws, but this the legislature reserved to itself.

**General Revision under New Constitution** One of the most noticeable differences in the legislation before and after the adoption of the new constitution is the manner in which statutes are amended. Under the old constitution they were frequently changed or amended by providing that a certain word or words in a certain line of a certain section in a certain act should be stricken out and certain other words inserted. This is the method still pursued by Congress. The practice creates great confusion, and it is not always an easy task to determine the effect of statutes after the amendment is made. Under our present method the amended section must be definitely referred in the amending act, and then the section as amended set out in full. Formerly, under decisions of the Supreme Court, it was necessary to set out in full the old section, and then in full the section as amended, but a later interpretation of the constitution by that court permits the omis-

\*This may not express Mr. Thornton's exact meaning. There was some confusion in the copy here, and it was not possible to submit proof.—*Ed.*

sion of the old section, thus simplifying the process.

Another noticeable change is that the laws with very few exceptions are of a uniform and general application throughout the State. Prior to 1851 our statute books were loaded down with special legislation. Every city was incorporated by a law particularly its own, and there was no general law for their incorporation until after that date. Towns were incorporated in the same way. A stranger entering a town or city was chargeable with notice of the laws of the place, and was bound to obey them, and yet he could not know what they were until he had examined the charter of the city or town. It was nothing uncommon to vacate a street or even an alley by special act of the legislature. Prior to 1851 a temperance wave had swept over the State, taking a stronger hold on the people in one locality than in another. The result was a great patchwork of statutes relating to the subject. In some counties prohibitory laws were in force, while in others a license was required. Even in the same county these differences prevailed, some of the townships being "dry" while others were "wet".

There was no uniformity in the schools, the laws being as various with reference to the subject of public education as those concerning the sale of intoxicating liquors. The public schools were poor—far below the standard prevailing today. Practice and pleading in our court are now uniform, but before 1851 such was not the case. In a county in particular instances a certain practice had to be observed; in an adjoining one, another, and in a third still another. Even the practice in several townships of the same county before justices of the peace was not uniform, and a special law for the election of a justice of the peace in a particular township was not uncommon. Nor were the laws of taxation uniform. One county could levy a certain tax while another could not levy it; and this difference often extended to townships of the same county, or to cities and towns.

There is also a vast body of legislation, of a date prior to 1851, that is called "private" legislation, because it is of a private and not a public character. Prior to 1847 each corporation was incorporated by an act of the legislature pertaining to it alone, called the "charter". At the session of 1846-7 the first law of a general character for the

Spec'l Legislation  
under Old Const.

Lack of Uni-  
formity

Private Legisla-  
tion under Old  
Constitution

incorporation of voluntary associations was enacted, but it was limited in its scope. Academies, seminaries, colleges, private schools, libraries, railroads, manufacturing and trading companies of all kinds, planing mills, saw mills, and even brass bands were incorporated by private acts of the legislature. This practice became a great burden to that body. Thus at the five sessions prior to that of 1843-4 the number of octavo pages of the private laws were respectively 180, 301, 365, 431 and 636; while those of the general laws were respectively only 122, 92, 135, 164 and 125. Within the eight years prior to 1846 more than four hundred private acts of incorporation were enacted.

Under the old constitution the legislature could grant divorces, and 83 were granted, 40 of them at the session of 1845-6. Under the present constitution none can be granted by this method. Under the present constitution each statute can embrace only one subject, and the subject-matter must be embraced within the title. There was no such requirement under the old constitution. The object of this provision is to prevent undesirable legislation slipping through, and to give all legislation as much publicity as is conveniently possible.

Another reason for a new constitution was the resentment in the breasts of many toward the State Bank and its branches, and the monopoly it held in banking matters in the State. It had become a very lucrative source of income to its stock-holders, who were mostly influential Whigs, and the Democrats dreaded their influence in State affairs. Many of the latter, therefore, favored a revision of our banking laws so as to overthrow the bank. Still another reason, growing out of the disastrous State internal improvement legislation, was to adopt measures to prevent the lending of the State's funds or credit to private enterprises.

These were some of the features in our laws that brought about the calling of the convention of 1850. Others were the election of the judiciary and all State and county officers by popular vote; biennial instead of annual sessions of the legislature, and the election of members of the general assembly from single districts. The year 1850 was also the end of two decades of constitutional construction and revision in many of the States of the Union. That

**Movement in  
Other States**

fact had a decided influence in bringing about the call for a convention. In 1830 Virginia had adopted a new constitution; in 1831, Delaware; in 1832, Mississippi; in 1835, Michigan (although not admitted until 1837); in 1836, Arkansas; in 1838, Pennsylvania and Florida (although the latter was not admitted until 1845); in 1842, Rhode Island; in 1844, New Jersey; in 1845, Louisiana and Texas; in 1846, Iowa and New York; in 1848, Illinois and Wisconsin; in 1849, California; in 1850, Kentucky and Michigan. In Maryland and Ohio the subject had been so much under discussion that in 1851 both these States adopted new constitutions.

**First Laws under  
New Constitut'n**

The laws enacted at the first session of the legislature after the adoption of the present constitution were a decided improvement over previous statutes. Of course there were radical changes required by the new fundamental law, but even where no changes were so required many were made. There were many improvements upon the draft of the statutes, for the legislators had the old statutes before them, and it was an easy thing to improve upon them. The general body of the law was made more certain, and in many instances not so complex.

**New Civil and  
Criminal Codes**

The crown of the work of legal reformation was the two codes—the civil and the criminal. These were the work of the Commissioners of Revision, and well they did their work. New York, in 1846, had adopted a code of civil procedure—the first in this country—which served as a model for our revisers, as well as a model for many other States since the adoption of our code. David Dudley Field, in many respects her greatest lawyer, had written her code, and the impress of his genius has been felt in many of the States of the Federal Union. The Indiana codes—especially the civil code—are models of legal writing. The commissioners that revised them in 1881 made few changes and added little to them, but what they did was an improvement. The new codes introduced great and radical changes in the practice of the law, sweeping away a brood of fictions and technicalities that rendered the practice uncertain, cumbersome and unnecessarily prolix. Strange as it may be, the reformation of our practice in the courts was brought about largely by the laity, and against the opposition of a majority of the members of the legal profession.

On the Writing  
of Statutes

The statutes of our State are not as well written as those of some of the older States, nor as well as those of the United States, but there is a marked improvement in them in this respect over our early statutes. The Commissioners of Revision in 1881 presented to the legislature drafts of many statutes that failed to pass that body, which would not only have introduced many reforms into our legislation but greatly improved existing statutory law. Many of our statutes should be re-written and simplified. This is especially true of the school law, which is a mere hodge-podge of statutes enacted during the last thirty-seven years, often so obscure that no man can tell what the law is upon a particular question. In the writing of statutes one of the cardinal principles to be kept in view is that a statute with which the people *en masse* have to deal should be not only clear in its language, but explicit and minute in detail. Statutes that courts deal chiefly with may be more general in terms and omit details in many instances, the courts having the power to supply the latter often when necessary to carry out their provisions. Such a statute will not do, however, where the people *en masse* deal in minute particulars directly with its provisions. The civil and criminal codes are written in general terms, but the tax and Australian ballot laws are written in great detail, the language used in them being explicit and clear. They are models of statutory writing. The laws on taxation and elections are not only a great advancement over the laws of the past on those subjects, but are much better and more clearly written than those of the past.

Beginning with 1888 the volume of our legislation has annually been very large as compared with that of the previous years. Many statutes are now in force on subjects where prior to 1851 none existed. This is due to the change in the condition of the country and the advance in civilization. There have arisen new conditions, new methods of doing business, new opportunities to commit crimes, and these had to be met. Necessity in old countries requires the statutes to be more numerous, more minute in detail, and usually more complicated than in new countries, and for this reason a new revision of our statute laws can be but a matter of time; though to undertake to secure such revision now would be a Herculean task.

Legislation as  
affected by  
New Conditions