

Homestead Exemption in the Indiana Constitution of 1851

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Security against want was a desideratum as prevalent in the nineteenth century as it is today, though it was expressed in different phraseology. Today one asks "freedom from want" for all. In the second third of the nineteenth century, however, every family dreamed of owning its own home, which it could call the family homestead, and of having some guarantee that this home would not be taken from it in times of economic distress. The possession of a homestead, it was felt, would be the best guaranty of economic security.

It was this desire to combat economic insecurity and to prevent the recurrence of the scenes witnessed during the depression which followed the panic of 1837 when family after family was turned off the land it had cleared or tilled for years, that gave birth to the idea of homestead exemption. Following the example of Texas in 1839, state after state east as well as west, north as well as south, enacted homestead exemption laws. Not content with mere statutory exemption, no less than six states followed Texas in writing it into their constitutions. Between 1845 and 1860, Texas, Wisconsin, California, Michigan, Indiana, Maryland, and Minnesota incorporated homestead exemption provisions into their constitutions.¹

The homestead exemption was a legal device that reserved the family abode, sometimes within certain specific limits of acreage and monetary valuation and sometimes merely within the limits of a "reasonable amount of property," from distraint for debt.

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¹ Francis N. Thorpe (ed.), *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories and Colonies now and heretofore forming the United States of America* (7 vols., Washington, 1909), I, 404; II, 1075; III, 1726; IV, 1965-1966, 1993; VI, 3561-3562; VII, 4078; Ben P. Poore (ed.), *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States* (2 vols., Washington, 1878), I, 205, 513, 847, 1009-1010; II, 1030, 1778, 2029; Charles Kettleborough (ed.), *Constitution Making in Indiana*, in *Indiana Historical Collections* (Indianapolis, Indiana, 1916-), I, 414.

Homestead exemptions were demanded by the land reformers, organized into the National Reform Association, as a part of the agrarian doctrine of natural rights which its adherents hoped would prove to be a universal panacea. They believed that man has a natural right to use the materials of nature necessary to his existence. Hence, light, air, water, and soil are man's natural material rights. Every natural right has three cardinal points—individuality, inalienability, and equality. In the doctrine of the natural right to the soil, individuality was to be secured by freedom of the public lands (i.e., ownership of part of the public domain to be granted gratuitously to actual settlers), inalienability was to be obtained by homestead exemption, and equality was to be attained by land limitation.² On the frontier, however, homestead exemptions were desired in order to encourage the settlement of the wilderness. Everywhere, the debtor element of society sought to secure homestead exemptions in order to promote their own interests. Then, too, homestead exemptions were regarded as promoting democracy by fostering a spirit of security which helped preserve a feeling of freedom and independence so essential to the continuance of democracy.

In Indiana, homestead exemption was written into the new constitution of 1851 as a result of three movements—the agitation for improving the lot of the debtor, the crusade for changes in the public land policy, along with the steady trend towards humanitarian and democratizing reforms characteristic of the temper of the times.

The exemption from execution of a fixed amount of real, as well as personal, property was one of the constitutional amendments proposed by individual citizens, the press, and public meetings prior to the calling of the revision convention.³ Due to the popularity of this reform, both major political parties supported the measure.

² John R. Commons (ed.), *Labor Movement, 1840-1860*, in *The Documentary History of American Industrial Society* (10 vols., Cleveland, Ohio, 1910), VII, 30-36, 289-307, 312-320, 331-340; Henry E. Hoagland, "Humanitarianism (1840-1860)," in John R. Commons, *et al.*, *History of Labour in the United States* (2 vols., New York, 1918), I, 522-527; Roy M. Robbins, *Our Landed Heritage, The Public Domain, 1776-1936* (Princeton, New Jersey, 1942), 99; Helene S. Zahler, *Eastern Workingmen and National Land Policy, 1829-1862*, in *Columbia University Studies in the History of American Agriculture* (New York, 1934-), VII (1941), 33-36, 68-69.

³ Kettleborough, *Constitution Making in Indiana*, in *Indiana Historical Collections*, I, lxiv-lxv.

The Democrats had as their spokesman the chief executive of the state. Governor Paris C. Dunning,⁴ in his annual message to the last legislative session preceding the assembling of the constitutional convention, said:

Believing that the interest and welfare of our country demand greater security to the families of a large and respectable portion of our unfortunate fellow-citizens, who are often over-reached by the superior knowledge and cunning of their fellowmen, or become embarrassed in their pecuniary affairs by the vicissitudes of trade, it is respectfully recommended that such a change be made in our execution laws (to operate prospectively) as will exempt from execution and sale, in favor of any resident defendant and his family, a specific number of acres of land, or a specific amount in value; in all cases to include the homestead, or so much thereof as it will embrace. The details of such a law are left to the better judgment of the General Assembly. Should a law embracing this humane principle not meet with favor at the present session of the General Assembly, I trust that before the next assembling of the people's representatives, this principle will become a constitutional provision, thereby placing it beyond the power of unfavorable legislative action.⁵

Not to be outdone by their opponents, on January 16, 1850, two days before the governor signed the bill providing for submission to the people of the question of convoking a constituent assembly, the Whig members of the legislature met in Indianapolis with other eminent Whigs from various parts of the state and adopted a series of resolutions listing the constitutional changes they deemed necessary. Prominent among the reforms enumerated by these Whigs was the recommendation

That the exemption of the homestead, or its equivalent in personal property, from forced sale, for debts contracted after the adoption of the new Constitution, would be a measure of policy and humanity—that it would be in consonance with our republican institutions—that this Government owes protection to the wives and children of its citi-

⁴ For brief biographical sketches of Governor Dunning see Jacob P. Dunn, *Indiana and Indianans* (5 vols., Chicago, 1919), I, 434; *Indiana 1930* (Indianapolis, Indiana, n.d.), 22.

⁵ *Journal of the House of Representatives, of the State of Indiana, 1849*, pp. 22-23; *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana, 1850* (2 vols., Indianapolis, Indiana, 1850), I, 787. The legislature considered a bill containing this proposition outlined by the governor, but tabled the bill because the constituent assembly was to meet soon, and it was believed that the latter body would incorporate a homestead exemption clause into the new constitution. *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana*, I, 721; *Journal of the House of Representatives, of the State of Indiana, 1849*, pp. 724-725.

zens, and that a home for innocence and infancy is demanded alike by the impulses which operate upon the human heart, no less than by the teachings of the Divine Law— that such a provision in our Constitution would tend to repress, in this country, that fatal abuse so long existing in the systems of the old world, overgrown land monopoly (the fruitful source of bloodshed and attempted revolution)—that it would create a spirit of true independence in the political action of the masses of the people, and prove the means, finally, of perpetuating the wise, just, and glorious institutions of our beloved country. Adopting the language of Mr. Jefferson, we declare, "Our national independence will never be complete till the homestead of the citizen shall be secured against the misfortunes incident to human life."⁶

These excerpts indicated that the Democrats and the Whigs were interested in homestead exemptions as a debtor issue.⁷ Yet the phraseology of the Whig suggestion, especially its reference to "land monopoly," seemed to show the affect of the propaganda of the land reformers.

That the influence of the National Reform Association was felt in Indiana may also be gleaned from the discussion in the constitutional convention of 1850-1851. The land reformers were referred to, and the speeches of some of the delegates were worded in terminology that might have been uttered by the land reformers themselves. A good illustration of their influence was the following extract from the address delivered on November 25, 1850, by Judge James W. Borden, who from 1857 to 1863 held the post of United States Minister to the Sandwich Islands.⁸

I insist that man is entitled to live and to enjoy a portion of the earth, and that to enable him to do this, we should, under proper restrictions, prevent our public domain from being monopolized, as is now being done to a considerable extent, by large land companies. I do not propose to take from one man and give to another, but I desire that a limitation should be placed upon the amount of property that a man can hold in the soil. . . . There is a party in this country who are in favor of preserving the public lands, so as to put the poorer portion of the present and the future generation, in some respects, on an equal footing with the more wealthy portion.⁹

⁶ *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana*, I, 787. Kettleborough, *Constitution Making in Indiana*, in *Indiana Historical Collections*, I, lxxix-lxxx, 210-212.

⁷ Of the 150 members of Indiana's constitutional convention, 95 were Democrats and 55 were Whigs. The convention met October 7, 1850, and adjourned February 10, 1851. Kettleborough, *Constitution Making in Indiana*, in *Indiana Historical Collections*, I, 221.

⁸ *The National Cyclopaedia of American Biography* (32 vols., New York, 1892-1945), XII (1904), 292-293.

⁹ *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana*, I, 755, 749-750.

Furthermore, the affect of land reform propaganda was apparent in the allusions made by the Indiana convention members to the precedents of ancient history, a favorite device employed by the land reformers to show that the measures which they advocated should not be feared on the ground of novelty as well as to prove that they had worked advantageously even in the ancient world. Judge John Pettit, who had represented his state in the United States House of Representatives and later on was to represent it in the United States Senate,¹⁰ praised the Mosaic law. He asserted that

The Mosaic system . . . secured the rights of the individual to a freehold exemption in a better manner than has been done by any nation before or since. The beneficent effects of the Mosaic policy were more lasting than the policy of exemption adopted by any other country in the world. . . . So long as that policy was adhered to, so long no foreign power was able to prevail against them. But when that policy was abandoned, . . . their institutions crumbled and sank to naught.¹¹

James W. Borden, on the other hand, commended the agrarians of Rome for attempting to eradicate the evil of land monopoly by limiting the amount of land of the public domain that any individual might own.

Had not the Gracchi been put to death . . . by the Patricians, for attempting to execute the Licinian law,¹² the nobility of Rome would have been prevented from seizing upon the public lands, and appropri-

¹⁰ *Appletons' Cyclopaedia of American Biography* (6 vols., New York, 1888-1889), IV (1888), 748; *Biographical Directory of the American Congress, 1774-1927* (Washington, 1928), 1406; Dunn, *Indiana and Indianans*, I, 445, 486, 490; *The National Cyclopaedia of American Biography*, IV (1893), 537; William Wesley Woollen, *Biographical and Historical Sketches of Early Indiana* (Indianapolis, Indiana, 1883), 455.

¹¹ *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana*, I, 764-765. Under the Jewish Mosaic law, land could not be alienated forever. But if an Israelite debtor pledged or sold his property to meet some financial obligation, it had to be returned to him at the time of the jubilee which came every fiftieth year. "Leviticus," XV, 10-11, 23-28, *The Holy Bible, Containing the Old and New Testaments . . . by His Majesty's Special Command. A.D. 1611* (London, n.d.), 151.

¹² The Licinian law of 367 B.C., achieved primarily through the efforts of the tribune Calvus Lucius Stolo, limited the amount of arable land of the public domain that any individual might hold to five hundred jugera (about three hundred to three hundred and fifty acres). Tenney Frank, *Rome and Italy of the Republic*, in Tenney Frank (ed.), *An Economic Survey of Ancient Rome* (5 vols., Baltimore, Maryland, 1933-1940), I, 26-28; M. Rostovzeff, *A History of the Ancient World*, translated by J. D. Duff (2 vols., Oxford, 1926-1927), II, 33, 47, 105-115; Shosuke Sato, "History of the Land Question in the United States," in Johns Hopkins University *Studies in Historical and Political Science* (Baltimore, Maryland, 1883-), IV (1886), 268-270; Albert A. Trever, *History of Ancient Civilization* (2 vols., New York, 1936-1939), II, 72-73, 158-170.

ating them to their own use and Rome would have remained forever a republic. The moment that the people were denied their share of the public lands, they were compelled to congregate in the towns and cities of that republic, where they could only obtain a scanty subsistence, and under the peculiar laws of that country, which reduced men to slavery, where they were unable to pay their debts, many of them became bondsmen for life. . . .

Sir, it was the combined evils of land monopoly and slavery, that overturned the republic of Rome. And let me here say, that, while we may never expect that in the free States of this Union, slavery will ever be directly tolerated; yet, sir, unless we shall restrict capital within proper limits, and prevent its having too much the advantage over the labor of the country, the time may come when the lands of this country may be monopolized to a much greater extent than we could now anticipate, and a state of things will be brought about not dissimilar to that which existed in Rome, in the days of the Gracchi.¹³

Significant, too, was the fact that the foes of the proposed exemption section also turned to the pages of ancient history to refute the arguments of the adversaries. Alvin P. Hovey, who in 1854 was the youngest man ever appointed to Indiana's highest tribunal, who was elected to Indiana's highest executive office in 1889, and who from 1865 to 1870 represented the United States as Minister to Peru,¹⁴ quoted a passage from the orations of Marcus Tullius Cicero in which Cicero denounced the agrarians, maintaining that the laws they sought would "plainly undermine *the two principal pillars and supports of the government*. In the first place, concord and unity amongst the citizens; which can never be kept *while some are deprived of what is justly their due, and others discharged from the necessity of payment*. Secondly, justice; which immediately must sink into ruin and nothing if men cannot be secured in the possession of what is their own. . . ."¹⁵ Hovey further declared that the aims

¹³ *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana*, I, 755.

¹⁴ Appletons' *Cyclopaedia of American Biography*, I, 276; *Biographical Directory of the American Congress, 1774-1927*, p. 1118; *Pictorial and Biographical Memoirs of Elkhart and St. Joseph Counties, Indiana* (Chicago, 1893), 498-499; William H. Smith, *The History of the State of Indiana* . . . (2 vols., Indianapolis, Indiana, 1897), I, 499-503; William W. Sweet, "Alvin Peterson Hovey," in *Dictionary of American Biography* (20 vols., New York, 1943), IX, 270-271; *The National Cyclopaedia of American Biography*, XIII (1906), 274-275; Charles M. Walker, *Lives of General Alvin P. Hovey and Ira J. Chase* (Indianapolis, Indiana, 1888). It was at one time rumored by his foes that the eccentric, strong-willed Hovey regarded himself as the reincarnation of Napoleon and that on the anniversary of the latter's death he would retire for solitary meditation. Dunn, *Indiana and Indianans*, I, 481-482.

¹⁵ *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana*, I, 773-774.

and the language of the agrarians of ancient Rome and of modern America were the same.

The arguments of Cassius of Stolo and the Gracchi are resounding through England, America, and France. Give us homes and an equal division of property, cry the agrarians of England. Down with the rich, and an equal division of the stealings, scream the wild, infuriated "sans culotte" of France. Permit us to use other men's property as our own under the sanction of law, is the more gracious language of the followers of those great Romans with us. Yes, sir, hide it as you will, disguise it as you may, the Homestead and the Licinian law have been woven in the same loom and are both of the same texture—the web other men's property, the woof the prejudices of the poor against the rich. The Licinian law took the property of one class and divided amongst another. The amendments proposed here would have the same practical effect as they would permit one class, under the guise of contract, to obtain the property of another, and then keep that property under the sanction of the law.¹⁶

Moreover, the insertion into the bill of rights of the exemption clause adopted by the Indiana convention, a verbatim copy of the Wisconsin provision, disclosed the influence of the land reform doctrine that every one had a natural and inalienable right to a plot of land and a home built thereon.¹⁷

But the work of the National Reform Association was only one of the factors causing the adoption of homestead exemption in Indiana. Another reason why the property exemption article was agreed to by the Indiana convention was the endeavor to solve the debtor problem.

The homestead exemption provision had as its goal the "humane object" of helping the honest but impoverished debtor by preserving a home to his wife and children and by ensuring to him the means whereby he might, through energy and industry, regain his financial solvency, declared the members of the constituent assembly. Its connection with the debtor question was also demonstrated by its position in the constitution for it was placed in the same section as, though just before, the clause abolishing imprisonment for debt. And, indeed, the exemption article itself asserted that its purpose was to recognize "the privilege of the debtor to enjoy the necessary comforts of life."¹⁸

¹⁶ *Ibid.*, 751.

¹⁷ *Ibid.*, II, 2067; Kettleborough, *Constitution Making in Indiana*, in *Indiana Historical Collections*, I, 300; Poore, *The Federal and State Constitutions*, I, 513; II, 2029; Thorpe, *The Federal and State Constitutions*, II, 1075; VII, 4078.

¹⁸ Kettleborough, *Constitution Making in Indiana*, in *Indiana Historical Collections*, I, 300; Poore, *The Federal and State Constitutions*,

The exponents of exemption believed the measure was as wise as it was humanitarian, in conformity with the enlightenment of the age and the spirit of democratic institutions. It was essential to protect the poor because they were the most numerous class in society, because "it is the poor, principally, who labor, and labor only produces wealth," and because the poor were "our main reliance, our main support, both in Peace and in War" adding to the country's wealth in peacetime through their labor and furnishing in wartime the armies to defend the nation. The supporters of property exemption also thought that it would promote prosperity and patriotism and would secure greater obedience to law and a larger degree of democracy.¹⁹

The opponents of this constitutional measure, however, regarded it as "unethical," as "legal swindling," as a creator of idleness and denied that it would foster either prosperity or patriotism. "I hold that property makes a man no more virtuous or patriotic than he is without it," said the lawyer, Samuel Pepper, who was at one time attorney for Crawford County.²⁰ It would not be "conducive to public morals to place that class comparatively above want by giving them homesteads—homesteads purchased with the funds of other men," asserted Alvin P. Hovey. He also maintained that the proposed exemption would legalize fraud. He illustrated this contention with the case of two friends, one of whom had five hundred dollars in cash and the other had nothing. The penniless person would borrow the five hundred dollars from his friend and would buy a homestead with it. When his friend needed the money and asked him to return it, the friend would be informed of the manner in which it had been invested and would be told that the money could not be regained because of the homestead exemption principle. The exemption, Hovey insisted, would close credit to the poor. Moreover, argued Hovey, the exemption would breed laziness for what incentive would a man deeply indebted have "to acquire anything above his mere homestead? None!

I, 513; Thorpe, *The Federal and State Constitutions*, II, 1075; *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana*, I, 719, 750, 756.

¹⁹ *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana*, I, 718-719, 721, 749.

²⁰ *Ibid.*, 788. See also Hazen H. Pleasant, *A History of Crawford County, Indiana* (Greenfield, Indiana, 1926), 7, 140.

He will settle down and refuse to exercise either body or mind for the acquisition of property." Hovey added that there was a "distinction between the *truth* of abstract principles and the *propriety* of carrying such principles into practice." He confessed to the correctness of the abstract principle that all men were created free and equal, but denied that any inference could be drawn from that entitling Negroes to the same privileges and immunities as whites or admitting women to the same political rights enjoyed by men since expediency condemned such a course of action. Similarly,

God gave the earth to man for his inheritance, and therefore every man is entitled to enjoy it. Now that abstraction is true, and man does enjoy it; but the argument that they attempt to deduce from that fact, that all men should be entitled to homesteads is to my mind anything but clear.

God gave no man a right to any particular spot, but an undivided interest in the whole.²¹

These views were refuted by the adherents of homestead exemption who claimed it would result in a greater obedience to law by delivering the debtor from the dire distress that caused him to resort to fraud and led him to crime. They denied that the exemption provision would inspire men to the recourse of subterfuge to avoid paying debts. They pointed out that the belief that fear of the stringent collection laws and of prison made men pay their debts was false since thousands of dollars were repaid without the aid of the law while comparatively few debts were collected by the coercion of the law. On the contrary, they felt that a constitutional exemption clause would encourage honesty and morality for "it would place the debtor above the *dire* necessity, which tempts man to misdemeanors."²² In the opinion of Schuyler Colfax, who later became the first newspaper editor to be elected Speaker of the United States House of Representatives and then during Ulysses S. Grant's first administration became Vice-President of the United States,²³

²¹ *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana*, I, 751-753.

²² *Ibid.*, 719.

²³ In the last years of his life, Colfax's career as a politician was ended abruptly as a result of his being implicated in the *Crédit Mobilier* scandal even though a Congressional committee in 1873 exonerated him from charges of corruption. *Appletons' Cyclopaedia of American Biography*, I, 687-688; *Biographical Directory of the American Congress*,

it will also tend to elevate character. The poor man will know that his credit will depend on his honesty and promptitude more than on his property, and he will strive to build up and maintain a reputation that will be thus valuable to him. It will also avoid the necessity which, in the minds of so many, under the present law, drives them to smuggling their property into some friend's hands, or making a conveyance of their home, which is tainted with fraud, rather than see their little all swept away by some merciless creditor, and their family turned out upon the world, with no roof to shelter them from the storms of adversity. . . .

It will be an incentive to industry, a sweetener of toil.²⁴

The proponements of property exemption declared that it would foster prosperity by facilitating the obtaining of credit by the poor, by stimulating immigration into the state, and by destroying land monopoly and increasing the number of small freeholders.²⁵ They reminded the convention that the argument that credit would be closed to the poor had been raised when the movement to abolish imprisonment for debt was started and the success of that reform proved the fallacy of that viewpoint. They were positive that homestead exemption would make it easier for the poor to get credit as it would increase the ability of the debtor to pay and would give greater security to the creditor. Moreover, they proclaimed that the lack of homestead exemption law had hitherto repressed immigration into Indiana. Foreign emigrants coming to the west settled in states having liberal homestead exemption laws. The immigrant knows, said Colfax, "that if he casts his lot with us, the humble home he may purchase for his family may be swept away from them, if an acclimating sickness or any other temporary misfortune may happen to them. He knows and sees that Indiana protects barely a small pittance of personal property,

1774-1927, p. 834; Dunn, *Indiana and Indianans*, I, 565, 645; IV, 1580; Ovando J. Hollister, *Life of Schuyler Colfax* (New York, 1886); William McDonald, "Schuyler Colfax," *Dictionary of American Biography*, IV, 297-298; A. Y. Moore, *The Life of Schuyler Colfax* (Philadelphia, 1868); Smith, *The History of the State of Indiana*, II, 805-806; James Sutherland, *Biographical Sketches of the Members of the Forty-first General Assembly of the State of Indiana, and That of the State Officers and Judiciary* (Indianapolis, Indiana, 1861), 195-199; *The National Cyclopaedia of American Biography*, IV, 12-13.

²⁴ *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana*, I, 749.

²⁵ To this the foes of exemption replied that it was not possible to have a landed aristocracy in the United States because of our law of descent distributing the property of the deceased equally among all his children, both male and female. *Ibid.*, 753.

but not a dollar's worth of that which he has journeyed for, thousands of miles—a home."

The promoters of homestead exemption were certain that their proposition would, in the words of Colfax,

tend to increase the number of landholders in every community and consequently, the prosperity of the State. In military and feudal ages . . . great States might exist while THE FEW owned the lands and THE MANY were serfs or tenants. But in this age, for men to be contented and happy, and States to be prosperous, families must have homes, secured to them inviolably. . . . Thus increasing the number of landholders, you infuse into them a deeper, stronger interest in the social progress of the neighborhood, in the peace, the morals, and the welfare of the community, in the advancement and prosperity of the State.²⁶

Furthermore, those who favored property exemption felt it would help safeguard democracy by instilling in the poor a spirit of independence and by preventing creditors from exerting an undue influence upon their debtors at election time. James Dick told his colleagues: "It is our duty as freemen, in order to sustain our liberties and to continue them, to guard against the influences of wealth over the necessities of the poor, and through this conservative system, sir, to preserve uncorrupt and inicorruptible [*sic*] the purity of the ballot box."²⁷

The advocates of homestead exemption also argued that it would promote patriotism, for a home inalienably secured by law would make a man feel a deeper interest in his country's safety and welfare. John B. Niles asserted: "Those will love their country who love their homes. Protect them in their homes and they shall defend their country, her laws and institutions."²⁸ A similar sentiment was expressed by Elias Murray, who maintained that

an interest in the soil insures the devotion of the citizen to his government, and diffuses the greatest sum of prosperity.

A man having a home to defend, could scarcely be found to be recreant to his duty. . . . Every citizen would be a soldier, and every soldier brave. This measure, then, will not only strengthen the government, and give dignity and comfort to her citizens, but it will insure industry, abate poverty and pauperism, and redeem vast multitudes from want and wretchedness.²⁹

²⁶ *Ibid.*, 719-720, 747-749, 770-771.

²⁷ *Ibid.*, 719, 721, 757.

²⁸ *Ibid.*, 771.

²⁹ *Ibid.*, 720.

John B. Howe, former educator, lawyer, legislator and future banker and author, voiced the view that there was "a practical argument stronger and better than any other that can be made in favor of homestead exemption—it is the argument of experience." To support this statement, it was shown that the principle of property exemption in the form of chattel exemptions had been embodied in the laws of Indiana for the past twenty-five years, and the amount of personal property reserved from distraint by these statutes had been increased steadily from fifty to one hundred and twenty-five dollars.³⁰ The example of the personal and real estates freed from levy for debts by the legislation and constitutional provisions of other states were also cited. Howe quoted the following article from the *National Intelligencer* to further prove his point.

AN UNUSUAL SIGHT.—We yesterday saw in one of the Harrisburg papers a notice of an intended application for the benefit of the insolvent laws. A few years ago, preceding every term of an "Insolvent Court," long columns of names were paraded in the newspapers of intended applications for the benefit of the law. We now rarely hear of such an application, and we venture the assertion that *not half so much money is lost from bad debts as was lost before the law exempting from execution three hundred dollars worth of property was passed*. The hundreds of thousands of dollars formerly spent in legally collecting small debts are now saved to the poor, who had the tax to

³⁰ *Ibid.*, 766. The members of the Indiana convention unanimously concurred in and published an address to the people of the state summarizing the most important amendments made to the old constitution and explaining where they deemed it necessary, the reasons for these proposed changes. Of the exemption section, they said: "The Principles of exempting a reasonable amount of the property of the debtor from seizure or sale, is asserted, but without specifying any amount. There is no provision of this kind in the old Constitution; though the present law, usually called the 'hundred and twenty-five dollar law', is based upon the principle thus proposed to be permanently established." *Ibid.*, II, 2042; Kettleborough, *Constitution Making in Indiana*, in *Indiana Historical Collections*, I, 222, 404-405. In 1833, the first school in Lima Township was taught by John B. Howe, whose admission to the bar the next year made him the earliest resident lawyer of LaGrange County. In 1840-1841, Howe served in the Indiana House of Representatives. Howe also established the pioneer bank of LaGrange County in 1854 in conjunction with Samuel P. Williams. Howe remained a banker the rest of his life. During his last five years, he published four books on political economy and finance. The year after he died, in 1884, the Howe School for boys was founded from his bequest. Then, in 1909, the name of the village of Lima was changed to Howe in honor of his memory. *Appletons' Cyclopaedia of American Biography*, III (1888), 281; Ira Ford, *et al.*, *History of Northeast Indiana: LaGrange, Steuben, Noble and DeKalb Counties* (2 vols., Chicago, 1920), I, 39, 42-44, 54, 59-60, 69-70, 90, 122, 150; II, 448.

bear. They are, therefore, to the extent of this saving, the better able to buy for cash.³¹

Consequently, the desire to assist the debtor, to promote patriotism and prosperity, to foster democracy and good government, and to lessen crime, as well as the effective propaganda of the land reformers and the lessons of the experience of the other states, led the members of Indiana's convention to engraft an exemption clause into the revised constitution. Since, however, they believed that a constitution should embrace fundamental principles solely and not legislative minutiae, since they held divergent views as to the actual amount of a person's estate that should then be reserved from distraint, and since they felt that the value of property was uncertain and variable necessitating a different amount of exemption at different times so that an exact sum should not be immutably fixed,³² therefore, they incorporated into the new fundamental law only the doctrine that a reasonable portion of property, without specifying the kind of property—whether real or personal, be exempt from execution by statute, and left the details to the legislature.³³

Thus homestead exemption was adopted in Indiana in order to preserve the stability and integrity of the family; to prevent insolvent debtors and their families from becoming burdensome charges upon society; to protect the community from crime by guarding against debtors becoming paupers and turning to felony from desperation; to foster democracy by increasing the obedience to, and respect for, law through the elimination of fraud and crime as well as by freeing the debtor from the possible domineering influence of the creditor at the ballot box; to give the poor a feeling of security in order to preserve their spirit of independence so vital to the existence of democracy; to stimulate the more speedy settlement of the frontier so as to aid not only the

³¹ *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana*, I, 765-766; see also, 748, 754, 756, 763, 783, 804.

³² *Ibid.*, 718-719, 721, 736-737, 747, 754, 758-759, 762-764, 772, 776-782.

³³ "The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale, for the payment of any debt or liability hereafter contracted," read the Indiana Constitution of 1851. Poore, *The Federal and State Constitutions*, I, 513; Thorpe, *The Federal and State Constitutions*, II, 1075; Kettleborough, *Constitution Making in Indiana*, in *Indiana Historical Collections*, I, 300.

people of the west but also the workingmen in the east; and to promote patriotism by giving the poor a keener interest in the welfare of their community and government through the possession of a plot of land that could not be alienated because of financial reverses.