Constitution for the State of Indiana

Hugh E. Willis

Indiana University School of Law - Bloomington

Follow this and additional works at: http://www.repository.law.indiana.edu/facpub

Part of the Constitutional Law Commons, and the State and Local Government Law Commons

Recommended Citation
Willis, Hugh E., "Constitution for the State of Indiana" (1932). Articles by Maurer Faculty. Paper 1230.
http://www.repository.law.indiana.edu/facpub/1230

This Ephemera is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.
CONSTITUTION FOR THE STATE OF INDIANA*

Drafted and Proposed by Hugh E. Willis, Professor of Law, Indiana University

PREAMBLE

ARTICLE I

Framework of Government

Section 1. Separation of Powers.

*While the people of the state of Indiana were considering the question of whether or not they should vote for another constitutional convention, the author of the plan herewith submitted began the work of drafting a constitution for the state, so that the constitutional convention, if it should be voted for, might have a draft on which to work. The author was impelled to do this because of the example of Madison, Pinckney, Patterson, and Hamilton in preparing plans for a federal constitution and having them ready for submission to the Constitutional Convention when it convened in Philadelphia; to which plans (especially Madison's) the success of the Constitutional Convention was largely due. When the election in Indiana was finally held and the vote turned out to be adverse to a constitutional convention, the author had not finished his work. There were many matters of substance, as, for example, the form of county and city government, which he had not as yet completed, and he had not done the final work of casting the constitution into the phraseology which it should finally have. The fact that the election turned out as it did destroyed the motive which the author had for proceeding to finish his draft constitution. However, he had already done enough so that he has decided to publish the results of his labors at the time he stopped working on his draft constitution. This may have some suggestions in it for the people of Indiana who are interested, and may arouse thought and discussion over some of the fundamental differences between this constitution and our present constitution. If Indiana should ever vote to have another constitutional convention, either the author or someone else could finish the draft which is herewith submitted.
ARTICLE II
THE POWERS OF GOVERNMENT

Alternative Section 2.

ARTICLE III (Bill of Rights)
LIMITATIONS ON THE POWERS OF GOVERNMENT IN FAVOR OF INDIVIDUALS


ARTICLE IV
LIMITATIONS ON THE POWERS OF GOVERNMENT IN FAVOR OF THE PEOPLE


ARTICLE V
AMENDMENT

PREAMBLE

We, the people of the state of Indiana, inherently possessing all the sovereign political power not possessed by the people of the
United States as a whole and the people of the world as a whole, and the sole authority to form a government for the state of Indiana, in order to substitute law for violence, establish a scheme of social control for the protection of the social interests of the people of this state, and to protect the personal liberty of the people against unreasonable social control, do ordain and establish this constitution, setting up a framework of government for the state and for all the subdivisions thereof, designating the powers hereby delegated to such governments and to all the organs thereof, limiting the exercise of their powers in many important respects, and providing for an indefeasible method for altering and amending this constitution.

ARTICLE I
FRAMEWORK OF GOVERNMENT

SECTION 1. SEPARATION OF POWERS. a. The powers of government are by this constitution divided into the legislative power to make substantive law, the judicial power to apply such law to specific cases, and the executive power to enforce such law; each kind of power is delegated to a separate branch of government called the legislature, the judiciary, and the executive, corresponding with the division of governmental powers; and, except as otherwise provided by this constitution, each branch of government so provided shall exercise the powers of government delegated to it and none of those delegated to any other branch of government.

b. The executive power shall include the administrative power.

c. The judicial power shall include the power of judicial legislation where the court in the absence of statutory law develops and applies a decisional or "common" law.

SECTION 2. STATE GOVERNMENT. a. Legislature. (1) The legislative power herein granted to the state is vested in a general

1. The doctrine of separation of powers has become such a typical American doctrine that this constitution adheres to it. Yet, it must be remembered that under the United States constitution and other state constitutions there have developed so many exceptions and modifications that the doctrine is not a true doctrine of separation of powers. It perhaps might be better to say that the government has been divided into three different branches and that various powers have been delegated to each one of them with some relation to the doctrine of separation of powers.
assembly, which shall consist of a senate and a house of representatives.2

(2) The number of members of the senate shall not exceed fifty, and the number of the members of the house of representatives shall not exceed one hundred.

(3) The members of the senate shall be chosen geographically by the qualified electors of senatorial districts, into which the state may from time to time be divided in proportion to the population thereof. The members of the house of representatives shall be chosen by the various interest groups as organized and provided by law, in such manner as the respective interest groups may adopt.

(4) The senators shall be elected one-half every two years, on the Tuesday following the first Monday in November, for a term of four years. The representatives shall be elected on the same date for a term of two years. The term of office in the case of both senators and representatives shall begin the next day after their election.

(5) Senators shall be at least twenty-five years of age and representatives at least twenty-one years of age. Both must be citizens of the United States and inhabitants of this state for at least two years preceding their election.

(6) Senators and representatives shall be privileged from arrest in all cases, except treason, felony, and breach of the peace, during the session of the general assembly, and in going to and in returning from the same; and they shall not be subject to any civil process, during the session of the general assembly nor during the fifteen days preceding the commencement thereof. For any speech or debate in either house a member shall not be questioned in any other place.

(7) A regular session of the general assembly shall be held biennially beginning on the Thursday next after the first Monday in January. A special session may be called by the governor, or by a majority of the members of the legislative council.

2. The American practice of having two houses of legislation is followed herein. There is no real need for more than one house unless the basis of representation is different for the two houses. Consequently, this constitution retains the two houses,—but provides for two different methods of representation. Perhaps there is a real need for representation by the interests named. This is evidenced by the third house of the lobbyists. It might be said that we now really have three houses of legislation. After the adoption of this constitution, there will be only two houses of legislation.
(8) The members of the general assembly shall receive such compensation as shall be fixed by law.

(9) Every bill which shall have passed the legislature shall be presented to the governor; if he approve he shall sign it, but if not he shall return it with his objections to the legislature. Any bill so returned by the governor shall be reconsidered by the legislature and if, upon reconsideration, two-thirds of all the members shall agree to pass the bill it shall become a law. In all such cases the vote of the legislature shall be by yeas and nays and entered on the journal. If any bill shall not be returned by the governor within ten days after it shall have been presented to him it shall be a law in like manner as if he had signed it, but if the legislature shall by adjournment prevent the return of a bill within ten days any such bill shall become a law unless filed by the governor together with his objections in the office of the secretary of the legislature within thirty days after the adjournment of the legislature. Any bill so filed shall be reconsidered by the next session of the legislature as though returned while the legislature was in session.

(10) Any bill failing of passage by the legislature may be submitted to referendum by order of the governor, if at least one-third of all the members shall have been recorded as voting in favor of the bill when it was upon final passage. Any bill which, having passed the legislature, is returned thereto by the governor with objections and, upon reconsideration is not approved by a two-thirds vote of all the members but is approved by at least a majority thereof, may be submitted to referendum by a majority vote of all the members of the legislature. Bills submitted to referendum by order of the governor or legislature shall be voted on at the next succeeding general election unless the legislature shall provide for their submission at an earlier date.

(11) The legislature shall, by a majority vote of all its members, appoint an auditor who shall serve during the pleasure of the legislature. It shall be the duty of the auditor to conduct a continuous audit of all accounts kept by or for the various departments and offices of the state government, and to report thereon to the legislative council quarterly and at the end of each fiscal year. He shall also make such additional reports to the legislature and legislative council, and conduct such investigation of the financial affairs...
of the state, or of any department or office thereof, as either of such bodies may require.  

(12) The governor, lieutenant-governor, speaker, and five members of the general assembly elected by the latter in joint session by the system of proportional representation with the single transferable vote shall constitute a legislative council; and shall continue in office until their successors have been chosen and qualified; but the general assembly at any time may dissolve the legislative council and proceed to the creation of a successor by the election of new members to represent the general assembly.  

SECTION 2.  b. Executive. (1) The executive power herein granted to the state is vested in a governor who shall be elected by the qualified electors of the state on the Tuesday following the first Monday in November for a term of four years beginning the first Monday in December next following his election.  

(2) At the time of the election of a governor, there shall be elected a lieutenant-governor, who shall hold office for the same term as the governor.  

(3) Both the governor and lieutenant-governor shall be at least thirty years of age, citizens of the United States, and inhabitants of this state for at least five years preceding their election.  

(4) In case of the removal of the governor from office, or of his death, resignation, or inability to discharge the duties of the office, the latter shall devolve on the lieutenant-governor. In case of the removal from office of the lieutenant-governor, or his death, resignation, or inability to discharge the duties of the office, the speaker of the house shall act as governor.  

(5) The governor and all civil officers, except such inferior officers as may by law be exempted, shall, before entering on the

3. The auditor should be appointed by the legislature, because it should be his duty to conduct a continuous audit of all accounts for the various departments and offices of the state government.

4. The plan for a legislative council is one recommended by the National Municipal League, and is now being adopted by many states, and other states are approaching this plan through the use of legislative reference bureaus.

5. The plan of vesting executive power in one executive officer is the plan of the federal government, and is the plan being adopted by various states of the Union. The state of Virginia is one of the states which recently changed to this plan. The federal plan has worked better than the usual state plan of division of responsibility. It spells greater executive efficiency and also greater discrimination on the part of voters.
duties of their respective offices, take, and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the constitution of the United States and the constitution of the state of Indiana, and that I will faithfully discharge the duties of the office of ——, to the best of my ability."

(6) There shall be a department of state, department of treasury, department of public instruction, legal department, and such other executive departments as may be established by law, whose heads shall be appointed by the governor as hereinafter provided.

(7) The governor and the heads of executive departments shall be entitled to seats in the general assembly, may introduce bills therein, and may take part in the discussion of measures, but shall have no vote.

(8) The governor, lieutenant-governor, secretary of state, treasurer of state, attorney-general, auditor, superintendent of public instruction, and speaker of the house of representatives shall constitute an executive council, and each official herein named shall continue as a member of such executive council until the expiration of his term of office.

(9) All officers of the executive branch of the government, with the exception of the heads of departments, shall hold office during good behavior.6

(10) All executive officers shall receive such compensation as shall be fixed by law.

SECTION 2. c. Judiciary. (1) The judicial power herein granted is vested in a general court of justice which shall have three branches, to be known as the supreme court, the district courts, and the county courts.7

(2) All the judges of the general court of justice shall hold office during good behavior.

(3) Judges of the supreme court shall be at least thirty-five years of age; of the district courts, thirty years of age; and of the

---

6. The purpose of this provision is the abolition of the spoils system. This is the great bane of American politics. The placing of executive officers under the Civil Service will do more, perhaps, than anything else to insure the success of the democratic form of government.

7. This organization of courts has been proved the best by the modern English organization of courts and by the investigations of legal experts in the United States.
county courts, twenty-five years of age; and all shall be citizens of the United States and inhabitants of this state for at least five years preceding their appointment.

(4) The judges, after the first named below, shall be appointed by the governor, subject to the consent of the majority of the general assembly, after nomination by the judicial council. The function of the governor herein shall be regarded a ministerial function. But the first judges of the supreme court shall be the present justices of the supreme and appellate courts; the first judges of the district courts, the present judges of the circuit, superior, criminal, and municipal courts; and the judges of the county courts, probate judges so far as there are any: and all of the present judges shall continue to serve as such new judges for the remainder of their respective terms and until their successors shall have qualified. 8

(5) One of the justices of the general court of justice shall be designated chief justice and he shall also be the presiding judge of the supreme court.

(6) The chief justice of the general court of justice, one associate justice to be selected by the judges of the supreme court, one judge of the district courts to be selected by the judges of the district courts, the president of the State Bar Association, and the dean of the law school of the state university shall constitute a judicial council and they shall continue to serve in such judicial council until the expiration of their respective terms of office. 9

(7) All judges of the general court of justice shall receive such compensation as shall be fixed by law.


(1) The counties of the state shall be political units to govern the affairs of the county outside the jurisdiction of villages and cities, and to act as administrative units for the state. 10

8. Appointment of judges as in England, in the federal courts, and some of our state courts, has proved a better way to get judges of high caliber than election by the people. Popular vote is not a good method for choosing experts. However, to insure good appointments, some better scheme than mere appointment by the governor must be provided. In this constitution this better scheme is nomination by judicial council in addition to the consent of the general assembly.

9. At least sixteen states of the Union have already established judicial councils. The plan outlined herein is the usual plan followed by other states. 36 W. Va. L. Quar. 9.

10. Probably the poorest form of government in the United States is
(2) Each county shall have a legislative and an executive but not a judicial branch of government.

(3) The legislative power delegated to the counties shall be vested in a board of county commissioners who shall not exceed five in number, shall be at least twenty-five years of age, citizens of the United States, inhabitants of their county for at least one year preceding their election; and shall be elected at the time of election of state officers for the term of two years.

(4) The board of county commissioners shall elect a county auditor who shall serve during the pleasure of such board.

(5) The executive power delegated to the counties shall be vested in the county manager who shall be at least twenty-five years of age, a citizen of the United States, an inhabitant of his county at least one year preceding his election, and shall be elected at the time of the election of state officers for a term of four years.

(6) Both the county manager and the county commissioners shall be elected at a regular election on the first Tuesday after the first Monday in November.

(7) There shall also be a county sheriff, a county treasurer, a county coroner, a county recorder, a county surveyor, and such other county officers as may be authorized by the county commissioners by general law.

(8) All executive county officers, with the exception of the county manager, shall hold office during good behavior.

(9) All county commissioners, county managers, and other county officers shall receive such compensation as shall be authorized by the county commissions by general law.

county government. At the present time, county government is more of a political machine than a government. This constitution undertakes to make county government a real government, both so far as concerns the legislative branch of government and the executive branch of government. All of the courts of the state should be organized into one system, and they are therefore left out of county and city government. A measure of home rule where local county interests are involved should be provided for, as in this constitution. The executive and administrative branches of the county government have been made efficient by heading them up in one officer and providing for continuity of tenure. The arguments for this are those which have been advanced for the form of state government provided. But, because this form of government is such a departure from our present government, an alternative plan of government is presented for consideration. The alternative plan is for the most part recommended by the National Municipal League.
SECTION 3.  b. City Government. (1) The villages and cities of the state shall be political units for the government of their respective affairs, and to act as administrative units for the state.

(2) Each village and city shall have a legislative and executive but not a judicial branch of government.

(3) The legislative power delegated to villages and cities shall be vested in a board of aldermen who shall not exceed ten in number, shall be at least twenty-five years of age, citizens of the United States, inhabitants of their city or village at least one year prior to their election, and shall be elected at the time of the election of state officers for the term of two years.

(4) The board of aldermen shall choose an auditor who shall hold office during their pleasure.

(5) The executive power delegated to cities and villages shall be vested in a mayor who shall be at least twenty-five years of age, a citizen of the United States, an inhabitant of his village or city for at least one year prior to his election, and shall be elected at the time of the election of state officers for the term of four years.

(6) The mayor with the advice and consent of the board of aldermen in cities of ten thousand or more shall choose to be the business head of the city or village a city manager who shall hold office during the pleasure of the mayor and the board of aldermen.

(7) There shall be such other executive officers for the cities of the state as shall be authorized by the board of aldermen by general law.

(8) All executive officers, with the exception of the mayor and the city manager in cities having a city manager, shall hold office during good behavior.

(9) All aldermen, the mayor, and all other executive officers, including the city manager in cities having a city manager, shall receive such compensation as shall be fixed by the board of aldermen by general law.

ALTERNATIVE SECTION 3.  a. County Government. (1) The counties of the state shall be political units to govern the affairs of the county outside the jurisdiction of villages and cities, and to act as administrative units for the state.

(2) Each county shall have a legislative and an executive but not a judicial branch of government.

ALTERNATIVE SECTION 3.  b. City Government. (1) The villages and cities of the state shall be political units for the govern-

10. See page 8.
ment of their respective affairs,\textsuperscript{11} and to act as administrative units for the state.

(2) Each village and city shall have a legislative and executive but not a judicial branch of government.

\textbf{ARTICLE II}

\textbf{THE POWERS OF GOVERNMENT}

\textbf{SECTION 1. STATE GOVERNMENT.} \textit{a. General Assembly.} The general assembly shall have the power

(1) Each house to choose its own officers with the exception of the president of the senate;

(2) Each house to determine its own rules of procedure;

(3) Each house to punish its own members for disorderly behavior, and by a two-thirds majority to expel a member;

(4) Each house to punish by imprisonment not exceeding twenty-four hours any person not a member who shall be guilty of disorderly or contemptuous behavior in its presence;

(5) To cause an enumeration to be made every six years of all the inhabitants of the state over the age of twenty-one years;

(6) To cause an apportionment of the senators among the several counties according to such enumeration, and to cause an apportionment of representatives among the social groups of the state according to their actual membership;

(7) Each house to judge the elections, qualifications, and returns of its own members;

(8) To keep and to publish a journal of its proceedings;

(9) To make provision by general law for bringing suit against the state for any injuries caused by the torts of its agents, or for any non-tortious civil liability of the state;

(10) To provide for the selection of all state administrative officers and all state executive officers whose selection has not been provided for by this constitution.

(11) To fix the compensation of the senators, representatives, members of the legislative council, judges, governor, and all other executive and administrative officers of the state;

\textsuperscript{11} What has been said with reference to county government also applies to city government. The city manager form of government has demonstrated its success, and should at all events be applied in cities of sufficient size.
(12) To prescribe the qualifications for office where such qualifications are not prescribed by this constitution;

(13) To prescribe the term of office of all state officers whose terms are not prescribed by this constitution;

(14) To determine the interest groups entitled to representation in the house of representatives, and their method of representation;

(15) To provide for the election of senators, representatives, governor, and all other elective officers of the state, except as provided for by this constitution;

(16) To provide a method for filling vacancies in elective offices;

(17) To provide a manner for determining contested elections;

(18) To itself elect a governor or lieutenant-governor in case two or more persons shall have received an equal and the highest number of votes for either office;

(19) To appoint an auditor of state as provided for in this constitution;

(20) To determine the number of judges of the supreme and other branches of the general court of justice;

(21) To provide for the speedy publication of the decisions of the supreme court;

(22) To deprive of the privilege of suffrage and to render ineligible for office all persons convicted of an infamous crime;

(23) To prescribe the qualifications of voters, except as forbidden by this constitution;

(24) To remove from office all state officers, except judicial, elected by the people or appointed by the governor, for crime, incapacity, or negligence, either by impeachment by the house of representatives to be tried by the senate, or by a joint resolution of the general assembly upon a two-thirds vote of all the elected members of each house in each case;

(25) To provide for an initiative and referendum whereby the people by petition may directly propose laws and amendments to this constitution and enact or reject the same at the polls, and whereby the people by petition may directly require measures enacted by the general assembly to be submitted to the voters for their approval;

(26) To provide for the organization, arming, and discipline of the militia;

(27) To construct and maintain public highways throughout the state;
(28) To provide by law for a general and uniform system of common schools—including grade and high schools—equally open to all and where tuition shall be without charge, and for the general supervision thereof by a board of education;

(29) To charter private corporations by general law;

(30) To provide institutions for the education of the deaf, dumb, and blind, for the treatment of the insane, and the detention and segregation of criminals;

(31) To regulate all public utilities of state-wide scope, either directly or through corporations administering legislative standards, or to provide for state ownership and operation of such utilities;

(32) To provide for the control and management of the state university by a board of trustees and to constitute such board of trustees a public corporation under the name and style of The Board of Trustees of University;¹²

(33) To provide for the taking of property for a public use; to provide by graduated inheritance taxes, graduated income taxes, and graduated excise taxes for the raising of revenue for the public purposes of the state; to provide for shelter, the maintenance and distribution of a sufficient supply of food, and for other common necessities of life at reasonable rates; to conserve the agricultural, mineral, forest, water, and other natural resources of the state; to regulate advertising on public ways in public places and on private property within public view; to provide unemployment insurance; to provide for a state bank; to provide for public medicine; and otherwise to exercise a general police power to protect the social interests of the state. The question of whether or not there is a public use for eminent domain, public purpose for taxation, and social interest for police power, shall be deemed a judicial function.

(34) To make any laws necessary and proper for carrying into execution of the foregoing powers, or any other powers vested by this constitution in the government of this state, or any department or officer thereof.

¹². It is the belief of the drafter of this constitution that Purdue University and Indiana University should be placed under one board of trustees, but with their separate organizations otherwise left intact. This would eliminate any lack of cooperation between the institutions and it would mean greater progress for both institutions. If this reform cannot be accomplished, he would still insist that each institution should be a constitutional institution rather than a statutory institution.
SECTION 1. b. Legislative Council. The legislative council shall have the power
(1) To collect information concerning the government and general welfare of the state, and to report thereon to the legislature;
(2) To consider measures for proposed legislation submitted to it and to report to the general assembly thereon with its recommendations;
(3) To prepare for the general assembly such legislation as in its opinion the welfare of the state may require, and to make recommendations thereon in the form of bills or otherwise;
(4) To exercise such other powers and duties as may be assigned to it by law.

SECTION 1. c. Governor. The governor shall have the power
(1) To be commander-in-chief of the military and naval forces of the state, and to call out such forces either to execute the laws or to suppress insurrections or to repel invasion;
(2) To give the general assembly information as to the affairs of the state and to recommend such measures as he shall deem expedient;
(3) To convene the general assembly at some other place than the seat of government, should such seat of government become dangerous from disease or a common enemy;
(4) To call a special session of the general assembly, if in his opinion the public welfare shall require it;
(5) To adjourn the general assembly to such time as he shall think proper not beyond the first day of the next regular session, in case of a disagreement by the general assembly with respect to the time of its adjournment;
(6) To appoint the judges of the high court of justice, with the advice and consent of the senate, on nomination by the judicial council; to appoint the secretary of state, treasurer of state, adjutant-general, attorney-general, heads of executive departments, and all other executive officers with the advice and consent of the senate, on nomination by the executive council (except in case of members of the executive council); and to appoint the superintendent of public instruction, with the advice and consent of the senate, on nomination by the state board of education;
(7) To fill by appointment any vacancy in an elective office until such time as a successor shall have been elected and qualified;
(8) To remove all officers appointed by the governor except where such officers hold their office during good behavior;
(9) To issue returns of elections, to fill any vacancies which may occur in the general assembly;
(10) To exercise a general supervision over all of the departments of government and to require information in writing from the officers of the various administrative departments of government upon any subject relating to the duties of their respective officers;
(11) To see that the laws are faithfully executed;
(12) To grant reprieves and pardons for offenses against the state of Indiana except in the case of impeachment and direct contempt of court;
(13) To submit to the legislature a budget setting forth a complete plan of proposed expenditures and anticipated income of all departments, offices, and agencies of the state for the next ensuing biennium;
(14) To introduce in the general assembly a general appropriation bill containing all the proposed expenditures set forth in the budget, and to reduce items in appropriation bills.

Section 1. d. Lieutenant-Governor. The lieutenant-governor shall by virtue of his office have the power
(1) To be president of the senate; to join in debate and to vote on all subjects when the senate is in committee of the whole, and to cast the deciding vote whenever the senate shall be equally divided;
(2) To act as a member of the executive council; and as governor, when the office devolves upon the lieutenant-governor, as provided in this constitution.

Section 1. e. Executive Council. The executive council shall have the power
(1) To nominate all heads of departments and all other executive officers than those who are members of the executive council;
(2) To advise the governor on all executive policies of the state;
(3) As individuals to have seats in the general assembly, introduce bills therein, and to take part in the discussion of measures, but without a vote.

Section 1. f. Court. The various branches of the high court of justice and the judges thereof shall have the following powers:
(1) The supreme court shall have exclusive appellate jurisdic-
tion coextensive with the limits of the state over all questions both of law and fact and any original jurisdiction which the general assembly may confer upon it, and it shall have the power to sit in two or more divisions when in its judgment this is necessary for the proper dispatch of business;

(2) The district courts shall have original jurisdiction in all cases, civil and criminal, except where exclusive jurisdiction may be conferred under this constitution upon the supreme court or some other branch of the high court of justice;

(3) The supreme court upon recommendation of the judicial council shall have the power to prescribe the qualifications of attorneys and all other judges except as they are prescribed by this constitution and to provide the rules of legal procedure to govern the conduct of all cases in all branches of the general court of justice;¹³

(4) The chief justice of the high court of justice shall have the power, with the advice and consent of the senate, on nomination by the judicial council, to appoint all the prosecuting attorneys, judges, and other officers of the court of this state; to assign various judges of the district courts to hold court in other districts in cases of necessity, or convenience, and generally to supervise the work of all the branches of the high court of justice;

(5) The supreme court shall have the power to remove from office any judge or prosecuting attorney convicted of any high crime or accused of incompetency in office upon an information in the name of the state.

SECTION 1. g. Judicial Council. The judicial council shall have the power

(1) To nominate all judges and other officers of court;

(2) To recommend qualifications for judicial office and attorneys and amendments to rules relating to pleading, evidence, and practice in the general court of justice, and any other rules of court concerning the duties of the officers of court;

(3) To prescribe the manner for the removal of judges and other officers of court for misconduct in office;

¹³ The powers enumerated in this section probably have always been judicial powers, but they have been largely usurped by the legislative branches of the states of the United States. This usurpation is partly responsible for the unfortunate situation into which our legal procedure has got, and placing the power back in the judiciary again where it belongs is the first step towards a genuine reform of legal procedure.
(4) Generally, to advise the presiding justice for the high court of justice as to all of his administrative duties.

Section 2. Local Government. a. County Government.

(1) The county commissioners of the various counties shall have the power to levy taxes upon land not including improvements for the public purposes of the county, to take private property for the public uses of the county, and to exercise a police power to protect any social interest of county-wide extent. Whether or not the matter is a matter of county interest shall be regarded a judicial question. They also shall have the power to choose a county auditor.

(2) The general manager of the county shall have the power to appoint with the advice and consent of the county commissioners a county sheriff, a county treasurer, a county coroner, a county recorder, a county surveyor, and all other county officers and employees, who shall hold their office during good behavior, and the power and duty to execute within his political unit all county laws and all state laws where required by the state government.

Section 2. b. City and Village Government. The board of aldermen of each city and village of this state shall have the power

(1) To take private property for its village or city public use; to levy a tax upon land, not including improvements, for the public purposes of the city or village; to exercise the police power over local public utilities, local parks, public libraries, local health, local safety, local morals, and all other matters of local social interest; and to own and operate essential local public utilities. The question of what is a matter of city interest rather than a county or state interest shall be regarded a judicial function.

(2) The mayor, with the advice and consent of the board of aldermen in cities of ten thousand or more inhabitants shall have the power to appoint the city manager as provided in this constitution, and all other city officers and employees.

(3) The mayor shall have the power to see that all of the ordinances of the city council are executed, shall have the general supervision over the various branches of the city government, and shall have the power and duty to execute state laws within his political unit when required by the state government.

Alternative Section 2. a. County Government. (1) The general powers and duties of county government shall be defined by general law, applicable to all counties, and optional plans for the organization of county government may be provided by law, to be
effective in any county when submitted to the legal voters thereof and approved by a majority of those voting thereon.

(2) Any county shall have the power to frame, adopt, and amend a charter for its government and to amend any existing law relating to its local organization, such charters and amendments to take effect when submitted to the qualified voters of the county and approved by a majority of those voting thereon. The manner of exercising the powers herein granted shall be regulated by general law.

(3) Any county with a population of over ——— may be authorized by law to provide in its charter for a consolidated system of municipal government, providing for the powers and duties of county, city, and other municipal authorities within the county and abolishing all officers whose powers and duties are otherwise provided for.

(4) The county commissioners of the various counties shall have the power to levy taxes upon land not including improvements for the public purposes of the county, to take private property for the public uses of the county, and to exercise a police power to protect any social interest of county-wide extent. Whether or not the matter is a matter of county interest shall be regarded a judicial question. They also shall have the power to choose a county auditor.

ALTERNATIVE SECTION 2. b. City and Village Government.

(1) Provision shall be made by a general law for the incorporation of cities and villages; and by a general law for the organization and government of cities and villages which do not adopt laws or charters in accordance with the provisions of (2) and (3), below, of this constitution.

(2) Laws may be enacted for the organization and government of cities and villages, which shall become effective in any city or village only when submitted to the electors thereof and approved by a majority of those voting thereon.

(3) Any city may frame, adopt, and amend a charter for its government, and shall have the power to amend any existing law relating to its local organization, such charter and amendments to take effect when submitted to the qualified voters of the county and approved by a majority of those voting thereon. The manner of exercising the powers herein granted shall be regulated by general law.
Willis: Constitution for the State of Indiana

(4) The board of aldermen of each city and village of this state shall have the power: to take private property for its village or city public use; to levy a tax upon land, not including improvements, for the public purposes of the city or village; to exercise the police power over local public utilities, local parks, public libraries, local health, local safety, local morals, and all other matters of local social interest; and to own and operate essential local public utilities. The question of what is a matter of city interest rather than a county or state interest shall be regarded a judicial function.

ARTICLE III
(BILL OF RIGHTS)

LIMITATIONS ON THE POWERS OF GOVERNMENT IN FAVOR OF INDIVIDUALS

SECTION 1. RELIGIOUS FREEDOM. No one shall be denied the privilege to worship Almighty God according to the dictates of his

14. It seems everywhere agreed that one function of the constitution is to protect personal liberty against social control. The problem is to draw the line where personal liberty should end and social control begin. It would be generally admitted that personal liberty is better than social control when matters of religious belief or academic freedom are concerned, and it would generally be admitted that social control is better than personal liberty where it is necessary to protect some paramount social interests in the exercise of the police power, or to further some public purpose by taxation, or some public use by eminent domain. But there are many other forms of personal liberty which are doubtless more important than any form of social control, and it is not an easy matter to determine social interests, public purposes, and public uses. In this constitution, an attempt has been made to protect those forms of personal liberty which receive protection in the best constitutions of the land, in the way that they are protected under the decisional law of the United States, and to allow social control only so far and according to the procedure sanctioned by such decisional law. In most constitutions these so-called constitutional guaranties or limitations, often called bills of rights, are stated in language which is practically meaningless, or if they have a meaning they suggest a meaning very different from the actual meaning which they have. As a result instead of aiding the administration of justice, they often interfere with it and contribute to the origin of lawlessness through the lawlessness of governmental officials. An attempt has been made herein to be realistic and to make these guaranties say just what they mean, and to give the protection they are supposed to give. For example, in the case of freedom of speech and the press, instead of forbidding any law or social control "abridging the freedom of speech, or of the press" the exact extent of the immunity guaranteed by freedom of speech and the press is set forth; and in the case of self-crimination, protection against "third degree" work is specifically named.
own conscience; nor denied the free exercise and enjoyment of any religious opinions; nor rendered incompetent as a witness in consequence of his opinion on any matter of religion. No preference shall be given by law to any creed, religious society, or mode of worship. No one, against his consent, shall be compelled to attend, help to erect, or help to support any place of worship, or to maintain any ministry, or compelled to do militia duty if conscientiously opposed to bearing arms. No religious test shall be required as a qualification for any office of trust or profit. No public money or property shall ever be appropriated, applied, donated, or used directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution or association, or system of religion, or for charitable, industrial, educational, or benevolent purposes not under the control of the state.

SECTION 2. OATH. The mode of administering an oath or affirmation shall be such as may be most consistent with, and binding upon, the conscience of the person, to whom such oath or affirmation may be administered.

SECTION 3. FREEDOM OF SPEECH AND OF THE PRESS. Every person shall be immune from censorship of his speech, writing, and publications on all subjects, except for the equity powers of the courts and the control of enterprises which do not give expressions of opinion; and immune from all liability except civil for any publications and in all trials for indirect contempt, slander, and libel, the truth when published with good motives and for justifiable ends shall be a sufficient defense.

SECTION 4. UNREASONABLE SEARCHES AND SEIZURES. Every person shall be immune from unreasonable searches and seizures of their persons, houses, papers, and effects; but a search and seizure are reasonable without a warrant both of goods on a person validly arrested and of goods on the place where a person has been validly arrested and of goods in moving vehicles; and with a warrant under all other circumstances: but no warrant shall issue except for the prevention of crimes and upon an affidavit alleging facts and for probable cause to be determined by the magistrate, which affidavit shall be supported by oath or affirmation and particularly describe the place to be searched and the person or thing to be seized. Evidence obtained pursuant to an unreasonable search and seizure shall not for that reason be inadmissible.
SECTION 5. PEACEABLE ASSEMBLAGE. None of the people shall ever be forbidden to assemble together in a peaceable manner to consult for their common good, or to instruct their representatives, or to petition the government or any department thereof for redress of grievances.

SECTION 6. MILITARY POWERS SUBORDINATE. The military shall be kept in strict subordination to the civil power. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

SECTION 7. EMINENT DOMAIN, ETC. Private property can be taken only in the exercise of the police power, the power of taxation, and the power of eminent domain; and it shall not be taken by eminent domain except for a public use and upon just compensation and, except in the case of the state, first assessed and tendered.

SECTION 8. EXEMPTIONS FROM TAXATION, ETC. The general assembly may provide for the exemption of a reasonable amount of property of all the people from taxation, and from seizure, or sale for the payment of any debt or liability hereafter contracted; but it shall not exempt any special classes of people nor exempt from taxation any private educational, religious, charitable, benevolent, or other private institution.

SECTION 9. IMPRISONMENT FOR DEBT. There shall be no imprisonment for debt, except for refusal by a person to deliver up his estate to his creditors as prescribed by law.

SECTION 10. EX POST FACTO LAW, ETC. The general assembly shall pass no bill of attainder, or ex post facto criminal law, or law making an irrevocable grant of special privileges or immunities.

SECTION 11. OBLIGATION OF CONTRACT, ETC. The general assembly shall pass no law impairing the obligation of a contract nor any other retroactive civil law, except in the exercise of the police power, or the power of taxation, or the power of eminent domain.

SECTION 12. HABEAS CORPUS. The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety require it, and then only in such manner as shall be prescribed by law.
SECTION 13. SUFFRAGE. The right of citizens of this state to vote shall not be denied or abridged on account of sex, race, color, or non-ownership of property.

SECTION 14. CLASS LEGISLATION. Class legislation is prohibited but classification which rests upon a reasonable basis is permitted.

SECTION 15. JURY. The privilege of a jury trial in both civil and criminal cases and in the case of indirect contempt of court shall remain inviolate but the jury shall have only the power to determine the facts, under the advice and direction of the court, and the general assembly may provide for a jury of less than twelve, for less than a unanimous verdict, and for the waiver of the privilege of a jury trial.

SECTION 16. CRIMINAL PROSECUTIONS. In all criminal prosecutions the accused shall enjoy the privilege of a public trial in the county or district in which the offense was committed; the privilege to appear and defend in person or by counsel; the privilege of demanding the nature and cause of the accusation, and to have a copy thereof; the privilege of meeting the witnesses face to face; the privilege of process to compel the attendance of witnesses; and the privilege against self-crimination, which shall include protection against "third degree" work before or during trial, but shall not prevent comment on his failure to take the stand.

SECTION 17. DOUBLE JEOPARDY. No person shall be put in jeopardy twice for the same offense.

SECTION 18. BAIL. Murder and treason when the proof is evident or the presumption strong shall not be bailable offenses, but other offenses shall be bailable on sufficient security.

SECTION 19. CRUEL AND UNUSUAL PUNISHMENTS. Cruel and unusual punishments shall not be inflicted, and prisoners shall not be treated with unnecessary rigor.

SECTION 20. TREASON. Treason against the state shall consist only in levying war against it, and giving aid and comfort to its enemies. No person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or upon his confession in open court. No conviction shall work corruption of blood, or forfeiture of estate.
SECTION 21. DUE PROCESS. No one shall ever be deprived of any existing legal right, power, privilege, or immunity, or of any other part of his personal liberty, by any branch of government in matters of substance, or by the judicial or administrative branches of government in matters of procedure, except by due process of law both as a matter of substance and as a matter of procedure: but it shall be regarded due process of law as a matter of substance when there is a proper exercise of the police power, or the power of taxation, or the power of eminent domain, because of a sufficient social interest for police power, public purpose for taxation, and public use for eminent domain; and it shall be regarded due process of law as a matter of procedure when the branch of government acting has jurisdiction and is an impartial tribunal, and the individual is given notice and an opportunity to be heard, according to some orderly procedure.

ARTICLE IV
LIMITATIONS ON THE POWERS OF GOVERNMENT IN FAVOR OF THE PEOPLE\textsuperscript{15}

SECTION 1. SPECIAL ACTS. The general assembly shall pass no local or special laws, or special act authorizing suit to be brought against the state, or making compensation to any person claiming damages against the state; but all laws shall be general and of uniform operation throughout the state.

SECTION 2. 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 public defense. No county shall subscribe for stock in any incorporated company, unless the same be paid for

\textsuperscript{15} It is usual for constitutions to have other limitations upon the powers of the different branches of government besides those to protect the personal liberty of individuals. The sovereign people do not wish to give their agents all the powers which they themselves possess. Sometimes when they have given powers to their agents they wish to limit the way in which such powers shall be exercised by their agents. Ordinarily, such limitations are scattered throughout the constitutions. In this constitution, since it has been thought it would be more scientific, all of these limitations have been brought together under a separate article.
at the time of such subscription; nor shall any county lend its credit
to any incorporated company, nor borrow money for the purpose
of taking stock in any such company; nor shall the general assembly
ever, on behalf of the state, assume the debts of any county, city,
town, or township, nor of any private corporation whatever.

Section 3. Time Acts Take Effect. No act shall take effect
until the same shall have been published and circulated in the several
counties of this state by authority, except in case of emergency;
which emergency shall be declared in the preamble or in the body
of the law.

Section 4. Eligibility to Office. No person holding a
lucrative office or appointment, under the United States or under
this state, shall be eligible to a seat in the general assembly; nor shall
any person hold more than one lucrative office at the same time,
except as in this constitution expressly permitted: Provided, That
offices in the militia to which there is attached no annual salary and
the office of deputy postmaster where the compensation does not
exceed ninety dollars per annum shall not be deemed lucrative; and
provided, also, that counties containing less than one thousand polls
may confer the office of clerk, recorder, and auditor, or any two of
said offices, upon the same person. No person who may hereafter
be a collector or holder of public moneys shall be eligible to any
office of trust or profit, until he shall have accounted for, and paid
over, according to law, all sums for which he may be liable. Every
person shall be disqualified from holding office forever if convicted
of an infamous crime or of fighting a duel or of giving or accepting
a challenge to fight a duel and during the term for which he may
have been elected for giving or offering a bribe to procure his elec-
tion. No senator or representative shall be eligible to election or
appointment to any office created, or whose emoluments have been
increased, during the term for which he was elected. No judicial
officer shall be eligible to any office other than a judicial office during
the term of his office.

Section 5. Nobility. No titles of nobility nor hereditary dis-
tinction shall be granted by any agency of this government.

Section 6. Special Privileges. The general assembly shall
pass no law making an irrevocable grant of special privileges or
immunities.
SECTION 7. DELEGATED AUTHORITY. Authority delegated by the people shall never be redelegated except as provided by this constitution.

SECTION 8. POLICE POWER, TAXATION, EMINENT DOMAIN. Power of taxation, police power, and power of eminent domain shall never be surrendered, suspended, or contracted away.

SECTION 9. THEORY OF CRIMINAL LAW. The theory of criminal law shall not be vengeance but the protection of society and all fines and imprisonment shall fit the character of the criminal and the needs of society rather than the nature of the crime.

SECTION 10. EMIGRATION. Emigration from the state shall not be prohibited.

SECTION 11. DUAL FORM OF GOVERNMENT. Because in the United States constitution the people of the United States have established a dual form of government, under which there have been delegated to the federal government certain powers which cannot be exercised by any state, and have placed further limitations upon the exercise of other powers by the governments of the various states, this constitution expressly limits the powers of the agencies of the government of this state, so as to give them no powers exclusively vested in the agencies of the federal government or contrary to the constitution of the United States, but to require them to observe the provisions of the United States constitution in regard to interstate commerce, imports and exports, taxation, full faith and credit, and the privileges and immunities of citizens both of other states and of the United States, citizenship, suffrage, slavery, intoxicating liquors, and all the other limitations upon the state and its agencies found in the constitution of the United States.

SECTION 12. COUNTIES. No county shall ever be divided for senatorial apportionment. No new county shall be created and no existing county subdivided unless by majority vote of the duly registered voters of the district affected voting on the question.

SECTION 13. ADJOURNMENT. Neither house of the general assembly shall, without the consent of the other, adjourn for more than three days, nor to any place other than that at which it may be sitting.

SECTION 14. COMPENSATION OF GENERAL ASSEMBLY. No increase of compensation of the members of the general assembly shall
take effect as to those who are members of the general assembly at the time such increase may be made. If either house fails to effect an organization within five days after a quorum is in attendance, the members of the house so failing shall receive no compensation from the end of such five days until an organization shall have been effected.

Section 15. Yeas and Nays. On any question except adjournment at the request of two members the yeas and nays shall be entered on the journal together with the names of those demanding the yeas and nays; but on a motion to adjourn, at least one-tenth of the members present shall be required to order the yeas and nays. The vote on the passage of every bill or joint resolution shall be taken by yeas and nays.

Section 16. Doors of House. The doors of each house and of committees of the whole shall be kept open, except where such house votes that secrecy is required.

Section 17. Title of Act. Every act of the general assembly shall embrace but one subject and matters properly connected therewith, which subject must be expressed in the title; but where an act embraces matters not expressed in the title, such act shall be void only as to such matters.

Section 18. Suit against State. No suit against the state or compensation to any person making a claim against the state shall ever be authorized by special act.

Section 19. Majority to Pass Bill. A majority of all the members elected to each house shall be necessary to pass every bill or joint resolution, and all bills and joint resolutions so passed must be signed by the presiding officers of the respective houses.

Section 20. Time of Taking Effect of Acts. No act shall take effect until it shall have been authoritatively published and circulated in the several counties of the state, except in case of an emergency so declared in the preamble or body of the act.

Section 21. Length of Session. No regular session of the general assembly shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days.

Section 22. Appropriations. No appropriation, except an emergency appropriation recommended by the governor, shall be passed until after the general appropriation bill introduced by the
Section 23. Re-election of Governor. The governor shall not be eligible for re-election for a period of four years after a term of office. Neither the governor nor lieutenant-governor shall be eligible to any other office during the term for which he shall have been elected governor or lieutenant-governor.

Section 24. Salary of Governor. The salary of the governor shall neither be increased nor diminished during the term for which he shall have been elected.

Section 25. Report by Judges. No judge shall be allowed to report any decision of the supreme court.

Section 26. Salary of Judges. The salary of the judges of the high court of justice shall not be diminished during their continuance in office.

Section 27. Indebtedness. No political unit or municipal corporation in this state shall ever become indebted in any manner or for any purpose except for a profit-making enterprise and then to an amount in the aggregate not exceeding two per centum of the value of taxable property within such geographical district, and for the purposes of this limitation no two political units can occupy the same geographical district.

Section 28. Suffrage. Every citizen of the United States of the age of twenty-one years who shall have resided in the state one year preceding the election and in the county, township, and ward (or precinct) the time prescribed by law, and who shall not have been convicted of an infamous crime, and who possesses the prescribed educational qualification shall have the qualifications of an elector.

Section 29. Civil Service. All appointments including state, county, city, and village shall be according to fitness determined by examination, and so far as practicable by competition.

Section 30. Common School Fund. The principal of the common school fund shall remain a perpetual fund to be increased...
but never diminished, whose income shall be inviolably appropriated to the support of the common schools.

SECTION 31. Real Property Taxes. No real property taxes shall be enacted unless they provide for a uniform and equal assessment and rate of taxation.

SECTION 32. Incorporation. No private corporation shall be chartered, except by general law, and no banking corporation shall be chartered to issue bills of credit, unless provision is made for the registering and countersigning of the same by an officer of state and ample collateral security convertible into specie shall be deposited under the control of an officer of the state for the redemption of the same.

SECTION 33. Stockholders' Liability. The stockholders in every banking corporation shall be individually liable to an amount over and above their stock equal to their respective shares of stock (double liability) and the stockholders in every other private corporation shall be individually liable for the full value of their stock (single liability) for all debts or liabilities of such corporation.

SECTION 34. No Lottery. No lottery shall ever be authorized by law.

ARTICLE V
AMENDMENT

This constitution may be amended at any time, either by initiative petition, as provided in this constitution, or by the proposal of an amendment by a majority of the members of the general assembly at a regular or special session of the general assembly and approval thereafter by a majority of the qualified voters voting on the amendment. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner as to require the electors to vote for or against each of them separately.16

16. Constitutions should be drafted so well as not to need much amendment, but some provision for amendment should be provided; otherwise, the constitution would only provoke a revolution. The above provision is an attempt to strike a happy mean as to the difficulty of amendment. Some constitutions like that of the state of Indiana at the present time are too difficult of amendment, as is proved by the unsuccessful attempt to amend, by the efforts of the supreme court to warp the constitution to make it workable, and by the great amount of dead wood found in the constitution. The provision herein corresponds with the usual practice. Willis, Revision of Indiana Constitution, 5 Ind. Law Jour. 329, 332-5.