Indiana Should Call a Constitutional Convention

Albert Stump
Claycombe & Stump

Follow this and additional works at: http://www.repository.law.indiana.edu/ilj
Part of the Constitutional Law Commons, and the State and Local Government Law Commons

Recommended Citation
Available at: http://www.repository.law.indiana.edu/ilj/vol5/iss5/2
INDIANA SHOULD CALL A CONSTITUTIONAL CONVENTION

ALBERT STUMP*

There is a rising tide of demand for a new constitution for Indiana. That demand is not a mere expression of the variable whims of unreasoning popular clamor. It is voiced by those whose responsibilities have brought them face to face with constitutional problems in their most practical forms, as well as by those whose study of government may seem to be of a more academic nature.

Governor Marshall said in 1912:

"The people of Indiana are bound down under a fundamental law which they have no means of amending by so much as a punctuation mark. . . . Now, a constitution is sacred to me. But the rights of the people are more sacred. A constitution has got to be workable, and when one fails to work—why, then it's time to get another."

Governor Ralston in his inaugural address in 1913 and in his farewell address in 1917 declared that the present constitution had been outgrown through intellectual, social, and material progress. Governor Goodrich in his first message to the General Assembly of 1917 urged the calling of a constitutional convention, and the Legislature responded with the calling of a convention, which call was held unconstitutional by the Supreme Court.

The interest in a new constitution for some time then was overwhelmed by the sweeping enthusiasms of the World War and the events which followed thereafter in finding the way back to normal. In 1929 the General Assembly was again confronted with the resurgence of that interest as the attention of the people of the state came back to their own problems of state government.

The desire for a new constitution is not stimulated and inspired by agitators and chronic finders of fault in the established order of things. It does not bespeak a volatile and unsteady people desiring change for the sake of change, and devoid of any stabilizing respect or gratitude for tried institutions built by the labors of the past. A people still confident in their own

* See p. 396 for biographical note.

354
CONSTITUTIONAL CONVENTION

capacity for self government has found that the constitution made by their fathers to meet with wisdom their own day's needs is not adequate to meet the needs of today.

The Indiana of 1851 bears but slight resemblance to the Indiana of today. A homogeneous rural population of about one million has given place to a heterogeneous population of more than three million, the large majority of whom live in cities. In 1851 the largest city in Indiana was New Albany with a population of about 7,000. There were no sections where the foreign born predominated. Lake County was practically an uninhabited swamp in the areas where great industrial cities now stand. In one of those cities about 80 per cent of the population are foreign born, or the children of foreign born, and in all of them they predominate strongly, and that county can now determine the outcome of elections.

In 1851 the total revenue of the state amounted to about $500,000; today, to about $34,000,000.

Then there was not a single public utility in the state except 212 miles of steam railroad; today, utilities in every city and town and in nearly every farm home. Then travel was largely over toll roads; now there are no toll roads. Then there were no typesetting machines and printing was slow and expensive. But it is not necessary that I attempt to paint a picture of the state as it was then, showing the conditions of life with the details in it necessary to show what a different world we are in today. You can bring that picture vividly and clearly before your minds, out of the materials within your own intimate knowledge. We have been striving vainly to make a constitution adapted to that day meet the conditions of today.

I invite your attention to a few of the important elements of the constitution of 1851 which will serve to show how inadequate it is to meet the needs of a government adapted to the conditions of today.

The particular points to which I shall refer, I do not refer to as exhausting the whole list, but only as among the things requiring consideration in the study of the proposition that will be before the people in the election of 1930 on the holding a constitutional convention.

First, in regard to taxation. Under the constitution there must be a uniform and equal rate of assessment and taxation and a just valuation for taxation of all property, both real and personal. This provision of the constitution clearly requires the
uniform levying of taxes on all property assessed at its true cash value. Property that is visible and cannot be concealed, that is, tangibles, will be assessed in accordance with that requirement. But that property which can be concealed, that is, money, taxable stocks and bonds, and other moneyed credits, in practice practically escapes taxation. Roughly the amount of wealth in Indiana, including tangible and intangible property, is estimated at about $10,000,000,000.00. A little more than half of this amount is on the tax duplicate. The amount on the tax duplicates and the distribution of those amounts is in round numbers as follows: $3,219,000,000.00 on real estate and improvements; $978,000,000.00 on utilities, banks, and building and loan associations; $919,000,000.00 on all other property including intangibles, household goods, machinery, merchandise and corporate property.

It is estimated that $5,000,000,000.00 in Indiana of intangibles escape taxation completely. How is that estimate arrived at? The total amount of cash deposits in building and loan associations assessed for taxes in Marion County in 1928 was $834,000.00. The total deposits of building and loan associations was $107,949,000.00. But it may be suggested that deposits of cash may have set off against them debts owed by the depositors. If that is done then the person to whom the debt is owed is required, under the law, to list that indebtedness owing to him as property to be taxed. But this that is lost between the assessments against the building and loan associations and the total amount of cash shown in the tax duplicate, is not made up in the amount of claims and accounts listed for taxation. It simply does not reappear. From the few figures that are available of that kind an estimate can be made of untaxed intangibles, and with the figures that are available that estimate becomes so completely persuasive that no one can be justified in challenging its substantial accuracy.

The result of this situation is to cast a burden upon real estate and improvements so great that money is driven out of such forms of investment. Instead of having the incidence of taxation such that it acts as an incentive to the building up and beautifying of homes and neighborhoods, in Indiana it acts as a genuine deterrent. And the making of attractive and beautiful homes, which it should be the dearest interest of government to foster, is discouraged by the system of taxation. Grant that
the power exists in the Legislature to pass laws that will force all intangibles upon the tax duplicate. No one who has had the responsibility of taking that move has felt that it could be done without injury to the State. Make the banks and building and loan associations disclose the list of their depositors, prescribe severe penalties for failure to put property upon the tax duplicate, establish a system of tax inquisitors to uncover all concealed intangibles, and by a rigorous determination to do whatever else may be done to accomplish that purpose, see to it that the requirement of the Constitution is completely enforced,—and what will be the result?

With other states classifying property for taxes, these intangibles and their owners will be driven from Indiana. The money that is necessary to finance the building of homes and the development of the state so that its people may enjoy a modern standard of living will not be available. It will be driven into those states where a classification of property for taxation is permitted.

It is futile to expect any substantial reduction of taxes by reducing the standards of education, the solicitude for dependents, or the demands for the improvement of the conditions of life. These demands for the expenditure of money will grow. The money to meet the demands must be forthcoming from some source. But the source should not be the pocketbooks of those who already have great difficulty to maintain what would be regarded in this day as a decent and respectable standard of living. That money should be obtained in such a way that a respectable and decent standard of living for the poor is not endangered.

There should be a limit upon the rate that may be levied on real estate and household furniture. And the state should have a sufficiently flexible constitution that it may classify for taxation other property and then force that property upon the tax duplicate. Then the billions that are paying nothing would be contributing something to the expenses of government. This feature of the tax situation apparently can not be met except by a change in our Constitution.

In making the tax provisions of the Constitution the experiences of Indiana and all other states point the way to the raising of revenues by excise taxes to a still greater extent. The easiest tax collected in the State of Indiana, the least burden-
some upon those who have grave problems of maintaining a
decent and respectable standard of living for themselves and
their children, are the automobile and gasoline taxes. Indiana's
annual budget is more than $34,000,000.00. These two special
taxes raise approximately $24,000,000.00 a year, or nearly twice
as much revenue as the state obtains from direct taxation on
property, and with practically no resentment or spirit of bitter-
ness engendered on account of it.

Classification of property for taxes is not an untried experi-
ment. Eighteen states have such laws, and some of them have
been in operation for more than forty years. Now, if we wish
to be practical, the data is easily accessible upon which results
in obtaining taxes and reducing the burdens upon farms and
homes can be assured. It is merely a matter of mathematics,
but of mathematics based on data which the world of 1851 could
not supply. The data being supplied now it should be utilized.
And to do so requires a change in the Constitution.

The second feature of the Constitution to which I invite your
attention is the provision that a session of the General Assembly
shall not extend beyond the term of sixty-one 'days. Remember
that at the time that provision was written into the fundamental
law we had a population of about one million, and their inter-
est were homogeneous. Aside from a few grist mills, tanneries,
saw mills, and small shops and factories of that kind, all inter-
est in Indiana were agricultural. There were less than $8,000,-
000.00 invested at that time in all manufacturing plants in this
state. The problems of government were not as numerous as
now. The advancing achievements of science, the developments
of educational interests and demands, the rise of great cities,
the dependence upon public utilities of hundreds of thousands,
of people, the modern methods of transportation—all these
things developed after 1851, and all of them have added to the
problems of government.

As a result of the forces that have made more complex the
life of today the Legislature in Indiana is confronted with an
absolutely impossible task. There are about twelve hundred
bills introduced in one session. The session is limited to sixty-
one days. Omit from the sixty-one days the Sundays and legal
holidays and the days necessary for the organizing of the Gen-
eral Assembly, and at the most there will not be more than forty-
five days left in which to do the actual work of legislation. In
the face of that demand on the part of the public, voiced in the presentation of twelve hundred or more bills expressing their desires for action of one kind or another to meet the conditions that are developing, the state invites ill-considered and haphazard law making. What should be done in the most careful and studious manner is done under the pressure and urgency of time limitations, which throws care and study to the winds and makes the result a matter of chance, and so confusing in its meaning that the courts are constantly required to give by construction some semblance of sense and reason to laws which would otherwise be devoid of it.

The Constitution should be changed in that feature. The exact nature of the change should be determined from the data available in the experience of other states. California divides its session into two parts. In the first part of the session bills are introduced but not passed. Then the Legislature adjourns. Time is given for study and public discussion of the bills that have been introduced, and after some months have elapsed it re-convenes for the passage of whatever bills may become laws with whatever amendments may seem necessary. Some system of that kind might solve the difficulty.

Distinguished scholars in the field of political science have advocated a Legislative Council, whose duty it would be to be in session continuously, to study and have hearings on bills proposed, untangle whatever knots there might be in them and be in a position when the Legislature convened to present the needs for legislation that had been expressed to them, along with their recommendations and the information that had been obtained in regard to those needs. That plan might succeed. But a Constitutional Convention is the necessary and proper means of determining what the solution of this problem should be.

Third. Connected with the length of time of the sessions is another item in the Constitution to which I invite your attention. That is Section 18 of Article IV, which requires that every bill shall be read by sections on three several days in each House, except that the first two readings may be dispensed with, “but the reading of a bill by sections on its final passage shall in no case be dispensed with.” For our state government to function at all it has been customary to disregard the Constitution. It must be held merely a scrap of paper as among law makers themselves sworn to uphold the Constitution. The Reading Clerk
in the House could not, in forty-five days of continuous reading during the hours in which the House is generally in session for the consideration of bills, read all the bills that are introduced. If the Constitution were followed, which happily it is not, there would be no time for any discussion nor even for roll calls on votes. The Legislature would meet, be called to order, hear the roll call, have prayer and settle down to listening to the Reading Clerk for the rest of the day,—and that would continue every day until final adjournment.

This provision of the Constitution seems ridiculous, even laughably absurd. It is not the absurdity or ridiculousness of the fathers who made the Constitution, but the ridiculousness and absurdity of their sons. In the day that that provision was put in the Constitution printing was expensive and slow, the business of the state was not large and the bills could be read. Many of them were read by the Reading Clerk as the only means by which the Legislators obtained information concerning the bills proposed. Today the business of the State has become so diversified and extensive that the bills cannot all be read. Printing is cheap, easy and expeditious. Bills can be placed on the desks in printed form the day of their introduction. The Constitution should be changed to meet this new condition.

Fourth, the power to remove Judges. Experiences will reveal weaknesses in any plan of organization although made with the greatest fore-thought of which human beings charged with the responsibilities of making such organizations are capable. There are few businesses that have continued in existence over a period of years that have not had occasion to amend their Articles of Incorporation or their By-Laws, or both. Conditions develop that no one could foresee and yet the conditions themselves, once they have developed, proclaim their own need of correction with an eloquence that will not be gainsaid.

Our Constitution contains this provision as Section 12, of Article VII: "Any Judge or Prosecuting Attorney, who shall have been convicted of corruption or other high crime, may, on information in the name of the State, be removed from office by the Supreme Court, or in such other manner as may be prescribed by law." The Supreme Court has recently held in the Dearth case that the only way that a Judge can be removed from office is by first having him convicted of corruption or
other high crime. No act of the Legislature can meet that situation. The Judge may become vindictive and passionately spiteful. He may undertake the wreaking of a personal vengeance on the members of whatever black list he may have made. He may rob widows and orphans of their estates through judicial action where he could not be convicted of corruption or other high crime. The blackest judges that have held the blackest assizes history records could still be safely on the bench and irremovable in Indiana until the expiration of their regular term of office.

The only partial escape from the possibilities that exist under such conditions is to create a new court of concurrent jurisdiction which may transact the business that would otherwise be required to be done in the court of such a Judge. Remember that if he is to be convicted of corruption or other high crime it may be necessary to obtain the conviction in his own court before any other step can be taken for his removal. The seriousness of such possibilities is overlooked in the good fortune that Indiana has generally had in the quality of men on the bench, and in the fact that while they were on the bench no twist of their mentality has occurred that has made reality of these grave possibilities against which the Constitution offers not the slightest barrier. Experience has revealed that defect. The people of the state should not be in further jeopardy on account of it.

Fifth. The power of the courts in cases of indirect contempt are not defined in the Constitution, and recent experience has shown that that too is a matter concerning which the rights of the courts and the rights of the citizen should be clearly defined.

The necessity of maintaining respect for the courts will be recognized by all students of government. The sense and feeling of contentment and tranquility on the part of a people requisite to stable and peaceful government, rests upon the abiding conviction that they, whether rich or poor, high or low, popular or unpopular, can present their grievances to impartial intelligent courts and know that even handed justice will be done. Whatever breaks that confidence in courts tends to unmake the orderly institutions of government and to cast the people back to a reliance on the unorganized, sometimes savage forces that arbitrated the disagreements of primitive people. The courts
have a grave responsibility to preserve not fear of the courts but respect for the courts. If, by the actions of the courts, they inspire fear of them on the part of the people generally, the people have it in their power to abolish the courts or destroy their usefulness.

The recent Dale and Shumaker cases centered the attention of the people of this state upon the powers and duties of a court in indirect contempt cases. The questions involved in those cases were such as to make difficult the distinctions between fair comment, libel of person, and contempt of court. The decisions in those cases did not clarify in the minds of the people those problems, and it is doubtful if the public reaction was a strengthening of confidence in and respect for, laws and courts. The personal element involved was strong. And the judges were placed in the anomalous position, under our Constitution, of sitting as a court in a case involving charges against themselves as persons. The result was that in one church conference and convention after another resolutions were adopted condemning the court, and the Governor saw fit to exercise executive clemency, which met with wide approval. It would be an act of unreasonable spleen and animosity to make a generally sweeping condemnation of the leaders and members of great churches in this state on account of such resolutions adopted in their state-wide conventions. Those people are of the people who have made this State. They and their kind are the prop and support and the very bulwark of the institutions of self-government. The courts, as a part of government, can ill afford to reduce the respect, esteem and confidence of people of that class.

These experiences point out where the weakness lies. In such cases there should be the possibility of having the case decided by other Judges than those who occupy the place as persons whose acts were commented upon. If that provision had existed in the Constitution, and the courts had been selected to try the cases where all parties involved would have had an opportunity to protect themselves against having a Judge who, they felt, might have a personal bias or prejudice, and if courts so constituted had reached exactly the same decisions, I doubt if there would have been the same storm of protest greeting their action.

But it was too much to ask the people who were interested in the outcome of the cases to believe that human beings cease to
have the attributes and weaknesses of human beings when they become Judges. If the decisions of the courts, under the circumstances, had been otherwise there would have been another group of the public, constituted of highly respected citizens, who would have been critical again of the decisions of the courts. But instead of ascribing their action to personal animus it would then have been ascribed to political cowardice. In neither event would the public generally have accepted the decisions as judgments of those who could approach the trial of the case without bias or prejudice affecting the result.

Similar unfortunate events are likely to occur in the future. Society is becoming more highly organized. Nothing can prevent that. It is one of the new imperative facts of this new world.

Various organizations will come into existence espousing one cause or another. Their leaders will become enthusiastic and zealous in support of the various causes the organizations sponsor. Their zeal will dull the edge of their tolerance for those who disagree, and of their patience with caution and deliberation in finding the means to accomplish what they will regard as upright purposes. The judicial attitude of courts may discern developments in their programs which the cause of justice must check or completely block. The disappointed sponsors of the movements will be inclined to charge such action of courts to ulterior motives. The judges whose motives and actions are thus questioned will be in an awkward position to teach the virtue of patience with the orderly processes of government and maintain respect for the courts through contempt proceedings. It is vain to suggest that we ought not to have such organizations as the City Manager League, the Daughters of American Revolution, the W. C. T. U., the Isaac Walton League, the Anti Saloon League, the League of Women Voters, and similar organizations. There is no way in a free country, if the country is to be kept free, to prevent the formation of such organizations; and if there were a means by which it could be done, that means should be destroyed.

That this tendency has developed is obvious, and those who read the comments in the newspapers and heard the statements following the decision of our Supreme Court in the City Manager Law case, will not need further evidence to prove that the enthusiasms of the sponsors of such movements are not turned
into sentiments of respect for the court when a decision of the court thwarts their plans. An impartial judge, that is a judge whom the public will regard as one who has no interest in the outcome as a person, should be available to the courts. They have been assailed quite as much as the individual who is charged with an assault upon the courts. This situation can be met with certainty only by a constitutional provision in regard to it.

Sixth, in regard to City Government. At the time our present Constitution was adopted the largest city in the state was New Albany, and it had a population of about seven thousand. The framers of the Constitution apparently did not have in mind the possibility of their descendants attempting to make the Constitution work as great cities grew up within the state. The only provision in the Constitution under which municipal corporations have been made is a section referring to corporations other than banking. That section shows how slight the interest was in cities or any problems of city government. It is a peculiar comment upon the situation existing then, when viewed in the light of conditions today, to find that we organize city government under a provision of the Constitution reading as follows: "Corporations other than banking shall not be created by a special act, but may be formed under general laws." There is no other provision for the making of a city government in the State of Indiana.

Since the adoption of this Constitution the whole character of the population of this country has undergone a tremendous change. Great cities have sprung up everywhere. Populations have been congested into crowded areas where people have not kept the same neighborly acquaintance with each other that once existed in rural communities. The great problem of American government is the management of its cities. All who have studied political conditions in this country have been impressed with the failure of America to solve that problem. Mr. Bryce, Mr. Lecky, and Mr. DeToqueville of some years ago, County Keyserling of today, are among the distinguished scholars of foreign countries who have commented on the failure of city government in America. There is no need of listing the names of great American scholars who have charged their own people with failure in that field. I know of no newspaper or magazine that publishes political news that has not made the same charge. The stories of rackets, vice rings and extensive systems of corruption fill the history of American cities.
The seriousness of that situation has attracted to the study of city government the finest scholarship of this country. But research into problems of city government did not begin until after 1851. Since that time foundations have been endowed to carry on such work, and the laboratories in which the work has been carried on are all the cities of the United States. Out of their experience data has been made available for the planning of city government to meet the needs as they exist in the various cities. The nature of the populations, and the industries, and the geographical locations, and the traditions of various cities, will require for the wise government of them the making of various forms of city government adapted to meet all the conditions that exist in the various cities. It is asking too much of a legislature, in the short space of time provided in our Constitution, or even in any length of time, to make a general municipal corporation act that will apply in detail to all cities. Even if such an act could be made it is not appropriate to a statute. It belongs in the Constitution.

The provision with respect to city government should give an outline of the power of government granted by the state to the municipal corporation as its subordinate agents; and in that outline of powers and duties of municipal government there should be such flexibility that the people of each municipality can themselves determine the form of government they are to have. Home rule for cities to a large extent should obtain throughout the state, and it should obtain not as a result of legislative log rolling, but as a result of a constitutional provision.

One of the weaknesses of the old Constitution was the fact that special laws could be granted in all cases and were required in so many that the Legislature found its time filled with the consideration of special acts. The 1851 Constitution attempted to guard against that by providing that all acts affecting certain subjects must be general. But conditions are not general. They are special, and the very needs of single places become so imperative that the Constitution has to be set aside, as it has been not once but scores of times. The courts realize the impossibility of general laws meeting the situation confronted by individual localities and have approved the setting aside of the Constitution if only the proper formula for setting it aside is followed.

For instance, Rushville was given a special power to sell school bonds some years ago under this Constitution. If the act had
been an act authorizing Rushville to sell the bonds it would have been unconstitutional. But the members of the Legislature, having been sworn to uphold the Constitution, passed an act providing that any city having a population according to the last census of not less than 4540 and not more than 4545 might exercise that special particular power. The courts, sworn likewise to uphold the Constitution, approved the law. Thus the Constitution was saved. The veneer of that formula setting aside the Constitution could not deceive even a child. The same thing was done except that the population requirements were different, for Terre Haute in establishing a teachers’ pension fund, and for South Bend in altering a grade crossing, and for the Township of Richmond in taking over and supporting a hospital by special taxation, and so on. The fact of the matter is, almost two-thirds of the time of the Legislature, according to the estimate given me by one who has served many terms, is taken up with bills that provide for special legislation which should be cared for locally.

If we are to depend on the Legislature alone defining the scope and power of municipal government, then we have a situation where we commit the making of a fundamental law to the Legislature. That is a departure from the soundest ideas of government. It is quite as obnoxious to American ideals of government that what should be fundamental basic constitutional law is left in the hands of the Legislature, as it is to write into the Constitution what should be statutory law. When every session of the Legislature is besieged by those who seek some power with respect to local government, the Legislature becomes a mere trading ground. There are certain fundamental powers that should be guaranteed to the people as of right and not made dependent on the success of legislative bargaining.

Seventh. A seventh feature of the Constitution, which I shall not take time to more than mention, is the Lawyer’s Amendment.

Eighth. The terms of Office. The Constitution provides that the Secretary, Auditor and Treasurer of State, and the State Superintendent of Public Instruction shall have terms of office of two years.

There is one in this list to which I invite your special attention. The State Superintendent of Public Instruction is charged with a responsibility now which did not exist when the Constitution was adopted. The state was sparsely populated, interest
in public education was not strong, attendance at schools was small and irregular. The public school system as we know it today had not developed at that time. The Supreme Court was still holding in 1855 that a school township could not levy taxes to build school houses and pay teachers, and that continued the law as late as 1885. Public high schools were practically unknown in 1851. The body of knowledge applied in the life of that day did not include important subjects in the wide scope of knowledge necessary to fit one into the life of today.

The state, assuming the responsibility for the training of its children for the responsibilities of maturity, confronts a totally different problem in the complex life of today from what it did at that time. The knowledge actually applied in the everyday life and necessary for one to know who would occupy a useful place in the structure of society today, is not only greater in extent but it is different in kind.

The complex nature of the requirements to adequately prepare the children of today for useful functions in the world in which they live requires a more highly developed school system. The position of the State Superintendent of Public Instruction should attract the greatest thinkers of the state. There should be in the tenure of office the possibility of working out problems of that kind, and a continuity of policy to advance the interests of the children. In 1851 schools were more or less a matter of local interest. They still retain that local feature. But the vast interdependence of the members of society today requires a clearer conception of business and industry than it did in the past. The nature of the industries and the need of information in regard to them, often of a somewhat technical nature, requires a better general education in order that the products of study and research may be applied to the actual work of the day.

The tremendous service that can be rendered to mankind in the field of education has invited into that field some of the most gifted members of the human family. With patient and enthusiastic devotion they have pursued their studies. And the rich product of their labors is available for the good of mankind. Their studies have not been carried on as they once were by reasoning deductively from assumed general principles. They have brought the great modern instrumentalities of inductive reasoning into this field. The same kind of logic, the same assembling of data, the same searching for the generalization
within which may be comprehended the isolated facts, in short the same methods that have achieved the remarkable successes in science, are being followed in education. But the head of the Department of Education in Indiana and all his staff must constantly exert themselves in keeping their conduct in accord with the political conditions from time to time arising. Their energy and thought must be largely directed to keeping their jobs rather than in doing the work their jobs require. This situation should be changed and it is a matter of such importance that it alone would be sufficient to justify the calling of a Constitutional Convention.

Ninth, in regard to the provisions for amending the Constitution. Our State Constitution has been amended nine times. Every amendment adopted was adopted in a special election. Not one was adopted by a majority of the electors of the State. The Constitution itself provides that a proposed amendment to become a part of the Constitution must receive a favorable vote of a majority of the electors of the State. The Supreme Court held what the language plainly means when the first amendments were proposed. The number of votes cast in favor of the proposed amendments was less than a majority of all the votes cast in the election. Clearly there was not under such circumstances a majority of the electors of the State expressing their approval. So the Legislature submitted amendments in a special election. Though there was only a small vote cast in the special election the majority of that vote was favorable. Then the Supreme Court held that that was a majority of the electors of the State. It is obvious that the total number of electors was not nearly the number that voted in the special election. But a situation existed which made it imperative that the Constitution be amended, as the court seemed to view the case, so they set the Constitution aside in that little matter. This same court in another case quoted with approval the words of Judge Bronson: "If the courts venture to substitute for the clear language of the instrument, their own notions of what it should have been, or was intended to be, there will be an end of written Constitutions."

But among friends in the midst of an emergency, what is a Constitution? Now it may be said that I am speaking disrespectfully of a sacred document. I am bringing the sacred document to your attention to show that the Supreme Court, sworn to up-
hold this document, has set it aside in approving all the amend-
ments to it.

But the Constitution is a thing frequently to be circumvented
rather than to be obeyed. There is a provision limiting the
power of a municipal corporation to create a debt in any manner
or for any purpose to an amount in the aggregate exceeding two
per cent. on the value of the taxable property within such cor-
poration. When the necessities of a community seem to require
it, that provision again means little between friends. We have
in Indianapolis a civil city, which would not make it possible
to raise sufficient funds, so we create a school city. We have a
civil township. Then needing more funds we created within
the same boundaries, a school township. The civil city needs
money for park purposes so we create a new taxing unit in the
same area. Still needing additional funds and finding the con-
stitutional limitations irksome and burdensome we create a san-
itary unit in the same area. All these are constitutional. But
no one could read the language of the Constitution itself and
reach that conclusion.

The method of amending the Constitution should be changed
so that by constitutional declaration the majority of the votes
cast on a proposed amendment shall be sufficient to ratify the
amendment. Instead of doing that we are forced, by the con-
struction of a court adding additional provisions to the Constitu-
tion, to the place where we have it meaning that a majority of
the votes cast in a special election—disregarding the number
of electors of the state—is sufficient to ratify the proposed
amendment. It is not a proper function of the courts to change
the Constitution. That is, and should remain a function of the
people.

The foregoing features of the Constitution should be cor-
rected. I mention them not as all but only as some of the ele-
ments of basic law that should come before the Constitutional
Convention for consideration. The educational value to Indiana
of centering the thought of her people upon basic principles of
government is worthy of great consideration. The experiences
of other states and the work of research in political science
should be fruitful of wise suggestions to Indiana in the reor-
ganization of state government.

Now it will be maintained by those who oppose the holding
of a convention that all the suggested changes can be made by
amendments instead of by means of a Convention. The possibility of amendment at a special election of course exists. But the next question that arises is, what is the exact form these amendments should take?

The answer to that question should be found in a full discussion of the problems as they are all over the State. For instance in the matter of City Government it would be impossible for any one to have in mind clearly all the local conditions of the State which should be taken into consideration in the making of the basic law concerning cities. Out of discussion should come the wisdom to solve the problem correctly. The same thing can be said concerning other propositions. These amendments should not emanate from some source where the possibility of suggestion and discussion as to the form and language does not exist. Amendments must be taken or left in the form submitted. The finding of the best form of basic law is important, and requires discussion and debate.

Since the time that the Constitution was adopted the human family has made remarkable progress in learning in every field. I do not believe anyone would deny the statement that mankind in all matters of scientific and material progress has made greater advancement since the adoption of this Constitution than in the whole preceding period of the history of this country from the landing of the first white man on its shores. This material and scientific advancement is the fruit of a developing intellectual grasp and comprehension of the facts of the world such as no preceding generation has been able to attain. In 1851 they could not make a telephone. They could not impress electricity into human service. They could not summon the electromagnetic waves of ether to broadcast their messages to the world. They could not measure the distance to island universes beyond the Galactic System of Stars, nor untangle a ray of light from one of them to learn the chemical composition of its source. They could not measure the velocity of electrons and detect the agitation within an atom. They did not know of the connection between bacteria and disease. They could not navigate the heavens. They could not imprison the force of falling water in one point to restore it in energy for driving machinery simultaneously in a hundred other points miles away. These things have become commonplace to our generation. But why continue the list of striking achievements to prove that the human race is
not deteriorating, is not falling into intellectual paralysis? These achievements are not mentioned to shame the fathers. They are mentioned as a tribute to the fathers who were able to transmit to their children the continuing capacity of advancement.

But some will say that intellectual progress is possible in everything except government,—in government there is no possibility of advancement,—the fathers did the last thing that could be done,—any attempt to improve upon their work would be like attempting to improve the Ten Commandments or the Sermon on the Mount. There is no comment on the fathers that does them less credit than such an attitude. America came into existence by the work of progressive thinkers in the field of government. I had intended to cull out of history some speeches that were made in 1775 concerning the progressive ideas developing in America. They are the speeches of the Tories on the virtues of the fathers and warning against the loss of liberties pertaining to free born Englishmen if any change should be attempted. The very language of the Tory reappears and is sometimes applauded today in fighting against any change in the Constitution. Against the tide of that kind of advice in the past the progressive language of Jefferson and Hamilton and Madison and Washington, and all the others whom we now delight to honor, was heard. Their speeches breathe the courage to undertake changes. Whose spirit have we preserved? The spirit of Washington, Jefferson, Hamilton and Madison who were not afraid to venture upon new enterprises in government? Or have we preserved the spirit of the Tories while we give a pitiable honor, in lip service only, to the fathers?

The same talk today about dangers on account of groups and fanatics, wild-eyed reformers, half-baked idealists and vague and dreamy theorists, was heard then; and it was as eloquently spoken then by the champions of the things that were against those who championed the things that should be. What America needs most to guard against is not change. It is not revision of constitutions. The most dangerous spirit that can enter into a country is a spirit of Chinese devotion to the past that would prevent a government from courageously and righteously adapting itself to matters out of which injustices and iniquities would otherwise develop in the forward march of events. Let us take our inspiration from our own past in a history filled with
the proof of high courage on the part of the people to make
government fit the conditions of its own day.

"Worshipers of light ancestral make the present
light a crime—
Turn those tracks toward Past or Future, that make
Plymouth Rock sublime?"

We need not fear that America has been struck with intellec-
tual paralysis in matters of political science when we see how
full of achievement her history is packed in every point in which
intellectual capacity can be made apparent. Every state in the
Union except eight has set aside its old Constitution and
adopted a new one since 1851. None of them have lost the
liberties that some fear would disappear in such a venture. The
people of Indiana should not be afraid of themselves.