

OHIO VALLEY HISTORY

Volume 5, Number 2, Summer 2005

A Journal of the History and Culture of the Ohio Valley and
the Upper South, published in Cincinnati, Ohio, and Louisville,
Kentucky, by Cincinnati Museum Center and The Filson
Historical Society, Inc.

Contents

- Grist, Grit, and Rural Society in the Early Nineteenth
Century Midwest: Insight Gleaned From Grain
Ginette Aley 3

- "Scared from Their Sins for a Season": The Religious
Ramifications of the New Madrid Earthquakes, 1811-1812
Tom Kanon 21

- A Tale of Two States: Producerism and Constitutional
Reform in Antebellum Kentucky and Ohio
Arthur Rolston 39

- Suburbs v. Slot Machines: The Committee of 500 and
the Battle over Gambling in Northern Kentucky
Robert Gioielli 61

Cover: Governor
Morrow's Mill by
Godfrey Frankenstein,
1869, oil on canvas.
Cincinnati Museum
Center, Cincinnati
Historical Society
Library

- Reviews 85

- Announcements 102

Contributors

GINETTE ALEY received the Ph.D. in History from Iowa State University in 2005. Beginning in August she will be Assistant Professor of History at the University of Southern Indiana.

TOM KANON is an archivist/historian at the Tennessee State Library and Archives in Nashville. He holds a master's degree in History from Middle Tennessee State University. A version of this article was presented at The Filson Institute Conference in Spring 2003, "Constructing and Reconstructing a Region: 21st-Century Approaches to the Ohio Valley's History."

ARTHUR ROLSTON is a Ph.D. candidate in History at the University of California at Los Angeles and a former Filson Fellow.

ROB GIOIELLI is a Ph.D. candidate in History at the University of Cincinnati.

A Tale of Two States:

Producerism and Constitutional Reform in Antebellum Kentucky and Ohio

ARTHUR ROLSTON

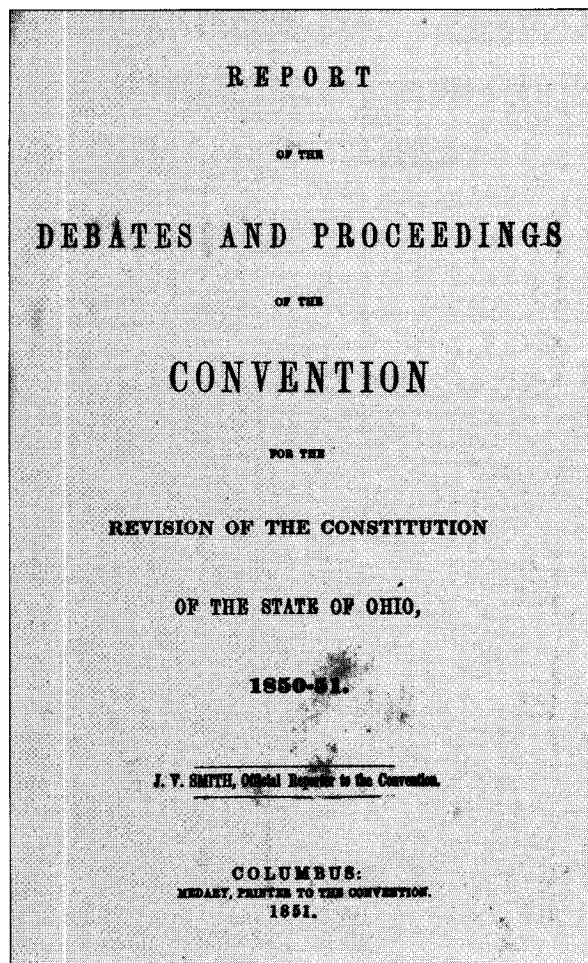
The state capitals of Kentucky and Ohio are but 165 miles apart as the crow flies, and in the nineteenth century their respective economic heartlands stretched north and south from their shared Ohio River boundary. Notwithstanding their common boundary, and the fact that in the nineteenth century their two largest cities, Cincinnati and Louisville, competed for the Ohio River's commerce with the Mississippi Valley, the two states functioned like fraternal twins separated at birth and reared in dissimilar environments. Nothing shows this quite so well as comparison of their antebellum state constitutional histories.

Kentucky and Ohio each held conventions to rewrite their respective state constitutions during the later stages of the transportation and market revolutions—Kentucky from October through December 1849, and Ohio from early May 1850 through early March 1851 (with a hiatus from July through November because of a midsummer cholera epidemic). For several years, many people in each state had believed that the time had come to reform the structure of their state's government in light of recent monumental economic, social, and demographic changes. But each state's convention was called into session only after years of legislative wrangling over whether to allow a plebiscite to decide if and when a constitutional convention would be held. When given the opportunity, each state's voters approved the call by substantial majorities. Common goals held in both states by advocates of constitutional reform included making more offices elective rather than appointive, shortening the terms of judges and reforming the courts to make them more efficient and responsive, setting limits on state government indebtedness,



*Ohio Capitol from
History of Ohio (1912)
by E. O. Randall and
Daniel J. Ryan. Cincinnati
Museum Center, Cincinnati
Historical Society Library*

and limiting or eliminating private interest special and local legislation. By all these measures, advocates of constitutional reform hoped to make state government more open and responsive to democratic processes. These constitutional debates also reflected an overriding commonality—an avowed goal to foster the economic interests of the ideal American: the independent, white male producer.¹ Advocates of constitutional reform hoped to do so by reducing his taxes, by making economic opportunity available more equitably, and by forcing state government to be more responsive to his interests.



Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio, 1850-51. Cincinnati Museum Center, Cincinnati Historical Society Library

But as the late Tip O'Neill said, "All politics is local."² It is therefore important to examine how differently each convention addressed these issues, and how the constitutions that each convention produced reflected significant social, cultural, institutional, demographic, and even environmental and geological differences between the two states. Defending slavery in order to guard against any possibility of emancipation, for example, dominated the Kentucky debates in which delegates rarely mentioned banking and corporations, key political issues during the market revolution. In that state, resistance to state supported internal improvements was driven more by local and regional jealousies over who received the most benefit from them than by party ideology, and therefore distrust of the legislature and the legislative process was selective and not broad ranging. Hence, Kentucky's new constitution did not fundamentally alter the relationship of government to public and private economic relationships, although the method of selecting state and county officials was radically altered. By contrast, across the Ohio River, party politics and platforms and ideology dominated political discourse, and the question of slavery that consumed Kentuckians in the Early Republic rarely entered into public discussions in Ohio. Instead, Ohio convention delegates engaged

in week-long arguments over the role of the state in regulating corporations and banks, and about how much to limit legislative powers. These debates brought out sharp differences among the delegates who argued their positions using long-established Democratic and Whig political rhetoric. Although, as in Kentucky, Ohio Democrats commanded a majority in the state's convention, the constitution they drafted fundamentally altered state policy regarding the economy while Kentucky's convention delegates did not.

Kentucky and Ohio were not unique in holding constitution conventions

during the antebellum era. Indeed, between 1819 and 1851, some twenty-one states called conventions to rewrite or amend existing state constitutions, and four others followed suit between 1852 and 1860.³ There were two more or less distinct phases of state constitutional reform during the first half of the nineteenth century. Until the late 1830s, state constitutional reform had been largely about democratization. Many conventions adopted provisions that opened more offices to the electorate, expanded suffrage to virtually all adult white males, and reapportioned voting districts to reflect growing populations and nascent urbanization.⁴ Thereafter, more and more states saw constitutional reform as a means of addressing problems arising from economic changes. These problems included public debt, banking, corporate charters, and public support of both publicly and privately owned “improvements” such as canals, roads, and early railroads. In the five years preceding Kentucky’s convention, constitutional conventions in New Jersey (1844), New York (1846), Louisiana (1845), Iowa (1844 and 1846), Illinois (1848), and Wisconsin (1848) debated these issues and, in the end, regulated aspects of banking, corporate formation, public indebtedness, as well as providing financial support for privately owned improvements.

By the 1840s, state constitutional reform became a party issue discussed in the national press. Democratic journals favored far reaching reforms, while Whig journals preached a more conservative approach resistant to sweeping changes. The *United States Magazine and Democratic Review* representing the Democratic Party position strongly advocated broad constitutional reforms that included imposing a measure of stockholder liability, requiring general incorporation laws, ending exemptions and special privileges in corporate charters, restricting and regulating the use of eminent domain to seize property, limiting public debt, and prohibiting public support of banks and privately owned improvements. In a series of lengthy articles beginning in 1843 by Thomas Kettell, “monopoly”—defined as any privilege or right not available to all—was identified as the principal evil. Citing Jefferson’s famous 1816 letter to Thomas Kercheval, Kettell argued that the people have a right to demand and implement revisions of their state constitutions as changing circumstances warranted. By 1847, Kettell acknowledged that the (then) western states—Iowa, Wisconsin, Missouri, and Illinois—were leading the way to constitutional reform.⁵ On the other hand, the pro-Whig *American Review*, the *North American Review*, and *The Republic* all saw calls for wholesale constitutional revision as “unsettling,” pandering to popular agitation. They argued that state judiciaries should be kept above partisan elective politics; legislatures should retain broad discretionary control over both economic policies; and only local governments and local improvements should be fostered and supported.⁶

Looking back from the late 1840s, Kentucky’s second constitution (1799) and Ohio’s first constitution (1802) had much in common. This should not be

surprising because in those years each had been a relatively sparsely populated frontier on the periphery of American expansion. Kentucky's 1799 constitution granted suffrage to all adult males, but little else about it could be considered democratic. Other than the governor, lieutenant governor and members of the legislature, most state and county officials, including judges, were appointed and county officers enjoyed life tenure. Similarly, Ohio's initial constitution qualified adult white male suffrage only by assessment or payment of a county tax, and judges and most other state and county officers were appointed.

Yet, both of these early constitutions reflected the Jeffersonian dogma that distrusted executive power and saw the legislature as the principal voice of the people.⁷ A veto by the governor of Kentucky could be overridden by a majority of each house, and Ohio's governor had no veto power at all. Ohio's legislature had the power to appoint state and county judges and most state officers, and appointments made by Kentucky's governor were subject to senate confirmation. Similarly, the authority of each state's legislature to enact general and special legislation was limited only by each state's bill of rights. And it took a lot of political capital to revise either state's constitution. Kentucky required a majority of the legislature to call for a plebiscite that then must be approved in two successive elections by a majority of all eligible voters in the state. Ohio required a two-thirds vote in the legislature to call for a vote of the electorate on a convention to coincide with the state's general election, and passage of a measure to call a convention required a majority of all voters voting for representatives to the General Assembly.⁸ What Thomas Kettell had said about Ohio's first constitution applied equally to Kentucky's 1799 constitution: It was "an experiment to ascertain the minimum power necessary for a government."⁹

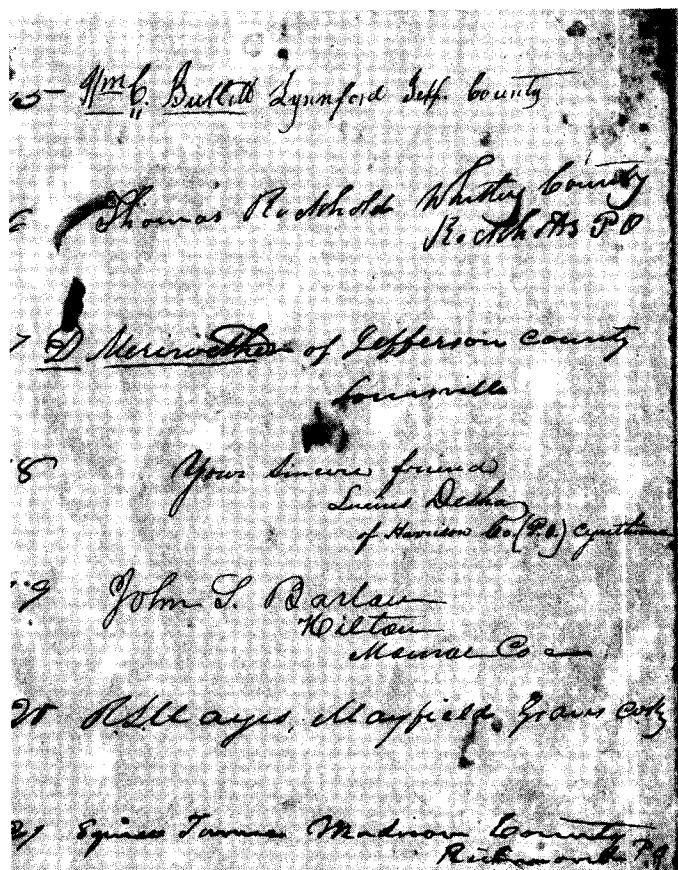
However, natural resources, geography and economic development after the Revolution in Ohio and Kentucky differed significantly, and those differences would have a profound impact when the two states revised their constitutions a half-century later. In Kentucky, slavery became entrenched by the end of the eighteenth century, and economic policies adopted during the early decades of the nineteenth century favored plantation agriculture based on slaves, with hemp and tobacco the primary cash crops, over the interests of small holding independent subsistence farmers. This was so, in part, because the varied and rough topography of Kentucky was not conducive to road or canal construction. Moreover, the state lacked a significant transportation corridor to commercial centers on the Atlantic seaboard, and its major transportation improvements were turnpikes and canals that connected the Blue Grass region to the Mississippi Valley and New Orleans. Many parts of Kentucky were remote from the Blue Grass—Louisville corridor, and by the mid 1840s many of the state's inhabitants resented being taxed to service a state debt of about \$4.5 million that paid for construction projects from which they believed they derived little value.¹⁰

Ohio's topography, on the other hand, is marked by gentle, rolling terrain intersected by rivers running south to the Ohio River and north to Lake Erie. Southern Ohio

was mostly settled by emigrants from the upland South, and many Germans as well. Settlers in the northern part of the state, especially the Western Reserve, primarily came from New England and the Middle Atlantic states. And while abolition found more support in northern Ohio, even Southern born Ohioans near the Ohio River had no quarrel with the Northwest Ordinance's ban on slavery. Ohio's farmers therefore focused, not on hemp and tobacco, but on cereal crops raised for market as Ohio's transportation network expanded access to the eastern seaboard. Compared to Kentucky, the geography gods smiled on Ohio when it came to its suitability for building canals and roads. By 1845, Ohio had 803 miles of state owned canals in operation, including two that traversed the state from the Ohio River to Lake Erie from which farmers could send their crops through the Erie Canal to eastern and international markets. Ohio wholeheartedly embraced public support of privately owned railroads that were funded, in fact, largely with state money. By 1849, the state could boast of

having about 270 miles of track—compared to about thirty miles of operating railroads in Kentucky—with another 337 miles under construction. Cheap and easy transportation had its effect—it attracted settlers. In 1820, Ohio's population of 600,000 was a little less than that of Kentucky; by 1850, Ohio had double the population of its southern neighbor, 1.98 million to 980,000 of whom some twenty percent were enslaved.¹¹ This growth, however, did not occur without incurring some cost. Occasional regional jealousies were often resolved by undertaking additional improvements. Not surprisingly, Ohio's state debt grew from \$5.5 million in 1830 to more than \$19 million in 1849 of which \$17 million represented long term state bonds that had been sold to fund canal, road, and railroad construction.¹²

From about 1820, Jacksonian Democrats in Kentucky agitated endlessly to revise the state's 1799 constitution. During the 1820s, Kentucky politics were dominated by conflicts between more populist-oriented small producers and property-oriented conservatives over debt relief. This resulted in a struggle for control of the judiciary in the "Old Court – New Court" controversy.



Signatures and addresses of delegates to the Kentucky Constitutional Convention, 1849-1850. Collected by Ignatius A. Spalding. The Filson Historical Society

Conservatives who, during the early 1830s, coalesced into a new Whig party in opposition to Jackson,¹³ regained and maintained control of one or both houses in the legislature. And these Whigs strongly opposed any convention that might adopt populist measures that would weaken, if not wholly undermine, their control of state and local government. Small wonder then that the road to the 1849 convention was littered with failed efforts. Proposals to call for a vote on holding a convention were introduced but defeated in the legislature in 1823, 1828, 1830, 1832, 1833, 1835, and 1836, and a proposal that squeaked through in 1837 did not engender sufficient popular interest to attract the necessary super majority at the polls.¹⁴



*William Christian Bullitt.
The Filson Historical
Society*

Calls for a convention, however, became more strident during the depression following the Panic of 1837, especially as other states held conventions and implemented constitutional reforms. Popular republican ideas hearkening back to the Revolution were at the heart of arguments for calling a convention plebiscite. Convention advocates argued that sovereignty resided in the people, who have a right to be heard on whether a convention should be called regardless of how legislators might feel about particular issues that might come up before a convention. To deny the people that right was to usurp their sovereignty, the people having sufficient virtue, intelligence, and “moral purity” for self-government.¹⁵ But conservative Whigs argued that it was unwise to allow temporary majorities to “make and unmake constitutions at their pleasure.” Kentucky’s existing constitution, they asserted, should be considered the product of “wise and revered founders.” It was therefore

hubris to think that a new convention could improve their work. Moreover, Kentucky Whigs hinted that many proponents of a convention were overt or closet emancipationists.¹⁶

Although a convention bill died in the Kentucky senate in 1846, such a bill made it through the following year. A pro-convention press successfully built support for the convention by reminding voters how conservative “elitist” judges had annulled relief measures in the 1820s. Newspapers also attacked the corruption that they argued had been perpetuated by a regime of life-tenured appointed officials, and by “do-nothing” legislatures that had approved hundreds of special and local acts while denying either tax or debt relief for most Kentuckians, as well as killing convention bills. Democrats also attracted

support by promising to protect slavery from abolitionists who had long sought a convention, and now sponsored efforts to weaken the system. This move succeeded turning the emancipation argument on its ear and attracting pro-slavery Whig support. Also, moderate Whigs came to see that it was dangerous to disregard the people's will on the issue and began to "ride the convention hobby." Benjamin Hardin, a leading Whig, who as a legislator in the 1830s had repeatedly voted against holding a plebiscite, publicly favored a convention in order to put an end to the excessive patronage under the governor's control.¹⁷ In the end, a plebiscite bill finally made it through both houses in March 1847, and afterwards the electorate was sufficiently aroused to approve the measure by the requisite super majority in the 1847 and 1848 state general elections.¹⁸

A reading of the Kentucky press during the run up to the August 1849 general election that would select delegates to the convention shows the importance of a prospective delegate's commitment to slavery. Newspapers tarred as emancipationists any candidate who failed to support slavery whole-heartedly, stoking public fears that northern abolitionists would flood the state with both money and organizational support for men like Robert Breckenridge and Cassius Marcellus Clay who had long campaigned for gradual emancipation. Yet only thirty-nine avowed emancipationists stood for delegate seats, and none of them were elected. Kentucky's political parties, however, attempted to prevent the campaign for delegate seats from becoming overly partisan. Whig William Bullitt and Democrat David Meriwether, for example, successfully campaigned together as an informal ticket for Jefferson County's two seats. Together they represented the moderate wings of both parties, agreeing on the need for reforms such as election of most state and local officials, an end to life tenure for offices holders, limitations on public debt, a ban on state-funded internal improvements, and biennial legislative sessions.

But sharp divisions did appear in the campaign. On the one hand, liberal proponents in both parties of more wide ranging changes urged an end to all appointive positions, shorter terms in office for judges, voting by ballot as opposed to viva-voice, debtor exemptions, and an open amendment clause that would facilitate future amendments to the state's constitution.¹⁹ Conservative Whigs, on the other hand, resented the fact that moderate Whigs, especially lawyers, were "yielding their long cherished principles and advocating an elective judiciary."²⁰ In the end, the voters gave the Whigs control of the house (52 to 48) and senate (26 to 12), but gave the Democrats a slim 52 to 48 majority of the convention delegates. That minority, however, included a substantial number of very conservative Whigs, such as Thomas Lindsey of Franklin County who derisively noted that "everything . . . is to be elected by the people—judges, . . . clerks, sheriffs, and all other officers—some will go for electing standby jurors—and perhaps electing witnesses."²¹

Unlike Ohio's experience the following year, the Kentucky convention debates

almost entirely ignored economic issues.²² “Banks” and “banking” are not listed in the debates’ index. Proposed provisions to establish homestead rights and personal property exemptions for debtors died in committee without debate. Not surprisingly, corporations were of no particular concern to delegates because at the time there were few of them in the state. Therefore, the delegates held no discussion on the possibility of adopting general incorporation laws as a means of reducing what the delegates themselves acknowledged to be an excess of special legislation approved by Kentucky’s General Assembly. Similarly, although some delegates introduced proposals to prohibit the legislature from granting corporate charters that included banking powers and to prohibit any authorization for suspending specie payments, these proposals were not brought up for discussion or vote. Moreover, convention delegates overwhelmingly rejected any effort, whether applied to all corporations or only to failed banks, to make a shareholder liable for debts incurred by a corporation in which they owned stock. This occurred after Ben Hardin spoke for a consensus of delegates in dismissing shareholder liability as “a veto on all corporations . . . because we know that no company will ever be incorporated.”²³ Even so, arguments on both sides of the core issues of slavery, state financed improvements, public debt and taxes, and selection and terms of judicial and other state officials were framed in reference to the economic interests of small producers.

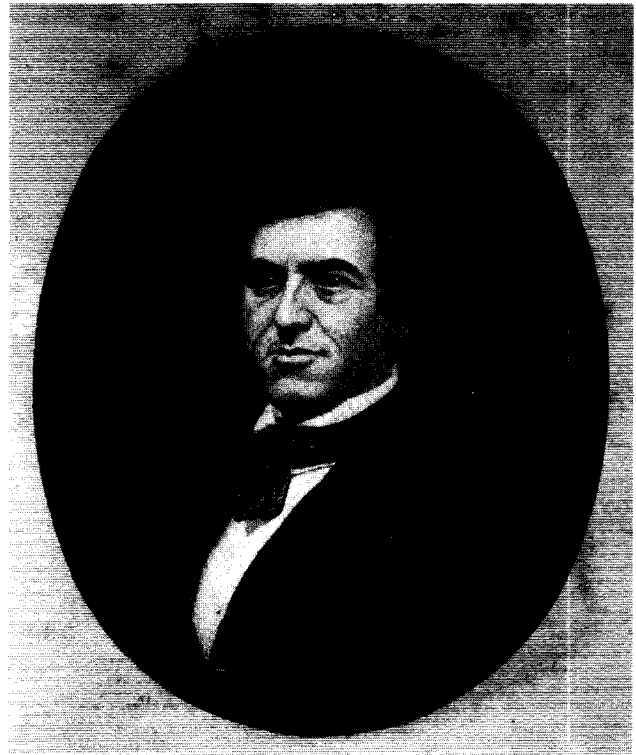
Kentucky delegates discussed slavery (for days on end), an institution to which Whigs and Democrats alike made a point of expressing their unwavering support, mostly in populist economic terms. For example, Squire Turner, a conservative Whig, tied slavery to promoting the interests of independent small farmers because free labor, he argued, was cheaper than slave labor. “Those who have to work their way up from small beginnings,” he asserted, “are interested in retaining slavery, because slavery keeps out the pauper population, the emptying of the jails and poorhouses of Europe . . . who come here and compete.” Turner went on to argue that Kentucky was led by independent farmers, while northern urban centers were filled with poor laborers neither inclined nor equipped to become independent.

Louisville Democrat James Guthrie (who had been elected the convention’s president over Whig Archibald Dixon on a party line vote) took a similar view. He argued that proletarianization of white workers was considered immoral because it made them into a lesser class of society forced to work for subsistence wages, “subject to dismissal and starvation.” He noted as proof of slavery’s superiority that, although Kentucky and Massachusetts were roughly equal in population, Massachusetts had almost ten times more people who required public charity. Capitalists, he argued, always hired cheapest labor and then fired them first in hard economic times, and that consigned legions of white small producers and workers to a lifetime of low wages insufficient to provide basic needs, thereby foreclosing any opportunity for personal advancement. Slavery,

on the other hand, he contended, should be considered elevating. It “lifts the white man . . . from a mere machine to a man.” Moreover, it made Kentucky a better place to live than the North because it deterred both class conflict and excessive population growth of the wrong sort, specifically free blacks, Catholics, abolitionists, and untrained factory hands.

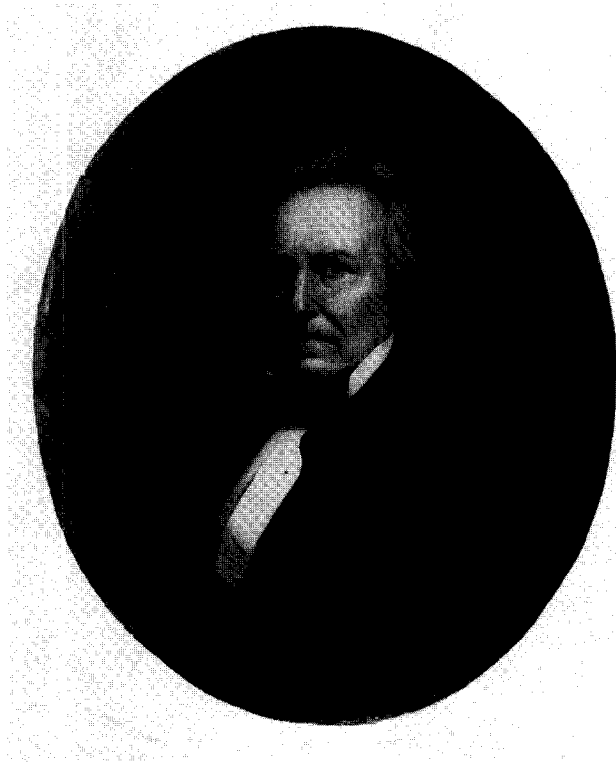
Some Democrats went further, making a populist argument for constitutional confirmation of the legislature’s repeal of the “Law of ‘33” that had banned all importation of slaves with very limited exceptions. Elijah Nuttall, for example, asserted that the law’s repeal had served to stabilize, if not reduce, the price of slaves and thereby to prevent existing wealthy planters from enjoying “a monopoly of slave labor.” This position was especially popular with independent non-slave owning farmers who hoped to become slave owners themselves. In the end, pro slavery proponents got what they wanted—a provision that made it impossible to revive the “Law of ‘33.” They also pushed through the convention a declaration that property rights, including a slave owner’s right in his or her slave, must be considered “before and higher than any constitutional sanction” with slavery “as inviolable as the right of the owner of any property whatever.” Having enshrined slavery in the state’s new constitution, pro-slavery delegates approved a provision that made it extremely difficult to amend the constitution in the future.²⁴

As it was with slavery, convention delegates appealed to the interests of independent producers in lengthy debates regarding the judiciary, apportionment, state indebtedness, internal improvements, and limiting legislative powers. Reforming the judiciary—specifically, opposition to appointed judges with tenure for life—had garnered strong public support because it was linked to earlier controversies over debt relief and the “Old Court /New Court” turmoil. Both proponents and opponents of judicial change cast their respective arguments in terms of serving “the people’s” interests, with “the people” identified as the vast majority of independent producers as against the political machinations of elites and their political allies. Well-to-do conservatives opposing change disingenuously argued that an appointed judiciary with life tenure was necessary to preserve judicial independence, and that supposedly formed a bulwark protecting the poor from the rich who were more able to manipulate nominating conventions and local elections to their own ends.



*Cassius M. Clay, ca. 1848.
The Filson Historical Society*

However, conservatives' rhetoric gainsaid their intention to assure continuation of a judiciary that would have as its highest priority protection of their property and privileged positions. Argued Squire Turner (presumably with a straight face), "Who, when the legislature and the executive are disposed to trample down the rights of the great body of the community, is to protect [the people]? They appeal to the judiciary to come to their aid and say to those other departments – thus far your power goes and no farther." However, Silas Woodson, a moderate Knox County Whig, along with others, spoke for the majority of Kentucky's voters when he argued that the present system of state government perpetuated power in an elitist judiciary chosen by elitist governors and confirmed by an elitist-dominated state senate. Therefore, he contended, election of judges for fixed terms was the people's only effective way to assure that judges would respond to the people's interests.²⁵



*David Meriwether. The
Filson Historical Society*

Conservatives also invoked the interests of yeoman farmers in their unsuccessful opposition to legislative apportionment based on total population, lest Louisville become too powerful. They asserted that country folk and small town residents were morally superior to city dwelling wage workers and therefore more politically independent. Citizen farmers therefore needed protection from massive urban voting blocs who conservatives characterized as "renegades from justice, the outpourings of Northern jails, and vile abolitionists." Moreover, cities tended to greater concentrations of wealth, although society as a whole would be better off with wealth more diffused. Squire Turner rhetorically asked if the delegates were drafting a constitution "for the outpourings of the jails . . . and almshouses of Europe and our larger cities

in other states . . . or for the great body of yeomanry of Kentucky."²⁶

Whig delegates advanced similar populist arguments appealing to the interests of yeoman farmers, including state-sponsored internal improvements, reduction of state indebtedness, and limits on legislative discretion, arguments that were often cast to take advantage of regional rivalries. Counties in Kentucky dominated by small farmers resented the political power of wealthy Blue Grass planters and Louisville merchants who had obtained for their areas a lion's share of state-sponsored improvements that connected them to markets outside the state. This resentment had been festering for some time. Archibald Dixon wryly noted that he had been "whistled down" at the 1839 state Whig

convention for opposing “the present system of internal improvements, which has its origin in a fraud upon the Green River country—and must invariably end in taxation and oppression.” Dixon believed that those persons who directly benefited by improvements should pay for them, and that taxpayers from less developed areas simply were not getting fair value for their taxes. This was an attitude no doubt fueled by the fact that as of January 1849 over a third of the roads in Kentucky that received state money remained unfinished due to poor planning, waste, and neglect.²⁷

State support for internal improvements was closely tied to questions of state debt and limiting legislative powers. As would be the case in Ohio’s convention, the delegates were acutely aware that, in many states, public debt had risen exponentially due to an orgy of investments in canals, rivers, roads, bridges, and banks, and that a number of states had defaulted on or repudiated all or part of their debts.²⁸ Most delegates viewed Kentucky’s \$4.5 million debt as excessive, especially since tolls and dividends from these investments generated less than ten percent of the annual debt service. Legislators were blamed for giving in to logrolling and local pressure, exercising any power not taken out of their reach, and on exploiting a gullible populace that bought into promoters’ rosy projections of immediate wealth for all.²⁹ But many Whigs, especially those representing Blue Grass counties, and a few Democrats, mostly from Louisville, argued against usurping the legislature’s will by constitutional provisions that would be difficult to change should circumstances warrant it. They also contended that Kentucky’s internal improvements should be considered economically sound as compared to those in other states, and that state-sponsored improvements were necessary to foster economic growth.

Nonetheless, most Kentuckians believed that public support for improvements should remain a local issue, and that the state legislature should not be considered a direct extension of the people’s sovereignty but simply another branch of government that needed to be checked as much as did the others. Thus delegates adopted provisions that imposed strict limits on incurring state debt and prohibited the use of the state’s credit for the benefit of local governmental or private entities or persons. But the power of Kentucky’s legislature was not appreciably curtailed. The delegates left unchecked the legislature’s power to control local governmental affairs through special legislation, including local support and financing for privately owned improvements. And they left undisturbed the Kentucky General Assembly’s power to grant and modify individual corporate charters.³⁰ The convention adjourned on December twentieth, and a special election on ratification was called for May 6 and 7, 1850.

During the ratification campaign, the press more or less divided along party lines, Whig papers generally opposing ratification and Democratic organs universally in favor. The essence of the campaign can be captured by reviewing competing weeklies that began publishing in early February—*The Old Guard*,

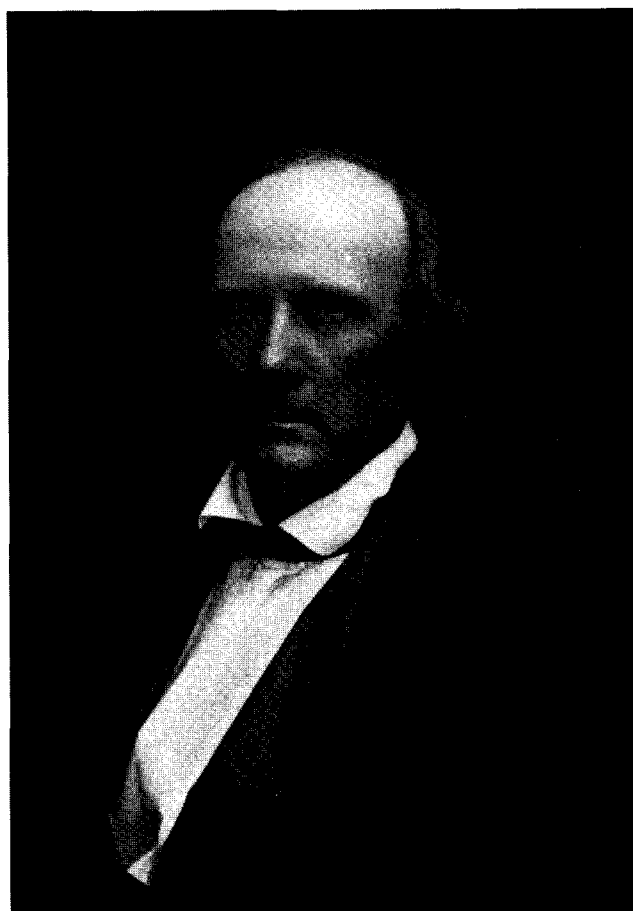
a Whig sponsored anti-ratification publication came out on Wednesdays and, presaging today's rapid response strategies, the pro-ratification *The Champion of Reform*, appeared on ensuing Saturdays. Conservative Whigs drew alarming analogies between popular election of judges and the Paris "Jacobins" of 1848, and they claimed that the proposed constitution was too radical because it "abandoned constitutional restraints and left the government open to control by demagogues." They appealed to small farmers by inferring that the lack of a constitutional prohibition against assessing taxes on slave property was an emancipationist-inspired loophole that could be used to make slaves unaffordable to all but the wealthiest planters. Whigs also argued that party leaders subservient to oligarchies would hand pick candidates and rig elections to serve their own interests.

The new constitution's proponents, mainly Democrats who represented what most Kentuckians wanted, advocated an end to life tenure, election of judges and other officials, limits on state debt, a shift in responsibility for internal improvements to the local level, and a reduction in special legislation that served only private interests. They also characterized the opposition to ratification as a "holy alliance" of "old hunkers" trying to hold on to lifetime appointments, "monopolists," and "emancipationists." An appeal "To Young Men" summed up the Democratic view in saying that the new constitution would expand both political and economic opportunities, and that in turn "provided a powerful incentive to virtue." It did not hurt the case for the new constitution that Cassius Marcellus Clay and the emancipationist press came out against ratification, and it helped that many moderate Whigs and a majority of the state's legislators came out for ratification.³¹ Constitutional reform, Kentucky style, was an idea whose time had come, and the new constitution was ratified with a majority of 51,000 of the approximately 92,000 votes cast.³²

Across the Ohio River, dissatisfaction with the organization of the state's judiciary among commercial interests led to the first effort to revise Ohio's 1802 constitution. And although the 1818-1819 legislature mustered the two-thirds vote required to call for a plebiscite in 1819 on whether to hold a convention, most farmers in Ohio saw no need for such a convention and the proposal lost by a landslide.³³ In fact, constitutional reform did not generate any serious political interest until the depression of the early 1840s. In 1841, a series of articles in Samuel Medary's *Ohio Statesman*, the principal Democratic daily newspaper in the state, urged the legislature to call for a convention citing banking, the state debt, and curbing special interest legislation as the principal evils to be addressed. And in December 1843, Governor Wilson Shannon, a Democrat, in his annual message asked the legislature to authorize a vote on holding a constitutional convention, but one that would be limited reforming the judiciary. The resulting bill, however, failed to garner the required two-thirds majority of each house. Afterwards, in December 1844, the outgoing governor's message

bemoaned the fact that “special and local legislation . . . has truly become an evil,” noting that, from 1837 to 1845, the General Assembly had enacted 1,746 laws of a special nature while it approved only 313 general laws with state wide application. Pro-convention Democrats cited popular election of judges and other state officials, limiting legislative abuses, and banking as additional areas for potential reform. But the 1802 constitution mandated a two-thirds majority for calling a convention into session. And besides, conservative Whigs opposed a convention that could result in reforms that might repeal the state’s 1845 free banking law and reduce the legislature’s dominant position in state government. And they had the votes to defeat bills calling for a convention plebiscite in the 1845, 1846, and 1847 legislatures.³⁴

Political events starting in 1848 changed the political equation. The two major parties were so evenly matched in both the 1848 and 1849 legislatures that the balance of power rested with a handful of Free Soil adherents. Democrats and moderate Whigs alike saw an opportunity to rectify that situation. A constitutional convention could allow each to revise apportionment rules to their respective advantage, and thereby gain a majority in the legislature. A growing bipartisan consensus for constitutional reform was reflected in moderate Whig (outgoing) governor William Bebb’s January 1849 message to the legislature. In it he favored electing judges and state officials, proscribing most special legislation, holding only biennial legislative sessions, constitutionally limiting state debt, and restructuring the state’s judicial system. Incoming Whig Governor Seabury Ford’s inaugural address echoed the call for constitutional reform. He cited the need to limit state debt in order to lessen the heavy tax burden on Ohio’s farmers on whom, he argued, depended the state’s well being. Some conservative Whigs, however, contended unsuccessfully that constitutional reform should be seen as a Democratic ploy to dominate the state government and attack property rights. They also believed that constitutional reform was an issue of great concern mainly to lawyers, and did not mean much to most Ohioans. However, grass roots support for a convention proved to be too strong to ignore, and in March the General Assembly finally approved a convention bill.³⁵

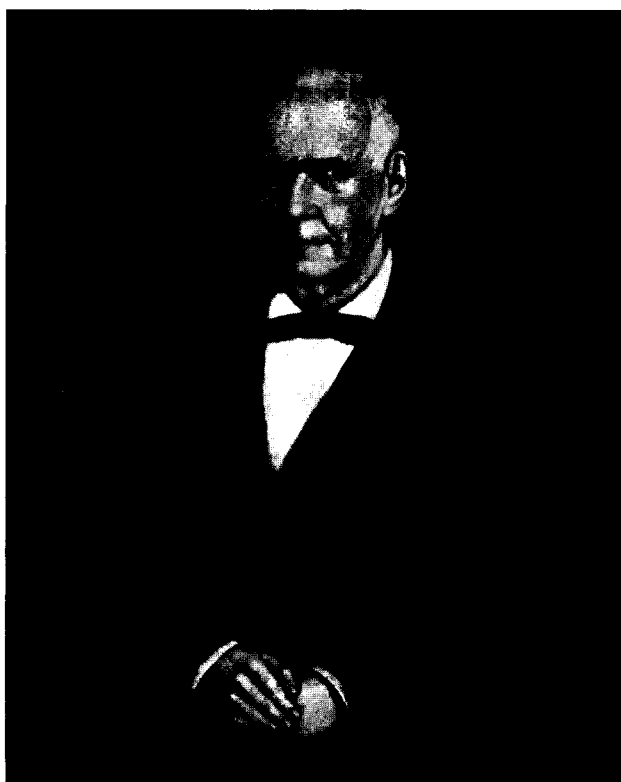


James Guthrie. The Filson Historical Society

Although it appeared that Ohioans favored constitutional reform, the Democratic press left nothing to chance. Samuel Medary, fervent Jacksonian and Democratic activist and publisher of the *Ohio Statesman*, put out a weekly entitled *The New Constitution* for twenty-six weeks from May through November, 1849, that hammered home orthodox Democratic positions: popular election of judges and other state officers, an end to legislatively sanctioned special privileges and exemptions for banks and other

corporations, firm limits on state debt, eliminating government financing for privately owned internal improvements, and holding biennial legislative sessions. Medary asserted that the central issue to be addressed should be the growing imbalance of power between corporations, especially banks, and ordinary people, and a corresponding need for appropriate regulation. Corporations, in his view, were not bad *per se*, but their exclusive privileges gave them unfair advantages over the great majority of ordinary citizens. It was, Medary wrote, “a system corrupting and corrupt—rotten, anti-republican, fraudulent, and unsafe.” Reform could only be accomplished through constitutional means by restricting the power of the legislature so as to “cripple . . . the overshadowing influences of corporate wealth.” At the October 1849 general election, over sixty percent of those participating in the election voted to hold the convention.³⁶

The General Assembly scheduled an election to select delegates in April 1850. County Whig and Democrat organizations nominated candidates,



Squire Turner. *The Filson Historical Society*

and the campaign was contested along party lines in a brief five-week campaign. Although Democrats divided between “hard” and “soft” money adherents, they remained united on most issues, especially on the need to elect judges, to eliminate most forms of special and local legislation, and to put the breaks on state debt by limiting the use of government funds to support privately owned transportation enterprises. Two days before the election, Medary’s *Ohio Statesman* concluded that the conflict over a new constitution would be “between money and man.” Whig candidates ran at a disadvantage because voters correctly perceived that many Whigs had been opposed to holding the convention in the first place. Conservative Whigs, who maintained that judges should be mainly protectors of property and should be appointed to keep them above the vagaries of popular politics seemed out of sync with most Ohioans. Whigs also found little support for the idea that Ohio’s legislature should continue to have the freedom to charter corporations and support improvements. As

most observers anticipated, Democrats won a decided majority of delegates.³⁷

Democratic delegates controlled the organization of the convention and, unlike in Kentucky, issues arising out of the growth of corporate capitalism immediately came to the fore of ensuing debates. While none of the eleven standing committees around which the Kentucky convention organized its discussions focused on the economy, in the Ohio convention heated discussions, often lasting weeks at a time, centered on the work of standing committees on corporations, banking and currency, public debt and internal improvements, and taxation and finance. Each side argued that its positions would serve Ohio's independent producers best, although they did not entirely agree about who this group included—certainly not women or people of color, of course. Democrats claimed to speak for farmers and “mechanics,” those who make or grow things, while Whigs included among independent producers all who engaged in commerce including factory owners, merchants, and bankers.³⁸

Arguments on economic issues, especially those relating to corporations, special legislation, and apportionment mostly followed party lines. Thus Democrats such as Daniel Robertson, Charles Reemelin, and M. H. Mitchell excoriated “the organized money power represented [in the convention] by the advocates of banking incorporation and other privileges” that were at “war . . . against the rights, the liberties, and the prosperity of the people.” “Incorporated monopoly,” meaning any privilege or legal standing not available to individual proprietors, “has established an aristocracy in our midst [that] transfers the property of the many to the few.” Constitutional reform therefore must be considered necessary and proper because experience had shown that the “influences” of corporate capital generally prevailed in both courtrooms and legislative halls when the interests of capitalists were challenged. “The power of the people is nothing compared to the organized power of money.” Democrats stressed that they did not oppose all corporations, acknowledging that people must be free to associate and that many small corporations in the state promoted economic growth. But “monopolies” and privileges that afforded unequal advantages to some constituted “an injustice to an honest and virtuous yeomanry, whose persevering industry . . . toil and diligence combined alone have made [Ohio] the pride and glory of youthful America.” Answering Whig charges that Democratic delegates were fomenting prejudice against corporations, Reemelin replied, “it was not prejudice against them, but a judgment . . . on account of their inequities.”³⁹

Whigs generally fought a rear guard action aimed at minimizing their losses by softening what they saw as the most radical proposals. Whigs occasionally characterized reform proposals as stemming from “demagoguery,” “Jacobinism,” and “agrarianism” that constituted an attack on the basic liberties associated with property rights and that would lead to anarchy. But more often they stressed the importance to ordinary farmers and small businessmen—who

Whigs included among “independent producers”—of promoting economic expansion through internal improvements that would increase commerce. Whigs knew well that public opinion associated corporations with “monopoly” and “special privileges.” And moderate Whig Edward Archbold acknowledged that “statesmen must respect the prejudices of the people” and decried absolutist denunciations and “warnings of calumnies” by both sides. But Whig delegates argued vigorously against what they called “constitutional legislation” that had no place in a state’s organic law. Such “constitutional legislation” ranged from imposing shareholder liability and iron-clad debt limits to proscribing all special and local legislation, including special acts of incorporation and governmental support for privately owned improvements. For example, Whigs argued that imposing shareholder liability actually favored rich creditors at the expense of yeoman farmers who invested small amounts in transportation companies to reduce the cost of getting their crops to markets. Yet if private investment were discouraged, public support for internal improvements would require government support that in turn would lead to more state debt and higher taxes. Whigs objected to this on both practical and theoretical grounds. On the one hand, “constitutional legislation” stifled economic growth to the detriment of ordinary Ohioans. On the other hand, at least in a republican theory of government, the legislature as the true voice of the people should decide questions of economic policy and relationships. In the view of Ohio Whigs, having the current Democratic party position embedded in the constitution constituted the epitome of hubris by a majority of delegates who assumed that they “had all the wisdom . . . trusting nothing to the good sense of the people.”⁴⁰

In the end, Democrats got most of the reforms that they had sought, often by substantial majorities that included moderate Whigs who either agreed in principle or saw that the Democrats had both public support and a majority of the votes in the hall. Moderate Whigs went along rather than leave themselves open to attack in future campaigns. Accordingly, the proposed new constitution provided that corporations in Ohio could be formed only under general incorporation laws; shareholders would be liable to creditors in an amount equal to the par value of their fully paid stock; all corporate charters were subject to revision or revocation by legislative action; all bank and other corporate property would be subject to the same tax as if such property were owned by individuals; the legislature would hold biennial sessions; state and local governments were banned from financing privately owned improvements; state debt was strictly limited in both amount and purpose; and judges and other state officials had to stand in elections for office. Only where the Democrats divided between “hard” and “soft” money advocates on banking issues did Whigs prevail by attracting enough delegates from the “softs” to preserve Ohio’s free banking system that had been in effect since 1845.

The Democratic majority also prevailed in strictly political matters. They

apportioned the legislature somewhat in their favor and rejected a single district system. But an executive veto provision was rejected because Democrats divided over whether the greater evil lay in excessive executive or legislative power. The delegates also approved a provision that mandated a plebiscite every twenty years on holding a convention, and future amendments to the constitution could be adopted without calling a convention, but only if supported by super majorities in the legislature and by the voters. (The “open clause” had been rejected by the Kentucky convention.) The final constitution was approved by fifty eight of sixty four Democrats and twenty of forty one Whigs, with only fourteen Whigs voting their disapproval, and twenty six delegates either absent or abstaining.⁴¹

The Ohio convention adjourned on March 10, 1851, and a ratification election was scheduled to be held the following June. In the event, the campaign was mainly carried out through the state’s press. The Democratic papers such as the *Ohio Statesman*, *Dollar Statesman*, and the *Cincinnati Enquirer* uniformly supported ratification while the Whig press represented by the *Ohio State Journal* and the *Western Reserve Chronicle*, among others, opposed it. Not surprisingly, Democratic and Whig voices repeated the same arguments they had invoked in the convention campaigns. The Whig State Central Committee opposed ratification, objecting strongly to the new constitution’s limitations on legislative powers over corporations, local government, and state finances, its anti improvement provisions, and its attack on corporate rights. They did approve, however, inclusion of an open clause, and the provisions that provided for election of state officials that would reduce legislative “buying and selling” of offices and retention of the state’s free banking law. Whigs hoped that divisions within the Democratic ranks would work in their favor, but it was not to be. The constitution was duly ratified by a margin of about 16,000 votes.⁴²

Taken together the movements and campaigns to call constitutional conventions in Kentucky and Ohio, the delegates’ debates, the constitutions that resulted, and subsequent ratification contests revealed both the deep ideological divisions between the two dominant parties of the era and the coming breakdown of the Whig party.⁴³ The dominating focus of slavery in Kentucky’s 1849 convention overshadowed party divisions and directed discussion away from the impact of corporate and agricultural capitalism. Instead, regional jealousies and party ideology drove the argument over state funded improve-



Wilson Shannon
(1803-1877) from *The Democratic Party of the State of Ohio (1913)*
by Thomas E. Powell.
Cincinnati Museum Center,
Cincinnati Historical
Society Library

ments and state debt. As a result, the Kentucky legislature was left free to micro manage local governmental affairs and corporate charters as long as it did not increase state indebtedness or interfere in Kentucky's treasured peculiar institution. This unanimity on the sectional issue of slavery served in the short term to unite the state's Whigs and Democrats and direct discussions away from what earlier had been the hotly contested economic issues dividing the

two parties. But that same unanimity was an early symptom of the coming demise of the Whig Party and collapse of the Second Party System in the United States. To Zachary Taylor widespread support for Kentucky's constitutional convention was a harbinger of Democratic strength and Whig weakness, while other Whigs saw their party's resistance to reforms as futile and politically self-destructive.⁴⁴



*Governor William Bebb
(1802-1873). Cincinnati
Museum Center, Cincinnati
Historical Society Library*

By contrast, the absence of slavery as an issue in Ohio's constitutional convention left delegates free to focus squarely on the consequences of phenomenal growth of wealth in the state and the increasing power of accumulated capital. Reformers believed that popularly elected legislators could not be trusted to serve the interests of the people over the interests of corporate capital, and their beliefs testified to the enduring strength of Jacksonian ideals. And they acted on those ideas by establishing constitutional policies regarding corporations and their stockholders, and by imposing constitutional

limitations on legislative powers. The reformers succeeded in their aims by at least one measure. The average number of new corporations formed each year from 1856 to 1860 under general incorporation was less than half the average number formed each year from 1847 to 1851 pursuant to special legislation.⁴⁵ Even so, the two party system in Ohio dominated by Whigs and Democrats was in decline. Evidence of coming political change could be seen in the fact that the Liberty and Free Soil Parties controlled the balance of power in the Ohio legislature in the 1848 and 1849 (which they used to convince the Democrats to support partial repeal of the state's "Black Laws" thereby largely eliminating the issue from the convention's debates). Division in the Democratic Party between "Hards" and "Softs" on banking issues also presaged the coming demise of the Second Two Party System.

There is a significant irony in the new constitutions of Ohio and Kentucky. Ohio's constitution imposed a measure of stockholder liability and substantially limited the legislature's powers to manage local government, grant corporate charters, and support internal improvements, while Kentucky's constitution

proscribed state support for improvements and fixed absolute ceilings on state debt. Until the 1840s, such issues were deemed the business of legislators, not state constitutions. Jeffersonian-Jacksonian idealism considered the individual citizen farmer to be the bedrock of American society, and monied corporations and other forms of privileged special interests as the source of corruption. That ideology also held that the people's representatives in popularly elected legislatures formed the ultimate defense against tyranny, while judges should be distrusted as unelected protectors of capital and privilege, and executive power was to be feared and controlled. The Whig Party that emerged in opposition to Jackson also saw popularly elected legislators as the principal representatives of the people's sovereignty, and the principle bulwark against overreaching executive power.⁴⁶ However, by the 1840s, state constitutional conventions around the country adopted provisions that limited legislative power based on the votes of both Democratic politicians who believed that legislatures were captives of special interests of organized capital and could not be trusted to serve the people's welfare, and moderate Whigs who saw limiting legislative power as a defense against majoritarian excesses. In effect, power was taken away from the people's representatives in the name of the "independent producers," the family farmers and small businessmen and professionals variously celebrated in both Democratic and Whig rhetoric, whose identity became one with American national identity.

Convention debates in the antebellum era, especially those in Ohio on corporate, banking, and financial issues, underscore how liberalism changed what constituted a moral economy in nineteenth century America. Classical liberalism shifted the center of national political discourse and policy from an emphasis on fair prices and protecting consumers to creating a level playing field in the market to preserve the rights of independent producers. But by the mid-nineteenth century the independent producer's political power far outweighed his market power.⁴⁷ Absent from constitutional conventions in either Ohio or Kentucky was any meaningful discussion of the rights and interests of the proletariat of permanent wage workers who were growing rapidly in numbers in the 1840s and 1850s, which became the focus of political conflicts and violence that exploded during the massive industrialization and waves of immigration that marked the remainder of the century.⁴⁸ ♣

The author wishes to express his deep appreciation to Naomi Lamoreaux and Stephen Aron for their challenging criticism, counsel and support, and for the constructive comments of the ProSeminar of Economic History at UCLA in September 2004.

1. By "producerism" I refer to the belief that there is an intrinsic value in labor (religious and cultural, as well as economic), that the Jeffersonian idealized "independent producer" who owns his farm or shop is the quintessential

American, and that public policies should advance his interests as opposed to the interests of those "speculators" and "operators" who do not "work." Whigs and Jacksonian Democrats did not always agree as to who was and was not a "producer" in this context.

2. Tip O'Neill, *All Politics is Local and Other Rules of the Game* (New York, Crown, 1993)
3. The list of admitted states that called conventions to rewrite or amend their constitutions were from 1819-1851:

- Delaware (1831), Georgia (1833, 1839), Illinois (1847), Indiana (1850), Kentucky (1849), Louisiana (1845), Maryland (1851), Massachusetts (1820), Maine (1850), Mississippi (1832, 1851), Missouri (1846), New Hampshire (1850), New Jersey (1844), New York (1821, 1846), North Carolina (1835), Ohio (1850), Pennsylvania (1837), Rhode Island (1824, 1834, 1841), Virginia (1829, 1850), Tennessee (1834), and Wisconsin (1848); and from 1852-1860: Iowa (1847), Louisiana (1852), Massachusetts (1853), and Delaware (1853).
4. Walter Fairleigh Dodd, *The Revision and Amendment of State Constitutions* (Baltimore, The Johns Hopkins Press, 1910), 30-71; Morton Keller, "The Politics of State Constitutional Revision, 1820-1930," *The Constitutional Convention as an Amending Device*, Kermit L. Hall, Harold M. Hyman and Leon V. Sigal, eds. (Washington, D.C.: American Historical Association and American Political Science Association, 1981), 67-86. Eleven states revised their constitutions to expand white male suffrage between 1792 and 1835, eight by constitutional convention and three by legislatively enacted amendment.
5. *The United States Magazine and Democratic Review* 13 (December 1843): 563-75, 567; 20 (March 1847): 195-203. Others beside those cited that argued the Democratic Party's position on constitutional reform and political economy appeared in the *Review's* issues dated April, June and November 1846 and July 1851.
6. *The American Whig Review*, New Series, Vols. 6-12 (1850): 4; *The American Review* 79 (November 1846): 520-31; and 87 (March 1852): 189; *The Republic* 10 (July 1849): 39-56.
7. Saul Cornell, *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828* (Chapel Hill: University of North Carolina Press, 1999); Gordon Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1969; reprint 1998); Mark W. Kruman, *Between Authority and Liberty: State Constitution Making in Revolutionary America*, (Chapel Hill: University of North Carolina Press, 1997).
8. *Kentucky Constitution* (1799): III – 8, 9, 23, 24, 25; IV – 3, 6, 10; IX – 1; *Ohio Constitution* (1802): II – 16, III – 8, IV – 1, VI – 2 and 4, VII – 5. Robert M. Ireland, *The Kentucky State Constitution: A Reference Guide* (Westport, Conn.: Greenwood Press, 1999), 5-7; Joan Wells Conrad, *Kentucky in the New Republic: The Process of Constitution Making* (Lexington: University Press of Kentucky, 1979); Thomas R. Swisher, *Ohio Constitution Handbook* (Cleveland: Banks-Baldwin Law Publishing Co., 1990), xii-xvi; Isaac Franklin Patterson, *The Constitutions of Ohio: Amendments and Proposed Amendments* (Cleveland: Arthur H. Clark Company, 1912).
9. *The Merchant's Magazine and Commercial Review* (October 1849): 389.
10. Stephen Aron, *How the West Was Lost: The Transformation of Kentucky from Daniel Boone to Henry Clay* (Baltimore: Johns Hopkins University Press, 1996), 124-69; Thomas Clark, *A History of Kentucky* (New York: Prentice-Hall, 1937), 1-48; Frank T. Mathias, *The Turbulent Years of Kentucky Politics, 1820-1850*, Ph.D. diss., University of Kentucky, 1966, 257-301. As of 1800, about twenty five percent of Kentucky householders owned slaves. Conrad, *Kentucky in the New Republic*, 63.
11. *Historical Statistics of the United States: Colonial Times to 1970* (United States Department of Commerce, Bureau of the Census, 1975), Part 1, 28, 33.
12. Harry N. Schreiber, *The Ohio Canal Era: A Case Study of Government and the Economy, 1820-1861* (Athens: Ohio University Press, 1969), 134-55; Donald J. Ratcliffe, "The Market Revolution and Party Alignments in Ohio, 1828-1840," *The Pursuit of Public Power: Political Culture in Ohio, 1787-1861*, Jeffrey P. Brown and Andrew R. L. Cayton, eds. (Kent, Ohio: Kent State University Press, 1994), 99-116; *Dubow's Review* 25 (July 1858): 477; *Documents Including Messages and Other Communications Made to the Forty-Seventh General Assembly of the State of Ohio* (Columbus, 1849), Vol. 13, 56 (hereafter *Ohio Executive Documents*).
13. On the formation of the Whig Party in Kentucky, see Richard P. Mc McCormick, *The Second American Party System: Party Formation in the Jacksonian Era* (Chapel Hill: University of North Carolina Press, 1966), 209-222.
14. Ireland, *Kentucky State Constitution*, 6; Mathias, *Turbulent Years of Kentucky Politics*, 328; Carl R. Fields, "Making Kentucky's Third Constitution, 1830-1850," Ph.D. diss., University of Kentucky, 1951, 10-13.
15. "Remarks of Leander Cox of Fleming, in the Legislature of Kentucky on the Bill to Provide for the Taking the Sense of the People of the Commonwealth, as to the Expediency of Calling a Convention, Delivered January 9, 1846" (Frankfort, 1846), 6.
16. C. W. Short to William Short, July 30, 1844, Papers of Charles Wilkins Short, Folder 27, Filson Historical Society; Fields, "Making Kentucky's Third Constitution," 14-30; *The Convention* (Frankfort), January 16, 1847 (quoting speech of William Reed dated January 7, 1847).
17. *The Convention*, January 2, 16, February 20, 27, April 13 (reprinting editorial from the *Frankfort Yeoman*), and May 8, 1847 (reprinting editorial from the *Georgetown Herald*); J. F. Bullitt to John C. Bullitt, February 19, 1846, Bullitt Family Papers, Oxmoor Collection, Folder 151, Filson Historical Society (hereafter "Bullitt Papers"); Lucius P. Little, *Ben Hardin, His Times and Contemporaries* (Louisville: Courier-Journal Job Printing Company, 1887), 509-512. Hardin's change of heart can be viewed as personal, as Hardin had been appointed Secretary of State in 1844 and then fired in 1846 in a dispute with Governor Owsley over patronage appointments. Thereafter Hardin and other moderate Whigs joined in the call for constitutional reform to reduce the governor's appointment powers.
18. George L. Willis, Sr., *Kentucky Constitutions and Constitutional Conventions: A Hundred and Fifty Years of State Politics and Organic-Law Making, 1784-1933* (Frankfort: State Journal Co., 1930), 31.
19. Mildred Fry Bullitt to John C. Bullitt, April 8, 1849, and Susan Bullitt to John C. Bullitt, May ?, and June 5, 1849, Bullitt Papers, Folders 162 and 163; Lewis Sanders, "Carroll and Gallatin Convention Question," July 30, 1849, and "To the Freemen of Carroll and Gallatin Counties," August 4, 1849, Sanders Family Papers, Folder 51, Filson Historical Society; *Kentucky Yeoman*, February 21 and March 8, 15, 1849; Mathias, *Turbulent Years of Kentucky Politics*, 334-35; Fields, "Making Kentucky's Third Constitution," 156-89; Bennett H. Young, *History and Texts of the Three Constitutions of Kentucky* (Louisville: Courier-Journal Job Print Co., 1890), 49-52; David Meriwether, "Memoirs of David Meriwether (1800-1892)," unpublished MSS, Filson Historical Society; Mildred Fry Bullitt to John C. Bullitt, April 8 and July 19, 1849, Bullitt Papers, Folders 162 and 163; *Louisville Daily Journal*, April 3, 1849; "Message of Governor J. T. Crittenden, December 20, 1848," *Journal of the Senate of the Commonwealth of Kentucky* (Frankfort, 1848), 8-9.

20. R. Hardy to Orlando Brown, July 28, 1849, Brown Family Papers, University of Kentucky Special Collections.
21. *Louisville Daily Journal*, September 6, 1848; Thomas N. Lindsey to Orlando Brown, August 31, 1849, Orlando Brown Papers, Folder 36, Filson Historical Society. Note that genealogy mattered in Kentucky. William Bullitt's father, Alexander Bullitt, had been president of the 1799 constitutional convention, and a cousin, William G. Bullitt, was later to be elected a delegate to the state's 1890 constitutional convention. See Conrad, *Kentucky in the New Republic*, 129; J. F. Bullitt to William G. Bullitt, August 21, 1890, Bullitt Family Papers, Oxmoor Collection, Folder 916, Filson Historical Society.
22. Most of the published literature on Kentucky's 1849 Constitutional Convention is essentially descriptive, and sees slavery, election of judges, and ending life tenure, as the principal issues. Clark correctly notes that the resulting constitution was essentially conservative. Clark, *History of Kentucky*, 429-33. Mathias, *Turbulent Years of Kentucky Politics*, 326-53, called the 1849 constitution a "restoration of majority rule" wherein Whigs ceded oligarchic control and state funding of improvements in exchange for ironclad guarantees on slavery, and argued that the delegates "perpetuated a myth of republicanism by linking liberty to slave property rather than to democracy." Bennett Young's *History and Texts* was written for his fellow delegates to Kentucky's 1890 convention, and Young stresses the 1849 convention's desire to protect slavery and make judges elective. It should be noted that Young, a wealthy lawyer and railroad executive, had fought for the South during the Civil War, as was the case for most of Kentucky's successful politicians during the 1870s and 80s.
23. R. Sutton, *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Kentucky, 1849* (Frankfort, 1849), 110, 630, 640 (hereafter *Kentucky Debates*). This is not surprising. Banking was not a divisive political issue in Kentucky in the late 1840s. Kentucky banks in general had high ratios of specie to notes outstanding. As of 1847, Kentucky's banks had stated capital of \$7 million and specie reserves of \$2.9 million as against \$6.5 million notes in circulation, compared to Ohio's banks with \$5.7 million capital and \$2.6 million in specie reserves as against \$8.3 million in circulation. *Niles National Register*, February 28, 1848, 416. Further, Kentucky had far fewer corporations than Ohio. For comparison, Ohio's 1848 legislature chartered over one hundred for-profit corporations while Kentucky's legislature had incorporated less than thirty, with Kentucky having established less than one third of the 1,300 for-profit corporations that Ohio had chartered since the beginning of the nineteenth century. See "Special Report of the Secretary of State, February 12, 1851," *Ohio Executive Documents*, Vol. 15 (Columbus, 1851), 637-39; *Frankfort Daily Commonwealth*, March 2, 1849.
24. *Kentucky Debates*, 71-74, 78, 92-97, 141-46, 105, 1091-1104; *1849 Constitution*, VIII – 20, X – 1, 2; XII – 1.
25. *Kentucky Debates*, 92-97, 141-46.
26. *Kentucky Debates*, 537, 545.
27. Archibald Dixon to James Guthrie, October 28, 1839, Guthrie and Caperton Family Papers, Folder 14, Filson Historical Society; *Kentucky Debates*, 762, 786-87; *Annual Report of the Board of Internal Improvement* (Frankfort, 1849), 4-5.
28. For an in depth analysis of the relationship between actual or threatened default of state indebtedness and state constitutional reform, see John Joseph Wallis, "Constitutions, Corporations, and Corruption: American States and Constitutional Change, 1842 to 1852," National Bureau of Economic Research, NBER Working Paper 10451 (2004).
29. *Kentucky Debates*, 755-58, 762, 768.
30. *Kentucky Debates*, 759-60, 766, 769, 782, 1091-1104; *1849 Constitution*, II – 32, 33, 35, 36. The proscriptions against special legislation concerning divorce, venue in criminal cases, name changes, and sale of property by estates, minors and incompetents did not appreciably reduce the volume of special legislation. By the mid 1880s, the *House Journal* ran to 2,000 pages per session and private acts outnumbered general acts ten to one.
31. *The Old Guard*, Thomas F. Marshall and J. H. Holman, eds, February 6, 21, and April 11, 25, 1850; J. H. Holman to Orlando Bloom, February 17, 1850, Orlando Bloom Papers, Folder 37, Filson Historical Society; George Robertson, "To the Citizens of Fayette," *Scrapbook on Law and Politics, Men and Times* (Lexington, 1855), 338-45; *The Champion of Reform*, Victor Monroe, ed., February 9, 16, March 30, 1850; *Louisville Daily Journal*, May 27, 1850. Whigs also disingenuously argued that the lack of a procedure for corrective amendments was reason to reject it, disingenuous because conservative Whigs such as Garrett Davis, the only delegate who refused to sign the constitution at the conclusion of the convention and a leading voice against ratification, provided the votes that defeated adoption of an open clause.
32. *Journal and Proceedings of the Convention of the State of Kentucky* (Frankfort, 1849), 443-44. About sixty five percent of the state's voters turned out for the special election (seventy eight percent of whom voted for ratification). Interestingly, the total turnout was less than those who had voted in 1847 and 1849 to hold the convention. Nonetheless, those counties providing the largest percentage majorities for holding the convention produced the largest majorities for ratification (e.g., Jefferson County and Louisville, and Calloway, Henry, and Pulsaki counties, to name a few), while those counties showing the weakest support for holding the convention produced the largest percentages opposing ratification (e.g., Blue Grass counties of Bourbon and Fayette). *Kentucky Debates*, "A Table" (unpaginated).
33. Swisher, *Ohio Constitution Handbook*, xii-xvii; Patterson, *Constitutions of Ohio*, 98. Ohio's judicial system was flawed from the outset. With multiple levels of courts holding both original and appellate jurisdiction, it took years for civil cases to reach final resolution, and the provision requiring the state Supreme Court to hold sessions once a year in each county required judges to spend so much time traveling that the court's calendar was hopelessly backlogged.
34. *Ohio Statesman*, June 18, 1841; George P. Parkinson, *Antebellum State Constitution Making: Retention, Circumvention and Revision*, Ph.D. diss., University of Wisconsin, 1972, 144-80; Ernest Ludlow Bogart, *The Financial History of Ohio* (Urbana-Champaign, The University, 1912), 42; William G. Shade, *Banks or No Banks: The Money Issue in Western Politics, 1832-1865* (Detroit: Wayne State University Press, 1972), 115.
35. Parkinson, *Antebellum State Constitution Making*, 153-61; *Ohio Executive Documents*, Vol. 14, 5-10, 98-103; *The New Constitution*, June 2, 1849; *Ohio State Journal*, July 1, August 8, 1848; Stephen E. Maizlish, *The Triumph of Sectionalism: The Transformation of Ohio Politics, 1844-1856* (Kent: Kent State University Press, 1983), 162-63. The legislative stalemate and party-centered animosity was exacerbated by a dispute over the legality of a previous

- Whig measure to establish single district voting in Hamilton County (Cincinnati). Ultimately it was broken by a Democratic/Free Soil deal that gave Salmon P. Chase a seat in the U.S. Senate, repeal of the state's onerous Black Laws, and Democrats' control of the lower house speakership. Maizlish, *Triumph of Sectionalism*, 121-46. Most Whigs then decided to support the convention call in the hope of obtaining a statewide single district apportionment plan, but they did not succeed.
36. *The New Constitution*, May 5, 26, June 7, 23, 30, 1849; *Ohio Executive Documents*, Vol. 14, 23-26.
 37. C. B. Galbreath, *Constitutional Conventions of Ohio* (Columbus: Stoneman Press, 1911), 23; Swisher, *Ohio Constitution Handbook*, xii; *Ohio Statesman*, March 30, 1850; Maizlish, *Triumph of Sectionalism*, 162-63. The voters elected sixty four Democrats, forty one Whigs, and three Free-Soilers.
 38. Harry L. Watson, *Liberty and Power: The Politics of Jacksonian America* (New York: Hill and Wang, 1990), 133; John Ashworth, 'Agrarians and Aristocrats': *Party Political Ideology in the United States, 1837-1846* (Cambridge: Cambridge University Press, 1983), 62-66.
 39. Galbreath, *Constitutional Conventions*, 24; J. V. Smith, *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio, 1850-1851* (Columbus, 1851), Vol. 1, 282-84, 369-72, 380-81, Vol. 2, 200, 665 (hereafter, *Ohio Debates*).
 40. *Ohio Debates*, Vol. 1, 341-42, 375, 387-88, 439-40; *Ohio Debates*, Vol. 2, 145, 200, 544.
 41. John Larwill to Joseph Larwill, December 5, 1850, and John Larwill to Ann Larwill, January 1, 1851, Larwill Family Papers, 1801-1925, Box 9, Ohio Historical Society; *Ohio Debates*, Vol. 2, 344-420 (debate on banks), 856-66 (1851 Constitution, especially Articles 8, 12, 13, and 16), 870 (vote); Parkinson, *Antebellum State Constitution Making*, 172. Maizlish (*Triumph of Sectionalism*, 165) argues that the 'hards' inability to pass a tough anti-banking provision reflects a growing obsolescence of many Jacksonian economic policies. I believe he underestimates the continued strength of Jeffersonian-Jacksonian producerism, as evidenced by both the adoption of shareholder liability and the failure to give the governor a veto power, which remained the law in Ohio until 1903. Patterson, *Constitutions of Ohio*, 280, 282.
 42. *Ohio State Journal*, April 2, 4, May 13, June 9, and July 7, 1851; Parkinson, *Antebellum State Constitution Making*, 173-76. Interestingly, most of the arguments made against ratification had been advanced by those opposed to calling the convention which won by a margin of over 94,000 votes, and by Whig delegate candidates, a majority of whom lost to their Democratic opponents. Yet ratification was approved by a much smaller margin. It seems that the paper was correct in predicting a close election based on an assumption that many Democrats were unhappy with the absence of a veto and a strong anti-bank provision, coupled with voter exhaustion with the whole subject after the convention had dragged on for almost a year.
 43. The essential differences between Democratic and Whig ideologies are described in a plethora of works on the period, including John Ashworth, 'Agrarians' and 'Aristocrats'; Daniel Walker Howe, *The Political Culture of the American Whigs* (Chicago: University of Chicago Press, 1979); Watson, *Liberty and Power*; and Charles Sellers, *The Market Revolution, Jacksonian America, 1815-1846* (New York: Oxford University Press, 1991). Among the works consulted on the disintegration of the Whig party and the reconstitution of American politics leading up to the Civil War are Michael F. Holt, *The Political Crisis of the 1850s* (New York: Wiley, 1978), and *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (New York: Oxford University Press, 1999); Stephen E. Maizlish, *The Triumph of Sectionalism*, "Ohio and the Rise of Sectional Politics," and "The Meaning of Nativism and the Crisis of the Union: The Know-Nothing Movement in the Antebellum North," *Essays on American Antebellum Politics, 1840-1860*, Stephen E. Maizlish and John J. Kushma, eds. (College Station: Texas A&M University Press, 1982), 166-98.
 44. Zachary Taylor to Orlando Brown, March 15, 1848, Thomas B. Stevenson to Orlando Brown, July 2, 1849, and John J. Helm to Orlando Brown, February 25, 1850, Orlando Brown Collection, Kentucky Historical Society; Holt, *Political Crisis of the 1850s*, 101-111.
 45. George Herbert Evans, Jr., *Business Incorporations in the United States, 1800-1943* (New York: National Bureau of Economic Research, 1948), 18-19. The explosive increase in Ohio incorporations began in 1865 when 358 new corporations were chartered compared to 49, 97, 36, and 25 that were formed each year from 1858 to 1861.
 46. Ashworth, 'Agrarians' and 'Aristocrats,' 34-36, 57-58; Howe, *Political Culture of the American Whigs*, 87-92.
 47. Tony A. Fryer, *Producers Versus Capitalists: Constitutional Conflict in Antebellum America* (Charlottesville: University Press of Virginia, 1994), 10. On page 41, Fryer argues that the ideological basis for state regulation of economic relationships rests on the belief that individual moral responsibility should be protected by the state and that "public and private concentrations of power are not legitimate unless checked by formal external constraints." Fryer's focus is on conflicts over the Federal Constitution in Delaware, Maryland, New Jersey, and Pennsylvania, and he did not examine the process of state constitutional revision.
 48. Kentucky's and Ohio's new constitutions proved to be quite durable. Kentucky's 1850 constitution remained unchanged until 1890. The legislature called for a plebiscite in 1888, spurred in part by the rise of Populism and the Farmer's Alliance, and the voters approved a convention call because it had become apparent to a majority of Kentuckians that finally something had to be done to check excessive private and special interest legislation, put the breaks on the unbearably high levels of local government debt, and to address the growing power of railroads. Even so, Kentucky's 1890 constitution remained quite conservative on economic issues, especially when compared to late nineteenth century constitutions adopted in many of the western states. Ohio's 1851 constitution remained essentially unchanged for the remainder of the nineteenth century. The state's voters approved a convention call in 1871, but the resulting convention's proposed constitution was soundly rejected in 1874, and in 1891 voters overwhelmingly rejected holding another convention. Ohio voters' apathy towards further constitutional reform is attested to by the fact that during the remainder of the century, eighteen amendments proposed by the legislature failed at the polls while only four were adopted, and two of those merely changed the dates of some state and local elections and the others related to court organization. Ohio's constitution was not substantially revised until 1912 when Ohioans embraced many Progressive ideas about state constitutional reform.