

**THE INTRODUCTORY
ARTICLES OF
THE CONSTITUTION OF
ILLINOIS**

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The Introductory Articles of the Constitution of Illinois by Herman Gerlach James

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THE INTRODUCTORY ARTICLES OF THE CONSTITUTION OF ILLINOIS

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PREAMBLE.¹

A study of the preamble of a constitution may often prove interesting and instructive to the student of constitutional history, even though its practical value to a lawyer may be comparatively slight. It has, indeed, been asserted that a preamble is, strictly speaking, without force in a legislative sense, being but a guide to and not the vehicle of the import of a statute.² Other writers, however, have awarded to the preamble of a constitution or a statute a larger measure of importance,³ and the decisions of our federal supreme court contain a number of expressions of opinion on the meaning of the preamble to the federal constitution⁴ which have unquestionably been of great significance in the development of the powers conceded by that tribunal to the federal government under the constitution. Nor can it make any material difference, for our purposes, whether the first paragraph of the constitution of Illinois should be termed an enacting clause rather than a preamble, as has been as-

¹ "We, the People of the State of Illinois—grateful to Almighty God for the civil, political and religious liberty which he hath so long permitted us to enjoy and looking to Him for a blessing upon our endeavours to secure and transmit the same unimpaired to succeeding generations—in order to form a more perfect government, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the State of Illinois."—*Constitution of Illinois, 1870, Preamble.*

² Lieber, "Hermeneutics," p. 117 n.

³ Story on the Constitution (4th ed.), p. 338; Kent's "Commentaries," Lecture xx, p. 460 ff.

⁴ *Chisholm v. Georgia*, 2 Dallas, 419; *Martin v. Hunter*, 1 Wheaton, 305; *McCulloch v. Maryland*, 12 Wheaton, 316.

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served of the almost identical preamble to the federal constitution,¹ or whether it partakes of the nature of both of these forms, for we are here concerned primarily with the origin and development of the first paragraph in the constitution, expressly termed by the framers, whether rightly or wrongly, a preamble.

A considerable part of the preamble to the present constitution of Illinois is directly traceable to the first constitution of the state, adopted in 1818, the opening paragraph of which contains the following language: "The People of Illinois Territory etc. . . . in order to establish justice, promote the welfare and secure the blessings of liberty to themselves and their posterity do . . . ordain and establish the following constitution or form of government."² It is seen that all of these clauses have become, with some minor alterations, part of the preamble to the present constitution.

At the time when the first Illinois constitution was framed it was already the general practice in the other states of the Union to prefix preambles to their constitutions, for, of the eighteen states which had adopted constitutions before 1818,³ all but three, Georgia, 1798; New Hampshire, 1792; and Vermont, 1793, had inserted a clause in the nature of a preamble, as had also the federal constitution of 1787. Of these sixteen, however, apparently only the Indiana constitution of 1816, the Ohio constitution of 1802, and the federal constitution of 1787 could have served as models for the Illinois constitution in this respect as they contain almost

¹ Andrews, "Manual of the Constitution," p. 44.

² Debates and Proceedings of the Constitutional Convention of 1869, p. 1889.

³ Delaware, 1792; Georgia, 1798; Indiana, 1816; Kentucky, 1792; Louisiana, 1812; Maryland, 1776; Massachusetts, 1780; Mississippi, 1817; New Hampshire, 1792; New Jersey, 1776; New York, 1777; North Carolina, 1776; Ohio, 1802; Pennsylvania, 1790; South Carolina, 1790; Tennessee, 1796; Vermont, 1793; Virginia, 1776. Thorpe, "American Charters, Constitutions and Organic Laws."

the identical phraseology, while the first three clauses are to be found in none of the other preambles of that time.

In all probability the direct prototype of the Illinois preamble of 1818 was that of the Indiana constitution of 1816; for the wording is identical in the two, save that in the Illinois constitution the third person is used instead of the first person, which latter form was indeed adopted in the original committee draft of the constitution of Illinois, though subsequently changed by amendment.¹ The constitution of Indiana having been adopted less than two years before the constitutional convention met in Illinois, and being furthermore the fundamental law of a neighboring state, closely related in every way, it was naturally the instrument to which the framers of the Illinois constitution directly looked for suggestions and guidance, even as Indiana had in turn borrowed largely from her elder sister state, Ohio, all three states having in close succession been carved out of the original Northwest Territory. As regards the wording of the preamble there is no doubt that the federal constitution was the ultimate original instrument of which the above three state constitution preambles were copies.

A determined but unsuccessful effort was made to have embodied in the preamble to the constitution of 1818 a recognition of the Deity and of Christ. Ford, in his "History of Illinois" says, "during the sitting of the convention of 1818, the Rev. Mr. Wiley and his congregation of a sect called Covenanters, in Randolph County, sent in their petition, asking that body to declare in the constitution about to be made that Jesus Christ was the head of the government and that the Holy Scriptures were the only rule of faith and practice. It does not appear," he goes on to say, "by the journals of the convention that this petition was

¹Journal of the Constitutional Convention of 1818, pp. 16, 42.

treated with any attention, wherefore the Covenanters never yet fully recognized the state government. They have looked upon it as 'an heathen and unbaptized government which denies Christ'; for which reason they have constantly refused to work the roads under the laws, serve on juries, hold any office or do any other act showing that they recognize the government. For a long time they refused to vote at the elections; and never did vote until the election in 1824 when the question was whether Illinois should be made a slave state, when they voted for the first time and unanimously against slavery." The actual wording of these petitions, of which there were three in all, as shown by the journal of the convention of 1818 was slightly different, though substantially as stated by Ford.² Two of them were referred to a select committee which was later discharged from the further consideration thereof, and the other, presented four days before adjournment of the convention in August was on motion of Mr. Cullom laid on the table "until the fourth day of March next."³ This agitation though unsuccessful at that time had its effect on the consideration of the same general question thirty years later when the second constitution of Illinois was being framed.

Coming now to the constitution of 1848 we find several changes in the form of the preamble from that of the constitution of 1818, which changes were also embodied in the preamble to our present constitution. A distinct paragraph was made of the preamble, some of the clauses in the first constitution were slightly altered to conform to the style adopted by the majority of constitutions in force at that time, and four new phrases were added. Three of these viz. (in order to) (a) "form a more perfect government," (b) "insure domestic

¹ 1854.

² Journal of the Constitutional Convention of 1818, pp. 13, 66.

³ *Ibid.*, p. 66.

tranquility," (c) "provide for the common defense," were evidently taken verbatim from the federal constitution, for they were to be found in no other state constitutions in 1847, except the last clause which was found in the Alabama constitution of 1819.¹

The fourth addition, and the most important of the changes, was the present clause referring to the Deity. It has been seen how the failure of the convention of 1818 to embody any mention of the Deity in the constitution of that year was the cause of violent opposition by the Covenanters. Yet the report of the committee on law reform in the convention of 1847 contained a preamble in which again no reference was made to the Deity,² although by this time nine state constitutions had been adopted with some such clause in the preamble.³ The preamble was, however, amended by the addition of the present clause containing an expression of thanks and an invocation,⁴ written by Judge Lockwood,⁵ and modeled almost exactly on the corresponding clause in the constitution of New Jersey adopted three years before.

That the preamble as finally adopted in the constitution of 1848 met with approval, or at least with no strong opposition, is evidenced by the fact that it was incorporated without the slightest change both into the proposed constitution of 1862 and into the present constitution adopted in 1870. The convention of 1862 adopted the former preamble with-

¹ Cf. Alabama, 1819, "insure tranquility," and Maine, 1819, "provide for our mutual defense." Cf. also the Constitution of the Republic of Texas, 1836.

² Journal of the Convention of 1847, p. 395.

³ Connecticut 1818, Delaware 1831, Iowa 1846, Maine 1819, Massachusetts 1780, New Jersey 1844, New York 1846, Rhode Island 1842, Texas 1845; Thorpe, "American Charters, Constitutions and Organic Laws."

⁴ Journal of the Convention of 1847, p. 511.

⁵ Orville Berry, "The Constitutions of Illinois." Illinois Blue Book, 1907, p. 522.