

Introduction

In January 1851, delegates to the Colored Citizens League gathered in Columbus, Ohio, to protest their disenfranchisement in the state constitution. Although these women and men had been meeting annually for several years, the 1851 convention was of special significance. The league had timed their meeting to coincide with the Ohio state constitutional convention, which – even at that moment – was considering whether to grant suffrage to black men. Representatives from the league met with delegates from the constitutional convention to present their demands for justice and equality. Declaring that their “social, political, and religious rights [were] at the mercy of the [Ohio] law-makers,” the league delegates now insisted that the convention grant equal voting rights to black men. They received a sympathetic hearing from several of the more reform-minded members of the constitutional convention, but their efforts failed: The 1851 Ohio state constitution retained the word “white” in its list of voter qualifications. Yet the members of the league had insisted on (and won) a meeting with the convention delegates, a concession that suggests that they were able to participate in the conversation about reforming their state government. More to the point, it also suggests that they believed in the power of democratic deliberation to change society, in spite of the fact that they had been forcibly excluded from the constitution-building project.¹

How do citizens in a racially and politically diverse frontier democracy talk to each other about framing governments and defining rights? What happens when those citizens – in spite of the profound differences that drive them apart – agree on the core ethical principles of democratic self-government? *Frontier Democracy* explores the creation of constitutional democracies in new political communities. More specifically, this book investigates the building of state

¹ *Minutes of the State Convention of the Colored Citizens of Ohio, Convened at Columbus, Jan. 15th, 16th, 17th, and 18th, 1851* (Columbus, OH: 1851), 1: 266.

constitutions in the antebellum Northwest (Indiana, Illinois, Iowa, Michigan, Minnesota, Ohio, and Wisconsin) from the 1820s through the 1850s. Even so, *Frontier Democracy* is primarily a book about conversations rather than about foundational documents: in particular, the fights and negotiations over the core ideals in the constitutions that brought these new communities to life.

To put these ideas into perspective, it may be instructive to contemplate an 1847 petition from a group of angry Illinois citizens. Upon hearing, to their dismay, that the Illinois constitutional convention had refused to talk about a provision excluding black people from the state, the petitioners complained that this decision “stifled their voices.” The resolution not to act on black exclusion negated the “will of the people” and, worst of all, promoted the destruction of good society and the peace of the community. The petitioners declared that they had no other remedy than to place their demands before the “convention of the people.” The only way to ensure that their rights would be respected – in this case, to live in a segregated society – was to inscribe that privilege into the state constitution.² In the long run the Illinois petitioners prevailed. The constitutional convention reconsidered its earlier decision and permitted Illinois citizens to vote on the question of black persons’ exclusion from Illinois. The result was a resounding victory for the petitioners: 60,585 voted for exclusion, and 15,903 against. The situation in Ohio was only slightly more propitious. The state had already dismantled some of the black laws the year before the convention met but did not grant full political equality to black men (at least on paper) until the 1880s. Although the delegates to the 1850 Ohio state constitution did not debate an exclusion provision, their convention votes on the black suffrage provision were similarly depressing: thirteen for black suffrage, and seventy-five against.³

Both the Ohio antiprejudice activists and the Illinois proexclusion petitioners believed that they had to address a constitutional body in order to establish the kind of society they wanted. This paradox exposes a thorny question – indeed, a dilemma that all northwestern delegates confronted. Was the process of building a democratic constitution morally neutral? That is: Could such conversations and negotiations (at least in theory) accommodate both

² Illinois Constitutional Convention, *Journal of the Convention, Assembled at Springfield ... for the Purpose of Altering, Amending, or Revising the Constitution of ... Illinois* (Springfield: Lanphier & Walker, 1847), 95–96. The petition was signed by H. J. Grimsley and five other unnamed people. H. J. Grimsley was probably Harrison J. Grimsley, active in antiabolition vigilante posses, who had married Eliza Todd (Mary Todd Lincoln’s cousin) in 1842. The state constitutional convention had decided the day before, on June 25, 1847, to table a proposal for such a provision. For the convention discussion, see Arthur Charles Cole, ed., *The Constitutional Debates of 1847*, vol. 14 of *Collections of the Illinois State Historical Library* (Springfield: Illinois State Historical Library, 1919), 228.

³ For votes on black exclusion and disenfranchisement, see Table 8.2, Chapter 8. For information on black exclusion laws and constitutional convention provisions, see Leslie A. Schwalm, *Emancipation’s Diaspora: Race and Reconstruction in the Upper Midwest* (Chapel Hill: University of North Carolina Press, 2009), chap. 1.

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those people fighting for their rights and those people battling for a segregated society? Antebellum delegates would not have considered that a legitimate question. Each side argued that the other misinterpreted the foundational principles of American constitutionalism or, worse, deliberately twisted those principles for selfish and destructive ends. While the process of constitution building was under way, the delegates had to allow all members of society to have a say; constitutional conventions had been intentionally designed that way. And some outsiders would make powerful ethical arguments that explicitly framed the constitution-making project as a moral enterprise. Yet the end product (the state constitution and any referendum questions left open for a public vote) could only be ratified by legitimate voters, most of whom consistently denied rights to the outsiders. If a society inscribed racial injustice in its written constitution, then that constitution would shape laws, judicial decisions, and economic arrangements for generations. Could such a society be considered democratic and republican, even by the standards antebellum northwesterners set up for themselves? While I hope this question has been settled, at least in philosophy and law, for modern Americans, it was still open to question in the antebellum Northwest.

The antebellum Northwest provides an opportunity to watch people strive to build new governments in a hectic, pressured, hopeful, violent new region: in some ways a great laboratory in which both traditional and innovative ideas were tested to their limits. I chose to write about a region I call the “Northwest,” an area slightly larger than the Old Northwest and somewhat smaller than the new Midwest. That way I could study the idea of constitutionalism in a region nominally (though not in practice) free of slavery, a region that represented the working out of American democracy, and one whose government was based on an ordinance that enshrined many rights. The original Northwest Territory comprised the present-day states of Illinois, Indiana, Michigan, Ohio, and Wisconsin, as well as part of what is today Minnesota. I have included Iowa (Map 1), as a state bordering on the Mississippi, and as one of the agriculturally most important free states in the Great Lakes and Upper Mississippi region. I have excluded states such as Kansas and Nebraska because both were part of the bitter controversies over slavery, and both entered the Union during or after the Civil War.

During those contentious years (the 1820s through the late 1850s) every state in the nation attempted to revise its constitution, and nearly two-thirds of them succeeded.⁴ Historians usually observe that the great age of state constitutional revision was triggered, in large part, by the economic panics that plagued the antebellum era. Citizens throughout the nation were trying to balance legislative power with political, economic, and cultural aims, and in order

⁴ For an extremely useful and detailed discussion of state constitutional conventions in a national context, see John J. Dinan, *The American State Constitutional Tradition* (Lawrence: University Press of Kansas, 2009), 7–28.



MAP 1. The Old Northwest with Iowa.

to achieve lasting changes, they had to rewrite (not just amend) their state charters. My book examines one region – the fastest-growing and economically most vibrant in the nation – in an effort to search for deeper reasons for this era of fervent constitutionalism. This book suggests that the process of building and revising state constitutions during those fractious decades represented a profound moral struggle. If the constitutional deliberations, both inside and outside the convention halls, were the arena for that struggle, then the specific subjects under debate (black people's rights, banks and paper money, married women's property rights, the power of the legislature, and the authority of the judiciary) were the objectives at stake. Those topics were vitally important to all northwesterners. For many of the people living in the region, the outcomes of the convention debates represented the difference between a decent, worthwhile, prosperous life and a corrupt, degraded, impoverished existence. After all, the new state constitutions would frame governments, delineate rights,

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clarify the state's physical boundaries, and empower all the branches of government. The newly elected delegates who traveled to their state capitals to undertake this challenge believed that so long as they followed the basic constitutional principles and paid attention to the popular will they would be able to acquit themselves honorably. But they soon found that writing democratic charters for new communities in a diverse region entailed insuperable challenges.

The colonial charters of Virginia (1606) and Connecticut (1662) swept away Indian possessions by extending the western boundaries to the Mississippi River, thus granting ownership of all lands to the colonial proprietors. Five other states claimed lands in the western continent.⁵ Throughout the eighteenth century, British and French explorers and fur traders set up trade relationships with the people who lived in the Northwest: the Ojibwa and Huron in the Great Lakes region, the Miami and Kickapoo farther south near the Mississippi, and the Leni Lenape, Shawnee, and Wyandotte in the Ohio Country. Illegal settlements caused serious problems with the Native people already living in the region, to a degree that forced the British government to pass an ordinance in 1763 forbidding settlement west of the Ohio River – a law that was essentially ignored. By the early 1780s, before the Treaty of Paris settled the land claims west of Pennsylvania in 1783, thousands of Americans had already begun to move across the Appalachian Mountains into the Northwest, northward into Vermont and Maine, and southward to Arkansas and Texas. Meanwhile, the British and French retained control in military forts, and French voyageurs who had intermarried with Indian women founded families of about four thousand métis people in Wisconsin and Minnesota.⁶

The western lands claimed by the seven states created serious rivalries with those five states without land claims (Delaware, Maryland, New Jersey, Pennsylvania, and Rhode Island.) Delaware, Maryland, and New Jersey at first refused to ratify the Articles of Confederation government until the larger states agreed to give up their lands to the public domain. As a concession to states that did not hold land, and in order to ensure ratification, these landholding states ceded their claims on the territory to the federal government: New York in 1782, Virginia in 1784, Massachusetts and Connecticut in 1786. Virginia and Connecticut reserved the land of two areas to use as compensation to military veterans: the Virginia Military District and the Connecticut Western Reserve. As a result the majority of the territory became public land owned by

⁵ The following states had western land claims: Connecticut, Georgia, Massachusetts, New York, North Carolina, South Carolina, and Virginia.

⁶ Beverley W. Bond, *The Civilization of the Old Northwest: A Study of Political, Social, and Economic Developments, 1788–1812* (New York: MacMillan, 1934), 3. See also, Andrew Cayton, *Contact Points: American Frontiers from the Mohawk Valley to the Mississippi, 1760–1830* (Chapel Hill: University of North Carolina Press, 1998).

the U.S. government. Thomas Jefferson crafted a series of land ordinances to cope with these disputes and to facilitate white settlement. The 1784 ordinance allowed for orderly settlement but encouraged large-scale land speculation, essentially a way to ensure that the country would be settled quickly and to create revenue for a nearly bankrupt national government. This ordinance established the grid pattern, established future self-government (that is, rejected the idea of colonial relationships for the new territories), and attempted two radical innovations: prohibition of slavery and free lands for settlers (ultimately dropped from subsequent iterations of the ordinance.) The 1785 ordinance decreed that the region would eventually be subdivided into three to five states; townships would be six miles square, subdivided into thirty-six sections of 640 acres. That amounted to four family farms and one lot for schools. The grid pattern, the disregard for individual topographical features or even the presence of timber and water, and the minimum purchase requirement of 640 acres and hard money made it more difficult for individual settlers to obtain land and encouraged large-scale speculators.⁷

Two years later, the articles government passed Jefferson's 1787 Northwest Ordinance, which set up stages of development from territory to statehood. The Northwest Territory (then known as the Territory Northwest of the River Ohio) was to write its own legal code and appoint local magistrates. By 1803, a year after Ohio joined the Union, Congress assigned the rest of the Old Northwest to the Indiana Territory, which was later subdivided. The resulting territories were renamed and reconfigured with the growing population. When settlement had proceeded to the point where five hundred families had acquired a fifty-acre freehold, the inhabitants elected their own territorial legislature and a congressional (nonvoting) delegate. The third stage, at which point the territory was presumably ready to assume the burdens and responsibilities of self-governance, occurred when the number of white inhabitants had reached sixty thousand. The territory now began the process of electing delegates to a state constitutional convention. The territorial legislature passed an enabling act, which empowered the legislature to set up elections and to assemble the machinery of constitution building. The first three territories to achieve statehood (Ohio in 1802, Indiana in 1816, and Illinois in 1818) moved quickly and copied the majority of the constitutional provisions from older states: Kentucky, Virginia, and New York. Those three conventions were able to finish their work in three to four weeks in spite of bitter divisions over slavery, black people's civic rights, and battles over the gubernatorial veto.⁸

⁷ For public land policy development and Anglo-American settlement in the Northwest see Paul W. Gates, *History of Public Land Law Development* (Washington, DC: U.S. Government Printing Office, 1968), 33–86; see also, Malcolm Rohrbough, *Land Office Business: The Settlement and Administration of American Public Lands, 1789–1837* (New York: Oxford University Press, 1968).

⁸ Nicole Etcheson, *Emerging Midwest: Upland Southerners and the Political Culture of the Old Northwest, 1787–1861* (Bloomington: Indiana University Press, 1996), explains that by the 1840s sectional differences had become muted, though she argues that they flared up again

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Within two decades, as thousands of people migrated into these states from the South, from the mid-Atlantic, and from New England, the people living in these three states began to talk about the need to revise their first constitutions. Meanwhile, inhabitants in the new territories started the process toward statehood. By the late 1840s the region had changed dramatically. Northwestern citizens demanded fundamental constitutional reform: not just minor problem-solving amendments, but a radical transformation that weakened state legislatures, rendered political offices elective, did away with grand juries, and strengthened the power of the people to influence their representatives. By that point, swift western expansion, two catastrophic economic crises, and sharpening sectional divisions rendered constitution building a much more difficult task. While the first territorial conventions took three or four weeks, the conventions from 1835 through 1857 took much longer – some as long as six months. During this period of intense democratic reform, state constitutional conventions throughout the nation made significant democratizing changes in the structure of government. And they were usually successful. This was especially true in the antebellum Northwest, where state constitutional revision shortened legislative sessions and rendered annual sessions biennial, deprived lawmaking bodies of the authority to pass economic legislation, and instituted popular vetoes over economic legislation, such as the state assembly's right to charter private corporations.

By 1850, about 5 million people lived in the Ohio River Valley, the Great Lakes region, and the area west of the Mississippi River north of Missouri. By comparison, the total U.S. population was about 23 million. Within a decade, the upper Midwest expanded to nearly 7 million inhabitants and was home to a quarter of the U.S. population.⁹ In the United States, 2,244,000 (9.7 percent) were foreign born in 1850. In the Middle West, the percentage was somewhat higher (about 12 percent), or 500,000.¹⁰ The farther north the state, and the newer the state, the higher the percentage of foreign born. Those included Canadians and European immigrants from the German states, as well as from Scandinavia, Ireland, England, Wales, and Scotland. Historians have also frequently commented on the sectional nature of the population changes, particularly when “Yankees” from New England began to move into upper Illinois

during the Civil War era. For further discussion and the national context on regional migration to the west, see Christopher Clark, *Social Change in America: From the Revolution through the Civil War* (Chicago: Ivan R. Dee, 2006), 149–151.

⁹ Robert P. Swierenga, “The Settlement of the Old Northwest: Ethnic Pluralism in a Featureless Plain,” *Journal of the Early Republic* 9 (Spring 1989): 86.

¹⁰ Richard Sisson, Christian Zacher, Andrew Cayton, eds., *The American Midwest: An Interpretive Encyclopedia* (Bloomington, IN: 2007), 180; Swierenga, “The Settlement of the Old Northwest: Ethnic Pluralism in a Featureless Plain,” 73–105; Richard K. Vedder, “Migration and the Old Northwest,” *Essays in Nineteenth Century American Economic History: The Old Northwest*, ed. David C. Klingaman and Richard K. Vedder (Athens: Ohio University Press, 1997), 161.

and Indiana. New Englanders had always lived in the Western Reserve of Ohio and antislavery Quakers had been populating eastern counties along what was then the Ohio-Virginia border. Nicole Etcheson’s *Emerging Midwest* traces the cultural divide between the two groups but also explains that the conflicts became muted in the early nineteenth century, a conclusion that is borne out by the research for this book. For the purposes of building their constitutions, and resolving conflicts in democratic self-governance, the delegates and their constituencies forged political alliances on the most controversial issues. By the late 1840s through the late 1850s, the time when every state in the region held constitutional conventions to create or revise its charter, the states’ populations had spread northward and westward to their present-day borders, and political divisions became more important than demographic or sectional ones. Delegates were aware of and occasionally referred to the intensifying sectional conflict. But other than antiprejudice or antislavery comments, most delegates were wary of discussing contemporary political events in the conventions.

Frontier Democracy picks up the story at the moment the northwestern states were beginning to push their way into the national polity and economy. These territories and states were not merely interested in joining the Union. They declared themselves to be equal in every political, economic, and cultural arena. This book examines the eleven northwestern conventions that occurred during the antebellum era, roughly from 1835 to 1857. Although the constitutions formed by the first three conventions (Ohio 1802, Indiana 1816, and Illinois 1818) laid the foundation for the later constitutions, these charters were primarily copied from older southern and eastern state constitutions and were therefore less innovative than the constitutions written after 1830.

State	First Constitution	Failed Attempts	Revised Constitutions
Illinois	1818	1824 (voters rejected the call for a convention)	1848*
Indiana	1816		1851*
Iowa	1846*	1844*	1857*
Michigan	1835*		1850*
Minnesota	1857*		
Ohio	1802		1851*
Wisconsin	1848*	1846*	

* This book discusses the conventions marked with an asterisk.

Two nonnegotiable requirements framed the delegates’ work: They had to abide by parliamentary procedures, and they had to carry out the mandates of the U.S. Constitution and the Northwest Ordinance in their work. Even so, there was still plenty of room for all sorts of popular intrusions. This book argues that the conversations within and outside the convention halls reveal two crucial aspects of democratic self-governance. First, in spite of obstinate

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antebellum cultural attitudes toward nonwhite people, northwesterners did not flinch from painful subjects even when overwhelming majorities supported a predictable outcome. Therefore, people who were deliberately excluded from participating in their own governments could and often did join in the ongoing conversations. They may have lost every battle in the struggle for equality, but they maintained a presence in all conversations. The radical reformers – who must have known how slim their chances were of reforming northwestern society – chose to stand on the foundational frameworks (religion, scientific reason, and revolutionary ideology) in their arguments. As a result, and in small and hesitant ways, I suggest, they were able to change the terms of the debate. *Frontier Democracy* explores how the undergirding frameworks – republicanism, Christianity, and reason – fared in the debates over self-government during the most contentious and economically challenging decades of the nineteenth century. Some of these ideas succeeded brilliantly: Within forty years, the region became an economic success story, as well as the geographic and demographic center of the nation. And some failed tragically: Racial hatred prevailed everywhere in the region, in spite of reformers' passionate arguments for justice, and resulted in disfranchisement and even exclusion for nonwhite northwesterners that lasted for generations.

No matter how frustrating or painful some of these conversations may have become, however, northwesterners remained deeply committed to seeing them through. They loved talking to one another about the kind of government they wanted: specifically, how they envisioned and defined justice and democracy on an antebellum frontier. As these people – black, white, Indian, migrants from the New England and southern states, European immigrants, men and women – argued over their new governments, they discovered that they had to rethink everything they had believed about democracy, rights, and justice: indeed, what it meant to be an American citizen. They debated every aspect of their political, economic, and private lives, including the citizenship of black people and Indians; the placement of important state and local boundaries, as well as transportation and civic projects such as canals, railroads, colleges, and courthouses; married women's property rights; the role of the judiciary; and economic problems and institutions including banks, debts, and paper money.

Most of the delegates who took up these subjects in the conventions would have shared an agreement that constitutions should be both ethical and rational. Even in a society that revered popular sovereignty and took great care to engrave it in the foundational charters, ethics and reason had to remain the pillars that supported the work. The constant back and forth in those conversations – between foundational principles and unwritten prejudices, between convention delegates and their constituencies – forms the core narrative here. Underlying deeply held beliefs embraced all their conversations, even while the delegates fought so bitterly and (at the same time) attempted to compromise with one another. The origin of these ideas and theoretical frameworks can be

traced to the core sources for nineteenth-century American thought: Scripture, Greek and Roman classical writers, and the eighteenth- and nineteenth-century political and philosophical thinkers, whom the college-educated delegates would have studied as young men. Those included Enlightenment authors (chiefly John Locke and Montesquieu), as well as Scottish Enlightenment thinkers including William Paley and Thomas Reid. The lawyer delegates would have been deeply familiar with English legal theorist William Blackstone, and American legal commentators such as Joseph Story and Chancellor James Kent. The citizens living in the region, even those who had not been educated beyond basic literacy, were aware of and persuaded by a worldview that combined Christianity, democracy, reason, and history. These people experienced little trouble, in the abstract, imagining a divinely created universe in which Christianity and nature created a perfect democratic body of law. The purpose of constitutions was to frame governments and delineate rights, but constitutions also had a higher purpose as well: to reflect and support ethics and reason, and to create a just, law-abiding, and moral polity.

How would this best be achieved? For antebellum Americans, that had to be done through written agreements. They wanted to be able to read a physical document that set forth these negotiations in ink on paper, so that they could decide for themselves whether their rights, and the rights of their communities, were being respected. Yet there was an awkward contradiction in the notion that constitutions could frame out agreements based on immutable principles and, at the same time, abide by local customs and conditions. In most northwestern minds, that conflict could give rise to political disagreements, but it certainly did not imply a criticism of popular sovereignty. Such a suggestion that would have been considered unpatriotic and even heretical in the early nineteenth century. Antebellum Americans firmly believed that the very process of constitution building (which would have included the deliberations, the public discussions, and the final act of ratification) was in itself an elevating process, and would have beneficial effects on all participants. Yet they were able to mold these principles into a framework that supported discrimination and segregation. Modern readers are probably less shocked by the notion that popular sovereignty is neither inherently moral nor even reasonable, especially when they confront the relentless race prejudice and resulting discrimination against and disfranchisement of nonwhite persons.

That logical and ethical paradox is precisely what this book explores. Northwesterners struggled to resolve their conflicts through the medium of public and private conversations. This analysis concerns itself with these conversations, therefore, rather than with the largely predictable outcomes. In an effort to trace the development of northwestern opinions on constitutional matters, the individual chapters delve into the philosophical, spiritual, and political roots of those opinions. That in itself is a difficult task and requires some speculation, since the speakers were not always careful to harmonize their political opinions or personal feelings with their own ideals. Yet as their letters,