

THE CONSTITUTION OF COLORADO

A study of the framing of a constitution for a western State such as Colorado is full of historical interest; for such a document reveals the degree of progress reached in a political evolution that has covered centuries of time. A new State constitution has appeared in America, on an average, every year since 1776; and these constitutions taken together form almost a complete history of the progress of democracy in this country.

The study of State history, especially in the West, will probably receive much more attention in the future than it has in the past. The pioneers in the West labored, like their fathers in the East, through years to establish free institutions; but, while the children of Colorado know well the history of the great struggle of the Puritans and the founders of Virginia, they know relatively nothing of the pathfinders of the mountains and plains. Without this knowledge the younger generation cannot thoroughly appreciate the Commonwealth of their nativity. Nor will such study result in sectionalism, but rather in a broader view of the history of American institutions and in a realization that the work of the founders was to transplant the old institutions and to transform them, in a measure, to fit new conditions.

Local affairs and government have always held first place in both the English and American mind. The citizen comes

in contact with local government five times while he comes in contact with the national government once. Good local government is, therefore, always the first consideration; and a study of local history is a very efficient method for awakening interest in and for causing a realization of the importance of good local government both for the present and as a foundation for the future.

Francis Newton Thorpe, in a recent article,¹ says: "The political value of State constitutional history lies largely in the range of a man's thoughts. It might seem, if the history of the suffrage be taken as an illustration, that without a familiar knowledge of the organic laws of the States and of the conditions prevailing at the time of their formation, no one can hope to understand the present aspect of great public questions."

The Constitution of Colorado has a noble ancestry. The model followed in its framing was the constitution of Illinois. This is largely accounted for by the fact that many of our early pioneers came from the central and southern parts of that State. At the close of the eighteenth century Virginia was sending immigrants into Ohio and Kentucky, and these States in turn furnished pioneers from 1800 to 1830 for Indiana, Illinois, and Missouri. Among the latter who came to central Illinois was Abraham Lincoln.

The first constitution of Illinois was required to be in harmony with the Ordinance of 1787 which governed the Northwest Territory. The general model for the constitution of Illinois was the constitution of New York. Thus it

¹ Francis Newton Thorpe, *The Political Value of State Constitutional History*, in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. I, p. 29.

is seen that the constitution of Colorado is in direct line of descent from the very earliest documents of the Republic.

The act enabling Colorado to become a State was approved by President Grant, March 3, 1875. Hon. Jerome B. Chaffee was largely responsible for the successful passage of the act in Congress. On Monday, October 25, 1875, an election was held for delegates to form a State constitution. The constitutional convention assembled December 20, 1875, in Denver, in the third story of the building then known as the First National Bank Building situated at the corner of 16th and Blake streets. Ministers from the various denominations were requested to act as chaplains. Among these ministers were: Bishop John F. Spaulding, Dr. Lord, Revs. Eads, Finch, Sturtevant Bliss, Haskill, Adams, Hawley, and Linn.

The convention at the time of its assembling was face to face with many difficulties. First of all, two constitutions had already been framed and both had met with defeat. In 1864 the territorial legislature petitioned the Thirty-eighth Congress to pass an enabling act providing for the admission of Colorado as a State. The enabling act was passed by Congress, but the constitution prepared by a convention under the authority of the enabling act when submitted to a vote of the people was rejected in October, 1864. In 1865 another constitution was framed by a convention and adopted by a vote of the people. This, however, was done without the sanction of the national government, and Congress at this time was not disposed to admit Colorado as a State. But an exigency arose. Congress needed the services of another representative and two senators to assist in the

impeachment of Andrew Johnson. Another enabling act was passed, but it was vetoed by President Johnson after senators had been elected and were in Washington waiting to take the oath of office.¹ These conventions had been held at great expense to the Territory. The constitutions framed were more for the temporary purpose of gaining admission than for the future use of the State.²

For the first time in such a case Congress had appropriated twenty thousand dollars of the public money in aid of the Territory in paying the necessary expenses of a convention. This grant was obtained through the efforts of the Hon. Thomas M. Patterson, at that time the territorial representative of Colorado. If the work of the convention failed to receive the endorsement of the people, its members feared that another similar grant would not be made.

The problem of forming a stable government for a small population scattered over such an enormous area was not an easy one. The Commonwealths to the east lay in close proximity to developed country, but Colorado had a population not exceeding one hundred thousand scattered over an area nearly as large as New York, Pennsylvania, New Jersey, and Delaware combined. A large proportion of this population consisted of newly arrived immigrants, unused to the peculiar and severe conditions imposed by the climate and surface formations of the country. Obstacles unheard of in their former homes lay in any line of communication. No crops could be thought of until some system of irrigation

¹ These senators were John Evans and Jerome B. Chaffee.

² Judge Hall's *History of Colorado*, Vol. II, Ch. XIV. This chapter was written by Judge. H. P. H. Bromwell.

had been devised. Starvation for man and beast often faced these pioneers. Even provender for cattle had to be brought in wagons to some districts.

The convention met at a time of great financial depression. The panic of 1873 began to produce its disastrous results in Colorado in 1874 and nearly reached its worst in the early part of 1876 while the convention was in session. Another and perhaps greater cause of disaster came in 1873 with the incursion of the Rocky Mountain locusts. This great pest plagued the State throughout 1873, 1874, and 1875. The effects of this visitation upon agriculture in a new State can hardly be realized.¹ A local history never fails to mention the coming of the locusts. With all of these difficulties the convention had to frame a constitution and provide for laws to meet some absolutely new conditions in mining, irrigation, agriculture, and stock raising.

The members of the convention were: Joseph C. Wilson and Robert Douglas, of El Paso County; Casimero Barela, George Boyles, Jesus Maria Garcia and Agapito Vijil, of Las Animas; Wm. E. Beck and Byron L. Carr, of Boulder; Wm. M. Clark and Wm. H. Cushman, of Clear Creek; A. D. Cooper, of Fremont; Wm. W. Webster, of Summit; H. R. Crosby, of La Plata; H. P. H. Bromwell, Frederick J. Ebert, Clarence P. Elder, Lewis C. Ellsworth, Daniel Hurd, and E. T. Wells, of Arapahoe; Wm. B. Felton, of Saguache; John S. Hough and J. W. Widderfield, of Bent; Lafayette Head, of Conejos; Wm. H. James, of Lake; Wm. R. Kennedy, of Hinsdale; Wm. Lee and George G. White, of Jefferson; Alvin Marsh and Lewis C. Rockwell, of Gilpin; Wm.

¹ "Grasshopper mortgages" soon covered many a ranch.

H. Meyer, of Costilla; S. J. Plumb and John S. Wheeler, of Weld; George E. Pease, of Park; Robert A. Quillian, of Huerfano; W. F. Stone and Henry C. Thatcher, of Pueblo; Wm. C. Stover and Abram K. Yount, of Larimer; and P. P. Wilcox, of Douglas. There were thirty-nine in all.

The chief officers of the convention were: President, J. C. Wilson; Secretary, W. W. Coulson; Enrolling and Engrossing Clerk, Fred. J. Stanton.

In a recent editorial the *Denver Republican* gives the following estimate of the men who framed the constitution after their work had been tried for twenty-seven years: "The ablest body of men that ever assembled in Colorado was that which framed the constitution of this State. Their work was a credit to them and it has been vindicated in the high approval which has been given the organic law of the State, notwithstanding certain recent attempts to mutilate it."

Another editorial gives an estimate of the personal character and attainments of the oldest member of the convention, Judge H. P. H. Bromwell, as follows: "To those who knew him no encomium or eulogy is necessary, but his attainments, nobility of character, and splendid citizenship are a joy to those who came within his charmed circle and ought to be deeply memorialized in the minds and lives of the younger generation. Dying toward the close of his eightieth year, his life exemplifies the noblest product of our country in the last century. Proficient to a high degree in a half dozen languages, living and dead, he added to this store a knowledge of mathematics, science, literary and polite learning such as the university furnishes to its most

finished product. This man had never been within the walls of a college until he was called to deliver a learned address to a graduating class. Deeply versed in constitutional, statutory, and common law, he added the quality of statesmanship, and was called by his fellow citizens of Illinois to represent them in Congress, when in very truth 'the office sought the man.' The people of Illinois made him one of the builders of their constitution, and when the foundations of our State were laid he fitly became the master builder of our constitution. Fortunate was the friend who had his friendship and enjoyed close communion with him as gentleman, lawyer, scholar, poet, philosopher, and statesman."¹

In politics, fifteen of the members of the convention were Democrats and twenty-four were Republicans.² One was an ex-member of Congress, one an associate justice of the Supreme Court of Colorado. There were two ex-district attorneys, twelve judges and ex-judges, probate and district. There were fifteen lawyers, three bankers, one newspaper man; and the remainder about equally divided among merchants, stock raisers, farmers, and speculators. Fifteen of the thirty-nine were natives of Pennsylvania.³

The services of some members who have never received great public recognition were invaluable to the convention.

¹ The *Denver Republican*, January 10, 1903.

² "Many members of the convention were obliged to travel from four hundred to ten hundred and sixty miles, crossing several ranges of mountains at the line of perpetual snow."—The memorial to Congress reported by Gen. B. L. Carr, of Boulder.

³ Judge E. T. Wells' account of the constitutional convention, found in the *Legislative History and Biographical Compendium of Colorado*. Pp. 147-168.

Some new and difficult subjects were dealt with by these men most skillfully.

A number of the members have since the time of the convention rendered important service both to the State and to the national government. Of these, Casimero Barela, Wm. W. Webster, Lewis C. Ellsworth, Clarence P. Elder, and Wm. H. Meyer have served in the State Senate; and Robert A. Quillian, George E. Pease, and Robert Douglas in the House of Representatives. Mr. Barela has served in both houses—in one or the other continuously. Alvin Marsh has held the office of Attorney-General; Wm. H. Meyer, Lieut. Governor; Wm. H. Clark, Secretary of State; Willard B. Felton, Secretary of the Senate and Warden of the Penitentiary; P. P. Wilcox, United States Marshal; and Wm. W. Webster, Capitol Commissioner. From the committee on the Judiciary Department, besides Felton, Marsh, Wilcox, and Pease mentioned above, have been chosen four members of the Supreme Court—E. T. Wells, Henry C. Thatcher, W. F. Stone and Wm. E. Beck, the latter having also served on the District Bench.

“The Spanish-speaking by nativity were Messrs. Vijil, Garcia, and Barela. Mr. Barela, in consequence of his command of the English language, stood as the leader of the representatives of the Spanish-speaking population. Messrs. Vijil and Garcia, though embarrassed at times by being compelled to resort to the aid of an interpreter, engaged earnestly and with ability in the work of the convention. Mr. Vijil supported the provision prohibiting the division of the school funds. Mr. Barela and Mr. Garcia were absent when this vote was taken.”¹

¹ From Judge Bromwell's account of the convention which I have used freely.

Mr. Meyer of Costilla and Col. Head of Conejos represented two of the "Mexican counties." Mr. Meyer was acquainted with several languages and represented many classes of people.

That the members and officers were faithful to their task is shown in part by the fact that they continued at their work, adjusting, amending, and revising for twenty-one days after the expiration of the time for which they would be paid. They did this, too, at much personal sacrifice. About nine years after the convention they were awarded the unpaid part of their salaries by a voluntary act of the legislature.

After some partisan strife over the chief offices, party politics was almost completely eliminated. In the newspaper reports of the convention there is hardly a reference to any activity for mere partisan reasons.¹

Among the questions receiving most thorough discussion were: corporations, common carriers, disposition of public waters, public schools (especially in relation to freedom from domination of religious organizations), taxation, salaries, restrictions against indebtedness, school lands, and the suffrage.

The report of the committee on the Bill of Rights was the first to be presented to the convention. It was under discussion on the fifteenth day of actual sitting. It was very thoroughly prepared and contained some provisions not found in any other constitution. Section fourteen, providing "that private property shall not be taken for private

¹ The *Rocky Mountain News*, the *Denver Times*, and the *Tribune*. Judge Wells has a bound volume of newspaper clippings covering this period. Judge Bromwell bequeathed a similar volume to the State Historical Society of Colorado.

use unless by consent of the owner, except for private ways of necessity and except for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes," is a western addition to those ancient and famous statements which precedent forces into our State constitutions.

Many petitions were received asking for a recognition of the Supreme Being in the statement of the Preamble. These requests were finally heeded.

The report of the committee on the executive department was adopted with little discussion. But, as in nearly all other State constitutional conventions, there was in the Colorado convention much discussion over the other two departments. The convention hoped that by numerous restrictions it could control the common tendency of State assemblies to over-legislation. The restrictions, however, have not proved effective.

On the plains the people's courts held sway, and in the mountains the miners' courts were the recognized tribunals. These courts had proved efficient and had grown popular. It was now the task of the committee on the judiciary to form an adequate system of courts to transplant these popular courts. This was done after much intelligent discussion and labor.

Illinois had followed Virginia and Kentucky in choosing county government rather than the township system. Colorado, following Illinois, now adopted the southern plan of the county system rather than the northern idea of the township. At the time the constitution was framed conditions were not favorable for the county-township, or mixed sys-

tem of local government, which prevails in most of the States. The township demands permanent compact settlements; and these Colorado did not have. The miners controlled small tracts of land, but they were unsettled, going at will from camp to camp. Except in a very few cases the people did not come in colonies to form settlements, but they came largely as individuals and often without their families. Stock raising required areas of land that would cover many townships in eastern States. The agricultural lands were scattered along the river valleys in elongated strips. For these reasons the county system prevailed in Colorado and has continued to the present.¹

The convention determined that the General Assembly should consist of twenty-six senators and forty-nine representatives until 1890, when the number should be increased to thirty-five senators and sixty-five representatives (which was done). Senators were to be elected from districts, and representatives from counties.

On the question of suffrage the convention took a forward step. Reforms of the first half of the nineteenth century had swept away the old religious and property qualifications for voting and further emphasized individualism. The next step in this process was the extension of the suffrage to women. As early as 1846 George William Curtis and Horace Greeley in the New York convention had made their great defence of woman suffrage. The Colorado convention feared that the new constitution might not be adopted if woman suffrage was at once established and so provided that

¹ *Historical Sketch of Colorado in The Civil Government of Colorado*, by J. S. Young. Pp. 14, 60, 61.

the First General Assembly should, and any subsequent session of the Assembly could, pass a law submitting the question to a vote of the people.¹ Mr. Thatcher presented a petition signed by one thousand voters in Colorado and Missouri asking that woman suffrage be adopted. The Massachusetts Woman's Suffrage Association also sent a petition signed by James Freeman Clark and William Lloyd Garrison. Judge Bromwell,² who is called the father of woman suffrage in Colorado, in speaking upon the subject said that the ruin of nations is caused by three things: "Contempt of Deity, contempt of women, and contempt of law."

The convention also inserted a section in the constitution providing for an educational qualification for voters by law after 1890, but no such law has been passed.

When the question of public schools was reached many petitions and counter petitions were presented on the subject of the division of school funds. The convention finally decided that the school fund should forever remain inviolate and intact and that the State must make good all losses to the fund. The question of the Bible in the schools also received much attention, but no statement was made for or against its being taught.

One of the longest debates in the convention was upon the question of the extent to which church property should be taxed. Like many other questions this was settled in a liberal and broad way by freeing from taxation all buildings and grounds actually used for religious purposes.

¹ The victory for woman suffrage was finally won in 1893.

² The minority report on the suffrage was introduced by Judge Bromwell and indorsed by Agapito Vijil.

It was declared that the rate of taxation should never exceed six mills on the dollar; when the valuation reached one hundred millions it should never exceed four mills; and when the valuation was three hundred millions the rate should not exceed two mills. It was provided that the appropriations should never exceed the amount produced by these rates; but every year since 1882 the State has exceeded the prescribed limit of taxation—an example of the powerlessness of specific limitations in constitutions.

Under the head of officers was inserted a curious survival from southern constitutions, namely, that any person who should be criminally connected in any way with the fighting of a duel should not hold any office in the State. The Kentucky convention of 1849 had adopted this regulation after long and heated discussion.¹ Delegate Hough introduced a resolution that no person who denies the existence of the Supreme Being should hold an office under the constitution. Judge Bromwell sought to defeat the pernicious fee system by a substitution of salaries, but was unable to accomplish the reform.

In their "address to the people" the delegates stated that "probably no subject had come before the Convention causing more anxiety and concern than the troublesome and vexed question pertaining to corporations." All western constitutional conventions had the same difficulty, for the West has had to struggle with trusts and monopolies in a peculiar way. Remote from the great markets, the West has suffered much from the arbitrary methods of

¹ Thorpe, *A Constitutional History of the American People*, Vol. II, pp. 126-134.

public carriers, speculators, creators of "corners" and money lenders.¹ We find another example of complete disregard of the fundamental law in "watered stock," for the constitution declares that "all fictitious increase of stock or indebtedness shall be void."

One of the ablest speeches of the convention was delivered by Mr. Ebert on *Forest Culture*. The General Assembly was directed to enact laws for the preservation of forests, and also to encourage the planting of hedges, orchards, and forests by exempting from taxation for a limited time the increase of value in such lands as a result of the improvement.

It was enacted that the laws of the State should be printed in Spanish and German until the year 1900 in sufficient numbers to supply the inhabitants using those languages.

The last article of the constitution covers the question of amendments. Judge E. T. Wells, of the committee on the Judiciary has said that "the provision of the constitution which is most objectionable is perhaps that which allows an amendment upon a bill enacted by one legislature merely." The number of articles that can be amended at one time has since been increased to six.

A portion of the judiciary committee brought in a report proposing that a popular election for the choosing of electors for President and Vice President should be called by the convention in the election ordinance. Judge Pease of that committee at once opposed the plan, on the ground

¹Thorpe, *The Political Value of State Constitutional History*, in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. I, p. 33.

that such a provision would be null and void for the want of power in the convention to deal with the subject. A lively debate followed, which resulted in the convention resorting to the method which had formerly obtained in South Carolina and other States, namely, leaving the electors for the year 1876 to be chosen by the legislature. A new legislature could not possibly be elected and meet in time to order an election by the people. This was the legal course as the legislature is the only body that can elect or provide for the election of the presidential electors.

The decision in favor of this method proved to be of great consequence. In fact, it changed the result of a presidential election. With the vote of Colorado, Rutherford B. Hayes was elected by a majority of one. If Colorado's electors had been chosen illegally, their election would have been declared void and Samuel J. Tilden would have been elected by a majority of two.

The last work of the convention was to draw up and issue an address to the people.¹ This address was a clear and excellent statement of the main features of the constitution. In it many arguments were presented favoring the adoption of the work of the convention. Special attention was called to the necessity of gaining statehood at once in order that the State might select its share of government land before settlers had taken up all the mineral, forest, and agricultural lands. The immense amount of this land is seen when we remember that the school lands and the grants in the enabling act amounted to two hundred and twenty-two sections

¹ *State and Governmental Papers*, issued by the authority of the Fourth General Assembly, 1883; and *Legislative Manual*, 1903, pp. 283-291.

or one hundred and forty-two thousand and eighty acres. Furthermore, by a previous act of Congress, Colorado, when she became a State, was to receive five hundred thousand acres of the public land within her borders.

The convention adjourned March 15, 1876, after having been in session eighty-six days with seventy-two actual working days. The constitution presented to the people is one of the longest of all the State constitutions. It has been said that it is a wise convention that knows the difference between a constitution and a code. While the Colorado constitution is excellent in many ways, and interesting from the point of view of the historian, its greatest fault is that it is a long code of laws rather than a brief statement of principles establishing a system of government. Where checks and limitations are too numerous and too restrictive they are very liable to be disregarded; and a disregarded constitution is worse than no constitution at all. It has been said in defence of our constitution that it has many provisions for adjustments, which is true. The number of articles was necessarily large because of the many separate and distinct sets of interests in the State.

The constitution was voted on and ratified July 1, 1876. The vote stood as follows: total vote, 19,505; for the constitution, 15,443; against it, 4,062;¹ majority in favor, 11,381. The vote was very light, thus giving credence to the general impression that our population was too small to justify the concession of statehood. The light vote was due more to the fact that the election was held at a busy time for farmers and miners than to indifference.

¹ Hall's *History of Colorado*, Vol. II, p. 328.

On Tuesday, July 25, Mr. John M. Reigart, private secretary to Governor Routt, left Denver for Washington bearing a duly authenticated copy of the constitution and ordinances, an abstract of the votes cast at the election, and copies of proclamations and other incidental papers together with Governor Routt's certificate to President Grant.

The beautiful enrollment of the Constitution now in the State Department of Colorado is the work of Mr. Stanton, the enrolling and engrossing clerk. Mr. W. H. Salisbury executed the fine copy that was sent to Washington.

On the first of August, 1876, President Grant issued his proclamation declaring Colorado a member of the Union.

Twenty-one amendments¹ have been made to the constitution since its adoption. The first amendment was adopted (supposedly) in 1878 relating to the appointment and place of residence of certain officers. A portion of the election records of 1878 are missing from the Secretary of State's office, among them being the vote on this amendment. In 1880 an amendment was adopted exempting certain improvements upon land from taxation. In 1882 the salaries of State officers were fixed as they are at present. In 1884 the people adopted the amendment making the compensation of legislators seven dollars per day with mileage of fifteen cents per mile. Article five was further amended by adopting the present method of introducing and passing a bill in the legislature and declaring the time in which it should become a law. In 1886 four sections of Article VI were amended, all relating to the State courts. In 1888 the indebtedness

¹ An amendment must receive a two-thirds majority in the General Assembly. It is then submitted to a vote of the people at the next general election.

of counties was regulated. In 1892 it was declared that the rate of taxation should never exceed four mills. Municipal authorities were also given power to tax certain property exempted from State taxes. In 1900 the General Assembly was given power to propose amendments to six articles at one session. This wholesale method of changing the fundamental law resulted in 1902 in the adoption of one entirely new article, making the city and county of Denver coëxtensive, and in changes in four other articles. By these changes the General Assembly was directed to provide by law that the eight hour day should be legal for laborers in underground workings, blast furnaces, smelters, ore reduction works, and other injurious and dangerous occupations; citizenship and a residence of twelve months were made a requisite for the privilege of the ballot; while other sections amended related to the office of district attorneys, county judges, county commissioners, justices of the peace, constables, and the regulation of the time of election of county officers. The amendment under the name of the Australasian Tax Amendment was defeated at this election—one of the very few amendments proposed to the people that have been defeated. An amendment once proposed by the legislature is almost invariably adopted. At the coming November election two amendments will be submitted to the people, the first exempting two hundred dollars worth of personal property from taxation and the second to consolidate the appellate courts and have seven judges with ten year terms for each.

The constitution of Colorado has proved to be an admirable document in many ways. Cries for a new constitution

will arise in the future as they have in the past; but by a broad interpretation the present fundamental law is adequate for almost all possible conditions. The efficiency of a constitution depends very largely upon its interpretation. A poor constitution broadly and wisely interpreted is often better than a good constitution restricted by a too narrow interpretation.

Federal relations and numerous national questions can be thoroughly understood only by a study of State history. In order to facilitate this study the States should publish their official documents and early archives. While a number of States have done this Colorado has failed to preserve officially much of the material relating to her early history. No official account of the constitutional convention has ever been published, nor have the speeches and debates of that convention been preserved. Such speeches and debates are always of value because of the light they throw upon current history. American political institutions rest very largely upon the intelligent sympathy of the people and intelligent sympathy requires an intelligent view of the past.

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