

NOTES ON THE CONSTITUTIONAL CONVENTION*

The first step in forming a State Government for Washington, framing and adopting a written constitution, was taken by a convention chosen by the people of the whole territory, for which it was to be framed.

The convention assembled at Olympia, July 4, 1889. Each county was allowed a number of delegates, the ratio being in proportion to population; by these delegates a constitution suitable to the requirements of the territory was carefully prepared, and was then ratified by the convention, published, and the people called upon to vote for or against it.

The members were all representative men of the several districts, able and sincere, and devoted to their arduous work. There were few matters of a local condition before the body; only matters of general application, equally applicable to all sections of the new state, and it was not difficult to declare the principle to apply to all sections of the state. Hence there was no trading or need of it.

Any constitution they might adopt must be subordinate to the Federal Union and conform to the laws of Congress. Subject to the above, our constitution declared the principles of government in its Bill of Rights; designates who may vote at popular elections; provides for a legislature and declares its powers; provides for the election of a Governor and Lieutenant Governor and fixes their power and duties; creates certain courts or empowers the legislature to do so; provides for the public educational interests of the commonwealth in detail; also for the organization of the militia, and for a revenue. In fact, it either fixes every detail of the machinery of the state government or gives the legislature power so to do. It declares the principle controlling the disposal of all the shore lands of the new state, about which so much controversy and uncertainty existed among the able lawyers of that time, for it was believed and contended that the upland owners owned down to deep water; whereas the convention declared that the upland ownership extended only to ordinary high tide and that the future state would own the balance. In speaking of the character and complexion of the convention, it has been fittingly said: "The enabling act of congress provided for the election of seventy-five delegates to draw up a constitution for the new state of Washington, and provision was made to permit of representation from

*This was written for Mr. Knapp and was made Appendix 1 of his thesis published in this issue. Mr. Kinnear was a member of the Constitutional Convention and was Chairman of the Committee on Corporations other than Municipal.

all parties, in that, while three members were to represent each district, only two of them were permitted to be of the same party. The convention as elected was composed of forty-two Republicans, twenty-nine Democrats and three Independents. They met at Olympia July 4, 1889, and for fifty-three days were in deliberation before their task was completed. John P. Hoyt, now of Seattle, was the presiding officer, and John I. Booge, of Spokane, acted as secretary. October 1 of the same year the constitution was voted on by the people and approved by a vote of 40,152 to 11,789, and November 11 President Harrison approved of the admission of the new state to the Union.

"The convention at Olympia was regarded as one of the most noteworthy bodies of men that ever gathered in public on the Pacific Coast. Many were wealthy and all had shown eminence in their respective callings. Vigorous and forceful, they attacked their work with all the energy which characterized their behavior in private life. With an average of only fifty-five years, they combined the wisdom of age and experience with the force and directness of youth.

"By breeding and experience that body of men was fitted exceptionally well for the task before it. There was represented the best blood of the new world, from every rank of life, men who had served in the legislatures of Northern, Southern and Middle Western States, and had followed their bent to the Coast. There were Scotchmen, Englishmen, Irishmen and Germans, born among monarchical surroundings and wise in the old world laws; and there were Canadians versed in the procedure of colonial government.

"Almost every walk of life was represented in the convention at Olympia. Twenty-one lawyers were in the body, and six physicians, three teachers and one preacher added to the professional equipment. The agricultural interests of the state were protected by thirteen farmers, four stock men and two hop growers. Finance and business had for their sponsors five bankers and six lumbermen; the mineral industry a mining engineer. Of the remainder, there were editors and surveyors, real estate dealers and others, all conversant with the resources of the future state and the necessities of the people who were seeking state government. Of all the number only one was a native born citizen of the Puget Sound country, so that, with this exception, each member of the convention could draw on his experience elsewhere to decide on what was best to retain or omit."

This was a non-partizan convention and politics at no time dominated or appeared in the discussions. Its members were broad-minded and far-seeing, and constantly kept before it the constitutions of all the

states and drew from each the newest and the best, with the result that it presented to the people of the state of Washington an organic act as good if not better than the best of them all. Time has proven and time will prove its superior excellence, and its intrinsic strength, sufficient to build upon for many years to come. In it the declaration of the right principles will be ever present. The fear is it will not be followed by the officers of the state legislature. Explanations foreign to the express meaning may wipe it away or render its declaration of principles worthless. If the people would be bound by wholesome rules of government they must follow its provisions closely. It seems to me the constitutions most drawn from by the convention were, in the order given: Illinois, California, Indiana, Michigan, Pennsylvania, New York, Georgia, Kentucky, with all the others in liberal use.

There were stenographic notes taken of the proceedings of the convention, but were never published. They should be for the use of lawyers and courts and all others interested, for, in the rendition of judgments, the bare reading of the words of the constitution gives rise to divided opinions as to the actual meaning contained therein, and, in instances of the kind, it is always the practice of the legal profession to procure information of the intent of the framers of the constitution. To the average lay mind the importance of securing at first hand the "intent" of the constitutional convention may not appear of so much importance, but every lawyer in the state will appreciate the value it will be to the courts. Outside of this, however, the general public would be interested in learning the influence brought to bear on us in forming the different sections. While of no legal value, these would be eloquent with information showing the character of the men of the convention. We all read with interest the personal reminiscences of men now long dead, but who at some time or other of their lives were connected with some great legislative or political movement. The little sidelights thrown upon such subjects by their writings convey to us a vivid picture of the things which led up to the events and help us to understand as no other means could the significance of their actions. Surely there has not been a deliberative body in the state or territory of Washington whose work was of such importance to the people as the constitutional convention, and I think it would be almost criminal, if, when we have the living material at hand, we should fail in this duty of recording completely and in sequence the labors of the convention and the discussions and findings of the committees.

Every member of the convention should be called upon to compile with all the minuteness at his command the part he took in framing the constitution, his reasons for supporting or opposing certain portions of the

constitution which were passed and the details of those which were suggested and rejected. Each member would probably have a different perspective and perhaps a different viewpoint, but the assembled expressions would give body to a volume that would form healthy and instructive reading.

The principles laid down in the constitution are plain divine justice. They were never bettered and never will be, so long as the sun comes up in the morning, but still they are often subordinated or misconstrued for personal greed or private ends, although the organic act was intended to protect man's sacred rights from the greed and rapacity of trusted servants.

From this declaration of the conditions and limitations on the principles and powers given and the care then taken to prevent abuse thereof by those in power, the constitution was amplified and partook somewhat of a legislative character, which, however, is common to all recent constitutions. Desiring to prevent public bodies and officers from the abuse of power, the people are ever jealous and suspicious of the abuse of privilege, and well they may be.

The Preamble

The Preamble to the constitution had been adopted in the usual form with the "God" in it, and an adjournment taken over Sunday. During the recess an unexpected and vigorous opposition had been stirred up, insomuch that a motion was made on convening of the convention to eliminate "God" from that instrument. After much earnest debate the motion to strike was put and carried and the word "God" stricken out. Efforts were made at different times to reinstate, but the opposition continued strong and the motion to reinstate was lost. The opposition claimed that the terrible cruelties of the Inquisition, as carried on in the name of God, and reported by Motley in the Dutch Republic, had never been resented as they should be, and to the extent of their influence should be on this occasion. The earnestness of the contest reminded me of my college days at Knox, where there was much controversy among the various churches. It was during that time Henry Ward Beecher often came to Galesburgh, Ill., to visit his brother and lecture to the students at Knox. On one occasion, referring to the church disagreement, he drew a circle on the blackboard with a dot on the circumference representing each church, and a dot in the center called "heaven," saying that as each of the churches were of equal distances from heaven, the central point, he believed that all good persons in the various churches would be saved in heaven, though on different roads, but leading to the same place.

This idea of Beecher's was certainly humane and gentle, and appreciated by the people as tending to allay this trouble and bring them together in harmony. This made him the "famed of all men of his times" and the most noted preacher of that or this century. And in all time there has been but one preacher greater than he, not so erudite, but greater and more loving to all men. From the "mount" this other preacher gazed down into the faces of the throng, and speaking to them personally in all sincerity said to them: "When thou prayest enter into thy closet, and when thou hast shut the door, pray to thy Father which is in secret, and thy Father which seeth in secret shall reward thee openly." This was sunshine that lent hope to all men and allayed their troubles materially. After the adoption of the constitution the controversy hushed, and for twenty years remained so. The people united to create a great state, perhaps the greatest of them all, and seeming to say, a busy, well regulate life "square as a square of steel," is the best sacrifice to the Infinite.

So long as the people shall live close to and be watchful of this constitution, and change their servants often, they may live long in their chosen land, and see it grow great and favored in the land. If, therefore, we, the framers of this constitution, have succeeded in eliminating from our institutions whatever in the past ages and times was derogatory to the full and free enjoyment of our natural rights and privileges and if we have succeeded in incorporating into our civil polity the most valuable products of the experience, as well as thought of former times, we may well abide in the assurance that our government does not rest upon the uncertain foundation of an untried experiment.

Of those members who have passed away to the land of the Infinite, we surviving ones may well repeat the sad words:

"When I remember all
The friends so linked together,
I've seen around me fall
Like leaves in wintry weather,
I feel like one, who treads alone
Some banquet hall deserted,
Whose lights are fled,
Whose garlands dead,
And all but he departed."

JOHN R. KINNEAR.