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## NEW MEXICO'S CONSTITUTION IN THE MAKING— REMINISCENCES OF 1910<sup>1</sup>

*By* THOMAS J. MABRY

THE FIRST effort on the part of the people of New Mexico to secure admission into the Union through the formal method of writing and submitting a constitution was made in 1850. A meeting of representative citizens was held in Santa Fé on April 20th of that year, resolutions seeking admission of the state were adopted, and Col. Monroe, then military governor, was requested to issue a proclamation calling delegates to a constitutional convention. In pursuance of such call, a regular constitutional convention was held, the opening session being on May 15th. James H. Quinn was elected president. The convention sat for 10 days. The most controversial matter was that involving slavery for the new state, against which the document contained a clear and ringing declaration. This document was submitted to congress, but statehood was declined largely because of this anti-slavery declaration, we are told. A bitter debate was then raging in congress on the slavery question. The Southern representation at that time was anxious that any new state then to come in should be one to balance against California's anti-slavery attitude.

Historians tell us that, had New Mexico declared for slavery at that time, it might have been admitted to the Union. As indicative of the temper of the people in favor of statehood, the overwhelming vote of 8,371 in approval of the constitution as compared with only 39 negative votes, should be noticed. Somebody suggested that this reflected smooth election machinery rather than unanimity of opinion—but we will skip that.

The next effort came with the convention which met in Santa Fé in 1889, this time authorized by the territorial legislature. This effort also brought no results, excepting to again impress upon congress our ardent desire for state-

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1. Address by Supreme Court Justice Thomas J. Mabry at the annual meeting of the State Bar of New Mexico in Santa Fé, October 22-23, 1943.

hood. There were 74 delegates elected to this convention, among whom were five who subsequently served in the authorized convention of 1910 through which statehood was finally obtained. These delegates serving in both conventions were: E. S. Stover and Alejandro Sandoval of Albuquerque; G. W. Prichard of Santa Fé; John G. Clancy of Puerto de Luna, and Silvestre Mirabal of Valencia county.

The people of New Mexico likewise adopted this constitution, submitted, together with a stirring address prepared by what was called a "committee of the constitutional convention" of which Hon. J. Francisco Chávez was the chairman. The theory upon which the people of New Mexico was approaching the question at this time was, as we gather from the words of this committee, that "God helps only them who help themselves and the time has come for New Mexicans to stand up, insist on, demand your rights!" In this address it is pointed out that New Mexico, as a territory, has furnished a place of forage for politicians who couldn't be either supported or elected to any office in their home states; that "a delegate to congress is only a paid beggar licensed to enter its halls. To him little more respect is paid than to the ordinary mendicant who walks your streets." The address further pointed out that of 31 states admitted into the Union since 1789, only three of them at the time of their admission "possessed more property or wealth than New Mexico has at present." Needless to say that nothing was accomplished by this effort, and New Mexico remained a territory.

Then a convention was called in 1910 to write the constitution for the proposed new state. This was to be first submitted to the people, then to congress and the president for approval. This time New Mexico acted under authority of an act of congress known as The Enabling Act. Under this act the chief justice of the supreme court, the governor of the Territory and the secretary of the Territory were selected to apportion the 100 delegates which the act provided should meet at Santa Fé and formulate the constitution. This apportionment was soon made. The Territorial governor, Judge Wm. J. Mills, issued his proclamation calling an

election for September 6, 1910, for the selection of delegates for a constitutional convention to open in Santa Fé on October 3, 1910, and which was authorized to sit for not more than 60 days. Of the 100 delegates to this convention, 71 were republicans and 28 were democrats, and there was one socialist. Bernalillo, with the largest population, elected eight delegates while McKinley had only one. The state was then composed of 26 counties, including the newly created county of Curry, with which Quay and Roosevelt had to share their representation. The democrats, usually claiming the distinction of speaking for the common man, were challenged by this lone socialist, Green B. Patterson of Chávez county, who said no one was closer to the poor man and the grass roots than he. "I am the only man in this convention," he boasted, "that came to Santa Fé directly from a dug-out."

The convention met on October 3, 1910, and adjourned on November 21, without consuming the entire 60 days allowed, and having left from the \$100,000.00 appropriated by congress for holding the convention something over \$7,000.00. This was later returned by Mr. Nathan Jaffa, then secretary of the Territory, to the U. S. Treasury. This perhaps set a precedent in practice of giving back government money not theretofore observed in the territory; nor thereafter in the state, so far as most of us can recall. The convention met in the house chamber of the capitol, the old brass rail being removed and desks were placed almost to the back wall. The excellent record made by Mr. Jaffa as the last secretary of the Territory and the courteous and impartial treatment shown all delegates of the convention will long be remembered by those who knew him then. Mr. Jaffa is still living, I am happy to report, and is in reasonably good health although now at the age of 79. (Mr. Jaffa was in the hall and was asked to take a bow.)

The election to approve the constitution was held on January 21, 1911, after a vigorous and bitter campaign, the vote being 31,742 in favor of adopting the constitution, with a negative vote of 13,309. Women did not vote at this time,

of course. The constitution carried in all counties but those of Roosevelt, Lincoln, Sierra and San Juan.

The democratic party, as an organization, was opposed to the constitution as submitted, and fought its adoption, particularly on the ground of its conservative character and of the alleged general conservative form of the referendum provision and the entire absence of any form of initiative or recall. But, at a central committee meeting of that party which was held at Santa Fé soon after the close of the convention in 1910, it was resolved that party loyalty would not be tested by any man's vote upon the constitution, that all democrats would be free to vote as "their conscience should dictate."

The preparation for, and opening of, the constitutional convention at Santa Fé was accompanied by much social and political activity. That the republican party, overwhelmingly in the majority, would have its own way was apparent from the first; but the democrats, constituting slightly more than one-fourth of the convention, made up for its lack of numbers in oratory and disunity; and thus stoutly maintained the party tradition.

Former Governor and Mrs. L. Bradford Prince, the popular Judge and Mrs. N. B. Laughlin, and the popular ex-Governor Miguel A. Otero, and others, took a leading part in extending social courtesies and doing many of the nice things which made a few of the early days of the convention particularly enjoyable, socially; after the first few days, however, partisan feeling arose to such a high pitch that most delegates were occupied with other thoughts than those associated with receptions, dinners and buggy rides about scenic Santa Fé. There were many social activities thereafter, I remember, but these were confined largely to smoke-filled hotel rooms of the old Palace Hotel where card tables, brass spittoons and Old Taylor took the place of lovely, well-dressed ladies serving tea and cookies. Cocktail parties, openly conceived and advertised, had not yet come into wide favor. Mrs. Laughlin, an intense partisan, was a most gracious hostess, and like Mrs. Prince, belonged to the old school.

Not to have known Mrs. Mary Prince was to have missed a lot of life. My acquaintance with her, it is true, was in the sunset days of her life, but it was a sunset of bright glow, and color, and hope; somewhat disturbed, perhaps, by the thought that the new generation then taking over was declining to show proper political deference to her gallant husband, then also advanced in years. She strove earnestly, cared deeply, for the acclaim of achievement, success, blue ribbons, culture, distinction and for political preferment for her husband.

The document, as finally written, was largely the handiwork of such able delegates of the majority party as T. B. Catron, thereafter U. S. senator; Charles A. Spiess, president of the convention and an outstanding attorney; Charles Springer of Raton, also an able lawyer and representing as well as possessing, large property interest; H. O. Bursum, an able man though not a lawyer, a ceaseless worker and the party's first candidate for governor; A. B. Fall of Three Rivers, an able lawyer, then in the prime of life and in his best fighting condition; Clarence J. Roberts; Frank W. Parker, and Solomon Luna, of Valencia. Luna never made a speech in the convention, but it is said, that he needed only to lift a finger or his eyebrows, to stop any proposal which he deemed against the best interest of his people, his party, or the proposed new state. I omit mention of the many able democrats, since these, after all, were in a hopeless minority, and, as I have often said, were there to get into the document what they could, of our program, but whose principal function seemed to be to vote "no."

The convention became a rough and tumble political fight from the day it opened until the day it closed. Some of the most controversial subjects with which the convention dealt were: direct legislation (the initiative and referendum), term of office for county and state officials; succession to office; power to be given to the state corporation commission; specific manner and method of our selection and retention of public lands granted by congress; authorizing payment of the bonded indebtedness of Santa Fé and Grant counties, legalized by congress; the price or term at

which public lands might be sold or leased; the protection of established water rights; methods of amending the constitution; the matter of the creation of legislative and judicial districts; and the method of selecting the judiciary.

Both parties were united in its purpose to end the pernicious and extravagant fee system for county officers. No party lines were drawn when it came to the much debated subject of how to select district judges and justices of the supreme court, whether by election or appointment; and, likewise, as to their terms of office. A considerable number of both parties favored and fought for some appointive system, but the overwhelming majority in both parties favored electing all judges, disagreeing only as to the length of term and the salaries to be paid.

It will be remembered that the constitution left to the first state legislature the matter of fixing county salaries for all county officers, and this task brought on what was perhaps the most prolonged and bitter contest between the legislative and executive branches of our state government that has ever been known in New Mexico. The disagreement between the legislature and the governor over the classification of counties and the fixing of salaries for the various officials was wholly irreconcilable. Governor McDonald vetoed the salary bill passed by the first legislature of 1912, and his veto was sustained by the narrow margin of one vote in the senate.

It was Delegate H. O. Bursum who introduced the provision limiting succession to certain state and county offices and providing for the abolition of the unsatisfactory and unpopular fee system employed in the compensation of certain county officers.

H. B. Fergusson, M. D. Taylor, C. M. Compton, Sr. (father of our able District Judge J. C. Compton), E. D. Tittmann, R. W. Heflin and J. W. Childers, to mention those names that now occur to me, represented the so-called irreconcilables among the minority in the convention, who would be satisfied with nothing less than a thoroughly progressive constitution; while C. R. Brice, G. A. Richardson, A. H. Hudspeth, J. L. Lawson and H. W. Daugherty would

probably be classified with the ablest of that portion of the minority which was endeavoring, through compromise and agreement, to get into the organic law as much of the party's philosophy and program as was possible without unduly antagonizing the majority; and these leaders, working with the majority undoubtedly did accomplish a good deal. We secured a pretty fair and workable constitution, although unmistakably, of a most conservative flavor. As for my own position, it is pretty well stated in a quotation I find credited to me by the *New Mexican* of the day after the close of the convention (Nov. 22nd) when short interviews from several delegates were obtained. I was quoted as follows: "Curry county will support the constitution. I will work for its adoption \*\*\*. While we wanted direct legislation, we are confident of getting it after statehood." That last phrase shows I was unjustifiably optimistic, as well as somewhat politically naive.

One of the bitterest controversies raged over the provision relating to districting the state for judicial and legislative purposes. We heard much about this charge of "Gerrymandering" for at least twenty years after the state's first election. The "Gerrymandering" went merrily on notwithstanding all protests and wailing from the minority. The superiority in numbers possessed by the majority party, then well united, was to it proof enough of the justice of its course. And, while refined amenities of statecraft were pretty nearly upset over this districting incident, it did not make much difference in the long run, for, as one of the majority delegates once declared in heated debate, the democrats are against us anyway and are here to "raise hell whatever the majority does; and we are here to write a constitution for this glorious new state to be—and, to protect the interests of the republican party." In passing, it might be noticed, that the complaint in respect to the Gerrymander has largely subsided since the democrats, many years ago, obtained control of both the senate and the house, and, likewise, came to elect most of the district judges. I suppose it might be said that when the pain of defeat was thus al-



leviated there was no occasion to kick about the tight shoe that had theretofore pinched the political foot.

In support of the charge that there had been a highly successful "Gerrymander" as to legislative districts, it will be noticed that, although the democrats elected their governor, approximately half the state officers, and their candidate to congress, at the first state election, the republicans controlled the legislature by a two-thirds majority in both the senate and the house.

Notwithstanding the bitter controversy which waged throughout practically the whole of the deliberations, many of these differences, political and personal, were forgotten at the close; and the last day and night session witnessed a great get-together with much forgetting, and forgiving, on all sides. Obviously, most delegates were glad that the job was over and that statehood was on the way.

I recall the splendid eulogy paid to Mr. Spiess, the very impartial presiding officer of the convention, by Delegate G. A. Richardson of Roswell, when, on the closing night, he presented to the president a beautiful silver service set, the gift of all the convention. The speaker might have overstated the case a bit in his eulogy and, likewise, President Spiess was not too restrained in speaking kindly of the democrats in his response. This lack of restraint on both sides was later emphasized by its bold contrast to the hot campaign speeches which followed. I have often thought that it would have been a nice thing, and would have greatly neutralized a lot of political oratory, if the speakers of the closing night of this historic event had preserved and restated some of the high points of these fine eulogies in the subsequent campaigns; but, I soon learned that this is a practice not theretofore, then, nor thereafter, observed in New Mexico politics.

Of course, I realized that perhaps the three barrels of bottled beer and the large supply of sandwiches (a contribution from whom, we never knew—at least I never knew) which were rolled into the foyer of the house chamber on that closing night might have had something to do with calming the spirits of the belligerents. Certainly a good

time was had by all until the adjournment of the convention *sine die* at about 4 a. m. the next morning.

I recall one incident when there ensued a bitter personal encounter between a prominent democrat and a leading republican of the convention, when, after an exhibition of violent language and bared fists, both men were led from the floor by their respective friends, while the sergeant-at-arms, alarmed at the fast movement of events, remained over in one corner of the room. Major Whiting was the sergeant-at-arms. He had gone through the Civil War, but he was then a little old to referee bouts of such promise as this one. The republican member returned to the hall within a day or two, but the democratic delegate refused to return until he could have a public apology from the offending brother. This was never forthcoming and the delegate with the tender feelings never came back, while the other went to the U. S. senate.

Delegate E. D. Tittmann of Sierra county would provide authority for a civil service system for all state employees. The *New Mexican* of November 4th shows, significantly, that this motion was lost for want of a second. Both parties ignored the suggestion, evidently hoping to profit by the spoils system, as they have—or have they?

Delegate Parker, then a territorial supreme court justice also, was responsible for the specific authority found in the constitution (Art. 6, Sec. 13) for the establishment of juvenile courts. According to newspaper files of the time, Delegate Brice arose to object to the Parker proposal for the specific mention of juvenile courts on the theory, to quote from the press report: "that Sec. 1 already gives the legislature that power; it is just adding unnecessary language."

The proposed amendment then adopted, was placed at the end of Sec. 1 of Art. 6, providing for the establishment of courts inferior to district courts, and it read: "including juvenile courts." From this little history it can be seen that Brother Brice has always been consistent in his advocacy of less words and more ideas, in all writing upon the law.

I recall an instance in recent months when, in a moment of slight impatience with one of his associates on the bench

because of what Brother Brice thought was too much language with too little said, he remarked, "Judge, I believe you can compress more words into a small idea than any lawyer I ever knew." Brother Brice scolds his associates at times for what he terms obstinacy of opinion. However, he guides us away from many errors, even if, occasionally, he would unintentionally lead us into a few.

It might be said that this three-word phrase, "including juvenile courts," which Judge Parker insisted upon writing into the constitution even at the risk of slight verbosity, may have saved to us the juvenile courts as thereafter, and nearly a quarter of a century ago, established by the legislature. In a recent case (*In re: Santillanes*, 138 P. 2d 503) such courts as now established were challenged as depriving the district court of the powers given to them exclusively by Art. 6, Sec. 13. Whether or not exactly decisive of the issue there presented, this three-word phrase so written into the constitution, was the subject of vigorous attack, and support, with varying interpretation, by counsel as well as by members of the court in their very lengthy consideration of that case.

One of the bitterest political controversies of all the convention debates revolved about the question of direct legislation—the initiative and referendum—with the recall enjoying a considerable share of the spot-light. There was never any doubt that there would be no provision for either the initiative or recall, but the minority party, since all delegates were pledged to both a liberal initiative and liberal referendum, and many favored the recall, made an issue of this question which greatly stirred the convention; and this issue was echoed in many political speeches of later campaigns. Mr. Fergusson, the minority leader in the convention, and who at the time, shared with A. A. Jones of Las Vegas, and Felix Martinez, the honor of speaking authoritatively upon party matters, made what was to my mind, one of the greatest speeches of the convention. This was upon the question of direct legislation. The speech was at night, and it was a field day for discussion of that intriguing issue, with all standing space and the galleries completely filled with the

delegates' wives, Santa Fé society and other visitors. I cannot recall now much of what was said by him. But the press of that date gave liberal space to all the talks of the occasion, the high-light of all convention oratory. In reading of these now from newspaper files, I am less thrilled by the art and histrionics of this effort of Fergusson, as well as that of Fall, Catron, Bursum, Brice, Holloman, Nestor Montoya, Richardson and Jim Hall, all of whom spoke that afternoon and night. "Few speeches which have produced an electrical effect upon listeners can bear the colorless photograph of a printed record," some sage has very appropriately reminded us.

H. B. Fergusson, an average size, rather stooped, man with deep-set brown eyes and with what I would call a Cordell Hull expression of a thinker with a soul, was then perhaps about 60 years of age. I have often speculated upon how deeply he might have stirred the convention had he been of the majority faith, and how different the results might have been. I recall how, upon that occasion, he played upon the harp strings of our emotions—although he changed no votes—in showing how the poor and neglected of the great masses (we had not yet coined the term "forgotten man") was being trampled underfoot by the greedy rich and corporate interests which proposed to "control this convention, and write this constitution for one of the last two states to be born upon the American continent!"

One phrase he used, and which I think I can quote, substantially verbatim, was:

"From the cankerous womb of governmental neglect are born, to contest for supremacy in this government founded for all free men, two great classes: The very poor and the very rich—the economic tramps and the millionaires. I dedicate my life, I cast my lot, with the common man."

As I sat there in wide-mouth, youthful wonder and listened to the delegates expounding these two clearly separated political philosophies—the one implying that business prosperity was paramount, and from it would flow prosper-

ity for all; and the other that moral and economic considerations common to the average man should persuade us,—I pondered, as in after years I decided, that both sides, perhaps, had overstated their case.

The Santa Fé *New Mexican*, the acknowledged spokesman for the majority at the time and then edited by that inimitable and able Paul A. F. Walter, now a banker and still living, expressed the sentiment of the majority pretty well on the second day of the convention when it said: "There is a world of difference between the initiative and referendum. While the Constitutional Convention will not for a moment consider seriously any effort to adopt the Initiative or the Recall, it will be disposed to adopt a modified referendum, and such exists to a certain extent in New Mexico today." Then the editorial goes on to show that we already had a modified form of referendum in matters involving extension of municipal boundaries, fixing municipal bonded indebtedness, permitting a local vote in fixing "herd law" districts, etc. But, continued the editorial, "there is a big distinction between this and the referendum which the socialists advocate."

For a youngster in New Mexico politics, Delegate (later Judge) Reed Holloman, who hailed from Quay county, (and who I always contended held the democratic viewpoint, if he did have republican leanings) had much to do with forming the party's policy on direct legislation, and my information is that he appraises as I do the hesitant, careful and limited steps which the convention took when it consented to embody in the constitution any provision for the referendum. As Mr. Justice Sadler, who authorized the recent opinion in the so-called Tobacco Tax case (*State v. Cleveland*, 47 N. M. 140, 141 P2d 192) said: "After all, we have a representative form of government. The delegates to our Constitutional Convention were schooled by tradition in representative government. At the time it convened the initiative and referendum were largely new and untried. The convention moved cautiously in the matter, rejecting the initiative altogether and giving us the referendum carrying a broader exemption in the safety clause than is to be found in any

other state constitution. There was nothing covert or concealed in the matter. On the contrary, the question was widely publicized in the press and from the platform all over the State and the Constitution was adopted with a full knowledge by all of just what it did and did not have on the subject." And, continuing, the opinion reads: "If it seems desirable that a larger reservation of power be lodged in the people under which the popular veto of legislation may be exercised, the remedy is not through the courts \*\*\* but rather through an amendment to the constitution using language of similar import to that urged upon, but rejected by, the constitution makers in 1910." The opinion then points out that in no other constitution of the some twenty states employing the referendum is like language employed in defining the exceptions from referendum operation; that "In most, if not all, of the other constitutions providing for the referendum the language of exemption is 'laws *necessary* for the *immediate* preservation of the public peace, health or safety,' or that in substance." The convention advisedly rejected the minority report which would have employed the term "Laws for the *immediate* preservation of the public peace, health and safety." The official proceedings of the convention (Pages 66 & 67) disclose that Delegates A. H. Hudspeth and H. B. Fergusson brought in and urged the adoption of the minority report, which, had it been employed, would, of course, have greatly widened the operation of this instrument of legislation veto.

Father Julius Hartmann, now of Santa Fé, then in his late twenties, was the chaplain of the convention, and was very popular with all delegates. His prayers were sufficiently general in application and abstract and impersonal in character to create no feeling of partiality. This was in strong contrast to the Presbyterian minister<sup>2</sup> who, as chaplain of the first state senate, of which I was also a member, had, by certain prayers, when he thought the majority was running a little too rough-shod over the weak minority, invoked divine guidance that the blows might be softened. I

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2. The Rev. B. Z. McCullough, then pastor of the Santa Fé Presbyterian Church.—Editor.

remember, too well, that the blows were *not softened*; and also (it was generally understood) that a caucus of the majority was called to ascertain whether the chaplain should not be "talked to," or even discharged, because of what was thought to be an unnecessary effort to invoke God in our local politics. I recall that neither was the chaplain discharged nor was the tone of his ministerial rebuke thereafter materially (though it may have been a little) modified.

We remember that the president did, in the summer of 1911, veto the first act of congress approving, jointly, the New Mexico and Arizona constitutions; and it was on account of Arizona's liberal acceptance of direct legislation. I was in Washington at the time of this veto with a committee of New Mexico democrats, there trying to help secure democratic house reservations and conditions, upon which to base approval, and heard him announce to this committee, the day after the passage of the act in congress, that he proposed to veto it. He explained that he was sorry he had to do this since he approved heartily of New Mexico's excellent constitution; but that he did not propose to violate his oath of office which had bound him to preserve the traditional American form of government for all states.

Incidentally, I am the only surviving member of this small, unofficial, group in Washington at the time. It was composed of: A. A. Jones, Summers Burkhart, H. B. Fergusson, P. F. McCanna, Felix Martinez, J. D. Hand, W. R. McGill, and myself.

We know of the compromise which was then worked out in congress by which it was proposed that Arizona should first vote upon the question of removing this feature so obnoxious to the president; and within a few weeks the new act of congress was passed and signed by the president, and statehood for both territories was thus achieved. Arizona did remove the source of annoyance, but at the next election after statehood, voted by a tremendous majority to replace it.

It might be noted in this connection that the most unfavorable feature of the original of our constitution, that relating to the method of amendment, was modified by popu-

lar vote at the first state election through provision, insisted upon by the democrats and exacted by congress, for a vote upon this issue, as a condition precedent to our admission. The original provision would have made any amendment most difficult, we can all now see, in the light of experience which shows it to be difficult enough to secure desirable amendments even upon questions upon which both major parties agree.

Of the 100 delegates to the convention only seventeen survive as of this writing. Strange to say, the democrats, with a little more than one-fourth of the original membership, now have one majority of those surviving. This is not counting, either, the few republicans of that convention who later became democrats. Incidentally, it might be added, that all of these men who changed to democratic affiliation are still living. Whether it is purely co-incidental that long life and party irregularity go hand in hand, I hazard no guess. The record does not disclose that any democrat of that convention ever changed his party affiliation, which may, after all, offer some support to the familiar saying that only the smart man changes his mind.

I have heard of no particular explanation as to why the democrats outlived the republicans, as a group, excepting it will be noticed that most of the younger delegates were of the democratic faith. This may be the explanation. Brother Pat Hamilton is my authority for the assertion that democrats do not, as a fact, live any longer than republicans; it just seems longer.

In Oklahoma, of the 112 delegates to that state's constitutional convention of 1907, thirty-one were living at the time of a reunion held at Guthrie on September 18th, last, the report of this meeting tells us. So, when we remember that all but thirteen of these delegates were democrats, there might be, after all, something to the fact that democrats live longer than republicans.

While no member of the convention ever became governor of the state, we know that the first two United States senators, Catron and Fall, were members of the body, and



likewise, H. B. Fergusson, who, with George Curry, first represented us in congress.

It might be noted, incidentally, that at no time since statehood has our supreme court been without one or more members who served in this convention: Justices Roberts, Parker, Reynolds, Davis, Brice, Hudspeth, and your humble servant. But for his defeat by the republican candidate, Mr. Justice Bickley, of our court, would have had the same distinction. He had not learned yet, or probably he didn't care too much, that Colfax hadn't begun to elect any democrats to office by 1910. Certainly not when the powerful and able Charles Springer was the alternative. Numerous other members later served in district, county and state office, all with honor and credit, as far as the record shows.

It may be of interest to the bar to know that the original of the constitution, with the signatures of the signers, which has been left lying about in the vault of the secretary of state through the years, is now to be preserved in a neatly constructed glass-covered box and under lock and key, provided by our present secretary of state, Mrs. Cleveland. It is sad to relate that but few of the original papers and records of the convention proceedings have been preserved. I do find in that office the original files on the preamble, and the boundaries of the state, and two or three others.

As I reflect upon those days and the men of this convention, I believe it can be said that, notwithstanding the wide difference in political philosophy which separated the two parties at that time—many of which differences have now ceased to exist as experience has taught us all to distinguish between that which is desirable and that which is not—that no more patriotic or earnest body of men ever assembled in any territory in preparation for statehood. That somewhat selfish purposes motivated some of the delegates goes without saying; but the fact that most of such purposes were pretty well circumscribed or thwarted, justifies this tribute to the patience, skill and patriotism of that body as a whole.

New Mexico's interests were varied and, in many cases, rather conflicting; and the idea of writing a constitution which would fairly serve the people for decades and not

years merely, and which would, at the same time, pass muster in a congress then divided, politically, with a democratic house and republican senate, and which would meet the approval of a most conservative president, was no little problem. And, it might be noticed that, although we have had, at all times, authority for the legislature to initiate the calling of a constitutional convention to rewrite, or revise, our constitution, yet there has never been, from any quarter, so far as I have learned, any demand for such a convention. All of the few essential amendments adopted have been made through the more simple and direct method.

It is quite possible that no one of the seventeen framers of our constitution now surviving, will live to see called a convention to revise; and this, in itself, would represent a record of general approval not achieved in many such conventions.

We can't say there was anything unusual, or outstanding, that came from this convention. We were dealing simply with the ideologies and problems which were common to political parties, the several state legislatures and congress itself, in that period of growing political pains and restlessness. It was the unusual era which lay, say, between the early 90's and the time of the first World War.

It was simply Democracy feeling its way along: marching, battling, hating, loving. Political corruption, confined exclusively to neither political party, and economic injustices inflicted upon the great masses, and selfishness, had bred unnecessarily deep class-hatreds; bigotry and tolerance were struggling, each for supremacy as in no other like period of our history, perhaps; certainly never on such a wide scale. And, the wonder is, not that our country as a whole eventually achieved so little in unity, security and justice, but rather that we in fact escaped that yawning pit of political darkness which came later to devour the other world democracies—those which, in desperation, accepted the rule and dictates of *men*, as they turned away from government by *law*. And, for this *we must owe something to Divine Guidance.*

FEB 27 '78

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## PUBLICATIONS FOR SALE

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