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THE MAKING OF THE NEW MEXICO CONSTITUTION

Thomas C. Donnelly

II. The Constitutional Convention of 1910

The Enabling Act of 1910 contained two basic series of provisions. One was a list of obligations or a “compact” which New Mexico was required to accept, and the other stipulated the procedure or “schedule” which the territory was to follow in becoming a state. The compact, now Article XXI of the Constitution, was to become a perpetual contract between the new state and the national government, subject to amendment by the people of New Mexico only with the consent of Congress. The schedule, now Article XXII of the Constitution, authorized the calling of an election to choose delegates to form a constitutional convention, fixed the number of delegates and provided for their apportionment, and appropriated $100,000 to carry out the process of formulating and ratifying the constitution.

On June 28, 1910, eight days after the signing of the Enabling Act by President Taft, and in accordance with the authority vested in them by the act, a commission consisting of William J. Mills, Governor; William H. Pope, Chief Justice; and Nathan Jaffa, Secretary of the Territory, met in Santa Fe and apportioned the members of the forthcoming constitutional convention among the twenty-six counties of the state. The Enabling Act provided that the convention should consist of 100 members and should be apportioned among the several counties according to the vote cast in the 1908 election for Delegate in Congress. The members were apportioned according to this vote and there was no objection from any source to the apportionment; it was merely a mathematical calculation.
On June 29, Governor Mills issued a proclamation calling for an election to be held on September 6 for the purpose of selecting the delegates to the constitutional convention. The Enabling Act provided that the election should be held not less than sixty days after the passage of the Act and not more than ninety days.

Although neither the Democratic nor the Republican Party held a state convention to advise the delegates how they should vote or what principles they should put into the constitution, rival party tickets appeared in almost all of the counties. In a minority of the counties joint bi-partisan tickets were run, notably in Socorro, Rio Arriba, Lincoln, and Otero counties. Although Governor Mills at a Congressional hearing, February 17, 1911, expressed the opinion that the object of the delegate election "seemed to be to get, as near as possible, an expression of the will of the people," the election proved to be predominantly a partisan one. The counties that agreed on joint tickets and forswore partisanship were the exceptions rather than the rule. On the whole, however, the election appears to have been a fair one despite the usual crude acts of a few county machines in furthering the fortune of their nominees. No contests were filed against the election of any of the delegates. The chief issues of the campaign were the initiative and referendum, then much favored by progressives throughout the United States. In general, the majority of the Republican nominees for delegates opposed inclusion of such measures in the New Mexico Constitution; the majority of the Democratic candidates favored them. The people seemed to favor the measures, but the larger business interests of the state looked askance at them, and the majority of the political leaders were quite willing to see them sidetracked.

The result of the election, which was never in doubt, gave the Republicans seventy-one (more than two thirds) of the delegates and the Democrats twenty-nine. While the Albuquerque Journal, a Republican paper, observed that "every one of the candidates whom the Journal attacked as bosses, railroad attorneys, and corporation lawyers"1 was elected, its rival, the Tribune-Citizen, a Democratic paper, felt that a number, at least twelve, of the Republican majority were independent of the "Old Guard" and could be depended on to join the Democratic minority and certain of the nineteen delegates elected on fusion tickets in the support of progressive principles.2

2 The Albuquerque Tribune-Citizen, September 7, 1910.
The delegates elected to the convention and their party affiliations are shown in the table on the next page.

Taken as a group, the delegates were representative of all phases of life in the territory. Approximately one third of the delegates were Spanish-American, natives of the territory, and two thirds were Anglos. A few were considered wealthy men, a larger number definitely poor, but the majority, perhaps two thirds of the entire membership, were from the middle classes. Lawyers constituted the chief occupational group, there being thirty-five representatives of this profession in the convention. A survey of the occupations of the other delegates reveals them to have been livestock growers, mining promoters, bankers, merchants, farmers, educators, newspaper men, and men of miscellaneous activities. Almost all, if not all, of the delegates had been active in the political life of the territory, several had held high political office, and many hoped to do so when statehood was obtained. What is more, a surprisingly large number lived to realize their ambitions. The political history of the state since its admission to the Union is studded with the names of members of the constitutional convention who have attained high political places. Even today, more than three decades since the convention, a few of the delegates are still prominent figures. Thomas J. Mabry, the junior member of the convention, is now a state supreme court justice, as is C. R. Brice. Holm Bursum in Socorro county, W. D. Murray in Grant county, Reed Holloman in Santa Fe county, and Francis Wood in Bernalillo county also remain men to reckon with in the councils of their party.

The general level of ability of the delegates was high, and a more adept group in the art of government could not have been selected from the citizenry of the territory. Father Julius Hartmann, the chaplain of the convention, was a young priest at the time, having only recently come from Europe where he had been trained in the best universities. His observant eyes and keen mind took in much of the convention scene. He was "simply amazed," he reports, at the marked ability of the personnel which composed the convention. He said "he felt like a child" in the presence of the leaders of the delegates so skillful were they in their work. That a frontier society such as New Mexico was at the time could summon to the task of constitution-making such an assemblage of men trained in the processes of government gave him, he
## Delegates to the Constitutional Convention of 1910

### AND PARTY AFFILIATION

**Bernalillo County:**
- Herbert R. Raynolds (R)
- A. A. Sedillo (R)
- M. L. Stern (R)
- Anastacio Gutierrez (R)
- Nestor Montoya (R)
- Francis E. Wood (R)
- E. S. Stover (R)
- H. B. Fergusson (D)

**Chaves County:**
- John I. Hinkle (D)
- G. A. Richardson (D)
- Emmet Patton (D)
- Green B. Patterson (D)

**Colfax County:**
- Francisco Gauna (R)
- Thomas H. O'Brien (R)
- Charles Springer (R)
- Norman W. Barlett (R)
- Clarence J. Roberts (R)
- George S. Brown (R)

**Curry County:**
- John W. Childers (D)
- Thomas J. Mabry (D)

**Dona Ana County:**
- Frank W. Parker (R)
- Isidoro Armijo (R)
- Charles E. Miller (R)
- Winifred E. Garrison (R)

**Eddy County:**
- M. P. Skee (D)
- C. R. Brice (D)

**Grant County:**
- A. H. Harllee (D)
- J. B. Gilchrist (D)
- W. D. Murray (R)
- W. B. Walton (D)

**Guadalupe County:**
- Salome Martinez (R)
- John G. Clancy (R)
- Tranquilino Labadle (R)
- Reymondo Harrison (D)

**Lincoln County:**
- Andrew H. Hudspeth (D)
- Jacobo Aragon (R)
- John H. Canning (R)

**Luna County:**
- James N. Upton (D)

**McKinley County:**
- Gregory Page (R)

**Mora County:**
- E. M. Lucero (R)
- Daniel Cassidy, Sr. (R)
- Anastacio Medina (R)
- Juan Navarro (R)
- Fred S. Brown (R)

**Otero County:**
- Albert B. Fall (R)
- George E. Moffett (D)
- J. Lee Lawson (D)

**Quay County:**
- C. C. Davidson (D)
- Charles H. Kohn (R)
- Ed. F. Saxon (D)
- John L. House (D)
- Reed Holloman (R)

**Rio Arriba County:**
- Venceslao Jaramillo (R)
- G. D. Burns (R)
- Perfecto Esquibel (R)
- Jose A. Lucero (R)
- Samuel Eldodt (D)
- J. H. Crist (D)

**Roosevelt County:**
- James A. Hall (D)
- C. M. Compton (D)
- W. E. Lindsay (R)

**Sandoval County:**
- Alejandro Sandoval (R)
- E. A. Miera (R)

**San Juan County:**
- R. W. Heflin (D)
- M. D. Taylor (D)

**San Miguel County:**
- Margarito Romero (R)
- Atanacio Roybal (R)
- J. M. Cunningham (R)
- S. B. Davis, Jr. (R)
- Luciano Maces (R)
- Harry W. Kelly (R)
- Eugenio Romero (R)
- Nepomuceno Segura (R)
- Charles A. Spies (R)

**Santa Fe County:**
- B. F. Pankey (R)
- Jose D. Sena (R)
- Victor Ortega (R)
- George W. Pritchard (R)
- Thomas B. Catron (R)

**Sierra County:**
- Edward D. Tittman (D)
- Frank H. Winston (R)

**Socorro County:**
- H. M. Dougherty (D)
- James G. Fitch (D)
- H. O. Bursum (R)
- A. C. Abeita (R)
- J. Frank Romero (R)

**Taos County:**
- Malaquias Martinez (R)
- Onesimo Martinez (R)
- Squire Hartt, Jr. (R)
- William McKean (R)

**Torrance County:**
- William McIntosh (R)
- A. B. McDonald (R)
- Acasio Gallegos (R)

**Union County:**
- Efucrino Gallegos (R)
- Candelario Vigil (R)
- George W. Baker (R)
- F. C. Field (R)

**Valencia County:**
- Solomon Luna (R)
- John Becker (R)
- Sylvestre Mirabal (R)
said, an enduring faith in democracy. Father Hartmann's estimate of the ability of the delegates deserves to be credited with respect, because, new to New Mexico as he was at the time, his judgment was not warped with personal or political biases.

The temper of the group was definitely conservative. Only a minority seemed to have been under the influence of the progressive ideas in government that were gaining headway in the nation in 1910, and which were destined to raise Woodrow Wilson to the presidency two years later on his New Freedom program. The general outlook on government and economics held by the large majority of both Democrats and Republicans in the convention can best be described by saying it derived from Taft rather than from "Teddy" Roosevelt or Wilson.

Albert B. Fall, Holm O. Bursum, and Solomon Luna, it is generally agreed, constituted the three most important leaders of the Republican majority, although Charles Springer, Thomas B. Catron, and Charles H. Spiess deserve to be ranked not far below them.

Fall, a man of great natural ability, was forty-nine years of age at the time and in the prime of his life. A lawyer by profession, a former justice of the territorial supreme court, and an important political leader, he exerted much influence. He was chairman of the Committee on the Legislative Department and a member, as were Bursum, Luna, Springer, Catron, and Spiess, of the highly influential Committee on Committees, the informal "steering committee" of the convention. Fall was an important spokesman in the convention for the livestock industry when matters of importance concerning it arose, and he was pictured by the opposition press as being an "astute, cool, suave defender of the special privileged interests." With the admission of New Mexico as a state, he became a United States senator, and later Secretary of the Interior under President Harding.

Bursum, then only forty-three and a well-to-do rancher, was territorial chairman of the Republican Party. A strong, quiet, intelligent man of Scandinavian type, he had the rugged individualistic outlook of a man who had made his own way from early youth. He was chairman of the important Corporation Committee of the convention. Believing New Mexico needed to attract capital investment to realize its economic potentialities, he was eager to see the convention make a constitution

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8 Personal interview with Father Hartmann, October 7, 1941.
9 See the Albuquerque Tribune-Citizen, October 12, 1910.
that would not discourage corporations from coming to the state or hamper those already here. Always, even yet, a leader in Socorro county and in his party, he was an unsuccessful candidate for governor in 1911, but later became a United States senator.

Solomon Luna, the leader of the native element in the convention, was fifty-two years of age, and according to Twitchell, "in point of numbers and invested capital, the most heavily interested of any sheep owner in New Mexico." He was the undisputed leader of Valencia county, and had been a member of the Republican National Committee since 1896. In the convention, he was chairman of the very important Committee on Committees. Wealthy and relatively uninterested in public office, his influence in the convention, quietly used, as all agree, was powerful.

Thomas B. Catron was the patriarch of the convention, being seventy years of age. For many years he was not only the leader of the New Mexico bar but the Republican "boss" of the territory, and although his political power had waned, he was still a force with which to reckon. In the convention, he was a member of several of the more significant committees. In 1912, at the first session of the legislature, he was elected, along with Fall, to the United States Senate.

Charles Springer, a wealthy and capable lawyer, was chairman of the Committee on Revision. He was an important political figure in the northern counties of the state. Charles A. Spiess, another brilliant attorney, was chairman of the convention. He had broken into New Mexico politics as an associate of Catron, but at the time of the convention resided in San Miguel county where he was a dominant figure.

Harvey Fergusson of Albuquerque was, as floor leader of the Democrats, the principal spokesman of the minority. A lawyer of much ability, and always a force in his party, he had been a delegate to Congress from the territory. Republican leaders found him difficult to understand because he, more than any other delegate in the convention, was in tune with progressive ideas of government. Those of his political faith saw him as an impassioned pleader for the rights of the common people. In 1911 he was elected by the people to be a member of Congress from New Mexico.

The convention met in the chamber of the House of Representatives at the capitol in Santa Fe on October 3, 1910.

5 R. E. Twitchell, Leading Facts of New Mexico History (Cedar Rapids, Iowa: The Torch Press, 1912), II, 551-552.
Partisanship was rife in New Mexico at the time and, apparently, little attempt was made to have a non-partisan convention. Catron, in writing of this earlier, had said:

We [the Republicans] are sure to have a two-thirds majority in the convention, and we think we are better able to make a good constitution than the Democrats. We know they would not hold a non-partisan convention if they were in the majority. To make it non-partisan means that we would have to give away some of our strength, and I do not believe any political party can succeed by surrendering a part of its strength.6

On the eve of the convention, the Republican delegates held a caucus with Bursum, the territorial chairman of the Republican Party, presiding; they nominated Charles A. Spiess for convention chairman. The Democratic caucus nominated Harvey B. Ferguson. The vote in the convention on the chairmanship showed that the party lines were tightly drawn; Spiess received the support of sixty-eight delegates and Ferguson twenty-nine. Not a single Republican present voted for Ferguson or a single Democrat for Spiess. The convention completed its organization by naming George W. Armijo,7 chief clerk, and Harry Whiting, sergeant at arms. Both of these men were Republicans as were all the appointed clerical assistants.

In commenting on the chairmanship vote, the Albuquerque Tribune-Citizen, leading Democratic daily of the territory, said:

His [Spiess'] selection signified that the conservatives are in control and that the initiative and referendum will not be written into the Constitution, but it would be a fundamental document, as desired by President Taft.8

Spiess was, nevertheless, a capable presiding officer. It was agreed in advance of his selection, however, that he would be denied the right to appoint the standing committees of the convention, a right customarily exercised by the chairman of legislative bodies in the period.

7 Armijo, a colorful figure in New Mexico politics for half a century, was a grandson of Francisco Chavez, who had presided over the convention of 1890.
8 The Albuquerque Tribune-Citizen, October 3, 1910. Harvey B. Ferguson was vice-president of the Tribune-Citizen. The Albuquerque Journal sometimes referred to its rival as "the evening anarchist." Such was the spirit of the times in New Mexico. The Albuquerque Journal was edited by Dana Johnson, later editor of the Santa Fe New Mexican. Will Keleher, later to become a state Democratic leader, was then city editor of the Journal.
Instead, the appointment of the committees was vested by the convention, on the initiative of the Republican caucus, in a Committee on Committees, composed of twenty-one men, with Solomon Luna as chairman and Charles Springer as secretary.

This committee not only appointed the other committees but became the unofficial "steering" or managing committee of the convention through which control over that body was exercised by the Republican caucus. Twitchell says of the committee that it "had for its members the men who, more than any other, performed the work of the convention, dictated the policies of the Republican majority, and without the support of whom, no article of the constitution could have been adopted."

The election of the Committee on Committees signified the beginning of caucus control of the convention. However, Republicans have since pointed out in defense of their action that caucus control was no more in evidence at this convention than in any of a number of conventions during the period. It was simply customary procedure in an era noted for its lusty partisanship, they claim. Francis E. Wood, a member of the Committee on Committees, has stated in justification of the procedure used that it was necessary, to prevent the Democratic minority from debating every committee report at length for partisan political purposes. He also has pointed out that several Democratic delegates—he specifically remembers the names of W. B. Walton, J. G. Fitch, and H. M. Dougherty—who sincerely wished to cooperate in making the constitution and who were not of an obstructionist nature were invited to attend sessions of the Republican caucus, and did attend. Wood credits them with having exercised considerable influence in the shaping of certain constitutional provisions.

Twenty-seven standing committees were appointed by the Committee on Committees. The chairman and the majority of members on each committee were Republicans, but the Democrats were allowed minority representation.

9 Members of the Committee on Committees: Luna, Bursum, Fall, Springer, Catron, Holloman, Wood, Parker, Murray, Labadie, Canning, Page, Brown, Esquibel, Lindsay, Miera, Eugenio Romero, Winston, Martinez, Acasio Gallegos, and Eufracio Gallegos. Every member was a Republican.


11 See statements by Bursum and Holloman in Dorothy Thomas, The Final Years of New Mexico's Struggle for Statehood, unpublished thesis, University of New Mexico, 1939, p. 98.

12 Interview with Francis E. Wood, October 10, 1941.
Each committee was assigned the task of drafting a section of the constitution; the Committee on the Legislative Department wrote the provisions pertaining to the legislature, the Committee on Corporations wrote the provisions pertaining to corporations, and so on. Open hearings of committees were held when individuals or groups asked to appear on matters of interest to them. No draft constitution was prepared in advance of the convention to guide the delegates in their work, but a copy of the proposed constitution of 1890 and copies of all the state constitutions were available. Some committees simply copied provisions of other state constitutions, whereas others carefully constructed their sections from the standpoint of New Mexico's needs.

Each committee, after completing its tentative draft, reported to the Republican caucus, where its work was carefully considered before it was sent to the convention. On the floor of the convention the report was debated and then voted on. Rarely did the debate, which was frequently sharp, result in any substantial change of a provision. The reason for this was that the Republicans, after approving a committee report in the caucus, committed all their members to support it on the floor of the convention. The effective work of the convention was thus accomplished in the committee rooms and in the caucus.

Another procedure which gave the majority a chance to dominate the convention was the so-called "gag" rules. One rule, Rule 18, prevented a roll call to determine the vote of each delegate. It read: "Any two members shall have the right to demand yeas and nays before the result is announced; but if objection is made the demand shall be sustained by thirty of the members present." Since there were only twenty-nine Democrats, the necessary thirty votes could not be obtained by the minority. If no vote was taken, there was no way for the public to learn how each delegate voted. The minority recommended that the sustaining vote should be one tenth of the members present, but the proposal was defeated.

Rule 20 provided that any member should have the right to demand the previous question. This rule worked to stop debate in the convention at any time. Another rule, number 12, prevented a delegate from speaking more than twice on the same subject without permission of the

14 Ibid., pp. 27-29.
15 Ibid., p. 277.
These rules curtailed proper debate and discussion and kept the minority ineffective throughout the convention. They were justified by the majority as necessary time-saving procedures. Furthermore, the Republicans charged that the Democrats wanted to utilize debate only to make “political medicine.”

It is of special interest to note that no verbatim record of the convention was made. The published Proceedings contain an account of only the most formal actions of the convention, such as committee reports and the votes on their adoption, but no record of debate. The minority sought to have the full proceedings of the convention published, but the majority opposed doing so because, they said, the cost involved was prohibitive. Despite this consideration, many people sincerely doubted that the expense was the main reason for not publishing such a record.

The basic difference between the majority and the minority aside from mere partisanship was that the Republicans desired the constitution to be a conservative one, one that would appeal to the principal economic interests of the territory and to President Taft, whereas the Democrats, at least those who tended to follow Fergusson, wanted the constitution to be a “progressive” one. A progressive constitution meant to them one that would contain among other things provisions for a workable initiative and referendum (but not the recall), stringent regulation of the railroads and other large corporations in the public interest, non-partisan election of the judiciary, the direct primary, and an easy amending process. Woman suffrage and prohibition also had their champions among the minority.

Chief interest in the delegate election and in the convention centered on the initiative and referendum proposals. The majority of Republicans would have preferred to take no action at all on these measures but, because of the demands of the minority and the evident public interest, finally compromised on a modified initiative and referendum provision that has since, as they hoped, proved difficult to employ.

The minority’s proposal that judges should be nominated by petition, instead of by partisan conventions, and then elected on a separate
rather than on a party column ballot was voted down. The purpose of the plan was to remove the judiciary from politics, an end yet much to be desired in New Mexico. Public support for the idea grows yearly in New Mexico, and sooner or later it will become a part of our constitution. The proposal to write a direct primary provision in the constitution was viewed adversely by the convention and the matter was left to future legislative action. In 1938, the legislature finally enacted a direct primary law.

The fight of the minority to regulate the corporations was a bitter one, but the majority had its way and the result was the creation of a corporation commission without real powers. The prevailing view in the convention regarding woman suffrage was that it was degrading for women to participate in politics. However, since women had been allowed even under the despised territorial regime to vote in school elections, this privilege was continued in the new constitution. General suffrage for women in New Mexico was not to come until the passage of the nineteenth amendment in 1920.

The prohibition forces, represented by the New Mexico Department of the Anti-Saloon League, had lobbyists at the convention sponsoring a “dry” provision in the constitution. A number of the delegates, principally those from the eastern counties, favored such a provision, but the convention after much discussion decided by a 57 to 25 vote to leave the matter to the discretion of the legislature. A representative of a national organization urging the outlawing of child labor also appeared at the convention but was, like the advocates of prohibition, unsuccessful in getting his ideas adopted by the delegates.

In no provision of the constitution did the majority reveal its conservative tendency more clearly than in the method adopted for amending the constitution. As we shall note later, so onerous were the terms of this provision, that Congress required its modification before statehood was granted.

The partisan nature of the convention was again manifested in the closing days in the report of the committee dealing with the apportionment of members of the House and Senate of the legislature. The committee’s report was cleverly drawn for the partisan advantage of the Republicans, and, although the Democrats realized it was a piece of gerrymandering, they did not seem to fight it as spiritedly as they had other provisions. Delegate W. B. Walton, Chairman of the Democratic
Territorial Committee, in debate on the matter, good-naturedly stated his party's position:

The Republican members of the convention have taken just a slight advantage of us in this apportionment; but in view of the political exigencies of the occasion, we feel that we ought not to complain; because, were the situation reversed, in all frankness and candor, I am inclined to the opinion that we, the Democrats, might have done likewise.²⁰

The only defense the Republicans ever offered for the gerrymander was that, in later years, when the Democrats got into control of the state legislature they did not change the arrangement.

There had been some apprehension prior to the convention that, because of the large Anglo majority, the Spanish-American element might be discriminated against, particularly with reference to suffrage and educational facilities. However, no such disposition developed and equal rights were sensibly given to all. Since 1910, several writers have tried to give credit to this person or that for the inclusion of these protective articles ²¹ in the constitution, but the fact of the matter is that there was no particular sentiment against including them.

The convention completed its labors on November 21 after one month and three weeks of hard work. The Albuquerque Journal, which published the constitution in full in its issue of November 22, 1910, declared the document a credit to the delegates, “to their disinterestedness and patriotism, and a credit to the people of New Mexico.”²²

On the final motion to adopt the constitution, the convention vote was 78 for, 18 against, and 4 not voting. Only eight of the Democratic delegates voted for the constitution as framed. Ninety-two of the one hundred delegates, however, signed the original copy of the constitution. Later, two of the eight Democrats who failed to sign the constitution when it was first completed affixed their signatures. Six never signed it.²³

The Democrats called a state convention to meet in Santa Fe in December to consider the position their party should take on the ques-

²¹ Article VII and Article XII, Constitution of New Mexico.
²³ See original copy of constitution now on file in the office of the Secretary of State, Santa Fe.
tion of ratifying the constitution in the January election. They found themselves hopelessly divided, and although they drew up a list of thirteen objections to the constitution, they decreed that "the fealty" of members of the party would not be called into question for their vote on the constitution "whether it be for or against."^{24}

In brief, the thirteen objections to the constitution as outlined by the Santa Fe Democratic convention were as follows:^{25}

1. The constitution was too difficult to amend.\(^{26}\)
2. More judicial districts were created than was necessary, and there was no provision for a non-partisan judiciary.
3. The terms of the judges were too long for the best interests of the people.
4. The number of members of the legislature was too large.
5. The salaries of state officials in general and
6. Those of the corporation commissioners in particular were too high.
7. The expenses of government necessitated by the constitution would increase taxation.
8. The Board of Equalization would consist of elective officers who would use their position to pay off campaign obligations.
9. The districting of the state for judicial and legislative purposes was inequitable.
10. No limit on taxation for county, district, and municipal purposes was imposed by the constitution.
11. The constitution did not provide an initiative, referendum, direct primary, or an advisory selection of United States senators by popular vote.
12. No provision was made for an effective and honest election law or for a corrupt practices act.
13. The method of selecting public lands granted the state by the national government was alleged to be not in accord with the Enabling Act.

\(^{24}\) Despite the declaration issued by the Santa Fe convention, it is to be noted that not all Democratic leaders opposed ratification. A number of them announced that they intended to vote for the constitution, and did.

\(^{25}\) For the full text of this document, which was signed by A. A. Jones, Democratic state chairman, see Twitchell, *op. cit.*, pp. 586-588.

\(^{26}\) The constitution as adopted by the convention required a two-thirds vote of each house of the legislature to propose an amendment except in the second year after its adoption and every eighth year thereafter when a majority vote of each house would suffice. To ratify a proposed amendment a majority of electors voting thereon was sufficient provided that the affirmative vote was equal to at least 40 per cent of all the votes cast in the election, and provided that at least one half of all the counties favored it. The obvious aim of the convention was to make it difficult to amend the constitution unless there was an overwhelming sentiment on the part of the people favorable to the action. Considering the large amount of detailed statutory matter in the constitution, the amendment provision appears to have been unduly stringent.
Some of these objections were well taken. Objections number 1, 9, 11, and 12 embodied issues that the Democrats had made much of in the constitutional convention and were questions of importance. One or two of the remaining objections might also be placed in the same category, but most of them were picayune.

On three questions in which there was considerable public interest the Democrats remained silent, namely, woman suffrage, prohibition, and the thorough-going way in which the constitution protected Spanish-Americans in their rights.

The Democratic manifesto concluded:

Wherefore this convention . . . does declare its judgment to a candid world that the rejection of the submitted constitution will be for the highest and best interest of the people of New Mexico . . .

We therefore appeal to the . . . citizens of the territory to disapprove the proposed constitution for the reasons set forth and for the further reason that the way is provided and the method easy, under the Enabling Act, for them to secure a better constitution and one in accord with their sentiments . . . inasmuch as that Act is mandatory on the governor to call members of the constitutional convention together again twenty days after the election if the constitution submitted is disapproved by the people.

In the campaign preceding the election, the large majority of the newspapers of the territory favored ratification, pointing out in support of their position that while the constitution did not in every respect please everybody it was in the main excellent, and, further, that a vote against ratification would only delay statehood. The minority of the press opposing ratification directed their attacks chiefly at the difficult amending clause and the absence of the initiative and referendum, and asked for a new convention.

On January 12, 1911, the election was held and the returns showed a vote of 31,742 in favor of ratification and 13,399 against. Only four of the twenty-six counties (Lincoln, Roosevelt, San Juan, and Sierra) voted for rejection. On February 24, Taft approved the constitution and sent it to Congress with a message recommending its approval by that body.

Meanwhile Arizona had adopted a constitution containing among other things a provision which made possible the recall of public offi-
cials in general and judges in particular. A national controversy developed over the proposal and continued for many months. President Taft, a former judge, thought the provision pernicious and declared it would be conducive to destruction of independence in the judiciary. New Mexico's constitution got stalled in the long Congressional debate involving the Arizona proposal, and it was not until August 21 that it finally reached Taft's desk for his signature. Congress, however, before giving its approval to the constitution, stipulated in the so-called Smith-Flood resolution that New Mexico should vote on a substitute for Article XIX of its constitution (the amending clause). The territory, however, was to become a state regardless of the fate of the substitute proposal at the hands of the people.

The Smith-Flood resolution required that the vote on the amendment should be on a separate ballot from that used in the state's first general election, and that it should be tinted blue. Thus it became known as the "blue ballot" amendment. In the election held on November 7, 1911, the voters gave the amendment their approval with a vote of 34,897 for and 22,831 against it. Thus came to a close the task of making the New Mexico constitution. The state government began its legal existence under it on January 6, 1912, when President Taft signed the statehood proclamation in Washington.

27 The substitute provided that amendments to the constitution could be proposed by simple majorities in each house of the legislature and ratified by a simple majority of the popular vote. The method is the one still in use in New Mexico.

28 See Thomas, op. cit., for an extended description of the treatment accorded the New Mexico Constitution in the 62nd Congress, 1911.