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THE MAKING OF THE NEW MEXICO CONSTITUTION

Thomas C. Donnelly

I. Constitutional Conventions in the Period from 1848 to 1910: Their History and Significance

THE CONSTITUTION under which the state of New Mexico now operates was drafted in the fall of 1910 by a convention called under the authority of the statehood act passed by Congress in the early summer of the same year. After its ratification by the people of New Mexico and its approval by Congress and the President, the state government finally began to function under it in 1912.

It is interesting, however, to note that prior to the successful convention of 1910, New Mexico had, in the long sixty-two-year period extending back to 1848, held a number of other constitutional conventions whose drafts had failed to become the organic law of the state. Five of these conventions were held, and all, with the exception of the convention of 1848, drafted proposed state constitutions. On several other occasions, as will be noted later, unsuccessful attempts were made to call constitutional conventions. In 1870, an ingenious legislature, with a flair for novelty, sought to get the governor to submit to the people a constitution formulated privately without the aid of a convention, and in 1872 actually succeeded in doing so, albeit with unhappy results.

Truly, New Mexico was active in this long period in constitution making. What was the significance of these constitutional conventions? Why were they called, why did they fail in their efforts, and why were other constitutional conventions that were not called, urged? These and other questions suggest the importance of reviewing the earlier

efforts to draft a state constitution before consideration is given to the convention of 1910, which succeeded where others had failed.

The region that is now the state of New Mexico was acquired by the United States as a result of the war with Mexico (1846-1848). The territory was occupied by the military forces of the United States in 1846 and was formally annexed by the Treaty of Guadalupe Hidalgo, which was proclaimed at Washington on July 4, 1848. By this treaty the United States sealed the annexation of Texas and acquired New Mexico along with California, Arizona, and other large fragments of territory.

CONSTITUTIONAL CONVENTIONS DURING THE PERIOD OF U. S.

MILITARY RULE OF NEW MEXICO, 1846-1850

From the time of the military occupation of New Mexico in 1846 until the passage of the famous Compromise of 1850 by Congress, which organized New Mexico as a territory, New Mexico was ruled by a government presided over by governors who were appointed by the military authorities, or who were themselves officers of the army of occupation.

During this period the inhabitants of the territory were restive under their military rulers, and as soon as the treaty of peace was concluded began agitation for a territorial form of government. Under call from Governor Donaciano Vigil, a convention convened at Santa Fe, October 10, 1848, elected the celebrated padre of Taos, Antonio Jose Martinez, president and petitioned Congress for a territorial form of government.¹ The petition was sent to Senator Thomas Hart Benton of Missouri, an ardent friend of the territory, and Senator John M. Clayton of Delaware with the request that they urge the claims of New Mexico upon Congress. Nothing resulted from this action of the convention and the people continued to chafe under the existing military rule. Not the least of the reasons why Congress failed to pay heed to the petition was that the convention had declared its opposition to slavery. The slavery question was the burning issue in national politics at the time and southern senators were offended by the declaration.

Not to be daunted by the failure of their first attempt to procure a

¹ L. B. Prince, *The Struggle for Statehood* (Santa Fe: New Mexico Printing Co., 1910), pp. 9-12. I am indebted to this work of Prince for much of the material contained in the sections of this paper dealing with constitutional conventions held in New Mexico prior to 1910; and also to R. E. Twitchell, *Leading Facts of New Mexico History* (Cedar Rapids, Iowa: The Torch Press, 1910), I, 264-268; C. F. Coan, *A History of New Mexico*, (New York: The American Historical Society, Inc., 1925), I, 344-345.

territorial form of government, the people of New Mexico held a second convention which met in Santa Fe, September 24-26, 1849. The convention consisted of nineteen delegates apportioned among the seven counties into which the territory was then divided. Padre Martinez was again chosen president. The convention adopted a proposed constitution² "as a recommendation" to Congress and elected a delegate to Congress.³ The delegate was instructed to seek territorial status for New Mexico, but if it was found practicable to obtain statehood, he was to work toward this end. The delegate, on arrival in Washington, was denied a seat in Congress and his efforts and those of the convention came to naught.⁴

The initial failures of the conventions of 1848 and 1849, instead of discouraging the proponents of a territorial form of government, only sharpened their desires to gain their objective. The reasons for their determination were not imaginary but real. The power of the provisional government under which the territory was ruled was undefined and doubtful in character and inefficient in protecting the rights of the people; consequently, industry and enterprise were paralyzed and discontent and confusion prevailed throughout the area. The want of adequate protection against the Indians was particularly pressing. A passage from a resolution adopted by the convention of 1849 described vividly the plight of the people:

The want of proper protection against the various barbarous tribes of Indians that surround us on every side, has prevented the extension of settlements upon our valuable public domain, and rendered utterly futile every attempt to explore or develop the great resources of the territory. . . . Our flocks and herds are driven off by thousands, our fellow citizens, men, women, and children, are murdered or carried into captivity. . . . The wealth of our territory is being diminished; we have neither the means nor any adopted plan of government for the education of the rising generation. . . . Ruin appears inevitable unless speedy and effectual protection be extended us by the Congress of the United States.⁵

² There was a majority report and a minority report, both of which appear in *House Executive Documents* 17, 31st Congress, 1st Session, pp. 93-104.

³ When an area has been admitted by Congress to territorial status, it is entitled to a delegate to represent its interests in Congress. The delegate sits in the House of Representatives, and, while he may speak, he has no vote. Until his admittance to Congress, a delegate, such as the one selected by the convention of 1849, occupies much the same status as a lobbyist.

⁴ Prince, *op. cit.*, pp. 13-16; Twitchell, *op. cit.*, I, 269-270; Coan, *op. cit.*, I, 345.

⁵ Quoted in Prince, *op. cit.*, pp. 15-16.

While the people of New Mexico were petitioning Congress for a stronger government and urging the necessity of such a government for critical local reasons, discussion of the status of the vast domain acquired from Mexico continued in Congress along national lines. New Mexico was simply a pawn on the chessboard of national politics. Her fate was to be determined less by the wishes of her people than by broad consideration of national policy, which at the time revolved around finding a solution for the slavery question.

Information reached New Mexico in 1849 that President Zachary Taylor favored the admission of New Mexico into the Union as a state rather than its organization as a territory. When in the early months of 1850 it seemed Congress was of the same mind, all parties in New Mexico hastened to take advantage of the opportunity by uniting in a call for a constitutional convention. The military governor of the territory, in compliance with the wishes of the people, issued a proclamation calling for the election of delegates. The election was held, and on May 15, 1850, the convention convened in Santa Fe. The convention was in session ten days and formulated a constitution⁶ which was submitted to the people for their approval on July 1, 1850. The constitution was ratified by a vote of 8,371 to 39. State officers and national representatives were named at the same election and were to exercise authority as soon as Congress approved the constitution and formally proclaimed New Mexico a state. While the state congressional delegation was en route to Washington, the news arrived by slow mail across the plains that Congress had passed the so-called Compromise of 1850. Under the terms of this measure, designed primarily to still the slavery question, California was admitted as a free state and Utah and New Mexico, covering all the remaining area acquired from Mexico, were made into territories with no mention of slavery. Thus ended the hope of the convention of 1850 of making New Mexico a state and thus began New Mexico's sixty-year career as a territory.⁷ The territorial government went into operation in New Mexico on March 3, 1851.

⁶ The constitution contained a clause prohibiting slavery, in order to meet the views of the native New Mexicans, who were pronouncedly opposed to slavery in any form. Twitchell, *op. cit.*, I, 273-274. Twitchell estimates that there were not a thousand residents in the territory at that time who had been born in the United States and the native population was over sixty-five thousand (p. 278).

⁷ Prince, *op. cit.*, pp. 17-20; Twitchell, *op. cit.*, I, 271-275.

CONSTITUTIONAL CONVENTIONS DURING THE TERRITORIAL
PERIOD, 1850-1910

Twenty years were to elapse after 1850 before the Territory of New Mexico called another constitutional convention. Apparently the new territorial form of government provided by Congress was such an improvement over the military government preceding it that the discontent of the people was for a time allayed. But the fundamental desire of the people for self government reasserted itself again, and we see the legislature of 1866 authorizing the governor to call a constitutional convention. The governor, however, considering the moment unpropitious, did not act on the authorization and nothing was done.⁸

Throughout the territorial period, and even before, there was a doubt in many people's minds whether or not calling a constitutional convention before Congress had authorized it was really worthwhile. To explain why this feeling existed it is necessary to consider briefly the legal procedure established for admitting states into the Union.

Congress is authorized by the Constitution of the United States to admit new states into the Union,⁹ but Congress had not in 1850, and, indeed, has not yet developed any uniform procedure by which it exercises its power. The usual procedure is for the community desiring to become a state to take the initiative and request Congress to pass an "enabling act"¹⁰ authorizing it to call a constitutional convention. Congress, if it feels the territory is ready for statehood, passes the enabling act, sometimes including in it conditions which must be met before admission is granted. If the constitution is approved by the voters of the territory it is submitted to Congress for its approval, or, in some instances, to the President. With the approval of Congress the territory is proclaimed a state.

General understanding of this procedure existed in New Mexico from the first, but Senator Thomas Hart Benton of Missouri, who assumed the role of New Mexico's protector, took a different view of the matter. His opinion was that no Congressional enabling act was necessary for a community to frame and adopt a constitution and then ask Congress for admission as a state.¹¹ In 1884, he addressed an open letter

⁸ Prince, *op. cit.*, p. 24.

⁹ Article IV, Section 3, Article 6.

¹⁰ It is not necessary for a community to become a territory before becoming a state although it is customary. Some areas have not gone through the territorial status, California and Texas, for example, but they are exceptions to the general custom.

¹¹ Prince, *op. cit.*, p. 7.

to the people of New Mexico so advising them. Benton's view is supported by a few instances in which territories have, on their own initiative, formulated constitutions without waiting for an enabling act of Congress. This irregular practice has been regularized by subsequent action of Congress in admitting the territories as states. Since New Mexico was never, until 1910, authorized by an enabling act to call a constitutional convention, it was, as can be seen, acting throughout the period prior to 1910 in accordance with Benton's view.

On February 3, 1870, the legislature passed an act providing for an election to be held in October for the purpose of submitting a state constitution and electing state officers. No convention to draft the constitution to be submitted was authorized; so it is to be assumed that by this time a draft constitution was kept on file.¹² Nothing, however, came from this novel and ingenious attempt to expedite the admission process.

Undismayed, the legislature again passed a similar bill in 1872 to submit a ready-made constitution to the people. The election was held, but the vote on the constitution was so disappointingly small — only a third of those expected actually voted — that the governor refused to press the matter further at the time.¹³

While the struggle for statehood went on unceasingly in the state and in Congress, seventeen years went by before another constitutional convention was called. On September 3, 1889, a duly elected delegate convention met in Santa Fe, stayed in session until September 21, and adjourned without completing its work because dissension broke out among the delegates. The trouble seems to have been that the apportionment of delegates to the convention gave too much representation to Republican counties, and the Democrats became disgruntled. The delegates reconvened in August of the following year without having resolved their differences, completed the proposed draft of the constitution, and submitted it to the people in an election held on October 7, 1890. Because of the resentment of the Democrats, which was carried to the point of open opposition in the election, the constitution failed of ratification by a vote of 16,180 to 7,493, the majority against the constitution being 8,687. The vote was in no sense an expression of disin-

¹² Prince, *op. cit.*, p. 24; Coan, *op. cit.*, I, 387.

¹³ Twitchell refers to a constitutional convention being held in Santa Fe in February, 1871. He is in error as his comment obviously refers to the constitution of 1872. See also B. H. Read, *Illustrated History of New Mexico* (Santa Fe: The New Mexico Printing Co., 1912), p. 614.

clination on the part of the people to assume the conditions of statehood but can be attributed almost wholly to the Democratic leaders, who feeling that the Republicans had been unjust in apportioning delegates to the constitutional convention, either advised their followers to vote against ratification or to abstain from voting.¹⁴

After the sub-committee of the United States Senate Committee on Territories, headed by Senator A. J. Beveridge, had come to New Mexico in 1902 and made an unfavorable report¹⁵ on the territory's qualifications for statehood, the idea of combining Arizona and New Mexico and admitting them as one state gained favor in Congress, and in 1906 an act embodying this idea was passed by that body. Neither New Mexico nor Arizona favored the plan, but New Mexico submerged its feeling and voted two to one in favor of joint statehood rather than wait longer. Arizona, however, voted against it, thereby defeating the measure, as the concurrence of both territories was necessary before it could go into effect.

New Mexico then decided to hold a constitutional convention and ask for separate admission under the joint statehood enabling act. The sixty-six delegates elected met at the capitol in Santa Fe on January 7, 1907, and organized the convention, but adjourned by agreement until February 5 in the hope of getting the legislature to appropriate money to defray the expenses of the body. The legislature paid the plea scant attention and adjourned without appropriating the necessary funds. Some of the convention delegates wanted to reassemble at their own expense, but the majority felt that since the results of their efforts would probably not be approved by Congress, it was no use. The feeling had by now become general that it was not worthwhile to hold a constitutional convention unless Congress authorized its calling.¹⁶ So

¹⁴ Prince, *op. cit.*, pp. 48-59; Twitchell, *op. cit.*, I, 504-505. Read in his history errs in saying the constitution prepared in 1889-90 "was adopted by the majority of the people but Congress refused to approve it" (p. 615).

¹⁵ *Senate Report* No. 2206, 57th Congress, 2nd Session, Document No. 36. Beveridge and his committee conducted themselves in New Mexico in a manner that led the leaders of the territory to believe that the committee were prejudiced against New Mexico's claims from the beginning and were agreed that the territory should not be admitted as a state.

Prince says (p. 98) that it was believed testimony was taken simply to justify such a view.

The report drew a very unflattering picture of New Mexico, centering its attention chiefly upon the Spanish character of the territory and the evident lack of educational progress rather than the economic resources of the territory and its financial ability to bear the expense of statehood. Because of his adverse report, Beveridge was for a time the most hated man in New Mexico.

¹⁶ Prince, *op. cit.*, pp. 107-117.

the 1907 convention faded into history, and New Mexico was not to call another one until Congress passed the necessary enabling act.

PASSAGE OF THE ENABLING ACT

During the sixty-year period from 1850 to 1910 more than fifty bills proposing statehood for New Mexico were introduced into Congress without success. No other territory ever fought so continuously for so long a time, or suffered so many discouraging defeats in its attempts to gain admission. "At least a dozen times the passage of an enabling act seemed certain," says Prince, "and its failure [came] from some unimportant reason. . . . Statehood was almost attained in 1850; it was lost by a handshake in 1875, by a sudden impetuous word in 1889, by a shiver of malaria and a miscalculation of time in 1894."¹⁷ When a complete account is written of the statehood struggle,¹⁸ it might well be entitled: A Study in Persistence.

The decisive turn in the struggle came in 1908 when the Republican Party, then the majority party, adopted a plank in its national platform pledging the "immediate admission of the territories of New Mexico and Arizona as separate states." The Democratic party had had a similar plank in its platform since 1888, but the Republicans had usually hedged on the question by merely promising "the early admission" of New Mexico "when practicable." In the election of 1908 the Republicans maintained their control over both houses of Congress and elected William Howard Taft as President. Taft insisted that the Republicans make good on their pledge to the territories, and through the immense weight of his influence Senator Beveridge, the Chairman of the Senate Committee on Territories, and the avowed foe of admission, was induced to discontinue his hostility.

On January 17, 1910, the much-sought enabling act passed the House of Representatives without opposition and was sent to the Senate for its approval. For three months thereafter the Senate took no action on it and grave anxiety was felt in New Mexico as to the final result. At last, in the closing days of the second session of the Sixty-First Congress, on June 16, the Senate began its discussion of the bill. After amending the measure in a number of respects, the Senate unanimously passed it and returned it to the House for approval of the amendments. At

¹⁷ *Ibid.*, p. 4.

¹⁸ Dr. Marion Dargan, professor of history at the University of New Mexico, has been engaged for several years in research and writing on the statehood movement, and when his work is published it promises to be a definitive one.

President Taft's insistence, the House speedily and unanimously concurred in the amendments on Saturday, June 18.

If statehood had been denied on occasion for seemingly unimportant reasons, it is also true that in the final passage of the enabling act New Mexico was the beneficiary of a peccadillo. The enabling act might easily have been lost in the impatient rush of Congress to adjourn (it was June in Washington and hot!) had President Taft not insisted that the measure reach his desk before he left on Monday, June 20, on a nostalgic journey to the commencement of his Alma Mater, Yale University. His intercession with the House leaders in the interest of expediting the bill's final passage was to no little extent actuated by his yearning as an "old grad" to be off to a college reunion. After all, what greater joy can there be for a man who has climbed the heights to the presidency than to return to the campus of his college and do a little humble strutting? In accordance with his desires, short shrift was made of the final formalities incident to passage of the bill, and it was hurried to the White House for signature.

On Monday, June 20, at 1:40 p. m., with Delegate W. H. Andrews of New Mexico, Senator Beveridge, now gracious in defeat, and other interested parties looking on, Taft completed the signing of the measure. The president got to Yale on time and New Mexico finally got its chance to become a state.

Some New Mexico historians have been lavish in their praise of Delegate Andrews¹⁹ for the part he played in successfully engineering the enabling act through the two houses of Congress to final passage, and there is no denying the value of his contribution, but if any one man deserves more credit than others, it is lovable, human William Howard Taft. But in another and truer sense, both of these men merely brought to fruition the struggle of a long line of men who preceded

¹⁹ William H. Andrews represented New Mexico as a delegate in Congress from 1905 until statehood was secured. A suave and effective politician, and not much else, according to ex-Governor Curry, he came to New Mexico from Pennsylvania, where he had been closely affiliated with Senator Boies Penrose and Matthew Quay. Reputed to be a tool of corporate interests and rather unscrupulous, Andrews nevertheless worked ardently for statehood. While Prince, who thought highly of his usefulness, says (pp. 120-121), "his close connection with Senators Quay and Penrose and the Pennsylvania delegation gave him an influence that was very valuable," Bowers, the biographer of Beveridge, attributed the Indianan's opposition to statehood for New Mexico to his suspicions of the Pennsylvania crowd's interest in it. See C. G. Bowers, *Beveridge and the Progressive Era* (New York: Literary Guild, 1932); p. 182. Certainly Penrose and Quay were not exactly the type to inspire confidence in a progressive like Beveridge. As a result, not until Taft throttled Beveridge did the statehood fight succeed. See Dorothy Thomas' unpublished thesis, *The Final Years of New Mexico's Struggle for Statehood*, in the University of New Mexico library, for interesting comment on the period 1907-1912.

them, men like L. Bradford Prince and Bernard S. Rodey and many others, who had fought the good fight for statehood in Congress and in New Mexico for over sixty years. Taft and Andrews, and they would be the last to deny it, were merely the actors on the stage when the drama closed.

CONCLUSIONS

In reviewing the history of the various conventions that were called or urged during the long period under consideration, one is impressed that both the leaders and the people of the territory considered them mere details in the statehood quest. The conventions usually stayed in session for only a few days, and the usual procedure seems to have been to appoint a committee to prepare and report a draft, whereupon it was approved with little or no debate, and the delegates went home. The convention of 1848 was in session four days, that of 1849 two days, and that of 1850 only ten days. Twitchell says of the constitution of 1850 that it was "the work of Joab Houghton and Murray F. Tuley" and "was modeled after the constitutions of the newer states of the Union."²⁰ The constitution of 1872, as already noted, was drafted without the formality of calling a convention. More time was spent on the constitution of 1889-1890 than any of the others made during the period. However, a considerable number of the twenty days the convention was in session seems to have been spent by the delegates discussing the absence of the Democrats, who with one exception boycotted the meetings.²¹ The convention of 1907 merely met and organized and then adjourned, since no funds to finance its meetings were forthcoming. The summary nature of all the conventions tends to indicate that they served no greater purpose than to ratify the work of their draft committee.

Despite the nature of the conventions, Prince claims that several of the constitutions produced during the period were "models of excellence,"²² and Twitchell says the constitution of 1889-1890 was "without doubt the best at that time formulated in the United States."²³ What these writers claim is no doubt true. New Mexico possessed throughout the period a group of able leaders and among them could always be found a few with the skill necessary for drafting a constitution. The excellence of the constitutions must be attributed to the proficiency

²⁰ Twitchell, *op. cit.*, I, 273-274.

²¹ *Ibid.*, p. 505.

²² Prince, *op. cit.*, pp. 273-274.

²³ Twitchell, *op. cit.*, I, 505.

of this small group. The contribution of the majority of delegates seems not to have been significant, which is understandable, as they were not primarily interested in the task. To most of them drafting a constitution was only a necessary preliminary to the obtaining of statehood, and they felt that the more quickly the chore was done the better.

In these earlier times as in modern days the rank and file of voters took little interest in the content of the constitutions. When they approved them in the elections called for the purpose, or when they disapproved them, as in the case of the 1889-1890 constitution, they were primarily motivated by extraneous reasons not germane to the subject matter of the constitution. In commenting upon the constitutional referendum of 1872, which attracted only a small percentage of the voters, Prince gives us an insight into the public mind of the day when he says, "There was really nothing strange in this [the small vote]. Not specially in New Mexico, but everywhere when an abstract question is to be voted upon or the personal element does not enter into the campaign, the ordinary vote is cut down to a comparatively small fraction of the normal vote."²⁴ How to overcome this public indifference to constitutional referendums still remains a problem in New Mexico as recent sponsors of constitutional amendments will bear witness.

While the many attempts to expedite entrance into the Union by calling a constitutional convention before an enabling act authorized it, may in retrospect seem to have been a mistake, nevertheless the effort so expended was not altogether lost. A people persisting in such action attest to their determination to gain their objective and by so doing influence representative law-making bodies. Congress more often than not acts from pressure exerted upon it in such a manner, as Senator Benton knew when he advised New Mexico to take this course. Therefore, these several conventions, by repeatedly organizing and expressing sentiment for statehood, must be reckoned as one of the contributing factors resulting in the passage of the enabling act of 1910.

The ultimate reason for the failure of the conventions was, of course, not due to any shortcoming on their part, but rather that national policy instead of local considerations was shaping the destiny of New Mexico. The historic moment, when national policy and local interests coincided, did not come until 1910.

²⁴ Prince, *op. cit.*, p. 31.

[TO BE CONTINUED]