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New Mexico Constitutional Convention: Recollections

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Final Roll on the Constitution
CONSTITUTIONAL CONVENTION

*Final
Roll*

*Roll
Final*

*November 21st 1910
10 P.M.*

ROLL CALL

*November 22^d 1910
3.00 A.M.*

NAME	AYES	NAYES	NAME	AYES	NAYES	NAME	AYES	NAYES
Abeytia, A. C.	/		Gutierrez, Anastacio	/		Navarro, Juan	/	
Aragon, J. J.	/		oHarles, A. H.	/	<i>explained</i>	O'Brien P. J.	/	
Armijo, Isidoro	/		Harrison, R.	/	<i>explained</i>	Ortega, Victor	/	
Baker, G. N.	/		Hart, Squire, Jr.	/		Page, Gregory	/	
Bartlett, Norman W.	/		oHedin, R. W.	/		Pankey, B. F.	/	
Becker, John	/		oHall, James A.	/	<i>explained</i>	Parker, Frank W.	/	<i>explained</i>
x Brice, C. R.	<i>explained</i>		oHinkle, John I.	/	<i>explained</i>	Patterson, Green B.	/	<i>explained</i>
Brown, Fred S.	/		Holloman, Reed	/		Patton, Emmett	<i>out of town</i>	
Brown, George S.	/		oHouse, J. L.	/		Prichard, George W.	/	
Burns, Thomas D.	/		oHudspeth, A. H.	/	<i>explained</i>	Raynolds, Herbert F.	/	
Bursum, H. O.	/		Jaramillo, Veneciano	/		Richardson, G. A.	/	<i>explained</i>
Canning, John	/		Kelly, Harry W.	/		R. berte, C. J.	/	
Cassidy, Daniel	/		Kohn, Charles H.	/		Roibal, Atansio	/	
o Catron, T. B.	<i>proxy</i>		Labadie, Tranquilino	/	<i>proxy</i>	Romero, Eugenio	/	
o Childers, J. W.	<i>out of town</i>		oLawson, J. L.	/	<i>proxy</i>	Romero, J. Francisco	/	
Crist, J. H.	<i>explained</i>		Lindsey, W. E.	/		Romero, Margarito	/	
Ciancy, J. G.	/		Lucero, Emanuel	/		Sandoval, Alejandro	/	<i>explained</i>
x Compton, C. M.	<i>explained</i>		Lucero, Jose Amado	/		Sedillo, A. A.	/	<i>explained</i>
Cunningham, J. M.	/		Luna, Solomon	/		Segura, Nepomuceno	/	
x Davidson, C. C.	<i>explained</i>		x Mabry, T. J.	/	<i>explained</i>	Sena, Jose D.	/	
Davis, S. B. Jr.	/		Maes, Luciano	/		o Skeen, M. P.	/	
x Dougherty, H. M.	<i>explained</i>		Martinez, Malaquias	/		Springer, Charles	/	
x Eldodt, Samuel	/		Martinez, Onesimo	/		Stern, M. L.	/	
Equibel, Perfecto	/		Martinez, Salome	/		Stover, E. S.	/	
Fall, A. B.	<i>explained</i>		McDonald, A. B.	/		o Taylor, M. D.	/	<i>explained</i>
...			McIntosh, William	/		o Tittman, Edward D.	/	<i>explained</i>
o Fergusson, H. B.	<i>explained</i>		McKean, William	/		Upton, James N.	<i>not present</i>	
Field, F. C.	/		Medina, Anastacio	/		Vigil, Candelario	/	
o Fitch, James G.	/		Miera, E. A.	/	<i>proxy</i>	o Walton, William B.	/	<i>explained</i>
Gallegos, Acasio	/		Miller, C. E.	/		Winston, F. H.	/	
Gallegos, E. F.	/		Mirabal, Sylvestre	/		Wood, Francis E.	/	<i>explained</i>
Garrison, W. E.	<i>explained</i>		Moffett, George E.	/	<i>explained</i>	Mr. President	/	
Gauna, Francisco	/		Montoya, Nestor	/		Total		
o Gilchrist, James B.	/		Murray, W. D.	/				
	26			26			25	

*x Debit voting for
o Debit voting no*

Final Roll 12.9.10

79 18

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NEW MEXICO CONSTITUTIONAL CONVENTION: RECOLLECTIONS

By EDWARD D. TITTMANN*

NOT LONG after the Enabling Act had been passed by Congress and signed by President Taft sentiment was encouraged by various sources that the convention should not be organized along political party lines. Just why anyone should believe that a convention to achieve a political end could be organized on non-political lines is not clear. The Republican Party at that time was in an overwhelming majority in the Territory, and only the southwest portion consisting of Luna and Grant Counties was Democratic in addition to the counties which joined Texas, which were inhabited mainly by people from Texas and other southern states and who had very little in common with the rest of the territory. There were, however, several able men of Democratic faith living in Republican communities, such as H. B. Fergusson, Harry M. Daugherty, James G. Fitch, Felix Martinez, and J. H. Crist. On the other hand, the Republicans of ability who lived in Democratic counties included A. B. Fall, Reed Holloman, and W. E. Lindsey. Harry Daugherty had as one of his clients one of the top Republicans, Holm O. Bursum. The desire to get the best thought of the territory into the convention may have had something to do with the desire for a non-partisan convention.

It was not long, however, before partisanship won out as was to have been expected. On the first day, October 3,

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1910, the Democrats, 29 in number, tried to sit together. But on the next day the convention decided that delegates from one county should sit together. Among a total of 100 delegates the 29 Democrats became so widely distributed that a spontaneous effort to achieve something on the floor could not get anywhere unless it had been pre-arranged in caucus. Besides the Democratic delegates were not always of one mind. There were among them some radicals who sometimes suspected the conservative portion of being lukewarm on some issues.

My seat was two rows behind A. B. Fall, from Otero County, right in the middle of the house facing the President, which was an advantageous position from which to conduct or take part in the political struggles which soon developed.

One of the first of these was over the reading of the Journal. The official Journal, as published after the convention had adjourned, is by no means a reliable report of what happened on the floor. One reason why it is not correct is that for quite a few days the reading of the Journal was dispensed on motion without a roll call or other method of counting the vote on such motion. The reading of the Journal was provided for by Rule 53:

As soon as the Convention is called to order, prayer may be offered and a quorum being present, the journal of the preceding day shall be read by the Secretary and, if necessary, corrected by the Convention.

Rule 50 provided that no rule shall be suspended except by a vote of at least two-thirds of the members present.

The reading being dispensed with every morning and no copies of the previous day's proceedings being delivered to the delegates no one except the officers would know what the Journal said had occurred. The point of order was made that it would require a two-thirds vote to dispense with the reading. This was embarrassing to the presiding officer who sustained the point of order. Thereafter the Journal was actually read until the rule was changed. After that the contents of the Journal became again a dark secret, as every morning Delegate E. A. Miera, Sandoval County, rose to make the formal motion.

One of the hotly contested subjects was the article on apportionment. Of course the Republicans, putting aside for the moment the desirability of a non-partisan convention, had their eyes on the coming elections. These would determine whether or not there would be a legislature favorable to the selection of two Republicans for the place of United States senator from New Mexico. In those days senators were elected by the legislature and not by primary petitions. I personally filed a suggestion that judicial, legislative, and other districts should be along lines of communication with easy amendment or change by the legislature. In those days lines of communication were determined by the lines of railroad. To go from Doña Ana County to Otero County one had to take the Santa Fe to El Paso and the El Paso and Northwestern to Alamogordo. To go from Farmington to Santa Fe one had to take the Denver & Rio Grande narrow gage to Durango, Colo., thence to Alamosa, Colorado, and then south to Santa Fe.

Gallup in McKinley County could be reached by railroad from Santa Fe via Sandoval County, Bernalillo County and Valencia County. But on the north it joined San Juan County which joined Rio Arriba County which joined Santa Fe County. So instead of making a judicial district joining Bernalillo, Valencia and McKinley counties along the best roads of communication, the Republicans proposed to join McKinley County to San Juan County to Rio Arriba County to Santa Fe County for the First Judicial District. Doña Ana County then heavily Republican was joined to Otero County of doubtful political persuasion, Lincoln County often Democratic, and Torrance County mainly Republican. This seemed to assure the election of a Republican in that district. Similar allocations were worked out for the Senatorial Districts, where small counties were attached to large Republican Counties. So, for instance, Socorro County had its own senator but, combined with other counties in other senatorial "shoe-string" districts, controlled the political color of three other districts.

There was a general demand from many counties that there should be at least one representative from each county.

The controlling interests in the convention used this demand to secure the approval by many delegates of the gerrymander of the State in other respects.

When the matter came up for vote the delegates from the small counties were advised that they had better vote for the proposed apportionment. There was a roll call and each delegate was supposed to say something in its favor. We did, but not all of what was said was complimentary.

Nevertheless, the apportionment stood for nearly forty years. When the Democrats finally secured control of the State they did not find it necessary to change the apportionment which their representatives in the convention had fought so hard. The influx of voters from Texas, Oklahoma, and other southern States made unnecessary a change in so political a subject.

Another ticklish question was whether or not the Constitution should contain a provision prohibiting the sale of alcoholic liquors. The Democratic delegates from the East side of the Territory were supported by numerous petitions from Republican as well as Democratic women which demanded that such a provision be included. The fact that many Republicans had a backpower of prohibitionists made the situation difficult for the men who were running the convention. There were several adjournments of the motions for and against the proposition, and then, one day, when the Democratic members were caucusing on some subject, the matter was brought up on the floor. Whenever we had a caucus some member was left behind to watch the proceedings, and on this afternoon I was that person. I rushed immediately to the caucus room on the floor below and yelled, "Prohibition!" Thereupon the Democrats who were almost all for the prohibition proposition, whether they liked it or not, streamed back to the convention floor, much to the disgust of the floor leaders, and the call for and against was made by a rising vote. Behind me sat the Reverend Mr. Seder (I have forgotten his first name). When I rose with the affirmative votes that the proposition should be rejected, he pulled my coat-tails and said, "You don't want to vote that way," and I turned to reply, "I certainly do." I shall

never forget the look of surprise on his face. He could not understand that a man could be against a proposition and yet want his friends to have a chance to vote for it.

The proposition for prohibition was defeated.

But the most controversial and bitterly fought proposition was the article which would provide for the initiative and referendum. Oregon had pioneered the idea that the people themselves should have the right to propose legislation without asking the legislature and to repeal legislation enacted by the legislature.

These provisions had been actually the only ones about which there had been some campaigning before the election of the delegates. All the Democrats had been pledged to support it. And one Republican had pledged himself to support it. He came from a Democratic county. He had signed a promise to support the initiative and referendum and so the Democratic Committee put him on the list of delegates favorable to the proposition. But on the day when it came up for a vote he walked to the desk of the convention's Secretary and made a violent attack on the idea of adopting an initiative or referendum.

The debate on these provisions raged off and on and, in order to stop it, the management finally caused to be passed a resolution which provided that after a proposition had been debated and defeated it could not be renewed. Nevertheless, new propositions were being introduced every other day, each of them a little bit different, the last one on the very last day of the convention. The effect was that finally the management offered a compromise eliminating the initiative and permitting a referendum. So after days of torture the referendum was finally adopted.¹ It is still in the

1. *My Draft of the Referendum as adopted by Committee on Revision:*

The above power shall be known as the Referendum and shall be exercised as follows:

Petitions for the Referendum against any law, passed at the last preceding session of the legislature, shall be filed with the Secretary of State not less than four months prior to the next general election. Such petitions shall be signed by not less than ten per cent of the qualified electors of each of $\frac{1}{4}$ of the counties and in the aggregate of not less than ten per cent of the qualified electors of the States as shown by this total number of votes cast at the last preceding general election (for Governor). The question of the approval or rejection of any law, against which the Referendum is invoked, shall be submitted to the electorate at the next general election; and if a

Constitution. It has been invoked several times, sometimes successfully, sometimes not. The last attempt to invoke it was regarding the law for pre-primary conventions. On that occasion several questions were raised and submitted to the Supreme Court. The Supreme Court, not desiring to decide a controversial question which was tainted with politics, passed it off by relying on a previous decision which, however, had not passed at all on the question presented to the Court which was the necessity of some law to determine and prevent fraud in obtaining signatures for a valid referendum.

The provision for amending the Constitution made constitutional amendments almost impossible. This was the provision which was so obnoxious to the prevailing idea of easy amendment that Congress caused to be enacted a provision, on which the people were required to vote, which would make amendment easier. This was known as the "Blue Ballot amendment" because it was submitted to the voters on a separate ballot of blue color.

The Blue ballot amendment was intended to facilitate changes in the Constitution. George Curry, running for Congress on the Republican ticket, was one of the Republican candidates in the first state election of 1912 who publicly announced that he was in favor of that amendment. And he was elected on that promise.

One provision which caused much debate and considerable compromise was the one which gave women the right to vote in school elections. The Spanish speaking delegates, faithfully representing the then prevailing ideas of their people, were opposed to the theory that it was a good thing to let women vote. If you will read the first Section of Article VII on Elective Franchise, and use your imagination, you will see the kind of compromise that had to be made by the opposing parties in order to get the idea of votes for women in school elections into the Constitution.

The chief role of the Democrats was that of irritating

majority of the legal votes cast thereon at such election, and not less than forty per cent of the total number of legal votes cast at such general election, be cast for the rejection of such law, it shall be considered annulled; otherwise it shall remain in force unless subsequently repealed by the legislature.

insects. They were a pretty smart bunch, these Democrats, and they knew that they could not get any of their pet schemes adopted. But they also knew that the Republican leaders were vulnerable in many ways, especially in the knowledge that this Constitution had to be adopted by a popular vote. Of course, then, the Democratic gadflies used every chance to sting the Republican body. It became so annoying that the Republican caucus, they called it a conference, issued the ukase that nothing proposed by a Democrat on the floor should be passed or adopted unless it had been previously approved by the Republican executive committee. If you read what remains of the Journal you will find very few instances where a Democratic motion was passed affirmatively.

I do not know, because I was never told, who were the ruling members of the Republican executive committee. However, from observation of what happened on the floor, I believe that Solomon Luna, of Valencia County, Holm Bursum of Socorro County, Charles Springer of Colfax County, and Charles A. Spiess, the "Black Eagle" of San Miguel, were the most potent members of that committee. Everyone of them was a personage. They were not small fry. They were men of great ability, of staunch belief in the righteousness of their cause, of wide and public view, and of generous appreciation of the ability and equal political honesty of their opponents.

Albert Bacon Fall it was thought did not carry the same power and influence as did the others, because of his emotional character. He and Bursum, a man of great dignity and hard to disturb, were no friends. Fall's wife and lovely daughter Jonett sat every other day near the door to the left of the President's chair, facing Fall, and keeping their eyes on him. And he knew it. Sarcastic and provocative remarks by Fall were permitted to go by because they were not out of bounds. One day he arose to address his remarks to the chair, then occupied by some one else than Charley Spiess. His unparliamentary language was directed against Delegate J. H. Crist from Rio Arriba County, a cultured and scholarly Democratic lawyer. I sat two rows behind Fall and

waited for someone to stop him. No one did. I rose: "Mr. President," I said, "I call the gentleman to order for using offensive and unparliamentary language against another delegate, the gentleman from Rio Arriba County, and I demand that the chair instruct the gentleman from Otero County to take his seat and if he fails to do so to have the Marshal conduct him from the hall." I think the Chairman was Isidoro Armijo from Doña Ana County. The poor fellow did not know what to do. While he was hesitating, Fall turned to look at me. I was told it had never happened to him before. Spiess came to the chair and noticing the tense atmosphere spoke: "The gentleman from Otero County will take his seat." The gavel fell once, twice, a third time, and Mr. Fall sat down. This was the only disturbing event of the convention. Delegate Crist never again attended a session, and he did not vote on the adoption of the Constitution.

There were a good many natural born orators in the Convention, and not a few of them displayed their abilities from time to time. There was Crist, a scholar versed in the works of Shakespeare, and there was Eugenio Romero of San Miguel whose fiery orations taxed the ability of the interpreters on the floor to translate them effectively into English. As the debates could be carried on in either English or Spanish, the role of the interpreters was an important one. I do not find their names listed in the official publication of the proceedings of the convention, but there does appear on page 4 a list of "Convention Clerks," and I suspect that the names there listed were the names of the interpreters. One of those mentioned, Cesario Pedregon, became later interpreter for the District Court of Doña Ana County. He was able and efficient in the exercise of his duties. But, if my memory serves me rightly, the ablest one was a little man who wore a black cape, and whose name was Hilario Ortiz. I believe he was of Santa Fe. During one of the impassioned speeches of Crist, who was known never to make a speech without quoting the Bard of Avon, to whom he referred as William "the great Shakespeare," Hilario was interpreting. The words floored him a moment and then he came thru

with: "El Grande Shakespeare." The Convention gave him an ovation of applause.

The most important Committee proved to be the Committee on Revisions and Arrangements. To it were referred all provisions finally adopted on the floor. The business of the Committee was to pass on the provisions as to clarity, grammar, punctuation, and spelling. After a provision had been scrutinized and, if necessary, rewritten, the result was handed to the Chairman, Charles Springer, who would take it to the floor, obtain recognition, and move the adoption whereupon it became a part of the proposed Constitution. Mr. Springer was an able, fair and honest man. Once, when some interested parties in high standing within the Republican Party wanted to "borrow" one of the resolutions in which they were deeply interested, Mr. Springer flatly refused them, because, he said, he would take no chances on that resolution being lost in the shuffle. The Committee consisted of some 15 members. The membership as shown in the official "Proceedings" is not correct. The composition of the Committee was changed. The working force consisted of Charles Springer, Stephen B. Davis, Jr., both Republicans, and Charles R. Brice, H. M. Dougherty and Edward D. Tittmann, Democrats. Mr. Springer discovered that I had been a newspaperman in the east as well as a lawyer, that I knew the English language, and so he turned over to me the resolutions adopted by the Committee for final approval as to clarity of language, punctuation, spelling and grammar. Some times he would permit me to make other alterations or suggestions for approval by the Committee. One instance was the Article on Mines and Mining, being Article VII, consisting of two sections, the second section directing the legislature to pass laws to prevent the employment in mines of children under 14. I suggested that this language left it open to the legislature to enact or not to enact such laws and, being familiar with legislative barriers, that the Constitution should itself provide against such employment; the language was changed to read: "No children under the age of fourteen years shall be employed in mines." Mr. Springer

immediately agreed to this change and the changed resolution was adopted on the floor and is now part of the Constitution. Very few changes in the language reported by the Committee were made on the floor. It is largely due to this that there have been so few disputes over the meaning of the provisions of the Constitution. And most of these arose out of Article XX, entitled "Miscellaneous," which contained many provisions which were afterthoughts and had been inserted too late by the Convention to enable the Committee on Revision and Arrangements to place them in their proper places and co-relate them with other provisions.

The time for the Convention to expire was November 21, 1910, and the official time for its final adjournment as entered in the Journal was 10 P. M. on that date. However, the Constitution at that hour had not yet been adopted and the reading of the document in its final form had not been finished. So the clock was turned back and the actual time of the final adjournment was 3:10 A. M., November 22, 1910. I would like to have printed with these recollections a copy of the original Roll Call on final adoption which I made at the time. The word "explained" after some votes means that the delegate made some statement giving reasons for his vote either for or against adoption. I would also like to state that I quit the Democratic Party in 1919 when I resigned as Secretary of the State Central Committee after attending the meeting of the National Committee in Chicago where it appeared certain that the party would approve the League of Nations which I considered a movement contrary to the best interests of the United States. In 1926 I returned to the Republican Party, to which most of my family have belonged since its foundation.