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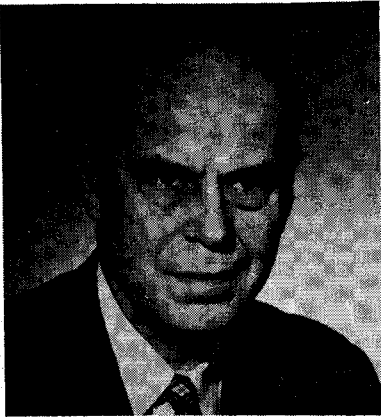
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## COLORADO'S CONSTITUTION OF 1876

By HAROLD H. DUNHAM



Harold H. Dunham was graduated from Swarthmore College in 1926. After a year spent touring the world, he attended Columbia University where he earned his M.A. and Ph. D. degrees in history. He taught history at several colleges in the New York area, and during World War II, served as an Army historian. Dr. Dunham came to the University of Denver in 1946, and is now Professor of History and Chairman of the Social Science Division in the College of Arts and Sciences at that university. He is the author of a number of articles on western subjects which have appeared in magazines, encyclopedias and books.

Colorado's "Rush to the Rockies" Centennial might well have provided an occasion for recognizing a century-old constitution if the promoters of the State of Jefferson had been supported by their fellow citizens. During April 1859, as the vanguard of the 100,000 argonauts was reaching the straggling cabins and tents at Cherry Creek and the Platte River to join gold seekers and discoverers of 1858, demands for a government arose in several of the new settlements along the front range of the Rocky Mountains. Out of these demands grew a call for a constitutional convention to meet in June in Denver and draft a frame of government. Local sentiment for statehood was bolstered by the arrival of Horace Greeley, the *New York Tribune* editor, on June 6, the day the convention met, and his address to a mass meeting advising statehood.

Whether it was due to the uncertainties of the future of the new region, a sudden exodus of prospectors to the new discoveries of rich veins in the Chicago Creek and Gregory Gulch regions, or the need to plan carefully the various provisions of the proposed organic law, historians are not quite agreed, but the June assembly adjourned with plans for staging another and larger convention in August. This meeting was duly held and under the stimulus of such leaders as William N. Byers, editor of the *Rocky Mountain News*, adopted a constitution largely modelled after the one created for Iowa two years before. Early in September, the voters of the mining and supply camps decisively rejected the proposed frame of government for the embryonic State of Jefferson, even though, according to one report, a favorable vote of 1,000 was tabulated from Fountain City, a struggling community with a total population

of less than 100. Thus statehood was postponed till a later and more propitious date.

Meanwhile, Congress established the Territory of Colorado in 1861, and in 1864 afforded the six-year-old region a new chance for entering the union on a basis of equality with the other states. This opportunity arose partly from the need of the political party controlling the national government to ensure its continuance in power during the troublesome period of the latter stages of the Civil War. Political necessities thus displayed, foreshadowed an important factor that was to influence the course of events leading to the creation of the Centennial State a dozen years later. Coloradans in 1864 rejected the proposed state constitution drawn in conjunction with Congressional authorization, and when during the succeeding year the citizens of the territory reversed their course and ratified a constitution, the exigencies of party politics in the nation's capital at that time thwarted all efforts for admission as a state.

Several Coloradans carried on sporadic efforts to gain official permission in Washington for a new attempt to frame a state constitution, but it required a favorable combination of persistent and skillful leadership, general willingness to accept statehood among territorial residents, and the necessities of national politics at the nation's capital before statehood could finally be achieved.

In 1870, census statistics revealed a total Colorado population of just under 40,000, an increase of only about 15,000 from the previous decade. The former figure scarcely justified the creation of a state, and for most of the first term of President U. S. Grant (1869-1873), leaders of the government in Washington were indifferent to Colorado statehood enthusiasts. The unpopularity of the Grant administration nationally, however, led to formation in 1872 of the Liberal Republican Party which, combining with the Democrats in support of the presidential candidacy of Horace Greeley, caused serious concern in regular Republican top circles.

This changing national picture, plus the untiring efforts of Colorado's delegate to Congress, Jerome B. Chaffee, started the wheels turning in behalf of the passage of an enabling act for Colorado statehood. In December 1873, President Grant included in his message to Congress the proposal: "I would recommend for your favorable consideration the passage of an enabling act for the admission of Colorado as a State of the Union. It possesses all the elements of a prosperous State, agricultural and mineral, and, I believe, has a population now to justify such admission." Almost immediately two bills were introduced into the House of Representatives, one by Delegate Chaffee, to carry out the President's recommendation. After consideration by the House Committee on Territories, the Chaffee bill was reported out and by June 8, 1874, with little opposition, passed the House and was sent to the Senate.

In the Senate, the Chaffee sponsored enabling act encountered opposition arising from several sources. One of these was manifest in the hostility to Colorado statehood reflected in eastern newspapers. Frank Hall, in his *History of Colorado*, quoted a Pittsburgh

newspaper as maintaining that the "discovery of gold and the profligate scenery of the spot [Colorado] is its entire fortune." In enlarging upon this indictment, the paper claimed that "Colorado consists of Denver, the Kansas Pacific Railway, and — scenery. The mineral resources of Colorado exist in the imagination. The agricultural resources do not exist at all." Other newspapers were equally skeptical of the readiness for and value of Colorado for advancement from territorial status.

Such hostility was matched by honest doubts about the desirability and values of statehood in Colorado. Many residents believed that statehood meant heavier taxation at a time when the territory was ill-prepared to support it. The effects of the Panic of 1873, according to Judge H. P. H. Bromwell, a subsequent leader in the convention which framed the state's constitution, began to be felt in Colorado early in 1874 and were increasingly severe by 1875. This meant that a business depression had caused the value of real estate to fall to about one half of what it had been, and building construction nearly to cease. Moreover, the farms were stripped by a visitation in 1873 of Rocky Mountain locusts, whose destruction was continued in succeeding years. Such circumstances, in addition to others, caused the *Rocky Mountain News* on November 18, 1875, to analyze the reasons for believing that statehood was not popular in Colorado Territory.

An additional factor in Colorado was the division within the Republican party and the consequent election, in 1875, of a Democratic Territorial Delegate, T. M. Patterson, to replace Republican Chaffee in the next Congress. The Republican split had arisen over dissatisfaction with the governor whom President Grant had appointed in 1874, Edward M. McCook (who had served a previous term, 1869-73). Governor McCook had secured the appointment of his own supporters, replacing other Republican incumbents, and had antagonized many territorial leaders of his party. The Governor also was accused of various acts of maladministration.

As a result of the party split and the Democratic strength in the territory, national Republican leaders feared that they would not be able to count on Colorado's increasing the Republican strength in Congress and in the coming presidential election of 1876. When the House-adopted enabling act came up for consideration in the Senate during the latter part of February 1875,<sup>1</sup> Senator P. W. Hitchcock of New York earnestly supported its passage, exaggeratedly claiming that Colorado's population had risen since the 1870 census to 150,000. On the other hand, Senator O. P. Morton of Indiana maintained that he and others would fight enactment of the law unless Governor McCook were removed to prevent Colorado from becoming a Democratic state. Even the support of the Republican caucus could not secure Senate passage of the bill until President Grant was persuaded to ask for Governor McCook's resignation. Reluctant to go back on his appointee, who had been a general in the Union Army under Grant at Shiloh, the President finally yielded to the entreaties of McCook's opponents and appoint-

<sup>1</sup> On February 27, 1875, General R. W. Woodbury, owner and editor of the *Denver Times*, published an editorial which anticipated statehood for Colorado, and first suggested the name "Centennial State."

ed Colonel John L. Routt, an able and honest Assistant Postmaster General, to replace Governor McCook. As soon as this nomination was sent to the Senate, it was confirmed and the Colorado Enabling Act was overwhelmingly passed.

Curiously enough, while Delegate Chaffee had been promising that Colorado could be counted on to go Republican, Delegate-elect Patterson had been quietly assuring Democratic leaders in Congress that the new state would remain Democratic, and therefore they should vote in favor of the enabling act. Yet Senate passage of the bill did not mean final approval. There were still three hurdles in the way, namely: House acceptance of a few Senate amendments to the bill before the session expired on March 3, 1875, a commitment by Delegate Chaffee to support simultaneously an enabling act for New Mexico (in the face of antagonism created by New Mexican Delegate Stephen B. Elkins), and Presidential approval of the bill in defiance of ex-Governor McCook's efforts to secure a veto.

The House delayed consideration of the bill with its Senate amendment until the last day of the session when a host of other last-minute bills were pressed for consideration. A recess was taken by the House late in the afternoon of March 3, until 8:00 p.m. Delegate Chaffee was advised that if he wished the Colorado bill passed he would have to drop his support of the New Mexico bill, so reluctantly he assented, and in due course that evening the Colorado Enabling Act was passed. The bill was already enrolled so the proper congressional signatures were hurriedly obtained and then it was rushed to the President who affixed his signature twenty minutes before midnight of the expiring session.

Passage of the Enabling Act of 1875 left several unanswered questions, such as: would the leaders of Colorado be able to devise a constitution that conformed to congressional requirements, would the voters of Colorado adopt such a constitution, and would the new state select two Republican Senators and a Republican Congressman, in addition to three Republican electors for the presidential contest of 1876? The answer to each of these questions proved to be in the affirmative, largely because of the vigorous and able Republican leadership in Colorado during the ensuing fifteen months.

The newly appointed Governor Routt arrived in Denver on March 21, 1875 and promptly proceeded to begin restoring unity and harmony to the divided Territorial Republican Party. A meet-

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ing of the Republican Central Committee during the latter part of April brought at least a surface harmony which was later reflected in the results of the election of members to the last territorial legislature. This election, held on September 24, 1875, gave the Republicans a narrow majority of one in the combined council and assembly membership.

Whether or not this showing encouraged the Governor as to Republican prospects is a moot question. In any case, on the same day as the election, he issued a proclamation designating the date of October 25 for the selection of delegates to a constitutional convention, and the date of December 20 for the opening of the convention. Incidentally, according to the enabling act, the convention opening date should have been set for no later than December 1, but the Governor must have believed that he had sound reasons for postponing it for another three weeks.<sup>2</sup>

The October election of delegates was reported to have been devoid of excitement, though it was somewhat partisan, and only a small vote was cast. Nevertheless, from twenty-four districts a total of thirty-nine delegates were chosen, twenty-four of them Republicans and fifteen Democrats. The ninth district, comprising Arapahoe County, in which Denver was situated, was permitted to select six delegates. The thirty-nine delegates included some of Colorado's leading citizens, drawn from many segments of territorial life. Eighteen were lawyers, twelve had held judicial office, three were bankers, and others represented mining, farming, stockraising, newspaper and railroad activities. Three delegates represented the Spanish-speaking elements in the territory, two had German backgrounds, eight were credited with being fifty-niners and almost all had been born outside the territory, fifteen having migrated from Pennsylvania and several from Illinois.<sup>3</sup>

The delegates assembled for their first meeting at 9:00 a.m., December 20, 1875, at the old Odd Fellows Hall in the First National Bank Building, at the corner of Blake and F (16th) Streets in Denver. That morning the Hall was still in the process of ornamentation. The Mayor, the City Council and other enterprising citizens had contributed numerous paintings, flags, floral tributes, and vases to lend a colorful atmosphere, and the janitors were placing these decorations in suitable positions as rapidly as possible.

After this flutter had subsided, a temporary organization of the convention was devised, Judge Wilbur F. Stone, a Democrat of Pueblo being chosen temporary chairman. Partisan feeling is evident in the fact that one of the leading, experienced, and able Republican delegates, Judge Bromwell, later referred to the fact this selection weakened "the enemy on the floor" during the time of the election of permanent officers.<sup>4</sup> As a matter of fact, each of the two parties had previously held caucuses, and so the election proved to be a matter of the majority Republicans placing their slate in office. After these preliminaries, partisanship was said to have subsided,

<sup>2</sup> The enabling act is reproduced in its entirety in Smiley, *Semi-Centennial History of the State of Colorado*, 492-94 (1913).

<sup>3</sup> The different nationalities led to a requirement that state laws be printed in English, Spanish and German for more than two decades after the constitution was adopted. Two of the Spanish-speaking delegates could converse with other delegates only through an interpreter.

<sup>4</sup> Mr. Bromwell had served as a member of the Illinois Constitutional Convention of 1869-70. He also had represented Illinois in Congress.

and was not again in evidence during the remaining eighty-five days of the session. The officers chosen included: Joseph C. Wilson of El Paso, President; W. W. Coulson of Boulder, Secretary; Herbert Stanley of Clear Creek, Assistant Secretary; and H. A. Terpenning of Arapahoe, 2nd Assistant Secretary.

The next important step proved to be the establishment of committees, each to frame and present an important segment of the proposed constitution. Judge Stone was made chairman of the Committee on Standing Committees, and on December 22, Judge Stone's committee made its report. The public was greatly concerned with the question of committee assignments. On December 23, the number of spectators was reported to have been much larger than that of the preceding day. In short, a newspaper account revealed that "the auditorium was packed with the leading citizens of Denver, eager to note the complete organization of the convention in the way of appointment of committees." On that day, the meeting was called to order at 2:15 p.m., and was opened by prayer from the pastor of the Presbyterian Church. Yet in spite of careful consideration and great popular interest, final agreement on committees and committee assignments was held over till the following day. Then, only a few hours before the start of Christmas Eve, a decision was reached.<sup>5</sup>

The decision called for twenty-six standing committees, and because of the limited number of delegates, each representative was required to serve simultaneously on two, three or even four committees. Some of the latter were: the Judiciary; Bill of Rights; Education and Educational Institutions; Public and Private Corporations; Revenue and Finances; Mines and Mining; Irrigation, Agriculture and Manufactures; Military Affairs; State, County and Municipal Indebtedness; and Forest Culture. The work of the committees, which began during the ensuing holidays, has been described as onerous and often discouraging, and the reports that were submitted to the convention provoked extended debate.

The convention reassembled on January 4, 1876, at 10:00 a.m., and opened with a prayer by the pastor of the Congregational Church. Petitions and resolutions began pouring in, and within a few days, reports of the standing committees, as they were completed, began making their appearance on the floor. It had been decided that in order to save expenses there would be no official verbatim reports of convention debates, but the local newspapers afforded fairly thorough coverage, and each delegate was provided daily with copies of the *Tribune*, the *News*, and the *Times*.<sup>6</sup>

Since an extended period was spent in debate and the finished document itself was extremely lengthy, it is impossible to note more than a few highlights. The subject which produced the greatest number of petitions related to constitutional recognition of the "existence and providence of Almighty God." For more than the first sixty years of our country's history, as Professor C. B. Goodykoontz has pointed out, few state constitutions mention the name of God, but after 1840, the number tended to increase.<sup>7</sup> The Colo-

<sup>5</sup> A complete list of committees and their members is presented in Stone, *History of Colorado*, 184-85 (1918).

<sup>6</sup> The official record is found in O'Connor, *Proceedings of the Constitutional Convention* (1907).

<sup>7</sup> I Hafen, *Colorado and Its People* 347 (1948).

rado convention delegates failed to support this trend, however, and so began the Preamble to the Constitution with the words: "We the People of Colorado; with profound reverence for the Supreme Ruler of the Universe. . . ."

The report of the Committee on the Bill of Rights, submitted early in January by its chairman, Alvin Marsh of Gilpin County, revealed provisions common to such bills and several features somewhat distinctive to Colorado. The bill, as finally adopted, contained twenty-eight sections and formed Article II of the Constitution. It conformed where necessary to the requirements of the enabling act, in its provision for religious toleration, for example. It also provided that a grand jury could consist of twelve men instead of twenty-three (any nine of whom concurring could find a bill), and that a petit jury could consist of fewer than twelve men in civil cases. This latter provision has been called a distinct innovation. Another novel feature of the bill specified the right of taking private property for private use, after paying just compensation, if necessary for use in creating reservoirs or ditches to carry water.

In considering the proper use of water in an arid state, the Committee on Irrigation, Agriculture and Manufactures, chaired by S. J. Plumb of Weld County, was said to have been "snowed under by difficulties" on matters dealing with irrigation. Nevertheless, the Committee effected "more than could have been expected" in the light of the "brood of conflicts between different interests." It was able to secure a provision that "the water of every natural stream, not heretofore appropriated" was to remain the property of the public, dedicated to the use of the public, "subject to appropriation as hereafter provided."

The subject of railroad regulation proved to be a particularly thorny one for the convention delegates. Judge Bromwell has written that, "the siege upon the convention in the railroad matter was led by the most influential of the public men of the Territory." Railroads, which had reached Denver by 1870 and which had continued to be fostered in a territory of vast distances and of relative isolation from more settled portions of the country, had encountered general criticism for their arbitrary management. The Granger movement of farmers, particularly, had supported in Illinois, Missouri, Nebraska and Texas an effort to bring railroad companies under state legislative control. The recognized value of additional railroads for continued territorial development, especially in the light of the curtailment of railroad construction arising from the consequences of the depression beginning but a few years before, vied with the desire to prevent railroad discrimination in rates and management manipulative policies, so that the constitutional convention finally adopted a moderate course. All public highways and railroad companies were declared to be common carriers, and all individuals and corporations were accredited equal rights to have persons and property transported over railroads in the state without undue or unreasonable discrimination. Additional provisions respecting railroads also were incorporated in the draft constitutions, especially those which affected corporations in general.

Three other topics served to prolong consideration of a constitution, namely: schools, taxation of church property, and woman



suffrage. The convention received forty-five petitions on the subject of allocating school funds, some favoring financial aid to parochial schools and some opposing it. In addition to petitions, representatives "of at least two prominent ecclesiastical bodies" urged the adoption of the broader policy, while other church adherents spoke in behalf of non-sectarian schools alone.<sup>8</sup> The convention decided, however, in behalf of free public schools. It also provided that there should be no religious test, for either pupils or teachers, for admission to any public school, and "no religious or sectarian dogmas shall ever be taught in any of the schools under the patronage of the State."

The question of taxing church property the same as other property became a live issue, as did that of taxing mining property. The growth in church landed wealth, evident in certain European countries and in Mexico, caused considerable concern to many Coloradans, and even President Grant, in 1875, recommended taxing all property equally, including church and corporate property. The members of the Colorado convention finally decided on a moderate course for both church and mining property, specifying in the former case that lots with buildings, if used solely for religious worship, for schools or charitable purposes, or cemeteries not operated for profit, should be exempt from taxation, unless a law provided otherwise.

The woman suffrage movement in the United States had gained considerable headway before the Civil War and had resulted in having the Territory of Wyoming lead off in granting suffrage rights in 1869. Colorado had witnessed the formation of a Woman's Suffrage Association, and the Association received a strong support from leaders in other sections of the country in behalf of a constitutional provision granting woman suffrage. The convention's Committee on Suffrage and Elections, headed by W. W. Webster, contained a majority that was unimpressed by a petition and other efforts in behalf of women, but a minority of the committee, composed of Judge Bromwell and Agapita Vigil, favored omitting the word "male" from the suffrage clause. The majority believed that inclusion of woman suffrage might bring a new issue into other disputed areas regarding the constitution, and so encompass its rejection by the voters. Out of the convention disagreement came a provision that "the General Assembly shall at the first ses-

<sup>8</sup> Fritz, *Colorado: The Centennial State* 246 (1941).

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sion thereof, and may at any subsequent session, enact laws to extend the right of suffrage to women."

The convention struggled with many other interesting and important subjects, such as provisions for Supreme Court justices, who would not also serve on lower courts as was customary in the territorial arrangement, payment of salaries to state officers and deposit of all fees in the state treasury, restrictions on state indebtedness, taxing property held within the state by non-residents the same as that of residents, and others. But discussion of these and additional items would require a paper as long for its purposes as the constitution was for its purposes. Students of the constitution are agreed that the constitution was overly minute, that it invaded the field usually reserved for legislation. Its preamble, nineteen articles, and "Schedule," providing for the orderly transfer of duties and functions from territorial status to statehood, made it one of the longest drawn up to that time.

Before leaving the subject of the convention, however, it would be appropriate to observe that not all of its time was devoted to contending with pressure groups and petitions, drafting and re-drafting provisions, and debating the contents of the constitution. There were moments of humorous by-play, as when absentee delegates were fined to the extent of two boxes of cigars, a bushel of apples or a peck of peanuts for the delectation of the members. And there were banquets given in honor of the delegates, such as that of January 8, 1876, when former Governor Samuel Elbert, J. B. Chaffee, Judge A. B. Steck, Governor Routt and other notables were present.<sup>9</sup> At this banquet, there were thirteen formal toasts offered, "after about an hour's play of the knife and fork, the mellow wine meantime flowing freely," and appropriate responses to each toast. One of the responses joshed the lawyers present by referring to the fact that each "relieved the pockets of his clients of much of that which is the root of all evil, here and hereafter." Following the formal toasts, various participants offered a number of "volunteer toasts."

The constitution was unanimously approved in its entirety by the convention on March 14, 1876, but an adjournment was delayed for one more day. It is of interest to note that the delegates had labored for twenty-one more days than they were paid for, though years later the Colorado legislature reimbursed the men for their previously unpaid labor. In anticipation of adjourning, the convention had drawn up an "Address To the People of Colorado," explaining the constitution and offering reasons for its adoption, and this document warrants notice.

The "Address" pointed out that with two senators and a representative for Colorado, there would be an opportunity for securing "additional appropriations for the fostering of our industries . . . ; then we will have a voice in matters of Indian treaties, in establishing military posts and roads, in the location of mail routes, in the passing of laws concerning the title to mineral veins, and providing for the disposal of the mineral and pastoral lands of the State as suited to peculiar wants. . . ." It pointed to the benefits

<sup>9</sup> Daniel Hurd Scrapbook, Western History Department, Denver Public Library.

for Colorado from no longer being "governed by satraps appointed and removed at pleasure, asking pittance at the gate of the nation; poor wards dependent upon the charity of Congress, living in a sort of penal colony, the Botany Bay of political servitude."

The strongest argument of the "Address" was directed toward answering the possible objection that statehood would be more costly to the citizens than territorial status had been. It conceded that there would be increased expense, but contended that this expense would be more than balanced by the pecuniary benefits to be derived from the generous land grants and guarantee from the sale of public lands in the state, provided by the enabling act. Congress had granted two sections in each township for the support of public schools; fifty sections for the public buildings for the capital, the legislature and the judiciary; fifty sections for erecting a penitentiary; and seventy-two sections for the support of a state university. Five percent of the return from the sale of agricultural lands in the state was guaranteed for state use in promoting internal improvements.

These and other reasons must have had a strong appeal, for when on July 1, 1876, the constitution was submitted to popular vote, it was approved by almost a four to one majority. The vote was unexpectedly light, only 19,505 ballots being cast, but the explanation for this seeming lack of interest included the points that there was not a strong opposition to the constitution, the farmers of the territory were occupied with their harvests and the miners were in the midst of the busiest season of the year.

Popular ratification was followed on July 4, by a gala celebration in anticipation of official acceptance of the constitution in Washington. A grand parade with many participants and a procession of gaily decorated floats was followed later by speeches and entertainment at a grove along the Platte River. Some of the floats had carried young women representing all the states of the Union, and "Miss Colorado" was featured among this group.

Toward the end of July, the constitution, later to be placed in the office of the Secretary of State of Colorado, was taken with supporting papers to the nation's capital, and on August 1, 1876, President Grant proclaimed the state admitted to the Union. Several leaders in Congress later protested the President's action, noting that only Congress had the power of approving a state constitution and admission of states. But these protests were in vain, and so on October 3, 1876, a vigorous political campaign in Colorado brought the election of state officials and placed it safely within the Republican fold. The subsequent choice of three presidential electors, Herman Beckurts, William L. Hadley and Otto Mears, played a vital role in the disputed election of 1876, and ensured a majority of one for the Republican candidate, Rutherford B. Hayes, over his Democratic opponent, Samuel J. Tilden. Thus Colorado came to enjoy the benefits of statehood, and the Republican Party was ensured of a successor to President Grant. The centennial year for Colorado as a state will require a new celebration in 1976.