

ARTICLES

WILLAMETTE LAW REVIEW

Volume 40:2 Spring 2004

A LEGISLATIVE HISTORY OF THE OREGON CONSTITUTION OF 1857—PART III (MOSTLY MISCELLANEOUS: ARTICLES VIII-XVIII)

CLAUDIA BURTON*

INTRODUCTION

1. *State Constitutions in the Mid-Nineteenth Century*

Many states formed constitutions in the mid-nineteenth century.¹

* Professor of Law Emerita, Willamette University College of Law; A.B. Oberlin College, 1961; M.A.T. Johns Hopkins University, 1962; J.D. University of California at Los Angeles School of Law, 1968.

Part I of this work was authored by Claudia Burton and Andrew Grade and was published as *A Legislative History of the Oregon Constitution of 1857—Part I (Articles I and II)*, 37 WILLAMETTE L. REV. 469 (2001). Part II was authored by Claudia Burton alone and was published as *A Legislative History of the Oregon Constitution of 1857—Part II (Frame of Government: Articles III-VII)*, 39 WILLAMETTE L. REV. 245 (2003).

Many people have assisted in this large project. Mary Kim Wood was there at the beginning, as she and I deciphered the faded nineteenth-century script of the original Convention documents. Andrew Grade did much of the initial hard slogging through Oregon Constitution and Proceedings, *infra* note 14, as he and I attempted to draw all the material relating to a particular section of a particular article into one place. The law school's two faculty secretaries—Kathy Marbut and Candace Bolen—performed a number of quite tedious transcription chores cheerfully and expertly. Michael Hallinan, Nicole Hancock, Clayton Hill, Marc Gardner, and—especially—Marisol Ricoy contributed valuable research assistance. Last, Richard Breen, Director, J.W. Long Law Library, Willamette University College of Law, has supported the project in a myriad of ways, from funding the acquisition of photographs of the Convention documents to furnishing me with an office. Thanks to all of you.

1. In the 1840-1860 period, eighteen states adopted original or revised constitutions. Janice C. May, *State Constitutions and Constitutional Revision, 2000-2001*, in 34 THE BOOK

sionaries and their families to Oregon.⁶ Not until 1842 did the first wagon train make the trek across the plains to Oregon.⁷ The population of the Oregon Territory grew rapidly in the 1840s and 1850s,⁸ but by the late 1850s, Oregon was still sparsely settled, and most of the residents were recent arrivals. The majority of the immigrants who came in the 1840s and 1850s had most recently lived in the Mississippi River valley states of Missouri, Illinois, and Iowa,⁹ but their roots were further east.¹⁰

The factors that brought immigrants to Oregon were varied. A number of those who came in the 1830s and early 1840s were motivated by religious fervor¹¹ or by a patriotic desire to claim the territory for the United States.¹² Dicken and Dicken give the following description of the motivations of those who came slightly later:

In general, the migration to Oregon was due to a “push-pull” effect. A number of circumstances were tending to push people out of the Middle West and the various descriptions of Oregon were pulling them toward Oregon. The “push” was mostly floods, diseases, and depression. During and following the panic of 1837,

prevalent in the upper Mississippi Valley. Malaria and ague were common. Tuberculosis took more lives than any other affliction.¹³

State of Birth	State of Residence Before Immigrating to Oregon
Indiana—A.J. Campbell Illinois—Hendershott, Kinney, Moore, Packwood, Scott, Shields Tennessee—Duncan, Prim, Shrum, White Kentucky—Anderson, Applegate, Bristow, Coyle, Fitzhugh, Kelsay Missouri—Burch, Jesse Cox, McBride, Shannon, Waymire, Watts	Shannon, Whitted Illinois—Bristow, Coyle, Crooks, Hoult, Logan, Matzger, Newcomb, Packwood, Short, White Michigan—Olds Missouri—Applegate, Burch, Jesse Cox, Joseph Cox, Fitzhugh, Kelsay, Lewis, Lovejoy, Marple, McBride, Miller, Reed, Shields, Shrum, Watts, Waymire Iowa—Anderson, J.H. Brattain, Paul Brattain, A.J. Campbell, Hendeshott, Kinney, Nichols, Olney, Scott, Smith, Williams
<p style="text-align: center;">Foreign Lands (2)</p> Germany—Matzger Ireland—McCormick	<p style="text-align: center;">West (5)</p>

distinguished public careers after the Convention.²⁰

4. *Convention Procedures*

Each proposed article received three readings: a first reading, for information only; a second reading, when the article was debated and could be amended; and a third reading, when the question was whether the article (as amended at second reading) should be passed.²¹ Typically, the major debates occurred at second reading, either when the article was first debated, section by section, in a committee of the whole, or later, when the Convention again debated the article, considering any amendments to the article adopted by the committee of the whole and considering further amendments.²² The following table gives an overview of when articles VIII-XVIII were taken up by the Convention.²³

20. Matthew Deady was appointed to be the first judge of the United States District Court of Oregon, following Oregon's admission to the Union. BIOGRAPHICAL DIRECTORY OF THE FEDERAL JUDICIARY 1789-2000, at 462 (Bernan Editorial Staff ed., 2001). Reuben Boise, Paine Page Prim, Erasmus Shattuck, John Kelsay, and James Kelly served on the Oregon Su-

Article	1st Reading; 2d Reading	2d Reading (Committee of Whole)	2d Reading (Conven- tion)	3d Reading
VIII (Education & School Lands)				
Majority report	8/26 (a.m.); 8/28 (a.m.)	9/11 (aft.)	9/12 (a.m.)	9/15 (a.m.)
Minority report	8/26 (a.m.); 9/2 (a.m.)	9/9 (a.m.)		
IX (Finance)	9/12 (a.m.); 9/14 (aft.)		9/14 (aft.)	9/15(a.m.)
X (Militia)	8/21 (aft.); 8/24 (a.m.)	8/25 (aft.)	8/25 (aft.) 8/26 (aft.) 9/1 (a.m.)	9/3 (a.m.) 9/4 (aft.)
XI (Corporations & Internal Im- provements)	8/24 (a.m.); 8/27 (a.m.)	9/1 (aft.) 9/2 (a.m. & aft.) 9/3 (a.m. & aft.)	9/4 (a.m. & aft.)	9/12 (a.m. & aft.)
XII (State Printer)	9/15 (a.m.); 9/16 (a.m.)	9/16 (aft.)	9/17 (a.m.)	9/17 (aft.)
XIII (Salaries)	9/15 (a.m.); 9/16 (a.m.)	9/16 (aft.)	9/17 (a.m.)	9/17 (aft.)
XIV (Seat of Government)	9/12 (aft.); 9/14 (aft.)	9/14 (aft.)	9/15 (a.m.)	9/16 (a.m.)
XV (Miscellane- ous)	9/15 (a.m.); 9/16 (a.m.)	9/16 (aft.)	9/17 (a.m.)	9/17 (aft.)
XVI (Bounda- ries)				
Original article	8/21 (aft.); 8/24 (a.m.) 9/14 (a.m.)	8/24 (a.m. & aft.)	8/25 (a.m.) 9/16 (a.m.)	9/17 (aft.)
Revised article	9/14 (a.m.);		9/16 (a.m.)	
Minority report	9/14 (a.m.)			
XVII (Amend- ments)	9/15 (a.m.); 9/16 (a.m.)	9/16 (aft.)	9/17 (a.m.)	9/17 (aft.)
XVIII (Schedule)	9/11 (a.m.); 9/15 (a.m.)	9/15 (aft.)	9/16 (a.m.)	9/17 (aft.)

The record is even sketchier with respect to the voters' views of particular provisions in the constitution. The Convention went to some lengths to insure that the voters had the opportunity to read and study the proposed constitution. The Convention authorized the printing and free distribution of five thousand copies of the constitution.²⁷ It also offered to pay to any newspaper in the Territory the sum of fifty dollars if it published the full text of the constitution in a single issue.²⁸ Debate on the proposed constitution was vigorous in the Territory's newspapers during the period between the Convention's adjournment on September 18, 1857, and election day, November 9, 1857.²⁹ Keep in mind, though, that if the voters desired statehood, their only choice was to approve the constitution as a whole, regardless of how much they might disapprove of a particular provision.³⁰

chief objection was the expense. OREGON STATESMAN, Aug. 25, 1857, at 2, reprinted in OREGON CONSTITUTION AND PROCEEDINGS, *supra* note 14, at 145. Patrick Malone, the reporter hired to report the proceedings of the Convention for the *Weekly Oregonian*, was a skilled shorthand reporter and apparently took very complete notes of the debates. John R. McBride, The Oregon Constitutional Convention, 1857, Address Before the Oregon Historical Society (December 20, 1902), reprinted in OREGON CONSTITUTION AND PROCEEDINGS, *supra* note 14, at 483, 492. But since no one ever offered to pay Malone for transcribing his notes, the great bulk of them were not transcribed. *Id.* at 492-93.

27. JOURNAL, *supra* note 1, Sept. 17, 1857 (a.m. & aft.), at 87, 96, Sept. 18, 1857 (a.m.), at 97. The constitution was printed in pamphlet form. One of the pamphlets is in the Oregon Historical Society Library. A photocopy of that pamphlet was in the author's files and has been transferred to the J.W. Long Law Librar