

JOURNAL

MISSOURI CONSTITUTIONAL
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WITH AN HISTORICAL INTRODUCTION ON
CONSTITUTIONS AND CONSTITUTIONAL
CONVENTIONS IN MISSOURI

By ISIDOR LOEB, PH. D., LL. B.

AND A BIOGRAPHICAL ACCOUNT OF
THE PERSONNEL OF THE CONVENTION

By FLOYD C. SHOEMAKER, A. M.

Editors.



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Mr. President:

Your Committee to which was referred the Preamble and Bill of Rights and also the Article on Boundaries, to revise, correct and report the same back to the Convention at an early day properly engrossed and printed, has instructed me to report that it has carefully considered the same and has revised and corrected said articles and arranged them in order in the proposed Constitution, and that same are herewith reported, properly engrossed and printed.

A. R. Taylor, *Chairman.*

602] which was read, the following articles accompanying the report:

CONSTITUTION OF MISSOURI.

PREAMBLE.

We, the people of Missouri, with profound reverence for the Supreme Ruler of the Universe, and grateful for His goodness, do, for the better government of the State, establish this Constitution.

ARTICLE I.

BOUNDARIES.

The boundaries of the State as heretofore established by law are hereby ratified and confirmed. The State shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the State, so far as the said rivers shall form a common boundary to this State and any other State or States; and the river Mississippi and the navigable rivers and waters leading to the same shall be common highways, and forever free to the citizens of the State and of the United States, without any tax, duty, impost or toll therefor, imposed by this State.

ARTICLE II.

BILL OF RIGHTS.

In order to assert our rights, acknowledge our duties, and proclaim the principles on which our government is founded, we declare:

Section 1. That all political power is vested in and derived from the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. That the people of this State have the inherent, sole and exclusive right to regulate the internal government and police thereof, and to alter and abolish their Constitution and form of government whenever they may deem it necessary to their safety and happiness: *Provided*, such change be not repugnant to the Constitution of the United States.

Section 3. That Missouri is a free and independent State, subject only to the Constitution of the United States; and as the preservation

of the States and the maintenance of their governments are necessary to an indestructible Union, and were intended to co-exist with it, the Legislature is not authorized to adopt, nor will the people of this State 603] ever assent to any amendment or change of the Constitution of the United States which may in any wise impair the right of local self-government belonging to the people of this State.

Section 4. That all constitutional government is intended to promote the general welfare of the people, that all persons have a natural right to life, liberty and the enjoyment of the gains of their own industry; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails of its chief design.

Section 5. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no person can, on account of his religious opinions, be rendered ineligible to any office of trust or profit under this State, nor be disqualified from testifying, or from serving as a juror; that no human authority can control or interfere with the rights of conscience; that no person ought, by any law, to be molested in his person or estate, on account of his religious persuasion or profession; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of this State, or with the rights of others.

Section 6. That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, preacher, minister or teacher of any sect, church, creed or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same.

Section 7. That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof as such; and that no preference shall be given to, nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.

Section 8. That no religious corporation can be established in this State, except such as may be created under a general law for the purpose only of holding the title to such real estate as may be prescribed 604] by law for church edifices, parsonages and cemeteries.

Section 9. That all elections shall be free and open and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 10. That courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property, or character, and that right and justice should be administered without sale, denial or delay.

Section 11. That the people shall be secure in their persons, homes and effects from unreasonable searches and seizures, and no warrant to search any place, or seize any person or thing, shall issue without de-

scribing the place to be searched, or the person or thing to be seized, as nearly as may be; nor without probable cause, supported by oath or affirmation reduced to writing.

Section 12. That no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; in all other cases, offenses shall be prosecuted criminally by indictment or information as concurrent remedies.

Section 13. That treason against the State can consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; that no person can be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on his confession in open court; that no person can be attainted of treason or felony by the General Assembly; that no conviction can work corruption of blood or forfeiture of estate; that the estates of such persons as may destroy their own lives shall descend or vest as in cases of natural death; and when any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

Section 14. That no law shall be passed impairing the freedom of speech; that every person shall be free to say, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel the truth thereof may be given in evidence, and the jury under the direction of the court, shall determine the law and fact.

Section 15. That no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any 605] irrevocable grant of special privileges or immunities, can be passed by the General Assembly.

Section 16. That imprisonment for debt shall not be allowed except for the nonpayment of fines and penalties imposed for violation of law.

Section 17. That the right of no citizen to keep and bear arms in defense of his home, person and property, or in aid of the civil power, when thereto legally summoned, shall be called in question; but nothing herein contained is intended to justify the practice of wearing concealed weapons.

Section 18. That no person elected or appointed to any office or employment of trust or profit under the laws of this State or any ordinance of any municipality in this State, shall hold such office without personally devoting his time to the performance of the duties to the same belonging.

Section 19. That no person who is now or may hereafter become a collector or receiver of public money, or assistant or deputy of such collector or receiver, shall be eligible to any office of trust or profit in the State of Missouri under the laws thereof, or of any municipality therein, until he shall have accounted for and paid over all the public money for which he may be accountable.

Section 20. That no private property can be taken for private use, with or without compensation, unless by the consent of the owner, except for private ways of necessity, and except for drains and ditches

across the lands of others for agricultural purposes in such manner as may be prescribed by law; and that whenever an attempt is made to take private property for a use alleged to be public, it shall be a judicial question, and as such judicially determined, without regard to any legislative assertion that the use is public.

Section 21. That private property shall not be taken or damaged for public use without just compensation. Such compensation shall be ascertained by a jury or board of commissioners of not less than three freeholders, in such manner as may be prescribed by law; and until the same shall be paid to the owner, or into court for the owner, the property shall not be disturbed or the proprietary rights of the owner therein **606]** vested. The fee of land taken for railroad tracks without consent of the owner thereof, shall remain in such owner subject to the use for which it is taken.

Section 22. In criminal prosecutions the accused shall have the right to appear and defend, in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf; and a speedy, public trial by an impartial jury of the county.

Section 23. That no person shall be compelled to testify against himself in a criminal cause, nor shall any person after being once acquitted by a jury, be again for the same offense, put in jeopardy of life or liberty; but if the jury to which the question of his guilt or innocence is submitted, fail to render a verdict, the court before which the trial is had may, in its discretion, discharge the jury and commit or bail the prisoner for trial at the next term of court, or, if the state of business will permit, at the same term; and if judgment be arrested after a verdict of guilty on a defective indictment, or if judgment on a verdict of guilty be reversed for error in law, nothing herein contained shall prevent a new trial of the prisoner on a proper indictment, or according to correct principles of law.

Section 24. That all persons shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.

Section 25. That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Section 26. That the privilege of the writ of *habeas corpus* shall never be suspended.

Section 27. That the military shall always be in strict subordination to the civil power; that no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

Section 28. The right of trial by jury as heretofore enjoyed, shall remain inviolate; but a jury for the trial of criminal or civil cases, in courts not of record may consist of less than twelve men, as may be prescribed **607]** by law. Hereafter, a grand jury shall consist of twelve men, and nine of whom concurring may find an indictment or a true bill.

Section 29. That the people have the right peaceably to assemble

for their common good, and apply to those invested with the powers of government for redress of grievances by petition or remonstrance.

Section 30. That no person shall be deprived of life, liberty or property without due process of law.

Section 31. That there cannot be in this State either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

Section 32. The enumeration in this Constitution of certain rights shall not be construed to deny, impair or disparage others retained by the people.

By unanimous consent the numerals in numbering the articles were changed to the Roman characters.

Mr. Norton moved that the Article on Boundaries be adopted as reported by the Committee on Revision. Mr. Spaunhorst rose to a point of order and stated the bill is on its second reading and to get it out of that order it would require a suspension of the rules. The Chair decided the point of order well taken.

Mr. Taylor of St. Louis moved that the Preamble to the Constitution and the Articles on Boundaries and Bill of Rights be taken up and read a second time, section by section, which was agreed to.

The Preamble and the Article on Boundaries and Bill of Rights were then read by the Secretary a second time.

Mr. Gantt moved to strike out the word "Preamble," which was not agreed to.

Mr. Shields moved the rules be suspended, the Preamble and Articles I and II, be considered engrossed, read a third time and placed upon their passage, which was agreed to.

Mr. Mudd moved that the Convention adjourn until 2 o'clock p. m., which was not agreed to.

The question then recurring on the adoption of the Preamble and Articles I and II as reported by the Committee on Revision, the articles were adopted by the following vote:

AYES

608] Adams	Bradfield	Crockett	Eitzen	Hale
Alexander	Carleton	Davis	Farris	Halliburton
Allen	Chrisman	Edwards	Fyan	Hammond
Boone	Cottee	of Iron	Gantt	Hardin

Hyer	McKillop	Riphey	Rucker	Taylor	
Lay	Norton	Roberts	Shackelford	of St. Louis	
Mabrey	Pipkin	Ross	Shanklin	Wagner	
Massey	Priest	of Morgan	Switzler	Wallace	
Maxey	Ray	Ross	Taylor	Watkins	45
McAfee	Rider	of Polk	of Jasper		
McKee					

NOES

Black	Dysart	Gottschalk	Lackland	Shields	
Broadhead	Edwards	Johnston	Letcher	Spaunhorst	
Conway	of St. Louis	of Nodaway	Mudd	Todd	14
Crews					

ABSENT

Brockmeyer	Johnson	McCabe	Nickerson	6
Holliday	of Cole	Mortell		

ABSENT WITH LEAVE

Dryden	Pulitzer	Mr. President	3
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On motion, Articles I and II were ordered enrolled as a part of the Constitution.

Mr. Switzler offered the following resolution:

Resolved, That two copies of the Constitution shall be enrolled, and when the Constitution shall have been finally adopted by this Convention, each of said copies shall be authenticated by the signatures of the President, Vice-President and Secretaries; and the signatures of the members of the Convention, including those opposed and those in favor of the Constitution in the following order: to-wit: *First*, the President; *Second*, the Vice-President; *Third*, the members in alphabetical order with the names of the counties of their residence; and *Fourth*, the attestation of the Secretary and assistant secretary. As soon as the said copies are thus authenticated the Secretary shall deposit one in the office of the Secretary of State, and the other in the office of the clerk of the Supreme Court in the City of Jefferson, taking receipt therefor.

which was read.

Mr. Conway offered the following amendment to the resolution:

Amend by striking out "two copies" wherever it occurs and insert "one" and strike out all in regard to depositing one copy in the office of the Supreme Court.

which was read and rejected.

The question recurring on the adoption of the resolution offered by Mr. Switzler, it was adopted.

Mr. Shields offered the following resolution:

Resolved, That a Committee on Enrolling the Constitution consisting of three members, be appointed by the Chair, whose duty it shall be to see that the same is carefully enrolled and to compare the same when enrolled with the Constitution as adopted, and report the same when completed to the Convention.

which was read and adopted.

Mr. Shanklin moved that the Convention adjourn until tomorrow at 8 o'clock a. m., which was not agreed to.

Mr. Wagner moved that the Convention adjourn until 3 o'clock p. m.

Mr. Spaunhorst moved that the Convention adjourn until 6 o'clock p. m., which was not agreed to.

The Convention then, on the motion of Mr. Wagner, adjourned until 3 o'clock, p. m.

AFTERNOON SESSION.

The Convention met pursuant to adjournment, the Vice-President in the chair.

Mr. Conway, in pursuance of notice, moved to reconsider the vote by which the resolution offered by Mr. Switzler on the seventeenth of June authorizing the printing of three thousand copies of the journal of the Convention was adopted.

The question being on the motion to reconsider and the ayes and noes being demanded by five members, the motion to reconsider was agreed to by the following vote:

AYES

Adams	Conway	Fyan	Johnson	Ross
Allen	Cottey	Gantt	of Cole	of Polk
Black	Crews	Hale	Letcher	Shackelford
Boone	Davis	Halliburton	Maxey	Shields
Bradfield	Dysart	Hardin	McAfee	Taylor
Broadhead	Edwards	Holliday	Rider	of St. Louis
Carleton	of St. Louis	Hyer	Rippey	Todd
Chrisman				Watkins 33

NOES

None.

ABSENT.

Broadhead	Holliday	Johnston	Massey	Pulitzer	
Carleton		of Nodaway	Mortell	Rippey	8

ABSENT WITH LEAVE.

Dryden	McAfee	Ross	Shackelford	
Hale	Rider	of Morgan		6

Mr. Shields offered the following resolution:

S.83] Resolved, That the Committee on Accounts be instructed to draw a warrant payable out of the contingent fund for two hundred and seventy-five dollars in full payment for enrolling the Constitution.

which was read and adopted.

Mr. Broadhead offered the following resolution:

Resolved, That the Auditor of Public Accounts be required to furnish the Secretary of the Convention with a statement of the total expenses of the Convention, and that the Secretary be required to cause the same printed with the journal.

which was read and adopted.

Mr. Chrisman, chairman of the Committee on the Address to Accompany the Constitution, submitted the following report:

To the People of Missouri:

Your representatives assembled in Convention to "revise and amend" the Constitution of the State, have completed their work, and the result is now to be submitted to you for approval or rejection. That you may, the more readily compare the amended with the present Constitution and thus be enabled to form a clear and correct opinion as to their respective merits, your careful attention is invited to the following brief statement of the more important changes proposed with some of the advantages supposed to result from those changes.

BILL OF RIGHTS.

All the proscriptive features of the present bill of rights have been abolished, such as forfeiture of estates for treason and the provisions, which prevents gifts of any kinds to religious denominations, or to trustees for their use.

The grand jury system has been modified so as to make a grand jury consist of only twelve men, any nine of whom concurring, may find an indictment. This will be equally as effective as the present system and will cause a great saving of costs in criminal proceedings.

S.84] In addition to the usual guaranties of natural and civil rights it is declared substantially:

That the General Assembly shall make no irrevocable grant of special privileges or immunities;

That no person shall hold office without personally devoting his time to the performance of the duties of such office;

That no collector or receiver of public money or the deputy of such shall be eligible to any office until he shall have accounted for and paid over all the money for which he may be accountable;

That private property shall not be taken or damaged for public use without compensation and whether the use be public is a question to be determined by the court;

That private property may be taken for private use for drains and ditches across the lands of others for agricultural and sanitary purpose, by making proper compensation therefor.

REPRESENTATION AND APPORTIONMENT.

In the matter of representation no radical change is proposed. As heretofore, the Senate is based strictly on population. Through the failure of the General Assembly to reapportion the State on the basis of the census of 1870, as required by the Constitution, great inequality exists in the senatorial districts, some having more than three times the population of others. To remedy this and secure equality, the State has been, in part, redistricted, and ample provision made to guard against a failure to redistrict in the future. In doing this, however, care has been taken to remove from office no Senator entitled to hold over.

Since the organization of the State, each county has been entitled to one Representative in the lower branch of the General Assembly, without regard to population. To abandon this feature would incur bitter opposition from many long accustomed to it. To adhere to it prevents **S.85]** the apportionment of Representatives strictly according to population, without increasing the number beyond reason.

To render satisfaction as far as practicable, the plan of county representation has been adhered to, and as a concession to the more populous counties, they have been allowed twelve more Representatives than at present, of which St. Louis receives three and the remaining nine are distributed among the next most populous counties according to population. Thus the advocates of increased representation to the more populous portions of the State, while not obtaining all they desire, receive more members than they have under the present Constitution.

LEGISLATIVE DEPARTMENT.

The General Assembly is required to meet once in two years, but is not permitted to hold adjourned sessions. Being restricted to general legislation, much less time will be required for its sessions, and the business will be more satisfactorily performed. Perhaps less than half its time is now occupied in the enactment of laws of a general nature, therefore there will be no necessity for adjourned sessions. To prevent