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Constitution of Minnesota

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THE CONSTITUTION OF MINNESOTA[1]

BY WILLIAM ANDERSON*

1. THE MOVEMENT FOR STATEHOOD

THE organized territory of Minnesota existed from 1849 to 1858. Included within its areas was not only the present state of Minnesota but also those portions of the present states of North and South Dakota which lie east of the Missouri and White Earth rivers. In this extensive region, double the area of the present state, there were at the beginning of the territorial period a scant five thousand people of the white race. The population increased slowly at the outset. The lands west of the Mississippi were not opened to settlement until after the conclusion of the Indian treaties of 1851 and 1852. In 1854, with the opening of the first railroad from Chicago to the Mississippi, the inrush began, thousands of settlers coming each year from New England, New York, and the states north of the Ohio. By 1857 there were 150,000 people in the territory. These were indeed "boom times" for Minnesota.

It would appear that far-sighted politicians had already begun to lay plans for ultimate statehood. The first problem to be solved was that of a proper division of the territory. With an area of approximately 166,000 square miles—as large an area as

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[1]There has been published by the University of Minnesota A History of the Constitution of Minnesota with the first verified text, 323 pp., by William Anderson, in collaboration with Albert J. Lobb. The following article is a condensation of certain portions of this monograph, which is reviewed elsewhere in this number of the MINNESOTA LAW REVIEW, p. 490.

the states of Illinois, Iowa, and Wisconsin combined—Minnesota territory was extensive enough for at least two states.[2] As late as 1857, however, ninety-five per cent of the population occupied an area in southeastern Minnesota which was not over one-tenth of the total area of the territory. The more western and northern regions were an uninhabited wilderness. Using the populous southeastern region as a nucleus, it was possible for those who spent any time speculating on statehood to picture the future state of Minnesota either as running north and south, from Iowa to the Canadian boundary, with its western boundary running up the Red River valley and thence south to the northwestern corner of Iowa, or as having its greatest extension east and west, from the Mississippi and St. Croix rivers to the Missouri, and extending northward to some parallel of latitude such as 45° 30′, or 46°.[3]

The delta between the St. Croix and the Mississippi, the first region in Minnesota to gain a considerable white population, was also in the years up to 1857 the most prosperous and influential portion of the territory. Its early beginnings and its advantageous location at the confluence of the St. Croix, Mississippi, and Minnesota rivers, made this region the true center of gravity of the Minnesota country. Within this small district there had already been located in territorial times the capitol, the university, and the prison. Politicians and men of business in St. Paul, St. Anthony, and Stillwater, the three favored towns, were naturally desirous of retaining their sectional advantage when the state came to be formed. Any solution of the boundary question which would to any extent endanger their privileged position would be sure to meet with their united opposition.

On the other hand the people south and west of the Mississippi, the section which may be denominated southern Minnesota, were justly envious of the privileges enjoyed by the St. Paul region, and they had no sooner begun to become numerous than they set up an agitation for a fairer distribution of political advantages and public institutions. It has already been said that

[2]In the organic act itself Congress made reservation "That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as Congress shall deem convenient and proper." Organic act, sec. 1, 9 Stat. at Large, 403.

[3]See map, p. 48, in A History of the Constitution of Minn. cited in note 1, above.

this region did not begin to draw settlers on a large scale until 1854, but when settlement began it went forward with extraordinary rapidity. Most of the immigrants of the years 1854 to 1857 made their homes in the southern counties. By the beginning of 1855 the surprising growth in the population of this section was already recognized, and a reapportionment of representation in the legislative assembly was made to meet the new situation.[4] In the next two years, however, even this apportionment became grievously unjust to southern Minnesota, which found itself under-represented in the legislative assembly, far distant (in a day when there were no railroads) from the territorial capital, and possessed of not a single territorial public institution. It is not surprising to find, therefore, that there arose in southern Minnesota a feeling of bitterness and suspicion directed at St. Paul, nor is it to be wondered at that politicians in this section were quick to sense this feeling and to use it to further their own ends.

The sectional antipathy thus briefly described was intensified by the division of the people into political parties. From earliest territorial times the majority of the inhabitants of Minnesota were probably Democrats at heart, despite the presence of a number of influential Whigs including Alexander Ramsey, the first territorial governor. The Democrats understood their own superiority in numbers, but did not at first press their advantage by appealing for votes on a partisan basis. In fact they were divided into factions and would have found it hard in the early territorial period to work in complete unison had it become necessary to do so. But when a group of anti-slavery radicals in Minnesota, following the lead of like-minded men in the states to the south and east, organized the Republican Party in the territory in 1855 and proceeded during the next few years to work feverishly to draw men to their standard, the Democrats were also spurred on to better their party organization. The Republicans were most successful in southern Minnesota, not simply because the people there were strongly anti-slavery but because the voters in that section were already waiting for the organization of some party not attached to the interests of St. Paul which they could use in their attacks upon the hegemony of that section. The Dem-

[4]The several apportionment acts in the territorial period were as follows: Terr. sess. laws 1849, ch. 3, sec. 6; 1851, ch. 6; 1855, ch. 9; 1856, ch. 35.

ocrats, while they drew votes from all parts of the territory, were most numerous and most firmly entrenched in St. Paul, St. Anthony, and Stillwater, and in the more northerly portions of the territory, as at Pembina. Thus it came about that the line of cleavage between the sections corresponded to a large extent with the line which divided men into parties. The struggle between the "Moccasin Democracy" and the "Black Republicans" in the last few years of the territory was at times almost indistinguishable from the sectional conflict between the St. Paul region and southern Minnesota. The history of this double conflict is also the story of the movement for statehood in Minnesota.

In the years 1855-1857 certain leading politicians and businessmen of southern Minnesota, mostly Republicans, seem to have evolved a fairly definite plan of action to promote their personal, sectional, and party interests. They desired, of course, a reapportionment of representation based upon an actual census, for they felt that they were entitled to a majority of the members in both houses of the territorial legislative assembly. It was their hope, also, to have the state constitutional convention elected upon a new and just apportionment. Given this much, it was their plan to get expressions from both the legislative assembly and the people approving a division of the territory by an east and west line at about 45° 30′ or 46° north latitude. The next step would be to petition Congress for the organization of the region south of this line and as far west as the Missouri river as the state of Minnesota. St. Paul, St. Anthony, and Stillwater, left "high and dry" in the far northeastern corner of this state, and shorn by this division of the support of Democrats farther north, could then be deprived of the principal public institutions. The capitol would be set up at St. Peter and the university at Winona. At about the same time Congress was to be urged to give a grant of lands to the new state for constructing railroads from Winona and other points on the Mississippi westward to the Missouri river.

The residents in the St. Paul region were not unaware of the plans being made in southern Minnesota to make an east and west state. They were in the saddle, however, and fully prepared to protect their own interests. Under the apportionment of 1855 it was impossible for southern Minnesota alone to control the legislative assembly to bring about a reapportionment.

Furthermore the St. Paul section had in the person of Mr. Henry M. Rice, a resident of St. Paul and the delegate and official spokesman of the territory in Congress, an alert and influential representative of its special interests. It was his plan and that of the most important persons in the St. Paul region, to make a north and south state, dividing the territory by a line up the Red River of the North to Lake Traverse and thence south to the Iowa line. Politically, and from the point of view of river transportation and future railroad building, this was a far better division of the territory for the St. Paul section. Indeed, St. Paul could well claim to be the logical center of such a state and might well continue to be the capital. Apart from all this it could be argued with a great cogency that access to the Red River of the North and to Lake Superior, and the union of agriculture, lumbering, and possibly mining within one state were factors which made for a greatness which a purely agricultural state could never attain. The gist of the north and south plan was embodied in two bills which Mr. Rice introduced in Congress in the session of 1856-57. One of these was a bill for an enabling act, providing for the north and south division of the territory described above, and authorizing the people of Minnesota to hold a constitutional convention on July 13, 1857. The other provided for a land grant to the territory for the purpose of railroad building, and of the five railroads therein provided for, all were to be constructed wholly within the proposed state, and four of the five radiated out from St. Paul, St. Anthony, and Stillwater, which were thus to be made the railroad center of the state.

It would take too long to tell here how in the months preceding the constitutional convention the "north and south" forces defeated the "east and west" faction on one point after another. Despite desperate efforts both at Washington and St. Paul, the "east and west" group, though aided by Governor Willis A. Gorman, made virtually no headway. Congress accepted and passed without serious amendment Rice's bills for an enabling act and for a railroad land grant.[5] Forewarned of his probable success the east and west faction, temporarily in the ascendancy in the legislative assembly of 1857, undertook a series of measures to forestall him. A resolution requesting Congress to leave the boundary question to the people of Minnesota was readily passed by

[5]11 Stat. at Large, 166-67, 195-97.

the legislative assembly, but it proved to be of no avail.[6] A bill was introduced to have the legislative assembly itself call a constitutional convention under the principle of "squatter sovereignty," but it was lost when the houses found themselves unable to agree upon its terms. Fearful that they would lose all if they did not hasten, the southern Minnesota group finally attempted to rush through the legislative assembly a bill to remove the capital to St. Peter immediately. There was a clear majority for the bill in both houses, and it would have passed with all due formality had not Joseph Rolette of Pembina, chairman of the enrolment committee of the council, made away with the official copy of the act. He hid himself in a St. Paul hotel for a number of days, while the council was held under call, and returned to his seat, too late to permit of a complete repassage of the measure. with protestations that he had found inaccuracies in the enrolled bill. Friends of the measure seem to have believed that it was legally adopted and that it was competent for the legislative assembly to enact such a law. The territorial district court for the St. Peter district thought otherwise; the act was declared to be invalid, and St. Paul continued to be the capital.[7]

A sufficient résumé of the political events preceding the constitutional convention has now been given to bring out the important questions which were agitating men's minds in Minnesota in 1856 and 1857. Naturally—and to one who reads the contemporary newspapers this is a very striking point indeed—there was almost no discussion of state constitutional questions. The politicians who were candidates for the convention discussed slavery, and negro suffrage, and state boundaries, and the sectional struggle, and the system of districting and apportionment in the new state, but they appear hardly to have touched upon the problems of governmental organization and constitutional law with which they would, if elected to the convention, be called upon to deal. Most of the delegates came up to St. Paul a few weeks later keenly alert to the importance of the pending party struggle for control

[6]House Journal, 1857, pp. 63, 70, 71; Council Journal, 1857, pp. 39, 50, 51-54. Not published in the territorial session laws of 1857, this memorial will be found in the Pioneer and Democrat, St. Paul, Jan. 21, 1857.

[7]Terr. sess. laws 1857, ch. 1. For Judge R. R. Nelson's conclusions as to the validity of the act, see St. Paul Advertiser, July 18, 1857. It is difficult to understand upon what theory the legislative assembly arrived at the conclusion that it had the authority to change the capital without a vote of the people. Cf. Organic act, sec. 13, 9 Stat. at Large, 403-9.

of the convention, but only slightly informed concerning the difficulties of drafting a state constitution.

2. THE ATTEMPT TO ORGANIZE THE CONSTITUTIONAL CONVENTION

In the months between the adjournment of the territorial legislative assembly and the election of delegates to the constitutional convention on June 1, there was held a brief special session of the legislative assembly. Its main business was to provide for conferring the railroad lands upon the proper corporations, yet it also enacted, on May 23, 1857, a law to provide for the expenses of the constitutional convention.[8] The validity of this act, and particularly of those sections of it which attempted to fix the number and qualifications of the delegates to the convention, and the area in which the elections were to be held, is open to grave question.[9] A little more than a week after the passage of this act the elections were held, as provided by the enabling act. The electoral procedure was typical of the frontier. Well authenticated reports can be found of fraudulent voting in several constituencies, including an account of seven hundred illegal ballots cast in St. Paul. From Swan River it was reported that "while the election board were at dinner, certain rowdies known as the 'Swan River Blues' took possession of the ballot box and threw it into the Mississippi River." From the Pembina district, which sent six Democratic delegates, came conflicting stories, one of which went so far as to say that no election whatever had been held there. Two delegates from one district presented unverified certificates of election made out by one of them. The report from Little Falls that "the inhabitants were too much occupied with building and planting to pay special attention to the election" was typical of the accounts from many places.

A difficult and important question arose concerning certificates of election. The enabling act provided:[10]

[8]Terr. sess. laws, ex. sess., 1857, ch. 99.

[9]It is doubtful whether Governor Gorman had any power to call the special session. In the second place, Congress had passed a complete and self-standing act enabling the people of Minnesota to hold a constitutional convention and providing for the election, procedure, etc. It is difficult to see what the territorial act could add to or take from the enabling act. As to expenses, the constitutional convention could probably have provided for that matter itself under the authority conferred upon it by Congress to "proceed to form a constitution and take all necessary steps for the establishment of a state government." Enabling act, sec. 3. See also Goodrich v. Moore, (1858) 2 Minn. 61 (Gil. 49, 53-54). But see Dodd, Revis. and Amend. of St. Const., 82-83, 103-4; and Jameson. Const. Conven., secs. 435-41.

[10]Enabling act, sec. 3; 11 Stat. at Large, 166.

"That on the first Monday in June next, the legal voters in each representative district, then existing within the limits of the proposed state, are hereby authorized to elect two delegates for each representative to which said district may be entitled according to the apportionment for representatives to the territorial legislature."

It was claimed in the territory that there was ambiguity in this language, since "representatives" might be taken either in the narrow sense as signifying representatives in the lower house of the legislative assembly, or in the broader, generic sense, thus including all who represented the people in the legislative assembly, i.e., both councillors and representatives. In the territorial act providing for the expenses of the convention the latter view was taken, provision being accordingly made for one hundred and eight instead of seventy-eight delegates. Doubts still existed, however, and a Democratic newspaper put forward the suggestion that since the convention itself would be final judge of this question it might be well to distinguish in the balloting between delegates from councillor districts and delegates from representative districts. Where a councillor district was co-extensive with a representative district, such a procedure might appear to be absurd yet it would be necessary to avoid future difficulties. Speaking generally the Democrats refused to follow this advice, but the Republicans in several districts took it up seriously. Thus in St. Anthony, where six were to be elected, the Republicans put up two men as candidates to be delegates from the council district and four from the representative district, the two districts being exactly conterminous. The Democrats ran six candidates for the position of delegates, without other or more particular specification. In the voting four Democrats and two Republicans led all the others in a very close poll. The register of deeds of Hennepin County, a Republican, was then called upon to decide who had been elected, and he issued certificates of election to the six Republican candidates on the ground that they alone had complied with the election laws. The Democrats of Hennepin County immediately protested his action, and the case was laid before Governor Medary, also a Democrat, who thereupon removed the register of deeds from office on the ground of malfeasance. But the register was not without recourse. The Hennepin County board, composed of Republicans, promptly reëlected him to his place.

The election proved that the two parties were almost evenly balanced. From the outset both parties claimed the victory, and at no time thereafter did either confess its defeat in this election. Since the results of the voting were never officially and impartially canvassed, it is impossible to say which of the parties was the victor. The Democrats claimed to have carried the territory by a popular majority of 1635.[11] This figure, if corect, can probably be explained by the fact that in the cities, which were Democratic strongholds, a heavy vote was cast, partly fraudulent, whereas in the Republican rural areas, due to the late planting season, the vote was generally reported to have been very light. On the other hand fifty-eight Republicans received certificates of election as against only fifty Democrats.[12] The former number included five, four from St. Anthony and one from Houston County, who received their credentials without having received clear popular majorities.[13] The latter figure included a number of delegates from far northern constituencies where there was practically no population.

The sectional and party differences which preceded the election grew more bitter as it reached into the past. The St. Paul region, with its Democratic majority, had stubbornly refused to permit a fair apportionment of delegates to the convention. The political advantage thus gained had now been neutralized by the Republican ruse of issuing certificates of election to Republicans without majorities. Each side had resorted to fighting the devil with fire, and these tactics began to produce exactly the consequences which should have been expected. Fair play was in the discard; mutual confidence was gone. There could be no thought now of conciliation; both parties simply sought new stratagems to win back what had been lost or to hold what had been gained. The next move was now up to the Democrats, and rumors are said to have been circulated that they intended to dominate the

[11]Deb. and Proc. of Minn. Const. Conven. [Dem. Wing], p. 16.

[12]One of the fifty Democrats refused to serve on the ground that, as he himself admitted, he had not received a majority. His Republican opponent, who had received the larger vote, was seated by the Republican wing without credentials, making the fifty-ninth member who served with that body.

[13]Deducting the five here mentioned from the total Republican strength of fifty-nine delegates, we have fifty-four duly elected members serving in the Republican wing,—or just one-half of the one hundred and eight provided for by the territorial act. Adding five to the forty-nine Democratic credential holders, we find they also had fifty-four legal members. This does not take into account possible losses and gains by both conventions from the exclusion of members who were elected by fraud.

convention by fair means or foul. They controlled the territorial administration, the capitol building, and the city of St. Paul, a set of circumstances which caused the Republicans to fear that plans were being prepared in that wicked city to trick them out of their majority. It appears that the Republican delegates declined to submit their credentials to the territorial secretary, a Democrat. One delegate, nominated by Republicans and presumably elected by Republican votes (he is not counted in the fifty-eight mentioned above) was induced to declare himself a Democrat. As the day for the meeting of the convention drew near, the Republicans became hourly more apprehensive as to the future.

Spurred on by their anxieties the Republican delegates began to arrive in St. Paul several days before the date of the meeting of the convention. On Saturday, July 11, a number of them were already in the capital city, taking counsel together as to a course of procedure.[14] It was their desire, to which they knew the Democrats were opposed, to have all holders of credentials given a vote on questions of organization. To protect their interests in this matter, it was necessary to have all their members present at the time of the first meeting, but unfortunately the enabling act was silent as to the hour. What was there to prevent the Democratic delegates, with the connivance of the territorial administration, from stealing a march on their opponents by meeting at midnight or some other unusual hour to organize the convention in their absence? It became important in the minds of the Republicans to agree with the Democrats upon an hour of meeting. On Sunday evening, July 12, some of the Republicans chancing to meet ex-Governor Gorman at the Fuller House, they broached this momentous question.[15] Possibly the Democrats, some of whom were meeting in caucus that evening, saw for the first time in the anxiety of the Republicans upon this point the strategy which they could adopt to outwit them and to gain control of the convention. The Republicans having proposed 12 m. as the proper hour, Mr. Gorman appeared at first to agree, but all negotiations were brought to an end when the Democratic caucus transmitted to their opponents a resolution promising to "meet at the usual hour for the assembling of parliamentary bodies in the United States." This "sliding scale" proposal served only to confirm the Republican members in their darkest suspicions. The Democrats were

[14]Deb. and Proc. of Const. Conven. [Repub. Wing], p. 30.

[15]Ibid,. pp. 30-31.

up to mischief; it behooved Republicans to be on their guard. After brief consultation the latter concluded that none but desperate remedies would suffice. Leaving their hotels and lodgings in the dead of Sunday night the Republican delegates betook themselves to the capitol, according to previous tentative plans, where at midnight they entered the council chamber and held it until after daybreak on Monday morning, the 13th. Their purpose, as one member explained, was "not to do anything, although we had a majority of all the members elected present; but to prevent any undue advantage being taken of us by the other side."

With the coming of day the Republicans, singly and in small groups, began to go out to breakfast. When they returned they took their places in seats in the hall of the house of representatives, at the opposite end of the capitol from the council chamber. There they undoubtedly chatted and discussed their plans, possibly concluding the signing of the paper in which they requested Mr. John W. North to call the convention to order. In the meantime the Democratic delegates were in caucus elsewhere in the capitol, probably in Secretary Chase's office, from which they sent in the course of the morning a resolution directed to the Republicans in which they confirmed "the position of the Democratic members last evening" and resolved to "concur in the proposition to meet at 12 o'clock m. of this day, the usual hour for the assemblage of parliamentary bodies in the United States." To the relief of the Republicans, "the usual hour" had at last been given a Democratic definition.

The Republican delegates, fifty-six in number, continued to sit quietly in their places. An employee of the territorial administration entered the hall, adjusted the clock upon the wall, and went out without disturbance. Apparently all was peaceful in the hall when, without warning, at about fifteen minutes to twelve o'clock, the Democratic delegates, forty-five in number, marched quickly and as one body into the hall. At their head was Mr. Charles L. Chase, secretary of the territory. Without pausing he went directly to the speaker's platform, mounted it, and proceeded to call the convention to order. The Republicans appear to have been dazed by the suddenness with which this action took place, a full quarter of an hour before the time agreed upon for meeting. Their chosen leader, Mr. North, mounted the platform as quickly as he could, but was apparently some seconds behind Mr. Chase. While the latter was calling the delegates to order,

Mr. North began to do so also, and then without pausing he nominated Mr. Thomas Galbraith of the Republican delegation to act as president pro tem. At the same time ex-Governor Gorman was addressing Mr. Chase from the floor and making the motion that the convention adjourn until 12 o'clock m. the next day. From his side of the platform Mr. Chase put the question upon Gorman's motion, the Democrats, according to their own reports, voted unanimously for it, a few bewildered Republicans probably voted against it, and Mr. Chase thereupon declared the convention adjourned. The Democrats promptly marched out in a body as they had come in, while the Republicans, having voted Mr. Galbraith into the chair, remained in the hall and proceeded to organize what they called "the" constitutional convention of Minnesota. The fifty-six delegates presented their credentials, were sworn in, elected their officers, and proceeded almost at once to debate the question of whether Minnesota wished at that time to be admitted to the Union.[16]

Having made some progress on the first day, the Republican convention adjourned until nine the next morning when the members met again to take up their work. They were apparently busy upon the question of printing their rules when "the proceedings were . . . interrupted by the appearance of Mr. C. L. Chase at the door, who, as Secretary of the Territory, demanded the hall for the use of the Constitutional Convention. *The President* [Mr. St. A. D. Balcombe] replied that that body was now in session, and in possession of the Hall. *Mr. Chase.* Then you will not give up the Hall? *The President.* Certainly not. *Mr. Chase* then retired."[17] This quotation is from the Republican proceedings. Under the same date the Democratic debates have the following entry: "At twelve m. the Delegates proceeded to the Hall of the House of Representatives, pursuant to adjournment on Monday. *Mr. Chase* met the Delegates at the door of the Hall. He said—Gentlemen: The Hall to which the Delegates adjourned yesterday, is now occupied by a meeting of the citizens of the Territory, who refuse to give possession to the Constitutional Convention. *Mr. Gorman.* I move the Convention adjourn to the Council

[16]The sources of this brief account of the first day's proceedings are (1) a series of speeches delivered in each convention, (2) the contemporary St. Paul newspapers, particularly the St. Paul Advertiser, the Pioneer and Democrat, and the Daily Minnesotian, and (3) Flandrau, Hist. of Minn., 1900 ed., pp. 111-112.

[17]Repub. debates, p. 28.

Chamber. The motion was carried, and the Delegates accordingly repaired to the Council Chamber in the west wing of the Capitol Building, where *Mr. Chase* called the Convention to order."[18]

The schism between the Republican and Democratic groups of delegates was now complete and, as it proved, final. Neither side ever receded from the position it had taken that it was the constitutional convention. To the end the two bodies kept up their pretensions and their separate organizations, and though they finally agreed through a committee of conference upon a single constitution, they did not even sign the same document. Many speeches were made in both bodies with reference to the validity of the respective organizations, the Democrats consuming several days in denouncing the conduct of the Republicans. In the attendant flow of words some facts of interest were divulged. The Democratic delegates, it would appear, were slow in arriving at St. Paul, yet in spite of their initial inferiority in numbers the Democrats were determined to gain control of the convention. Looking into the precedents they claimed to have found that it was customary for the territorial secretary to receive the credentials of delegates, to make up the preliminary roll of delegates, and to call the convention to order. This suited their needs precisely, for Mr. Chase was a Democrat and a good party man, and was, as they claimed, doubly qualified because he had been elected a delegate from St. Anthony though he had been denied credentials by the Hennepin County register of deeds. The fact that he would be called upon in this dual capacity to pass upon his own case did not seem to them any objection. The Democrats concluded, therefore, to permit Mr. Chase to act as president pro tem., and they duly turned over their credentials to him. There was yet another difficulty, however, for even if Mr. Chase excluded all Republicans whose right to sit was in any manner disputed the Republican delegates would still be in a majority on the first day. A delay of a day or two must somehow be brought about, in the hope that enough additional Democratic delegates would reach St. Paul to swing the scales to their side. It was, therefore, decided in the Democratic caucus (and there seems to be little doubt on this point) to do nothing the first day except to have Mr. Chase assume the chair and to have a motion put to adjourn until the next day. In this way Mr. Chase would be established as temporary chairman and time would be gained.

[18]Dem. debates, pp. 3-4.

This plan would succeed, however, only in case the Democrats acted quickly and with unanimity and took the Republicans by surprise. No doubt the ruse of coming in fifteen minutes before the appointed hour was a part of the general plan to catch the Republicans napping. The entire scheme succeeded almost perfectly up to the point to which it had been thought through; it was only Mr. North's readiness in mounting the platform also which to any extent frustrated their designs. The Democrats subsequently asserted that Mr. North's actions were disorderly and disrespectful, that Mr. Chase was first on the platform and was the presiding officer for the time being, and that since some Republicans voted on the question put by Mr. Chase and no one appealed from his decision as to adjournment, the convention stood adjourned and Mr. Chase had been recognized by a majority as the presiding officer.[19] They asserted, therefore, that they "had legally and fairly and formally, the organization of the convention."[20]

It is the writer's conclusion that the constitutional convention of Minnesota, authorized by the enabling act, did not at any time have a real meeting as a whole. A meeting implies something more than mere physical presence in the same place; it signifies a meeting of minds and purposes, an agreement at least upon organization, and this the constitutional convention never had. From the beginning the two moieties of the convention refused or failed to agree upon anything relating to their common organization, and while it is true that they were for a minute or two in the same room together, it was at a time different from that agreed upon by their unofficial caucuses and even then the separate delegations refused to recognize the same presiding officer but were rather two separate meetings, overlapping somewhat at the fringes, but having separate presiding of-

[19]The Democrats contended that the announcement of adjournment by Mr. Chase was binding upon everyone in the room, and that nothing could be done legally by "the convention" until the hour set for meeting next day. Upon a similar point there is an interesting decision by the supreme judicial court of Massachusetts. The president of a city council had declared the council adjourned and had departed from the hall, but a majority of the members remained, reorganized, and went on with the business. The court held the action of the majority entirely lawful. "The president's declaration of adjournment had no effect to bring the meeting to an end when the vote declared was promptly doubted. The meeting continued without being adjourned, and took action which was equivalent to a decision that the motion to adjourn was not carried." Pevey v. Aylward, (1910) 205 Mass. 102, 91 N. E. 315.

[20]Dem. debates, p. 79.

ficers and proceeding upon distinctly different lines. The fact that there was some confusion, and that some Republicans voted upon the Democratic motion to adjourn, can hardly be said to have made one meeting out of what were essentially two.

3. The Conventions and the Compromise

From the second day forward the two wings of the convention met entirely separately, in opposite ends of the little territorial capitol. The Democrats, meeting in the council chamber, met and adjourned for seven days without doing any important business and with less than half of the one hundred and eight delegates prescribed by law in attendance upon their meetings. Finally on the ninth day their committee on credentials reported that forty-nine delegates had presented their credentials to, and recognized the authority of, their organization, and that five others who were without credentials but whom they asserted to have been duly elected, were likewise prepared to act with them, making fifty-four delegates in all, just half of the legal number.[21] This number they accepted without question as being sufficient to constitute the convention, particularly in view of the fact that they represented a popular majority of 1,635 votes, and that an additional delegate would be recommended for a seat as soon as "official evidence" of his election could be procured. On the twenty-fifth day of the convention this delegate, the fifty-fifth in the Democratic wing, was given his seat.[22] Due to the long preliminary delay the Democrats had to work rapidly when they finally got under way. Most of their work was accomplished in committees, and committee reports were generally accepted by the convention without serious amendment. This was due in part to the better leadership and more extensive public experience of the Democratic delegates, in part to the feeling that, with fewer members than the Republicans claimed, they must stand more unitedly together. Another factor leading to greater harmony was the absence of any radicals among the Democratic delegates.

The Republicans, boasting fifty-six credentialed delegates from the first, soon increased that number to fifty-nine, only one of whom did not have credentials. The two conventions together had, therefore, not one hundred and eight but one hundred and fourteen delegates. Following a brief pause, while the Repub-

[21]Ibid, p. 12-16.
[22]Ibid, pp. 397-99.

licans waited for the Democrats to recede from their position and to join them, committees were appointed and the work of drafting a constitution was begun. But there were many disputes which disturbed the peace and harmony of the gathering, and a number of radical proposals which had to be voted down. The question of boundaries came up for a long and bitter discussion, a large minority desiring to put the convention on record in favor of an east and west state. Negro suffrage was another point on which there was bitter wrangling and in the end the convention had to agree to submit this question to the people along with the constitution. Being without a group of outstanding leaders the Republicans all tried to be leaders, and the result was that one committee report after another was voted down or seriously altered upon the floor of the convention. The articles and sections which were adopted to go into the constitution contained some unusual provisions, yet most of the more radical and bizarre proposals were voted down.

In the early weeks each convention proceeded upon the theory that it was the genuine constitutional convention and that it was its duty to prepare and to submit to the people a constitution, without any regard to what the other organization might do. The zest of the party combat soon passed away, however, and the better sense of the community and of the outside world commenced to put the disagreement which had led to the split in the convention into its true light. Not only were the reasons for separation trivial in themselves, but the consequences of continued separation were not pleasant to contemplate. Two irreconcilable conventions pursuing their separate courses to the end would of necessity result in the submission of two constitutions, and whether upon the same or different days, there might easily arise incitements to violence and bloodshed. Furthermore, if the voting was likely to be at all close, there would be temptations to fraud, and in any case there would arise a question as to which constitution had been adopted, with a resultant extended controversy in Congress over the admission of the state. It was reported that outside leaders of the two parties regretted the course which events had taken in Minnesota, and it was also known that capitalists and businessmen within the territory feared that public and private credit would be damaged as long as the transition to statehood appeared uncertain.[23] Finally the course

[23]Ibid, p. 357.

of the debate in the two conventions proved that there was not going to be much difference between the two constitutions which were likely to be proposed. The question arose why there should not at least be an agreement between the two conventions upon the same constitution. If this were done it would solve almost every difficulty, and yet leave each convention to claim that it was the true constitutional convention.

Judge Moses Sherburne of the Democratic organization made the first public proposal of the compromise on August 8.[24] His resolution was indefinitely postponed.[25] On Monday morning, August 10, the Republicans, without debate, adopted the identical resolution with the exception of one word.[26] The Republicans were thus put on record as desiring conciliation, but the Democrats were adamant in refusing to countenance any direct, open negotiations between the conventions, for that would imply recognizing the Republicans as a convention. Behind the scenes, however, proffers of compromise were being made, and on August 18 the Democratic wing, despite strong opposition from a minority, took action authorizing the appointment of a committee of conference.[27] That afternoon the two conference committees of five men each met for the first time in the office of the secretary of the territory. The Democratic members were ex-Governor Gorman, Joseph R. Brown, William Holcombe, Moses Sherburne, and W. W. Kingsbury. The Republican convention was represented by Thomas J. Galbraith, Charles McClure, L. K. Stannard, Cyrus Aldrich, and Thomas Wilson.

The situation at the time of the agreement to compromise was that neither convention had completed its draft of a constitution. The several conference committees accordingly gathered up the completed articles, the committee reports, and other data, and upon the basis of these materials proceeded behind closed doors to the work of drafting a compromise constitution. Very little news of their deliberation reached the public, but entire secrecy was impossible.

There were some marked differences between the Republican and Democratic proposals with reference to the organization of the three departments, and on the bill of rights, the suffrage, and the provisions relating to finances, education, local government,

[24]Ibid, p. 350.
[25]Ibid p. 361.
[26]Repub. debates, pp. 410-11.
[27]Dem. debates, pp. 521-23.

and amendments to the constitution there were lesser discrepancies, but in no case did these divergencies seriously affect political interests or go to any important question of principle. On boundaries the conventions were in complete agreement, since both had voted down the east and west proposals and had accepted the state boundaries proposed by the enabling act. There were, however, several matters upon which the conventions were in marked disagreement. *First.* As related above the Republican convention had agreed to submit to the voters separately along with the constitution the question of Negro suffrage. In the conference committee the Republicans stood strongly for the right of the people to decide this question, but the Democrats were unyielding in their refusal to entertain the proposition. *Second.* Each convention had worked out a system of congressional, legislative, and judicial districts, and an apportionment, which would give its own party and section the advantage in the first election. This was a matter which affected political interests vitally, and a compromise was very difficult. *Third.* The Democratic wing, wedded to the interests of the St. Paul region, had incorporated the so-called tri-city agreement into its miscellaneous provisions, guaranteeing the capitol to St. Paul, the university to St. Anthony, and the prison to Stillwater. The Republicans, many of whom had not given up hoping for the transference of some of the state institutions to southern Minnesota in the near future, had left this matter to future legislation by neglecting to say anything about locations in the constitution.

After working for a number of days without any solution of the major difficulties before them the committee members finally reached a point where they had to face the big issues, and when they did so they found themselves in hopeless disagreement.[28] The majority of the ten members continued to be cool and hopeful of success, but several members either permitted their animosities and anger to get the better of them, or made the desperate suggestion of abandoning all attempts at compromise. It was while matters stood at this juncture, with hope of a solution almost gone, that ex-Governor Gorman, resenting some words of personal disrespect alleged to have been uttered by Thomas Wilson of Winona, proceeded to break his cane over that gentleman's head.[29] The combatants were quickly separated,

[28]Repub. debates, pp. 573-74.

[29]Dem. debates, pp. 587-90; Repub. debates, pp. 560-65.

but everyone knew that the crucial hour had come. "Border ruffianism" had raised its sinister head within the committee itself. Unless the conference committee succeeded in coming quickly to an agreement upon a compromise constitution, Minnesota might soon be found taking her place alongside of Kansas, settling her constitutional difficulties with rifles and bloodshed. It was undoubtedly with some such thought as this that the eight members who remained, after Gorman and Wilson had been permitted to depart, agreed to meet again the next day for a final attempt to agree upon a compromise.

On the following day, Wednesday, August 26, a splendid spirit of compromise was evidenced by the remaining conferees. A Republican member, Mr. Charles McClure, having proposed in lieu of the separate submission of the question of Negro suffrage that the article on the suffrage be made amendable at any time by the legislature with the consent of the voters, Mr. Joseph R. Brown proposed that they go further and make the whole constitution easy of amendment.[30] Thus in a few minutes was attained the most important compromise of all, and out of the agreement came the provision which for forty years (1858-1898) made Minnesota's constitution more easily amendable than that of any of the other states. A simple majority of the members of each house present and voting at any session were, by this provision, authorized to submit amendments to the people, and if a majority of the voters voting upon the proposition at the next election approved the amendment it became a part of the constitution.

With this obstacle overcome the Republican conferees yielded on one point after another. The provisions as to districting and apportionment were quickly agreed upon, the Democrats gaining the most important points. The tri-city agreement was completely embodied in the constitution, although a door was opened for capital removal at a later day if desired. On the framework of the government also the Democrats prevailed generally over their opponents. Of course many minor modifications were introduced throughout, but in the main the better-drafted Democratic proposals were adopted and written into the compromise constitution. The Republicans resigned themselves to accepting the Democratic materials with the comforting thought that whenever they succeeded in getting control of the state government

[30]Repub. debates, pp. 574-75.

they would be able, due to the ease of amendment, to make the constitution over to suit themselves.

Most of the work of drafting the compromise constitution was done on the 26th and 27th. At 4 o'clock in the afternoon of Thursday the 27th the Democratic convention received the report of its conferees, and the next morning the Republicans also heard the report.[31] A few members, particularly among the Democrats, expressed great bitterness at the compromise, but in the course of the day, Friday the 28th, both wings of the convention accepted the constitution without amendment.[32]

4. The Constitution Adopted and Put Into Effect

The constitution itself provided that it should be voted upon October 13, 1857, and that the people should elect at the same time three congressmen at large and a full complement of state officers and legislators.[33] The members of each wing of the convention returned to their homes determined to prove by winning the election that their branch of this peculiar double-headed constitutional convention was the true representative of the people. There followed a short, strenuous campaign which resulted in a fairly decisive victory for the united Democratic party, although Sibley barely succeeded in becoming governor over his Republican opponent, Alexander Ramsey. On the same day the constitution was adopted by the astounding vote of 30,055 to a mere 571, the canvassers' official figures.[34] This surprising result can best be explained by the conditions under which the vote was cast. By the schedule of the constitution it was provided, among other things, that "in voting for or against the adoption of this constitution, the words 'For Constitution,' or 'Against Constitution' may be written or printed on the ticket of each voter, but no voter shall vote for or against this constitution on a separate ballot from that cast by him for officers to be elected at said election under this constitution."[35] In other words a separate and distinct vote upon the adoption of the constitution was inadmissible. Unless a voter were willing to vote "for" officers to be elected under the constitution he could not vote either for or against the constitution. Since neither party dared nor desired to oppose

[31]Dem. debates, p. 597; Repub. debates, pp. 565 ff.
[32]Dem. debates, pp. 614-15; Repub. debates, p. 582.
[33]Minn. const., schedule, secs. 16-22.
[34]Dem. debates, p. 677; Repub. debates, p. 620.
[35]Minn. const., schedule, sec. 18.

the adoption of the constitution, it is very probable that no ballots were printed "Against Constitution," and on the other hand very few voters were willing to put themselves in the absurd position of voting "Against Constitution" on the same ballot as that on which they voted for officers under it. Indeed, it is a simple fact that the rules under which the election was held were skilfully drawn to prevent any adverse votes on the constitution.[36] It is surprising not that there were so few but that there were so many negative votes.

The constitution-making process in Minnesota was prolific of innovations, of which none was more interesting than that which is now to be mentioned. The enabling act, entitled "An Act to authorize the People of the Territory of Minnesota to form a Constitution and State Government, preparatory to their Admission in the Union on an equal footing with the original States," contained in section 1 the following provision:

"That the inhabitants of that portion of the territory of Minnesota which is embraced within the following limits . . . . be and they are hereby authorized to form for themselves a constitution and state government, by the name of the state of Minnesota, and to come into the Union on an equal footing with the original states, according to the federal constitution."[37]

When this bill was being debated in Congress, Mr. Galusha Grow of Pennsylvania, chairman of the house committee on territories, who had the bill in charge, was asked directly whether there was anything unusual about the bill, and his reply was that "the bill is in the usual form; and indeed, in drawing it up, it was like taking a form-book, and drafting this bill from it, with the exception of the boundaries."[38] Nevertheless when the act became known in Minnesota there was almost immediately some discussion as to whether the language quoted above, and particularly the words "authorized to form for themselves a constitution and state government . . . and to come into the Union on an equal footing with the original states," did not make Minnesota a state in the Union immediately upon the adoption of the constitution by the people, without further action by Congress. This question was discussed in the conventions, and apparently considered to some extent in the conference committee, but the constitution which was adopted bears evidence that the members

[36]This fact was pointed out in Congress during the debate on the act of admission. Cong. Globe, 35 Cong., 1 sess., p. 1141.

[37]11 Stat. at Large, 166-67.

[38]Cong. Globe, 34 Cong., 3 sess., p. 518.

even of the conference committee did not accept either the theory of immediate statehood, or the theory that a subsequent act of admission would be required, in its entirety. Instead it was provided in the constitution that the state legislature elected on October 13 was to convene on the first Wednesday, the 2nd day of December, 1857, before Congress could meet to consider an act of admission, whereas the executive officers elected at the same time were not to take office until "after the state shall be admitted by congress into the union."[39] In the meantime "all territorial officers, civil and military, now holding their offices under the authority of the United States or of the territory of Minnesota shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the state."[40] Other passages of the constitution also showed a confusion of ideas upon this point.[41]

The legislature met as scheduled. The Republican minority immediately entered its protest against the recognition by the legislature of the territorial governor.[42] Their purpose was, of course, obstruction, but their argument was that acts passed by a state legislature must be signed by a state governor and could not become valid through signature by the territorial governor. This objection was overruled by the majority in both houses, and the legislature proceeded to the work before it. Before it took a recess at the end of March it had elected two United States senators, and passed thirty-two general and ninety-two special laws. Most of these laws were signed not by Governor Medary, who had left Minnesota, but by Charles L. Chase, who signed the acts first as acting governor and then as secretary. Among the acts thus put upon the statute books of the state were two which proposed amendments to the constitution, both of which were ratified by the voters April 15, 1858, at a special election almost a month before the admission of the state.[43] This novelty of a state legislature passing laws and proposing amendments to the constitution before the admission of the state came very close to revolution and was more than some congressmen who heard of it could pass over without protest. Nevertheless the act of ad-

[39]Minn. const., schedule, sec. 6; art. 5, sec. 7.

[40]Ibid, schedule, sec. 5.

[41]Ibid, art. 2, sec. 3; art. 5, sec. 9; schedule, secs. 1, 8.

[42]Senate Journal, 1857-58, pp. 27-29, 62-67, 72-74; House Journal, 1857-58, pp. 58-59.

[43]Minn. sess. laws, 1857-58, chs. 1, 2.

mission was passed on May 11, 1858, without any attempt being made to attach any conditions.[44]

The question of when Minnesota became a state, whether on October 13, 1857, or on May 11, 1858, was discussed as late as 1882.[45] In the leading decision bearing upon this point it was held that the railroad loan amendment adopted on April 15, 1858, was valid by subsequent ratification, and the same reasoning may well be applied to the other amendment adopted the same day, and to the numerous laws passed at this first session of the state legislature.[46] From December 2, 1857, until near the end of March, 1858, there was in fact a de facto state legislature whose acts were fully ratified by the non-action of the de jure state government which took office after the admission of the state in May, 1858. There are, nevertheless, some nice moot points connected with this whole procedure.

5. The Two Originals of the Constitution

Another interesting novelty in the constitutional law of Minnesota is the existence of two originals of the constitution. When the question of the enrolment and signature of the constitution arose in the conventions on Friday, August 28, it was reported that Mr. Sibley, the president of the Democratic wing, was unwilling to sign the same document with the Republicans, and no doubt others in both wings entertained similar feelings. It became necessary, therefore, to enrol two copies of the constitution, one for signature by each wing, and to get this work done before the next morning, since both conventions had voted to adjourn on Saturday. It appears that to get the work done on time at least sixteen copyists were employed, for there are eight distinct handwritings in each document. Moreover the writing exhibits many evidences of haste, and it is perfectly apparent that there was no careful collation of the two constitutions. There are approximately three hundred differences in punctuation between the two documents, besides some fifteen other discrepancies.[47] Naturally most of these differences are of no particular consequence,

[44] 11 Stat. at Large, 285.

[45] Application of Senator Shields, Cong. Globe, 35 Cong., 1 sess., pp. 861-62; opinion of Atty. Gen. Berry, July 2, 1858, in Opin. of the Attys. Gen., 1858-1884, pp. 2-3; Repub. debates, pp. 532-35; Minn. Senate Journal, 1857-58, pp. 72-74; report of U. S. Senate judiciary committee, Cong. Globe, 35 Cong., 1 sess., p. 957.

[46] Secombe v. Kittelson, (1882) 29 Minn. 555.

[47] See table in History of the Constitution of Minnesota, cited above, pp. 270-75.

but there are important exceptions. For example, in article 4, sec. 3, the Republican version has: "Each house shall be the judge of the election returns and eligibility of its own members," while the Democratic version has "Each house shall be the judge of the election, returns, and eligibility of its own members."

Due to the discrepancies which exist, it is possible, though hardly probable, that the question will some day arise as to which of the two originals gives the correct version of a particular section. The question as to which of the two wings of the convention was the true constitutional convention has never been decided, and will hardly arise since both conventions did, to a certain extent, recognize each other's existence, and there was an honest endeavor at the end to agree upon the same constitution.[48] The fact that one version is signed by fifty-one Democratic delegates and the other by fifty-three Republican delegates (a minority in each case) certainly cannot make one of these versions more valid than the other. Both conventions thought that they were adopting the same instrument, the people in voting for the constitution cast their ballots "For Constitution" or "Against Constitution," not for one or the other version of that document, and Congress in admitting the state assumed that the two original versions of the constitution were identical, i. e., that Minnesota was proposing to be admitted under but one constitution. Such discrepancies as there are must, therefore, if the need ever arises, be considered on their merits, but how the courts will decide which of the two versions is to be accepted the writer will not venture to say. The debates of the two wings of the convention may be referred to but they will not be of much assistance. The compromise constitution was, when all is said, drawn up by the conference committee, and this committee kept no minutes, much less any record of its debates. A Republican delegate put the truth very well when the proposal was made to spend some thousands of dollars to print the convention debates. He said:

"I understand that this report which we have agreed to, and which is the constitution itself, was got up by the committee of conference appointed by the two bodies, and not by the Conventions themselves. We may have discussed articles similar to

[48]In the case of Goodrich v. Moore, (1858) 2 Minn. 61 (Gil. 49), involving the right of the Republican wing of the convention to let out its printing to a printer other than the official territorial printer, the question of the legality of the Republican wing to act as a constitutional convention was apparently not questioned.

them, but to say that our debates have any reference to this constitution, seems to me to be erroneous."[49]

It is nevertheless true that the state supreme court has on several occasions referred to the debates, but at least one chief justice has pointed out that they are of no value in explaining the constitution.[50]

6. The Amendments to the Constitution

The present constitution of Iowa, adopted in the same year as the Minnesota constitution, has been amended six times up to date. The constitution of Minnesota in the same period has been amended fifty-nine times.[51] The framers would have difficulty recognizing it as the same document. Article 9, entitled "finances of the state and banks and banking" has been amended sixteen times; article 4, relating to "the legislative department," has been amended twelve times; article 8, "school funds, education and science," nine times, and so on.

If Minnesota has, as she seems to have, the amendment habit, it arose probably out of the fact that the original amending process was simple to operate. Undoubtedly, too, when the Republicans gained control of the state government in 1860 they were not averse to making some changes in the fundamental law simply for the purpose of undoing some of the work of the Democrats, for they had been told from 1857 forward that the constitution was principally of Democratic origin. Of the sixty-six amendments proposed from 1858 to 1898, inclusive, under the simple process of amendment then in force, forty-eight were adopted and eighteen rejected. But many persons came to think, toward the end of this period, that the amending process was entirely too easy, and the proposal was made in 1897 to require a majority of all voters voting at a general election to vote favorably to bring about the adoption of an amendment. The amendment was itself voted upon in 1898, and it carried by a vote of

[49]Repub. debates, p. 583.

[50]Chief Justice Emmett, a former member of the Democratic wing of the constitutional convention, most clearly asserted the value of the debates as explaining the constitution. Crowell v. Lambert, (1864) 9 Minn. 283 (Gil. 276). Chief Justice Wilson, who had been a member of the Republican wing of the convention, took the opposite view. Taylor v. Taylor, (1865) 10 Minn. 107 (Gil. 81). See also Minnesota and Pacific Railroad Company v. Sibley, (1858) 2 Minn. 13 (Gil. 1); State v. Bishop Seabury Mission, (1903) 90 Minn. 92, 95 N. W. 882; State ex rel. Olson v. Scott, (1908) 105 Minn. 513, 117 N. W. 845.

[51]See the complete text of the constitution, with all past and present provisions, in the History of the Constitution of Minnesota, cited above, pp. 207-69, and also the table, pp. 278-85.

69,760 to 32,881, in a total vote of 251,250. The result of this change in the amending process can be shown statistically. In the elections from 1900 to 1920, inclusive, forty-eight amendments have been proposed, and every one has been given the approval of a majority of the voters voting upon the proposition. Nevertheless only eleven out of the forty-eight have received the constitutional majority, namely a majority of all voters voting at the election; the other thirty-seven proposed amendments have, therefore, been declared defeated. From 1858 to 1898, inclusive, seventy-three per cent of the amendments proposed were adopted, and twenty-seven per cent rejected. From 1900 to 1920, inclusive, these figures have been almost reversed, for only twenty-three per cent have been adopted and seventy-seven per cent have been rejected.

7. The Constitution Today

As on looks over the constitution of the state today, he is impressed by the fact that there are many provisions still printed in it which either are not being enforced, many of which in the nature of things simply cannot be enforced, or else are obsolete. It may not be out of place to call attention to some of this dead timber, though it would be tedious to mention all. Article 4, sec. 20, provides that all bills shall be read twice at length in each house before being passed. In a day when all important bills are printed the reading is usually quite unnecessary, and indeed, considering the number of bills introduced and passed, it is quite impossible. The system of reading the title and a bit of the first or last section is certainly an adequate compliance with the needs of the legislators, but it is not what the constitution requires. Article 4, sec. 23, says that the legislature "shall" provide for a decennial census, beginning with the year 1865. There was no state census in 1915 and there is not likely to be one in 1925, and one may add, good riddance! Section 24 of the same article seems to provide for a system of overlapping terms for senators, but in practice all the senators are elected at one time for four year terms. Section 26, as to the election of United States senators by the legislature is obsolete. The word "male" in article 7, sec. 1, and all of sec. 8 of the same article are obsolete since the adoption of the federal woman suffrage amendment. Article 9, sec. 11, as to the publication of the treasurer's annual statement with the general laws, has fallen into disuse. Section 13 of the

same article, relating to banks of issue, is practically a dead letter, since the state laws no longer provide for banks of issue. In article 10, sec. 2, which reads: "No corporation shall be formed under special acts except for municipal purposes," the last four words have been superseded by article 4, sec. 33, relating to special legislation, and so too has much of article 11, sec. 1, relating to the establishment of counties. But this is enough of these details.

Certain other provisions of the constitution, the writer will make so bold as to say, are not working out as the framers may have expected. As the result of a long line of decisions sustaining the power of the legislature to classify the subjects of legislation, the prohibition of special legislation in sec. 33 of article 4 has been rendered almost nugatory.[52] Article 6, sec. 2, limits the number of associate justices of the supreme court to four, but in fact the office of commissioner has been created, and today, while the voters do not elect them, there are two commissioners who do most of the work of associate justices but who do not have a vote on decisions. After the voters had refused to amend the constitution to increase the number of associate justices there seemed to be no other way to relieve the members of the court of an undue pressure of work. Since the decisions of the supreme court in the cases involving the issue of certificates of indebtedness for building the capitol and prison, and for paying the 1919 soldiers' bonuses, the average person may well be pardoned if he expresses a doubt as to whether the constitutional debt limitation laid down in article 9, sections 5 and 7, really means anything at all.[53] Again it becomes undesirable to continue the heaping-up of details.

The constitution of Minnesota was drawn up and adopted over sixty years ago with very little study by frontiersmen strongly under the influence of the tenets of Jacksonian democracy. It was a typical western constitution in its day, and while it has been frequently changed by amendment the fundamental provisions relating to the organization of the government and the rights of the individual have not been changed. Many of the provisions of this fundamental law are now obsolete, or have

[52]Cf. Dunnell, Minnesota Digest, 1910, vol. 1, secs. 1676-1694, and cases there cited.

[53]Fleckten v. Lamberton, (1897) 69 Minn. 187, 72 N. W. 65; Brown v. Ringdahl, (1909) 109 Minn. 6, 122 N. W. 469; Gustafson v. Rhinow, (1920) 144 Minn. 415, 175 N. W. 903.

ceased to have any real effect. It is a question whether it is good constitutional morality to continue to make shifts to keep within the letter of the law when we know as a matter of fact that it is impossible to live up to the spirit of much of what is written.

This thought raises the question as to whether there is need of a new constitutional convention in the near future in Minnesota. The matter has often been discussed, and there have been several official proposals for a convention without results. In 1896 the question got so far as to be submitted to a vote of the people, but it was found then that it is very difficult to get a majority of the people voting at the election to approve such a convention.[54] The total vote at the election was 343,319; the number of votes necessary to approve the holding of the convention was 171,660; and there were only 96,308 affirmative as against 70,568 negative votes on the convention proposal. The initial obstacle to holding a convention is, therefore, a very serious one.

The question of policy must also be considered. Is there a real need for a new convention? Is there any popular demand? The constitution is still a workable instrument. Whenever it becomes seriously unworkable we have the amending process to fall back upon, and while that process is a difficult one today it is not an absolute bar to amendments. Nevertheless, it should be said that the amending process will never suffice to give the constitution that thorough overhauling which it should some day receive, not only to remove from its text the various obsolete and unworkable provisions but also to clear up the meaning of the entire document. This need alone will not justify the holding of a constitutional convention, but if the time ever comes when the people demand a change in some important branch of the government or in the provisions relating to finances or to local government, for example, then it might be well to have a convention to go over the entire constitution. There is, of course, some danger that a convention will unduly lengthen the constitution by writing in various innovations, but on the whole this danger exists rather in timid minds than in fact. Many of the great states have held constitutional conventions in recent years without any bad results.

When Minnesota does decide some day to have a constitutional convention, there should be careful preparation in advance

[54]Minn. Laws 1895, ch. 1.

for its work. In New York (1915), Massachusetts (1917-1919), and Illinois (1920), the work of the conventions was preceded by the appointment of special commissions which gathered and published for the use of the conventions a wealth of information upon special constitutional subjects. The state of Pennsylvania is just now trying out another plan. A commission of citizens, appointed by the governor under an act of the legislature, has met from time to time for the better part of a year, going over the entire constitution with expert assistance, finding out where the constitution seems to need amendment and proposing new provisions for filling gaps or strengthening weak places. This commission has reported back its findings to the governor and legislature who are now in a better position to consider the advisability of a constitutional convention. The Pennsylvania plan seems to have many merits not possessed by the plans of other states, and may well be studied by Minnesotans with a view to its adoption here.