CONSTITUTIONS AND CONSTITUTIONAL CONVENTIONS IN MISSOURI

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BY ISIDOR LOEB.

Missouri has had five Constitutional Conventions but only three Constitutions have existed in the history of the State. The first of these was adopted by the Convention of 1820 and continued to operate until 1865. In 1845 a Constitutional Convention submitted a Constitution which was rejected by the voters. In 1861 a Convention was called for the primary purpose of determining the attitude of Missouri regarding the Union. After deciding by a practically unanimous vote against secession, the Convention adjourned instead of disbanding. It held four other sessions during 1861 and the two succeeding years and practically carried on a provisional government. While it adopted a number of constitutional amendments, the Convention did not undertake to make any general revision of the fundamental law of the State. In 1864 the voters approved the plan of calling a Constitutional Convention, which met in 1865 and drafted a Constitution which was adopted by the voters. This Constitution remained in effect until it was superseded by the present Constitution which was adopted in 1875.

While this article is primarily concerned with the Constitutional Convention of 1875 and the conditions which influenced its action, it will be desirable to consider briefly the preceding Constitutional Conventions which drafted Constitutions and to point out some of the more important features of these instruments. Many provisions of the existing Constitution had their origin in the earlier documents.

CONSTITUTIONAL CONVENTION OF 1820.

Missouri's admission into the Union was delayed by the contest over the question of slavery extension, but finally an

Act of Congress approved March 6, 1820, authorized a Convention for the purpose of forming a Constitution and State government. This Convention, which consisted of forty-one delegates chosen from the fifteen counties in accordance with the apportionment prescribed in the congressional act, met in St. Louis on June 12, 1820, and completed its work in a little more than five weeks, adjourning on July 19th. The Constitution was adopted by a vote of forty to one. The Act of Congress did not require the submission of the Constitution to the voters and the Convention assumed that its adoption of the Constitution marked the establishment of the new State.[1] It made provision for an election for State officers to be held on August 28, 1820, and for the inauguration of the new government on September 18, 1820.[2]

While the machinery of State government was put into operation as provided by the Constitution, the State's Senators and Representative in Congress were not permitted to take their seats because of objection to a clause of the twenty-sixth section of the third article which required the Legislature to pass laws to prevent free negroes from coming into the State. After a contest extending over a period of three months, the controversy was settled by the Second Missouri Compromise on March 2, 1821. This resolution of Congress required the passage of a "solemn public act" by the Missouri Legislature agreeing that the clause in dispute should never be made the basis of any law by which any citizen of any state shall be excluded from any privileges to which he is entitled under the Constitution of the United States. The General Assembly of Missouri passed this act which was approved by the Governor on June 26, 1821. A copy of the act was sent to President Monroe and thereupon in pursuance of the congressional resolution the latter on August 10, 1821, issued his proclamation setting forth the facts and stating that "the admission of the said State of Missouri into this Union is declared to be complete."

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[1]Constitution, 1820, Schedule, Sec. 1.
[2]Ibid., Sec. 9, 10.

The Constitution of 1820 consisted of thirteen articles dealing with the boundaries, distribution of powers, legislative power, executive power, judicial power, education, internal improvement, banks, militia, miscellaneous provisions, permanent seat of government, mode of amending the Constitution and declaration of rights, in addition to a schedule containing temporary provisions for facilitating the transfer from Territorial to State government. The articles relating to education and internal improvement were brief and largely confined to a mandate for the encouragement of such matters by the Legislature. The article dealing with banks restricted the Legislature to the incorporation of one bank with not exceeding five branches and a maximum capital stock of five millions of dollars of which at least one-half must be reserved for the State. The militia article was likewise brief, providing merely the manner of choosing officers, while the provisions regarding the permanent seat of government left the General Assembly chief power of determining this question.

The legislative article was largely confined to provisions regulating composition, organization and procedure. The bicameral system was established and the principle of apportionment according to free white male population was adopted for each house, except that each county was to have at least one member in the House of Representatives. The membership of this House was not to exceed one hundred while that of the Senate was not to be less than fourteen nor more than thirty-three. Only a few sections contained positive restrictions upon legislative power and these related almost exclusively to some feature of the institution of slavery.[1] While the declaration of rights contained the usual limitations upon civil and criminal procedure, the Constitution did not contain the numerous restrictions upon legislative power which have appeared in the later documents. As a result the Constitution of 1820 was a relatively brief instrument, containing not exceeding 10,000 words.

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[1]Constitution 1820, Art. III, Sec. 26-28.

In addition to the Legislature the Constitution provided for the Executive and Judicial Departments which, in accordance with the principle of distribution of powers set forth in Article II, were to be distinct from and independent of each other as well as of the Legislative Department. The Constitution was one of the earliest to provide a four-year term for the Governor, who, however, was made ineligible to succeed himself. The Governor and Lieutenant-Governor were the only executive officials chosen by popular election. All of the other officials of the Executive Department provided for by the Constitution were appointed by the Governor except the treasurer who was chosen by a joint session of the two houses of the Legislature.[4] The Governor likewise appointed all judges, who held office during good behavior, but his appointment of these and of the principal executive officers required the consent of the Senate.[5] The Governor was also given a limited veto power but this could be overcome by an absolute majority in each house of the General Assembly.[6]

Suffrage and elections were not as yet considered of sufficient importance to deserve a separate article. Universal suffrage was provided for all free white adult male citizens of the United States, except members of the regular army or navy of the United States,[7] but occasion for the exercise of this suffrage was limited. The only elective State officials were members of the Legislature and the Governor and Lieutenant-Governor. The whole field of local government was left to legislative regulation, except that the Constitution provided for a sheriff and coroner in each county and these were to be chosen by popular election until otherwise provided by the General Assembly.[8]

Even in the matter of amending the Constitution there was no provision for popular referendum, amendments

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[4]Constitution, 1820, Art. III, Sec. 31; Art. IV, Sec. 12, 21; Art. V., Sec. 18; Art. IX, Sec. 3.
[5]Constitution, 1820, Art. V. Sec. 13.
[6]Constitution, 1820, Art. IV, Sec. 10, 11.
[7]Constitution, 1820, Art. III, Sec. 10.
[8]Constitution, 1820, Art. IV, Sec. 23.

being proposed by a two-thirds vote of each house of the Legislature and requiring for ratification a similar vote at the first session of the next succeeding General Assembly. No provision was made for a general revision of the Constitution.[9]

The Constitution of 1820 was typical of the period of its creation, occupying a somewhat advanced position in the matter of long terms for members of the Legislature (two and four years) and executive officials (four years, except Treasurer, two years) and of biennial instead of annual elections and sessions of the Legislature. The democratic movement had barely commenced and it did not appreciably affect the Constitution. The chief influence came, naturally from existing state constitutions and of these the most influential were those of Alabama (1819), Illinois (1818), Kentucky (1799), and Maine (1819), all of these except one falling in the group of most recently adopted constitutions.[10]

Constitutional Convention of 1845.

Before the meeting of the Constitutional Convention of 1845, two series of amendments to the Constitution of 1820 had been adopted by the Legislature. The first group originally included ten sections proposed in less than one year after the adoption of the Constitution and seven of the sections were ratified in 1822.[11] Most of the amendments were intended to change those sections of the Constitution which provided a minimum salary of $2,000 for the Governor, Chancellor and Judges of the Supreme and circuit courts. These sections had been the subject of repeated opposition in the Constitutional Convention.[12] As amended the Legislature was left free to fix the compensation of these officials. Other amendments abolished the office of Chancellor but left the General Assembly power to establish a court or courts of chancery. United States officials who

[9]Constitution, 1820, Art. XII.
[10]Shoemaker, *Missouri's Struggle for Statehood*, p. 250.
[11]Revised Statutes, 1825, Vol. I, pp. 65-67.
[12]Journal, Convention 1820, pp. 20, 21, 23, 24, 40.

were already ineligible to election as members of the General Assembly[13] were by one of these amendments disqualified to hold any office of profit under the State of Missouri.

The amendments as originally proposed by the Legislature in 1821 included sections transferring the power of appointing judges and the Auditor, Secretary of State and Attorney-General from the Governor to houses of the Legislature in joint session,[14] but these failed of ratification by the subsequent General Assembly. Notwithstanding this fact, one of the amendments proposed in 1821, which provided that the offices of the judges of the Supreme and circuit courts should expire at the end of the first session of the next General Assembly or as soon as their successors should be elected and qualified, was ratified in 1822.

The second group of amendments as proposed in 1833 was chiefly concerned with changes in the tenure and terms of judges and clerks of courts.[15] It was proposed to take the power of appointment from the Governor and, in the case of the clerks, from the courts, and to abolish the prov i sion under which all of such officials held office during good behavior. The Supreme Court Judges were to be elected by a joint session of the General Assembly while the circuit judges and the clerks of the county and circuit courts were to be elected by the voters of the circuits and counties respectively. All of these officials were to hold office for terms of six years. The offices of existing judges and clerks were to be vacated and provision was made for the electio of their successors. When these amendments were submitted to the Eighth General Assembly, all were rejected except those relating to clerks of the county and circuit courts and the vacation of the offices of existing circuit judges.[16] It was contended by a circuit judge that inasmuch as the section for vacating the offices of circuit judges had

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[13]Constitution, 1820, Art. III, Sec. II.
[14]Laws, 1821, p. 38.
[15]Laws of Missouri, 1832-33, pp. 3, 4.
[16]Revised Statutes, 1835, Vol. I, pp. 34, 35. Amendments which had been proposed in 1833 for changes in the northwestern and northeastern boundaries of the State were ratified in 1834.