

FIVE BOOK REVIEWS

of

A HISTORY OF THE CONSTITUTION OF MINNESOTA.

**By William Anderson in collaboration with Albert J. Lobb.
Research Publications of the University of Minnesota.
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Robert E. Cushman

5 *Minnesota Law Review* 490-492 (1920-1921).

Fifty years ago, in urging students of the law to read Blackstone, Judge Cooley emphasized the magnitude of the debt which every good lawyer owes to the historian. "The thoughtful student . . . soon perceives that the field of legal knowledge is too vast and diversified to be understood from a superficial survey of its principal objects and features, and that it must be carefully explored through all its mazes and intricacies, and with the aid of men who, having studied the law with an intimate knowledge of the habits and customs of the people over whom it was established, were prepared to say why this rule was prescribed, and how and under what circumstances that custom sprung up." If this is sound advice for students of the law of property and torts it is equally sound advice for the constitutional lawyer whose duty it is under our American written constitutions to discover how to construe words, phrases and clauses, which were presumably put into our fundamental law to accomplish a definite purpose and to embody a definite meaning.

Any study which throws light upon the origin, history and development of our state constitution is, therefore, of immediate interest and value to every Minnesota lawyer as well as to every

person who desires to follow with intelligence the public affairs of this state. It is such a study which Professor Anderson has presented.

This volume is not a discussion of the way in which the various provisions of the Minnesota Constitution have worked in practice, nor is it a digest of the decisions of the courts upon questions of state constitutional law. It is rather, as the author explains in his preface, "a history of a public document, the written constitution of Minnesota." About one-third of the two hundred pages of text are devoted to a survey of the constitutional history of Minnesota as a part of the Northwest Territory, and as an organized territory, and of the various efforts to gain statehood. A second third of the book presents the story of the election and organization of the constitutional convention, the famous split between the Republican and Democrat contingents, resulting in the establishment and continuance of two separate and competing conventions and the efforts which finally resulted in a single compromise constitution. The nature of this compromise document is analyzed in an effort to determine which of the two hostile groups exerted the greater influence in its formulation, and a chapter is then devoted to the actual admission of Minnesota into the Union. The remainder of the book is devoted to a discussion of the processes by which the Minnesota constitution may be amended or revised and a short discussion of the numerous amendments which have been adopted since 1857.

Only a few of the many striking facts which will impress the reader's mind can be mentioned. It is interesting to learn that the constitution of Minnesota was not actually drafted by the two competing conventions but rather by a conference committee of the two bodies, a committee which seemed to entertain rather astonishing views of the scope of its power. Either by inadvertance or design several provisions which had been approved in substance by each convention were eliminated from the compromise draft. Examples of this are to be found in the omission from the bill of rights of any guarantee of freedom of assembly and the failure to place any limitations upon the terms of office of the members of the state legislature. Apparently the report of the conference committee

was not scrutinized with sufficient care to detect these important repudiations of the expressed will of both conventions. One is also struck with the fact that there is no single authentic text of the present constitution of this state. Each wing of the divided convention insisted upon signing its own copy. These copies had to be made by hand with the result that there are over three hundred minor differences between the two documents. No court has ever been asked to face the impossible task of deciding which of these is the true constitution.

Great interest attaches to the process of amendment provided for in the new state constitution, a process which the author declares to be the easiest form of amendment ever employed in this country. Professor Anderson discusses the question whether our present amending process is not too difficult in its requirement that any proposed amendment shall receive a majority of all the votes cast at the general election at which it is submitted to the people. He presents for consideration the proposal that a majority of those voting on any proposed amendment should be sufficient to pass it provided such a majority is not less than forty per cent of the vote cast in the election.

It is certainly no serious criticism of this exhaustive and scholarly work that the reader's curiosity is not gratified upon every conceivable point. There might perhaps have been incorporated some brief allusion to and explanation of the fact that the provisions relating to constitutional conventions in Minnesota have never required that the constitutional changes adopted by such conventions must be ratified by the people. A new constitution could be promulgated by such a convention without popular approval. One wonders also whether it was by accident or design that the lieutenant governor of the state was not made subject along with other officers to the impeachment process.

The grace and vigor of the author's style give the lie to any impression of heaviness created by the gloomy thesis-like exterior of the book. It is an interesting story told in a vivid and interesting way. The reader is aided by an analytical table of contents, a thorough index and a discriminating bibliography. In an appendix

appears what Professor Anderson regards as the most nearly accurate text of the Minnesota constitution in existence and other valuable data is also included. It is to be hoped that studies such as this may in time be made in very state.

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George M. Stephenson

8 *Mississippi Valley Historical Review* 186-188
(June-September, 1921)

The spirited style and careful workmanship of this volume would indicate that the author thoroughly appreciated the humor and enjoyed the novelty of writing the history of a constitution of which there are two originals, each in eight distinct handwritings, differing widely in punctuation and capitalization, and enrolled in one night after two rival conventions and a conference committee had spent weeks in partisan bickering and political chicanery. Mr. Anderson makes it entirely clear why Minnesota is probably the only state in the union in the predicament of having a constitution with two original versions of equal validity, "no court having as yet decided which document shall be referred to." The author is entitled to the distinction of exploring a field of historical research which may result in important changes in writing the history of the United States. In the past historians have relied mainly upon congressional proceedings and documents more or less national in character. Mr. Anderson's book is a powerful reminder that the history of the United States is the history of commonwealths as well as of sections, classes and interests.

The historian's interest in the volume centers largely in the pages devoted to an illuminating discussion of the historical setting of the movement for statehood. The constitution of Minnesota was framed and adopted when two great issues were agitating the public mind: slavery and know-nothingism. When the constitutional convention met, party feeling over the extension of slavery was at white heat and certain individuals were bringing into play every device known to the political game to cover up their tracks lest it be discovered that they led to the inmost recesses of a know-nothing lodge — a most unfortunate revelation in a state harboring a considerable number of German, Irish, and Scandinavian immigrants. A searching examination of the newspaper files of territorial days reveals the intense feeling between the democrats and the radical, libertarian republicans who were not wedded to the existing order of things. In Minnesota, as in every state and territory where the political power of the foreign born had to be reckoned with, the republicans were the targets for democratic sneers about abolitionists, know-nothings, prohibitionists, revolutionists, and disunionists. The Swedes in the large Chisago county settlement voted solidly republican in the election of delegates to the constitutional convention, the Maine law and other radical proposals of the militant republicans having no terrors for them. The Germans, on the other hand, were not ready to sacrifice the pleasures of the tavern by sending republican know-nothings and prohibitionists to frame the state constitution. Likewise republican oratory was wasted on the Irish. A study of the available material has resulted in the presentation of interesting tentative deductions relative to the nativity, occupations, and political experience of the members of the two conventions. A study of similar material in other states would no doubt throw strong light on this interesting phase of party history.

The human, geographical, economic, and political elements in the constitutional development of the state stand out boldly. Beginning

with a chapter on the preterritorial period, in which the complicated question of boundaries is considered at some length, the constitutional history of the state is traced from the organization of the territory, when the population of the capital numbered less than one thousand, down to the present time.

The chapter on the preliminaries of statehood is a lucid account of the forces which accelerated the movement for statehood (1) the willingness of members of congress who received scanty political returns on the constantly increasing appropriations for the benefit of the politically impotent residents of the western territories; (2) the heavy immigration and material progress in the territory following hard upon the opening of the Chicago and Rock Island railroad; (3) the conflict between the agricultural, mining, and lumbering interests; (4) the contest over the division of the state and the location of the capital, which assumed the character of a struggle between the "Moccasin Democracy" in the St. Paul region and the "Black Republicanism" of the inhabitants in the southern part of the state; and (5) the urgent need of railroads and the prospects of a congressional land grant. The election of members to the convention, the organization of the convention, the proceedings of the rival bodies and of the conference committee, and the results of their deliberations have been skillfully reported, mainly from the two substantial volumes of debates and proceedings, newspapers, and session laws.

In preparing the verified text of the constitution the author was put to endless pains in comparing the two originals, standardizing capitalization and punctuation, and preparing a table showing the differences between the versions and including every provision "which at any time has been or which now is a part of the constitution."

The value of the volume is further enhanced by a table of proposed amendments, a classified bibliography, and an excellent index. A

series of maps illustrates the evolution of boundaries, rival plans for statehood, and the results of the election of delegates. Almost every page has taxed the judgment and historical honesty of the writer, who had to tread warily through a maze of material — some of it highly controversial — consisting of newspapers, court decisions, statutes, the Congressional globe, the debates and proceedings of the conventions, manuscripts, and statistics. The lack of documents has left some interesting questions unanswered, and to the credit of the author it must be said that he is cautious in his conclusions.

George M. Stephenson

Walter F. Dodd

27 American Historical Review 367-368 (January 1922).

**A History of the Constitution of Minnesota,
with the first verified Text.**

**By William Anderson, Ph.D., Assistant Professor of Political
Science, in collaboration with Albert J. Lobb, Ph.B., LL.B.,
Comptroller of the University.**

**Journal, Missouri Constitutional Convention of 1875, with an
Historical Introduction by Isidor Loeb, Ph.D., LL.B.,
and a Biographical Account by Floyd C. Shoemaker, A.M.
In two volumes. (Columbia, State Historical Society, 1920,
pp. 509, 515-954.)**

Professor Anderson has prepared a clear and scholarly history of the constitution of Minnesota. Minnesota is the one state having

experience with a bicameral constitutional convention. Democratic and Republican members elected to frame the constitution of 1857 met separately in two conventions, but finally united upon a single document for submission to the people. The full account of the relationships of these two bodies is of great interest and value. One criticism of this book is that it confines itself too closely to the textual history of the constitution, once that instrument was framed. The author does not altogether neglect other factors, and makes frequent reference to judicial decisions, but his chapter on amendments to the constitution would have been more interesting to the reviewer had it commented upon the experience of Minnesota with five-sixths verdicts in civil cases (p. 157), and with the plan of expressly subjecting the enactment of special laws to judicial control (p. 170). In his comments upon "due process of law" the author does not seem to have in mind the broad judicial construction of that constitutional guarantee (p. 160).

One defect, perhaps to some extent necessary in a work upon the constitutional history of a single state, is that the author does not bring out sharply the more important tendencies of constitutional development in Minnesota and their relationship to developments throughout the country since 1857. What the author gives us is good, but more of comparative discussion would have been helpful.

Students of state constitutional history will be pleased with the publication of the *Journal* of the Missouri Constitutional Convention of 1875. This is one of the important conventions for which neither journals nor debates were previously available. As published, the *Journal* makes an attractive appearance. The biographical account preceding the text will naturally be of interest chiefly to residents of Missouri; but students of state constitutional history throughout the country will welcome the clear though brief introduction by Professor Loeb on Constitutions and Constitutional Conventions in Missouri.

Publications such as the two here under review will serve as material aids to the preparation of a comprehensive history of state constitutional development. Such a history, when written, must take full account not only of the forces which determine what constitutions shall contain, but also of those which determine how they shall operate and be construed.

Walter F. Dodd.

John D. Hicks

4 *Minnesota History Bulletin* 41-44 (February-May 1921)

One who has never attempted a critical study of the origin and development of an American state constitution can scarcely appreciate the difficulties which have confronted Professor Anderson in the preparation of this monograph. To explain "when and how the original constitution" of any state "was drawn up and adopted, how it happened to include this and that original provision, and what amendments have been introduced into its text and for what reasons" may be, as the author in this instance modestly asserts, a "limited" task, but it must none the less involve months, and even years, of painstaking labor.

A careful reading of this *History of the Constitution of Minnesota* proves conclusively that the author has exercised all due diligence in its preparation. For example, in order to answer adequately the question, When was the constitution adopted?, he presents three chapters of hand-picked territorial history. Two more are devoted to How?, which, in the case of Minnesota, means the narration of a dramatic story of partisan politics — of a battle so bitter that it

resulted in two conventions, one composed of Republicans and one composed of Democrats. Each drew up a constitution, and finally a compromise committee reconciled all differences. Obviously, to separate truth from the noisy fulminations of such a conflict requires the exercise of all the finest arts of the historian.

Probably chapter 6 tackles the most baffling question of all: Why was this and that original provision included? The word "original" might well be italicized. The writer of this review knows what it means to build up an elaborate theory to explain the origin of some provision apparently new, only to discover later that some versatile delegate had learned how to paraphrase Magna Charta or the Northwest Ordinance in an unusual way. He knows also what it means to find that a trite and oft-copied phrase had for some reason secured a new and startling significance. The author wisely saves himself much labor by refusing "to prepare a statement of the sources from which the various provisions of the original Minnesota constitution were drawn," but his footnote on page 131 is an adequate apology for this omission, if, indeed, an apology is needed. Many provisions which find their way into nearly all our American state constitutions are only slightly varied expressions of a common political heritage; some are even anachronisms, belonging to a remote past and of little or no present significance. It may be that the work of tracing every provision back to its original source" with Teutonic thoroughness "would have unearthed" some stray bits of valuable information," but we doubt it. Laborious enough, and far more useful, is the author's careful analysis in this chapter of the materials turned over to the conference committee by the two conventions — materials from which the constitution was finally drafted. His careful, running commentary on the whole document will be useful, no doubt, as he hopes, to "lawyers, judges, legislators, and public officials generally," as well as to political scientists and historians.

The later chapters have to do with the development of the constitution since the original document was adopted. Here the author has been aided greatly by the work of his colleague, Mr. Lobb, who, according to the original plan, was to have written this part of the book. Other duties, however, prevented, and it devolved upon

Professor Anderson to prepare the entire manuscript. The growth of the constitution by textual amendment receives elaborate and complete treatment, and some attention is given also to changes by judicial interpretation and by other means "more subtle and less tangible" (p. 144). It is obvious that the constitution adopted over seventy years ago is not the constitution. But such is not the case with the fundamental law amended no less than fifty-nine times, the courts have stretched it abundantly to fit new situations, and the gradual changes in customs and traditions have added further transformations. While the author does not claim to have made an exhaustive study of those changes which have come about otherwise than through direct amendment, he has really included a surprising amount of information along this line.

A corrected text of the constitution of Minnesota, which appears as an appendix, is one of the most commendable parts of this volume. Ordinarily it would not be a difficult task to produce from the original copy an authentic version of a state constitution. But such is not the case with the fundamental law of Minnesota, for here the editor must deal with two originals. Furthermore, "it appears from a study of the two documents that the work of copying was divided among a number of men. There are eight distinct handwritings in the document signed by the Democrats. Unfortunately some of the copyists were possessed of little skill in writing and were lacking in knowledge of spelling or punctuation or both. It is evident also that no careful comparison of the two resulting documents was made" (p. 109).

The rules of editing which Professor Anderson has laid down in his endeavor to prepare the most authentic text possible under the circumstances are dictated by common sense, and apparently they have been rigorously adhered to. Instead of following the mistakes of sleepy copyists he has adopted the most commonly accepted spelling of today. He has systematized capitalization, and, with regard to differences between the two versions in punctuation and phraseology, he has exercised his best judgment in choosing to follow the one or the other. The demands of the meticulous are met by a table showing the differences between the Republican and Democratic originals (pp. 270-275), but the average student will be

only too glad to accept the editor's opinion without further investigation. A unique feature is the inclusion, with proper identification, of "every provision which at any time has been or which now is a part of the constitution." Those who have labored with the bewildering uncertainties of Thorpe's *Federal and State Constitutions* will know how to appreciate this improvement. It is to be hoped that the writers of textbooks on Minnesota civics and the compilers of state documents will uniformly accept this version.

Other appendixes give the names of the signers of the constitution; a table of proposed amendments with votes upon the same; the Northwest Ordinance, 1787 — not a particularly rare document; the organic act, 1849; the enabling act, 1857; the territorial act providing for the expenses of the convention, 1857; and the act of admission to the Union, 1858. There is a comprehensive bibliography and an unusually complete index. In the earlier part of the volume space is given to several useful maps, and throughout the text proper the multitudinous footnotes attest the scholarly character of the work.

John D. Hicks

19 *Iowa Journal of History and Politics* 459 (1921)

This volume is issued as number fifteen in the *Studies in the Social Sciences*. It is a comprehensive study of the constitutional history of Minnesota and, indeed, contains much information on other phases of State history. Chapter one presents the pre-Territorial period and relates largely to boundaries. The second chapter describes the period of the Territory, including the Organic Act and Territorial politics. The preliminary steps toward Statehood are considered in the third chapter. Four chapters are devoted to the constitutional convention, and the drafting and adoption of the constitution. Chapter eight traces the development of the con-

stitution since its adoption, and the ninth and last chapter gives the history of the various amendments. In the appendix is the text of the constitution, a table of proposed amendments, and various acts relating to the organization and admission of Minnesota. Footnotes, a bibliography, and an index add to the usefulness of the volume which is a valuable contribution to students of political and constitutional history. It is of interest to Iowans because of the close relation between the histories of the two Commonwealths.

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