A LEGISLATIVE HISTORY OF THE OREGON
CONSTITUTION OF 1857–PART II (FRAME OF
GOVERNMENT: ARTICLES III-VII)

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INTRODUCTION

1. State Governments in the Nineteenth Century

At the beginning of the nineteenth century in the United States, the legislative branch was the predominant branch of state government.1 State constitutions imposed few limitations, substantive or procedural, on the power of the legislative branch.2 In many states,
the legislature selected both judges and the governor.\(^3\) Governors had few powers (in particular, lacking a power to veto legislation).\(^4\)

By the middle of the nineteenth century, much of this had changed.\(^5\) The executive branch had been strengthened by the legitimacy that came from election of executive branch officers by the people\(^6\) and by the acquisition of a veto power by the governor.\(^7\) Increasingly, the judiciary was no longer appointed but was elected.\(^8\) Last, the legislative branch’s powers had been circumscribed by substantive and procedural constraints.\(^9\)

Several factors combined to produce these changes. Jacksonian democracy led to a broader franchise and to popular election of many more officeholders.\(^10\) Experience with legislative excesses led to a desire to trim legislative powers:

The persistent theme of the limitations written into state constitutions after the 1840s was the desire to curb special privilege. The trend began with general or detailed prohibitions on the enactment of “special” and “local” legislation. The related fear, that special favors would be sought under cover, was expressed in requirements that every bill bear a title clearly stating its subject matter, and that every bill deal with but one subject. The same fear was behind insistence upon many requirements, hopefully designed to insure full publicity and open deliberation of the merits of legislation, through three readings, reference to committee, recording of the yeas and nays, and the like.

Real, if naïve, public protest spoke through such provisions; its stimulus was in revealed fraud and corruption in public-land dealings and in the getting and granting of franchises, subsidies, and rate privileges for turnpikes, canals, river improvements, toll bridges, and, of course, especially railroads and street railways.

\(^3\) Id. at 122.


\(^7\) See generally John A. Fairlie, The Veto Power of the State Governor, 11 AM. POL. SCI. REV. 473 (1917).


So also between 1840 and 1880 banking was singled out, either as a wholly prohibited subject of legislation, or at least as one on which there must be no “special laws.”

Given the common practice of borrowing ideas and constitutional provisions from other states, innovations in one state were likely to be adopted by others.

The delegates to the Oregon Constitutional Convention were familiar with developments in other states. One delegate, Paul Brattain, had been a delegate at the Iowa Constitutional Convention of 1844. Matthew Deady, President of Oregon’s Constitutional Convention, received a copy of the proceedings of the New York constitutional conventions of 1826 and 1841 from O.C. Pratt, his former colleague on the territorial supreme court. La Fayette Grover owned a recently published copy of a compilation of state constitutions and apparently used it during the Oregon Constitutional Convention. At least two more delegates, Delazon Smith and William Packwood, likely also possessed such compilations.

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11. Hurst, supra note 1, at 241-42. See also A. James Heins, Constitutional Restrictions Against State Debts 4-10 (1963); Hurst, supra note 9, at 84-87.

12. The election of judges provides a striking example of this interstate borrowing: “[A]fter Iowa and New York in 1846 made all judges elective, eleven other states also did so (in whole or in part) over the next four years, and nine more did so in the succeeding decade.” G. Alan Tarr, Understanding State Constitutions 52 (1998).


number of delegates, in addition to Grover, Smith, and Packwood, referred to the provisions of other states’ constitutions in the course of their remarks. Thus, it is not surprising that the articles relating to the departments of government approved by the delegates to the Oregon Constitutional Convention reflect, for the most part, a mid-nineteenth-century view of how these departments should be constituted.

Clark College Library, bears the stamp of Albany College, Albany, Oregon. It is possible that this book was donated to the Albany College Library by Delazon Smith, who was a delegate from Linn County (where Albany, Oregon, is located).

William Packwood apparently consulted a compilation of state constitutions on subjects as varied as the name to be given to the legislature and the best way to deal with corporations. The Oregon Statesman reported that Packwood had been “looking over the constitutions” to determine the most common name given to the state legislature. Oregon Statesman, Sept. 8, 1857, at 1, reprinted in Oregon Constitution and Proceedings, supra note 15, at 231. The Weekly Oregonian reported that Packwood “read from several constitutions extracts showing the provisions which they make on the subject of corporations.” Weekly Oregonian, Sept. 26, 1857, at 1, reprinted in Oregon Constitution and Proceedings, supra note 15, at 240.