

## Montana's Constitution of 1972: How it Came to Pass

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Montana's Constitutional Convention has been frequently characterized as "populist". Jessie Birnbaum in Time magazine described the rugged individualism of Montana's delegates as "100% populism" and wrote, "This populist verve was abundantly evident in the way Montanans overhauled their creaky, 82 year old state constitution. That laborious, 28,000 word document had been written--or more precisely, foisted upon the people--largely by the mining interests, who hobbled the processes of government while exempting their own properties from taxation. But it was not until 1970 that the heel-dragging legislature, under pressure from reform-minded citizens called for a new charter. Appropriately, members of the legislature, as well as other elected officials, were not invited to participate actively. This was to be a people's crusade." (1) Time, April 10, 1972, p. 18

And that is what it was! The process from start to finish was marked by widespread public participation--such as Montana had never seen. In that sense it was a populist movement. But these were pro-government activists. They weren't demanding less government but were calling for strengthened, effective, efficient units of government with the authority to make government work. They weren't lashing out at problems blindly but most of them were becoming self-educated constitutional scholars. Their education was encouraged by a host of conferences and workshops, backed up by studies and publications.(2) Bibliography

Constitutional reform was on the national agenda. National groups such as the Committee for Economic Development and the U.S. Chamber of Commerce called for reform. Their argument was that only an effective state government could counter the growing federal power. A 1967 Legislative Council study summerized the deficiencies of the 1889 Constitution and found it wanting with over half of its provisions in need of repeal or revision. (3) Selected Bibliography, Memorandum 7 Late in 1968 the Montana Citizen's Committee on the State Legislature issued recommendations for reform. Other groups were looking at the hodge podge of executive agencies and talking about reform of the court system and local government.

The League of Women Voters studied and supported constitutional revision, but not until a 1968 Chamber of Commerce conference in Butte did the League recognize that there was support for a convention. Butte wanted city-county consolidation and had come to realize that it wasn't likely to happen without major constitutional changes.

It may have been a fluke, but in 1969 the Legislature killed and then revived and passed a referendum calling for a constitutional convention. It passed by only one vote in the Senate. Daphne Bugbee and Dorothy Eck were there lobbying for the League and were jubilant.. One seasoned Senator, patting them on the shoulder, said, "Now girls, don't count on this as a victory yet. You have to realize that when the session is over the leadership will get together and decide which three issues go on the ballot and I'm quite sure this won't be one of them." He was wrong! It was the constitutional initiatives that had to be cut to three. This was a referendum--and it was heading to the people.

That legislature also sent two constitutional amendments to the voters--one to enable a broad revisions of the executive article and another limiting the number of executive agencies to 20. They wisely provided for a bipartisan Constitutional Revision Commission, representing the legislature, the governor and the courts to study the options and make recommendations about how best to revise the Constitution. Dale Harris was their executive director.

That same year the League of Women Voters had a workshop on publications. It was not considered a campaign school but members were there to learn how to take the message to the public. Tom Judge, speaking as an expert in advertising, demonstrated how to fashion our message so that it would catch public attention and be easily understood and remembered. The League was used to writing lengthy, scholarly papers but realized that a new approach was needed to reach the voters. One of the outcomes was a red, white and blue flyer urging voters to "Vote Yes" on all three ballot issues. They also organized Citizen Action Committees to publicize Referendum 67 at organizational meetings and state fairs. (4) League of Women Voters Packet.

By early summer of 1970 the Montana Constitutional Convention Committee was formally organized and started an intensive campaign to win support for the referendum. (5) Montana Constitutional Convention Packet By election time dozens of organizations and hundreds of influential Montanans had endorsed the call for a convention. The call for a constitutional convention received a positive vote by 65.1% of the voters. (6) Excerpt from Atlas of Montana Elections 1889-1976. pp. 249-250. Ellis Waldron and Paul B Wilson, University of Montana Publications in History, 1978

That December I was asked to write a New Year's Eve editorial. In part I wrote, "In looking back at the inception of the constitutional convention, it appears we have witnessed a small miracle. . Who would have believed a few years ago that his kind of openness would emerge in Montana where the political climate has never been noticeably progressive and where voter apathy has been fed on a belief that corporate control was inevitable. (7) Great Falls Tribune,

The legislature in 1971 set up the mechanics for the election of delegates and the organization of the convention and established the Montana Constitutional Convention Commission to research and lay the groundwork for the Convention. Once again Dale Harris directed these efforts.

As the time drew near for electing delegates and as candidates emerged, the public education program accelerated. Most candidates became well versed in the issues facing a constitutional convention and studied the process and experience of other states. This encouraged a growing consensus on how to have a successful constitutional convention:

- involve the public at every step
- keep it non partisan
- keep the process open
- stick to fundamental principles, leaving details to the legislature

The state newspapers provided good coverage and some in depth studies. Radio stations gave time for lengthy call-in programs with candidates and others giving their views and answering questions. In the midst of all this, another issue had arisen. The legislature had spent a good bit of the summer caught up in the quagmire

of the sales tax. It, too, would be put to the voters in November and in the final days it became perceived as a struggle between the "corporations" and the "people"-- another populist issue.

The election was condensed--with primaries in September and the general election six weeks later. The orientation and organizational sessions of the convention were in late November and early December. It was a tight schedule but a good one for maintaining public interest. (8) Atlas of Montana Elections, pp255-257

The delegates elected could be characterized as populist. There were few former public officials, few who in the public's mind represented corporate interests. There were 19 women, quite a few lawyers, educators, ministers and businessmen. Most were idealists, true believers who were convinced that state government needed to be reformed to become more effective and efficient and more accountable and responsive to the people.

They wanted the constitutional process to work. They had campaigned for a non partisan and open convention with alot of public participation. With a few modifications, that's what was put in place.

By law, the convention organization was bi-partisan rather than non partisan but even though a large majority were democrats, the commitment to nonpartisanship was so strong that it took over. The convention elected Leo Graybill, a democrat as president, John Toole, a republican as vice president, Dorothy Eck, democrat as western vice president, Bruce Brown, Republican as eastern vice president and Jean Bowman, Republican as secretary. The committee chairmen were split and delegates were seated alphabetically. There were no party caucuses.

The public information committee recommended open meetings of all sessions and all committee meetings, a five day public notice of committee hearings and made plans for tours, speakers, a slide show and media coverage. There was some disagreement from the rules committee. Public notice was changed to three days. The proposed rule to require recorded votes only on final votes met strong objection and was amended to require a recorded vote at the request of five members on any matter.

Daphne Bugbee was responsible for the organization of a Citizen's Corp and maintained communication with dozens of Citizen Corps from around the state. Public officials, representatives of statewide organizations and interested citizens were recruited to provide information to local communities and to seek their input into the convention proceedings. Defeated candidates found this an avenue to become effectively involved in the process.

There was public input. Citizens from all over the state showed up for hearings. A form for "citizen suggestions" appeared in the state's newspapers and "suggestions" poured in and were referred to committees. Public participation was effective. Young people and some adult youth workers asked for a guarantee of the rights of children and it was included in Section 15 of the Bill of Rights. Two shy, young Indian girls asked that the cultural heritage of Indian Americans be recognized. They felt that no one at their school thought anything Indian was of worth. Their concerns were addressed in Section I of the Education article. "The state recognizes the distinct and unique cultural heritage of the American Indian and is committed in its educational goals to the preservation of their cultural integrity." The demands of students who wanted to be able to vote at age 18 and also to be able to hold public office were

accepted. Telephone call-in hearings met with a good response from people around the state.

The Romney hearings, scheduled for a Saturday or in the evenings when the public could more easily attend, focused on major controversial issues. At times there was more testimony than time would allow but the public knew their views were being heard. The pros and cons of all the major issues were heard.

Once more the commitment of the delegates to write a constitution which would be acceptable to the majority of the people of Montana became a key concern. The powers of the people were expanded in nearly every article. The governmental process would be accountable and responsive; recorded votes and open meetings were the rule; the initiative process was extended to constitutional amendments; citizen participation was guaranteed by the bill of rights and written into the decision making processes of governments. There would be "voter review" of local governments and a periodic opportunity to call for another constitutional convention. The reforms reflected a trust in the collective wisdom of the people--and that extended to a trust public officials would be elected who could also be trusted.

During the debates the question became, "How much reform would be too much?" Some issues were considered and reconsidered until there was an acceptable balance. The balance between the public's "right to know" and the "right to privacy" was a particularly difficult question--and still is.

Through the whole process visitors, school classes and organizations were welcomed. There were tours and public information sessions. An extensive public information program was planned to explain the new constitution to the public. The delegates worked long hours to end the session early so that dollars could be saved for this effort.

At last there votes along with the debates. Many were close votes but there was a lot of consensus. Some issues were to be referred to the voters as alternatives. The final document gave few all they wanted and some objected to most of it but every delegate signed it. The 1972 Proposed Constitution was ready to go to the voters for ratification.

That effort suffered an initial setback when the Supreme Court denied the use of the unexpended funds for educational purposes. In retrospect, it was probably a positive decision. Once again a committee was formed, The Citizen's Committee for Constitutional Improvement. There was strong opposition from many major business organizations and corporations and a few delegates campaigned against ratification. Others who had been in opposition to many of the reforms worked diligently in support of ratification. Betty Babcock was one of these whose active participation and counsel generated the wrath of many of her former conservative supporters and caused her business some real losses. The strong support of convention leaders of both parties prevented a partisan stance. It was a people's issue.

Again the endorsements of organizations and individuals was sought. The League of Women Voters, members of the Citizens Corp and delegates answered criticisms, spoke at countless meetings and went door-to-door with flyers explaining and supporting the new constitution. The constituency of citizens built over the years went to work one last time. There were five two hour call-in TV programs with listeners calling in questions which were answered by a panel of delegates.

It all worked-- just barely. The vote was close. It can reasonably be argued, it wouldn't have passed with an ounce more of reform--and it wouldn't have passed without everyone's special efforts--and it wouldn't have passed without the active involvement of the people of Montana.