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Alabama’s Six Constitutions

By
Julian D. Butler

In the drafting and adoption of Alabama’s six Constitutions, no woman participated and only 18 blacks (1868).

Part I

The Constitutions of 1819, 1861, 1865, 1868

Constitution of 1819

- Enabling act passed by Congress on February 19, 1819, and signed by President Monroe on March 2, 1819. The act specified that residents of the Alabama Territory were to write a constitution and present it to Congress for approval. The act contained the provision “said Territory when formed into a State, shall be admitted into the Union upon the same footing as the original states”.
- Elections for constitutional convention held the first Monday and Tuesday in May 1819.
- 44 delegates from 22 counties assembled in Huntsville on July 5, 1819. The convention included 18 lawyers, 4 physicians, 2 ministers, 1 surveyor, 1 merchant, and 4 planters, the balance likely being small farmers or tradesmen.
- Nine of the forty-four had had prior legislative or judicial experience in the states from which they had come. Harry Toulmin of Baldwin County had been president of
Transylvania University, Secretary of State for Kentucky, and an Alabama territorial judge since 1804. William Rufus King of Dallas County had served in Congress from North Carolina from 1810 to 1816 and after that was Secretary of the American Legation to St. Petersburg, Russia, Israel Pickens, from Washington County, had been a member of the North Carolina Senate and had represented that state in Congress from 1811 until 1817. Marmaduke Williams of Tuscaloosa County had been a member of the North Carolina Senate and had served that state in Congress from 1803 until 1817. John Leigh Townes had served in the Virginia legislature in 1815 and 1816. John Murphy, of Monroe, had been clerk of the South Carolina Senate for ten years and a trustee of South Carolina College, 1809-1818. Clement Comer Clay, Henry Hitchcock, Hugh McVay, James McGoffin, Gabriel Moore, Reuben Safford, and John W. Walker had all be members of the Alabama territorial legislature and Samuel Garrow, Mayor of Mobile. At least eight of the men had had some college training. The potential ability of the delegates is best indicted by the fact that from them the state obtained six governors, six judges of the Supreme Court, and six United States senators.

- Known birthplaces; Virginia (15), North Carolina (5), South Carolina (2), Georgia (2), and one each from England, Vermont, Delaware, and Pennsylvania.
- Committee of Fifteen charged with drafting a document reported out on July 15. The Convention was in session for less than a month.
- Suffrage; Every white mail 21 years of age and a citizen of the U.S., who had been in the state one year and the district
three months was eligible to vote. No property, tax-paying, or militia qualifications were applied---a departure from requirements of surrounding states. At the time of Alabama’s admission, Kentucky was the only other southern state with universal white manhood suffrage.

- **Appointment;** the convention rejected the committee’s recommendation that the federal ratio (five slaves equaling three white men) be used to set an area’s legislative representations, as it was in Georgia. But accepted the draft requirement for censuses and reapportionment in 1820, 1823, 1826, and every six years thereafter, owing to rapid increases in population.

- **Capital;** First Legislature to meet in Huntsville, and all subsequent sessions in Cahaba until 1825, when the legislature was to revisit the location.

- **Legislative power;** Provided for annual elections and annual sessions of the legislature, which was to appoint the secretary of state, state treasurer, comptroller, supreme court judges, circuit judges, inferior judges, and other officials.

- **Governor;** Elected by the people for a term of two years, with a two-term limit. The relatively weak executive would have only minor appointive powers, and vetoes could be overturned by a simple majority of the legislature.

- **No provision for a Lieutenant Governor;** the line of succession included the president of the Senate and the speaker of the House.

- **Education;** provided a sixteenth section of land in every township for schools.

- **Slavery;** Protected as an institution, but provisions called for humane treatment of the enslaved and established criminality of killing a slave.
Ratification by the people not required. (No state constitution was ratified by the state’s voters until Minnesota’s in 1857.)

Adoption and admission: All 44 delegates signed the constitution on August 2 and transmitted a copy to Congress. Congress passed a resolution of admission on December 6. Alabama became a state on December 14, upon President Monroe’s signing the resolution.

Format; The constitution is written on twenty-six sheets of parchment, each attached to the sheet below it by blue grosgrain silk ribbon and red sealing wax. The document extends to approximately thirty-one feet in length and nearly ten inches wide. It is approximately 3.75 inches in diameter and 19 inches in length, when rolled.

Constitution of 1861

In February 1860, the legislature instructed the governor to call a convention in the event of Republican victory in the fall. On December 6, Governor A.B. Moore ordered elections on December 24 for delegates to a “convention of the State to consider, determine and to do whatever in the opinion of said convention, the rights, interests and honor of the State of Alabama require to be done for their protection.”

Of 100 delegates; 54 declared themselves secessionists and 46 were cooperationist, generally divided between the southern and northern areas of the state, respectively.

Convention assembled on January 7, 1861 in Montgomery. On January 10, a Committee of Thirteen chaired by William Lowndes Yancey reported a recommendation to
secede. An Ordnance of Secession passed by a vote of 61 to 39, with some cooperationists supporting it in a show of unity.

- The Ordinance of Secession was made an amendment to the 1819 constitution, and for the next two months Alabama functioned as an independent republic. The state convention acted in a legislative capacity to break all ties with the United States government that were provided by the 1819 constitution, including the preamble, which now read, “We the people of the State of Alabama, having separated ourselves from the government known as the United States of America, and being now by our representatives in convention assembled, and acting in our sovereign and independent character.”

- On January 16, Yancey’s committee recommended forming a provisional confederate government of the southern states. Invitation made to seceding states to gather in Montgomery on February 4.

- Members of the secession convention elected delegates to the Confederate convention.

- Confederate constitution adopted on March 11 and sent to the states for ratification. The Alabama convention voted 87 to 5 to ratify. The ratification was made an amendment to the Alabama constitution, effectively ending the period of the Alabama Republic. An additional state ordinance transferred the state militia and all federal property seized by the state, including forts, arsenals, arms, and facilities in Mobile, to the new Confederates government.

- Additional amendments restricted the state’s ability to charter banks and to incur debt.
Format: The constitution is written on eleven pages of parchment, each page glued to the one below it. The document is twenty feet and eight inches in length and nearly twenty four inches wide. When rolled, it is one foot and eleven and three-quarter inches in length and approximately two and three quarters inches in diameter.

Constitution of 1865

On May 29, 1865, President Johnson granted amnesty to southerners who took an amnesty oath and didn’t not fall into one of several excepted classes, including Confederate officers higher than colonels in the army and lieutenants in the Navy, civil and diplomatic officers of the Confederacy, members of the bench who aided the Confederacy, governors of the Confederate states, and others. Voters had to meet the state’s suffrage requirements as they existed prior to session.

Johnson created a provisional Alabama government headed by Lewis Parsons. Governor Parsons set an August 31 election to elect delegates to a constitutional convention to alter and amend the constitution, and “with authority top exercise within the limits of said State all the powers necessary and proper to enable such loyal people of the State of Alabama to restore said State to its constitutional relations to the Federal Government.” Fewer than 30,000 votes were cast, compared to 65,529 votes cast for members of the 1861 session convention.

100 delegates were elected, and 99 participated in the convention. The body included 29 lawyers, 6 physicians, 41 planters and farmers, 9 merchants, 7 ministers, 2
teachers, 3 probate judges, and 1 newspaper editor. The convention met at the Capitol September 12, and was in session until September 30. A large majority of members had been either opposed to session in 1860 or at least cautious in their attitude toward disunion. Many had been Whigs in the antebellum period. Ill feelings existed along sectional lines, with the north Alabamians feeling that the southern part of the state had brought on the war and its destruction.

- This was a convention of old men, forty-five of them over fifty. Among them were two former governors, one United States senator, one former representative, one minister to Belgium, twenty-nine lawyers, and over four planters and farmers.

- Johnson made clear his intent that the southern constitutional conventions should abolish slavery, recognize the legal rights of blacks, repeal the ordinance of secession, repudiate the state's war debt, and provide for the election of state and federal officials.

- Slavery: On a divided vote, the convention declared that “as the institution of slavery had been destroyed in the state of Alabama, hereafter there shall be neither slavery nor involuntary servitude in the state, otherwise than for the punishment of crime, whereof the party shall be duly convicted.” Civil rights for former slaves were not written into the constitution, instead being delegated to legislative action by the new government.

- Ordinance of Session: The convention divided over whether to declare secession null and void as of 1865 or as of 1861, with the former prevailing.
State debt; The convention divided bitterly over whether to repudiate more than $20 million in wartime debt, which carried $1.6 million in annual interest costs. Most creditors were in Mobile, so the issue again divided the convention between north and south. Repudiation was adopted in a final vote of 69 to 19.

Election provisions were made for county, municipal, state, and federal offices.

In an effort to preempt black participation in the political process, the declaration of rights was revised to delete the statement that “all freemen, when they form a social compact, are equal in rights.”

Other provisions of the 1861 convention were readopted, including biennial elections legislative sessions limited to thirty days, limitations on state debt, and the elimination of the legislature’s role in granting divorces.

The apportionment of the legislature became another point of division, with north Alabama favoring a white-only basis, and the Black Belt favoring the inclusion of the total population. The former prevailed.

The 1819 provisions for the executive department were readopted, continuing the relatively weak position of the governor.

By a vote of 61 to 25, with most of the minority being north Alabamian, the convention decided against submitting the new constitution to the people for a vote. As a concession, a provision established that no future constitutional convention could be called without a popular vote being taken.

Format: The constitution is written on thirty-four sheets of paper, bound together at the top of each page with string.
The manuscript is fifteen inches in length and nine and one-fourth inches in width.

**Constitution of 1868**

- The Reconstruction Act of March 2, 1867, invalidated Johnson’s plan for restoration f the seceded states. Alabama became part of the Third Military District, administered by General John Pope. Pope issued orders for new boards of registrars to register eligible voters in the summer of 1867. To be eligible, registrants had to take a test oath with finer restrictions than Johnson’s loyalty oath. 104,518 blacks and 61,295 whites registered.
- The vote on a new constitutional convention and for delegates too place on October 1-5. The results were 90,283 for and 5,583 against.
- At the convention assembled on November 5, the 100 delegates included 96 Republicans (including 18 blacks) and 4 Democrats. Nearly one-third of the white Republicans were carpet baggers who arrived in Alabama after the war.
- The body contained 46 planters or farmers. 12 lawyers, 10 or more preachers, 5 teachers, 4 newspaper men, at least 2 doctors, at least 10 Freedmen’s Bureau officials, and other merchants and laborers.
- The declaration of rights stated that “all men are created equal” and that all citizens have “equal civil and political rights and public privileges.”
- Carpetbaggers abandoned a push for the desegregation of transportation and public places because the Scalawag faction responded in vehement disfavor.
Apportionment of the legislature was to be for the total population, not just whites.

In addition to governor and sheriff, public offices to be elected by the people included secretary of state, treasurer, auditor, attorney general, and the newly created office of lieutenant governor.

The governor’s power remained limited.

After extended debate and maneuvering, judicial offices were to be elected rather than appointed.

The section on education followed closely and provisions of Iowa’s 1857 constitution; public school and all institutions of higher learning were placed under an elected stated board of education that had legislative power to enact laws regarding education. Twenty percent of the state’s annual revenue was earmarked for education, plus a poll tax and a tax on corporations. Attempts to provide for integrated schools or equally funded segregated schools were defeated.

Provisions for the militia, corporations, and property were heavily shaped by recent constitutions of states in the Midwest.

Women’s property rights had been gradually increased by status since the late 1840’s and were here set in the constitution. Married women retained title to their property, which was not subject to liabilities of the husband.

The newly created Commissioner of Industrial Resources was to facilitate economic growth through surveys of resources and general promotion of the state.

Ratification by the people was required by the Reconstruction Act of 1867. The convention adjourned on December 6 of that year, and General Pope ordered that the
election be scheduled to last two days beginning February 4, 1868.

- Under a requirement of the Second Reconstruction Act, ratification had to be in an election in which more than half of registered voters participated, or at least 85,000. In February 1868, 70,812 Alabamians voted for the new constitution, and 1,005 against it, so the vote was insufficient for the state to reenter the Union.

- The state’s status was in limbo until June 1868, when a bill sponsored by Thaddeus Stevens and encouraged by northern industrialists allowed the acceptance of the ratification vote.

- Format: The document is approximately thirty-three feet and six inches in length and eighteen inches in width. It consists of twenty-one sheets of parchment, each glued to the one below it.

Reference:

- Malcolm Cook McMillian, *Constitutional Development in Alabama, 1789-1901; A Study in Politics, the Negro, and Sectionalism* (1955)

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About the Author: Julian Butler received his undergraduate and law degrees from the University of Alabama where he was President of the student body. He began his law career assisting
Senators and Congressman and a District Judge as a law clerk. His law practice began in Huntsville in 1966 serving as County Attorney for Madison County for 35 years and as a partner in the state-wide law firm of Sirote & Permutt. He has served as President of the National Association of County Civil Attorneys and as a Special Assistant Attorney General for the State of Alabama, and council to Alabama’s Democratic Party. His list of accolades is lengthy and includes recognition by law associations and multiple community service Associations. He has been a lawyer for 53 years.