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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 II**

#### **The Constitutions of 1875 and 1901**

##### **Constitution of 1875**

- Democrats wrested control of the legislature and the governor's office in the 1874 elections. The Legislature on March 19, 1875 passed an act to submit the question of a constitutional convention to the people in an election to be held on August 8.
- Approval of the question in the popular vote was not a foregone conclusion. Democrats campaigned for the "yes" vote by vowing to abolish the powerful and expensive Board of Education and by promising to implement retrenchment and economy in state government. They also attacked the offices of lieutenant governor and commissioner of industrial resources.
- State indebtedness was \$29 million, with two-thirds of that amount consisting of railroad bonds guaranteed by the Republican legislature.
- The August 3 vote approved the call for a convention, 77,763 to 59,928. Delegates included 80 Democrats, 12 Republicans, and 7 Independents, who won the Republican support.

- The convention opened on September 6 in Montgomery and continued in session until October 2. More than half the members were lawyers. Others included planters, farmers, merchants, preachers, editors, and physicians. Several had been members of the secession convention of 1861, and two had served in the 1865 convention. None returned from the Reconstruction convention of 1867, Leroy Pope Walker of Huntsville who had been Secretary of War in the Confederate Cabinet was elected President of the convention.
- Adopted provisions included one providing that the state could not be sued in any court of law or equity, a step that grew directly out of fear that creditors would sue because of debt incurred by the Republicans.
- Foreigners were given equal privileges and rights with native-born citizens, and immigration was encouraged.
- It prohibited any educational or property qualification for suffrage or office, or any limitation based on race, color, or previous condition of servitude.
- The legislature was to have biennial sessions limited to 50 days.
- The state could not lend its money or credit for internal improvements.
- Dueling and lotteries were prohibited.
- Relocation of the capital from Montgomery without a majority vote of the people was prohibited. (Some had favored moving the capital out of the Black Belt to avoid “Radical influences.”)
- The governor’s term was set at two years, but successive terms permitted. The governor could veto a portion of an appropriation bill.

- Judges were to be elected to six-years by the people.
- The delegates skirted the issue of suffrage entirely, fearful of Federal intervention should they attempted to limit black voting. The text recognized the Fifteenth Amendment. A prohibition on integrated transport and interracial marriage was not seriously considered.
- Apportionment decreased the number of seats of Republican-majority Black Belt counties. No provision was made for continuation of the state census, and future apportionment was to be made on the results of the federal census.
- The constitution demanded economy in state government, limited state and local taxation, and instructed the legislature to cut the salaries of state officials.
- In the area of education, the constitution abolished the state Board of Education, created a popularly elected state superintendent; required separate schools for blacks and whites; and earmarked 96 percent of school funds for teacher salaries. Funding sources were to include \$100,000 from general revenue, the poll tax fund, interest on state funds, and unclaimed property.
- The state, counties, and cities were not engaged in internal improvements by lending of money or credit.
- Ratification occurred on November 16, 1875, by a vote of 85,662 to 29,217. Only the Black Belt counties of Autauga, Dallas, Lowndes, and Montgomery voted against it.
- Format: The constitution is written on twenty-eight sheets of parchment, and is a total of forty-two feet and eight inches in length. Each sheet of parchment is glued to the one below it and held together with blue grosgrain silk ribbon. When rolled, the document is eighteen one-fourth

inches in width and three and one-fourth inches in diameter.

### **Constitution of 1901**

- After adoption of the 1875 constitution, whites were able to exercise control of the political process through manipulation and intimidation of black voters in the Black Belt. North Alabama resented the power realized by the southern half of the state due to this.
- The assurance of white control diminished during the Populist revolt of the 1890's, when economically disadvantaged small farmers split from the conservative Democrats.
- With the likelihood of federal intervention gone, conservative Democrats decided it necessary to limit suffrage through a new constitution.
- In December 1900 the legislature passed an enabling act to provide for a vote on calling a convention. The results on April 23, 1901, were 70,035 votes in favor and 45,505 against. Twenty-five majority-white counties, most in North Alabama, voted against the convention. Five Wiregrass counties voted "no".
- On May 21, 1901, 155 delegates met in Montgomery; 141 Democrats, 7 Populists, 6 Republicans, and 1 Independent. No blacks were elected.
- The members included 90 lawyers, 12 bankers, 4 journalists, an several physicians, teachers, and engineers. 38 were Civil War veterans, and 45 had served in the legislature.

- John B. Knox, an Anniston attorney representing the industrialist faction of the Big Mules, was selected president of the convention by acclamation.
- Knox's presidential address left no doubt about the chief agenda of the gathering.

*“And what is it that we want to do? Why it is within the limits imposed by the Federal Constitution, to establish white supremacy in this State. This is our problem and we should be permitted to deal with it, unobstructed by outside influences. But if we would have white supremacy, we must establish it by law-not by force or fraud.”*

*“These provisions are justified in law and in morals, because the negro is not discriminated against on account of his race, but on account of his intellectual and moral condition. There is in the white man an inherited capacity for government, which is wholly wanting in the Negro.”*

- The Convention sat continuously, with the exception of one week's intermission, until September 3<sup>rd</sup>.
- The work of the Committee on Suffrage and Elections drew the most attention and constituted the most significant updates to the Constitution of 1875.

- Ratification took place on November 11, 1901, by a vote of 108,613 to 81,734. The margin of victory came from the Black Belt counties. Thousands of African Americans saw their votes manipulated one more time—to ensure their future disfranchisement. Historians have largely concluded that its passage was the result of considerable fraud in the Black Belt counties, which were predominantly African American yet overwhelmingly approved the measure.
  - On November 28, 1901, Thanksgiving Day, the present Alabama State Constitution went into effect by proclamation of Governor Jelks.
  - The 1901 Constitution was written in large part to restrict voting by blacks and poor whites. Literacy requirements and cumulative poll taxes (that grew larger each year they were not paid) became major barriers to popular suffrage. Also, local registrars were given, as a practical matter, almost unchecked power to make a final determination of who could register.
  - Format: The constitution has a total of 287 sections, numbered consecutively and uninterrupted from Article 1 through Article XVIII. The document, bound in burgundy colored leather, is written on sixty-one sheets of parchment.
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**Reference:**

- Malcolm Cook McMillian, *Constitutional Development in Alabama, 1789-1901; A Study in Politics, the Negro, and Sectionalism* (1955)
- \*My sincere appreciation to Steve Murray, Director, Alabama Department of Archives and History, and my

legal assistant, Margaret Nivens, for their invaluable assistance in the preparation of this presentation.

***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.*