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# The Twenty-Three Lawyer- Delegates To The Constitutional Convention

by Charles K. Wiggins

## Portrait of the Lawyer-Delegate

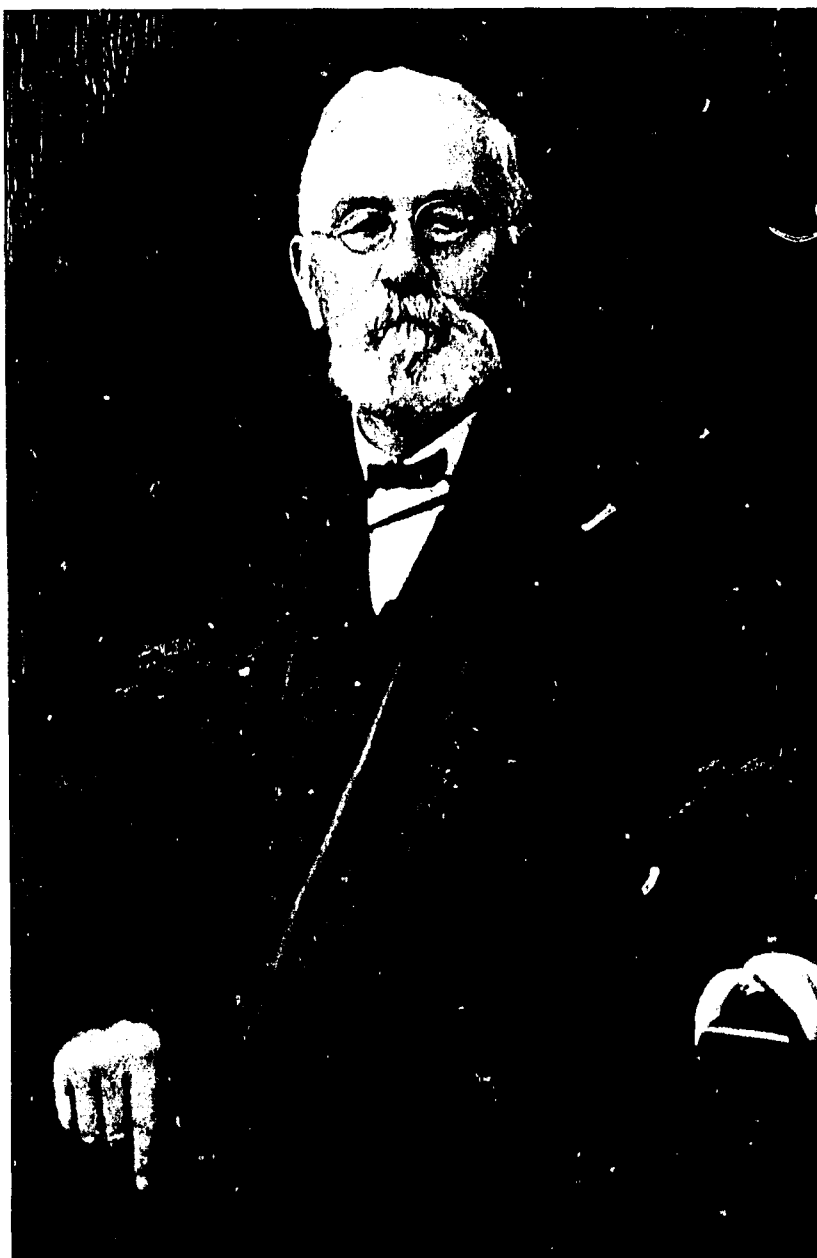
**T**wenty-three of the delegates to the Washington Constitutional Convention of 1889 were lawyers.<sup>1</sup> Who were these men; how did their talents serve them in convention; and what forces shaped their debates and votes?

The lawyer-delegates were a young group, with a median age of 42. Twice as many had prepared for their legal career by reading law in a law office as by attending law school. Of the seven law school graduates, two had studied at Michigan, the remainder at Berkeley, Union Law School at Cleveland, Chicago, Harvard and Columbia. Fourteen had read law, three in California, two in Washington Territory, and the balance in Ohio, Missouri, Wisconsin, Idaho Territory, Michigan, Oregon, Colorado and Alabama.<sup>2</sup> Seventeen of the lawyer-delegates were in private practice, most in two- or three-man firms. Two were bankers, one the territorial auditor, one a prosecuting attorney, and one owned and operated an abstract company. Two pairs of delegates practiced as partners: J.Z. Moore with T.C. Griffiths of Spokane Falls, and S.G. Cosgrove of Pomeroy with M.M. Godman of Dayton.

Politically, the lawyer-delegates mirrored the overwhelming Republican majority in the convention — 15 were Republican, six Democratic and two independent. Most had political aspirations, and many were later elected to office: George Turner to the U.S. Senate; Hoyt, Stiles and Dunbar to the Washington Supreme Court; Godman, Moore, Sturdevant, E.H. Sullivan and Mires to the superior court bench and Godman, Kinnear, Mires, Allen and Dyer to the State Legislature. S.G. Cosgrove was elected governor in 1908, but was stricken by a fatal illness and served in that capacity only for the one day of his inauguration.<sup>3</sup>

Geographically, 14 of the lawyer-delegates came from the larger commu-

nities of the state: Seattle, Tacoma, Spokane Falls, Walla Walla and Olympia, and nine were from smaller communities. The lawyers made a clean sweep of the election in Spokane Falls — all five delegates from that city were lawyers, and they were a remarkable group. George Turner was recognized as one of the ablest delegates to the convention (see an earlier article in this series). J.J. Browne was reported to be one of the wealthiest men in the territory.<sup>4</sup> He had settled in Spokane Falls in 1878, when the town had only 54 citizens, and had purchased one-quarter of the entire town site.<sup>5</sup> He built up a successful law practice but discontinued it in 1885 to devote his attention to his real estate investments, the Browne National Bank —



*Judge Ralph Origen Dunbar. Photo courtesy of the Washington State Historical Society, Tacoma, Washington.*

which he founded in 1888, editorship of the *Spokane Chronicle*, and presidency of the Spokane Mill Company.<sup>6</sup> T.C. Griffiths, at 32 one of the youngest delegates to the convention, was a prominent trial lawyer described by a contemporary biographer as "almost invincible before a jury":

His career at the bar has been marked with unvarying success. In the defense of persons accused of crime he has been singularly successful, having within 10 years acquitted 24 different defendants of the crime of murder in the first degree without a single conviction, and having defended men and women charged with almost every crime in the calendar. In that period of time he has met with but one verdict of guilty. In the practice of civil law he has been no less successful, and there is scarcely a prominent lawsuit in the records of Eastern Washington in the last 8 years in which he has not appeared, and in which his handiwork is not shown.<sup>7</sup>

The influence of the lawyer-delegates in convention exceeded their proportionate numbers. The president of the convention, John P. Hoyt of Seattle, was a lawyer, as were 13 of the 23 committee chairmen. Near the end of the convention, a contemporary newspaper singled out the more noteworthy delegates to the convention, all of whom were lawyers. George Turner of Spokane Falls and T.L. Stiles of Tacoma headed the list:

[Turner and Stiles] are acknowledged to be the ablest men on the floor of the convention, and the former has been frequently referred to in discussions as a master of logic and debate. Mr. Stiles is not so skilled in debate as his distinguished colleague, but he possesses a master intellect. These two men took the lead on all matters in the convention, acted as advisors to the committees and, in a measure, shaped the policy to be pursued on questions concerning the interests of the public. They seldom advocated a measure which did not carry. Whenever they spoke they were listened to with the most profound attention. They spoke often a great deal, and when men and

measures are compared after the convention has adjourned, it will be found that Judge Turner and Mr. Stiles head the list.<sup>8</sup>

The article also singled out the leadership roles played by attorneys Hoyt, Browne, Godman, and Griffiths. T.L. Stiles won the "beauty contest," being pronounced by the newspapers as the handsomest of the delegates.<sup>9</sup> The unfortunate Griffiths, invincible though he may have been before a jury, took last place: "Any member of the convention could knock out Griffiths in beauty."<sup>10</sup> A Democratic newspaper reported more sympathetically that Griffiths' face, though "not at all handsome . . . portrays earnestness of purpose and great decision of character."<sup>11</sup>

The lawyer-delegates spoke frequently on the floor of the convention. One newspaper reported that "Ten of the members of the convention do as much talking as all the remainder of the delegates put together" — 7 of the 10 were lawyers.<sup>12</sup> Their speaking style varied:

Griffitts is a very ready speaker with an unconquerable and sometimes tiresome penchant for superlatives and glittering generalities. Turner is slow, clear and logical. Moore possesses the oratorical temperament and is effective in delivery. . . E.H. Sullivan is inclined to be declamatory, but he has the faculty of saying something pertinent almost every time he speaks. Kinnear always commands attention and nearly always carries his point. Crowley is peculiar and generally sounds the keynote of the debate. Browne is forcible and says what he wants to say in a very short time period. Dunbar is a debater and nearly always says just the right thing.<sup>13</sup>

The contemporary newspaper accounts reflect these differing styles of debate, as well as a remarkable breadth of reasoning and precedence. The lengthy debate over the veto power of the governor illustrates the broad range of authority to which the delegates appealed. Several delegates referred to contemporary political history, criticizing the veto power exercised by former President Cleveland, Governor Pennoyer of Oregon, and Governor Waterman of California. Others ranged more broadly:

Turner cited the French Revolution and its horrors, Govey the Declaration of Independence, Weir the 10 commandments, Sullivan the wisdom of Solomon and volumes of history were plundered to find some instance that showed conclusively either the frightful abuse of the veto or the manifest wisdom of its maintenance.<sup>14</sup>

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### Bed and Breakfast

Public accommodations in Olympia were overflowing with the crush of delegates, journalists, distinguished visitors and lobbyists who gathered for the 52 days of the constitutional convention. The Olympia Board of Trade found quarters for all of the delegates, and many citizens took in boarders to provide accommodations.<sup>15</sup> The unofficial headquarters for the delegates was the Carlton House, where 12 delegates lodged and where others gathered to talk shop or to play cards.<sup>16</sup> Several social events relieved the tedium for wives in attendance — and delegates. The Olympia Board of Trade hosted a large clam-bake for them at Butlers Cove, a short cruise from Olympia. Territorial Governor Miles Moore held a public reception attended by nearly all of the delegates, who danced until 4:00 in the morning.<sup>17</sup>

Lobbyists descended on Olympia in some force. Unlike the politicians, the lobbyists were not always eager to identify themselves.<sup>18</sup> The newspapers speculated about the identity of various lobbyists, and one even purported to unmask as lobbyists delegates Turner and Moore,<sup>19</sup> both of which speculations were certainly incorrect. A contemporary newspaper account explained how to identify the lobbyists and their causes:

The lobby is here. You can single out the lobbyist in any crowd. His clothes are cut after the latest fashion and of the finest materials. He usually wears a high silk tie, his manners are elegant, his cigars of

the best, he is always affable and smiling, and one of the easiest men to approach. That sort of man represents the interests of railroad and other big corporations.

Next you come across a suave polite gentleman of middle age. His hair is brown and long, his eyes are blue, his face fat and rosy, and when he smiles he smiles the winsome smile of a pretty woman and shows a pretty row of white pearly teeth. He will talk woman suffrage to you by the yard, hour or day, just as long as you will stand it.

Then there is the clerical lobbyist who is here too in the interest of a clause in the constitution to exempt church property from taxation. He objects to being called a lobbyist because he is a church man, and while he does not employ the seductive methods — champagne and fine cigars — of the brother who wants railroads exempted from the heavy burden of taxation, he is a lobbyist nevertheless. The Women's Christian Temperance Union, the prohibitionists and liquor men, high tax and low tax advocates, tideland owners, and other great interests will all be represented in the lobby.<sup>20</sup>

Each morning the delegates climbed one mile uphill from the business district of Olympia to the territorial capital; each noon they trudged back down the hill for lunch and then back up for the afternoon sessions. The evenings were frequently occupied with committee meetings. This rigorous schedule occasioned one of the earliest debates of the convention, on July 5, the first full day of deliberations. Delegate Buchanan of Adams County objected to a proposed adjournment from noon to 2:00 for lunch. The "thrifty Scotsman of Ritzville" lectured the delegates on the urgency of their task:

Gentlemen, there is little time to waste. Let us get ahead with the work. In 12 weeks comes election time, and we must give the people time to think over what we are going to give them. If we idle our time away now, that means long night sessions in the near future.<sup>21</sup>

Buchanan renewed his protest in the afternoon when Griffiths attempted to fore-

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close further debate about the hours of the meeting by fixing the convention hours at 10:00 a.m. to noon, and 2:00 to 5:00. Buchanan moved to commence at 9:00 a.m. instead of 10:00, asking in his broad Scotch brogue, "I would like to know what the members of the convention are going to do between the time of breakfast and the opening of the session if we don't start in until 10:00."<sup>22</sup> Durie

of Seattle, another Scotsman, thought it was time to seriously oppose the gentleman from Adams County, responding in his own highland brogue:

The members of the convention view with alarm the deep and insidious design of the gentleman from Adams to deprive them of their breakfast. . . We nearly lost our dinner through him today and

now he proposes to put our breakfast in danger.<sup>23</sup>

Durie the Scotsman prevailed over Buchanan the Scotsman and the convention adjourned until 10:00.

### **Day-To-Day Proceedings In Convention**

The delegates divided into committees, each of which drafted a proposed article for the constitution. Initially, the committees met and worked in the morning, and the full convention convened only in the afternoon.<sup>24</sup> The territorial capital lacked adequate committee rooms, and the committees were forced to meet wherever they could, generally in the room of some member.<sup>25</sup> Committee meetings were open to the public, but no records exist of the committee deliberations and the newspaper accounts of committee meetings are sketchy at best.

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***"If you want it, it's fundamental; but if you don't, ... it's legislative."***

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Committee deliberations were temporarily disrupted by an onslaught of propositions and resolutions. Beginning on July 9, numerous delegates read proposals for clauses to be included in the constitution. Most of these propositions were petitions signed by private citizens urging the adoption of various measures such as women's suffrage, prohibition, election provisions, regulation of corporations, ownership of the tidelands, and numerous other important issues. After two wasted days, the delegates decided to refer all propositions to the appropriate committee, which could report back to the convention at any time prior to the committee's final report.<sup>26</sup>

When a committee had compiled its draft article, it was printed and read to the full convention. The members then convened into a "committee of the whole" and fully debated and amended the proposal article. At the conclusion of debate, the committee of the whole "rose and reported progress," and the article as amended would be again subject to debate and amendment on a more limited basis.

The delegates struggled to limit the constitution to important principles which should be a permanent part of the

state government, and to eliminate those matters so transitory that they should be left to the Legislature. This struggle became characterized for the delegates by the slogan "fundamental versus legislative." The delegates distrusted the Legislature because they were well aware of corruption in the state legislatures of their day and of abuses in the territorial legislature.<sup>27</sup> The delegates' distrust of the Legislature prompted Dunbar of Klickitat to comment that, "If a stranger from a foreign country were to drop into this convention, he would conclude that it had a great enemy, and that this enemy was the legislature."<sup>28</sup> At the same time, the delegates recognized the need to allow flexibility for the Legislature to deal with problems in the future. Weir of Port Townsend quoted the distinguished constitutional jurist Thomas M. Cooley, who had recently advised the North Dakota constitutional convention:

In your constitution making, remember that times change, that men change, and that new things are invented, new devices, new schemes, new plans, new uses of corporate power, and that such things are going on hereafter for all time. . . Don't in your constitution legislate too much. In your constitution you are tying the hands of your people. Do not do that to the extent as to prevent the legislature from performing all purposes that may be within the reach of proper legislation. Leave something for them. Take care to put proper restrictions upon them, but at the same time leave what properly belongs to legislation, to the legislature of the future. You must trust somebody in the future, and it is right and proper that each department of government shall be trusted to perform its legitimate functions.<sup>29</sup>

The newspapers heavily criticized the delegates for spending excessive time on "legislative" matters. One criticized the delegates for believing that they had "been called together for the purpose of regulating the speed and direction of the wind, the rising of the sap in the trees or the evolutions of the heavenly bodies in this and neighboring solar systems."<sup>30</sup> The delegates were particularly criticized for debating and including in the

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***"Don't let your constitution legislate too much . . . you must trust somebody in the future, and it is right and proper that each department of government shall be trusted to perform its legitimate functions."***

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constitution starting salaries for many state offices, including judgeships.<sup>31</sup>

The delegates were quick to adopt the slogan "fundamental versus legislative" as a rhetorical device. As delegate Fairweather wryly commented, "If you want it, it's fundamental; but if you don't want it, it's legislative."<sup>32</sup>

### **The Push To Completion**

As July ended, the delegates became increasingly anxious about their perceived lack of progress. Some had initially expected that the convention would be finished by August 1,<sup>33</sup> and they noted with envy that the North Dakota convention had drafted a complete constitution by July 31.<sup>34</sup> Two concerns spurred the delegates on to finish the constitution: they were anxious to return to their business interests; and, the Enabling Act called for a vote to ratify the constitution on October 1.<sup>35</sup> The delegates wished to complete the

constitution so that the political parties could nominate officers to be elected simultaneously, saving the substantial expense of an extra election.<sup>36</sup>

The delegates' first step was to lengthen the convention hours by meeting in the evening, as well as morning and afternoon.<sup>37</sup> The second step was a proposal to limit speeches, which followed the longest speeches to date, almost eight and three quarters' minutes.<sup>38</sup> Turner, who had delivered one of the offending eight-and-three-quarter-minute speeches, opposed the motion on the ground that every delegate should have the opportunity to express his views.<sup>39</sup> Moore quoted Judge Jameson, a professor of constitutional law at Chicago Law School, that a man was an enemy to his country who would try to shut off debate in so important a body.<sup>40</sup>

The gag rule was tabled on Turner's motion, and there it might have lain had not the speeches become lengthier during a debate over public subsidies of private enterprises, the "Walla Walla scheme" to help finance a local railroad.<sup>41</sup> The following day, Dyer called up his motion to limit speeches to ten minutes and to limit members to speaking only once on any question except by consent.<sup>42</sup> E.H. Sullivan and Dunbar both supported the motion, arguing the urgency of completing the business at hand and pointing out that many mem-

bers left the hall during debate, returning only when a vote was called.<sup>43</sup> Moore and Griffiths objected to the ten-minute limitation, particularly since the convention was about to begin debate on the controversial corporations laws.<sup>44</sup> Browne and Cosgrove pointed out that the motion would save very little time, since there had been few speeches which had exceeded ten minutes. The delegates, apparently tired of long speeches, adopted the gag rule by a vote of 51 to 17.<sup>45</sup> The following day, the delegates decided that the ten-minute limitation would not apply during debate on school lands and tidelands.<sup>46</sup> Thereafter, business proceeded more expeditiously until the delegates reached the most difficult issue for the convention — disposition and ownership of the tidelands — the subject of next month's article. □

<sup>1</sup>H.E. Allen, J.J. Browne, T.C. Griffiths, James Moore and George Turner, all of Spokane Falls; Francis Henry and T.M. Reed of Olympia; T.P. Dyer, John Hoyt and John Kinnear, all of Seattle; T.L. Stiles and P.C. Sullivan of Tacoma; D.J. Crowley and B.L.

Sharpstein of Walla Walla; S.G. Cosgrove of Pomeroy; R.O. Dunbar of Goldendale; M.M. Godman of Dayton; George Jones of Port Townsend; Austin Mires of Ellensburg; R.F. Sturdevant of Dayton; E.H. Sullivan of Colfax; J.F. Van Name of Kelso and J.J. Weisenberger of Bellingham. The traditional head count is 22 lawyers, apparently based on the occupational listings in *Barton's Legislative Handbook and Manual of the State of Washington* at pp. 167-68 (1889-1890). I have departed from Barton in deleting Gwin Hicks from the roll of lawyers, finding no evidence that Hicks ever studied law or was admitted to the bar. I have added J.J. Browne and J.P. Hoyt, both of whom are listed by Barton as bankers, but both of whom were admitted to the bar and had practiced law before entering the banking profession. Hoyt served as Supreme Court Justice both of Washington Territory and of Washington State.

<sup>2</sup>I have not discovered the legal training of two of the lawyer-delegates, T.C. Griffiths and George Jones.

<sup>3</sup>C. Snowden, *History of Washington*, Vol. V, 236 (1911).

<sup>4</sup>*Tacoma Morning Globe*, July 2, 1889.

<sup>5</sup>J. Hawthorne, *History of Washington*, Vol. I, pp. 359-60 (1893).

<sup>6</sup>*Id.*

<sup>7</sup>H. Hines, *An Illustrated History of the*

*State of Washington*, 353 (1893).

<sup>8</sup>*Tacoma Morning Globe*, August 19, 1889.

<sup>9</sup>*Spokane Falls Review*, July 17, 1889; *Olympia Washington Standard*, July 19, 1889.

<sup>10</sup>*Spokane Falls Review*, July 19, 1889.

<sup>11</sup>*Olympia Washington Standard*, August 9, 1889.

<sup>12</sup>*Seattle Post-Intelligencer*, July 29, 1889. The 10 loquacious delegates were Turner, Griffiths, Moore, Godman, Warner, Buchanan, E.H. Sullivan, Browne, Weir and Dunbar.

<sup>13</sup>*Seattle Post-Intelligencer*, July 19, 1889.

<sup>14</sup>*Seattle Post-Intelligencer*, July 27, 1889.

<sup>15</sup>*Tacoma Morning Globe*, July 2, 1889.

<sup>16</sup>*Tacoma Morning Globe*, July 14, 1889; *Olympia Washington Standard*, August 16, 1889.

<sup>17</sup>*Tacoma Morning Globe*, August 10, 1889; *Olympia Washington Standard*, August 16, 1889.

<sup>18</sup>*Tacoma Morning Globe*, July 13, 1889.

<sup>19</sup>*The Seattle Times*, July 9, 1889; July 14, 1889.

<sup>20</sup>*Tacoma Morning Globe*, July 3, 1889.

<sup>21</sup>*The Seattle Times*, July 6, 1889.

<sup>22</sup>*Seattle Post-Intelligencer*, July 6, 1889.

<sup>23</sup>*Id.*

<sup>24</sup>*Seattle Post-Intelligencer*, July 10, 1889.

<sup>25</sup>*Tacoma Morning Globe*, July 13, 1889.

<sup>26</sup>*Spokane Falls Review*, July 17, 1889.

<sup>27</sup>J. Fitz, *The Washington Constitutional Convention of 1889*, pp. 28-29 (1951) (Master's Thesis available at University of Washington Library).

<sup>28</sup>*Seattle Post-Intelligencer*, August 1, 1889.

<sup>29</sup>L. Knapp, "Origin of the Constitution of the State of Washington," *IV Wash. Hist. Q.* 227, 265 (1913).

<sup>30</sup>*Tacoma Morning Globe*, July 31, 1889.

<sup>31</sup>*Tacoma Morning Globe*, July 31, 1889; *Seattle Post-Intelligencer*, August 1, 1889.

<sup>32</sup>*Seattle Post-Intelligencer*, August 12, 1889.

<sup>33</sup>*Seattle Post-Intelligencer*, July 22, 1889.

<sup>34</sup>*Tacoma Morning Globe*, July 31, 1889.

<sup>35</sup>*Seattle Post-Intelligencer*, July 23, 1889.

<sup>36</sup>*Tacoma Morning Globe*, July 23, 1889.

<sup>37</sup>*Seattle Post-Intelligencer*, July 23, 1889.

<sup>38</sup>*Seattle Post-Intelligencer*, July 29, 1889.

<sup>39</sup>*Seattle Post-Intelligencer*, July 28, 1889.

<sup>40</sup>*Id.*

<sup>41</sup>*Seattle Post-Intelligencer*, August 2, 1889.

<sup>42</sup>*Seattle Post-Intelligencer*, August 2, 1889.

<sup>43</sup>*Spokane Falls Review*, August 3, 1889.

<sup>44</sup>*Id.*

<sup>45</sup>*Id.*

<sup>46</sup>*Journal of the Washington State Constitutional Convention*, p. 219 (B. Rosenow ed. 1962).