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Justice Charles K. Wiggins

Washington State Bar Association

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Francis Henry and the Declaration of Rights

by Charles K. Wiggins

The Old Settler

Francis Henry of Olympia served as a delegate to both of Washington's constitutional conventions, the Walla Walla convention of 1878 and the statehood convention of 1889. In both conventions, Henry served on the committee which drafted the declaration of rights.

Henry's poetry may be one of his enduring legacies, especially his poem "The Old Settler," which was set to music and won immediate popularity. More recently, Ivar Haglund popularized Henry's poem by borrowing its final phrase for the name of his Seattle restaurant:

No longer the slave of ambition,
I laugh at the world and its sham,
As I think of my pleasant condition
Surrounded by acres of clams.

Henry wrote "The Old Settler" in 1877 and adapted it to a popular tune. The poem was an immediate hit, lending its name in the following year to a steamer plying Puget Sound.

"The Old Settler" was loosely autobiographical, roughly tracing Henry's career:

I'd wandered all over the country,
Prospecting and digging for gold—
I'd tunneled, hydraulicled and eroded,
And I had been frequently sold.

Henry was born on January 17, 1827 in Galena, Illinois. Educated in a log schoolhouse, he became a lead miner. At 19 Henry was commissioned as a lieutenant and fought in the Mexican War, after which he read law with an attorney at Mineral Point, Wisconsin.

Henry returned to mining in 1851, traveling to California by way of Panama and prospecting near Placerville, before moving on to Gold Beach, Oregon in 1852. He was headed for eastern Washington, but was stopped by the Indian Wars.

Henry returned to lawyering in Yamhill County, Oregon in 1857, and soon married Elisa B. Henry. He flirted twice more with mining, once in the Cariboo.

Gold Rush on the Pacific Coast and once in Idaho, before joining Elisa's family and settling in Olympia.

Rolling my grub in my blankets, I left all my tools on the ground, And started one morning to shank it For a country they called Puget Sound. Arriving flat broke in mid-winter, I found it enveloped in fog, And covered all over with timber, Thick as hair on the back of a dog.

Henry next took up surveying, thanks to contracts awarded by his father-in-law, the surveyor-general of Washington Territory. In 1865 Henry resumed the practice of law, establishing an abstract business.

A Democrat, Henry served three terms in the Territorial Legislature and eight years as a probate judge. He also served variously as Olympia city treasurer, clerk of the Supreme Court, secretary of the Washington Pioneer Association, and president of the Thurston County Bar Association. Henry was apparently sincere when he wrote:

And now that I'm used to the climate,
I think that if man ever found
A spot to live easy and happy,
That Eden is on Puget Sound.

The Walla Walla Convention

The Walla Walla constitutional convention of 1878 was born in partisan territorial politics, and died in partisan national politics. From 1863, when Idaho Territory was carved out of Washington Territory, residents of northern Idaho had lobbied to reunify the Idaho panhandle with Washington.

Walla Democrats vigorously advocated the return of the Democratic panhandle to Washington, hoping to forge a Democratic majority, and, by shifting the center of population eastward, to move the capital to Walla Walla. For 10 years Puget Sound Republicans resisted these efforts. The Walla Walla Democrats abruptly changed tactics in 1875, seeking annexation of Walla Walla and Columbia counties to the state of Oregon. The western Republicans, alarmed at the prospect of losing southeastern Washington, hurriedly authorized a constitutional convention. The voters approved the convention and elected 15 delegates — eight lawyers, two farmers, a lumberman, a woolen-mill owner, a businessman, a fisherman, and a "man of the representative class." The Idaho panhandle sent a 16th delegate, a lawyer-editor.

The close political balance in the convention — eight Republicans and seven Democrats — was jeopardized when the Democratic candidate from northern Idaho, Alonzo Leland, asked for the right to vote in convention. Henry, who generally spoke little in public sessions, contributed a "philosophical speech" to the lengthy debate:

Beginning with the elementary principles of law, he gradually reached, by fine argument, and good philosophy, the question in issue and his reasoning seemed convincing.

But Henry's eloquence fell on deaf ears. Leland was denied a vote.

The 15 delegates, plus nonvoting Leland, divided into three committees to consider and report on various articles for the constitution. Henry was named to the committee which considered the preamble, declaration of rights, education, boundaries, distribution of powers, suffrage, and amendments. The synopsis of daily proceedings gives very few details of the debate on the declaration of rights. The title "declaration of rights" was selected instead of "bill of rights," which some delegates claimed "savored too much of Johnnie Bull. Declaration of Rights is purely American, as we ought to be by the right of conquest intensely Americanized, we
should retain our own titlehead." The constitution of 1889 similarly begins with a "declaration of rights."

The limited synopsis of the proceedings seldom reports Henry's position on the issues debated. The reporter apparently found it more significant that Henry presented the convention with a box of pickled clams sent to him from the Sound, and that the delegates handled the clams in proper parliamentary fashion:

Mr. Larrabee moved that the president take the clams in charge, and report upon the contents of the box to the convention.
Mr. O'Dell moved to amend that the president spread them upon the table. The amendment to the amendment by Mr. Henry was that the clams be equally divided among the delegates.

A century later, the reader wishes that the reporter had focused more upon the debates and less upon the clams.

Despite claims by some that its corporation provisions were too radical, the Walla Walla constitution was approved by the people of Washington Territory by a two-to-one margin. Congress was disinclined, however, to admit Washington to statehood. It was too Republican and too sparsely populated.

The 1889 Convention

By 1889, conditions had changed to favor statehood for Washington. The completion of the Northern Pacific and the railroad's massive marketing campaign to attract settlers to the Northwest had swollen the territory's population to 240,000. Perhaps more significant was the political shift at the national level from the Democratic party to the Republican party. From 1876 to 1889, Democrats had controlled either Congress or the Presidency, and had resisted admission of largely Republican territories such as Washington. Benjamin Harrison's election as President in 1888 returned both the White House and Congress to the Republican party; in February 1889, the lame-duck Cleveland administration and Democratic Congress approved the Omnibus Bill admitting Washington, Montana, and the Dakotas to statehood.

Henry was appointed to three committees of the new convention: preamble and declaration of rights, corporations, and state lands.

Few provisions of the Preamble and Declaration of Rights were debated by the delegates. The free-speech clause was modified by the committee, perhaps in response to an article published in The Seattle Times. The committee's initial draft of the free-speech clause read:

Every person may fully speak, write and publish on subjects, being responsible for an abuse of that right; in trials for libel, both civil and criminal, the truth when published with good motives and for justifiable ends shall be a sufficient defense.

The first draft closely followed the free-speech clause of the Walla Walla constitution, with editorial changes. After the publication of the first draft on July 17, the committee deleted the underlined language and presented the shortened version for consideration by the committee of the whole on July 29.
(The entire convention periodically sat as a “committee of the whole” for purposes of re-drafting and extensively debating an entire article.)

Why did the committee strike the defense of truth “with good motives and for justifiable ends”? Possibly because on July 13 The Seattle Times had published an overly-aggressive piece of investigative journalism in which delegate James Z. Moore of Spokane was accused of being a Northern Pacific Railroad lobbyist. The Times’ special correspondent had spied an express wagon delivering a large quantity of Kentucky whiskey, variously reported as 15 cases or two cases and a barrel, to the Olympia home where Moore stayed during the convention. Upon learning that the Northern Pacific Express had shipped the whiskey, the Times front page headline read, “LOBBY WHISKY. Was it sent by the Northern Pacific Railroad?”

The article surmised that Moore was a lobbyist and concluded, “Whisky seems a good purpose as an opener, or mouth opener, so to say, and its liberal use soon lays bare the character and inclinations of a man; these once revealed the knowledge of what men to approach with bribes to betray their trust becomes certain.”

On July 16 Moore rose to a point of personal privilege and defended himself. Never, said Moore, had he been charged with corruption, even when he suffered as the victim of “an overwhelming and proscriptive public sentiment,” an apparent reference to his brief stint as a Confederate soldier. Moore protested that the Northern Pacific had opposed his election as a delegate, and he produced a bill of sale for the whisky, which he had ordered to share with friends for their past kindnesses. Moore’s sense of humor shone through his speech:

As far as the suggestion goes, that this is more than I require, I admit that it is more than I should use in a hundred years, though it would not last the average Kentuckian 100 days... And now, Mr. President, since I’ve had to tell the whole of this ridiculous transaction, my fear is that not a few members of this body, its officers and correspondents, the territorial officials from the genial and sharp-eyed governor down, will make it his business to see that no part of these goods shall ever reach my confiding and suffering constituency.

The Preamble sparked a more intense debate than any clause of the Declaration of Rights. The committee proposed a simple introduction: “We, the people of the state of Washington, to preserve our rights do ordain this constitution.” The delegates who opposed any mention of a deity criticized the idea as a matter of sentiment which was out of place in a business document, calling it a “second-rate advertisement of something.” The delegates who supported a reference to God argued that it represented the religious sentiment of most of the citizens of the territory, and that it behooved men to consider that they do not belong at the head of creation.

Ultimately, however, the positions of the delegates appeared to depend largely
on pragmatic questions of whether the voters would be more inclined to accept or reject a constitution which mentioned a deity. Eventually the debate sank to attacks on the motives and reasoning of fellow delegates. E. H. Sullivan of Whitman County bluntly declared, "To put this in or leave it out means absolutely nothing. It is stuff and nonsense and nothing more nor less." Sullivan declared himself against doing anything "for show and buncombe." Declaring that God pays no attention to political gatherings, he hoped that "this convention will presently quit this moonshine."

Turner of Spokane, who had proposed that the preamble recite that the people of Washington are "profoundly grateful to Almighty God for this inestimable right and invoking his favor and guidance," responded that Sullivan "had been in the habit from the very commencement of lecturing and hectoring this convention in season and out of season," and accused Sullivan of the "coarsest buffoonery and bad taste." Fortunately, the delegates recessed for lunch before Sullivan and Turner went much further. Mires of Ellensburg summarized the debate in his diary: "The preamble provoked a great deal of discussion which grew acrimonious. Sullivan of Whitman County and Judge Turner had a tilt which was all out of place."

Following the luncheon recess and more wrangling, the exasperated delegates referred the matter back to the committee on preamble and declaration of rights for further consideration. The committee split, five members, including Henry, adhering to the preamble initially proposed. Two committee members, Sohns of Vancouver and Kellogg of Whidbey, submitted a minority report proposing a preamble reading, "We the people of Washington, grateful to the Supreme ruler of the universe for our liberties, do ordain this constitution."

The subject was not debated further, and the minority report was adopted by a vote of 45 to 22. The newspapers criticized the delegates for spending so much time on this issue, the Post-Intelligencer commenting wryly, "It finally ended in the complete rout of the heretics and the triumph of the hosts of the Lord." The Walla Walla Weekly Union observed that God got into the constitution under an alias.

The newspaper accounts of the convention include very little debate on the Declaration of Rights. Under contemporary constitutional jurisprudence, the basic civil liberties were natural and inalienable rights independent of any state constitution. The Declaration of Rights was just that — a "declaration" that these rights existed, not a "bill" conferring the rights. The dearth of debate in convention probably reflects the unanimity of the delegates that these civil rights were fundamental and undisputed.

Some provisions of the Declaration of Rights were probably not debated because they were required by the Omnibus Admission Bill. The Omnibus Bill required that the constitution "shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and shall not be repugnant to the constitution of the United States and the Declaration of Independence." The delegates were also directed to provide "by ordinances irrevoicable without the consent of the United States and the people of said [state]," for "perfect toleration of religious sentiment" and for public schools "free from sectarian control."

Epilogue

Once the convention ended, Francis Henry returned to Olympia and continued his law practice and abstract business until his death on September 24, 1893 at the age of 66. 

Note on Sources