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John P. Hoyt and Women's Suffrage

by Charles K. Wiggins

(First of a series on the Constitutional Convention and Lawyers’ roles in it)

As a judge and as president of the Washington Constitutional Convention, John Philo Hoyt found himself immersed in one of the spirited controversies of the day—women’s suffrage. The Territorial Legislature gave women the vote in 1883. Hoyt, writing for the Territorial Supreme Court, upheld the statute in 1884, but the court overturned the statute in 1887. In 1889 Hoyt voted in the Constitutional Convention for a direct vote by the people on the issue of women’s suffrage, to be submitted to the people as a separate proposition simultaneously with the constitution itself.

Hoyt’s Background: Legislator, Governor, and Judge

Born in Ohio in 1841, Hoyt served in the Union Army during the Civil War, then returned to Ohio, enrolled in law school, and was admitted to the bar in 1867. He practiced in Michigan from 1868 to 1878, where he was elected to the State House of Representatives and served a term as Speaker of the House. Seeking a change in climate, Hoyt sought and was appointed to the position of Secretary of the Territory of Arizona. He became Governor of Arizona Territory in 1877. In 1878 Hoyt was named to succeed Governor Brayman of Idaho Territory, who had fallen from favor for his administration of affairs during the Nez-Perce War. Investigating the charges against Brayman before he took over, Hoyt concluded that Brayman had been unjustly removed and wrote to President Hayes to decline the appointment; the President offered Hoyt an alternative appointment as associate justice of the Supreme Court of Washington Territory.

Hoyt arrived in Olympia in February 1878. By most accounts, he was a well-respected judge. An acquaintance called him “one of the kindliest and most courteous gentlemen who ever sat upon the judicial bench in Washington.” When Hoyt’s first term expired, every practicing attorney in each of the 12 counties of his judicial district petitioned President Arthur to reappoint him. Still, Hoyt felt obliged to write the U.S. Attorney General in defense of his temperament that he had drunk neither “spiritous liquor” nor malted liquor in 20 years. President Arthur reappointed Hoyt to a second term.

Judge Hoyt survived a second challenge to his judgeship when a Democrat, Grover Cleveland, removed nearly every Republican office holder in Washington Territory when he took office in 1885, and served until his term ended in 1887. Hoyt moved to Seattle and became manager of the banking house of Dexter, Horton & Company.

The Suffrage Movement in Washington Territory

Suffrage advocates had pressed the Territorial Legislature to extend the franchise to women for years. In 1854, A. A. Denny moved to grant women suffrage in the first Territorial Legislature. He failed. When the Legislature revised the election statutes in 1867 to deny former Confederate soldiers the vote by restricting it to “all white American citizens 21 years of age,” legislator Edward Eldridge argued that the phrase granted women the vote.

Women were inconsistently allowed to vote until 1871, when the Legislature decided women had no right to vote except in school elections. In 1878, following approval by the voters at large and authorization by the Territorial Legislature, a convention of 15 elected delegates assembled at Walla Walla to draft a constitution to be submitted to Congress in Washington’s petition for statehood. Though the convention heard from Abigail Scott Duniway, a prominent Oregon suffragist, and Eldridge moved to delete the word “male” from voter qualification requirements, the delegates rejected extension of the franchise. However, the delegates voted overwhelmingly to submit women’s suffrage as a separate proposition for a direct vote by the electorate. The voters ratified the Walla Walla constitution, but rejected women’s suffrage by a margin of almost 3 to 1, and the whole effort came to naught because Congress declined to grant statehood in 1878.

The Territorial Legislature finally granted the vote to women in November 1883. This statute not only permitted women to vote, but by implication permitted them to sit on grand juries, since another code section made all qualified electors and householders competent to do so. The implication was tested when one Mollie Rosencrantz appealed her conviction for keeping a house of ill fame on the ground that a married woman had served on the grand jury which had indicted her (Rosencrantz v. Territory, 2 Wash. Terr. 287 (1884)). Judge Hoyt, writing for himself and concurring Judge Wingard, upheld the conviction on the ground that the law was valid, and women were therefore eligible to sit on grand juries.

Two years later, a similar challenge was brought by one Harland who was
convicted of conducting a swindling game called "21, or top-and-bottom dice" (Harland v. Territory, 3 Wash. Terr. 131 (1887)). This time changes in the court changed the result. Hoyt was disqualified from sitting on the appeal because he had presided over Harland's trial. (Each of the four judges of the Territorial Supreme Court sat as a trial judge in one of the four judicial districts and was disqualified from hearing any appeals from his own cases, which were heard by the remaining three judges.) Judge Wingard, who joined Hoyt in the Rosencrantz decision, had resigned from the court. Judge George Turner, who vigorously dissented in the Rosencrantz decision, carried the day and overturned the law holding that the Franchise Act violated the provision of the Organic Act of the territory which stated that, "Every law shall embrace but one object, and that shall be expressed in its title" (This requirement survives in Article II, § 19 of the Washington Constitution). Turner reasoned that the title of the act, "An act to amend § 3050, Chapter 238, of the Code of Washington Territory," did not adequately express the subject of the legislation.

The Territorial Legislature of 1887-1888, elected by both male and female voters, reinstated women's suffrage. The issue was returned to the Territorial Supreme Court by Nevada Bloomer, who had been denied the right to vote in a regular municipal election in the city of Spokane Falls. (Bloomer v. Todd, 3 Wash. Terr. 599 (1888)). The case appears to have been contrived by saloon owners and suppliers to invalidate the women's franchise out of fear that women would vote for prohibition. Bloomer's husband owned a saloon, and John Todd, one of the defendant election judges, was a beer bottler who supplied him. By now, Hoyt's term on the court had ended, and Turner, who'd resigned from the court, was retained to oppose the statute. It was argued that Congress had provided in the Organic Act that only male inhabitants would be permitted to vote in the first territorial election, and that the first legislative assembly would decide upon the qualifications of voters at all subsequent elections. Relying on this, the court struck down the statute, holding that Congress must have intended to limit the franchise to male citizens, and that the Territorial Legislature had no power to enfranchise women. Thus ended women's suffrage in Washington Territory.

Hoyt, Suffrage, And The Constitutional Convention

With another try for statehood in the works, the battle for women's suffrage now shifted to the Constitutional Convention of 1889. The delegates considered three options: limit the franchise to men; extend the franchise to men and women alike; or, separately submit to the voters the issue of women's suffrage. Hoyt and Turner, who had fought the issue in their tenures on the Territorial Supreme Court, were now pitted against one another for the presidency, or chairmanship, of the Constitutional Convention. A third contender, Ralph O. Dunbar, was so
strong an advocate of women's suffrage that he eliminated his chance of election. The Seattle Times commented "Hoyt is objected to by the anti-suffragists, but his views upon the subject are mild, compared with those of Dunbar, consequently Dunbar's chances for the coveted honor have melted away like snow in the sunshine." Then Turner withdrew in favor of Hoyt, who was reported to have secured his election by a pledge not to place women suffragists in prominent committee positions.

But the suffrage issue had become entangled with another hotly debated issue of the day — prohibition — as the Bloomer case showed. Abigail Scott Duniway blamed the prohibitionists for resistance to women's suffrage, arguing that the liquor industry had stirred up opposition with the argument that women would surely vote for prohibition. She urged Washington suffragists at the convention to avoid the prohibition controversy at all costs.

Early convention press reports of delegate straw polls suggested that the delegates would limit the vote to men and that the best suffragists could hope for was a separate referral of the voting question to the people. A vigorous women's suffrage lobby nevertheless strove to persuade the delegates to include suffrage in the constitution. Although Duniway was unable to attend the Washington convention, the prominent Massachusetts suffragist Henry B. Blackwell traveled west and lobbied the constitutional conventions of North Dakota, Montana and Washington. Blackwell wrote to his wife from Olympia:

*Here I am fighting against odds — both the party conventions & leaders having dropped woman suffrage in order to conciliate the whiskey interest & the very general opposition which the men have manifested since the judges have overthrown the women's right of suffrage. It is a most discouraging & perplexing condition of things.*

A lengthy debate ensued in the convention when delegate E. C. Sullivan of Pierce County moved to invite Blackwell to address the delegates; he eventually withdrew his motion, and Blackwell settled for a public address attended by a few delegates and members of the public at large.

The suffrage question came before the convention on August 12, 13 and 15, 1889. The delegates reviewed and voted upon the issue in several rounds: in "committee of the whole," when the entire convention of 75 delegates freely debated and amended the proposed elections article; on first, second and third readings of the article; and, after the article was defeated on its final reading, on reconsideration of the article. Given the temper of the Convention, the debate was really over a series of strategic withdrawals by the suffragists.

Round One questioned whether to include women's suffrage in the constitution. When the convention went into the committee of the whole to consider the proposed elections article, 39 delegates left the hall to avoid listening to any suffrage speeches. Delegate Edward Eldridge moved to
strike the word “male” from the qualifications of voters in Section 1 of the proposed article. Eldridge spoke for over an hour, reviewing the history of women’s suffrage in Washington at some length, and urging the delegates to extend equal rights to women:

The consent of the governed is necessary to form just government and woman is an essential part of the governed. It follows as a natural sequence that woman is entitled to the right of suffrage. The conditions that man has ordained they should occupy was not the position the creator intended them to occupy. The women of Washington for the last quarter of a century have been petitioning for their rights.

No one else spoke on the motion, which was defeated. Eldridge brought this motion before the convention again on the elections article’s first reading, but was defeated, 50-8. Hoyt opposed the motion.

Round Two considered whether the Legislature should be authorized to grant women the right to vote. Ralph Dunbar led the suffragists in the lengthy debate, in which the Territorial Court, and Turner in particular, was criticized for striking down prior suffrage legislation. This effort failed, 36-18, on the first reading, Hoyt again voting “no.”

Round Three took up the details of a separate submission of the suffrage issue to the public. Eldridge, supported by Hoyt, repeatedly and unsuccessfully attempted to authorize women to participate in the vote on separate submission. Again supported by Hoyt, Eldridge unsuccessfully moved to permit the Legislature to submit women’s suffrage to the voters in the future even if the public failed to approve suffrage on the initial separate submission. Finally, the delegates debated whether suffrage should be separately submitted to public vote in 1889 or 1890. The suffragists felt that their chances of success were best at a special election limited to the suffrage issue, at which the only voters would be those most concerned with suffrage. They also wished to avoid submitting suffrage simultaneously with prohibition, which the delegates had also decided to submit separately. The delegates initially agreed on 1890, but finally voted to submit suffrage to the voters in 1889.

Hoyt’s voting pattern reveals a strong conviction that women’s suffrage should not be included in the constitution, but should be separately submitted. Hoyt did vote in favor of the suffrage movement by supporting the move to allow women to vote on separate submission, and by voting to authorize submission to popular vote on later occasions. Did Hoyt make a deal with anti-suffragists to limit his suffrage views in exchange for his selection as president of the convention? Turner’s withdrawal from contention for the presidency supports this hypothesis, but any “deal” seems inconsistent with Hoyt’s past record — his support for the accused Governor Brayman, the support and admiration Hoyt enjoyed from the practicing bar during his tenure on the bench, and his voting record on suffrage as a judge. It seems more likely that Hoyt concluded, as did Blackwell, that separate submission was the optimum strategy for an uphill battle.

Epilogue

The constitution was overwhelmingly approved by a vote of 40,152 to 11,579. Women’s suffrage was defeated on separate submission by a vote of 18,537 to 34,513. Women were not to receive the vote in Washington for another 20 years.

Judge Hoyt was elected to the Washington Supreme Court in 1889, and served on the court until 1897. Following his tenure on the Court, he became a lecturer at the University of Washington School of Law and was also a United States referee in bankruptcy at Seattle from the early part of the twentieth century until 1912. Hoyt died in Seattle on August 25, 1926, at the age of 85.

Note on Sources


Charles K. Wiggins is a Seattle attorney. He holds degrees from Princeton, the University of Hawaii and Duke University School of Law. His last appearance in the Bar News was a series on appellate procedure in 1986.