




*Photo by J. Gregg Layne (1922)*

## COLTON HALL, MONTEREY

*Where the Constitutional Convention of 1849 was held*

# The California Constitutional Convention of 1849

*By Homer D. Crotty*

 HIS is the period of California centennials. Of all of these commemorations the three most important, to my mind, are the discovery of gold at Coloma on the 19th of January, 1848, the Constitutional Convention at Monterey in September and October of 1849, and the admission of California into the Union as the thirty-first state, on September 9, 1850. It is of the second of these events that I wish to talk about here.

In what manner did the Constitution of 1849 arise almost out of the air? At the outset we should remember that the Treaty of Guadalupe Hidalgo between United States and Mexico, which terminated the Mexican War, was signed on May 30, 1848, several months after the discovery of gold. The gold excitement was beginning to be intense and to affect all quarters of the world. Settlers were pouring in over the Sierras from the East, from Oregon in the North, and from Mexico in the South. Ships were carrying the gold seekers and others from the eastern coasts of the United States and from all parts of the world. South America was sending huge contingents from Chile and Peru, and the rush was on from Australia.

The only active administration left in California was the inadequate organization provided for under the Mexican laws for the various towns in the state. General Bennett Riley had been appointed civil governor of the state by the Secretary of War. He complained constantly that he could not even keep his soldiers from deserting to the gold regions. Ships were deserted in the Harbor of San Francisco and the rush to the mines took away not only the passengers but most of the sailors.

Congress in 1848 did not set up any government for California either territorial or state, and again adjourned early in 1849 without

taking any action. Agitation for statehood was very active in both 1848 and 1849. There were many local meetings in San Francisco, in Sacramento and in San Jose, advocating the formation of a state government to procure even the most ordinary blessings of law and order for California. The frequent murders and robberies were generally unpunished and the perpetrators unapprehended. It is true the inhabitants rallied to put down the Hounds, an organized band of deserting English sailors and Australian criminals, but ordinary enforcement of criminal law had become almost non-existent. There was no enforcing authority adequate for the need.<sup>1</sup>

On the civil side we see also evidences of makeshift justice. A young woman in San Francisco who had been deserted by her husband applied to the Governor for a divorce. He decided that neither he nor the alcalde of San Francisco had the authority to grant it. As an off-the-cuff opinion, however, he advised her that because her husband had left her without any means of support, she might consider him as dead.<sup>2</sup>

In Monterey there was a rough and ready justice administered by the alcalde, the Rev. Walter Colton, who has left us a most interesting diary entitled *Three Years in California*. He was appointed the alcalde of Monterey by Commodore Stockton in 1846 and was in charge during the Mexican War, the gold excitement, as well as the period of the Convention. To illustrate the type of justice administered by Colton, I cite a few of his decisions. There was a woman who complained that her son, a full grown youth, had struck her. The young man was apprehended and taken before Colton, and as the culprit did not deny the offense, Colton instructed the mother to inflict twelve lashes with a raw-hide whip. The mother laid on with a will.<sup>3</sup>

In another case, a rogue had stolen a bag of gold from a miner and had hidden it. He refused to reveal where it was and was sentenced to one hundred lashes, but was advised that he would be let off with thirty if he would tell. The thirty lashes were inflicted upon him, but he refused to tell. Then Mr. Colton inflicted a punishment which not even the Gestapo has thought of. The culprit was tied to a tree and his bare and bleeding back was exposed to the hordes of voracious mosquitoes, which promptly went to work on him. After three hours of this refined torture the man confessed.<sup>4</sup>

Colton also cited the decisions of William Blackburn, alcalde of Santa Cruz, one of our early day characters.<sup>5</sup> A young man was brought before the alcalde charged with having sheared close to the stump the

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sweeping tail of another man's horse. The alcalde found him guilty and sent for a barber and ordered him to shave the offender clean of his dark flowing locks and curling mustache. Counsel for the prisoner entered at this time and demanded to know under what law the penalty had been inflicted. The alcalde replied, "Under the Mosaic, that good old rule—eye for eye, tooth for tooth, hair for hair."

What amounted to a passion with Colton was the construction of a building in Monterey large enough to be a schoolhouse. He raised money for this in every way he could think of. Most of the fines levied by him as alcalde went into its construction. On one occasion a number of gamblers came into town and started up a game of monte. The alcalde raided the premises and fined each of the gamblers. Describing his building, Mr. Colton said:<sup>6</sup>

"The town-hall, on which I have been at work for more than a year, is at last finished. It is built of a white stone, quarried from a neighboring hill, and which easily takes the shape you desire. The lower apartments are for schools; the hall over them—seventy feet by thirty—is for public assemblies. The front is ornamented with a portico, which you enter from the hall. It is not an edifice that would attract any attention among public buildings in the United States; but in California it is without a rival. It has been erected out of the slender proceeds of town lots, the labor of the convicts, taxes on liquor shops, and fines on gamblers. The scheme was regarded with incredulity by many; but the building is finished, and the citizens have assembled in it, and christened it after my name, which will now go down to posterity with the odor of gamblers, convicts, and tipplers."

So, following the adjournment of Congress in the early part of 1849 without having taken any action for the creation of a government in California, Governor Riley decided to take action. He issued a proclamation on June 3, 1849, calling for the election,<sup>7</sup> on August 1, 1849, of thirty-seven delegates from the districts which he delimited, for a Constitutional Convention which would meet September 1, 1849. San Diego was to elect two; Los Angeles four; Santa Barbara two; San Luis Obispo two; Monterey five; San Jose five; San Francisco five; Sonora four; Sacramento four; and San Joaquin four. Riley also stated that if any district considered it was entitled to a greater number of delegates it should elect them and on the organization of the convention the dele-

gates would be admitted or not at the pleasure of that body. The election was held more or less on the day scheduled. As it turned out, the convention accepted forty-eight delegates, elected sometimes very informally indeed.

So, on the first of September 1849, the Convention met at Colton Hall at Monterey. Numerous delegates had not arrived, including those from the District of Los Angeles. Hubert Howe Bancroft, in describing the convention, stated:

“Never in the history of the world did a similar convention come together. They were there to form a state out of unorganized territory; out of territory only lately wrested from a subjugated people, who were allowed to assist in framing a constitution in conformity with the political views of the conquerors. These native delegates were averse to the change about to be made. They feared that because they were large land owners they would have the burden of supporting the new government laid upon their shoulders, and naturally feared other innovations painful to their feelings because opposed to their habits of thought. These very apprehensions forced them to become the representatives of their class in order to avert as much as possible the evils that forboded.”<sup>8</sup>

The convention was not lacking in talent.<sup>9</sup> It was a convention largely of young men, as more than two-thirds of the delegates were under forty. The oldest man at the convention was fifty-three—Jose Antonio Carillo, of Los Angeles. A little less than one-third of the delegates were lawyers. Twenty-two of the delegates were from the northern states and fifteen from the slave states. There were seven native Californians and four foreign born. Some of the most famous in early California history are included. There is Captain Sutter, Thomas Larkin, General Vallejo, and Antonio Pico. Los Angeles had Manuel Dominguez, Hugo Reid, Stephen C. Foster, Abel Stearns and Jose Antonio Carillo.

One of the delegates was Elisha Oscar Crosby from the Sacramento District. Mr. Crosby's *Memoirs* were published a few years ago by the Huntington Library, and the manuscript of this book was used extensively by Bancroft in describing the atmosphere of the convention. Mr. Crosby's description of the delegates is sometimes quite picturesque. One of them, who listed his occupation as a gentleman of “elegant leisure” was Mr. Ben F. Moore. According to Crosby, he was the most disagreeable man in the convention. “He carried an enormous bowie

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knife and was half drunk most of the time.” This was an occupational risk for the delegates.<sup>10</sup>

The delegates elected Dr. Semple of Sonoma as Chairman, and J. Ross Browne as the reporter of the debates. Mr. W. E. P. Hartnell was elected as the translator.

An excellent description of the convention is contained in the delightful travel book called *Eldorado*, written by Bayard Taylor, who arrived in San Francisco in 1849. Taylor walked down from San Francisco to Monterey to be present at the convention. He says (p. 138):

“During my visit the climate was mild and balmy beyond that of the same season in Italy. The temperature was that of mid-May at home, the sky for the greater part of the time without a cloud, and the winds as pleasant as if tempered exactly to the warmth of the blood . . . The sky at noonday is a pure, soft blue.

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“The old and tranquil look of Monterey, before the discovery of the placers, must have seemed remarkable to visitors from the Atlantic side of the Continent. The serene beauty of the climate and soft vaporous atmosphere, have nothing in common with one’s ideas of a new, scarce-colonized coast; the animals, even, are those of the old, civilized countries of Europe. Flocks of ravens croak from the tiled roofs, and cluster on the long adobe walls; magpies chatter in the clumps of gnarled oak on the hills, and as you pass through the forest, hares start up from their coverts under the bearded pines. The quantity of blackbirds about the place is astonishing; in the mornings they wheel in squadrons about every house-top, and fill the air with their twitter. (p. 142)

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“No one can be in Monterey a single night, without being startled and awed by the deep, solemn crashes of the surf as it breaks along the shore. There is no continuous roar of the plunging waves, as we hear on the Atlantic seaboard; the slow, regular swells—quiet pulsations of the great Pacific’s heart—roll inward in unbroken lines and fall with single grand crashes, with intervals of dead silence between. They may be heard through the day, if one

listens, like a solemn undertone to all the shallow noises of the town, but at midnight, when all else is still, those successive shocks fall upon the ear with a sensation of inexpressible solemnity. All the air, from the pine forests to the sea, is filled with a light tremor and the intermitting beats of sound are strong enough to jar a delicate ear." (p. 169)

So the delegates had come to Monterey to create a state out of a part of the territory ceded by Mexico in the Treaty of Guadalupe Hidalgo. They were called together by General Riley, whose power to do so was certainly subject to some question. The delegates had been elected by a shifting population, most of whom had not been in the state more than a few months, and a great many of whom doubtless were not in the same location a few months after the election. The electors were every free male citizen of the United States and of Upper California, twenty-one years of age, and actually resident in the district where his vote was offered, with some additions.

The delegates from San Francisco came down on the Brig *Fremont* taking five days for the trip, but the rest of the delegates arrived on horseback from the districts from which they had been elected. As Josiah Royce put it:<sup>11</sup>

"The members of the convention nearly all brought with them their blankets to Monterey; like the foxes and the birds, they had to look for holes and nests, and like the foxes and the birds, they finally found where to bestow themselves."

Most of the delegates spoke English, but some of the native Californians spoke only Spanish, although some of them understood English. There was no such elaborate system as we find in modern conventions of having an instantaneous translation in Spanish or English when the delegates spoke. The practice appeared to be that the proceedings were translated to the Spanish delegates by the interpreter, and when a Spanish delegate spoke, his speech was translated into English for the rest of the convention.

At this time there was no printing press in Monterey so that it was therefore impossible to have daily printings of the different sections of the Constitution offered to the delegates. The sections offered were copied out by hand and distributed to the delegates. Dr. Gwin of San Francisco, who later became one of our first United States Senators,

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had a copy of the Constitution of Iowa, which had been adopted three years before, printed in San Francisco for the use of the delegates. He evidently felt that rapid progress could be made if the Constitution of Iowa were used as a basis for the discussion. In this expectation he was disappointed, for he was promptly sat on by Mr. Jacob Snyder of Sacramento, who indicated that Dr. Gwin evidently felt the rest of them were all dummies and that he was to be the embodiment of the convention.<sup>12</sup>

The convention then selected a committee of one member from each of the districts to submit a draft of the constitutional provisions. This was sometimes referred to as the "mammoth committee" or the "almighty committee,"<sup>13</sup> which indicated the convention's general appreciation of its creature. There was presented, first of all, a draft of the Bill of Rights. The first section of this Bill of Rights, which came from the Constitution of Iowa, is more extensive in recognizing property rights than even the Federal Constitution. It reads:

"All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness."<sup>14</sup>

With such a large proportion of the delegates coming from the slave states, and with others having a good deal of sympathy with the aims of the slave states, it was somewhat surprising that the section of the Bill of Rights prohibiting slavery and involuntary servitude passed unanimously.

Without discussing in detail the different sections of the Constitution, a few provisions might be specially noted. The Legislature was required to meet annually and the statutes adopted were to be printed both in Spanish and English. The Supreme Court was to consist of a Chief Justice and two associates. The convention adopted the principle of proportionate stockholder's liability, under which California suffered for almost eighty years. It prohibited dueling. But mark this! State debts were not to exceed \$300,000, except in case of war or to repel invasion or suppress insurrection (Article VIII), unless for some specific object in which the law shall provide the ways and means, exclusive of loans, for the payment of interest on the debt and the discharge of its principal within twenty years.

The delegates also were particular with reference to setting up provisions for education and had in mind the creation of a state university.



By far the longest discussion on any single topic was that concerning the state boundary. General Vallejo stated that he had seen in the archives of the Upper California Government a document which divided the great desert, leaving one-half to the jurisdiction of New Mexico, and one-half to Upper California. This would include in California a large portion of Arizona and Nevada. Some of the delegates wanted to extend the boundaries as far east as to include Utah, but objections were made that this would include too much territory and that Congress would be loathe to include so much in the boundary; that it was including Brigham Young and all his Mormons, who were not represented at the convention, and the convention had no right to legislate for them. Finally, after a tremendous amount of debate back and forth, the boundary delineated in the Constitution was accepted.

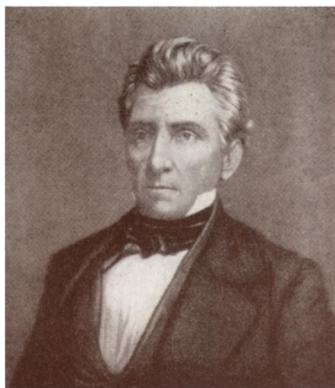
A spirited debate also arose as to whether the common law with respect to property rights of women should prevail, or the community property law. Mr. Botts of Monterey, one of the most vociferous delegates, asked the question whether the convention wanted to "make Prince Alberts of us all." The convention then decided the community property law would prevail.<sup>15</sup>

A proposal to authorize the abolition of the death penalty (p. 45) was made, but was defeated. In the discussion as to how the state government was to be financed and the taxes levied, Don Abel Stearns of Los Angeles brought forth a suggestion of a state property income tax, but this was not adopted.<sup>16</sup>

Mr. Pacificus Ord, from Monterey, offered an amendment that no clergyman, priest, or religious teacher shall be eligible to the Legislature. Immediately another delegate moved to amend it so that no lawyer, physician or merchant should be eligible. A further amendment was offered to exclude miners. Needless to say, the amendments were lost.<sup>17</sup>

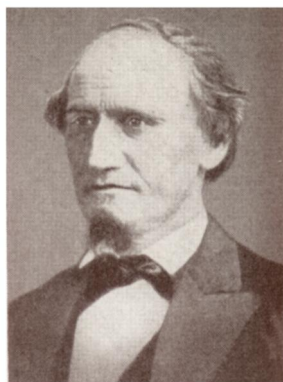
One interesting discussion concerned the adoption of the seal of the State of California. The explanation adopted by the convention was the following:<sup>18</sup>

"Around the bend of the ring are represented thirty-one stars, being the number of States of which the Union will consist upon the admission of California. The foreground figure represents the goddess Minerva having sprung full grown from the brain of Jupiter. She is introduced as a type of the political birth of the



WILLIAM M. GWIN

*One of California's first two United States Senators, Gwin was a dominant figure at the Constitutional Convention.*



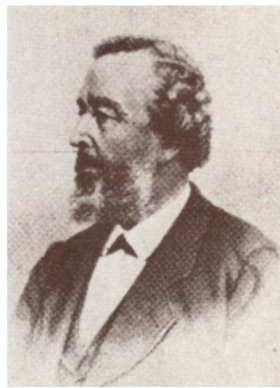
ROBERT B. SEMPLE

*President of the Constitutional Convention at Monterey; editor of California's first newspaper, "The Californian."*



J. ROSS BROWN

*Official Reporter of the Debates of the Constitutional Convention of 1849.*



BAYARD TAYLOR

*Author of "Eldorado" and layman observer of the Constitutional Convention.*

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State of California, without having gone through the probation of a territory. At her feet crouches a grisly bear feeding upon the clusters from a grape vine, emblematic of the peculiar characteristics of the country. A miner is engaged with his rocker and bowl at his side, illustrating the golden wealth of the Sacramento, upon whose waters are seen shipping, typical of commercial greatness; and the snow-clad peaks of the Sierra Nevada make up the background, while above is the Greek motto 'Eureka,' (I have found,) applying either to the principle involved in the admission of the State, or the success of the miner at work."

A San Francisco member suggested that the figures of the gold-digger and the bear ("gold-digger" being then used in its more literal and older meaning) be eliminated and that bags of gold and bales of merchandise be substituted. Gen. Vallejo, having in mind the Bear Flag Revolution so close to his home, recommended that the bear be taken out, but if it should remain that it be represented as made fast by a lasso in the hands of a vaquero.<sup>19</sup>

The compensation of the members was taken up and it was agreed that the delegates should be entitled to at least the pay of a common laborer, namely \$16 a day, and in addition \$16 for every twenty miles of travel, and that the president should get \$25 a day. The reporter, J. Ross Browne, was ordered paid \$10,000, for which he was to provide one thousand copies of the debates printed in English and two hundred fifty printed in Spanish. The convention also provided that 10,000 copies of the Constitution printed in English and 2,000 printed in Spanish should be distributed to the electorate.

The delegates then agreed upon November 13, 1849, as the date for the ratification of the Constitution, the election of a Governor and representatives to Congress. San Jose, after spirited competition from Monterey, San Francisco and San Luis Obispo, was selected as the place of meeting for the first legislature.

Notwithstanding the first rebuff that Dr. Gwin suffered on his offering of the Constitution of Iowa, that document furnished the main inspiration for more sections of the Constitution of 1849 than came from any other state. There are 136 sections in the Constitution. Of these 66 are taken from the Constitution of Iowa and 19 from that of New York. Other constitutions which had an influence upon our Con-

stitution of 1849 were those of Louisiana, Wisconsin, Michigan, Texas and Mississippi, as well as the Constitution of the United States.

On the night of October 12th the delegates gave a ball to return the hospitality of the citizens of Monterey which had been tendered to them. Bayard Taylor has described the closing scenes so vividly that I think his description should be repeated here. He says:

"The Hall was cleared of the forum and tables and decorated with young pines from the forest. At each end were the American colors, tastefully disposed across the boughs. Three chandeliers, neither of bronze nor cut-glass, but neat and brilliant withal, poured their light on the festivities. At eight o'clock—the fashionable ball-hour in Monterey—the guests began to assemble, and in an hour afterward the Hall was crowded with nearly all the Californian and American residents. There were sixty or seventy ladies present, and an equal number of gentlemen, in addition to the members of the Convention. The dark-eyed daughters of Monterey, Los Angeles, and Santa Barbara mingled in pleasing contrast with the fairer bloom of the trans-Nevadian belles. The variety of feature and complexion was fully equalled by the variety of dress. In the whirl of the waltz, a plain, dark, nun-like robe would be followed by one of pink satin and gauze; next, perhaps, a bodice of scarlet velvet with gold buttons, and then a rich figured brocade, such as one sees on the stately dames of Titian.

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"At twelve o'clock supper was announced. The Court-Room in the lower story had been fitted up for this purpose, and, as it was not large enough to admit all the guests, the ladies were first conducted thither and waited upon by a select committee. The refreshments consisted of turkey, roast pig, beef, tongue and pates, with wines and liquors of various sorts, and coffee. A large supply had been provided, but after everybody was served, there was not much remaining. The ladies began to leave about two o'clock, but when I came away, an hour later, the dance was still going on with spirit.

"The members met this morning at the usual hour, to perform the last duty that remained to them—that of signing the Constitution. They were all in the happiest humor, and the morning was so

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bright and balmy that no one seemed disposed to call an organization. Mr. Semple was sick, and Mr. Steuart, of San Francisco, therefore called the meeting to order by moving Capt. Sutter's appointment in his place. The Chair was taken by the old pioneer, and the members took their seats around the sides of the hall, which still retained the pine-trees and banners, left from last night's decorations. The windows and doors were open, and a delightful breeze came in from the Bay, whose blue waters sparkled in the distance. The view from the balcony in front was bright and inspiring. The town below—the shipping in the harbor—the pine-covered hills behind—were mellowed by the blue October haze, but there was no cloud in the sky, and I could plainly see, on the northern horizon, the mountains of Santa Cruz and the Sierra de Gavilan.

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"About one o'clock the Convention met again; few of the members, indeed, had left the hall. Mr. Semple, although in feeble health, called them to order, and, after having voted Gen. Riley a salary of \$10,000, and Mr. Halleck, Secretary of State, \$6,000 a year, from the commencement of their respective offices, they proceeded to affix their names to the completed Constitution. At this moment a signal was given; the American colors ran up the flag-staff in front of the Government buildings, and streamed out on the air. A second afterward the first gun boomed from the fort, and its stirring echoes came back from one hill after another, till they were lost in the distance."<sup>20</sup>

Immediately after the signing of the Constitution the delegates proceeded in a body to the house of General Riley and expressed to him the thanks of the Convention for the aid and cooperation which he had given in the creation of a state government.

On November 13 the Constitution was ratified by a very light vote—12,064 for the Constitution, 811 against, and our first governor, Peter H. Burnett, was elected at the same time.

I might close with a very apt quotation from Josiah Royce:<sup>21</sup> "Thus began the life of the Constitutional government that was to continue for thirty years without radical change of its organic law. The change, when it came, was for the worse."

HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA

NOTES

1. *Bancroft's Works*, Vol. XXIII, p. 269.
2. *Bancroft's Works*, Vol. XXIII, p. 268, n. 31.
3. Colton, *Three Years in California*, p. 192.
4. Colton, p. 250.
5. Colton, pp. 388-389.
6. Colton, p. 356.
7. Crosby, *Memoirs*, p. 33.
8. Bancroft. p. 284.
9. Bancroft, p. 286.
10. Crosby, p. 46.
11. *California*, p. 260.
12. Crosby, p. 41.
13. Debates, p. 59.
14. Debates, appendix, p. iii.
15. Debates, p. 257 and following.
16. Debates, p. 202.
17. Debates, p. 136.
18. Debates p. 304.
19. Debates, pp. 322 and 323.
20. *Eldorado*, pp. 159-163.
21. Josiah Royce, p. 270.

The Committee appointed to report "a plan or a  
part of a plan of a State Constitution" having  
had the same under consideration, respectfully  
further report the following.

### Schedule.

Sec. 1. All rights, <sup>actions,</sup> prosecutions, claims and  
contracts as well of individual as of bodies  
corporate and all laws in force at the time  
of the adoption of this Constitution and not  
inconsistent therewith until altered or repealed  
by the Legislature, shall continue as if the same  
had not been adopted.

Sec. 2. The Legislature shall provide for the removal of all  
causes which may be pending when this Constitution goes  
into effect, to Courts created by the same.

#### ORIGINAL MANUSCRIPT

Covering portion of Constitution adopted at Monterey one hundred years ago.  
Note signature of Myron Norton, chairman of the Committee on Constitution.

(See reverse side)



legislature elected under the same, which  
is hereby authorized, to negotiate for such  
amount as may be necessary to pay the expenses  
of the State Government.

By order of the Committee  
(Signed) Myron Norton  
Chairman.