RECLAIMING STATE CONSTITUTIONAL HISTORY: NEWSPAPER COVERAGE OF 19TH CENTURY STATE CONSTITUTIONAL COMMISSIONS AND CONVENTIONS

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James Bryce made the observation that the state constitutions are "a mine of instruction for the natural history of democratic communities."[1] James Dealey stated that the state constitutions reflect the "romance, the poetry and even the drama of American politics,"[2] and that they constituted a "cinematoscope" of the times.[3] Bryce and Dealey were exposed to state constitutions up through the turn of this century. The deliberations and debates leading to those state constitutions were often not available in any official or compiled form. If, as Bryce and Dealey claimed, the state *constitutions* themselves provide a window on the natural history of democratic communities (states) and the romance, poetry and drama of American (state) politics, how much richer are the data to be mined from the discussions, opinions, perspectives, attitudes, and debates leading up to the adoption of such constitutions? What can we learn from the alternative drafts, amendments, and compromises behind the constitutions that were finally adopted? Much of this discourse is available in the newspapers of those days, but it has rarely been collected and made conveniently available to scholars (not trained historians), students, lawyers, judges, political scientists, and government officials.[4] This paper, using a case study

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[1] 1 JAMES BRYCE, THE AMERICAN COMMONWEALTH 434 (rev. 2d ed. 1891).

[2] JAMES Q. DEALEY, GROWTH OF AMERICAN STATE CONSTITUTIONS 11 (1915, 1972 reprint).

[3] *Id.*, at 2.

[4] Fortunately, the three Salt Lake City newspapers, the *Deseret Evening News* (owned by the Mormon church), the *Salt*

from New Jersey, attempts to illustrate the treasure trove, or at least mother lode, of enlightening, available, albeit relatively inaccessible, material bearing on the state constitutional thought (as well as wider legal and political attitudes) of this important period of American constitutional development. It concludes with a call to reclaim this state constitutional history.

> *Lake Tribune* (owned by non-Mormon Republicans), and the *Salt Lake Herald* (a Democratic party voice), covered each day's sessions in lengthy, sometimes gossip-mongering, detail. From these accounts, the real flavor of the convention emerges.

JEAN BICKMORE WHITE, THE UTAH STATE CONSTITUTION: A REFERENCE GUIDE 212-13 (1998); James C. Harrington, *Framing A Texas Bill of Rights Argument*, 24 ST. MARY'S L.J. 399, 424-26 (1993).

New Jersey courts have been involved in litigation over the interpretation and application of the New Jersey state constitution's "Thorough and Efficient clause" for more than an generation.[5] This very important clause in the state constitution had its origins in a recommendation by a statutorily created, and gubernatorially appointed, constitutional commission that convened in New Jersey in 1873.[6] The Commission's recommendations were forwarded to the Legislature, which debated them in 1874, adopted them in 1875, and placed them on the ballot where they were ratified that year. The discussions of state constitution making that took place both in the Commission and in the Legislature were wide-ranging and sophisticated. They reflect, in very important ways, the range of contemporary thinking about state constitutions and the important political and legal issues of the day. However, neither the proceedings of the Commission nor of the Legislature were officially recorded, transcribed, or preserved in any way. There is only a handwritten journal from the Commission[7] and the House

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[5]N.J. Const. art. VIII, Section IV, ¶ 1:
The Legislature shall provide for the maintenance and support of a thorough and efficient system of public schools for the instruction of all the children in the State between the ages of 5 and 18 years.

[6]ROBERT F. WILLIAMS, THE NEW JERSEY STATE CONSTITUTION: A REFERENCE GUIDE 9-10 (rev. ed. 1997); Robert F. Williams, *Are State Constitutional Conventions Things Of The Past? The Increasing Role Of The Constitutional Commission In State Constitutional Change,* 1 HOFSTRA L. & POLICY SYMP. 1, 7-10 (1996).

[7] Joseph L. Naar and Edward J. Anderson were appointed Secretaries for the Commission. Their minutes of the deliberations of the Commission remain the sole record available for research and analysis (N.J. Constitutional Commission, 1873). Naar and Anderson recorded only motions introduced on the floor and the results of voting on these motions. Although four committees were established, no minutes were available of committee hearings to clarify issues or explain arguments raised in favor of or in opposition to proposals. However, the 1873 proceedings of the

and Senate journals for the Legislature. On the other hand, as was often the case with 19th century state constitutional commissions or conventions, there was extensive, daily newspaper coverage of the proceedings, by a number of different New Jersey newspapers. That newspaper coverage, however, has never been organized and published in any way that makes it readily accessible.

> Constitutional Commission do provide glimpses of some of the arguments which were raised on the floor and of the interests of the Commission members themselves.

Sepinwall, *infra* note 15, at 196.

Because of the indirect route taken by these important 1875 New Jersey state constitutional changes, the debates of the 1873 Commission arguably do not qualify as "constitutional history" in the direct sense that the debates in a constitutional convention, or in the legislature on proposed amendments, would be considered evidence of the "intent of the framers." Technically, and legally, of course, the members of the Commission were not the "framers" of the amendments adopted in 1875.[8] But this is too narrow a view of constitutional history. The Commission members were operating under a direct delegation of power from both the Legislature and the Governor. Of course, the Legislature was not bound to accept the Commission's recommendations, nor to limit its consideration of proposed state constitutional amendments only to those forwarded by the Commission. But, in fact, although it did not propose all the Commission's suggestions, and modified others (importantly including the "Thorough and Efficient clause") it did not add any of its own.

In any event, as legal historian Stephen Gottlieb has pointed out:

> Constitutional history is valuable whether or not one subscribes to a jurisprudence of original intent. For those who do, history becomes controlling - important because it does, or should, determine constitutional interpretation. For those who reject a jurisprudence of original intent, constitutional history nevertheless helps us to preserve the lessons embodied in the drafting of the provisions at issue and to explore the consequences of the language chosen. State constitutional history has become more important as the United States Supreme Court has become less protective of individual rights.[9]

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[8] *Cf.* L.H. Levinson, *Interpreting State Constitutions By Resort to the Record*, 6 FLA. ST. U. L. REV. 567 (1978).

[9] Stephen Gottlieb, *Foreword: Symposium on State Constitutional History: In Search of a*

We should, however, view state constitutional history with care and an understanding of the limitations of our hindsight. As Jefferson Powell has cautioned:

Usable Past, 53 ALB. L. REV. 255, 258 (1989). *See also* TOWARD A USABLE PAST: LIBERTY UNDER STATE CONSTITUTIONS (Paul Finkelman and Stephen E. Gottlieb, eds. 1991).

> One of the most common sources of misunderstanding and anachronism in constitutional history stems from the desire to identify a common set of ideas and arguments shared by groups labeled "the founders," "framers," `"traditional' constitutional lawyers," or similar appellations. This desire easily leads one to find more agreement and intelligibility in the past than was in fact there.[10]

Despite these caveats, the constitutional history produced by the Commission, even if not technically of a quality to be considered evidence of "intent of the framers," or without questions about its accuracy or completeness, is still of interest to scholars, students, judges, government officials, lawyers, historians and political scientists. It is an important part of any state's constitutional development. The *legislative* deliberations leading up to the 1875 amendments are, of course, clearly directly relevant as "legislative (constitutional) history."

Alan Tarr has demonstrated the special appeal of "original intent" (as well as textualism) and resort to state constitutional history materials in the rediscovery of state constitutional rights protections, or the "New Judicial Federalism."[11] He noted: "Because state constitutions possess a distinctive history and underlying theory, it is argued, the critique of federal original-intent jurisprudence does not apply--or at least does not apply with equal force--to a state original intent jurisprudence."[12] Thus, there is a strong incentive to uncover state constitutional history materials.[13] State constitutional history even played a central role in the United States Supreme Court's 1985 decision overturning the provision of the Alabama Constitution barring voting by

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[10]H. Jefferson Powell, *The Uses of State Constitutional History: A Case Note*, 53 ALB. L. REV. 283, 283-84 (1989).

[11]G. Alan Tarr, *Constitutional Theory and State Constitutional Interpretation*, 22 RUTGERS L.J. 841, 848-56 (1991).

[12]*Id.*, at 851.

[13]*Id.,* at 852.

persons convicted of crimes involving "moral turpitude," as intentional racial discrimination.[14]

[14]Hunter v. Underwood, 471 U.S. 222, 229-31 (1985).

In spite of the importance of the 1875 amendments to the New Jersey constitution, there is very little known or written about this crucial period in New Jersey constitutional development.[15] A number of times in the course of the litigation concerning New Jersey's thorough and efficient clause, the courts have alluded in passing to the fact that there was newspaper coverage. For example, in a 1980 decision of the New Jersey Supreme Court concerning the clause, Justice Alan B. Handler noted that: "[T]he history of the Constitution's free public education clause is surprisingly scant."[16] Also, in the 1973 landmark decision, *Robinson v. Cahill*, also concerning the "thorough and efficient" clause and its application to unequal education funding, the New Jersey Supreme Court noted that "[T]here appears to be no

[15]There is a very interesting in-depth doctoral dissertation on the thorough and efficient clause that makes extensive use of the newspaper coverage, the Commission journal, and legislative sources. It has never been cited by the courts. *See* Harriet Lipman Sepinwall, The History of the 1875 "Thorough and Efficient" Amendment to the New Jersey Constitution in the Context of Nineteenth Century Social Thought on Education: The Civil War to the Centennial (May, 1986) (unpublished doctoral dissertation.)

[16]Levine v. State of N.J. Dept of Institutions and Agencies, 418 A.2d 229, 234 (N.J. 1980). *See also In re Application of Lamb*, 169 A. 2d 822, 828 (N.J. App. 1961) ("Research of ... all available records of the 1875 constitutional amendment, the State Archives and even the newspapers of the day, does not bring to light any helpful interpretative information.").

helpful history spelling out the intended impact of this amendment."[17]

[17]Robinson v Cahill, 303 A.2d 273, 291 (N.J. 1973).

The deliberations of the 1873 Constitutional Commission and the 1874 Legislature are actually reasonably well "documented", albeit in the relatively inaccessible unofficial newspaper form. Both the *Newark Daily Advertiser* and the *Trenton Daily True American*, as well as other newspapers, provided in-depth coverage, and some analysis, of the Commission's and Legislature's public sessions on the days they met[18]. Justice Handler referred to the *Trenton Daily True American* in his 1980 opinion mentioned above,[19] probably based on research he did for a law review article on New Jersey state constitutional revision fifteen years earlier[20] where he cited the newspaper coverage. The Commission actually met, and newspapers covered its proceedings, more often than is commonly recognized. Also, the courts have never referred to the Legislative proceedings the year after the Commission met. In fact, there were interesting debates in both the Commission and the Legislature on the education clause. They are

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[18]Harriet Sepinwall notes, in addition, the *Daily Fredonian*, the *Newark Morning Register* and the *Daily State Gazette*. *supra*, note 15, at 248.

[19]*Levine*, 418 A.2d at 234 (*"Trenton True American*, July 9--- Nov. 18, 1873 (collected and bound)"). Actually, there were several more important meetings of the Commission, earlier, in May, 1873, and later, in December, 1873. Newspaper coverage exists, but was not in the "collected and bound" file in the State Archives, to which Justice Handler was referring.

[20]Arthur B. Sills and Alan B. Handler, *The Imbroglio of Constitutional Revision - Another By-Product of Reapportionment,* 20 Rutgers L. Rev. 1, 22 n. 93 (1965).

reproduced in Appendix A. They should be read, however, with Jefferson Powell's caveat, quoted earlier, in mind.[21]

Actually, the Commission recommended a clause quite different from the thorough and efficient clause finally recommended by the Legislature and approved by the voters. It read:

[21] *See* note 10, *supra*, and accompanying text.

> A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the legislature shall establish and maintain public schools for the gratuitous instruction of all persons in this state, between the ages of five and eighteen years. The term "free schools" used in this constitution, shall be construed to mean schools that aim to give all a rudimentary education, and not to include schools designed to fit or prepare pupils to enter college, or schools controlled by or under the influence of any creed, religious society or denomination whatever.[22]

After initial debate the next year in the Senate, the following revised version of the clause was tentatively adopted:

> The Legislature shall provide by general laws the means to establish and maintain public schools for the gratuitous instruction of all persons in this state between the ages of five and eighteen years.[23]

The vote by which this version was adopted was reconsidered and, a few weeks later, the Senate adopted the final version[24] without debate. There was no separate consideration of the clause in the House. As is evident from the debates in both the Commission and the Senate set forth in Appendix A, this clause was debated, and evolved, in the broader context of a related set of proposals concerning, most importantly, the questions of taxation and public funding for the schools across county lines.

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[22] NEW JERSEY SENATE JOURNAL, 98th Sess., Jan. 13, 1874, p. 52

[23] NEW JERSEY SENATE JOURNAL, 98th Sess., Feb. 4, 1874, pp. 177-79.

[24] *See note* 5, *supra*.

There is precedent in New Jersey, as well as other states, for retrieval of such important newspaper sources, and publication of them in book form to facilitate their use by scholars, lawyers, judges, and others. Indeed, John Bebout's widely-used (but out-of-print) *Proceedings of the New Jersey Constitutional Convention of 1844*, which is the only usable reference work on the origins of, and debates on, the 1844 New Jersey Constitution, is based almost exclusively on newspaper reports. This compilation was the product of a Federal Writers Project effort, nearly one hundred years after the 1844 New Jersey Constitutional Convention. It is regularly referred to by New Jersey courts and scholars.[25] There is no similar compilation for the important 1873-1875 period.

Scholars have known, and made use, of this important, albeit unofficial, source of information concerning state constitutional conventions and commissions for a number of years. For example, Merrill D. Peterson's *Democracy, Liberty, and Property: The State Constitutional Conventions of the 1820's,* published in 1966, made extensive use of newspaper reports, particularly for the Massachusetts convention of 1820-21. In an "Editor's Note", Peterson stated:

> The published texts of the debates of the three conventions are of uneven quality. That of the Virginia convention is unquestionably the fullest and the best. Thomas Ritchie, editor of the *Richmond Enquirer*, employed Arthur Stansbury to report the debates. Because Stansbury was both skilled in shorthand and experienced in legislative proceedings, as a recorder of Congressional debates, he was able to offer a superb stenographic transcription of everything said and done in the convention. The Massachusetts volume, the least satisfactory of the three, was composed from the day-to-day reports published in the *Boston Daily Advertiser*. Reprinted in 1853, this edition is used here. Two newspaper editors compiled the New York volume with the object of preserving in more regular and durable form than the fugitive columns of public journals a full and accurate record of the convention proceedings. They were assisted by a stenographer.[26]

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[25] *See, e.g.,* Vreeland v. Byrne, 370 A.2d 825, 838 (N.J. 1977) (Hughes, C.J., dissenting).

[26] MERRILL D. PETERSON, DEMOCRACY, LIBERTY, AND PROPERTY: THE STATE

CONSTITUTIONAL CONVENTIONS OF THE 1820'S xxiii (1996). *See also* GORDON MORRIS BAKKEN, ROCKY MOUNTAIN CONSTITUTION MAKING: 1850-1912 (1987).

Most of the reclamation of newspaper coverage has been, like in Massachusetts, of constitutional *conventions* in the 19th century. I know of no such compilation of the debates of a constitutional *commission*. Scholars in states such as Oregon,[27] Wisconsin,[28] Connecticut,[29] Maryland,[30] Texas,[31] and Arizona[32] have also produced compilations of newspaper coverage of

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[27]OREGON CONSTITUTION AND PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF 1857 (Charles Henry Carrie, ed., 1926). This work is regularly relied upon by Oregon courts and scholars. See, e.g., State v. Conger, 878 P.2d 1089, 1094 (Or. 1994); Billings v. Gates, 916 P.2d 291, 298 (Or. 1996); Vannatta v. Keisling, 931 P.2d 770, 782 (Or. 1997); David Schuman, *The Creation of The Oregon Constitution*, 74 OR. L. REV. 611, 622 (1995).

The editor of this work, Charles Carrie stated in the introduction:

> The transactions of the constitutional convention, held at the county courthouse in Salem, Oregon, between August 17 and September 18, 1857, are shown in the official *Journal of the Proceedings,* and also by the report printed in the *Weekly Oregonian* and in the *Oregon Statesman* of the period. These sources are quoted below, in succession, under each legislative date. The *Journal* is the official report, and in case of difference between the authorities must control, but the newspaper accounts give the debates in greater detail and furnish a valuable supplement to the record. The legislative date of the Proceedings is given at the top of each page.

id, at 57.

[28]MILO M. QUAIFE, THE CONVENTION OF 1846 (1919). The Wisconsin courts have relied on this source. *See, e.g.* Jacobs v. Major, 407 N.W. 2d 832, 853 (Wis. 1987).

[29]Wesley W. Horton, *Annotated Debates of the 1818 Constitutional Convention, 65* CONN. B.J. SI-1 (special issue 1991). Connecticut courts and scholars had relied on the newspaper reports even prior to Horton's compilation. *See, e.g.,* Cologne v. Westfarms Associates, 469 A.2d 1201, 1209 n.9 (Conn. 1984); Jacob Katz Cogan, Note, *The Look Within: Property, Capacity, and Suffrage in Nineteenth-Century America,* 107 YALE L.J. 473, 480-81 nn. 53, 54 (1997).

[30]PHILIP B. PERLMAN, DEBATES OF THE MARYLAND CONSTITUTIONAL CONVENTION OF 1867 (1923). *See* Hornbeck v. Somerset Co. Bd. Of Ed., 458 A.2d 758, 770 (Md. 1983).

[31]SETH SHEPARD MCKAY, ed., DEBATES OF THE TEXAS CONSTITUTIONAL CONVENTION OF 1875 (1930).

[32]JOHN S. GOFF, ed., THE RECORDS OF THE ARIZONA CONSTITUTIONAL CONVENTION OF 1910 (1991). *See* John D. Leshy, Book Review, 23 ARIZ. ST. L.

state constitutional conventions.

J. 1163 (1991). Professor Leshy commented about this volume: "it will help assuage the eyesight and patience of those who heretofore have had to spend hours in front of microfiche or microfilm readers and elsewhere tracking down scattered materials on the deliberations that lead to Arizona's first and only constitution.

Id, at 1163.

These state constitutional convention newspaper reports, and their use by scholars, lawyers and judges, must be distinguished from the use of newspaper reports in the judicial interpretation of initiated *statutes*.[33] It should also be distinguished from the use of newspaper reports in the interpretation of specific amendments to state constitutions.[34]

Newspaper reports are, of course, unofficial. Still, they often provide the most authoritative coverage of 19th century (and even early 20th century, as in the case of Arizona) constitutional conventions and commissions. Newspapers, of course, often had a political bias, sometimes explicit.

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[33] *See,* Jane S. Schacter, *The Pursuit of "Popular Intent": Interpretive Dilemmas In Direct Democracy* 105 YALE L.J. 107 (1995); Note, *The Use of Extrinsic Aids In The Interpretation Of Popularly Enacted Legislation,* 89 COLUM. L. REV. 157 (1989); Washington State Department Of Revenue v. Hoppe, 512 P. 2d 1094 (Wash. 1973).

[34] *See*, e.g., State ex rel. Sansted v. Freed, 251 N.W. 2d 898, 907 (N.D. 1965); Lipscomb v. State, 753 P. 2d 939 (Or. 1988); In re Advisory Opinion to the Governor, 612 A.2d 1, 11 (R.I. 1992); Client Follow-Up Co. V. Hynes, 390 N.E. 2d 847, 854-55 (Ill. 1979); Westerman v. Cary, 892 P.2d 1067, 1073 (Wash. 1995); Robert F. Utter, *State Constitutional Law, The United States Supreme Court, and Democratic Accountability: Is There A Crocodile In The Bathtub?* 64 WASH. L. REV. 19, 37 (1989).

The editor of the Arizona materials made the following : "some remarks made by the delegates are still missing, but others were located in contemporary newspapers. Interpolations are always enclosed in brackets. It can be said with certainty that all of the words included in these pages were uttered on the floor of the convention; what cannot be said is what others may have been spoken."[35] The Arizona materials point out a very interesting function newspapers can play in *supplementing* official sources that are relatively complete. For example, a major speech on the floor of the convention in opposition to the initiative was omitted from the official records, but found in the Phoenix Arizona Republican, and included by the editor.[36] This was true of another major speech as well on the initiative and referendum.[37]

Even in states where the newspaper reports of state constitutional conventions have not been compiled and indexed, lawyers, judges and scholars seek them out and rely on them.[38] But access is difficult even assuming one knows that such relevant newspaper coverage exists. Compilation would greatly facilitate the use of these materials, as it has done demonstrably in the states where it has occurred. Compilation will make this relatively inaccessible component of state constitutional history much more usable.

The use to which this kind of newspaper coverage is put will, of course, differ according to the reason one seeks to rely on it. Scholarly inquiry, delving into newspaper coverage of state

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[35] *supra note 32* at iv.

[36] id, at 198

[37] id, at 205

[38] *See, e.g.* Collins v. Day, 644 N.E. 2d 72, 77 (Ind. 1994); Dye v. State, 507 So. 2d 332, 340-41 (Miss. 1987); Virmani v. Presbyterian Health Services, Inc., 493 S.E. 2d 310, 316 (N.C. App. 1997).

constitutional conventions or commissions for broader understanding is relatively noncontroversial. Questions of accuracy, completeness or political bias, of course, may arise. Use of such materials, however, for legal advocacy raises all of the issues associated with use of legal history in constitutional (albeit usually *federal*) argument and interpretation.

Reliance on newspaper coverage of state constitutional conventions and commissions would be used, as Professor William Fisher says, in the "contextualist method."[39] This method "asserts that, by attending carefully to the discourse out of which a text grows (the vocabularies available to its author, the concepts and assumptions he took for granted, and the issues he considered contested), one can (and should) ascertain the author's intent."[40] Although Professor

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[39]William W. Fisher, III, *Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History*, 49 STAN. L. REV. 1065, 1104 (1997).

[40]*Id*. *See also* Martin S. Flaherty, *History "Lite" in Modern American Constitutionalism*, 95 COLUM. L. REV. 523, 550 (1995):

> American constitutional theorists are correct to turn to the history of the Founding for a number of reasons. Most generally, situating ideas in the context in which they arose enables us to comprehend and assess those ideas better than we would by viewing them as free-floating principles. This follows because the original historical setting almost invariably suggests reasons to accept or reject a given idea that would not otherwise be apparent.

See also *id*., at 590:

> No longer must American constitutional thinkers look beyond America when seeking insight from the past. Colleagues across the courtyard in history departments, by taking the arguments earlier American constitutionalists made seriously, and by considering arguments other than just those made one summer in Philadelphia, have achieved stunning success in reconstructing the constitutional discourse that led to revolution, to independence, and to the document we live under today. The success presents a singular opportunity to modern theorists.

It is this sort of reconstruction that can take place if newspaper coverage of state constitutional

Fisher concludes that this approach is flawed,[41] a number of lawyers and judges make use of state constitutional history in this way. Cass Sunstein has described the constitutional lawyer's (by contrast to the historian's) task of presenting a "usable past":

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conventions and commissions is compiled and made available.

[41] *Id.*, at 1105, 1007.

> The search for a useable past is a defining feature of the constitutional lawyer's approach to constitutional history. It may or may not be a part of the historian's approach to constitutional history, depending on the particular historian's conception of the historian's role. The historian may not be concerned with a useable past at all, at least not in any simple sense. Perhaps the historian wants to reveal the closest thing to a full picture of the past, or to stress the worst aspects of a culture's legal tradition; certainly there is nothing wrong with these projects. But constitutional history as set out by the constitutional lawyer, as a participant in the constitutional culture, usually tries to put things in a favorable or appealing light without, however, distorting what actually can be found.[42]

It is, of course, beyond the scope of this paper, not to mention my own expertise, even to attempt a resolution of the debate over the use of constitutional history. The point is that, with increased availability, possibly we can begin the debate about *state* constitutional history.

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[42]Cass R. Sunstein, *The Idea of a Usable Past*, 95 COLUM. L. REV. 601, 603 (1995). *See also id..,* at 605:

> What I am suggesting is that the constitutional lawyer, thinking about the future course of constitutional law, has a special project in mind, and that there is nothing wrong with that project. The historian is trying to reimagine the past, necessarily from a present-day standpoint, but subject to the discipline provided by the sources and by the interpretive conventions in the relevant communities of historians. By contrast, the constitutional lawyer is trying to contribute to the legal culture's repertoire of arguments and political/legal narratives that place a (stylized) past and present into a trajectory leading to a desire future. On this view, the historically-minded lawyer need not be thought to be doing a second-rate or debased version of what the professional historians do well, but is working in a quite different tradition with overlapping but distinct criteria.

APPENDIX

TRENTON DAILY TRUE AMERICAN

THURSDAY, OCTOBER 9, 1873

CONSTITUTIONAL COMMISSION

SECOND DAY

The Commission reassembled....

* * * *

Mr. Gregory offered the following amendments.

* * * *

The School Fund shall be appropriated exclusively for the maintenance and support of the public schools in the State, under its exclusive control.

Referred to Committee on Legislation.

Not less than two mills on the dollar of taxable value each year, shall be raised in each county by tax annually, to be expended on public schools therein, and not elsewhere.

Referred to same committee.

Laws shall be passed by the Legislature to compel the attendance of able-bodied children

at the public schools, or such schools as the parents or guardians shall prefer, of all children in the State, between the ages of ____ years for at least ___ months in each year.

TRENTON DAILY TRUE AMERICAN
WEDNESDAY, OCTOBER 22, 1873

CONSTITUTIONAL COMMISSION

* * * *

The following amendments were proposed by the Committee on Bill of Rights, Right of Suffrage, &c.

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22. Not less than two mills on the dollar of taxable values each year shall be raised in each county by tax, annually to be expended on public schools therein, and not elsewhere.

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23. The school fund shall be appropriated exclusively for the maintenance and support of the public schools in the State, under its exclusive control.

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The paragraph No. 22 was taken up, Mr. cutler moved to strike out the words “therein and not elsewhere,” requiring moneys raised by counties to be expended in those counties.

Mr. Green opposed the motion to strike out; and showed by the Comptroller's report that several counties were compelled to contribute to the support of schools in other counties. He thought the money raised by the two mill tax ought to be expended in the county were it was raised.

Mr. Hubbell advocated the report of the committee, and opposed the amendment. The idea of compelling one county to support schools in other portions of the State was not considered just or right.

Mr. Gray thought it was the duty of the State to see that the youth of the State are trained up in good citizenship; then it would appear right that the State should insist upon those portions of the State most able, to aid the weaker portions. The principle is that men are protected by the State in the measure of their wealth, and the wealthy are just as much interested in the proper education of the people in Cape May as they are in the counties in which they reside.

Mr. Green dissented from this principle. This money is raised for the education of children, according to the amount of taxable property in the counties, and is distributed entirely different proportion; that of the number of children in them. He showed that seven counties had by this principle paid $106,000 towards other counties.

Mr. Cutler took the opposite view. One county could not say to another, we have no need of them: we were one grand State and the children of the State are the property of all. The wealthy portions should consider what they have gained by legislation. Some counties have more property than others. He referred to the reports of the Comptroller for 1871 and 1872, characterizing them as able, and their arguments on this questions as unanswerable in favor of the present system. The difficulty was more in consequence of an imperfect sys. taxation than any inequality. He was a convert to the doctrine that the children of the State ought to be educated by the State.

Mr. Gregory thought the principle was clearly wrong, and producing unjust taxation, and presented a number of arguments to support his proposition. They were subjected to errors in the enumeration of children, and from a variety of other causes. People were willing to have the children educated, but we should compel the counties to do their duty, and the object of educating the children of the State would be answered:

Mr. Gray said it was only because the tax was for State purposes that it is justified. It was the misfortune of cities that they did not have as many children as other portions in proportion to the population. It is because it is a State duty to educate the children that this tax is justified. It was a part of the government, and the principle was justified on the ground of rearing good citizens. It cannot be sustained on any other principle.

Mr. Gregory still advocated his views against the principle. The valuations are not equal. If they were, there would not be so much to complain of.

Mr. Hubbell said it was not the duty of the State to educate the children without some effort on the part of the people. The Eastern States entertain no such idea. The principle instruction is based upon the exertions of the people, and in that proportion they should be helped by the State. There is not sound reason why the State should educate the children, except in proportion to the exertions of people of the several counties.

Mr. Ferry gave instances of the injustice of the principle as it operated on the town of Orange. The proposition he regarded as unjust and unequal, and he hoped it would not pass.

Mr. Gray further advocated his proposition, and referred to the present Constitution of the State, to show that for more than thirty years it has been considered the duty of the State to educate the children of the State.

The question was taken, and the motion to strike out was lost, 5 to 6.

The paragraph (22) was then adopted as reported by the Committee.

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Mr. Green moved to reconsider the vote by which paragraph 22 was adopted. Agreed to.

Mr. Green then moved to amend so as to leave the amount to be raised for schools to the

people and the Legislature, and to be expended where it was raised and not elsewhere. The amendment was lost, 4 to 7.

Mr. Gray moved to postpone the further consideration of this matter to Tuesday next, at 11 o'clock. Lost.

Mr. Dickinson moved to strike out the whole paragraph. He thought they were descending into the business of legislation.

Mr. Gray raised the question whether under this clause the people of a particular locality may not spend the money for any kind of school purposes. Do we not enable religious societies to use this money in any manner they please? The schools may be public, but still under a particular locality or society.

The question was taken on Mr. Green's motion to adopt, and it was adopted -6-5.

TRENTON DAILY TRUE AMERICAN
THURSDAY, OCTOBER 23, 1873

CONSTITUTIONAL COMMISSION
EIGHTH DAY

* * * *

Mr. Hubbell moved to take up the paragraphs 20 and 22, of Article I, "Rights and privileges," (published yesterday) and referring to the school tax and the indebtedness of counties, townships, boroughs and cities.

A number of amendments were proposed, and the several paragraphs were further postponed.

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Mr. Ferry moved to take up the amendments proposed to Article IV. section 7.

The Legislature shall not pass private, local or special laws in any of the following enumerated cases, that is to say:

* * * *

Mr. Swayze submitted a new paragraph as follows:

"Providing for the management of common Schools," which was adopted.

TRENTON DAILY TRUE AMERICAN
WEDNESDAY, OCTOBER 29, 1873

CONSTITUTIONAL COMMITTEE
OCTOBER 28-TENTH DAY

* * * *

The next propositions provides that the several counties of this State shall each year, raise by tax upon the valuation of their taxable property, a sum sufficient, in addition to the sum to be derived from the school fund, to support the public schools of such county.

After discussion the proposition was lost.

TRENTON DAILY TRUE AMERICAN
FRIDAY, NOVEMBER 14, 1873

CONSTITUTIONAL COMMISSION

* * * *

The Commission adjourned to meet on Tuesday morning next.

NEWARK DAILY ADVERTISER
FRIDAY, NOVEMBER 14, 1873

THE CONSTITUTIONAL COMMISSION
(The Public Schools-The Judiciary Again)
(Correspondence of the Newark Daily Advertiser)
Adjournment until Tuesday, etc.
TRENTON, 1873

The Commission was unable to complete its work to-day as expected, and was obliged to adjourn over to next Tuesday, when it will sum up and finally revise its work.

* * * *

A lengthy discussion then ensued upon the propositions of Mr. Swayze in regard to Education. The two chief points were, as to making the public schools of the State free, and as to striking out the words “five years” so as to admit children under that age to the public schools. The latter proposition was advocated by Mr. Gregory, who said that the poor people in Jersey City were enabled to send children who were under five years of age. The parents were laborers, and they could send their children there while they were out at work. This, he said, makes the schools popular, and he did not see why we should limit the age, as children there quit school when they are about twelve years of age.

Mr. Cutler objected to striking out the words “five years” for to do so in cities would be to make the schools, instead of being as they are schools for education, if the amendment was adopted, they would be turned into nurseries and would be made places to take care of children under three years old. As the President of the Board of Education of Morris County, he is continually importuned to admit children of that age. He doubted if a child should be allowed to go to school before seven or eight years of age, and would be very sorry to send a child to school

before it was four years old. The proposition to strike out was lost.

Mr. Green offered the following amendment to the first section of Mr. Swayze's proposition:

"The amount raised by tax for schools in each county in each year shall be expended therein and not elsewhere."

Mr. Green spoke of the inequality of tax in certain portions of the State, and claimed that the money raised by a county should not be spent for the support of other counties. Mr. Swayze opposed the amendment of Mr. Green, claiming that it was the duty of the State to support the schools. Mr Gregory advocated a pro rata division, and presented a letter from the Hon. John Van Brunt, in relation to the mode of assessments. Remarks were made by Messrs. Gregory, Dickinson and Green, and the amendment was lost by a vote of five to six.

The following was then adopted by a vote of 8 to 3:

Sec. 4 The term "free schools," or public schools, used in this Constitution shall be construed to mean common schools that aim to give to all a rudimentary education only, and not to include schools designed to fit and prepare pupils to enter college, or schools controlled by or under the influence of any creed or religious society or denomination whatever.

Mr. Carter then moved the adoption of a proposition for compulsory education, which was lost by a vote of 4 to 7. A proposition to devote the proceeds of the sale of lands granted by the United States to this State, and of the sale of land or other property belonging to this State, to the free school fund was also lost.

TRENTON DAILY TRUE AMERICAN
DECEMBER 24, 1873

CONSTITUTIONAL COMMISSION

* * * *

In the clause respecting schools, the committee suggested the rejection of the word “free” after the word “public.” Lost -4 to 5.

* * * *

Mr. Carter suggested the word “liberal” instead of “rudimentary” in the clause to provide the means to educate the children of the State. Objected to.

TRENTON DAILY TRUE AMERICAN
WEDNESDAY, FEBRUARY 4, 1874

SENATE
TUESDAY, FEB. 3

* * * *

AFTERNOON SESSION

3 P.M. The Senate met and resumed the consideration of the propositions to amend the Constitution.

* * * *

The proposition relative to public schools is as follows:

" A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the legislature shall establish and maintain public schools for the gratuitous instruction of all persons in this State between the ages of 5 and 18 years. The term 'free schools,' used in this Constitution, shall be construed to mean schools that aim to give all a rudimentary education, and not to include schools designed to fit or prepare pupils to enter college, or schools controlled by or under the influence of any creed, religious society or denomination whatever."

Mr. Stone opposed the adoption of the amendment, as being impaired with too much language of a general meaning.

Mr. Taylor said we ought not to amend the Constitution unless it is to meet a need felt by the State. There is certainly no need for a constitutional demand for free education in New Jersey. I am also opposed to it if it is designed to restrict the limits of free education. This amendment cuts off all schools from the State support which go beyond the three R's. It would

cut off all the high schools of Newark and Morristown, where pupils are prepared for college; there is nothing taught in these schools that unfits a boy for citizenship. It would cut off the Normal School, for there the pupils learn not the rudiments, but how to teach others.

Mr. Hopper said the amendment was not only crudely expressed, but fraught with danger, and would involve our public schools in interminable difficulties. There was no necessity for the restriction as to rudimentary education--the establishment of the high school is an incitement to the lower grades.

Mr. Stone said the amendment proposes to instruct the Legislature what its duties shall be, and it is powerless to effect what is set down for it to do. Suppose we adopt this amendment, and the Legislature does not choose to act under it, who is to compel them?

Mr. Cutler said it was possible to so amend the proposition as to make if acceptable. In the present constitution the language is peculiar. In one place it refers to "free," and in another to the "public" schools.

Mr. Cutler moved to amend the proposition so that it should read, "The Legislature shall establish and maintain public schools for the gratuitous instruction of all persons in this State between the ages of five and eighteen years." The term free schools used in this constitution shall be construed to mean schools that are not controlled by or under the influence of any creed, religious society or denomination whatever.

Mr. Hopper opposed the first branch of the proposition as amended, because it might and could be construed to mean that Legislature should "maintain" the schools by the appointment of officers and teachers. There was no need for inserting a clause compelling the Legislature to establish free schools, the Legislature has made great advances in these matters, and the

amendment is unnecessary. After discussion the original proposition was amended in accordance with the motions of Mr. Cutler, as above.

Mr. Taylor then moved to strike out all after the word “years” which was agreed to, 13 to 4.

Mr. Cutler then moved to amend by providing that the Legislature shall provide by general law the means to establish and maintain public schools for the gratuitous instruction of all persons in this State between the ages of five and eighteen years, which was agreed to.

Mr. Cutler defended the proposition as fixing in the organic law the enunciation of the determination of the people of the State to maintain a system of free schools. The adoption of the amendment could do no harm.

Mr. Stone said the same reasoning could apply to the insertion of the ten commandments; they could do no harm, but they were entirely unnecessary in that place.

Mr. Stone moved to strike out the suggestion as amended, which was agreed to, 3 to 13:

The question was taken on the adoption of the propositions as amended, on motion of Mr. Cutler, and it was adopted, 12 to 4.

Adjourned.

NEWARK DAILY ADVERTISER
WEDNESDAY, FEBRUARY 4, 1874

FROM TRENTON
THE CONSTITUTIONAL AMENDMENTS-NEWARK
BILLS-SALARIES OF PROSECUTORS, ETC
(Correspondence of the Newark Daily Advertiser)
TRENTON, FEBRUARY 3, 1874

* * * *

The Senate this afternoon again discussed the Constitutional amendments....

The proposition to maintain free schools by the State for children between five and fifteen years of age, means schools that aim to give all a rudimentary education, and does not include schools designed to fit or prepare pupils to enter college, or schools controlled by or under the influence of any creed, religious society or denomination whatever, was discussed by Messrs. Stone, Taylor, Hopper, Cutler and others. Mr. Taylor opposed it as unnecessary and restricting the limits of free education. It cuts off all schools from the State support which go beyond the three R's. It would cut off all the high schools of Newark and Morristown, where pupils are prepared for college; there is nothing taught in these schools that unfits a boy for citizenship. It would cut off the Normal school, for there the pupils learn not the rudiments, but how to teach others. Mr. Hopper thought it would involve our public schools in interminable trouble. High schools were an incentive to the lower grades. A motion to strike out all after "years of age" was adopted, 13 to 4. Mr. Cutler then moved to amend by providing that the Legislature shall provide by general law the means to establish and maintain public schools for the gratuitous instruction of all persons in this State between the ages of five and eighteen years, which was agreed to and adopted, 12 to 4.

TRENTON DAILY TRUE AMERICAN
THURSDAY, FEBRUARY 5, 1874

SENATE
WEDNESDAY, FEB. 4

* * * *

AFTERNOON SESSION

3 P.M.--Senate met.

The Senate took up the amendments to the Constitution.

Mr. Cutler moved to reconsider the vote adopting the paragraph relative to public schools. Agreed to.

The consideration of such paragraph was made the special order for Tuesday afternoon next.

TRENTON DAILY TRUE AMERICAN
WEDNESDAY, FEBRUARY 25, 1874

LEGISLATURE OF NEW JERSEY
NINETY-SEVENTH SESSION.
TUESDAY, FEB. 24
SENATE

* * * *

AFTERNOON SESSION

3 P.M.--Senate met.

The Senate took up the amendments proposed to the Constitution....

On motion of Mr. Taylor (Mr. Sewell in the Chair) the clause relative to the establishment of public schools was taken up. Mr. Taylor moved to amend so that it shall read, "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of five and eighteen years," which was agreed to. The paragraph as amended was then adopted.