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Mowry, Arthur May,

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THE CONSTITUTIONAL CONTROVERSY
IN RHODE ISLAND IN 1841.

BY

ARTHUR MAY MOWRY.

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XX.—THE CONSTITUTIONAL CONTROVERSY IN RHODE ISLAND
IN 1841.¹

By ARTHUR MAY MOWRY.

The general peace and the customary quiet of the State of Rhode Island were rudely disturbed in the spring and summer of 1842. The whole population was in a panic, and in the northern county, especially, the consternation was widespread. The struggle was confined within a restricted area and to a limited population, and the violence of the contest was very great. Son rose against father, brother attacked brother, neighbor was opposed to neighbor, and the resulting wounds are scarcely yet healed.

The Rhode Island civil war was begun during the first week of May, 1842. Then two rival legislatures were organized,

¹The sources for the history of the Rhode Island contest are nearly all conscious material, but fortunately both sides of the controversy are well represented. The majority and the minority reports of the select committee of the House of Representatives appointed to consider the question of the interference of the President, commonly called Burke's report and Causin's report, contain an almost unlimited amount of valuable material. Turner and Burgess's report of the trial of Dorr, prepared by his supporters, is well offset by Pitman's report, which presents the opposite side. The arguments of Messrs. Hallett, Whipple, and Webster in the Luther-Borden case present the constitutional questions. King's Life of Dorr, Frieze's History of the Suffrage Movement, Potter's Considerations on the Rhode Island Question, and Bowen's Recent Contest in Rhode Island furnish very complete presentations of the subject. Reports of speeches in Congress and the Rhode Island newspapers have been found valuable to supplement the other sources. During the controversy the newspapers teemed with argumentative discussions, and a large number of these were later issued in pamphlet form. Open letters were written to Governor Morton, of Massachusetts, to George Bancroft, and to others who encouraged Dorr and his supporters. This mass of tracts is nearly unlimited, and most of the older private libraries in New England, as well as the public libraries, contain many of these publications. The perusal of these pamphlets is extremely monotonous, but in no other way can the true inwardness of the contest be obtained.

two governors-elect inaugurated, and dual governments established. The State militia was divided in its allegiance—a part upheld Governor Dorr and the constitution, while the majority took their orders from Governor King and the charter government. In each of the five counties of the State were rival sheriffs, one-half of whom had broken the laws of the State in accepting the office to which they had been elected. The President of the United States had been called upon by each governor to furnish assistance under the clause of the Constitution which guaranteed a republican form of government to every State.

The general features of the Dorr Rebellion are comparatively well known, though many inexact statements occur in the accounts that have been published, even by most accurate historians. The causes of the struggle, the incidents which led up to the civil war, are not so well known, while the few brief accounts of the preliminary steps furnish many incorrect statements, almost without exception conveying erroneous impressions.

The meagerness of the secondary literature upon the earlier movements and the erroneous generalizations that are quite universal have led the writer to an extended study from the sources of the history of the suffrage movement in Rhode Island. This work has been done in the American History Seminary of Harvard University, and this paper aims to set forth a necessarily brief account of the circumstances which led up to the war.

Many faults were found with the charter and the government which had grown up under it during the century and three-quarters of its existence, but at first demands were made for only two important changes—an extension of the suffrage and an equalization of the representation of the different towns in the lower house of the General Assembly. Fitful attempts had been made to obtain an improvement in one or the other of these matters at several different times, but never was the movement in the hands of real leaders, and never did it awaken more than a passing interest among the people.

The suffrage qualifications were not determined by the charter, but the right to establish them was placed in the hands of the General Assembly. The suffrage, as finally determined by the Assembly in 1798, was granted to those who possessed a freehold, either of the value of one hundred and thirty-four

dollars or which rented for seven dollars per annum. A relic of primogeniture existed in the possession of the suffrage by the eldest sons of the freeholders. Most of the male inhabitants of the colony owned land before the Revolution, and this restriction of the suffrage was not then a serious limitation. As the State became more and more a manufacturing community, the number of the nonfreeholders materially increased, until, by 1840, those of legal age who did not have the suffrage were more numerous than the freemen.

The second evil was, unlike the first, inherent in the charter itself, which apportioned the representation in the General Assembly, without allowing for changes in the population. In the seventeenth century no objection could be made to the six members from Newport, the four each from Providence, Portsmouth, and Warwick, and the two each from the other towns. In 1840, however, the inequalities had become very great; for example, Smithfield had a population larger than Newport, which was permitted to choose three times as many representatives; Providence was nearly twenty times as large as Portsmouth, and yet could elect but the same number of representatives. The apportionment resembled that of the unreformed English borough representation, and possibly the great reform of 1832 may have had its influence upon the demand for a change in Rhode Island.

The first steps were taken during the last weeks of the year 1840, and were not party movements at all. The Whig victories in November may have led the Democratic leaders to adopt the agitation for freer suffrage, after it was well inaugurated, as a means of regaining the popularity which they had lost, but they were surely not prominent in the early movements. The Whig features of the log-cabin campaign—processions, mass conventions, and frequent assemblages—were faithfully copied by the suffragists, and doubtless were effective instruments in awakening the people and in moving the authorities. However, the Rhode Island State Suffrage Association and the various town suffrage societies were at first by no means party movements.

The first sign of the agitation appears to have been an address, perhaps originated in Rhode Island, but ostensibly issued by a social reform society of New York. It was addressed to the nonfreeholders of Rhode Island, and urged them to hold a State convention, frame a constitution, submit it to all the

people, and if more votes were given for it than were cast at the last election of national Representatives, proclaim it as the "fundamental law of the land." Then they were advised to elect Representatives to Congress and thus provide a jury which might decide that such constitution had been legally adopted. This advice was in many respects very closely followed by the suffrage associations. Such societies were formed throughout the State before the beginning of 1841, and a weekly paper, entitled the *New Age*, was established as the official suffrage organ.

In January, 1841, a petition was presented to the General Assembly, signed by nearly six hundred persons, asking for the formation of a constitution, and for an extension of the suffrage, but the petitioners declined to recommend any special plan. At the same session, Smithfield asked for an increase in the number of Representatives allotted to that town. The first petition was laid on the table, while the second was discussed and a practical answer to both was given by an act calling a State convention for November to frame a new constitution. The vote for the convention was more than 2 to 1, and the Whig majority in its favor was greater than the Democratic. Perhaps some of the members of the Assembly voted for this convention hoping that the movement would result in failure, as had been the case so often before.

The voters of Rhode Island showed very little interest in this proposed convention, and the suffrage associations at once declared the whole scheme an evasion. The leaders proceeded to take steps to arouse enthusiasm among the nonfreeholders by meetings for debate, by public addresses, by mass conventions, and by enormous parades, as well as by a constant fusillade of argumentative letters and editorials, especially in the *New Age* and the *Republican Herald*.

The first of the series of parades and conventions occurred in Providence on the 17th of April, at which perhaps three thousand persons appeared in line and wore the suffrage badge. This number was probably about equal to one-third of the number of legal voters in the State. By this time some of the leading Democrats had joined the ranks of the suffragists, and had begun to assume control of the movement. The 17th of April was called the "People's Day," and it was prophesied that in the future it would rival the Fourth of July.

A second parade was planned for Election or Inauguration Day at Newport on May 5. This convention was naturally

much smaller, being held in a less populous community, but the interest and enthusiasm seem to have continued unabated. At this meeting one of the resolutions passed plainly suggested holding a State convention, of the nonfreeholders as well as the legal voters, in order to supersede the charter government. Another resolution criticised the legislature for not apportioning the delegates to the convention according to the population, and for not granting every American citizen the right of voting for delegates.

As a result of the agitation, two propositions were brought before the General Assembly at its May and June sessions. One motion, to the effect that all taxpaying resident citizens be allowed to vote for choice of delegates, was defeated by a vote of ten to fifty-one. The Democrats were equally divided, while but four Whig votes were cast in its favor. The other motion, apportioning the delegates in accordance with the population, was carried by a vote of forty-eight to twenty.

The grant of one of their demands and the refusal of the other, the more important one, was not satisfactory to the suffragists. At a third popular convention, held on Independence Day, in Providence, resolutions were passed criticising the action of the legislature, and affirming the right and advisability of holding a popular constitutional convention. July 20, a State committee, which had been appointed at the Newport meeting, issued an address requesting all the citizens of the State to choose delegates to a convention for the purpose of forming a State constitution.

The issue was fairly taken. Two conventions had been summoned to meet in the autumn months. One was called by an irresponsible committee of eighteen citizens; the other by the legislative body of the State. The delegates to one were to be chosen by all the male citizens resident in the State for a year and over twenty-one years of age; only legal freemen were to be electors of delegates to the other. The elections to the second were to be guarded in the usual manner; for the first, each election meeting could regulate its own action.

The ground upon which the Suffrage Association claimed the right to hold an "extra-legal" convention to form a State constitution was very simple, and can be briefly shown by the following quotations:

"A majority of the citizens of any State have the incontrovertible right, at any time, to assemble and alter, amend, annul or reform their government at pleasure." "We ask for

no authority from the legislature to empower the sovereign people to assemble in convention or to vote for or against the doings of that convention." "A constitution does not require to be framed and voted for under any sanction of the existing government." "The sovereign people are acting in their original sovereign capacity."

Many of the freemen were ready to grant an extension of the suffrage who were not willing to accept these constitutional theories. They considered the "original sovereign capacity" doctrine likely to lead toward an unstable government and perhaps to anarchy. "Majorities," said they, "real or pretended, will find all things lawful and all things expedient, and should they be fettered by constitutions they have only to resolve themselves into 'their original sovereign capacity,' and they may act their pleasure until another faction, stronger than they, shall arise to make them feel in their turn the miseries of such licentiousness and anarchy." "The vast majority of the people firmly believe that the will of the people must be expressed, not by mass meetings and party resolutions, but according to the forms prescribed by the constitution."

The so-called "people's convention" met in October, and after preparing a constitution adjourned for a month. The so-called "landholders' convention" met in November, drafted a scheme for a constitution, and adjourned until February, in order to allow a further discussion on the suffrage question. At its second session the people's convention perfected its constitution and submitted it to the people for ratification. Three days were allowed for voting on its adoption and, during the next three days, those who "from sickness or other cause were unable to attend and vote" were permitted to send in their proxies. It should be remembered that in Rhode Island, at all elections, the voter signed his name to the ballot which he cast. For the proxies it was only necessary to place also upon the back of the ballot the signature of the person who carried the prox. Each voter, at this people's election, was required to affirm on his ballot that he was an American citizen of the age of twenty-one years, and that he had a permanent residence in the State. He must also designate if he was a legal voter or not, under the existing laws of the State.

The vote appears to have been fairly free from fraud or error, at least for one cast under such unusual circumstances. A list

of all the voters has been preserved and has been open to investigation for fifty years. The opposition to the constitution claimed fraud, but no definite proof of illegal (?) voting has been found sufficient to vitiate the result. In January, 1842, the people's convention again met and declared that the constitution had been legally adopted, inasmuch as nearly fourteen thousand votes had been cast for it. The total number of males over twenty-one, by the census of 1840, was but a little over twenty-six thousand, and, even without deducting any from this number in order to omit those not naturalized, the insane, convicts, etc., the constitution seems to have received the votes of a majority of all the citizens. Nearly five thousand freemen had voted for the constitution, according to the face of the returns, a number more than half as large as had ever voted at a State election.

Propositions were at once made in the General Assembly to accept the constitution, to dissolve the constitutional convention, and to adjourn sine die. These motions were rejected by a vote of fifty-seven to eleven. The legislature also refused to investigate the vote on the constitution, claiming that the whole operation was illegal and void.

The landholders' convention met again in February, completed its labors, and referred its constitution to the people for adoption. By a vote of the General Assembly, all those citizens to whom the constitution would grant the suffrage were permitted to vote for or against the ratification. Three days in March were assigned for the vote. At this point the suffragists took the surprising step of voting, with the charter advocates and those opposed to any change, in opposition to the constitution. Nearly seventeen thousand votes were cast, and the constitution was defeated by a majority of six hundred and seventy-six.

It is difficult to determine how much influence the fact that the constitution was prepared by the landholders had upon the vote, but that it had much there can be no doubt. Many voted against it because they thought it implied a surrender of what they considered an invaluable right, namely, the sovereignty of the people over the government. The difference between the two constitutions was not great. The requirement of a two years' residence, instead of one, and a small property qualification for naturalized citizens were the two features of the landholders' constitution most severely criticised by the

suffragists. The fact that nearly seventeen thousand votes were cast, about double the largest number ever given before, is a proof of a considerable extension of the suffrage. Yet the constitution was defeated and the suffragists practically said, "Our constitution or none."

The Rubicon was passed. Either the "law and order" party or the supporters of the people's constitution must quietly surrender or a civil war would ensue. The sequel is fairly well known. Two governments were elected, rival legislatures took their seats, Governors King and Dorr were both inaugurated, and a desperate struggle appeared imminent. Two months of intense excitement followed. Armed bodies attacked arsenals and threw up fortifications, the garrison at Fort Adams was increased, and martial law was proclaimed by the charter authorities.

Before the end of June the people's government entirely collapsed, and Governor Dorr fled from the State for the third time. After his voluntary return, he was arrested, tried for treason, and condemned to imprisonment for life. He spent one year in confinement, and was then pardoned under a general amnesty act. Though the charter government was entirely victorious, nevertheless it yielded to the public sentiment, and even before the struggle was over, in June, 1842, called a new constitutional convention. This prepared an even more liberal constitution, which was ratified almost unanimously. Under this constitution of 1843 the State has continued without disturbance. In 1888 and 1893, amendments were passed, and the universal suffrage demanded in 1841 has been practically obtained.

In conclusion it may be legitimate to make a brief commentary in connection with the very condensed narrative which has been presented. The entire movement of the suffragists, from the call of the convention up to the election of the government under the people's constitution, was entirely revolutionary. The fact that the proceedings were peaceful up to the 1st of May, 1842, and that no attempt to use force had been made by either of the parties, does not diminish its illegitimacy.

The controversy was entirely unique in character, inasmuch as no agitation over the adoption of a constitution or of amendments to an existing constitution in any of the forty-four States has resembled that of Rhode Island in its peculiar

features. The people, who had waited so long for an extension of the suffrage, had few precedents by which they might be guided. Even the constitution of Connecticut, which superseded the charter of King Charles, was framed by a convention legally summoned by the legislature. The revolutionary conventions that framed the constitutions of Pennsylvania and Delaware in 1789 and 1792, though called in disregard to the previous constitutional limitations, were nevertheless authorized by the legislative bodies of those two States. The only precedent that could be suggested besides those of the period of the American Revolution itself was that of Michigan, in 1836. Even here, however, in the change from a Territory to a State many questions were presented which rendered it very unlike the conditions in Rhode Island.

If we conceive that the movement in Rhode Island was revolutionary, then its failure stamped it as rebellion. If the circumstances in the State rendered a change from the aristocratic to a democratic form of government impossible by legal means, then the revolution might have been justified. Later developments showed, however, that this was not the case. If the revolution had been upheld by the best judgment of the citizens, it might have presented an exceedingly important addition to the history of constitutional government.

Under some circumstances the wild revolutionary scheme of the suffragists might have succeeded. If the great majority of the people of Rhode Island had accepted the announcement of the vote on the people's constitution as an accurate statement of facts, and if the leaders of the movement had proceeded wisely in the establishment of the government which the new constitution created, and if the character of all the leaders had been such that the people could put real confidence in the wisdom of the movement, then the old charter might have given way to the more modern instrument. But all these possibilities failed to be realized, and the minute that it became apparent that the peaceful revolution must be followed by a condition of hostilities, into which the Federal Government might feel compelled to enter, the movement was doomed.

The right step for the suffragists to have taken in March, 1842, was to abandon their constitution and to hasten to ratify that which the landholders had prepared. The agitation would have then accomplished its legitimate result. In failing to take this step and in bringing about the defeat of that constitution

they made the serious mistake of the whole movement. The disastrous struggle which followed, together with the adoption of the second landholders' constitution, of November, 1842, may, perhaps, be said to have definitely furnished the precedent that "all lawful changes in government must be made by and with the consent of the constituted authorities," or, in the words of President Tyler, the existing government must be "altered and abolished and another substituted in its place only by legal and peaceable proceedings, adopted and pursued by the authorities and people of the State."



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