

## THE CONSTITUTIONAL CONVENTION

The farmers' struggle against the corporations was, of course, reflected in the constitutional convention. Yet the fundamental decisions of the convention had been made before it met; the structure of American state government had already been fixed beyond any real possibility of change. Congress had also decided many things in the Enabling Act of February 22, 1889, the Omnibus Bill, which authorized statehood. The act divided Dakota at the seventh standard parallel. It forbade discrimination in civil or political rights "on account of race or color, except as to Indians not taxed." The law endowed the state with 3,191,770 acres of land, about 7 per cent of its area, for educational and other public purposes and forbade it to sell the land grant for less than ten dollars an acre.<sup>5</sup>

The act also provided for a constitutional convention of seventy-five members, with three to be elected from each of twenty-five districts. On May 14, in a late blizzard, the voters went to the polls, many of them in sleighs, and the convention opened at Bismarck on July 4. A big parade celebrated the event; five hundred Sioux from Standing Rock, led by Sitting Bull, who carried a huge American flag, took part.

In general the delegates, some of the best citizens, were young men from the more humid part of the state, and most of them were farmers or lawyers of the older American stock. Fred B. Fancher, Martin N. Johnson, Roger Allin, Alexander Griggs, William Budge, and Burleigh F. Spalding were prominent members of the convention. Thirty-three delegates, or 44 per cent, came from the six counties of the Red River Valley. While Cass County alone had nine, the sparsely settled western part of northern Dakota had only six (five of them from Mandan and Bismarck). Only nine delegates were over fifty years of age, and some were even in their twenties. There were fifty-one Republicans, nineteen Democrats, two Prohibitionists, two Populists, and one Independent. A third were lawyers, but the largest group consisted of twenty-nine farmers. Of the seventy-five delegates, fifty-two had been born in the United States, ten in New York and thirteen in Wisconsin. All but five of the foreign-born came from Canada and the British Isles. There were only ten of Scandinavian stock.

<sup>5</sup> Harold A. Hagen, "North Dakota Land Grants," *North Dakota History*, XVIII (January 1951), 24.

The convention was subjected to many outside influences. The very fact that not a single delegate had been born in Dakota Territory was in itself a pervasive influence. The delegates' experience and background reflected the humid East, but they were writing a constitution for a semiarid state. That document inevitably did little to provide institutions suitable for a semiarid country.<sup>6</sup> Indeed, the delegates had before them as models the constitutions of many states with much more rainfall than North Dakota. The convention, however, was urged to make adaptations to the semiarid country by Major John Wesley Powell, director of the United States Geological Survey, who argued that the state must retain possession of the waters usable for irrigation. Such a provision was placed in the constitution.

It was appropriate, perhaps almost inevitable, that one important outside influence on making the constitution should come through the Northern Pacific. Henry Villard, then chairman of the railroad's board of directors, asked Professor James Bradley Thayer of the Harvard Law School to prepare a draft constitution for North Dakota. Thayer's draft was a carefully constructed model constitution, not a dishonest effort to create a government favorable to the railroads. It was introduced to the convention by Erastus A. Williams, a delegate from Bismarck. Although it was obviously not Williams' own handiwork, he refused to divulge its origin, causing much speculation.<sup>7</sup>

The constitution finally adopted by the convention followed the phrasing of Thayer's draft in many places. Yet the convention was in fact dominated by reform ideas. It reflected both the radical spirit of the exploited region and the nation-wide concern about the growth of monopolies and corruption in government. Reform influence was seen in the election of Fred B. Fancher as president of the convention; he was vice-president of the Dakota Farmers' Alliance. Many Alliance leaders, such as Martin N. Johnson, also played an active part in the convention. There were, of course, conservatives as well as reformers.

Many reforms were considered. A strong effort was made to adopt a unicameral legislature, considered less subject to corporation corruption, but it failed. Woman suffrage, compulsory arbitration of labor

<sup>6</sup> Carl F. Kraenzel, *The Great Plains in Transition* (Norman: University of Oklahoma Press, 1955), pp. 165-170.

<sup>7</sup> Clement A. Lounsberry, *Early History of North Dakota* (Washington: Liberty Press, 1919), pp. 398-399.