NEW MEXICO LAW REVIEW

Volume 5
Issue 3 *Special Issue: A Political History of The New Mexico Supreme Court 1912-1972*

Fall 1975

The Birth of a Partisan Judiciary, 1910-1911

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THE BIRTH OF A PARTISAN JUDICIARY, 1910-1911

The constitutional convention of 1910 was by no means the first such gathering held during the territorial period. Nor was it the first fruitful exercise in constitution-making. The struggle for statehood had been long and arduous, lasting from 1846 until 1912. During that period three especially serious attempts to achieve the admission of New Mexico as a state resulted in conventions, each one drawing up a constitution. All of these constitutions, dated 1850, 1872, and 1889, had a separate article setting up the organization, function, and jurisdiction of the courts. Each article, reflecting the political climate of its time, represented a stage in the evolution of the judiciary which was eventually established under the state constitution of 1910.

What this progression of constitutions meant was that the territory was maturing politically. In an era of isolation, the period including the constitutions of 1850 and 1872, both judges and their felt need for certain tenure were respected. These early documents provided an appointive judiciary virtually free from the threat of removal. Supreme Court justices—as envisioned by the framers of the first constitution—were simply to carry out their judicial duties. In the more complex days of the 1880s, constitution-makers were not so naive. Content to leave qualified Supreme Court justices appointive, though fairly easily removable, the framers made district court offices elective and subject to direct political influence.[1] This change in attitude toward the courts and their role in the political process grew during the remaining years of the territorial period.

In addition to internal political maturation, the change also reflected a growing objection to external control over judicial personnel, which resulted from presidential appointment of territorial judges.[2] The espoused desire was to make the courts responsive to the will of the people and their representatives in the legislature. The

1. Proposed N.M. Const. art. 6 (1889). *See also* R. Larson, New Mexico's Quest for Statehood, 1846-1912, at 161-68 (1968).

2. For the history of the territorial judiciary *see* A. Poldervaart, Black-Robed Justice (1948).

constitution of 1889 clearly demonstrated this. Thomas B. Catron (leader of the political group trying to control the courts) cleverly used it as his basic argument in an 1896 address to the New Mexico Bar Association that focused on two main points. First, he complained about presidential appointment of Supreme Court justices, maintaining that such a system resulted in a judiciary whose members were responsible only to the President and the federal government. According to Catron, the temptation to ingratiate themselves with the appointing power was thus too great, causing these men

> . . . to overlook the rights of the people, to slime over litigation, to practice favoritism and truckle to the government, and at the same time by sustaining each other's opinions and rulings, establish a reputation of being infallible—a weakness which is encouraged by the condition of things.

Second, Catron advocated change, maintaining that "judges who are directly responsible to the people or local authorities, would not give way to such weakness." At the very least he wanted a system whereby a separate review court sat in judgment of cases on appeal. This was to be an impartial and independent court, concerned only with doing right. Throughout, he came consistently back to the theme of giving a voice to the people, those immediately interested in the administration of the judicial system.[3] Catron, influential in the writing of the 1889 constitution, wielded similar influence in 1910.

By 1906 open advocacy of direct election of judges found its way into the minutes of the bar association's annual session, generated, of course, by the desire for a responsible judiciary. Addressing the association, Alonzo B. McMillen got into the matter of the best method of judicial selection. Defending the direct election system, he rejected the notions that the people could not intelligently select judges and that they could be too easily influenced in their choices by politicians and especially lawyer politicians. He also dismissed the appointive system as preferable. He did so by arguing that a judiciary lost its independence and thereby its ability to administer justice in the interest of the people when its judges were responsible for their appointment and tenure to either the executive or legislative branch. But perhaps most significant was the very manner in which McMillen opened his discussion of judicial selection: "The lawyers of New Mexico should be intensely interested in having the very best judicial system that can be devised."[4] For the lawyer delegates who attended

3. 1896 N.M. B. Ass'n Minutes 13, 15, 17.
4. 1906 N.M. B. Ass'n Minutes 53.

the constitutional convention of 1910, "the very best judicial system" was indeed an issue. The majority, moreover, reflected the attitude toward the courts and their role in the political process that had been growing throughout the territorial period.

When the constitutional convention opened in 1910, the condition of things political had in appearance changed very little since the late 1880s and 1890s. Republican leaders, now designated "Old Guard," dominated the scene and perpetuated their predominance for some years into the statehood period. The legal community consisted primarily of "railroad lawyers," and many of its members closely allied themselves with the Republican party. In fact, so overwhelmingly superior was the Old Guard organization and control of political conditions that Republicans attained 71 seats at the convention, leaving 28 to the Democrats and one to a Socialist. In this sense the constitution drafted along with its judicial article were products of a conservative era, an era shaped by men who were attempting to spawn a new one in that same image. That their control was tenuous at best became clear in the years up to 1930. During that time they lost about as many statewide elections as they won.[5]

A spirit of partisanship ruled from the outset. Indeed, the Old Guard allegedly proclaimed it was their purpose to have a Republican convention and to frame a Republican constitution. Leading Republicans who attended and who shaped the constitution as finally written were Thomas B. Catron, Charles A. Spiess, Charles Springer, Holm O. Bursum, Albert B. Fall, Clarence J. Roberts, Frank W. Parker, and Soloman Luna. Main spokesman for the Democratic minority was Harvey B. Fergusson, leader of the so-called "irreconcilables," a faction of Democrats determined to write a progressive constitution.[6] Fergusson and his faction aside, the makeup of the total delegation was definitely conservative, its basic outlook on government and economics influenced but little by the progressive ideas making headway throughout the rest of the nation in 1910.[7]

Ideologically conservative, the delegates also represented the special interest groups most concerned in the affairs of New Mexico: railroads, coal mining companies, copper mines, the sheep industry, cattle interests, and land grants, the last being most powerfully represented. Ethnically, the membership stood at 65 of Anglo-American

5. J. Homes, Politics in New Mexico 145-49 (1967), provides a good discussion of the politics of the period.

6. Mabry, *New Mexico's Constitution in the Making–Reminiscences of 1910.* 19 New Mexico Historical Review 172-74 (1944).

7. Donnelly, *The Making of the New Mexico Constitution.* 12 New Mexico Quarterly Review 435 (1942).

descent and 35 of Spanish descent.[8] The 32 attorneys attending the convention comprised the largest occupational group, a reflection of the leading political role played by the "railroad lawyers" during the territorial days and on into the statehood period.[9]

Concerning the continuing influence of attorneys in the political process, it might well be noted here that of the 32 in attendance, seven later served on the state Supreme Court: Roberts, Parker, Herbert F. Raynolds, Stephen B. Davis, Charles R. Brice, Andrew Hudspeth, and Thomas J. Mabry. Indeed, until January 1, 1951, the New Mexico State Supreme Court was not without one or more members who had served in the convention.

Whatever the philosophical, interest group, ethnic, or occupational makeup of the delegation, Republican control was complete. The Republican majority–directed by the leaders of the party–kept a tight grasp on the convention, usurping a task normally falling to the president of such a convention, in this case Spiess. They did so by passing a resolution providing for a 21 member committee on committees chaired by Solomon Luna. This special committee selected all committees and their members and, in addition, did the primary work of the convention, dictated the policies of the Republican majority, and had the final say as to the ultimate adoption of any and all articles of the constitution.[10] What this meant, of course, was that the Republican caucus dictated the drafting of the judicial article.

The judicial department, committee number six, included some of the convention's more prominent Republicans. Serving as chairman was Parker, then a territorial justice and an elected member of the first state Supreme Court. Other major Republican members were Catron, chosen as United States Senator in 1912; Roberts, also an elected member of the first Supreme Court; Fall, the other of New Mexico's first United States Senators; Raynolds, a later member of the Supreme Court; and Reed Holloman, later a district judge. Among the Democratic members only Granville A. Richardson, a district judge during the statehood period, could be called noteworthy, with none of the Democrats subsequently serving on the high bench.[11]

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8. Heflin, *New Mexico Constitutional Convention,* 21 New Mexico Historical Review 61-62 (1946).

9. Larson, *supra* note 1, at 275.

10. R. Twitchell, 2 The Leading Facts of New Mexican History 585-86 (1912-1917), and Tittman, *New Mexico Constitutional Convention: Recollections,* 27 New Mexico Historical Review 183 (1952).

11. Proceedings of the Constitutional Convention of the Proposed State of New Mexico, Oct. 3-Nov. 21, 1910, Santa Fe, N.M., 14 (1910).

The intent of the committee from the outset was to produce an elected judiciary. Democrat Richardson early filed a resolution calling for judges of all courts to be elected by the people, with the Supreme Court to be made up of three members, each of whom was to be selected for a period of not less than ten years. Significantly, Richardson called for the membership of this court to be nonpartisan.[12] The nature of the elections, whether partisan or nonpartisan, did generate debate; the matter of an elected judiciary did not. While some Republicans and some Democrats fought for an appointive system, the overwhelming majority of both parties favored the election of all judges.[13] The larger legal community also supported this majority position. Members of the Las Cruces bar, for example, responding to a letter from Parker soliciting lawyers' opinions, expressed a preference for an elected Supreme Court.[14]

As the proceedings continued, the one major area of party disagreement continued to be the nature of elections. Here, the Democrats tried through a minority report to change a totally unrelated section of the majority committee report, one dealing with district attorneys (section 23), to one dealing with the nonpartisan election of judges. Their substitute read that at elections for Supreme and district court judges, "no candidate for such offices shall be nominated by any political party or convention." Nominations were to be by petition, with the names of all candidates placed on the ballot; the top vote-getters were to be the winners. This major difference alone remained, for both parties agreed with minor variation on the basic structure (three members with an option to increase the total to five after 1920) and jurisdiction of the Supreme Court. They also seemed to agree on six-year terms for the justices.[15]

Yet from the time of the proceedings as printed to the final adoption of the article on the judiciary, changes did occur. The entire convention considered the article on November 9. At that meeting voting split along party lines, with every minority amendment readily defeated, including one last attempt at a nonpartisan judiciary. The amendments that did win approval were those amendments committee chairman Parker introduced. Most were minor in nature, the one exception was concerned with length of term for high court judges. Parker proposed an amendment making the length of term for Supreme Court judges eight years instead of six. It, like the other amendments he sponsored, passed handily.[16]

12. Santa Fe New Mexican, Oct. 12, 1910, and Proceedings, *supra* note 11, at 22.
13. Mabry, *supra* note 6, at 173.
14. Santa Fe New Mexican, Oct. 22, 1910.
15. Proceedings, *supra* note 11, at 136-37, 143-44.
16. Santa Fe New Mexican, Nov. 9, 1910.

The article on the judiciary received its final reading and adoption on November 18. Its provisions require no detailed examination here, although certain observations are in order. First, the long-developing trend toward an elected judiciary found its realization in 1910. That partisan elections won out over nonpartisan elections reflected the confidence of Old Guard Republicans who, fresh from their smashing victories in the election of convention delegates, felt sure they were to dominate state politics for years to come. Second, the lawyers most certainly took care to see that the best selection method from their point of view was adopted. All the leading members of the judiciary committee were lawyers. All were also Republicans. Even lawyers not attending the convention sought to protect what they perceived to be a vested interest. Third, Frank W. Parker, chairman of the committee, played an inordinately influential role in drafting the article as finally adopted. It was more than mere coincidence that he served on the Supreme Court until his death in 1932. Finally, Democratic objections to the judicial system as set up were voiced many times as the parties drew lines in the ensuing campaign for constitutional ratification. All in all, the constitution of 1910 was most conservative in nature, and nowhere was this more clearly evident than in the article concerning the judiciary.

The convention ended on November 21, 1910, with 19 Democratic delegates voting against the constitution, although all but seven of these later signed the document. Still, many Democratic leaders, not all of them delegates, continued to fight ratification until election day. Indeed, they met in Santa Fe and issued a statement of objections, dated December 17, 1910, for consideration by the voters. They specified 13 reasons for so objecting, the second and third items referring specifically to these shortcomings concerning the judiciary: the inexcusable extravagance of the provisions establishing the judiciary system (too many judicial districts and too high salaries); the investment of power in the legislature to create additional judicial offices in a district without constitutional limitation; the lack of a nonpartisan judiciary; and excessive length of judicial terms of offices.[17]

Generally, then, the Democratic party as an organization opposed the constitution as submitted and fought its adoption on the basis of its conservative character, particularly with reference to the lack of direct democracy provisions. The judiciary as well as other constitutional provisions also aroused concern. But Democratic forces found themselves badly split, so much so that the party's central committee

17. Twitchell, *supra* note 10, at 586-88.

necessarily resolved that party loyalty was not to be tested by the vote on the constitution, with all Democrats free to vote as "their conscience should dictate."[18] The irreconcilables, hardly satisfied by such temperance, carried on the fight against ratification. Their leader was Harvey B. Fergusson.

Fergusson, a demagogic orator and writer in the best progressive tradition, had actually undertaken his campaign against any such conservative constitution before the 1910 document was a reality. Between the time of delegate selection and the convention itself, Fergusson debated Attorney General Frank W. Clancy on the making of a constitution before a gathering at the University of New Mexico. Arguing eloquently for the provisions of direct democracy, Fergusson concluded on the note that "it is therefore, earnestly to be hoped that if, by the influence of special interests, these progressive provisions are not interested in the constitution, the people will reject it." He felt that a reassembled convention, so instructed by the vote of the people, had to yield on these matters. But, "if not," said Fergusson, "let us reject statehood on such debasing conditions."[19]

Fergusson did, of course, continue the fight during the convention, speaking out for progressive principles whenever he could. One such opportunity presented itself on November 9, the day the judiciary article reached the floor before the entire convention. He expressed opposition to partisan elections because it meant exposing the highest judges to the fury of politics and the need to solicit large campaign contributions.[20] Still, his most concerted efforts against the constitution came in the post-convention ratification struggle. They consisted of speeches, newspaper articles, letters, and a printed treatise.

He began his letter-writing campaign on November 29, dashing off 14 letters to various people throughout the territory, and continued it up to election day. He wrote the same messages over and over again, stressing the need to defeat what he perceived to be an anti-progressive, pro-vested-interest document: "By all means let us defeat this abortion called the constitution which is intended to protect the ring which has mis-governed New Mexico for twenty years—perhaps for another full twenty years under the New State."[21] Sometimes he itemized objections to specific constitutional provisions, always including the article on the judiciary.

18. Mabry, *supra* note 6, at 171; and Donnelly, *supra* note 7, at 446.
19. H. Fergusson & F. Clancy, The Making of a Constitution 14 (1910).
20. Santa Fe New Mexican, Nov. 9, 1910.
21. Letters from Harvey B. Fergusson to W. A. Merrill and R. G. Bryant, Nov. 29, 1910, in Harvey B. Fergusson Letters, on file in University of New Mexico Library.

Throughout, he decried the lack of party unity and the support rendered the constitution by many leading Democrats.[22]

His printed treatise, "The CONSTITUTION: Its Dangers and Defects," further demonstrated the extent of his opposition. The constitution warranted defeat, he wrote, because of its lack of direct legislation provisions and a corrupt practices law. It warranted defeat because those in control at the convention were railroad corporations and their agents and attorneys, powerful oil companies, and various county bosses, "making up the territorial ring." The constitution warranted defeat, moreover, because of its very provisions, some "absurd," some "jokers," and still others "pernicious." Among these Fergusson cited Article VI on the judiciary, calling it "one of the most objectionable provisions of the constitution."[23]

Fergusson, joined by a number of his fellow Democrats, did not stand alone in opposing ratification of the constitution. On January 19, 1911, two days before the election, a committee composed of ministers, church members, temperance people, and members of the anti-saloon league and Women's Christian Temperance Union met and issued a statement against the constitution. Of great significance, especially in view of court interpretations concerning the powers of the corporation commission during the nascent statehood years, was the committee's statement that "most dangerous to pure government and justice is the judiciary provision and the railroad-commission clause." Seeing the commission as a figurehead whose orders were not to go into effect until passed upon by the high bench, the committee predicted that

> This means that the railroads will dictate the nomination and election of judges to the supreme court, as in California, for years, and the supreme court will of necessity become corrupt, prostituting the highest tribunal of justice in the state.

The absence of a direct primary system and the provision for electing judges at the general election also meant that judges were to become the tools of bosses and were themselves to be pure politicians.[24]

In spite of efforts to defeat the constitution, pro-ratification forces won the fight. The Republican party was at the pinnacle of its strength, having controlled the selection of convention delegates and the document they wrote. It suffered from no lack of unity during the ratification campaign. Indeed, the party enjoyed the company

22. Letter from Harvey B. Fergusson to E. C. de Baca, Dec. 3, 1910, in Fergusson Letters, *supra* note 21.

23. H. Fergusson, The Constitution: Its Dangers and Defects 1-3 (1911).

24. House Comm. on the Territories, Constitution for the Proposed State of New Mexico, 62d Cong., 1st Sess., 70-71 (1911).

and assistance of a number of Democrats. Furthermore, the people of New Mexico, truly anxious for statehood, were not likely to turn down the constitution, for its conservative nature could but prove an asset with William Howard Taft as President. These advantages plus superiority of organization proved decisive.

Superior Republican organization meant a multi-faceted campaign for ratification. For one thing, it meant the solicitation of money. Holm Bursum, chairman of the Republican central committee for New Mexico, sent letters to county leaders asking for donations. In one such letter requesting 50 dollars to help with the campaign, he stated, "We cannot run any chances of either being defeated or having the majority cut down. I hope to have this campaign well started by the first of January."[25] For another, it meant that leading Republicans took to the hustings to promote ratification. Clarence J. Roberts, a territorial justice, wrote Secundino Romero, convention delegate and boss of San Miguel County, "After next Sunday I will be footloose for a couple of weeks. Is there anything I can do in your county to help along Statehood?"[26]

It even meant a possible effort to rig the election, such an allegation finding its way into the House of Representatives Committee on the Territories hearings held in February 1911. Introduced on behalf of the protesting citizens of New Mexico, the charge was that there was only one printed ballot in many counties, one distributed by the secretary of the Republican committee and clerk of the territorial Supreme Court, Jose D. Sena. A supposed copy of a Sena letter to one of the county committeemen showed Sena's instructions concerning the printing of ratification ballots. In those instructions Sena was quoted as saying, "Be sure if you can to see that no ballots against the constitution are printed."[27]

Whatever the truth of this charge, the outcome of the ratification election was never in doubt. The constitution carried the state by a vote of 31,742 to 13,399. Statehood awaited only Congressional and Presidential approval. The hearings before the House Committee on the Territories provided only the first stumbling block to approval. They also presented an opportunity for the Democrats to charge election fraud and to delay the proceedings. Pro-state forces, recognizing the danger, flooded Washington with statements that the election had been neither crooked nor irregular. Sworn statements came

25. Letter from Holm Bursum to Secundino Romero, Dec. 19, 1910, in Secundino Romero Papers, on file in University of New Mexico Library.

26. Letter from Clarence J. Roberts to Secundino Romero, Jan. 4, 1911 (misdated 1910), in Romero Papers, *supra* note 25.

27. House Comm. on the Territories, *supra* note 24, at 64.

from court personnel as well as other territorial leaders, including memoranda from W. H. Pope, chief justice of the territorial Supreme Court; Frank W. Parker; David J. Leahy, United States Attorney for New Mexico and later district judge; and Stephen B. Davis, Leahy's assistant and later state justice.[28] Such forceful affidavits along with Taft's recommendation for approval won both committee and House approval.

Further delays, however, ensued, with final congressional approval not coming until August 19, 1911. The machinations of Congress need no detailed recounting here, although the last-ditch efforts of the Democrats to defeat the constitution or at least change it do deserve some comment. This effort centered around the Flood resolution, which allowed New Mexico's constitution to be amended by a simple majority vote.[29] Fergusson, an author of the resolution, again fought vigorously for its passage. At stake was whether the constitution could be changed easily to include progressive principles. Referring to Albert B. Fall and Charles Spiess as "those two precious specimens of predatory wealth agents of our Territory," Fergusson expressed special concern over Fall's objections to the blue ballot provision of the resolution. This provision ensured that voters at the first state election could vote for or against an easier amendment article on a separate, distinctive ballot. If this provision were changed, it meant probable defeat for the resolution. Said Fergusson, "the schemers will mark ballots beforehand in every county where they dare do so; and the voters will not be allowed to see any but marked ballots."[30]

Final approval of statehood meant a modified amendment resolution and a series of compromises concerning Arizona's admission as well, all designed to secure President Taft's concurrence and the admission of both remaining territories as states. New Mexicans were still to vote on a somewhat easier amendment proposal, with the vote having no bearing on admission itself. This vote was to be by blue ballot. Yet no sooner had New Mexico been assured statehood than again the two parties drew battle lines. The fight began as soon as Governor William J. Mills called the first state election for November 7, 1911.[31] To the Democrats, well aware of the superiority of the Republican organization, this seemed too soon and quite unfair. But whatever the date chosen and whatever their apparent strengths,

28. *Id.* at 135, 168-69, 305.

29. Larson, *supra* note 1, at 286, 289-90, 293, 296.

30. Letter from Harvey B. Fergusson to Senator George E. Chamberlain, June 17, 1911, in Fergusson Letters, *supra* note 21.

31. Larson, *supra* note 1, at 296-97.

both parties fought vigorously, for at stake was control of the first state government.[32]

The Republicans met first, holding their convention in Las Vegas on September 28. From the outset friends and supporters of Holm Bursum controlled the proceedings, effecting the nomination of Bursum for governor on the first ballot. The Bursum faction then proceeded to dictate most of the remaining nominations and the report of the resolutions committee condemning the blue ballot. Overlooking and ignoring the complaints of non-Bursum Republicans, this faction acted in the belief that the Republican majority was to hold sway and that opposition to Bursum's nomination was simply overestimated.[33]

George Curry, former territorial governor who received one of the two nominations for United States Representative, alone spoke against the party platform:

> I told the convention frankly that I felt the condemnation of the Blue Ballot by the Resolutions Committee was a mistake and that I would not ask the people of New Mexico for their support and at the same time tell them they were incapable of amending their own constitution.

For his efforts Curry very nearly saw his resignation demanded, with only procedural matters saving his nomination. Such rigidity and factional control typified the Republican convention. Specifically with respect to Supreme Court nominations, the convention rewarded party loyalty and incumbency. The positions on the Republican ballot went to Frank W. Parker, Clarence J. Roberts, and Edward R. Wright, all at the time serving on the last territorial Supreme Court.[34]

The Democratic state convention followed on October 2 in Santa Fe. Joining the gathering were "Independent Republicans" Herbert J. Hagerman, former territorial governor, and Richard H. Hanna, a prominent attorney. The result was a fusion ticket headed by the gubernatorial nominee William C. McDonald, a businessman whose conservative principles appealed to the business interests of the new state. Nominated for Supreme Court positions were fusion candidate Hanna and Democrats Summers Burkhart and W. A. Dunn. In addition to the support rendered the Democratic ticket by Hagerman and

32. On Sept. 15, 1911, for example, Fergusson, fearful of corporate contributions for Republicans, wrote William Jennings Bryan soliciting money for Democratic candidates. Letter from Harvey B. Fergusson to William Jennings Bryan, Sept. 15, 1911, in Fergusson Letters, *supra* note 21.

33. Twitchell, *supra* note 10, at 597.

34. G. Curry, George Curry, 1861-1947: An Autiobiography 248-49 (1958).

Hanna and their friends throughout the state, the prohibitionists worked to defeat Republican candidates. The Democrats also helped their own cause by endorsing the blue ballot, a move that caused many Republicans to cross party lines at election time.

The ensuing contest was bitter. Hagerman and Hanna waged a separate campaign under the banner "Progressive Republicans," a campaign directed specifically against Bursum. They revived the charges that had led Hagerman to remove Bursum as superintendent of the state penitentiary and thereby influenced a number of voters.[35] To what extent Hanna and the other Democratic Supreme Court nominees campaigned actively in their own behalf is difficult to assess. It is clear that both Hanna and Burkhart were active politicians and unlikely to sit out a campaign where their own candidacies were involved.[36]

The Republicans joined the fray just as vigorously. They did agree, however, that their candidates for the Supreme Court were not to campaign actively. But when told that he was likely to lose, Frank W. Parker did not hesitate to go throughout his judicial district and greet the people. According to Curry's personal account, "while the Judge made no speeches, he was an expert and tireless handshaker. But for this trip, I think Parker might have been defeated."[37] The activities of the other two Supreme Court nominees are not discussed, but it is difficult to imagine C. J. Roberts, an extraordinary politician whether as a legislator, a justice pushing for statehood, or a member of inner Republican party circles, sitting idly by during his own election contest.

The November 7 election saw neither side clearly victorious—Democrats carried the statehouse but lost both legislative houses. The rest of the state offices were fairly evenly split, with Parker, Roberts and Hanna winning seats on the Supreme Court. The voters also expressed overwhelming approval of the blue ballot. How the Democrats, so badly outmaneuvered at the constitutional convention, could have done so well in 1911 has evoked much discussion. Curry, an active participant in that election, was convinced that Republican opposition to the blue ballot was the major reason. Twitchell, also a contemporaneous observer, saw it as a rebuke to

35. *Id.* at 260-61; and Twitchell, *supra* note 10, at 599-600.

36. Burkhart, although defeated in 1911, remained most active in Democratic party circles. In November 1912 he wrote Andrew H. Hudspeth, a future justice, soliciting party endorsement for a federal appointment and advocating a meeting of the party's central committee to consider federal patronage. Letter from Summers Burkhart to Andrew H. Hudspeth, Nov. 26, 1912, in Andrew H. Hudspeth Correspondence, on file in University of New Mexico Library.

37. Curry, *supra* note 34, at 261.

boss rule and machine methods and by no means a triumph for democratic principles. A recent scholar has simply attributed it to the too strong combination of Democrats and Progressive Republicans. Still another has assessed it in terms of the fragility of the Old Guard's power.[38] Whatever the reasons for the outcome of the election, New Mexico had entered the statehood era.

Statehood did not, at the same time, mean a total break with the past. Indeed, the first state Supreme Court was a direct product of years of cumulative thinking concerning the judiciary and its place within the governmental system. As territorial conditions and politics became more complex, attitudes toward the judiciary shifted. Accordingly, political leaders began to demand courts responsible to territorial conditions and to the people who resided therein. Lawyers recognized their considerable political influence and looked to the courts as their special province within the structure of government. These attitudes found expression in the constitution of 1889 and at bar association meetings. They were realized in the new state constitution.

Specifically, the judiciary as established reflected the political temper of the times in several ways. First, judges were elected on a partisan basis during the general election, chosen, in other words, along with the other partisanly elected state officers. Second, judges were, especially at the district court level, responsible to the voters, to the will of the people. Finally, the Supreme Court, given its jurisdiction and "the intent of the framers," was to act as a conservative influence to curb efforts toward progressive legislation or corporate regulation.

The new Supreme Court justices also mirrored these prevailing attitudes, although certainly to varying degrees. Frank W. Parker (who served on the Supreme Court—both territorial and state—for more than 30 years) was an ideological conservative slow to change. He was a Republican with strong Old Guard connections but did not actively participate in inner-party circles. Clarence J. Roberts was also a conservative and, more importantly, a seasoned party veteran. He played a more active political role than Parker, maintaining close ties with Republican leaders throughout the state. Richard H. Hanna, the third member of the court, won election as a Progressive Republican. A most active politician, as demonstrated in his campaign against Bursum, Hanna later ran as a Democrat for both governor and United States Senator.

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38. *Id.;* Twitchell, *supra* note 10, at 601; Larson, *supra* note 1 at 298; and Holmes, *supra* note 5, at 148.

Whatever their individual persuasion, these three justices joined together to serve on the first state Supreme Court. Basically, they wrote a conservative record. Of special significance were their early decisions concerning the Corporation Commission, decisions that would prevail for years. All in all, the framers of the judiciary article, Parker and Roberts among them, could not have been more pleased.

THE REPUBLICAN COURT, 1912-1922

The New Mexico Supreme Court during the first decade of statehood made an indelible impression on the political process. From the outset it proved to be the conservative force the framers intended it to be, a fact quite evident in its handling of corporation matters. The court also decided some political cases, one such case involving partisan manipulation of the district court structure. In terms of personnel Republicans dominated, a domination little affected by the high turnover of justices in the early 1920s. In short, the nascent state Supreme Court acted out its role in the governmental structure politically and did so through highly political court officers.

As already seen, the nature of politics as New Mexico embarked on its new status in 1910 through 1912 was conservative. This persuasion shaped the judiciary article and affected the selection of the first Supreme Court justices. It also determined the kind of Corporation Commission the new state would have, its regulatory powers dictated by constitutional provisions. Specifically, the constitution provided that

> . . . the commission shall have power and be charged with the duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telegraph, telephone, sleeping cars, and other transportation and transmission companies and common carriers within the state. . . .[39]

While granting the Commission what appeared adequate power to regulate rates in the public interest and what seemed extensive regulatory powers in other areas, the framers of this article made sure the Commission's orders were reviewable. Thus, if a corporation refused compliance with a Commission order or unless it removed that order to the Supreme Court, it became the obligation of the Commission itself to remove the issue. The Court was to sit in continuous session for consideration of such cases and give them precedence. This section of the constitution then ended on the note that

39. N.M. Const. art. 11, § 7.