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Introduction

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INTRODUCTION

SHIRLEY S. ABRAHAMSON*

One hundred fifty years ago, in 1847, Wisconsin territorial Governor Henry Dodge convened a special session of the legislative assembly to take the steps necessary to gain statehood. One step was the election of a convention to form a constitution for submission to the people of the territory and to the U.S. Congress.

The legislative assembly acted; the people selected their constitutional convention delegates; and the convention formed a constitution in seven weeks. In mid-March 1848 the electorate accepted the new constitution; in May 1848 Congress enacted legislation admitting Wisconsin to the union; and on May 29, 1848, President Polk signed the bill into law.

In 1848, with the complexities of merging the territorial government and the new state government, Wisconsin took no time to celebrate its new status.¹ Now, 150 years later, on the anniversary of statehood, we are celebrating with a year-long series of events. Schools, businesses, and a multitude of other groups will be "busting their civic buttons."² The Wisconsin Sesquicentennial Commission will host a tailgate party, complete with polkas, souvenir dolls in the likeness of the state's first first lady, and cheese making on the Mall in Washington, D.C. Quieter celebrations will also be a part of the sesquicentennial. This special issue of the *Marquette Law Review* fits into that latter category; there will be no polkas within these pages.

As the sesquicentennial commission has noted, this year is "a momentous occasion, a time to reflect on the past and look to the future. As we observe Wisconsin's Sesquicentennial, we can be

* Chief Justice, Wisconsin Supreme Court. S.J.D., University of Wisconsin-Madison, 1962; J.D., Indiana University, 1956; A.B., *Magna Cum Laude*, New York University, 1953. The general tenor of this introduction, as well as significant passages of the text, are from the author's foreword to JACK STARK, *THE WISCONSIN STATE CONSTITUTION* (1997). It is used here with permission of the State of Wisconsin's Joint Committee on Legislative Organization.

1. 1 ALICE E. SMITH, *THE HISTORY OF WISCONSIN* 679 (1973).

2. Steven Walters, *Party Time, State Plans Grand 150th Birthday*, MILWAUKEE J. SENT., Mar. 31, 1997, available at 1997 WL 4784221.

proud of our people, our heritage and the beauty of our land."³ Wisconsin's legal history in these 150 years indeed mirrors the commission's proclamation. As these pages reveal, the bar and bench in Wisconsin have experienced and accomplished much since 1848. Some of the articles within this volume pertain to fairly parochial matters—such as organizing local bar associations. Other articles—such as the one describing the integration of the bar—reflect the legal profession's encounter with broader social issues. All of the articles are obviously dependent upon the creation of the State of Wisconsin, which means that they are dependent upon a legal document: the Wisconsin Constitution.

As I noted in my foreword to Jack Stark's recent book, *The Wisconsin State Constitution*, it is quite remarkable that in 1998 the State of Wisconsin is governed by the same document, though amended, as it was in 1848. Consider Milo M. Quaife, Superintendent of the Wisconsin Historical Society, who in 1918 wrote a foreword to his four-volume treatise on the 1848 constitution and Wisconsin's attainment of statehood. Quaife wrote in a somewhat defensive and apologetic tone, taking pains to explain why "the assemblage and publication of the sources for the constitution of Wisconsin"⁴ was desirable. Acknowledging that the 1848 Wisconsin constitution had outlasted all other state constitutions in the western three-quarters of the country, Quaife noted that numerous other states had revised their basic document and hinted that the 1848 constitution would not last much longer. And when the Wisconsin 1848 Constitution will become outworn, wrote Quaife, his documentary history would become useful, nay indispensable, to those who would design a new framework for Wisconsin government.

Well, eighty years have passed since the publication of Quaife's treatise, and the 1848 constitution still stands as the basic framework for our state government. Wisconsin is one of only nineteen states still using their original constitutions; only five states, all in New England, have constitutions older than ours.

And Quaife's treatise has indeed become important, but not as an aid to the people of Wisconsin in drafting a new body of law.

3. PAMPHLET, WISCONSIN SESQUICENTENNIAL COMMISSION (1997) (on file with the author).

4. MILO M. QUAIFE, *THE MOVEMENT FOR STATEHOOD 1845-1846* 9 (State Historical Society of Wisconsin 1918).

Rather, it serves to inform our understanding of our first, and only, constitution.

Historian Robert C. Nesbit has opined that “the story of Wisconsin’s founding fathers is one worth notice, if only to counteract our tendency to assume that ‘there were giants in those days.’ The mantle of statesmanship will not cover the confusion involved. The confusion was much a part of the times and inchoate state of Wisconsin’s rapidly growing pioneer society. It was also a reflection of the inadequacies of available political leadership. As in other times, there were not many giants at hand, but men of ordinary clay consulting serviceable precedents.”⁵

Although Wisconsin’s constitution is comparatively brief—15,531 words—it has turned out to be one of the most important collections of words in the history of this state. As a result, I urge all those who examine the Wisconsin constitution to keep Justice Abram D. Smith’s words in mind:

In view of the obligations imposed upon me, or rather voluntarily assumed by me, when I gave my assent to our present form of state government, and more especially, in my present position, I have felt bound to sustain that fundamental law—the constitution of the state, according to its true intent and meaning. That is the great charter of our rights, to which the humblest may at all times appeal, and to which the highest must at all times submit.

Let us then look to that constitution, adopted by the people of Wisconsin, and endeavor to ascertain its true intent and meaning

The people then made this constitution, and adopted it as their primary law. The people of other states made for themselves respectively, constitutions which are construed by their own appropriate functionaries. Let them construe theirs—let us construe, and stand by ours.⁶

May we join this year in both quiet and boisterous celebrations of the sesquicentennial anniversary of the adoption of our Wisconsin constitution. The pages that follow most certainly will do our legal profession, our constitution and, most importantly, our state very proud.

5. ROBERT C. NESBIT, *WISCONSIN: A HISTORY* 224 (1973).

6. *The Attorney General ex re. Bashford v. Barstow*, 4 Wis. 567 (1856).

