

**A LEGISLATIVE HISTORY OF THE OREGON
CONSTITUTION OF 1857—PART II (FRAME OF
GOVERNMENT: ARTICLES III-VII)**

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INTRODUCTION

1. State Governments in the Nineteenth Century

At the beginning of the nineteenth century in the United States, the legislative branch was the predominant branch of state government.¹ State constitutions imposed few limitations, substantive or procedural, on the power of the legislative branch.²

So also between 1840 and 1880 banking was singled out, either as a wholly prohibited subject of legislation, or at least as one on which there must be no "special laws."¹¹

Given the common practice of borrowing ideas and constitutional provisions from other states, innovations in one state were likely to be adopted by others.¹²

The delegates to the Oregon Constitutional Convention were familiar with developments in other states. One delegate, Paul Brattain, had been a delegate at the Iowa Constitutional Convention of 1844.¹³ Matthew Deady, President of Oregon's Constitutional Convention, received a copy of the proceedings of the New York constitutional conventions of 1826 and 1841 from O.C. Pratt, his former colleague on the territorial supreme court.¹⁴ La Fayette Grover owned a recently published copy of a compilation of state constitutions and apparently used it during the Oregon Constitutional Convention.¹⁵ At least two more delegates, Delazon Smith and William Packwood, likely also possessed such compilations.¹⁶ A

11. HURST, *supra* note 1, at 241-42. See also A. JAMES HEINS, CONSTITUTIONAL RESTRICTIONS AGAINST STATE DEBTS 4-10 (1963); HURST, *supra* note 9, at 84-87.

12. The election of judges provides a striking example of this interstate borrowing: "[A]fter Iowa and New York in 1846 made all judges elective, eleven other states also did so (in whole or in part) over the next four years, and nine more did so in the succeeding decade." G. ALAN TARR, UNDERSTANDING STATE CONSTITUTIONS 52 (1998).

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number of delegates, in addition to Grover, Smith, and Packwood, referred to the provisions of other states' constitutions in the course of their remarks.¹⁷ Thus, it is not surprising that the articles relating to the departments of government approved by the delegates to the Oregon Constitutional Convention reflect, for the most part, a mid-nineteenth-century view of how these departments should be constituted.