Dr. Patrick T. Conley on the Law and Order Constitution

That constitution was described in 1901 by Arthur May Mowry as quote, "liberal and well adapted to the needs of the state." That 1843 constitution—and we use 1843 because it went into effect in May 1843—it was the Law & Order Constitution that was drafted by the Law & Order Convention in the concluding months of 1842 after Dorr had been vanquished and had gone into exile. That constitution was productive of an incredible amount of internal strife in Rhode Island. But nonetheless, Mowry's view expressed in his book *The Dorr War in 1901* prevailed for three quarters of a century, and when I wrote *Democracy in Decline: Rhode Island's Constitutional Development From the Beginning Through the Dorr Rebellion* in 1977, one of my principal points was to refute that notion.

That 1843 constitution had a number of major defects. The principal defect was the dual standard for suffrage. If you were native-born and a male you could vote without the ownership of property. If you were a—or without the ownership of real property. If you were a naturalized citizen you needed a freehold, real property, in order to be able to vote, hold office, serve on juries and perform other civil functions. So that the dual standard made that constitution the most nativistic in America from the moment of its inception. And it was placed there mainly because of the animus of the leaders of the Law & Order party against the expanding Irish Catholic population that was migrating to Rhode Island in the early 1840s. And that real estate requirement for naturalized citizens remained in effect until 1888 until the Bourn Amendment was adopted, which was still discriminatory but that is another story. So, I was very much disturbed by Arthur Mowry's shall we say, "the sweeping under the rug" of that particular defect. He made almost no mention whatsoever of the ethnocultural and religious tensions that existed in 1842 and '43 that helped lead to the defeat of the People's movement.

A second major defect in that constitution was what might be called the "rotten borough senate." The agricultural interests that had formerly been Democratic and Jacksonian, and Jeffersonian before that, were protected in that constitution in that each municipality regardless of population had one vote in the state senate. That was established under that constitution, and that meant that the rural areas of the state, the agrarian interest, had an effective veto over state legislation. And that was important because in those days the General Assembly by far was the dominant branch of government. The governor had very few constitutional powers. And so the senate was able to check reform if it chose to do so by virtue of the over-representation of the agrarian interest. And that prevailed down beyond the midpoint of the 20th century.

It was not until the United States Supreme Court in the reapportionment case of *Reynolds v. Sims* in the 1960s, that "one man, one vote" rule was made binding upon the states and that "rotten borough" system that had been created in 1843 was finally vanquished. You have a situation for example as late as 1920 where the town of West Greenwich, in that census having a population of slightly over four hundred, had

one senator, and Providence, which reached the population of 267,914 by the middle of that decade, had one senator! So it was a tremendous disproportion and that is why later on the Republican boss, Charles R. Brayton, secured the enactment of a statute in 1901, called the Brayton Law, which vested the appointive and financial powers of the state in the state senate. Because that was the last bastion of Republican, agrarian control once Democratic governors started to be elected by general suffrage.

Another very undesirable provision that wasn't eliminated until the 1890s was the absence of a secret ballot. The People's Constitution provided for one, the Law & Order Constitution did not, which meant that the workers in the various mill villages had to vote under the supervision and surveillance of their employers, who often were of a different political persuasion and a different economic perspective. Also, a major defect was the amendment procedure; those Law & Order folks that drafted that 1843 constitution wanted to make sure that change would not come easily. And so they established the most cumbersome constitutional amendment procedure in America. To amend the constitution, it required a vote of a majority of the whole number of each house of the General Assembly, a general election intervening! So you had to do it twice with a general election in between, and then a sixty percent vote of the electorate, which as a result of the nativistic suffrage clause was a restricted one. And then, number five, there was no provision in that constitution for the call of future constitutional conventions. And so it was a very difficult—and for a while with a conservative Supreme Court analyzing the constitution, impossible—to get a constitutional convention called in Rhode Island to reform the basic law of the state.

Very happily, and probably the most significant thing I have ever done in politics or government, was when I served in the 1973 constitutional convention as an elected delegate and as the elected secretary of that convention, because I introduced a provision which is now article fourteen of the Rhode Island Constitution that, in essence, embraced the provisions of the People's Constitution allowing for constitutional conventions to be called. In fact, even placing that before the people by referendum every decade as to whether or not they chose to call one to reform the basic law of the state. And I also introduced the People's Constitution amendment procedure where amendments to the constitution can be effected now by a vote of the General Assembly and by a majority vote of the electorate at a general election. And so in a way I took some pride not only as a historian, but also at the time a political official that was able to carry into effect some of the provisions of the People's Constitution and override the illiberal features of the constitution of 1843 that had endured for a century and a third. So, I am not a fan of that Law & Order Constitution.

And as a result of the nativistic provisions that were contained therein there was an awful lot of ethnocultural strife—Yankee versus Celt—during the 1840s, 50s, 60s, 70s, and onward. And as a matter of fact the individuals who were in power, particularly Henry Bowen Anthony, who was the editor of the *Providence Journal* during the Dorr Rebellion, and became a governor, and then a founder of the Republican Party, and a United States senator, was so determined to preserve that real estate requirement for voting that he helped to enshrine in that 1843 constitution, that he altered the Fifteenth Amendment to

the Constitution of the United States. When it was originally introduced, Henry Wilson wanted to expand it so that it wouldn't just deal with race, or color, or previous condition of servitude, but what would also ban discrimination in voting on the basis of education, property holdings, nativity. And Anthony said, "No way, you put that in the Fifteenth Amendment and I'll make sure when it comes to Rhode Island, Rhode Island will refuse to ratify!" And with a number of the Southern states not enthusiastic about the Fifteenth Amendment, with California and Oregon not enthusiastic, because of the Chinese question there, every single state of the North was necessary to get that amendment ratified. So, even the Constitution of the United States took on a different form as a result of the hostility of the Law & Order leaders towards the Irish Catholic immigrants and their determination to make them second-class citizens.