

CALIFORNIA'S “LIBERAL MOMENT”:

The 1849 Constitution and the Rule of Law

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INTRODUCTION

November 13, 1849, was a wet and dreary day in California.¹ But on that day, California voters braved muddy roads and pouring rain to ratify a constitution that had been debated for a month and a half in a convention held at Monterey.² In that moment when the proposed constitution was ratified, something momentous though not apparent happened: a liberal society was born. It was California's "liberal moment." Once Spanish, then Mexican, now American, California witnessed more than a changing of the guard with the ratification of the 1849 Constitution. It witnessed the emergence of a society based on the *rule of law*.

The convention that drafted the 1849 California Constitution and the election that ratified it were monumental events given the territory's history and the circumstances that crystallized during that history. Indeed, the 1849 Constitution appears as a climax of events and developments that began before California was known to the Western mind. In particular, when one considers the legal institutions and jurisprudence that developed in the Iberian Peninsula, and which were later imported to the New World and eventually California, then modified by Mexican rule, and eventually adapted by American conquerors, one realizes that

¹ The *Alta California* informed its readers, "The day of the election was very disagreeable. Several showers of rain fell, and the mud, which was unfathomable before, suddenly disclosed a 'lower deep.'" ALTA CALIFORNIA (San Francisco), November 15, 1849.

² The Constitution was formally adopted by the voters on November 13, 1849 by a margin of 12,061 to 811. KENNETH STARR, CALIFORNIA: A HISTORY 94 (2007); Myra K. Saunders, *California Legal History: The California Constitution of 1849*, 90 L. LIBR. J. 447, 466 (1998).