

TRANSPLANTING IOWA'S LAWS TO OREGON.

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Our trite saying that "America is but another name for Opportunity" might well be changed to "America is but another name for Experiment." It is no exaggeration to say that the people of the United States have done more experimenting in the making of laws and in the administration of government than the people of any other nation on the globe. This has resulted chiefly from the nature of our multiform government that is at once federal and national, as regards the relations of states to each other and to the national government. Within our national jurisdiction there are practically half a hundred sovereign states each and all engaged in practicing the methods and arts of self government. There is but little let or hindrance to experimentation in the making of laws and institutions.

But while there is the greatest range of freedom for originality there is a surprising similarity in the fundamental principles of our laws and in the primary institutions of the states. English common law and traditions are our common heritage and constitute the ground work of our institutions. But what may be called the acquisitive or adaptive disposition of Americans leads to the prompt observation of the workings of laws in other states and to their adoption where they work well. Moreover, by reason of our peculiar mode of creating territories out of the national domain it has generally happened that the laws of parent or adjacent territorial organizations have been continued or "extended" over the new territorial acquisitions; or they have been imposed *ad interim* until the inhabitants could assemble their law-makers and enact a body of laws. But from the nature of the conditions confronting pioneers they were almost certain to adopt bodily the laws of their ancestral states. The social traditions and political inheritance.

of the first inhabitants, or rather of the dominant elements determined whether the laws of this or that state were adopted.

We have some interesting examples of such transplanting of laws in the establishment of the territories of Iowa and Oregon. When Iowa was given a separate territorial existence in 1838 the laws of Wisconsin were "extended" over the new territory. The bulk of the laws adopted, however, were those taken over from Michigan when Wisconsin was cut off from that jurisdiction in 1834; and the major portion of those were the growths from the ordinances made for the government of the old Northwest territory pursuant to the great ordinance of 1787. But the members of the first territorial legislature of Iowa knew little and cared less about the genealogy of the laws they enacted in 1838-39. They were but little learned in laws or in law making. They had no new and radical notions to promote. The late Theodore S. Parvin, who was the first secretary of the council or senate in 1838-39, has told us how little the members knew of the real needs of the people, how ignorant they were of law making, how they selected here and there from the statutes of various states as fancy or state pride prompted them; how each member felt in duty bound to get as large a number of the laws of his own state enacted by the new territory.* The matter that was important and urgent was to inaugurate the new government and it did not signify much to them one way or other what laws were adopted so that they gave the people the form and substance of laws that would satisfy the traditional notions. Professor Jesse Macy has shown us† how remote often the laws actually adopted were from corresponding to or regulating the actual life and conduct of the daily affairs of the people in the first years of the territories.

*See Professor Macy's Institutional Beginnings in a Western State. ANNALS OF IOWA, 3d Series, vol. V, p. 337.

†Ibid.

We have in Oregon, however, a striking instance of the conscious and deliberate adoption bodily of the laws of another state. The event was of more than academic interest to us in Iowa as the laws adopted by the pioneers in Oregon were the statutes enacted by our first territorial legislature in 1838-39.

The settlement of Oregon constitutes one of the romantic chapters in our pioneer history and not the least noteworthy in the annals of the diplomacy of our national government. Long continued efforts were made to arouse effective interest in that region; but with meagre results. From 1820 on to 1829, John Floyd of Virginia and Thomas H. Benton of Missouri had striven earnestly in Congress to induce the national government to take vigorous steps to establish our authority in that region and to give the pioneers the protection of laws and institutions established in accordance with our forms and processes. But they failed. In 1838 however another champion arose in the person of Lewis F. Linn, another senator from Missouri. He, like his colleague Benton, sought to arouse public interest in the vast territory in the far northwest and between 1839 and 1843, the year of his death, introduced various bills and resolutions relating to Oregon, one of which in particular is of interest to Iowans.

Meantime events were rapidly conspiring in Oregon to bring matters to a crisis. The settlers were more or less divided in their allegiance. There were the active friends and adherents of the Hudson Bay company. The Americans were greatly disturbed by local dissensions, personal jealousies, contentions with the Indians and religious rivalries. All these things thwarted united, consistent and continuous efforts to bring about the establishment of our national authority. In 1841 the need of civil organization was made apparent on the death of a noted settler, Edwin Young, near the Methodist Mission station in the Willamette Valley. He died without heirs and how to distribute his property so as to give valid title brought home to the settlers the fact

that they were in a land without laws and government. Steps were taken to bring about the establishment of some form of government. As a consequence of their proceedings one Dr. Ira L. Babcock was appointed supreme judge with probate powers and it was resolved that "until a code of laws be adopted by this community Doctor Babcock be instructed to act according to the laws of the state of New York."* Various efforts were made between 1841, after that resolution was taken, and 1843, to get under headway with the new government but they availed little until May 2, 1843. On that date a meeting took place at Champooick (also given Champoeg), between Salem and Oregon city, where amidst tense feeling and by a close vote it was decided to establish a "Provisional Government" and a committee of nine were designated to draft a plan and to report to the people on the fifth of July following. Speaking of that committee and its work, Mr. J. R. Robinson of Oregon, writing in 1900, observes.

"This committee is of great importance in the history of civil government in Oregon, because of the responsibility which rested upon it and because of the excellence of its work. Its members were neither learned nor acquainted with the law but they possessed good judgment and common sense. Their meeting place was an old barn belonging to the methodist mission."†

The report of the committee is interesting and instructive. It exhibits the political thought and habits and wishes of the pioneers uninfluenced by the immediate surroundings of civilization and the formal procedure and political ceremony so important in the operations of political institutions. We have there a practical illustration of the creation of a civil society somewhat after the fashion dreamed of by Rousseau; and what is more we perceive some of the notions

*See Quarterly of the Oregon Historical Society, vol. II, p. 101. Article by H. W. Scott on "The Provisional Government."

†Quarterly of the Oregon Historical Society, vol. I, p. 35.

expounded by the French philosopher. The document presented sets forth exalted principles of civil liberty and righteousness.

We, the people of Oregon territory, for purposes of mutual protection, and to secure peace and prosperity among ourselves, agree to adopt the following laws and regulations until such time as the United States of America extend their jurisdiction over us.

Be it therefore enacted by the free citizens of Oregon Territory.

For the purpose of fixing the principles of civil and religious liberty, as the basis of all laws and constitutions of government that may hereafter be adopted.

Be it enacted that the following articles be considered as the articles of a compact, among free citizens of this territory.*

There then follow a series of articles specifying the fundamental rights and privileges that should never be denied to the inhabitants of the territory, and setting forth in considerable detail the nature, powers and methods of administration of a number of offices of the new government. Article 12 of section 2 of the proposed Articles reads as follows:

The laws of Iowa territory shall be the laws of this territory, in civil, military and criminal cases; where not otherwise provided for, and where no statute of Iowa applies, the principles of common law and equity shall govern.

After this comprehensive section the committee with superfluous caution proceeds to particularize a number of the statutes of Iowa that shall be the law under the new government, e. g., those relative to weights and measures, to wills and testaments, vagrants, elections, etc. Then again in Article 19 the following resolution is inserted.

Resolved, That the following portions of the laws of Iowa, as laid down in the statute laws of the territory of Iowa enacted at the first session of the legislative assembly of said territory held at Burlington, A. D., 1838-9, published by authority, Du Buque, Bussel, and Reeves, printers, 1839. Certified to be a correct copy by Wm. B. Conway, secretary of Iowa territory, be adopted as the laws of this territory. Viz:

*The extracts from the "Report" of the Legislative Committee given above are taken from a typewritten copy given the Historical Department of Iowa by Professor Edmond S. Meany, Head of the Department of History in the University of Oregon.

There are listed by title with reference to the pages whereon found in the collection referred to in the resolution some thirty-seven laws including those already mentioned in Articles 13, 14 and 15.*

This draft of a constitution or articles of government was adopted at the meeting at Champooick, July 5, 1843. The subsequent history of the Provisional Government that continued until the erection of the territorial government in 1848 it is not necessary here to follow. The instrument underwent some changes but none that vitally changed the character of the original "compact."† Under it their Government, said one of their chroniclers, was "strong without an army or navy, and rich without a treasury", and 'so effective that property was safe, schools established and supported, contracts enforced, debts collected and the majesty of the law vindicated.' †

The question presents itself, why did the pioneers of Oregon select the laws of Iowa for the regulation of their private and governmental affairs? Why choose the laws of Iowa rather than those of Illinois, Michigan, Ohio, Pennsylvania, New York or Massachusetts? Why after the resolution directing the use of the laws of New York, did the committee set them aside and select the laws of the new territory on this side the Mississippi? Did the members of that committee that met in the barn of the Methodist Mission have before them the statutes of those several states and after due examination and deliberation decide that the

*The officers of the Provisional Government did not have a very staunch faith in the efficacy of the Article 12 of Section 2 given as we find the "Executive Committee" in their report to the Legislature urging that "the militia law of Iowa" and "that the laws of Iowa be taken into consideration concerning blacks and mulattoes." See their message of June 18, 1844, given in Bancroft's History of Oregon. Vol. I, pp. 429-430.

†In 1845 the legislature refused to call their articles of government a "constitution" but referred to it in submitting a revision to the people for approval as a "compact."

‡Quoted by Robinson. Ibid, p. 39. In the "Organic Law" drafted in June, 1845, and adopted by the people at an election July 26, all specific reference to Iowa's laws was omitted. See "Organic and other general laws of Oregon," 1843-1872, pp. 46-51.

laws of Iowa were most fit for their circumstances? What suggested and what induced the adoption of the committee's report that the laws of Iowa should be adopted? In 1843 Iowa was but little more than a name to the people of the east, let alone to the pioneers of that remote Northwest. It could hardly be that many of Iowa's first settlers had left our eastern counties and journeyed across the Missouri and over the mountains, or around by Darien and up the coast and found lodgment in the valleys of the Columbia.* Bancroft asserts that the early settlers in Oregon were not familiar with the laws of Iowa which they had adopted.† What then led to their adoption?

It is not unlikely that some of the committee that drew up the original draft for the articles providing for the Provisional Government possessed or happened to get possession of a copy of the Iowa laws enacted in 1838-39, and thus it was mere chance and the urgency of circumstances that pressed the settlers on to the speedy establishment of some form of Government that brought about the transplanting of Iowa's first laws to Oregon. It is to be recalled that the territorial printer at Burlington was delayed for months in publishing our first laws because he could not get a copy of the statutes.‡ So that it is not at all improbable the pioneer law-makers of Oregon had only the choice of the Iowa statutes or nothing.

Another explanation may be ventured however that is worthy of consideration. As previously stated Senator Lewis F. Linn of Missouri was an ardent champion of the establishment of our national authority in the disputed

*There is evidence that Iowans were very much interested in Oregon and in the emigration to the Columbia. In April, 1843, was organized at Bloomington, Iowa (now Muscatine) the "Oregon Emigration Company." David Hendershott (a member of the third legislature of Iowa that met at Burlington in 1841) presided at the meeting April 1. On April 19, a mass meeting was held at Bloomington, in which Geo. M. Hinkley of Louisa county was in the chair and it was decided to favor the organization of a company to start for Oregon May 10. See extracts taken from *Iowa Territorial Gazette* and other papers given in the *Oregon Historical Quarterly*. Vol. 2, pp. 191-192, pp. 390-392 and Vol. 4, pp. 177-178 and pp. 403-404.

†See H. H. Bancroft's *History of Oregon*. Vol. I, p. 428.

‡ANNALS, Vol. V, 3d Series, p. 355. Note of the writer in "Chapters in Iowa's Financial History."

region in the Northwest. Between February 7, 1838, and his death in 1843 he introduced a number of bills and resolutions and made various reports all looking to the same end. On December 16, 1841, Senator Linn introduced a bill in the Senate relative to the Oregon territory that among other provisions extended the civil and criminal laws of Iowa over all of the territory west of the Missouri river, south of latitude 49° , north of the boundary of Texas and east of the Rocky Mountains. In addition the jurisdiction of Iowa was extended over all the country from the mountains to the ocean between latitudes 42° and 54° . The bill also provided that two associate justices of the supreme court of Iowa in addition to those already appointed for Iowa, were to be placed in charge of two judicial districts to be established in the region there specified wherein they were to conduct district courts after the manner pursued in the courts of Iowa. This bill was referred to a select committee which reported favorably, but before it came up for consideration Lord Ashburton arrived in Washington to negotiate with Webster with a view to an adjustment of the boundary disputes then endangering the peace between England and the United States. On account of the delicate situation the Senate did not debate the Linn bill until 1843, when after a lively debate, the bill passed the Senate February 3, 1843, by a vote of 24 to 22*; but it failed in the House.

Here again a question offers, why did a senator from Missouri urge the imposition of the laws of Iowa upon the people of Oregon? Why not those of Missouri or Illinois or Michigan, rather than those of a fledgling territory? Two explanations suggest themselves.

The first explanation is that Iowa was adjacent to the territory in controversy. It was consequently simply a matter of course that Senator Linn should propose to extend

*See Benton's "Thirty Years View," Vol. II, pp. 470-482, where the bill is given in part. There is no indication in Senator Linn's speech of the reasons that led him to provide for the adoption of the laws of Iowa. See Linn's speech in reply to that of Senator McDuffie in opposition, Congressional Globe, 1842-43; pp. 149-155.

over Oregon and the intervening region the government and laws of the territory lying next to the lands in question. The second is that Lewis F. Linn, Benton's colleague in the Senate was a half brother of Henry Dodge, the first Governor of Wisconsin and Iowa. They saw much of each other during this period in Linn's career; for from 1841 to 1845 Dodge was the territorial delegate of Wisconsin in Congress. It is not therefore a violent presumption to believe that in the course of their intimate conversations Dodge gave Linn much sage counsel and made suggestions that the latter made use of. It would not be strange if Dodge should urge upon Linn the wisdom of making use of the Iowa laws, made up as they were chiefly of statutes that he, Dodge, himself had helped to frame in the Council of Michigan or had signed as Governor of Wisconsin. The Iowa laws reproduced the traditional institutions and methods of administration common to the free states carved out of the Northwest territory. Hence it would be politic for a Missourian, in those days when slavery was charging the air with suspicion of everything that came from south of Mason's line, if he wished to secure northern sentiment in favor of his bill, to urge the adoption of the laws of a territory like Iowa.

Now it is more than probable that the nature of the provisions of Linn's bill had by 1843 become known to the pioneers in Oregon. Learning that the laws of Iowa were those urged for their government by their staunchest friends in the halls of Congress it would have been the natural and the diplomatic thing, if such a suggestion is not preposterous, for the committee that drew up the articles for the Provisional Government that were formally adopted by the Oregonians July 5, 1843, to have of set purpose adopted the laws of Iowa because their action would then commend itself to the friends of the territory in the east.

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