THE DEVELOPMENT OF THE IOWA CONSTITUTION OF 1857

*By Russell M. Ross**

> There has never been an ideal state constitution in America, and perhaps there never will be. Certainly no constitution would be uniformly ideal for all the forty-eight states. . . . Montesquieu was right when he averred that the best constitution is the one that best suits the genius and the traditions of the people who live under it.[1]

Professor Munro's statement is undoubtedly true, but nevertheless many of the states in the United States, and Iowa in particular, have been extremely reluctant to discard their venerable state constitutions.

Iowa's "new" supreme law, which will be one hundred years old on August 3, 1957, is one of the oldest among the forty-eight. Only nine other states have constitutions that have been used continuously for one hundred years or more. As might be expected, six of the nine are New England states with great pride in the antiquity of their supreme documents: Massachusetts, Vermont, New Hampshire, Maine, Connecticut, and Rhode Island. The constitutions of Wisconsin, Ohio, and Indiana complete the list of documents more than a century old.

Iowa's constitution is the tenth document in effect for more than one hundred years. Likewise, ten of the states have adopted their present supreme law since the beginning of the twentieth century. However, only three new documents have taken effect since World War II: Georgia, Missouri, and, the newest of all, New Jersey (1948).

Virtually every state constitution in effect prior to the Civil War confined itself to the statement of fundamental principles. As a direct result, the documents effective for more than one hundred years are all considerably shorter than the ten twentieth century documents. Iowa's Constitution of 1857 has an estimated 8,000 words. Only the constitutions of Connecti-

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[1] William B. Munro, "An Ideal State Constitution," *Annals of the American Academy of Political and Social Sciences*, 181:1 (September, 1935).

cut (6,741), Indiana (7,816), Rhode Island (6,500) and Vermont (5,759) are shorter than Iowa's. These are in direct contrast with the modern constitutions of Louisiana with its 184,000 words, the 72,000-word California constitution, and even the Missouri document of some 30,000 words. The recent constitutions are of such great length because virtually every one of them includes detailed provisions on an ever-increasing number of legislative and administrative subjects.

This verbosity is also attributed to the steadily diminishing confidence the people and the writers of constitutions have in legislative bodies. Likewise, the constantly increasing complexity of state governmental functions contributes to longer documents. Similarly, the trend toward imposition of constitutional restrictions upon both legislative and administrative officials brings about greater length in the state constitutions. The inclusion of a multitude of detailed prescriptions in the state constitutions has also resulted in a large number of amendments. The present constitutions of California and Louisiana have both been amended more than 300 times, with the California document approaching its 400th amendment. The constitutions of New York, South Carolina, and Texas have each been amended more than 100 times; Oregon, New Hampshire, Alabama, and Florida citizens have amended their constitutions more than 90 times.

In fact, only seven of the state constitutions have had fewer than the 20 amendments added to the 100-year-old Iowa document. The seven with fewer additions are: Illinois (8), Indiana (18), Tennessee (8), Missouri (4), Wyoming (13), New Jersey (0), and Georgia (18). Of these, only the Indiana constitution predates the Iowa supreme law.

IOWA'S CONSTITUTIONAL DEVELOPMENT

The success of the Iowa Constitution of 1857 may in no small part be due to the constitutional history of the country of Iowa. No less than five territorial constitutions were used as the supreme law of the land included in the present state of Iowa. All of these made material contributions to the ultimate framing of the existing state constitution.

Effective Dates of Constitutions Governing Iowa

1805 — Louisiana Territorial Constitution
1812 — Missouri Territorial Constitution
1821-1834 — No Civil Government in the Iowa Country
1834 — Iowa Country under Michigan Territorial Constitution

EFFECTIVE DATES OF PRESENT STATE CONSTITUTIONS*

Prior to 1850:

Massachusetts — 1780
New Hampshire — 1784
Vermont — 1793
Connecticut — 1818
Maine — 1820
Rhode Island — 1843
Wisconsin — 1848

1850-1874:

Ohio — 1851
Indiana — 1851
Iowa — 1857
Minnesota — 1858
Oregon — 1859
Kansas — 1861
Nevada — 1864
Maryland — 1867
Illinois — 1870
Tennessee — 1870
West Virginia — 1872
Arkansas — 1874
Pennsylvania — 1874

1875-1899:

Nebraska — 1875
Colorado — 1876
North Carolina — 1876
Texas — 1876
California — 1879
Florida — 1887
Montana — 1889
North Dakota — 1889
South Dakota — 1889
Washington — 1889
Wyoming — 1889
Idaho — 1890
Mississippi — 1890
Kentucky — 1891
New York — 1894
South Carolina — 1895
Utah — 1896
Delaware — 1897

1900-1957:

Alabama — 1901
Virginia — 1902
Oklahoma — 1907
Michigan — 1909
Arizona — 1912
New Mexico — 1912
Louisiana — 1921
Missouri — 1945
Georgia — 1945
New Jersey — 1948

**The Book of the States, 1954-1955* (Chicago, 1954), 68-73.

1836 — Wisconsin Territorial Constitution
1838 — July 4, Iowa Territorial Constitution
1846 — December 28, First State Constitution, Effective upon Admission to Statehood
1857 — August 3, Present State Constitution, Approved by Popular Vote.

It has been said that "Iowa was born in anarchy."[2] This is only true in a limited sense. Certainly at the time of the first settlement in 1833, the Iowa country was not under a specific territorial constitution, but there was precedent for law and order even though no formal supreme law may have been technically in existence when the pioneer settlers staked their first land claims.

It is not necessary to go any further into the constitutional development of the state than the original Iowa Territorial Constitution of 1838, as it embodied much of the traditional territorial documents that preceded its proclamation.

CONSTITUTION OF THE IOWA TERRITORY[3]

On July 4, 1838, President Martin Van Buren approved the formation of the Territory of Iowa. The constitution, ordained by Congress and imposed upon the people, was copied almost entirely from the supreme document of Wisconsin Territory. Robert Lucas, the Governor of the Territory appointed by the President, was the central figure of government. In addition to being the chief magistrate, who appointed all inferior judicial and peace officers, he was commander-in-chief of the militia and virtually a constituted branch of the legislature with the power of absolute veto. The legislature was bicameral, being popularly elected and authorized to make laws on "all rightful subjects of legislation." A supreme court, with a chief justice and two associate justices, administered the law in the Territory. The primary differences between the organic act of the Wisconsin Territory and the Iowa Territorial Constitution were that in the Iowa document all officials served shorter terms and received lower salaries.

In April of 1844, after having defeated a similar proposal in August of 1843, the people of the Territory voted with a large majority in favor of

[2] John E. Briggs, "A History of the Constitution of Iowa," *Iowa Code Annotated* (29 vols., St. Paul, Minn., 1949), 1:1.

[3] Benjamin F. Shambaugh (ed.), *Documentary Materials Relating to the History of Iowa* (3 vols., Iowa City, 1897-1901), 1:102-116.

forming a state government. As a result, the first state constitutional convention met in the territorial capital at Iowa City on October 7, 1844. In twenty-six days this group of seventy-three delegates wrote the Iowa Constitution of 1844.[4] The constitution prohibited slavery, kept public officials' salaries low and their terms of office short, and regarded banks as a public menace. The boundaries of the state as set forth in the constitution were rejected by Congress, however, and new boundaries established reducing the size of the proposed state.[5] As a result of this geographic curtailment, the electorate of the Territory voted to reject the Constitution of 1844.

A second attempt at writing a state constitution for Iowa began in May of 1846. The thirty-two delegates completed the task in just fourteen working days. The new organic law included a compromise northern boundary established on the parallel of 43° 30′ and extending from the Mississippi River to the Big Sioux River. The Constitution of 1846 was even a little shorter than the Constitution of 1844. The 10 Whigs and 22 Democrats, averaging only thirty-seven years of age, included thirteen articles in the new constitution. The Bill of Rights, stating the philosophy of democratic government and the essential rights of free men, was practically unchanged from the older version. The article providing for the executive department did not include a Lieutenant Governor but did give the Governor a four-year term of office.

The territorial legislature submitted the Constitution of 1846 to a vote of the people on August 3. It was ratified by a majority of only 456 out of a total vote of 18,528. Meanwhile, Congress had accepted the 1846 Constitution on August 1, and the bill was approved by the President on August 4, 1846. The first state officers were elected on October 26, and the first General Assembly of the State of Iowa convened on November 30, 1846. The first Governor, Ansel Briggs, took the oath of office on December 3, 1846. However, the bill for the admission of Iowa into the Union was not passed by the House until December 21, with the Senate concurring on December 24. Iowa became officially the twenty-ninth state of the Union on December 28, 1846, when President James K. Polk signed the admission bill.

[4] Benjamin F. Shambaugh (ed.), *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846* (Iowa City, 1900), 7-313.

[5] Benj. F. Shambaugh, "Maps Illustrative of the Boundary History of Iowa," IOWA JOURNAL OF HISTORY AND POLITICS, 2:369-80 (July, 1904).

Dissatisfaction with the Constitution of 1846 soon arose. The agitation for revision stemmed primarily from the acknowledged need for authorizing the establishment of banks. As a direct result of the nonexistence of banks within the state, Iowa was flooded with depreciated paper currency from other states. Gold and silver were scarce, and what did exist was usually hoarded either to pay taxes or to buy public land from the federal government. The need for other changes also became apparent. However, the amending process was rigid and difficult, and changes were almost impossible. As a result, the General Assembly in August, 1856, submitted to a vote of the people the question of calling a convention to revise the constitution. The proposition was approved, and thirty-five delegates were elected in November to meet on January 19, 1857, to revise the state constitution. Twenty-one were members of the new Republican party, while fourteen were Democrats. Fourteen were lawyers; twelve, farmers.

IOWA'S PRESENT CONSTITUTION

This third constitutional convention completed its work in thirty-nine days, adjourning on March 5, 1857.[6] While the new constitution was more complete, it was primarily a revision of the 1846 document, and both were patterned after the first proposed organic law of 1844. The new constitution included only 12 articles, 176 sections, and approximately 8,000 words. When submitted to the people of Iowa at a special election on August 3, 1857, it was approved by a majority of only 1,630 votes out of a total vote of 79,000. It went into effect by proclamation of the Governor on September 3, 1857, and it is still the supreme law of the state of Iowa.

The content of the constitution is effectively outlined by the article headings: (1) Bill of Rights; (2) Right of Suffrage; (3) Distribution of Powers; (4) Executive Department; (5) Judicial Department; (6) Militia; (7) State Debts; (8) Corporations; (9) Education and School Laws; (10) Amending the Constitution; (11) Miscellaneous; (12) Schedule.

In the following pages a brief analysis of the present constitution is made, with the amendments considered in chronological sequence.

(1) Bill of Rights: In the original 25 sections included under this article there are several items of vital importance to all Iowans. Section 4 declares that the testimony of any person, "not disqualified on account of interest," may be taken and used in any judicial proceeding. Section 6 provides that

[6] "The Constitutional Convention of 1857," *Iowa Historical Record*, 12:481-92 (July, 1896); "Constitution of the State of Iowa," *Iowa Code Annotated*, Vol 1.

the General Assembly shall not grant any special immunities or privileges to any one class of citizens. Section 9 gives the classical declaration of the United States Constitution that "no person shall be deprived of life, liberty, or property, without due process of law." Section 10 extends the right of the accused to a trial by jury not only in all criminal prosecutions but also "in cases involving the life, or liberty of an individual." Section 11 authorizes trial of all misdemeanors in a justice of the peace court without grand jury indictment and sets the limits of jurisdiction as a fine of $100 or imprisonment for thirty days. Section 13 guarantees the writ of habeas corpus, while section 16 defines treason in the words used in the United States Constitution. Section 17 protects the individual from excessive bail and fines in the state courts. Section 18 establishes the right of eminent domain, and section 21 forbids the state legislature from enacting any bills of attainder, ex post facto laws, or laws impairing the obligations of contracts. Section 23 forbids slavery, and section 24 establishes a twenty-year limit on the validity of leases on agricultural lands. One amendment to Article I, adopted in 1880 and re-adopted in 1882, was declared unconstitutional by the Supreme Court of Iowa in the case of Koehler & Lange *v.* Hill,[7] because the Court held that the amendment had not been legally submitted to the voters and therefore was never actually a part of the constitution. The entire Bill of Rights is virtually a verbatim copy of the original state constitution and was used in the *Model State Constitution* first written in 1921 by the National Municipal League.

(2) Right of Suffrage: While this article originally allowed only white male citizens to vote, an amendment was enacted in 1868 which struck out the word "white." The word "male" remains in the section, although it was rendered inoperative by the Nineteenth Amendment to the United States Constitution, adopted in 1920. The sections in this Article establish residence requirements and the policy of the state pertaining to causes of ineligibility of electors.[8] Dates for the general elections for state, district, county, and township officers, established in section 7, have since been amended in 1884 and 1916 to establish election day on the Tuesday next after the first Monday in November. Like Article I, this Article, before amendment, was taken word for word from the 1846 constitution.

[7] 60 *Iowa Reports*, 543.

[8] Carl H. Erbe, "Constitutional Provisions for Suffrage in Iowa," Iowa Journal of History and Politics, 22:163-217 (July, 1924).

(3) The Distribution of Powers. Legislative Department: The bicameral organization is retained from the original supreme law. The qualifications of members are set, and the terms of office and biennial sessions are established. The maximum number of senators is set at 50, and the representatives were originally limited to 100. However, an amendment of 1904 increased the number of representatives to a maximum of 108. Section 17 of Article II requires the assent of a majority of all members of each chamber before a bill is considered passed. In the section on legislative powers are sections dealing with compensation restrictions of legislative members and other restrictions upon the composition of congressional, senatorial, and representative districts. An effort is made in section 37 to restrain gerrymandering by providing that all districts must be contiguous and that counties cannot be divided in the formation of electoral districts. The scope of legislative authority, for the most part relatively unrestricted by the Article, contributes greatly to the durability of the 1857 constitution. Four sections were added to the Article on the legislative department in the Constitution of 1857 that had not been included in the original state constitution. All four dealt with some aspect of the number of representatives and senators and the years in which the legislature must convene.[9]

(4) Executive Department: The 22nd Section in Article IV outlines the essential structure of the executive and administrative departments. The greater part, however, has been erected by statute law. The Constitution of 1857 establishes the offices of Governor, Lieutenant Governor, Secretary of State, Treasurer, Auditor, and Attorney General. The term of office for all these officers is set at two years and their salaries are left to legislative determination. Outlined very briefly in this Article are the prime powers and duties of the Governor and the Lieutenant Governor.[10]

All of the four section additions to the 1846 Constitution made by the framers of the 1857 Constitution concerned the creation of the position of Lieutenant Governor, which was not in the original Iowa constitution, and the new succession to the position of chief executive. This was in effect a demotion of the Secretary of State, as he had been the number two man under the Constitution of 1846.

[9] Russell M. Ross, "The Iowa General Assembly: Composition and Powers," IOWA JOURNAL OF HISTORY, 53:31-56 (January, 1955).

[10] Russell M. Ross, "The Powers of the Governor of Iowa," IOWA JOURNAL OF HISTORY, 52:97-140 (April, 1954).

(5) Judicial Department: Section one establishes a supreme court and an unlimited number of district courts. The state legislature is empowered to establish other courts inferior to the Supreme Court, as it deems necessary. The popular election of judges is required. The term of office of the judges of the State Supreme Court is set at six years, while district judges serve for four-year terms. According to this Article, judicial salaries are determined by the General Assembly. Amendments to Article V made in 1884 have given the state legislature extensive power over the reorganization of judicial districts. In this same series of amendments, the office of district attorney was abolished and a county attorney post created in each of the ninety-nine counties of the state. A third constitutional amendment passed in 1884 established the size of grand juries but granted the General Assembly the power to suspend their usage during emergency periods. This article differed in detail but not in principal outline from the earlier constitution.

(6) Militia: In three brief sections provision is made for a state militia and officers, to be armed, equipped, and trained as the state legislature sees necessary. Certain exemptions from military service are provided for persons conscientiously opposed to bearing arms. Not a single comma was added or deleted by the 1857 constitutional convention.

(7) State Debts: The seven sections devoted to the responsibilities of the state in connection with debts allow the issuance of bonds for no longer than twenty years and only when authorized by a majority vote of electors voting on the question. This Article also includes a list of the reasons for which the state may contract a debt.[11]

(8) Corporations: It was this Article that gave the greatest impetus to the writing of the 1857 Constitution. The 1846 document had expressly forbidden the incorporation or charter of any banks or the issuance or putting into circulation of anything to serve as money. Section one gives the General Assembly the power to create corporations only by general laws. All property of corporations is subject to tax, with no exemptions to be granted. Sections 3 and 4 forbid the state government and municipal governments from becoming stockholders in any corporation. Section 5 provides that any acts creating corporations or associations with banking powers must be approved by a majority of the electors voting on the issue.

[11] Carl H. Erbe, "Constitutional Limitations on Indebtedness in Iowa," IOWA JOURNAL OF HISTORY AND POLITICS, 22:323-63 (July, 1924).

The other sections, dealing with the creation of a state bank, provide for a general banking law, stockholders' responsibilities, and amendment or repeal of charters and exclusive privileges.

(9) Education and School Lands: Article IX is divided into two parts; the first dealing with education in general terms. The first ten sections of this part deal with the substitution of a Board of Education for the Superintendent of Public Instruction. However, the state legislature was invited to abolish the Board at any time after 1863. As a result, the General Assembly acted in 1864 to abolish the Board of Education. The sections still remain in the constitution but are inoperative. The office of Superintendent of Public Instruction was re-established by statute in 1864.

The second part of Article IX is devoted to school funds and school lands. The General Assembly is granted control and management of educational and school funds and lands. Certain restrictions are made regarding school funds and school lands, but for the most part the state legislature is left unhampered in this area.

(10) Amendments to the Constitution: The framers of the Constitution of 1857 had no sanctimonious belief that the document was perfect and would never need to be changed.[12] However, they also proved by the amending process provided that they did not have complete trust in future General Assemblies. An amendment to the constitution may be introduced in either house of the legislature, and it must receive a majority vote of each house in two successive General Assemblies and be ratified by a majority of the electors voting thereon at a state election. It is important to note that the vote required for ratification is a majority of the electors voting on the issues and not a majority of the total vote in the election, since usually the constitutional amendments are voted on in the general election, and not all of the voters take the time to vote on the amendments to be ratified. The entire amending procedure is calculated to prevent hasty, trivial, and unpopular modification of the fundamental law.

The Article on amendments also empowers the General Assembly to submit the question of calling a constitutional convention to the voters at any time.[13] Since the framers apparently feared the legislature might ne-

[12] Carl H. Erbe, "Amendment of the Iowa Constitution," IOWA JOURNAL OF HISTORY AND POLITICS, 23:103-138 (January, 1925).

[13] John F. Sly, "Providing for a State Constitutional Convention," IOWA JOURNAL OF HISTORY AND POLITICS, 19:3-43 (January, 1921).

glect this opportunity, it provides that it shall be the duty of the legislature to allow the voters at the general election held in the years ending with zero to vote on the question, "Shall there be a convention to revise the Constitution, and amend the same?" The provision is a relic of the natural rights philosophy of the eighteenth century embodied in the Declaration of Independence and reiterated in state bills of rights. The General Assembly has never exercised its prerogative of proposing the question of calling a revision convention, and on only one occasion have the electors requested such a convention. In the election of 1920 a majority of 57,889 of the 501,515 votes cast favored a convention. However, the General Assembly adjourned in the following year without calling a state constitutional convention. Thus the judgment of the legislature was substituted for the will of the people. No popular rebuke was given the legislators, and in the 1930 election the question of calling a constitutional convention was rejected by a majority of 54,689. The largest negative majority on the question ever polled — 152,895 — was cast in the 1940 election.

This dual system of amending the constitution was in direct contrast to the provision of the 1846 Constitution, which provided that the only way in which that might be used for changing the constitution was by holding a constitutional convention. A convention could be held only if the General Assembly determined that the question of whether or not a convention was needed should be put to a popular vote of the people; then if a majority favored the convening of a state constitutional convention, a second election for naming delegates would be held. It should be noted that this occurred only once under the Constitution of 1846 and resulted in the drafting of a new constitution rather than merely amending the existing document. This cumbersome method of changing the 1846 Constitution was a major factor in the drafting of the present Iowa constitution.

(11) Miscellaneous: The eight sections in this Article deal with a variety of subjects. Included are rules regarding the jurisdiction of justices of the peace, the geographic size of counties, a 5 per cent debt limitation on county and municipal governments, the boundaries of the state, and the oath of office required for all elective and appointive offices. Also included are the regulations regarding the filling of vacancies and the location of land grants. The final section of this Article establishes the state capital in Des Moines, and the State University at Iowa City.

(12) Schedule: After proclaiming the Constitution of 1857 the supreme

law of the state and ordering the General Assembly to pass all laws necessary to carry it into effect, the Article deals with an even greater variety of subjects than the preceding one. It includes sections pertaining to the repeal of all laws inconsistent with the new constitution, fines inuring to the state, the keeping of bonds in force, the first election for Governor and Lieutenant Governor, Secretary of State, and other elective officers, and other instructions necessary to execute the new constitution.

(13) Amendments made to the Constitution of 1857:[14] The first five amendments were proposed to give the Negro in Iowa the national status of the Negro race following the Civil War. These five were proposed by the General Assembly in 1866, endorsed by the 1868 General Assembly, and approved by the voters in November, 1868. The word "white" was struck out of the Iowa constitution. The effect was to give Negro men the right to vote, to serve in the militia, and to be counted in the apportioning of representatives in the state legislature. It was assumed that Negro men would be eligible for any public office except membership in the legislature. Even this limited disqualification was removed in 1880, when the people ratified the sixth amendment striking the words "free white" from section 4 of Article III.

Another group of four amendments was proposed by the Nineteenth General Assembly in 1882, readopted by the Twentieth in 1884, and confirmed by large majorities in the November election of 1884. Three of the four pertained to the judicial branch of the government, which had been the subject of much controversy in the state convention. The power of the General Assembly to reorganize judicial districts according to the growth of the state was limited by the constitution to not more than "one District, or one Judge of either Court, at any one session." This restriction was eliminated by authorizing the General Assembly at any regular session to divide the state into the "necessary Judicial Districts for District Court purposes," and increasing or decreasing the number of districts and judges.

The Constitution of 1857 empowers the General Assembly to provide a "general system of practice" in the state courts, but the Bill of Rights prescribed that persons could be held for criminal offenses only "on presentment or indictment by a grand jury." In order to facilitate prosecution,

[14] David C. Mott, "Amendments to the Constitution of Iowa," *Annals of Iowa* (third series), 14:204-214 (January, 1924); Erbe, "Amendment of the Iowa Constitution," 103-137.

a sentence was added in 1884 to section 14 of Article V explaining that the "grand jury may consist of any number of members not less than five or more than fifteen, as the General Assembly may by law provide, or the General Assembly may provide for holding persons to answer for any criminal offense without the intervention of a grand jury." This amendment was ratified by the largest majority of any of the changes in the judicial system, although all of these amendments were approved by a ratio of about two to one.

Because of the increase in population, one prosecuting attorney for each judicial district, as provided in the constitution, was believed to be inadequate, and in 1884 section 13 of Article V was rewritten to abolish the office of district attorney and to create the office of county attorney. The term was changed from four to two years, with popular election retained.

The fourth of the four amendments adopted in 1884 fixed the date of the general election for state and local officials "on the Tuesday next after the first Monday in November." This coincides with the day on which presidential electors are chosen. Until 1884 members of the legislature and other state officers had been elected on this date in presidential election years but on the second Tuesday in October in other years.

Almost from the beginning of the territorial government, annual elections prevailed in Iowa, with only about half the state and local officials elected at one time. A resolution to provide for biennial elections was adopted by the General Assembly in 1898, re-enacted by the next General Assembly, and approved by the people in 1900. In order to accomplish the transition, the tenure of officials whose terms were to expire in 1901 was extended one year. As might be expected, disputes arose which led to judicial intervention. Smith W. Brookhart, county attorney in Washington County, refused to surrender his office in January, 1901, under the terms of the amendment, to Marsh W. Bailey who had been elected in 1900. Bailey won the case in the district court, and that decision was sustained by the Supreme Court.

The desire for biennial elections was not to be halted. A similar amendment was adopted by the General Assemblies of 1902 and 1904 and ratified in the general election of 1904. It provided that the general elections should be held in even-numbered years beginning in 1906. It also changed the regular sessions of the General Assembly from even to odd-numbered

years beginning in 1907. Again, the transition was accomplished by extending the terms of incumbent officials one year.

Tuesday elections were unpopular with many people in the state. A movement was started in Iowa to have the general elections changed to Monday. The first step in this movement occurred when Iowa repealed the amendment of 1884 and substituted another in 1916 empowering the General Assembly to change the date of the general election after 1916 to "such time as the General Assembly may by law provide." This authority has never been exercised. The enactment of the absent-voters law in 1915, whereby persons away from home on election day could vote by mail, satisfied the traveling men and others who opposed Tuesday elections.

An amendment adopted in 1904 repealed three sections of the constitution relating to the size and apportionment of the General Assembly. The new section 34 of Article III limited the Senate to 50 members to be "apportioned among the several counties or districts of the State, according to population as shown by the last preceding census." Section 35 as amended established 108 as the maximum number of Representatives, the ratio of representation being determined "by dividing the whole number of population of the state as shown by the last preceding state or national census, by the whole number of counties then existing or organized," except that each county shall have at least one Representative. Each of the nine largest counties, if their population exceeds the ratio number by three-fifths or more, is entitled to one additional Representative.

Section 36 of Article III of the 1857 Constitution, as amended in 1904, required that the General Assembly in 1906, and "at each succeeding regular session held next after" a state or federal census, should "fix the ratio of representation, and apportion the additional representatives."

After the beginning of the twentieth century, when improved drainage of the rich, level land of north-central Iowa had become an economic necessity, a general demand arose for the removal of legal impediments to the construction of drainage ditches. The General Assemblies of 1906 and 1907, with but a single dissenting vote, adopted an amendment to section 18 of the Bill of Rights authorizing the General Assembly to pass laws "permitting the owners of lands to construct drains, ditches, and levees for agricultural, sanitary or mining purposes across the lands of others, and provide for the organization of drainage districts," and to finance such projects "by special assessments upon the property benefited thereby."

The right of eminent domain was granted to condemn "such real estate as shall be necessary for the construction and maintenance of such drains, ditches, and levees." The voters ratified this amendment in 1908.

The next addition to the constitution occurred in 1919 when a joint resolution declaring that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex" was passed by Congress and submitted to the states for ratification. Both Iowa Senators and all Representatives except one voted for the resolution. Governor William L. Harding called a special session of the Iowa legislature for July 2, 1919, to consider ratification. The vote in the Senate was unanimous, while in the House only five members dissented, and as a result Iowa became the tenth state to ratify national woman suffrage. The Nineteenth Amendment, proclaimed on August 20, 1920, as part of the supreme law of the land, thus modified the restriction in the Iowa constitution that only men may vote. The word "male" has not been removed from section one of Article II on suffrage, but it is no longer operative.

Women were thus entitled to vote and were, therefore, eligible to hold any public office except membership in the representative branch of the government, since the Iowa constitution specifically listed male sex as a qualification of members of the General Assembly. With this discrepancy in mind, Governor Nathan E. Kendall in 1923 urged the legislature to remove from the constitution and statutes "every discrimination there existing against the enjoyment by women of every prerogative now exercised by men." In response, the General Assembly proposed to amend section 4 of Article III by striking out the word "male." This resolution was also adopted by the 1925 General Assembly and approved by the voters in 1926.

In order to maintain the territorial integrity of the county as an area for representative and electoral purposes, the 1857 Contitution prohibited the division of a county "in forming a congressional, senatorial, or representative district." There was, however, nothing to prevent the apportionment of two or more state senators to a single county. On the basis of population some of the larger counties, such as Polk and Woodbury, have been under-represented in the General Assembly. To forestall the possibility of increasing the strength of the populous centers in the Senate, a joint resolution adding to section 34 of Article III the guarantee that "no county shall be entitled to more than one senator" was adopted in 1925, passed

by the General Assembly of 1927, and ratified by the voters in 1928.

During the economic depression of the thirties, when the legislature sought to economize in public expenditures, section 33 of Article III, which required a state census at ten-year intervals for the purpose of apportioning members of the legislature, was repealed. The amendment was first passed by the General Assembly in 1933, readopted in 1935, and ratified at the general election in 1936.

The eighteenth amendment to the Iowa constitution was adopted in 1942. To Article VII on state debts was added section 8, whereby "All motor vehicle registration fees and all licenses and excise taxes on motor vehicle fuel, except cost of administration, shall be used exclusively for the construction, maintenance and supervision of the public highways exclusively within the state, or for the payment of bonds issued for the construction of such public highways and the payment of interest on such bonds." This limitation of the use of revenue derived from motor traffic for the sole purpose of highway construction and maintenance, as had previously been required by statute, appears to have been designed to protect this source of income against demands for funds to support other governmental services less clearly associated with the benefits derived by motor users. It may also have the effect of enabling the state to borrow directly for highway improvement by imposing and providing for "a direct annual tax" to be used exclusively for the object designated in the statute authorizing the loan, as required in section 5 of the same article. The amendment was adopted by the General Assemblies in 1939 and 1941 and approved by the voters in 1942.

The legislature in 1947 passed a joint resolution to provide a method of succession to the office of Governor in contingencies not previously contemplated. In case of "death, resignation, failure to qualify, inability to qualify, or other disability of the candidate for Governor who received the largest number of votes at the last general election," the duties of Governor shall devolve upon the successful candidate for Lieutenant Governor. Perhaps with the atomic age in mind, the proposed amendment also declares that if the Governor, Lieutenant Governor, president pro tem of the Senate, and Speaker of the House (which is the order of succession prescribed in the constitution) should all by reason of death, resignation, or any other cause be incapable of filling the office of Governor, the Executive Council "shall immediately convene the General Assembly by proclamation, and

the General Assembly shall immediately elect" incumbents to all those offices to serve "until their successors are elected and qualified." This proposal was nullified, however, by the failure of the Secretary of State to publish it "for three months previous" to the election of members of the next General Assembly to whom the proposed amendment was referred. It was passed again by the Fifty-third General Assembly in 1949 and by the Fifty-fourth in 1951, was approved by a majority of the voters in the 1952 general election, and certified on December 8, 1952. This second measure contained a revision of the original in that the Supreme Court, instead of the Executive Council, is given the power to call the legislature into session.

Only six amendments to the Constitution of 1857 that have been adopted by the legislature have failed to become part of the organic law of Iowa because of defective procedure or failure to be ratified by the voters. In no instance, however, has the object sought by an amendment failed to be achieved. Errors in the process of amendment have been inadvertent, but popular opposition to the extension of democracy has been emphatically expressed on one occasion and against a moral reform on another.

After the first referendum on a change in the constitution resulted in the overwhelming repudiation of political equality for Negroes at the time the constitution was adopted, every amendment submitted to the people was ratified until equal suffrage for women was defeated in the primary election in 1916. The proposal to remove the word "male" from the qualifications of voters was approved by the General Assemblies in 1913 and 1915, but repudiated by the male voters, 173,024 to 162,683. While the negative majority was not as large as that polled against Negro suffrage in 1857, the women had to wait only four years before their right to vote was obtained by national amendment, whereas Negro suffrage was legalized by an Iowa constitutional amendment in eleven years and by the Fifteenth Amendment to the United States Constitution two years later in 1870.

The second defeat of an amendment submitted by the legislature to the people occurred in 1917. The liquor traffic had dried up in most parts of Iowa by the beginning of the first World War. In the hope of permanent and complete suppression, the General Assembly in 1915 proposed that the "manufacture, sale, or keeping for sale, as a beverage, of intoxicating liquors, including ale, wine, and beer, shall be forever prohibited within this state." This resolution was passed by the Assembly in 1917. But in the special election in October of that year, 214,693 votes were cast for the

amendment, and 215,625 against it, and so it was defeated by 932 votes — the narrowest margin of any amendment in the largest vote ever polled up to that time on an amendment. Two months later the Eighteenth Amendment to the United States Constitution was adopted, and in January, 1919, national prohibition was proclaimed.

The first organized opposition to the sale of liquor in Iowa began with the passage of a prohibition amendment to the Iowa constitution by the General Assembly in 1880 and 1882, which was approved by a special election on June 27, 1882. However, the courts, in the case of Koehler & Lange *v.* Hill,[15] declared the amendment null and void because the amendment passed by the Senate was not identical to the one passed by the House.[16]

Similarly, the courts declared the amendment that would have provided for biennial elections null and void because of a technicality involved in the passage of the amendment. The legislature and voters were determined to have the constitution changed, and they repassed the amendment in proper form.

Errors on the part of the Secretary of State in publication of the amendments have on two occasions nullified the will of the state legislators. In 1917 and 1947 the Secretary of State failed to have the proposed amendments published, as required by the state constitution.

It must be concluded from a review of the first hundred years of the existence of the Iowa Constitution of 1857 that the document is a remarkable one. Its framers were not essentially original in their writing, as much of the constitution was copied from the original Iowa document which in turn had borrowed liberally from other state constitutions of the period, yet they were successful in putting together a supreme law that has served with relatively few modifications for one hundred years. Its longevity has primarily been due to the fact that it is basically an outline or blueprint of the essential framework of the state governmental structure. The error of many state constitutions of including a multitude of detailed administrative duties was avoided. Similarly, it gave a tremendous amount of legislative discretion to the General Assembly, thus preventing the need for numerous amendments.

[15] 60 *Iowa Reports*, 543.

[16] Jacob Van der Zee, "Proposed Constitutional Amendments in Iowa," Iowa Journal of History and Politics, 7:266-83 (April, 1909); 8:171-210 (April, 1910).