PROPOSED CONSTITUTIONAL AMENDMENTS IN IOWA 1857–1909

In a previous paper[1] it was shown by the writer that any alteration of the Constitution of 1846 remained difficult of accomplishment so long as the majority of members in both houses of the legislature was Democratic. The leading principles of the Democratic party had been embodied in the Constitution, the very existence of which as a partisan creation depended upon the maintenance of the supremacy of its creators in the legislative branch of the State government. There was no danger of revision or amendment, since the Constitution conferred upon the legislators the right of initiative: it was for them as the guardians of the fundamental law to decide whether the question of calling a convention to alter that law should or should not be voted on by the electors of the State. But when legislative supremacy in the General Assembly passed into the hands of the Whig party, the question of amending the Constitution was naturally answered in the affirmative, and a constitutional convention was soon called into existence.

The Constitutional Convention of 1857 completed its work within two months: the results of its debates are summarized in the present Constitution, the provisions of which, though party-made, were broad enough to meet with the approval of a majority of the voters in 1857.

[1] *Proposed Constitutional Amendments in Iowa: 1836-1857*, in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. VII, pp. 266-283. In this article the writer treated proposed amendments to the First State Constitution. The value of such researches lies, as Professor Herman V. Ames well says, "in the fact that they are indices of the movements to effect a change, and to a large degree show the waves of popular feeling and reflect the political theories of the time."

The Constitution of 1846 had provided for only one method of amendment or revision — which was difficult and expensive, and consequently productive of keen dissatisfaction among delegates of the Convention of 1857. The tenth article of the new Constitution is an improvement on the corresponding provisions of the old Constitution since it makes provision for two methods.[2] In the first place it empowers the General Assembly to take the initiative at any time: if a majority in both houses favors a proposed amendment and the succeeding General Assembly ratifies their action, the amendment is submitted to the electors for final approval. When several proposed changes are submitted together, each must be voted on separately. If the members of the General Assembly assume an attitude of superior wisdom or indifference and conclude that the popular demand for constitutional reform is unreasonable and unwarranted, the Constitution guarantees a second method of amendment whereby the electorate is given an opportunity to vote on the question of a constitutional convention. By this automatic machinery the people are enabled to register their wish every tenth year — a precaution designed to prevent permanent hostility or apathy on the part of the legislature.[3]

Supplementary to the provisions of the Constitution the General Assembly has passed acts prescribing the course of action necessary to refer proposed amendments to the people. Before 1876 whenever any proposition to amend the Constitution was accepted by the General Assembly, in conjunction with the act or resolution to amend or in a separate act, provision was made for its reference to the

[2] See Horack's *Constitutional Amendments in the Commonwealth of Iowa,* in the *Iowa Historical Record,* Vol. XVI, No. 2, in which are discussed the manner and significance of amending the Constitution.

[3] Thus far public opinion as expressed through the ballot-box has not favored the calling of a constitutional convention.

next General Assembly, its publication by the Secretary of State, and its submission to a vote of the people.[4] But the Sixteenth General Assembly passed and the Nineteenth amended and enlarged an act of general application to all proposed amendments. This law very explicitly provides for the proper publication of proposed amendments: it requires the Secretary of State to select two newspapers of general circulation in each of the eleven congressional districts, in which he shall cause the proposed amendment to be published for three months before the election of members of the next General Assembly. It also requires the Secretary to record and preserve in a special book the publishers' affidavits of publication and his own certificate of the selection of newspapers so that the next General Assembly may have proof of compliance with the law. The law at present provides for publication once a week.[5]

Furthermore, when a proposed amendment has been adopted by two successive General Assemblies, unless the last General Assembly has fixed a special time for its submission to the voters, the amendment shall be voted on at the next general election, and the returns of the vote shall be declared by the Board of State Canvassers and entered in the Secretary's book. But whether the proposed amendment is to be submitted at a special or at a general election, the Governor must include it in his election proclamation. All expenses incurred in carrying out the foregoing provisions are to be audited and allowed by the Executive Council and paid out of State money not otherwise appropriated.[6]

In this paper it is thought best to present proposed

[4] *Laws of Iowa*, 1866, p. 108; 1868, p. 93; 1870, p. 231; 1874, p. 85.

[5] *Laws of Iowa*, 1904, p. 2.

[6] *Laws of Iowa*, 1876, p. 99; 1882, p. 8. See also *Code of Iowa*, 1897, Sections 55 to 59.

amendments not in their chronological order but rather in the order of the twelve articles of the Constitution. Thus, all proposals to amend Article I of the Constitution will be disposed of first, then all desired alterations of Article II will be discussed, and so on. This method will not only simplify the arrangement of the subject matter and prevent undue repetition, but will also facilitate parallel reference to the Constitution itself.

PROPOSED AMENDMENTS TO ARTICLE I

EVIDENCE IN COURTS OF JUSTICE

To the minds of many the Bill of Rights of the Constitution of 1857 presented some rather glaring defects — particularly Section 4. A bill was therefore formulated in 1858 urging the omission of the words "and any party to any judicial proceeding shall have the right to use as a witness, or take the testimony of, any other person not disqualified on account of interest, who may be cognizant of any fact material to the case."[7] This clause had been fully debated in the Convention of 1857; and its acceptance was significant in that it would prevent legislation to deprive negroes, and perhaps Indians, of the right to give testimony in courts of law. A resolution of the legislature in 1860 explicitly urged that negroes and mulattoes be prohibited from giving evidence in courts of justice. In each case, however, the committee report of indefinite postponement was approved.[8]

[7] Original House File No. 283. The writer visited the Archives Department at Des Moines and there consulted the original House and Senate files to determine the nature of a few proposed amendments not fully recorded in the printed *Journals*. The search for these early files proved to be only partially satisfactory, since many of the bills seem never to have been preserved. It is, therefore, impossible to give the details of all proposals in these pages.

[8] *Journal of the Constitutional Convention*, 1857, pp. 244, 247, 257. *House Journal*, 1858, pp. 557, 755; 1860, pp. 125, 191.

TRIAL BY JURY

The ancient English right of trial by jury, though time-honored and sacred, did not escape the watchful solicitude of would-be constitution reformers in Iowa, to whom this "bulwark of our liberties" seemed moss-grown and incapable of meeting the demands of modern times. As an institution, therefore, the jury system has called forth considerable criticism, and has found its way into the records of nearly every General Assembly since 1860.

First of all it is well to enumerate the objections to Section 9 as offered in three successive General Assemblies. In the Senate of 1874 a proposed amendment gave the legislature authority to legalize trial by a jury of less than twelve men, two-thirds of whom might render a verdict. A resolution two years later explained the desired change. It was declared that a system which required "a unanimous agreement of the jury in order to reach a verdict is contrary to the spirit of a republican form of government, whose boast is that the majority shall rule." Surely a system which permitted "the will of one man to thwart and set at defiance the will of eleven is unjust, arbitrary and opposed to all the dictates of reason", since it constantly thwarted the ends of justice and provoked needless and expensive litigation: a change should be made in the Constitution empowering the majority of a jury to render a verdict in all district, circuit, and justice courts of the State. The House of Representatives in 1878, by a decisive vote, resolved to strike out the words "in inferior courts" and to insert "and may also authorize verdicts to be rendered by less than the whole number of jurymen in civil cases"; but the Senate postponed the resolution indefinitely.[9]

[9] *Senate Journal*, 1874, p. 317; and 1878, pp. 227, 253. *House Journal*, 1876, p. 20; and 1878, pp. 143, 146, 191, 307, 310, 311. Governor Carpenter

Amendments proposing to strike out the words "in inferior courts" failed in both houses in 1888 and 1894. One amendment provided that the trial or petit jury for trials in all civil and criminal cases should be composed of six competent jurors, four of whom might find and return a verdict, except that the verdict must be unanimous in criminal cases in which the offence charged is a felony. Senate resolutions of 1896 and 1898, to enable a majority of the jurors to render a verdict, never got beyond the committee stage.[10]

SECTION 11 — THE GRAND JURY

In the year 1860 came a proposal to abolish the grand jury. "Our present judicial system so far as it recognizes the necessity of the interposition of grand juries in order to [institute] criminal prosecutions is based on an old English custom; the reasons for which, however good in England, do not exist under our form of government". The belief was frankly expressed that the grand jury is not only useless and expensive, but contrary to the "genius of our free institutions, and opposed to the spirit of law reform, manifest both in Europe and this country". Since there was some doubt as to whether the desired reform was an infringement upon the Federal Constitution, the Committee on Constitutional Amendments was instructed to inves-

in his second biennial message included the following on the jury system:— "Entertaining as I do the profoundest veneration for this legacy of our ancestors, I yet do not think it beyond the reach of improvement. The requirement of unanimity in a jury in order to a verdict I can not but look upon as an antique absurdity, which has too long fettered the administration of justice. I therefore recommend that steps be taken to do away with the requirement, and thus to conform our jury system more nearly to modern ideas, and practical common sense."—See Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. IV, p. 171.

[10] *House Journal,* 1888, pp. 156, 315, 548; and 1894, pp. 309, 458, 474. *Senate Journal,* 1888, pp. 294, 426; 1894, pp. 35, 80, 94, 111, 793; 1896, pp. 368, 733; and 1898, pp. 451, 717.

tigate and report at an early day. This committee submitted a bill which was immediately read three times and passed in the House of Representatives, but was not approved by the Senate.[11]

Ten years later it was proposed to strike out the words "and no person shall be held to answer for any higher offense unless on presentment or indictment by a grand jury", except in certain cases mentioned, and to insert instead "And the General Assembly shall provide for the commencement of proceedings against persons charged with higher criminal offences, either by presentment, or by information, or by other proceedings before a judicial officer." Two years later this proposal in almost the same words seems to have passed in the Senate — the House of Representatives certainly rejected it.[12]

In 1874 the House Committee on Constitutional Amendments recommended the adoption of an entirely new section which reads:—"All offenses less than felony, and in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days, shall be tried summarily before a justice of the peace, or other officer authorized by law, on information under oath, saving to the defendant the right of appeal. All other offenses shall be tried in such manner as the General Assembly may prescribe." This resolution re-appeared in the Senate in 1876, with the exception of the last sentence, for which was substituted the words "and no person shall be held to answer for any higher criminal offense unless held to answer by a magistrate after an investigation according to law by such magistrate; except in cases arising in the army and navy, or in the militia, when in actual service, in time of war, or

[11] *House Journal*, 1860, pp. 120, 620. *Senate Journal*, 1860, p. 739.

[12] *House Journal*, 1870, p. 209; and 1872, p. 530. *Senate Journal*, 1872, pp. 46, 177, 333.

public danger, and all criminal prosecutions shall be conducted without presentment, indictment, or the intervention of a grand jury.'' This proposal met the same fate as the one passed by the House of Representatives: both died in the Senate.[13]

A resolution in terms almost identical with those mentioned above came before the House of Representatives in 1878, and after adoption by that body received unfavorable attention in the Senate. The resolution of 1880 failed also.[14]

SECTIONS 18 AND 22

At the election in November, 1908, the electors cast a majority vote in favor of an amendment making it possible for the General Assembly to permit land-owners to construct drains and ditches across the lands of others. The resolution favoring this amendment had been passed almost unanimously by three successive General Assemblies.

Both houses of the legislature passed and forwarded to Congress a joint resolution and memorial on the evils of permitting non-resident aliens to own lands in the United States. An amendment to the Federal Constitution was required before anything could be done in Iowa.[15]

[13] *House Journal,* 1874, pp. 135, 161, 168, 176, 410, 465; and 1876, pp. 391, 611. *Senate Journal,* 1876, pp. 51, 167, 214, 513.

[14] *House Journal,* 1878, pp. 21, 35, 308; and 1880, pp. 32, 79. *Senate Journal,* 1878, pp. 28, 115, 203; and 1880, pp. 53, 155, 383, 387. On page 310 of the *House Journal,* 1878, there is a record of an almost unanimous vote in favor of striking out the word ''indictment'' wherever it occurs in the Constitution.

Before the adoption of Amendment 3 of 1884 there was nothing in the Constitution to limit the size of the grand jury. In 1880 a proposal was made to fix the limits at the present numbers 5 and 15, and also to provide that the General Assembly might do away with the grand jury in all criminal cases. — *House Journal,* 1880, pp. 43, 168; 1882, pp. 54, 295; and 1884, p. 525. *Senate Journal,* 1882, p. 459; and 1884, pp. 158, 279, 338.

[15] *House Journal,* 1904, pp. 603, 857, 1005, 1106; 1906, pp. 110, 219, 262, 272; and 1907, pp. 136, 624, 709. *Senate Journal,* 1904, pp. 914, 954, 956; 1906, pp. 249, 691, 989; and 1907, pp. 615, 939, 1083. See also THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. VII, p. 391.

SECTION 26 — LIQUOR PROHIBITION

Liquor legislation in Iowa has been ably discussed by Mr. Dan E. Clark in a series of articles which appeared in THE IOWA JOURNAL OF HISTORY AND POLITICS. For more than thirty years a bitter fight has been waged to wipe out the liquor business either by ordinary legislative enactment or by amendment to the Constitution; but thus far local restriction only has been secured. The following summary of proposals to amend the Constitution by the addition of another section may be regarded as supplementary to what has already been written on the definite results of liquor legislation.[16]

In 1868 a committee of the House of Representatives recommended that there be laid on the table a resolution proposing an amendment to prohibit "the sale of intoxicating liquors, beer and wine."[17]

In 1880 the lower house of the legislature took the first step toward procuring the famous prohibitory amendment of 1882, the legislative history of which may very properly be narrated in full.

The House of Representatives by a decisive vote adopted the majority report of its committee in favor of the following proposed amendment: "No person shall hereafter manufacture, sell or keep with intent to sell, within this State, any alcoholic, distilled, brewed, fermented or vinous liquors, except for medical and mechanical purposes." A motion to substitute the word "intoxicating" for the five qualifying adjectives was rejected, as was also a provision "that nothing herein contained shall prohibit the manufacture and sale of beer, or wine or cider from fruit grown

[16] For *The History of Liquor Legislation in Iowa,* by Dan E. Clark, see THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. V, p. 193; and Vol. VI, pp. 55, 339, 503.

[17] *House Journal,* 1868, pp. 221, 567.

within this State.'' Likewise two substitutes for the original joint resolution were offered and defeated: one of these proposed to authorize the electors of each organized county to regulate or prohibit the manufacture and sale of intoxicating liquors; and the other urged that the ''manufacture and sale of all spirituous, vinous and malt liquors, including wine and beer, shall be regulated and controlled by a general license law.''

The House resolution underwent some change in the Senate. Here an amendment was offered so as to allow ''the manufacture and sale of beer, cider from apples, or wine from grapes, currants or other fruits grown in this State.'' This, as well as a provision to allow the sale of beer, cider and wine manufactured in Iowa, and numerous other motions to amend were lost; but the word ''medical'' was changed to ''medicinal'' and the words ''sacramental'' and ''culinary'' were inserted, while the phrase ''for sale'' was accepted to qualify ''manufacture''. The words ''chemical'' and ''scientific'', the phrase ''and for exportation'', and the substitute resolutions to forbid the passage of any law authorizing the licensing of the sale of intoxicating liquors and to empower each county or city of the first or second class, and cities acting under special charters, or incorporated towns to license and regulate the sale of liquor failed, and finally the Senate accepted a substitute resolution which reads as follows:—''No person shall manufacture, for sale, or sell or keep for sale as a beverage, or to be used, any intoxicating liquor whatever including ale, wine and beer. The General Assembly shall by law prescribe regulations for the enforcement of the prohibitions herein contained, and shall thereby provide suitable penalties for the violations of the provisions hereof.''

Such, in short, was the formula of prohibition as evolved in the General Assembly of 1880. Both houses of the leg-

islature in 1882 indulged in a heated discussion and ratified the amendment. And yet, despite the fact that the electorate overwhelmingly ratified this amendment, the State Supreme Court discovered a technicality which sufficed to kill the measure.[18]

Since 1882, when a prohibitory amendment so narrowly missed becoming a part of the fundamental law of Iowa, the legislature seems to have contented itself pretty much with the control and regulation of the liquor business by law, although the desire for a constitutional amendment has never been wholly dead. In 1884, for instance, the wording of the resolution left no doubt but that extreme prohibition was aimed at: the manufacture, sale, exportation and keeping of intoxicating liquors was to be forbidden, "except for mechanical, medicinal, sacramental, and scientific purposes." Without adopting this resolution, however, the

[18] *House Journal*, 1880, pp. 83, 95, 103, 106, 136-139, 470, 486, 503; and 1882, pp. 180, 197, 208-212, 440. *Senate Journal*, 1880, pp. 149, 205, 250-256, 263, 315-317, 321, 323, 324; and 1882, pp. 113, 127, 159-161, 170, 172, 213, 240, 249-253, 256, 257, 265, 322, 486, 498, 501.

In the minority report of 1880 the proposed amendment was attacked because "the twenty-five years' history and experience with unfriendly prohibitory legislation in Iowa" had clearly demonstrated that such laws had not diminished intemperance, and besides it was already an inherent power of the legislature to regulate or prohibit the traffic in liquor by law; a power which had been invoked in Iowa for a quarter of a century. In short, the amendment could not "change the habits, thought, opinions, and tastes of a people."

On the minutes of the Senate of 1882 we find two futile resolutions, one relative to the duty of members in the matter of ratifying or rejecting the work of their predecessors and the other relative to the proposed "benign and beneficent policy" of protecting the people of Iowa "from all the evils of the liquor traffic while it reserves to them the profits of its manufacture for export purposes", a policy "fully sustained by the Mosaic law as found in Deuteronomy, 14th chapter and 21st verse as follows: 'Ye shall not eat of anything that dieth of itself; thou shalt give it the stranger that is in thy gates that he may eat it; or thou mayst sell it unto an alien'."

The Senate also passed a resolution declaratory of its construction of the proposed amendment, and the House of Representatives printed in its journal the minority report setting forth at length numerous objections to the amendment.

Representatives showed their mettle by inviting a committee of the Woman's Christian Temperance Union to take seats on the floor of the House.[19]

In 1890 the lower house referred to its committee an amendment to prohibit "the manufacture, or keeping with intent to sell, or selling of any intoxicating liquors whatever, including ale, wine and beer, for use as a beverage," except for mechanical, scientific, chemical, medicinal, sacramental, culinary and art purposes, if so desired. The Senate then adopted and passed by a narrow margin a substitute amendment forbidding, except for certain purposes, the manufacture, sale and keeping for sale of all intoxicating liquors. The same amendment came before the Senate in 1892 when it received a hostile report at the hands of a majority of the committee, but the minority expressed a belief "that whenever it appears that it is the desire of a large number of the legal voters of the State to have an amendment to the Constitution submitted to a vote of the people, it is the duty of the General Assembly to submit the amendment to a vote of the people, no matter what the individual views of the members of the General Assembly may be." Not only did this amendment fail in the Senate but such was the fate also of the amendment which passed the lower house in words almost entirely identical. The minority of the House committee believed the resolution to be but a dilatory measure to evade and delay for two years more the relief which the people demanded and expected immediately from statutory enactments.[20]

[19] *House Journal*, 1884, pp. 34, 35. This committee presented to Speaker W. P. Wolf a "beautiful floral mallet" with the following communication: "Judgment also will I lay to the line, and righteousness to the plummet, and the hail shall sweep away the refuge of lies, and the waters shall overflow the hiding place."

[20] *House Journal*, 1890, p. 299; and 1892, pp. 311, 364. *Senate Journal*, 1890, pp. 336, 639, 730, 752; and 1892, pp. 113, 316, 389, 460, 603.

The prohibitionists secured a splendid victory in the General Assembly of 1894, after a gallant and complicated struggle. The following two amendments were proposed in the House of Representatives and referred to the committee: (1) "No person shall manufacture for sale, or sell, or keep for sale as a beverage, any intoxicating liquors whatever, including ale, wine and beer"; and (2) "The manufacture, sale and keeping for sale of all intoxicating liquors whatever, is prohibited, except for medicinal, chemical, mechanical and sacramental purposes." The committee twice recommended the passage of the first and the indefinite postponement of the second. The Senate committee reported favorably on the second amendment; but the Senate adopted a substitute providing that the sale of intoxicating liquor as a beverage be prohibited, though a lengthy enforcement clause was defeated. For this amendment the House of Representatives substituted the first one quoted above and adopted it, and the Senate subsequently concurred. But the Senate of the next General Assembly was content to abide by its committee's apathetic recommendation, while the House of Representatives voted down the favorable report of its committee.[21]

Of the two amendments quoted above the first was proposed in the House of Representatives of 1909, was withdrawn from the Committee on Constitutional Amendments

[21] A minority report submitted to the House of Representatives contained the following along with other reasons for opposition to the amendment:— "The question of resubmission was not an issue at the last election but rather that the prohibitory law be maintained where the same is now enforced and in favor of giving relief in districts by wise measures, where the same is not enforced. . . . Two bills seeking to accomplish this purpose have just been reported, and this resolution complicates and forces on this body a subject which is only used to delay and antagonize what a majority of the people of Iowa have expressed at the last election as its wishes and commands."— See *House Journal*, 1894, pp. 92, 104, 158, 199, 381, 520, 576, 627, 718, 750, 859, 962, 1006; and 1896, pp. 83, 510, 531-533. *Senate Journal*, 1894, pp. 68, 345, 656, 795; and 1896, pp. 54, 376.

and referred to the Committee on Suppression of Intemperance, whose favorable report was adopted. A motion to strike out the words "as a beverage" came to overwhelming defeat, as did the motion to insert the words "and cider" after the word "beer". An attempt to refer the amendment to the Committee on Judiciary was also squelched. Then followed a resolution directing the legislature, following the adoption of the amendment, "to make the necessary appropriation and establish the necessary tribunals to ascertain the damages suffered by those engaged in the manufacture and sale of intoxicating liquors . . . . to compensate them out of the State treasury to the extent of such damages." This was lost, and also a motion to insert after the word "beer" the words "and neither shall any person sell or keep for sale any cider after it has developed more than one-half of one per cent of alcohol." The amendment was finally read and passed by a vote of 68 to 37.

In the Senate the House resolution to amend the Constitution raised a long dispute relative to a point of order, and was finally referred to the Committee on Constitutional Amendments and Suffrage. Then a motion to recall the resolution from the committee was successfully tabled and several Senators felt obliged to explain their votes. A second demand that the committee should report led to the raising of another point of order; and the President in a lengthy ruling decided that if committees withheld reports on business referred to them, "all business might be suspended, all legislation thwarted and the Senate sit in absolute helplessness, the victim of its own appointed committees". The Senate, however, resolved, by vote of 27 to 13 to allow its committee to report what and when it pleased, and thus effectually killed the measure, much to the dismay of its supporters throughout the State.[22]

[22] *House Journal*, 1909, pp. 315, 349, 531, 741-743, 760-765. *Senate Journal*, 1909, pp. 726, 736-739, 1279, 1283, 1297-1299.

PROPOSED AMENDMENTS TO ARTICLE II

THE SUFFRAGE

No constitutional subject has been more productive of discussion than the right of suffrage, every phase of which has at one time or another been the prolific source of proposed amendments in the State of Iowa. That universal suffrage is the goal can no longer be questioned — especially since the perennial agitation in favor of votes for women promises to assume a militant aspect in imitation of the movement in England. Though our legislative halls have not been the scene of such dramatic incidents as have characterized the struggle abroad, the woman suffrage question has been constantly before the General Assembly since 1870. But before the history of that movement is presented, it is necessary to dispose of other suffrage questions which preceded it.

Both before and after negroes were enfranchised by amendments to the State Constitution, attempts were made to effect the modification of several provisions of Article II. First of all came the proposition to extend the suffrage to white males of foreign birth, twenty-one years of age, residents in the State for one year before the election, and prospective citizens of the United States. A county residence of twenty days instead of sixty was to be required of all electors. The committee recommended indefinite postponement because the alteration was not justified on the ground of absolute necessity: the constitutional guarantee was both just and liberal, and furthermore "frequent changes in that instrument [the Constitution] have a tendency to weaken the confidence and destroy the reverence which people have for it." [23]

[23] *House Journal*, 1862, pp. 319, 519. Thirty, twenty, and ten days' county residence were proposed later.— See *House Journal*, 1866, pp. 94, 374; and 1868, p. 108; and *Senate Journal*, 1888, pp. 177, 425, 770.

In the General Assembly which met after the close of the war between the northern and the southern States there were numerous outbursts of vindictive temper and unconcealed dislike of the South and all her ways. The President's pardon had, of course, been extended to all persons implicated in the attack on constituted authority; but certain Iowa legislators wished, nevertheless, to wreak a mild form of vengeance upon the delinquents by depriving them of the suffrage. The first amendment proposed to disqualify all men who had left their homes or the United States "for the purpose of avoiding any enrollment, conscription or draft" and those who had "served in, or joined with any rebel or insurgent forces opposed to the army or authority of the United States, or this State."

The same suffrage qualification was insisted upon in a lengthy resolution which virtually proposed to revolutionize Article II of the Constitution. First, the elective franchise was to be extended to every male, whether naturalized or not, and without regard to color, twenty-one years of age, who had resided in the State six months and in the county sixty days, and who "shall have enlisted in any of the military forces of this State, and after such enlistment shall have been duly mustered into the military service of the United States during the war of the Great Rebellion, and shall have served therein for a period of one year and been honorably discharged therefrom." Idiots, insane persons, and persons convicted of infamous crimes were not to be entitled to electoral privileges.

Secondly, a separate exclusion clause was leveled at all "who had ever voluntarily been in armed hostility to the United States or to the lawful authority thereof; or have ever given aid, comfort, countenance, or support to persons engaged in such hostility; or have ever, in any manner, adhered to the enemies, foreign or domestic, of the United

States; or have ever advised or aided any person to enter the service of such enemy; or have ever, except under overpowering compulsion submitted to the authority or been in the service of the so-called 'Confederate States of America'; or have ever left this State or gone within the lines of the army of the so-called 'Confederate States', with the purpose of adhering to said States or armies; or have ever been members of or connected with any order, society or organization inimical to the Government of the United States or of this State; or who have, by reason of treasonable or disloyal acts or sentiments, been disfranchised by any law of the State where such acts or sentiments were committed or expressed; or have ever left or come into the State for the purpose of avoiding enrollment for or draft into the military service of the United States."

Thirdly, it was provided that after January 1, 1872, a further qualification should go into effect: every person who was not a qualified voter prior to that time should be able to read, unless physically incapable.

Lastly, after January 1, 1874, a majority of all members elected to both houses of the General Assembly might suspend or repeal any part of the disqualification clause.

Another resolution had for its object the disfranchisement of all persons who had borne arms against the government of the United States, or who had engaged in military service in the interest of the southern States.

Besides the five amendments of 1868 striking out the word "white", adopted in two successive General Assemblies, a sixth amendment was offered, proposing to strike out of Section 1 the words "citizen of the United States" and to insert "persons"; but this proposition failed of adoption later. The Committee on Constitutional Amendments reported favorably on these, and also recommended a concise addition to Section 5, which answered the require-

ments of the resolutions quoted above. The committee frankly asserted that the provisions of this amendment were "eminently just in themselves, and due the soldiery of Iowa and their posterity as a just rebuke to those who vainly attempted to destroy the fairest, freest, and best Government the world has ever seen. It is the least punishment that those who gave or may hereafter give their aid to rebellion or insurrection to the Government of the United States [may expect], and may, in a just sense, be said to be magnanimous on the part of the loyal people of Iowa."

It will be seen that these amendments proposed to confer the right of suffrage upon Indians, negroes, and aliens indiscriminately, and at the same time "to disfranchise, so far as the State of Iowa is concerned, nearly the whole mass of white citizens of eleven States of the Union [the Confederate States] and probably one-half or more of the people of three other States, and a comparative few of our own citizens." In a minority report it was further objected that aliens owed no allegiance to the government: they were not bound to protect it against a public enemy, and were at liberty to take up arms against it in time of war: and worst of all, certain provisions of the amendments were unconstitutional because they imposed severe penalties for acts previously committed.

When the matter came before the House the amendment was altered by disfranchising also "any person who has been, or may hereafter be voluntarily engaged in the military service in rebellion against the United States."[24]

[24] *House Journal*, 1866, pp. 68, 147, 167, 186, 322-324, 446-447. The important addition to Section 5 reads as follows:—"Nor shall any person who has been or may hereafter be guilty of treason against the United States or this State, nor any person who has absconded or may hereafter abscond for the purpose of avoiding any military conscription or draft ordered by the authority of the United States or this State, be entitled to the privilege of an elector,

Many motions were made to change the amendment in other particulars, but only two succeeded. The first two lines were changed so as to read "nor shall any one who has committed or may hereafter commit the crime of treason against the United States or this State"; and furthermore, any person who procured an exemption from the draft by fraud was to be disqualified. The latter disqualification, though it prevailed in the lower house, failed to find favor

or qualified to hold office under the Constitution and laws of this State." For the action of the House on the committee's report, see pp. 544-547, 559-560, 625, 647-648, 723.

A certain Mr. Ballinger insisted on offering amendments to the committee's proposition relative to Section 5. He would have disqualified large numbers, and there may be an element of truth in his semi-cynical, semi-facetious reflections of conditions at that time. Besides other classes he would have excluded from the suffrage the following:—

1. All persons who have engaged in any mob instituted through political motives or otherwise.

2. All who "attempted, or shall hereafter attempt, to break up or disturb any lawful assembly of citizens (including raiders on soldiers' conventions in all cases where the Governor of the State refuses to pay the expenses of such raid out of his own private funds, but uses the public money for that purpose, and this fact is known to the raiders at the time of the commission of such raid) or who shall in any manner forcibly interfere with the peaceful proceedings of any such convention."

3. All persons "who served in the capacity of Provost Marshal, Quartermaster, or in any other official capacity in the army of the United States during the war of the Great Rebellion, and who shall have stolen an amount to exceed fifty thousand dollars."

4. "Any loyal or disloyal thief, be he 'Republican', 'Democrat', 'Niggerhead', 'Copperhead', or ''Possom', who shall have heretofore, or who shall hereafter, have stolen an amount to exceed fifty thousand dollars, whether said person at the time of said theft was engaged in either a military or a civil office under the authority of either the United States or the State of Iowa."

5. Any person who denounces "the President of the United States as a 'traitor', 'Copperhead', 'Judas Iscariot', or by any other name calculated to weaken the confidence of the people in the integrity or patriotism of their chief executive, for the sole provocation that said President manifests a determination to use all the powers vested in him to restore, preserve and perpetuate the Union of the States".

Two other amendments were suggested: "Nor any person who showed cowardice on the battle field, or evaded going into battle", and "all such persons as stayed at home and pronounced the war a failure".

in the Senate; and so the amendment was passed in both houses without it.[25] But a search through the *Journals* of the next General Assembly only reveals the rather surprising fact that this amendment to Section 5 was quite forgotten, while the other five amendments were ratified.

In 1868 was frustrated the last attempt to enfranchise aliens "who can read and write, and have declared their intention to become citizens of the United States"—one year's residence in Iowa was suggested as sufficient claim.[26] A substitute was also proposed for Section 5 so that no idiot or insane person or person under the influence of intoxicating liquors, or person convicted of any infamous crime should be entitled to the privilege of an elector. Likewise, the proposition to reduce the age qualification to eighteen years never commanded any serious attention in our General Assemblies.[27] The maintenance of a high standard in suffrage qualifications in Iowa has from the beginning attested to the strong character of the electorate, and it may help to explain the comparative freedom from corruption in politics.

[25] *Senate Journal,* 1866, pp. 562, 573, 634, 636. A minority of the Senate Committee also recommended as an addition to Section 1 that "no person who has not, prior to the taking effect of this act, rightfully exercised the right of suffrage in this or any other of the United States, or been engaged in the active military service of the United States, or of this State, shall be permitted to vote at any election now or hereafter authorized by law, unless he shall, at the time he offers his vote, be able to read the Constitution of this State, and write his own name, unless prevented from doing so by physical disability." Much the same amendment had been proposed in the lower house, though it was not to apply to citizens of foreign birth who could read and write their own language.—See *House Journal,* 1866, pp. 631, 643-644.

[26] *House Journal,* 1868, pp. 108, 223, 605.

[27] *Senate Journal,* 1888, pp. 146, 425, 770; and 1890, pp. 221, 552.

Futile attempts were made to alter Section 6 so as to make any method of election constitutional, provided secrecy in voting were preserved. Amendment to the Constitution was suggested when voting machines came into use.—*Senate Journal,* 1896, pp. 544, 656; and *House Journal,* 1896, pp. 747, 983, 1046; and 1900, p. 101.

POLITICAL RIGHTS OF THE NEGRO

The General Assemblies of 1866 and 1868, seconded by the favorable votes of the electors, effected what the people had rejected in 1857 when they cast their ballots for and against the new Constitution. In those ante-bellum days public opinion in Iowa as elsewhere very strongly resented the admission of negroes to the privileges of the ballot-box, as shown by the fact that a proposal to enfranchise them was voted down by a large majority. (See Section 14, Article XII, of the Constitution.)

But the fortunes of war having delivered American slaves from bondage, State constitutions had to be changed to meet the new conditions. In Iowa "a consistent regard for the principles of Republican Liberty" and the fact that "during the late civil war the colored residents of our State voluntarily and generously contributed their efforts to the support of the Union cause" prompted legislators to "discard political proscription, and make all men equal before the law".[28]

Nevertheless, fourteen years were to elapse before it was made possible for the negro to hold office in Iowa. The

[28] For the career of the amendments of 1868, see *House Journal*, 1866, pp. 57, 147, 186, 227, 322-323, 446-447, 544-547, 643-648, 723; and 1868, pp. 148, 301, 382, 401. *Senate Journal*, 1866, pp. 562, 573, 634-636; and 1868, pp. 54, 347, 385, 466.

Mr. W. T. Barker of Dubuque in his minority report urged the following objections:—"The undersigned regards the negro as belonging to an inferior race, not now, if he be capable of ever being, so far civilized and enlightened as to qualify him for the exercise of the governing power.

"The elective franchise is a political and not a natural right. The commingling of the white and black races, upon terms of equality would be detrimental to both, as all history clearly demonstrates. The immigration to our State of large numbers of negroes is not desirable, and should not be encouraged by the inducement of political privileges denied to them in other States. Is it not absurd to propose to elevate to citizenship a race of men, while we at the same time are resolving that they are incapable of taking care of themselves, and should be treated as the special wards of the General Government, and be supported out of the Federal treasury?"

amendments of 1868 had only conferred on him the right to vote, to be counted in the census, to be represented in the legislature, and to be eligible for the militia. From the beginning, however, there were legislators who, believing in equal opportunity to all, and special privileges to none, urged an amendment to Section 4, of Article III. Nearly every session saw its acceptance by one house and its defeat by the other until the General Assemblies of 1878 and 1880 agreed upon the measure and the voters ratified their action.[29]

WOMAN SUFFRAGE

"Votes for women" is an old cry in Iowa: ever since the Civil War this has been a question of biennial recurrence in the General Assembly. For nearly half a century woman suffrage has persistently found its way into the records of every session of the legislature, and it has incidentally been gaining such momentum that, if one reads the times aright, women will soon be seen voting at all elections and filling public offices. According to recent press notices Iowa suffragettes intend to adopt the militant tactics of their sisters across the Atlantic: in this way alone, perhaps, can they hope to successfully break down the barriers of the ordinary man's apathy and the critic's avowed disapproval. The possible outcome of a struggle with the next General Assembly may be political equality of the sexes in Iowa. Till then it will not be out of place to follow the progress of the movement from its inception.

[29] For the history of the legislative attempts to amend Section 4, Article III, see the following:

House Journal, 1866, pp. 227, 545, 631, 643, 645; 1868, p. 566 (passed); 1870, p. 480 (passed); 1872, pp. 253, 530 (passed); 1874, pp. 376, 423, 429 (passed); 1876, pp. 139, 288; 1878, pp. 260, 307, 383 (passed); and 1880, pp. 86, 125, 295 (passed). *Senate Journal*, 1866 (nothing); 1868, pp. 466, 471; 1870, pp. 414, 434, 521 (passed); 1872 (nothing); 1874, p. 313 (passed); 1876, pp. 35, 85 (passed); 1878, pp. 33, 116, 183 (passed); and 1880, pp. 74, 86, 155, 385 (passed).

In 1866 the Committee on Constitutional Amendments was instructed to inquire into the expediency of striking out the word "male" wherever it occurred in the Constitution in relation to the franchise.

The House resolution of 1868 summed up the situation in language that deserves to be reprinted here.

> Whereas, We hold these truths to be self-evident, that all men are created equal, and endowed by their Creator with certain inalienable rights, that to secure these rights governments are instituted deriving their just powers from the consent of the governed; and
>
> Whereas, We believe "men" in the memorable document from which we quote, refers to the whole human race, regardless of nationality, or sex; and
>
> Whereas, We recognize the fact, that as a general principle, taxation and representation shall be co-extensive; and
>
> Whereas, It is a fact that women are compelled to give allegiance, and pay taxes, to a government, in the enactment of whose laws, they have been and still are, denied a voice. Therefore,
>
> *Be it Resolved as the sense of this House,* That steps be taken looking towards a change in the constitution of this State so as to allow women the right of franchise, for the proper use of which, her quick perception, strong intellect, and above all, her high sense of right and justice, have proven her so well qualified.[30]

The foregoing resolutions were introduced so as to confer on women the right to vote; but in 1870, and nearly every two years thereafter, there was an attendant resolution to enable women to hold seats in the legislature. In this year accordingly the lower house adopted its committee's report recommending the exclusion of the word "male" from Section 1, Article II, and Section 4, Article III. The Senate also passed the resolution, after refusing to refer it to the Committee on the Suppression of Intemperance, and after defeating a motion to submit the ques-

[30] *House Journal,* 1866, p. 188; and 1868, pp. 530, 605.

tion to the women of Iowa. One branch of the following General Assembly ratified the resolution while the other rejected it by a close vote.[31]

Again in 1874 it was resolved to enfranchise women. In 1876 this action was ratified in the House of Representatives — where one member, fearing lest "a becoming modesty, characteristic of our bachelor friends in the House, may tend to defer their sentiments upon this question until the same may be nigh exhausted", urged that "no Benedict address the House upon this subject, until all of the bachelors choosing so to do shall have spoken." The Senate, however, rejected the proposal twice.[32]

In 1878 indefinite postponement and rejection were the fate of the measure in the House of Representatives and the Senate respectively. During the following session the former body passed resolutions to amend the Constitution so as to allow women to vote and also sit in the legislature, and later its committee favored the proposition to give women the right to vote at all school elections. This latter measure met with a favorable vote in the Senate, while the more important subject of woman suffrage in general met with a very cold reception, not to say open ridicule. Newspaper reports had reached Iowa that a bill had been introduced into the Senate of New York "making it a misdemeanor for any female to engage in any go-as-you-please walking match". To the Senator who moved the resolution such action in New York was manifestly "only a part of a scheme to deny to women the right to choose their own

[31] *House Journal*, 1870, pp. 95, 417, 469; and 1872, pp. 191, 211, 248, 377. *Senate Journal*, 1870, pp. 113, 394; and 1872, pp. 171, 377, 421, 426.

[32] *House Journal*, 1874, pp. 102, 251, 324, 363, 462, 491; 1876, pp. 65, 114, 131, 181, 235, 296, 396. *Senate Journal*, 1874, pp. 280, 321; 1876, pp. 66, 138, 185, 248, 317, 351, 386.

In 1876 it was also proposed in the lower house to strike the word "male" from Section 1, Article VI, on the militia.

business, and go-as-you-please, and is aimed at their liberties'': the proposed legislation was therefore condemned and denounced; the attention of various Iowa female suffrage associations was called to the case; and the possible danger of such discrimination against women in Iowa was declared deserving of prevention by constitutional amendment. This unusual resolution fell to the care of the Committee on Medicine, Surgery, and Hygiene.

The General Assembly of 1882 went on record as the friend of woman suffrage; but the next legislature showed its indifference and open hostility in spite of a favorable committee report. At this time several reasons were offered in support of the measure. First, the just powers of a free representative government are derived from the consent of the governed — an axiomatic principle of our democracy. Secondly, "American civilization, law and conscience recognize woman as a subject of government, as a person, and as a citizen in many respects equally, and in some respects more directly interested in the enactment and enforcement of law, and in giving direction to the administration of government than man." Thirdly, fairness and justice demand that the burdens and privileges, taxation and representative, should be equal and coëxtensive, if not altogether identical. Fourthly, woman will doubtless vote quite as intelligently as man, and her participation in the electoral franchise will "tend to elevate rather than degrade politics". Lastly, there is no sufficient reason why woman's share "in the direction and control of governmental affairs may not and will not tend to advance the best interests of all classes in the commonwealth."[33]

[33] *Senate Journal*, 1878, pp. 188, 253, 417; 1880, pp. 27, 80, 83, 155, 156, 385, 386, 387, 412; 1882, pp. 256, 299, 304; 1884, pp. 279, 332, 333, 335. *House Journal*, 1878, p. 381; 1880, pp. 22, 86, 124, 637; 1882, pp. 103, 190, 310; 1884, pp. 393, 396, 523.

During the years 1880-1892 it was a question not of woman's right to sit in

It is unnecessary to give a detailed account of the history of the movement during the next ten years — a period in which the political rights of women met with no hearty favor, except in the Senate of 1886 and in the House of Representatives of 1888. To the Senate of 1896 a majority committee report recommended woman suffrage, but the minority's opinion was accepted instead — not that women would not exercise the suffrage in an intelligent manner, but because the right to vote was not sought by any considerable number of "our mothers, wives and others". They did not believe that a genuine demand existed for this radical change; furthermore, such a change would not tend to safeguard the home and its influences, whereas "it is the theory of the law that nothing from without shall be permitted to enter to endanger any of the relationships upon which the good of society depends."[34]

Only once during the last seven sessions of the General Assembly has woman suffrage succeeded in getting a majority vote in its favor — in the Senate of 1902. At all other times resolutions to amend the Constitution were either

the legislature but of her right to vote for representatives in that legislature and other officials as well.

[34] *House Journal,* 1886, pp. 109, 120, 182, 256, 573; 1888, pp. 525, 633, 915; 1892, pp. 186, 291, 415; 1894, pp. 269, 526, 627. *Senate Journal,* 1886, pp. 130, 512, 555; 1888, pp. 81, 642; 1892, p. 243; 1894, pp. 44, 61, 158, 160, 206, 320; 1896, pp. 93, 209, 753.

One Senator explained his vote in 1894 and went on record as follows:— "I believe that my good old mother and my amiable wife, under the laws of government, should have equal rights with their husbands, for the reason that they are our equals, and in many regards our superiors. Taxation without representation is oppressive, and is the greatest source of discontent in any government. Woman has purified every organization that she has entered; she has elevated every institution with which she has been connected; she has filled every position of trust that she has been called upon to occupy, with as much, if not greater ability and aptitude than her husband and brother. She is his peer in every particular. She is now endowed with every other right and privilege with man. I cannot, therefore, see any good reason why this last veil should not be lifted and permit her to step out into the fulness of political freedom."

indefinitely postponed or lost by substantial majorities.[35] Such has been the checkered career of a cause espoused for nearly fifty years within the legislative halls of Iowa.

PROPOSED AMENDMENTS TO ARTICLE III

SECTION 1 — INITIATIVE AND REFERENDUM

The House of Representatives in 1874 granted leave to one of its members to offer a resolution which plainly recommended the principle of the referendum in certain matters of local concern. The resolution proposed to enact a wholly new section, providing for the same legislative authority but authorizing the General Assembly to delegate to the several counties the power to determine by a vote of the qualified electors the following questions:

1st. Shall stock be restrained from running at large?
2d. Shall the manufacture and sale of spirituous liquors be prohibited?
3d. Shall the number of supervisors be increased or diminished?
4th. Shall the irregular levy of any tax, or the illegal acts of any public officer of the county be legalized?
5th. Shall railroads be required to fence their roads?

What was really in effect an amendment to Section 1 was the proposal of 1892 which was introduced as Section 39, being an addition to Article III. This proposal allowed the General Assembly to submit any act to a vote of the qualified electors, at a general or special election, the act not to take effect until the voters cast a majority in its favor. The committee recommended its passage, but the final vote was unfavorable.

[35] *House Journal*, 1898, pp. 185, 216, 378, 434; 1900, pp. 197, 344, 536, 652; 1902, p. 813; 1904, pp. 961, 1049, 1099, 1117; 1906, pp. 282, 313, 379, 602; 1907, pp. 220, 1082; 1909, p. 651. *Senate Journal*, 1898, p. 240; 1900, pp. 257, 491, 996; 1902, pp. 134, 269, 403; 1904, pp. 208, 877; 1906, pp. 108, 764; 1907, pp. 441, 597, 895; and 1909, pp. 440, 594, 731.

A Representative in 1898 was supported by the Committee on Constitutional Amendments in the wish to vest legislative authority in a General Assembly of two chambers, reserving to the people the right and authority, in manner and form provided by law, to propose matters for legislation and to require that such measures be referred to a vote of the electors of the State. He would also permit two-fifths of the members of each house to file a demand and to require that any measure passed by both houses shall be referred to a vote of the electors of the State. Thus laws could be enacted either by the General Assembly or by the people; and all measures referred to the people should become law and be in full force and effect from and after the date of their approval by a majority of the voters, being beyond the reach of the Governor's veto power.[36]

On April 1, 1904, two Clinton County members of the legislature introduced in the Senate and the House of Representatives a joint resolution proposing the submission, to the electors in November, 1905, of amendments to the Constitution to provide for direct legislation. These gentlemen worked out an extensive scheme whereby they believed the initiative and referendum could be made to operate successfully in Iowa.

The legislative power would be reposed in the electors, and vested in the General Assembly of two houses — "except that the people reserve to themselves the power to propose laws and to enact or reject the same at the polls, independent of the General Assembly, as well as to cause any act or part of an act passed by the General Assembly, to be submitted to a vote of the people before becoming a law."

[36] *House Journal*, 1874, p. 251; and 1898, pp. 522, 861. *Senate Journal*, 1892, pp. 133, 460.

The text of the proposal of 1898 was obtained from the House File in the Archives Department at Des Moines.

Initiative petitions, containing the full text of proposed laws, signed by at least five per cent of the legal voters of the State, should be filed with the Secretary of State ninety days before the election at which they are to be voted on.

Any measure which may be so proposed or any laws enacted by the legislature may be passed upon by electors by the referendum. Such referendum may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety) either by petition, signed by five (5) per cent of the legal voters, or upon resolution or demand of twenty-five (25) per cent of the members of the legislative assembly, on joint ballot. Referendum petitions shall be filed with the Secretary of State not more than ninety (90) days after the final adjournment of the session of the legislature which passed the measure on which the referendum is demanded, and all measures shall be subject to this final submission to the electors.

The amendment also reserved the powers of initiative and referendum to the electors of any county, township, city, village, or other political division of the State in their local affairs, while no officer was allowed to veto measures referred to the people. Provision was also made relative to the elections at which State and local laws were to be voted upon, and the basis on which the number of petitioners on local and State laws should be figured. Furthermore, the style of the laws was to be: "Be it enacted by the people of the State of Iowa."

In 1906 a similar resolution, very much condensed, came before the House of Representatives. It is hardly necessary to say that committees never took kindly to such revolutionary departures and therefore did not hesitate to recommend indefinite postponement, which was adopted in 1904 and 1906.[37]

[37] *House Journal,* 1904, pp. 1022-1024, 1121. *Senate Journal,* 1904, pp. 910, 961. See the former for the resolution in full. See also *House Journal,* 1906, pp. 126, 219.

SECTION 2

This section fixes the time of meeting of the General Assembly. Two amendments have been proposed, but the nature of neither is known. A bill to amend Sections 2 and 3 was unfavorably reported upon in 1864; while the resolution of 1886, though acceptable to the committee, never came to a vote.[38]

SECTION 3

Besides the proposal mentioned above, only two other attempts were made to have Section 3 altered. The amendment of 1876 would have conferred on the General Assembly the power to prescribe by law the time of elections and the term of office of members of the House of Representatives. The proposal of 1878 desired no change in the time of elections, but urged that members of the lower house be continued in office for a term of four years and until their successors were elected and qualified, and one-half of them should be elected every two years. Neither proposal received encouragement, but in 1884 the election date was changed and duly ratified by popular vote.[39]

SECTIONS 16 AND 17

By a unanimous vote of members present the House of Representatives agreed upon an amendment, the wording of which was acceptably revised by the Senate. This resolution, successfully passed in favor of an addition to Section 16, provided for the Governor's approval of or objection to any item or items of a general appropriation bill. The Governor should append to the bill, at the time of signing it, a statement of the item or items to which he took exception, and no appropriations so objected to should take

[38] *House Journal*, 1864, pp. 283, 363; and 1886, pp. 239, 299.

[39] *House Journal*, 1876, pp. 17, 70; and 1878, pp. 259, 307, 381.

effect, unless they were again passed by a majority of two thirds of the members of each house.[40]

SECTION 25 — PAY OF LEGISLATORS

The members of the General Assemblies of Iowa have never expressed a desire for increased compensation for themselves: three dollars a day while in session and three dollars for every twenty miles going to or returning from the State Capital by the nearest traveled route seems to have been accepted, at least passively, as just and liberal — but two individual exceptions must be noted. One Senator in 1864 suggested that, in addition to the traveling expenses already provided by the Constitution, a salary of three hundred dollars should be fixed for each regular session and three dollars per day when convened in extra session. A Representative in 1870 believed that a definite sum of two hundred dollars annually with the usual mileage expenses would be fair remuneration.[41]

SECTION 30

A motion was lost in 1860 requesting the Committee on Constitutional Amendments to report on the necessity of an amendment authorizing the General Assembly to provide by law for the assessment and collection of taxes for general revenue. This probably has reference to the Federal Constitution and concerns State contributions to the revenue of the general government.

Later, in 1864, a motion was made concerning the expe-

[40] *House Journal,* 1886, pp. 161, 257, 338, 719; and *Senate Journal,* 1886, pp. 343, 533, 710.

The following General Assembly seems never to have concerned itself with this matter, and for some reason or other the resolution can not be found with the printed laws of 1886.

The bills which proposed amendments to Section 17 are missing.— See *House Journal,* 1858, pp. 556, 758. *Senate Journal,* 1862, p. 139.

[41] *Senate Journal,* 1864, pp. 256, 552; and *House Journal,* 1870, pp. 234, 413.

diency of permitting the legislature to pass special and local laws in some cases. In 1866 a committee declared it inexpedient and unwise to allow the General Assembly to change county boundaries: the proposition to deprive the majority of county voters of this right found no favor. The House committee of 1880 favored an amendment to allow the General Assembly to establish and open roads and cartways connected with a public road for private and public use.[42]

SECTIONS 34, 35, AND 36

These sections of the Constitution were repealed in 1904, but the amendments then adopted had precursors in 1896 and 1898.

The first House resolution affected the three sections but substituted only two, providing for fifty Senators and one Representative for each county except Polk, which should have two. In the committee report on this proposition an exception similar to that for Polk was made in the case of Dubuque County. But, instead, another resolution was adopted in both houses of two successive General Assemblies by large majorities — in favor of the repeal of all three sections, and providing for not more than one hundred and fifteen Representatives, besides prescribing the ratio and method of representation and apportionment in both Senate and House of Representatives. The voters, however, rejected these amendments in 1898, but changed their minds a few years later, when in 1904 they accepted them in slightly altered form.[43]

[42] *House Journal,* 1860, p. 121; 1866, pp. 354, 478, 507; and 1880, p. 555. *Senate Journal,* 1864, p. 222.

[43] *House Journal,* 1896, pp. 336, 530, 987; 1898, pp. 106, 264, 284, 724, 783, 912, 973; 1902, p. 110; and 1904, pp. 88, 118, 161, 362, 964. *Senate Journal,* 1896, pp. 762, 799, 857; 1898, pp. 262, 793; 1902, pp. 118, 232, 262, 913; and 1904, pp. 140, 164, 237, 469, 590, 591. House Resolution No. 1 of 1902 was later supplanted by a Senate Resolution, which was concurred in.

PROPOSED AMENDMENTS TO ARTICLE IV

A motion was carried in 1858 to indefinitely postpone a bill to amend Section 1, but the nature of the change desired has not been ascertained.

The proposal of 1864 to amend Section 3 desired that returns of every election for Governor and Lieutenant Governor should be made and the canvass should be "declared in such manner as may be provided by law".

An amendment to Section 16 was offered in 1876. It favored the inclusion of murder and rape as two offences for which the Governor should not be allowed to grant pardons.

In 1872 a resolution was adopted, instituting an inquiry as to what amendment was necessary to provide a successor to the office of Lieutenant Governor in cases of death, resignation, or other disability of the President pro tempore of the Senate and Speaker of the House of Representatives.[44]

PROPOSED AMENDMENTS TO ARTICLE V

SECTION 3

Indefinite postponement was the lot of a resolution to amend Section 3. This proposal called for a popular election of Supreme Court judges in 1898 and biennially thereafter, and provided that the Court should hold its sessions at Des Moines. Each judge should hold office for ten years and should be Chief Justice when he was to retire before any of his colleagues. Furthermore, the judges should be ineligible to any other office in the State during the term for which they were chosen.[45]

SECTION 10 — JUDICIAL DISTRICTS

It is necessary to note that the second amendment of

[44] *Senate Journal*, 1858, p. 116; 1864, pp. 256, 552; and 1876, pp. 116, 360. *House Journal*, 1872, p. 553; and 1876, pp. 153, 288.

[45] *House Journal*, 1894, pp. 328, 718.

1884 had been proposed in some form or another in six General Assemblies before its adoption in 1882 and 1884.

As early as 1860 the House of Representatives passed a bill embodying the changes which were accepted later, though the intention was to repeal the whole section. At this time the Senate took no final action.

The amendment proposed in 1872 passed both houses and is similar to the one mentioned above in that it makes provision for the number of Supreme Court judges. But during this session the Senate considered another resolution which introduced a plan, probably suggested by the Federal Constitution: judges of the Supreme Court should be nominated by the Governor and approved by the General Assembly, and they should hold office during good behavior. When incapacitated by old age from performing their official duties they might be retired by a majority vote of two-thirds of the General Assembly, after provision was made for their support for the remainder of their lives. The Senate of the next General Assembly blocked the first resolution.

Very little was effected in 1876, but in 1878 the lower house almost unanimously adopted a proposed amendment which the Senate postponed, and this action was repeated in 1880.[46]

SECTION 13

The fourth amendment of 1884 struck Section 13 from the Constitution and substituted another providing for a county attorney in each county. This change had been advocated

[46] *House Journal*, 1860, pp. 96, 126, 160, 166, 172; 1872, pp. 110, 211, 382; 1874, pp. 174, 370, 483; 1878, p. 309; and 1880, pp. 43, 168, 423. *Senate Journal*, 1860, p. 173; 1872, pp. 126, 177, 208, 223, 269, 281, 398; 1874, pp. 354, 404; 1876, p. 248; 1878, pp. 227, 253; and 1880, p. 379.

The proposal of 1860 was obtained in the Archives Department, Des Moines, while the Senate Resolution of 1872 was taken from the *Iowa State Register*, February 21, 1872.

in every General Assembly since 1872. In that year the new officer was called "prosecuting attorney" and the resolution in favor of his creation was adopted; but not until 1882 did both Houses again agree upon the resolution.[47]

PROPOSED AMENDMENTS TO ARTICLE VIII

With regard to acts of the General Assembly authorizing or creating corporations or associations with banking powers, an addition to Section 8 was desired in 1864, to the effect that such bodies should never "be suffered to demand or receive any greater interest for the use of money than the rate allowed by law to individuals at the time of the contract — anything in the Charter of such corporation or association notwithstanding." The committee's adverse report put an end to this proposal.

In the Senate of 1876 two additional sections were proposed. The first aimed to prohibit the consolidation of parallel or competing railway lines, unless sixty days' notice were given to all stockholders, a majority of whom should be citizens and residents of Iowa. Secondly, no railroad corporation should issue any stock or bonds, except for money, labor or property actually received and applied to the purposes for which it was created; "and all stock dividends and other fictitious increase of the capital stock or indebtedness of any such incorporation shall be void," and the capital stock of no railroad corporation should be increased for any purpose, except upon giving sixty days' public notice, in such manner as might be prescribed by law.[48]

PROPOSED AMENDMENTS TO ARTICLE IX

The Board of Education, prescribed by the Constitution

[47] *Senate Journal*, 1872, pp. 46, 177, 333, 691; 1876, pp. 185, 238; 1878, pp. 227, 253; and 1880, pp. 85, 155, 382, 415, 484. *House Journal*, 1872, p. 651, 1874, pp. 197, 363, 410, 482; 1876, pp. 347, 427; and 1878, pp. 46, 308.

[48] *Senate Journal*, 1864, pp. 256, 552; and 1876, pp. 327, 360.

of 1857, seems not to have found favor; but in a report of 1860 the House Committee on Constitutional Amendments declared that, however desirable abolition might be, it would be better to let the next three years elapse when the General Assembly might, according to Section 15, abolish or reorganize the Board. A proposal to insert the word "white" before "youths" in Section 12 was voted down in 1858.[49]

During the decade 1870-1880 considerable debate was aroused relative to the appropriation of public funds for sectarian purposes. The Senate of 1872 placed itself on record as opposed to the application of any public funds of State, county, city, or township "to the support of any seminary, school, college, or other institution of learning or charity". The House of Representatives received a favorable report from its committee. The same proposal appeared in the Senate of 1874.

The language of amendments proposed in 1876 was more severe. The first House resolution, at once indefinitely postponed, provided that no public funds, moneys, or revenues whatever, should ever be appropriated or used in the establishment, support, or maintenance of any school, seminary, college, or other institution of learning or charity, "unless the same shall have been established by the laws of the State of Iowa, and under its control"; and no institution maintained at the public expense should be controlled by any religious denomination. The second House resolution repeated almost exactly these demands, but added these words: "nor shall sectarianism, atheism, or infidelity be ever taught therein." The majority of the committee favored the adoption of this resolution, with the exception of the last clause; while the minority offered strong opposition in an interesting report of which two thousand copies were

[49] *Senate Journal*, 1858, pp. 478, 503, and *House Journal*, 1860, p. 620.

ordered printed. The result was indefinite postponement.

In the Senate three amendments were offered. One called for the perpetual maintenance of a free public school system by the General Assembly, to the expense of which all taxable property in the State should contribute. The second provided for the faithful application of gifts or grants to the educational objects and purposes for which they were made. The third amendment minutely required that "neither the General Assembly nor any county, city, town, township, school district, or other public corporation, created by or existing under the laws of this State, or any part thereof, shall ever make any appropriation, loan, payment, advance, gift, grant, or other conveyance or transfer whatsoever, of any public money, lands, funds, or other property, to found, support, sustain or aid any seminary, school, college or university, or other literary or scientific or other institution, owned or controlled, in whole or in part, by any church, religious, ecclesiastical, or sectarian organization or denomination". While the principle involved probably won approbation, yet, as in the next General Assembly, the adoption of such proposals was not deemed expedient.[50]

PROPOSED AMENDMENTS TO ARTICLE X

Naturally, after the Supreme Court had invalidated the prohibitory amendment of 1882, an amendment was proposed so that such actions might henceforth be checked. The main points of a long proposal were that every constitutional convention in submitting a new Constitution and every General Assembly in submitting any new amendment to the people should prescribe the persons, officers, or tri-

[50] *Senate Journal*, 1872, pp. 111, 177, 194, 271; 1874, pp. 164, 317; 1876, pp. 232, 360; and 1878, p. 253. *House Journal*, 1872, p. 530; and 1876, pp. 13, 49, 71, 83-85, 107, 186.

bunal by whom the votes shall be counted and the results of the election declared, their decision and declaration to be "conclusive upon all other persons and officers and departments of government". But within the period of six months after the adoption of a Constitution or amendment "any ten citizens of the State, subject to such rules and terms as may be prescribed by the Supreme Court, may present and file a petition in the Supreme Court to set aside and declare void the adoption of such new Constitution or Constitutional amendments upon the sole ground that the same have not been approved by a majority of the legal voters of the State." The Court had therefore only one point to decide: whether the vote was favorable or unfavorable. This proposed amendment was suggested as Section 4 of Article X. The Senate committee submitted an adverse report.[51]

PROPOSED AMENDMENTS TO ARTICLE XI

JURISDICTION OF JUSTICES OF THE PEACE

Before 1880 three proposals had appeared in the House of Representatives, urging alterations in Section 1 so that justices of the peace might have jurisdiction in all civil cases, except cases of conflicting title to real estate, where the amount in controversy does not exceed three hundred dollars; and by the consent of the parties might be extended to any amount not exceeding five hundred dollars. In 1880 the General Assembly adopted a resolution embodying these amendments, but the houses of the next General Assembly took different stands on the question. No further action was taken until 1886 and 1896, when the subject was almost at once set aside.[52]

[51] *Senate Journal*, 1880, pp. 265, 387; and 1884, pp. 121, 432.

[52] *House Journal*, 1872, p. 279; 1874, p. 235; 1878, pp. 290, 307; 1880, pp. 35, 236, 595; 1882. pp. 180, 299; 1886, p. 53; and 1896, pp. 291, 711, 1129. *Senate Journal*, 1880, pp. 47, 202, 260, 261, 300, 386; and 1882, pp. 256, 365.

Though no section was specified in an amendment proposed in 1876, it may be seen that Section 3 was affected. The change desired would prevent any county or other political or municipal corporation from lending its credit to, or in any manner becoming responsible for the debts or obligations of, any person, association, or corporation, unless approved by two-thirds of the voters, each voter paying an annual tax on real estate of at least five dollars. The constitutional provision relative to the limit of indebtedness should remain the same.[53]

Section 8 has been productive of several ineffective resolutions proposing amendments to the Constitution. In 1858, to quote from the resolution, "rumors that are now fast assuming the phase of facts are being daily circulated questioning the integrity of certain agents of the State", and since their conduct should not pass without censure, it was deemed proper "to direct the attention of the public to some other locality." Marshall in Marshall County was therefore pointed out as a more preferable seat of government. A resolution to this effect was referred to the Committee on Charitable Institutions.

The change recommended in 1864 would have allowed the General Assembly, at any time after 1867, to permanently establish the State capital either at Des Moines or at any other place. A similar resolution failed in 1866.

A wholly new section was recommended in 1874. "All charitable or reformatory institutions hereafter established by the General Assembly shall be located at or near the capital of the State, in Polk County. The State University and the State Agricultural College may be consolidated at such time and place as the General Assembly shall approve."

In 1894 appeared a resolution to remove the State Uni-

[53] *House Journal*, 1876, p. 48.

versity to Des Moines, provided that the city of Des Moines and its citizens "furnish free of cost to the State suitable land for the location of the State University, and sufficient means to place upon said grounds as good improvements as now exist on the State University grounds at Iowa City." The House resolution of 1902 desired the striking out of the clause relative to the location of the State University.[54]

PROPOSED AMENDMENTS TO ARTICLE XII

ELECTIONS

The first amendment adopted in 1884 relative to the election of State, county, district, and township officers, was first suggested and passed in the House of Representatives in 1880. Even in 1886 the election of State and judicial officers caused some dissatisfaction.

The biennial elections amendment of 1904 had three forerunners. In its first form, that of 1896, it was briefly provided that the general election for State, district, county, and township officers should be held on the Tuesday next after the first Monday in November in each even numbered year. The proposals of 1898 and 1900 are almost identical with the amendment in its final shape, and they received considerable support. There was at least a strong feeling that less frequent elections and campaigns would not "tend to beget an apathy on public questions among our electors, which would necessarily be inimical to the public welfare."[55]

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[54] *House Journal*, 1858, p. 577; 1864, pp. 471, 647; 1866, p. 730; 1874, pp. 341, 458; and 1902, p. 723. *Senate Journal*, 1894, pp. 166, 428.

[55] *House Journal*, 1880, pp. 43, 168, 423; 1886, pp. 53, 118, 300; and 1900, pp. 137, 178, 208. *Senate Journal*, 1896, pp. 296, 656; 1898, pp. 180, 253, 327, 422; and 1900, pp. 62, 119, 122, 223.