

## THE PRESIDENT OF THE SENATE IN IOWA

[The official position of the President of the Senate corresponds to that of the Speaker of the House of Representatives; and so this article may be regarded as a companion to the monograph by Dr. Upham on *The Speaker of the House of Representatives in Iowa* which was published in the January, 1919, number of THE IOWA JOURNAL OF HISTORY AND POLITICS.—EDITOR.]

### I

#### HISTORICAL TRADITION AND LEGAL STATUS

Under the bicameral system of legislative organization which now prevails in the United States the presiding officer of the upper house usually holds his position *ex officio*, while the moderator of the lower house is usually elected by the members from among their own number. Moreover it has worked out that the chairman of the upper house in America is elected by the people at large as an executive official with *ex officio* legislative duties and responsibilities: thus, the Vice President presides over the United States Senate, and in most of the States the Lieutenant Governor presides over the State Senate.<sup>1</sup> Some of the earlier State constitutions, however, provided that the presiding officers of the two houses should be identical in character and method of election. In 1780 the Constitution of Massachusetts, for example, provided that both the Senate and House should choose their own presiding officers.<sup>2</sup> Tennessee, too, as late as 1870 adopted a Constitution providing that each house of the legislature should choose its own Speaker.<sup>3</sup>

<sup>1</sup> This rule prevails also in Great Britain and in many other countries which have bicameral parliamentary bodies.

<sup>2</sup> *Constitution of Massachusetts*, 1780, Pt. II, Ch. I, Sec. 2, par. 7, Sec. 4, par. 10.

<sup>3</sup> *Constitution of Tennessee*, 1870, Art. II, Sec. 11.

There was considerable discussion prior to the adoption of the Federal Constitution as to whether the Senate should be allowed to choose a presiding officer from among its members: indeed there was strong opposition to the establishment of the office of Vice President. Some thought such an official "not a very important, if not an unnecessary part of the system";<sup>4</sup> while others went so far as to say that the office is "as unnecessary as it is dangerous."<sup>5</sup> It was alleged that this officer, "for want of other employment, is made president of the senate, thereby blending the executive and legislative powers, besides always giving to some one state, from which he is to come, an unjust pre-eminence."<sup>6</sup> On the other hand, it was urged that "the vice-president is not an executive officer while the president is in discharge of his duty, and when he is called to preside his legislative voice ceases."<sup>7</sup>

Two considerations were said to justify the final decision of the convention. "One is, that to secure at all times the possibility of a definitive resolution of the body, it is necessary that the President should have only a casting vote. And to take the Senator of any State from his seat as Senator, to place him in that of President of the Senate, would be to exchange, in regard to the State from which he came, a constant for a contingent vote. The other consideration is, that, as the Vice-President may occasionally become a substitute for the President, in the supreme Executive magistracy, all the reasons which recommend the mode of election prescribed for the one, apply with great,

<sup>4</sup> *The Federalist and Other Constitutional Papers*, p. 856.

The reference is to the edition by E. H. Scott published in 1894.

<sup>5</sup> *The Federalist and Other Constitutional Papers*, p. 628.

<sup>6</sup> *The Federalist and Other Constitutional Papers*, p. 628.

<sup>7</sup> *The Federalist and Other Constitutional Papers*, p. 573.

if not with equal, force to the manner of appointing the other.”<sup>8</sup>

It was also urged, that the “Vice-President, while he acts as President of the Senate will have nothing to do in the executive department; his being elected by all the states will incline him to regard the interests of the whole, and when the members of the senate are equally divided on any question, who so proper to give a casting vote as one who represents all the states?”<sup>9</sup>

The majority of the Commonwealths have followed the lead of the framers of the Constitution of the United States; and so to-day in the States as well as in the nation the Speaker of the lower house is given his position by the party vote of the legislative body over which he presides, while the President of the upper house is such *ex officio*. It is so in Iowa: the House of Representatives elects a Speaker from among its own members; while the Senate must accept as its President the Lieutenant Governor elected by the people. But this has not always been the case.

The office of Lieutenant Governor was not created in Iowa until 1857. Prior to that time, during the Territorial period from 1838 to 1846 and under the first State Constitution from 1846 to 1857, the Massachusetts-Tennessee system prevailed in Iowa. The Presidents of the Council during the period of the Territory and the Presidents of the Senate during the period of the Constitution of 1846 did not differ in character or manner of selection from the Speakers of the House during the same periods.

When the Council of the First Legislative Assembly of the Territory of Iowa met in session on the twelfth of November, 1838, it devolved upon that body to effect some sort of organization. The Organic Act contained no men-

<sup>8</sup> *The Federalist and Other Constitutional Papers*, p. 376.

<sup>9</sup> *The Federalist and Other Constitutional Papers*, p. 613.

tion of a moderator for the Council: it provided merely that "the persons . . . . elected to the Legislative Assembly shall meet at such place, and on such day as he [the Governor of the Territory] shall appoint".<sup>10</sup> There were neither constitutional provisions nor statutory regulations for the election of a presiding officer.<sup>11</sup>

The President of the Council in the First Legislative Assembly, however, seems to have had a legal status somewhat more definite than that of the Speaker of the House in the same session, since the Council, before perfecting organization by the election of permanent officers, drew up rules for its own governance, wherein it was provided that the "Council shall choose by ballot one of their own number to occupy the Chair. He shall be styled President of the Council."<sup>12</sup> Although the official journal does not record the adoption of the rules of which this regulation formed a part, the omission is doubtless a clerical error. At any rate on the afternoon of the thirteenth of November Jesse B. Browne was elected President of the Council, having received the whole number of votes cast.<sup>13</sup> At later sessions of the upper house almost without exception the rules of the previous session were adopted by the Council before effecting organization, thus authorizing the election of a President.

The Second Legislative Assembly, recognizing the advisability of placing the office of President on a statutory basis, enacted a law which directed that "after the decision of all cases of contested elections, the Council shall proceed

<sup>10</sup> *Organic Act*, Sec. 4, in Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 103.

<sup>11</sup> See Upham's *The Speaker of the House of Representatives in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS for January, 1919, pp. 5, 6.

<sup>12</sup> *Council Rules*, 1838-1839, Rule I.

<sup>13</sup> *Council Journal*, 1838-1839, p. 20.

to elect a president".<sup>14</sup> This statute continued in force down to 1851, when it was superseded by a more general provision authorizing the "election of officers".<sup>15</sup>

Agitation for the admission of Iowa into the Union as a State began in 1840. In August of that year a vote of the people was taken on the question of calling a constitutional convention, which resulted in the defeat of the proposition by a large majority. Two years later the people voted on the same question, and again it was defeated by a majority in every county. But in 1844 a favorable vote was secured and delegates were elected to the first constitutional convention which met in Iowa City on October 7, 1844. The Constitution drafted by this convention is known as the Constitution of 1844.

Although this instrument was never adopted by the people of the State, and consequently was never in force, the provision which it contained for a presiding officer of the Senate should be noted. It authorized the election of a Lieutenant Governor who was to be *ex officio* President of the Senate. Unsuccessful arguments against the incorporation of this section were based "upon the principle of economy, and the non-necessity of the Office."<sup>16</sup> Two years later these arguments must have had more weight, for the Constitution of 1846 in its final form contained no provision for a Lieutenant Governor, although the reports show no debate on this point. The report of the Committee on Legislative Department, it is true, included the provisions of the Constitution of 1844 in regard to the duties of the Lieutenant Governor as the presiding officer of the Senate; but the Committee on Executive Department

<sup>14</sup> *Laws of Iowa, 1839-1840, Ch. 66, Secs. 5, 10.*

<sup>15</sup> *Code of 1851, Ch. 2, Sec. 8.*

<sup>16</sup> Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846, p. 50.*

did not include such an officer in their scheme of executive organization, and no mention of a Lieutenant Governor was made in the Constitution as finally adopted.<sup>17</sup>

It is clear that the framers of the Constitution of 1846 intended that the Senate should have a President and that he should be chosen by the members from among their own number. The original draft of the section on the legislative department, which carried a provision for a Lieutenant Governor, prescribed that "the Senate shall appoint its own officers except the President". By a vote in open convention the words "except the president" were stricken out.<sup>18</sup> Then, too, the Constitution of 1846, while it did not specifically provide for the office, did give it recognition in providing that bills passed by the Senate should be authenticated by the President thereof and that in case of the inability of both the Governor and the Secretary of State to act as chief executive of the Commonwealth, by reason of death, resignation, removal, impeachment, or absence from the State, the duties of the executive department should fall upon the President of the Senate.<sup>19</sup>

There is little or nothing to indicate the character of the change in political affairs which brought about the provision for the office of Lieutenant Governor in the new Constitution. As the State grew in population and wealth, many of the voters may have felt that this State should conform to the standards set by the other States. At any rate, the Constitution of 1857 made provision for a Lieutenant Governor who should act as President of the Senate. Since that time the presiding officer of the upper house has been a constitutional officer elected by the people of the State.

<sup>17</sup> *Journal of the Constitutional Convention*, 1846, pp. 42, 43, 54, 56, 57.

<sup>18</sup> *Journal of the Constitutional Convention*, 1846, pp. 43, 57.

<sup>19</sup> *Constitution of Iowa*, 1846, Art. IV, Sec. 16, Art. V, Sec. 19.

PRESIDENTS OF THE COUNCIL OF THE LEGISLATIVE ASSEMBLY OF IOWA DURING THE TERRITORIAL PERIOD

NAME OF PRESIDENT	YEAR OF SERVICE	SESSION OF LEGISLATIVE ASSEMBLY
Jesse B. Browne	1838-1839	First Legislative Assembly
Stephen Hempstead	1839-1840	Second Legislative Assembly
James M. Clark	1840	Second Legislative Assembly (Extra Session)
M. Bainbridge	1840-1841	Third Legislative Assembly
Jonathan W. Parker	1841-1842	Fourth Legislative Assembly
John D. Elbert	1842-1843	Fifth Legislative Assembly
Thomas Cox	1843-1844	Sixth Legislative Assembly
Francis Gehon	1844	Sixth Legislative Assembly (Extra Session)
Serranus C. Hastings	1845	Seventh Legislative Assembly
Stephen Hempstead	1845-1846	Eighth Legislative Assembly

PRESIDENTS OF THE SENATE OF THE GENERAL ASSEMBLY OF IOWA UNDER THE FIRST STATE CONSTITUTION

NAME OF PRESIDENT	YEAR OF SERVICE	GENERAL ASSEMBLY
Thomas Baker	1846-1847	First General Assembly
Thomas Hughes	1848	First General Assembly (Extra Session)
John J. Selman	1848-1849	Second General Assembly
Enos Lowe	1850-1851	Third General Assembly
William E. Leffingwell	1852-1853	Fourth General Assembly
Maturin L. Fisher	1854-1855	Fifth General Assembly
Maturin L. Fisher	1856	Fifth General Assembly (Extra Session)
W. W. Hamilton	1856-1857	Sixth General Assembly

LIEUTENANT GOVERNORS AND PRESIDENTS OF THE SENATE OF THE  
GENERAL ASSEMBLY OF IOWA UNDER THE  
CONSTITUTION OF 1857

NAME OF PRESIDENT	YEAR OF SERVICE	GENERAL ASSEMBLY
Oran Faville	1858	Seventh General Assembly
Nicholas J. Rusch	1860	Eighth General Assembly
Senator James F. Wilson President <i>pro tempore</i>	1861	Eighth General Assembly (Extra Session)
John R. Needham	1862	Ninth General Assembly
John R. Needham	1862	Ninth General Assembly (Extra Session)
Enoch W. Eastman	1864	Tenth General Assembly
Benjamin F. Gue	1866	Eleventh General Assembly
John Scott	1868	Twelfth General Assembly
Madison M. Walden	1870	Thirteenth General Assembly
Henry C. Bulis	1872	Fourteenth General Assembly
Henry C. Bulis	1873	Fourteenth General Assembly (Adjourned Session)
Joseph Dysart	1874	Fifteenth General Assembly
Joshua G. Newbold	1876	Sixteenth General Assembly
Frank T. Campbell	1878	Seventeenth General Assembly
Frank T. Campbell	1880	Eighteenth General Assembly
Orlando H. Manning	1882	Nineteenth General Assembly
Orlando H. Manning	1884	Twentieth General Assembly
John A. T. Hull	1886	Twenty-first General Assembly
John A. T. Hull	1888	Twenty-second General Assembly
Alfred N. Poyneer	1890	Twenty-third General Assembly
Samuel L. Bestow	1892	Twenty-fourth General Assembly
Warren S. Dungan	1894	Twenty-fifth General Assembly
Matt Parrott	1896	Twenty-sixth General Assembly
Matt Parrott	1897	Twenty-sixth General Assembly (Extra Session)
James C. Milliman	1898	Twenty-seventh General Assembly

NAME OF PRESIDENT	YEAR OF SERVICE	GENERAL ASSEMBLY
James C. Milliman	1900	Twenty-eighth General Assembly
John Herriott	1902	Twenty-ninth General Assembly
John Herriott	1904	Thirtieth General Assembly
John Herriott	1906	Thirty-first General Assembly
Warren Garst	1907	Thirty-second General Assembly
Warren Garst	1908	Thirty-second General Assembly (Extra Session)
George W. Clarke	1909	Thirty-third General Assembly
George W. Clarke	1911	Thirty-fourth General Assembly
William L. Harding	1913	Thirty-fifth General Assembly
William L. Harding	1915	Thirty-sixth General Assembly
Ernest R. Moore	1917	Thirty-seventh General Assembly
Ernest R. Moore	1919	Thirty-eighth General Assembly

## II

DETERMINING FACTORS IN THE ELECTIONS OF  
PRESIDENTS OF THE IOWA SENATE

No attempt will be made to trace the influences which have led to the popular or party selection of Lieutenant Governors following the adoption of the Constitution of 1857, since that is a matter which has little or no connection with an account of the President of the Senate as such. Certain it is that the Lieutenant Governor has not been chosen primarily with a view to the performance of the legislative duties incident to his office. Indeed, some of the Lieutenant Governors have been men of no previous legislative experience, while those who were experienced were usually chosen through political motives rather than because of their preparedness for the performance of duties as a presiding officer of a legislative body.

But there properly should be some consideration of the elections and the play of interests prior to elections during the period when the Senators themselves chose their presiding officer. The qualifications necessary for the President of the Council or Senate during early times were merely those of a member of the Council or Senate over which he presided. It will be seen later how certain negative qualifications operated to prevent the reëlection of a President during an extra session and in fact almost deprived him of his seat in the Senate. The elections were partisan. During the entire period from 1838 to 1857 Iowa was Democratic, and the Democrats controlled the Senate. Within the party various causes contributed to the selection of a particular man for the office of President. Popularity sufficient to secure votes was necessary. Many of those chosen were party leaders and men of ability and experience. Local interests and sectional rivalry played a part. Nor did charm of personality go unrewarded. Some of the moderators thus elected were compromise candidates.

The President of the Council in the session of the First Legislative Assembly was Jesse B. Browne, a Whig from Lee County. In this case as in the House for the same session the presiding officer was chosen through sectional rather than party interests.<sup>20</sup> But in every succeeding ses-

<sup>20</sup> It is interesting to note that in the House of Representatives of the First General Assembly in 1846, Jesse B. Browne was again elected to preside over a Democratic membership. The members from Lee County held the balance of power, and Browne was elected Speaker to secure the solid vote of the Lee County men in the election of United States Senators and Supreme Court Judges.—*The Iowa Standard* (Iowa City), November 11, 25, 1846.

There was an attempt to explain the election of Maturin L. Fisher partly on sectional grounds. An early historian wrote in 1885 of the "coincidence that the presiding officers of both Houses of this Legislature were from the same county, indicating a preponderance of intellect in the northern part of the state, and certainly a compliment to Clayton County, which has never been accorded to any other county of Iowa."—*Iowa Historical Record*, Vol. I, p. 83.

This statement shows how unreliable are reminiscences for just four years

sion the party caucus largely determined who should preside. The caucus was crude and did not approximate its present-day efficiency, but at times it did its work thoroughly. In the session of 1841-1842, when Jonathan W. Parker was accused of voting for himself,<sup>21</sup> the party caucus determined who should fill the legislative offices. "No individual, so far as we know", wrote an Iowa City editor, "was suffered to have his name put in nomination for any of the offices conferred, either in the House or Council, by the Locofoco Junto . . . we are credibly informed, that at an early stage of the Star-Chamber doings, a solemn resolve was taken, that *no Whig* county in the Territory should have an officer in the Legislature".<sup>22</sup> Thomas Hughes was undoubtedly elected in return for his services to the party as the editor of the *Iowa Capitol Reporter*.<sup>23</sup>

It is apparent that the Presidents of the upper house during this period were able men, possessing the special qualification of legislative experience. Colonel Thomas Cox when elected President of the Council in the Sixth Legislative Assembly was the oldest member of the Council. He was said to have had "much experience in legislation, having been for many years a member of one or the

prior to this session, Enos Lowe of Des Moines County had presided in the Senate, and George Temple of the same county in the House of the Third General Assembly.

<sup>21</sup> Parker undoubtedly did vote for himself. Otherwise no election could have been possible, as the Council was equally divided. The party editors, commenting on the election said, "General Parker, if he did so at all, cast a vote, not for himself alone, nor for the gratification merely of the wishes of his associate Democratic members of the Council, BUT IN CONFORMITY WITH A SOLEMN DUTY WHICH HE OWED TO THE DEMOCRATIC PARTY THROUGHOUT THE TERRITORY; every true member of which, had he been present, would sternly have DEMANDED IT OF HIM, rather than have witnessed the thwarting of a majority by a stubborn and factious minority."—*Iowa Capitol Reporter* (Iowa City), December 18, 1841.

<sup>22</sup> *The Iowa City Standard*, December 11, 1841.

<sup>23</sup> *The Annals of Iowa*, Vol. VIII, p. 212.

other branch of our Territorial Legislature, and once Speaker of the House of Representatives. He will make an efficient and prompt presiding officer."<sup>24</sup> In the Seventh Legislative Assembly, Serranus C. Hastings was said to have "had much experience as a legislator, having been a member of one or the other branch of the Assembly, almost every session since the organization of our government. His experience, talents and character will reflect credit upon the honorable post assigned him by his fellow members."<sup>25</sup> In 1845-1846 it was written of Stephen Hempstead that he had "served several sessions in our Legislative Assembly, once before in the capacity of President of the Council",<sup>26</sup> to which office he had been again elected. Thomas Cox had previously served in the Illinois Senate; and Enos Lowe had been a member of the Indiana legislature.

Since the adoption of the present Constitution in 1857 the President of the Senate, in the person of the Lieutenant Governor, has been elected by the people—a choice which has been determined largely by political considerations. The first Lieutenant Governor, Oran Faville, was placed on the Republican ticket as a vote getter for the party. He was nominated as "a 'compliment' to the many estimable foreign citizens in the party in the State."<sup>27</sup> The same trick was turned in 1859 when it came time to elect Iowa's second Lieutenant Governor. In that year the Republicans, "as an earnest of their sincerity" to foreigners within the State, nominated and elected Nicholas J. Rusch, a prominent German of Davenport. He spoke English with difficulty, and it was said his nomination was a

<sup>24</sup> *Iowa Capitol Reporter* (Iowa City), January 13, 1844.

<sup>25</sup> *Iowa Capitol Reporter* (Iowa City), May 10, 1845.

<sup>26</sup> *Iowa Capitol Reporter* (Iowa City), December 3, 1845.

<sup>27</sup> *The Annals of Iowa* (Third Series), Vol. VIII, p. 203.

“salve to heal the wounded feelings of his countrymen in this State.”<sup>28</sup>

In addition to the qualifications prescribed for Governor and Lieutenant Governor the Constitution of 1857 put a negative qualification upon holders of those positions in the provision that “no person shall, while holding any office under the authority of the United States, or of this State, execute the office of Governor or Lieutenant Governor, except as hereinafter expressly provided.”<sup>29</sup>

Formal elections of the President of the Council and Senate during the period prior to 1857 varied somewhat. Permanent organization usually took place on the second or third day of the session. Sometimes a contest delayed the election, as happened in the Sixth Legislative Assembly when the President was not elected for over a month. But ordinarily organization was effected in the opening days of December.

The rules adopted by the Council in 1838-1839 provided that the President should be selected by ballot;<sup>30</sup> and practice followed these rules in every session of the Council except one. In the Eighth Legislative Assembly in 1845-1846, Stephen Hempstead was unanimously appointed on motion.<sup>31</sup> Election in the Senate of the First General Assembly was also by ballot, but the rules were changed that session to provide for a viva voce vote. Thereafter during the period under the first State Constitution roll calls decided the matter in all sessions except those of the Fifth General Assembly. In the regular session of this Assembly it took sixteen formal ballots to elect Maturin L. Fisher; while in the extra session the same gentleman was unanimously elected on motion.

<sup>28</sup> *The Annals of Iowa* (Third Series), Vol. VIII, pp. 215, 216.

<sup>29</sup> *Constitution of Iowa*, 1857, Art. IV, Sec. 14.

<sup>30</sup> *Council Rules*, 1838-1839, Rule I.

<sup>31</sup> *Council Journal*, 1845-1846, p. 6.

The records of the first two assemblies contain no evidence of formal nominations; but in later sessions it was ordinarily the custom for one or more names to be formally presented to the body by this method. Election was frequently had upon the first ballot or upon the first roll call. In the Second Legislative Assembly, however, it took ten votes to elect Stephen Hempstead; and in the contest of 1843-1844 Thomas Cox was victorious on the thirty-first ballot.<sup>32</sup>

Under the Constitution of 1857 as amended in 1884 the Lieutenant Governor is elected at the general State election which is held on the Tuesday next after the first Monday in November.

### III

#### INSTALLATION

The installation of the President of the Iowa Council was extremely simple and informal. When Jesse B. Browne was elected President of the Council of the First Legislative Assembly of the Territory of Iowa, he took the chair without any semblance of formality. In later sessions, however, it became customary to appoint a committee of two members to conduct the newly elected officer to the chair, from which station he was wont to return thanks to the body for the honor thus conferred upon him. The President-elect, in returning thanks, usually insisted upon his own unworthiness and lack of ability, and asked for aid and support from his colleagues. Apparently the President of the Council was not required to take an oath of office.

The formality of installation in the Senate during the period of the first State Constitution did not differ from that followed in the Territorial Council. Since 1857 the

<sup>32</sup> *Council Journal*, 1839-1840, p. 11.

ceremony in the Senate must needs wait upon the formal declaration that the election has been found genuine and until the oath of office has been taken by the person elected. The Constitution provides that the "returns of every election for Governor, and Lieutenant Governor, shall be sealed up and transmitted to the seat of government of the State, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly."<sup>33</sup> It is further provided by the Constitution that the "official term of the Governor, and Lieutenant Governor, shall commence on the second Monday of January next after their election, and continue for two years, and until their successors are elected and qualified."<sup>34</sup>

On the morning of Thursday, January 14, 1858, the two houses of the Iowa General Assembly met in joint convention, and after conducting an official canvass of the vote cast for Governor and Lieutenant Governor at the recent election, proceeded to inaugurate the first Governor and the first Lieutenant Governor under the new Constitution. When the Senate convened on the following day a committee was appointed to conduct the new President, Oran Faville, to the chair, from which position Mr. Faville addressed the Senate in a short speech. Subsequent installations have been conducted in essentially this manner down to the present day.

The *Code of 1897* provides that the "general assembly shall meet in joint session on the second Tuesday of January or as soon thereafter as both houses have been organized after the biennial election, and canvass the votes cast for governor and lieutenant governor and determine the election; and when the canvass is completed, the oath of

<sup>33</sup> *Constitution of Iowa, 1857, Art. IV, Sec. 3.*

<sup>34</sup> *Constitution of Iowa, 1857, Art. IV, Sec. 15.*

office shall be administered to the persons so declared elected and the governor shall deliver to the joint assembly any message he may deem expedient.'<sup>35</sup> The oath of office is administered by the Chief Justice of the Supreme Court.

Variations in the ceremony of installation have occurred from time to time, but the main features have remained the same. There is always an inaugural program which is arranged by committees appointed from the two houses. The inaugural reception is a customary feature of this program.

When a newly elected President is inducted into the office he is escorted to the chair and presented to the retiring Lieutenant Governor, who in turn presents him to the Senate. Usually both make short speeches; and frequently this event is made the occasion for resolutions of thanks and gifts to the retiring officer. In those instances where the retiring Lieutenant Governor is the incoming Governor, the President *pro tempore* of the Senate presides at the inaugural joint convention and also presents the newly elected President to the Senate. George W. Clarke was the first Lieutenant Governor to be elected Governor, although two others — Joshua G. Newbold and Warren Garst — succeeded to the office upon the resignation of the Governor.

Ordinarily when the President assumes the chair he addresses the Senate in a formal speech of greeting. But Lieutenant Governor Enoch W. Eastman, who took the position during the stress of war in 1864, made a stirring address. He said in part:

Senators, we are living in perilous times. Every day brings new responsibilities upon us. Treason is to-day in arms against our blessed Government. It exists, too, in the *hearts* of many persons

<sup>35</sup> *Supplement to the Code of Iowa, 1913, Sec. 30-a.*

whose homes are in the loyal States, and who have not, as they long ago should have been, banished from the country. I most devoutly hope and trust that it has not and *will not* cross the threshold of this Legislative hall. I really hope there is not a heart in the breast of any member of this honorable body, which does not beat with devotion to an inseparable Union. If, unfortunately, such an one is here, my heart's desire and prayer to God is, that his tongue may be paralyzed and cleave to the roof of his mouth whenever it attempts to utter the intent of the heart. For the honor of the State, I do hope that the patriotic men of Iowa who have taken their lives in their hands and gone to the tented field, will not receive a shot in the rear from any member of this honorable Senate.

Much has been said of the sacred right of speech. It is claimed by some that the right can in no case be abridged. This claim is seldom put forth by any except those who use it for a shield to invade the rights of others, and to propagate treason. Under this *claim* nearly every traitor member stood up in Congress and defiantly fulminated treason against our Government. The States of Illinois and Indiana and some others have been disgraced by like proceedings in their Legislatures, to the great mortification of the soldiers in the army from those States.

I do not believe in any such right. The right of speech, like all other rights, can never be legitimately used to infringe upon the sacred rights of persons by slander or libel. And the exercise of it to that extent is not only a licentious use, but a *crime* which the common law punishes by indictment, fine and imprisonment. The character and existence of the Government are paramount to the life of a person, and every one goes *beyond* the bounds of loyalty who *talks* the Government into disrepute with the people. Sedition and Treason are first propagated and then consummated by a licentious exercise of speech.

I hold that no man has the legal, moral or political right to *begin* to do, or even to *advocate* that which the law will punish him for consummating.

Believing, therefore, as I do, that the ax should be laid at the *root* of the tree, I will hold it *unparliamentary* for anyone to talk treason, or advocate the cause of secession or any dismemberment of our Union, or in any way give aid and comfort to the rebellion by

pleading the cause of the traitors, or denouncing or disparaging the Government in this Senate while I preside over it. The right of speech in a Legislative Assembly does not extend beyond the bounds of loyalty.

But, Senators, I hope better things of you, though I thus speak.

Within the limits of *loyalty* it will be my desire to give a liberal construction to all parliamentary rules in favor of free discussion. I confess to have been elected by a *party*—by a party which is loyal to this Union, and fights against and ultimately will crush out this rebellion. To that party I intend to be true. Beyond that I desire to know no distinction of persons in the discharge of my duties.<sup>36</sup>

Two years later when President Eastman resigned the chair he defended his stand as to disloyal speeches in the Senate and referred to his speech of 1864 as follows:

Some exception was taken to this by some papers, and persons, not members of this Senate. I desire now to be understood that I then had no reference to any member of the Senate; but I said it in *my place* because I thought it was time that this unquestionable parliamentary rule was promulgated and enforced, and to give notice that I intend to do it. I now take great pleasure in bearing testimony that during all the time I have presided over the Senate, each and every member has evinced a sacred devotion to the Union. Not one disloyal word or idea has been uttered by any one. Thank God, the *Iowa* Senate has *all* been loyal. So may it ever be.<sup>37</sup>

In 1884 when Orlando H. Manning resumed the chair the *Senate Journal* recorded no formal seating of the President, although in former years when a man succeeded himself, the President *pro tempore* went through the motions of turning over the gavel, chair, and office.<sup>38</sup> Indeed, in 1878 when the Lieutenant Governor had become Governor, the President *pro tempore* of the previous session, although

<sup>36</sup> *Senate Journal*, 1864, pp. 66, 67.

<sup>37</sup> *Senate Journal*, 1866, p. 57.

<sup>38</sup> *Senate Journal*, 1884, p. 32.

not then a member of the Senate, came to the Capital, convened the Senate, presided at the joint convention, and formally resigned the chair to the newly elected Lieutenant Governor.<sup>39</sup> But in 1886 the President *pro tempore* of the preceding session was not present, and in view of the fact that Lieutenant Governor Manning had resigned in October, 1885, a President *pro tempore* was elected who presided at the inaugural convention and later introduced President John A. T. Hull to the Senate.<sup>40</sup>

Owing to the contest for the speakership in the House of Representatives and the consequent inability of that body to effect a permanent organization, the inauguration of the Governor and Lieutenant Governor in 1890 did not take place until the twenty-seventh of February. Thus President Hull presided for practically half the session.<sup>41</sup>

The session of 1900 witnessed a change in the inaugural custom. Lieutenant Governor James C. Milliman, reelected to succeed himself, nevertheless presided in the joint convention at which he was inaugurated for the second time, and when the Senate reconvened he made a short address and announced the standing committees.<sup>42</sup> Lieutenant Governor John Herriott followed this precedent in 1904 in so far as the inaugural was concerned; but upon the reconvening of the Senate, Senator James A. Smith presided as President *pro tempore* and introduced Mr. Herriott.<sup>43</sup>

Again, in 1909 the President of the Senate had become

<sup>39</sup> *Senate Journal*, 1878, pp. 3, 13, 19.

<sup>40</sup> *Senate Journal*, 1886, pp. 6, 51, 66.

Madison M. Walden and Orlando H. Manning were the only Lieutenant Governors in Iowa to resign the office. Two others—Nicholas J. Busch and John Scott—accepted other offices during their term.

<sup>41</sup> *Senate Journal*, 1890, pp. 76, 77.

<sup>42</sup> *Senate Journal*, 1900, pp. 72, 73.

<sup>43</sup> *Senate Journal*, 1904, pp. 62, 63.

Governor and it became the duty of the President *pro tempore* to act in his stead.<sup>44</sup> In 1911, 1915, and 1919 the practice of formally presenting the reëlected President to the Senate was resumed.

## IV

## EXTRA SESSION PRESIDENTS

The rules adopted by the Territorial Council at its first session provided that the President should "hold his office during one session of the Council."<sup>45</sup> Later, in the Senate, the wording was changed to read, "during the session of the Senate at which he was elected."<sup>46</sup> These provisions were interpreted in the early days as not including extra sessions. Thus at each of the four extra sessions of the period prior to 1857 a new election was held for President; and at the first three of these extra sessions the presiding officer of the regular session was not reëlected. There was apparently no thought of his right to recognition by re-election. The first extra session was that of the Second Legislative Assembly which was held in July, 1840. Although Stephen Hempstead had been the presiding officer in the regular session, James M. Clark was now elected on the eighth ballot to fill the chair — his chief opponents being Jesse B. Browne, President in the first regular session, and Jonathan W. Parker, who was later elected President at the fourth regular session.

In the extra session of the Sixth Legislative Assembly, Francis Gehon was elected to take the place of his colleague, Thomas Cox, from the Dubuque-Jackson district. In this instance it happened that a General was promoted to the position which had been held by a Colonel. Again,

<sup>44</sup> *Senate Journal*, 1909, p. 15.

<sup>45</sup> *Council Journal*, 1838-1839, p. 16.

<sup>46</sup> *Senate Journal*, 1846-1847, p. 327.

in the extra session of the First General Assembly, Thomas Hughes was elected to occupy the chair from which Thomas Baker had made rulings at the regular session. Indeed, Baker almost lost his seat at the extra session of 1848. At the August, 1847, election he had been elected prosecuting attorney for Polk County—an office which he continued to hold.<sup>47</sup> There may be some question as to whether President Baker failed to be reelected at the extra session because of this situation; but the possibility that such was the case, together with its relation to a similar situation in 1861, makes it worthy of mention in this connection.

On the third legislative day of the extra session of 1848 the following resolution was offered, considered, and adopted:

WHEREAS, It is represented that the seat of the former member of the Senate from the counties of Marion, Polk, Dallas, and Jasper, has, since the adjournment of the General Assembly in February last, become vacant in consequence of the acceptance, by that gentleman, of a lucrative office, therefore,

Resolved, That a committee of three be appointed with power to send for persons and papers, to investigate the facts of the case, and to report to the Senate at an early day.<sup>48</sup>

The report of the committee, submitted a week later and adopted by a vote of eleven to seven, allowed Mr. Baker to retain his seat. A distinction was made by the committee between ineligibility and disqualification. They decided that had Mr. Baker held the office of prosecuting attorney at the time of his election, the election would have been invalid; but the acceptance of the office after election did not disqualify him. "If the gentleman", they argued, "whose case we are now considering had held a lucrative

<sup>47</sup> Senator John M. Whitaker of Van Buren almost lost his seat at this same session.—*The Annals of Iowa*, Vol. XI, p. 599; *Senate Journal*, 1848, pp. 14, 56.

<sup>48</sup> *Senate Journal*, 1848 (Extra Session), pp. 13, 14.

office at the time of his election, but had resigned afterward, could he have been received as a member of this body? By no means. He would have been ineligible. The election would have been a nullity, which nothing but another election could have remedied. If the subsequent removal of a disqualifying circumstance will not do away with the ineligibility contemplated by the constitution, its subsequent occurrence can not create that ineligibility."

These Senators were of the opinion that the adoption of the resolution would be "a violation of the constitution, unauthorized by any law whatever, and entirely without a precedent in the proceedings of legislative bodies. The seat of a member who possesses the necessary qualifications at the time of his election can, during the term for which he may have been elected, become vacant only by death, resignation, or expulsion. These are the only contingencies under which a seat can be declared vacant. That Mr. Baker was duly elected a member of this body is fully shown by the proceedings of the last session, when the committee on the credentials of members reported him as duly elected, and that he was thus duly elected is not denied by any one. It is not contended that he is dead, has resigned, or has been expelled, or that any reason for his expulsion exists. Legislative bodies have sometimes declared a seat vacant when they have ascertained that there was no fair or legal election by the people, or where the person receiving the greatest number of votes was not at the time eligible to the office, but never, so far as your committee has been able to ascertain, have they done so when there has been an election and no death, resignation, or expulsion." Could a member, they asked, be expelled by a mere majority vote for having been elected a prose-

cuting attorney, when it would take a vote of two-thirds of the members to expel him for a most heinous crime?<sup>49</sup>

It is possible that Thomas Baker would have been re-elected had it not been for this occurrence. At the next extra session — that of the Fifth General Assembly — Maturin L. Fisher, the popular President during the regular session was unanimously reëlected. He had been one of the most successful chairmen, and was described as “a most courtly officer and gentleman, overflowing with kind amenities. No member, however distraught, could rebel against his rulings. He was then verging upon sixty, with a fine presence and paternal air.”<sup>50</sup>

The Constitution of 1857 definitely states what shall be the term of the Lieutenant Governor. “The official term of the Governor, and Lieutenant Governor, shall commence on the second Monday of January next after their election, and continue for two years, and until their successors are elected and qualified.”<sup>51</sup> The term of the Lieutenant Governor as *ex officio* President of the Senate would be the same; and yet in the first extra session under the new Constitution the Lieutenant Governor did not preside over the Senate since he was disqualified by another provision of the Constitution. The Constitution provides that “no person shall, while holding any office under the authority of the United States, or this State, execute the office of Governor, or Lieutenant Governor.”<sup>52</sup> And so, on May 15, 1861, Lieutenant Governor Nicholas J. Rusch called the Senate of the extra session of the Eighth General Assembly to order and stated that “as he had been appointed to the office of Commissioner of Emigration, he had doubts as

<sup>49</sup> *Senate Journal*, 1848, pp. 35, 36.

<sup>50</sup> *Iowa Historical Record*, Vol. I, p. 86.

<sup>51</sup> *Constitution of Iowa*, 1857, Art. IV, Sec. 15.

<sup>52</sup> *Constitution of Iowa*, 1857, Art. IV, Sec. 14.

to his constitutional rights to exercise the functions of Lt. Gov. and President of the Senate, and that he would not therefore act in that capacity until those doubts were removed.'<sup>53</sup>

This statement opened a controversy which lasted throughout the greater part of the session and prevented Mr. Rusch from presiding. After stating the situation in which he found himself, the President called Senator James F. Wilson to the chair. Mr. Wilson retained the position throughout the session, being recognized as President *pro tempore* and receiving the extra compensation which would normally have gone to the Lieutenant Governor.<sup>54</sup> On the same day that the Senate convened, "on motion of Mr. Davis of Polk, the question of the right of Hon. N. J. Rusch, to preside over the Senate, was referred to the Attorney-General for his opinion."<sup>55</sup> The following communication from the Attorney General was read to the Senate on the second day of the session, May 16, 1862:

Office of Attorney General,  
May 15, 1861.

*To the Honorable Senate of the State of Iowa:*

Through your Secretary I am advised that the Senate has requested my opinion upon the matter of the right and duty of Hon. Nicholas J. Rusch to exercise the functions of Lieutenant Governor as President of your Honorable Body.

I am advised by the note of the Secretary that Mr. Rusch has heretofore been appointed Immigrant Commissioner under the Act of the General Assembly of 1860, and has accepted of said appointment and entered upon the duties of said Commission.

Art. 4, Sec. 14, of the Constitution of the State of Iowa, provides that "No person shall, while holding any office under the authority of this State, execute the office of Governor or Lieutenant Governor."

<sup>53</sup> *Senate Journal*, 1861 (Extra Session), p. 3.

<sup>54</sup> *Senate Journal*, 1861 (Extra Session), pp. 3, 97, 112.

<sup>55</sup> *Senate Journal*, 1861 (Extra Session), p. 3.

If the Commission created by the act of 1860 is an office within the meaning of this provision of the Constitution it would seem clear that the acceptance of the same by the Lieutenant Governor would necessarily disqualify him from exercising the functions of Lieutenant Governor, and that having disqualified himself for executing the office of Lieutenant Governor by his own act, the office would become vacant by operation of law. Having once vacated the office the incumbent could not again resume the exercise of its duties unless re-elected in the manner provided by law.

The Act of 1860 provides for the appointment of a Commissioner of Immigration by the Governor of the State, by and with the advice and consent of the Senate; fixes the term of his office at two years; provides an annual salary for his compensation, and makes it the duty of the Governor to remove the incumbent for "inefficiency and misconduct."

The duties of the Commissioner do not relate to the administration of the law, and are not within the ordinary scope of Judicial or ministerial functions. But our Legislature has seen fit to create many offices in connection with the Educational and Agricultural interests of the State, and every department of our government has recognized these auxiliaries to the public welfare as legitimate subjects of Legislation. This office of Immigrant Commissioner would seem to be of the same general character, and requires the exercise of important duties involving the material interests and prosperity of our State.

Our law writers define an office to be "the right to exercise a public function or employment and to take the fees belonging to it."

The act creating this commission, I think, very properly calls it an office, and I am unable to see any distinction between this and other public offices which would render the spirit or letter of the Constitutional provision before cited inapplicable to it.

It is made the duty of the Governor to remove the Commissioner in case of inefficiency or misconduct.

The Lieutenant Governor upon the happening of a single contingency, may become the Governor of the State. If he may be Commissioner and Lieutenant Governor he may also be Commissioner and Governor. How then could he exercise the public trust of removing himself from office?

It would seem, indeed, that the provision of the Constitution has a peculiar applicability in such a case as this.

I am of the opinion that the acceptance and exercise of the office of Immigrant Commissioner by one holding the office of Lieutenant Governor necessarily created a vacancy in the latter office.

Very Respectfully, Submitted,

CHARLES C. NOURSE.<sup>56</sup>

Thus did the Attorney General of the State decide that the Senate had no President. His communication was laid on the table, and not until May 27th was it taken up for consideration. At that time Senator John W. Thompson offered the following resolution:

*Resolved*, That in the opinion of the Senate the Hon. Nicholas J. Rusch is not disqualified to discharge the duties of his office as Lieutenant Governor, by reason of his having assumed the discharge of the duties of "Commissioner of Immigration," and that Lieutenant Governor Rusch be requested to resume the President's Chair.<sup>57</sup>

Upon motion of Mr. Thompson the opinion of the Attorney General and the resolution were referred to the Judiciary Committee with instructions to report as soon as possible. On the following day the Judiciary Committee was ready with both a majority and a minority report. Senator Lucien L. Ainsworth submitted the majority report, which read as follows:

The undersigned, a majority of the Judiciary Committee would respectfully report that they have had under consideration the opinion of the Atty. General, with regard to the right of N. J. Rusch to act as Lieut. Governor, also the resolution upon the same subject referred to them and they find that the said N. J. Rusch is entitled to the office of Lieut. Governor.

In the opinion of the undersigned, the position of emigrant agent is not an office within the meaning and purview of the Constitution. The Governor is by law made one of the trustees of the Agricultural College, which is termed an office, but no sensible man would claim that he was thereby disqualified from acting as Governor, or that

<sup>56</sup> *Senate Journal*, 1861 (Extra Session), pp. 15, 16.

<sup>57</sup> *Senate Journal*, 1861 (Extra Session), p. 75.

a vacancy was created in the office of Governor. Even if the position of emigrant agent were an office as is claimed by the Attorney General, then the acceptance of that office by the Lieut. Governor was illegal, but no vacancy was created in the office of Lieut. Governor. We therefore recommend the adoption of the resolution referred to said committee.

L. L. AINSWORTH,  
D. S. WILSON,  
JNO. W. THOMPSON,  
M. L. MCPHERSON.<sup>58</sup>

Mr. J. W. Rankin from the same committee submitted the minority report, dissenting from the majority report, in these words:

The undersigned, members of the Judiciary Committee to whom was referred the resolution introduced by Senator Thompson, report: The resolution contains two propositions:

1st—Nicholas J. Rusch is not disqualified to discharge the duties of his office as Lieut. Governor, by reason of his position as Commissioner of Immigration.

2d—Nicholas J. Rusch is invited to resume the President's chair.

They do not deem it necessary to discuss the second proposition. Nicholas J. Rusch was elected Lieutenant Governor by a large majority of the voters of the State. He became constitutionally the President of the Senate, and as such officer he discharged his duties with great fidelity, impartiality and signal success. If it rested with them to invite Nicholas J. Rusch to resume his seat as President of the Senate, and nothing beyond, they would not hesitate for a moment. So far as they have been subject to his powers and directions as an officer of the Senate, they have been highly delighted with his conduct. They do not however regard such matters as submitted to them. They are called on to consider a single legal proposition, or constitutional question.

The Constitution provides, Article 4, Section 14:

“No person shall, while holding any office under the authority of the United States, or of this State, execute the office of Governor or Lieutenant Governor, except as hereinafter provided.”

<sup>58</sup> *Senate Journal*, 1861 (Extra Session), p. 94.

They believe that any person holding any office by virtue of National or State authority is incapacitated for qualification to the office of Lieutenant Governor.

They believe that any person accepting, qualified and entering on the discharge of the duties of such office, cannot longer execute the office of Lieutenant Governor.

If either of these propositions is correct, both are.

It is not asserted that a person is ineligible to the office of Lieutenant Governor, who holds an office by authority, &c., but that such a person *cannot execute the office*. The provision is a limitation on the power or capacity of an individual, or the absolute constitutional denial of the power of any individual to discharge any function of the Lieutenant Governor, while holding any office as provided. The object, doubtless, is to prevent the concentration of too much official power in the hands of one person, and to secure the time and intellect of the incumbent in any one office, in the discharge of the obligations involved.

The law passed March 30th, 1860, providing for a Commissioner of Immigration, requires him to hold *his office* for two years from the first day of May thereafter, and he shall reside in the City of New York at least from the first day of May until the first day of December of each year, which office shall be kept open at all reasonable hours, &c.

The Commissioner is to receive a salary, have office rent paid, &c.

This very law establishing this office for two years, requires the Lieutenant Governor—being Commissioner—to reside in the City of New York at this very time.

The law creates a new office, a new bureau in Government policy for the sake of advancing a material interest, and the agricultural prosperity of the State. It is an office in every sense of the term. It as much requires the time, attention and mind of the occupant as the office of Senator, or Representative, or any other State officer.

Every reason that applies to the office of Senator, applies to the office of Immigrant Commissioner: indeed the reasons are stronger as to the latter office than the former, as the office of Commissioner practically exiles from the State the occupant.

They believe in giving a construction to the section of the Constitution cited, that at least, as doubts exist as to the power of Nicholas J. Rusch to execute the office of Lieutenant Governor, he

being the incumbent of the office of Immigrant Commissioner, and now, in contemplation of law, a resident of the City of New York.

J. W. RANKIN, Chn.

L. G. PALMER,

W. E. TAYLOR.<sup>59</sup>

By a yea and nay vote both reports were laid on the table, and on the next day the General Assembly adjourned.<sup>60</sup>

When the General Assembly met in regular session in 1862 N. J. Rusch, acting as Lieutenant Governor and President of the Senate, called the Senate to order on the opening day and served in his official capacity until his successor was inaugurated.<sup>61</sup> Was Mr. Rusch the President of the Senate or was he not? The answer to this question appears uncertain; but there is no doubt that the Senate did actually exercise the power of determining who should preside. Whether this power could have been upheld against the will of the Lieutenant Governor was not determined.

<sup>59</sup> *Senate Journal*, 1861 (Extra Session), pp. 95, 96.

<sup>60</sup> A similar situation arose in the Senate in 1870. John Scott had been Lieutenant Governor during the preceding biennium. Madison M. Walden had been elected to succeed him, and would act as President of the Senate as soon as inaugurated. On the opening day, Scott called the Senate to order and "remarked that he had, since the last meeting of the General Assembly, accepted a Federal appointment—that of Assessor of Internal Revenue of the District in which he resided, and that by virtue of the Constitution of the State, which provides that no person holding an appointment from the Government of the United States, should be eligible to exercise the functions of an officer of any State, he considered himself debarred from exercising any authority in the present General Assembly. And while he could not congratulate them in an official capacity, he would personally congratulate them on the auspicious circumstances under which they met. He closed by requesting them to elect some Senator to the Chair to officially call the Senate to order." Senator Grenville G. Bennett was elected to act as President *pro tempore* until the inauguration of the new President.—*Senate Journal*, 1861 (Extra Session), pp. 96, 115; *Iowa State Register* (Weekly, Des Moines), January 12, 1870; *Senate Journal*, 1870, p. 3.

<sup>61</sup> *Senate Journal*, 1862, pp. 3, 36, 46.

In the extra sessions of 1862, 1897, and 1908, as well as in the adjourned session of 1873, the Lieutenant Governor presided over the Senate without any question of right or authority being raised.

## V

## CONTESTED ELECTIONS

The only contest of any length over the election of a President during the period prior to 1857 was in the Sixth Legislative Assembly in 1843-1844. It had, it is true, taken six ballots to elect John D. Elbert in the Fifth Legislative Assembly, eight to elect James M. Clark in the extra session of the Second Legislative Assembly, ten to seat Stephen Hempstead in the Second Legislative Assembly, and sixteen to elect Maturin L. Fisher in the Fifth General Assembly; but none of these elections extended over any considerable period of time. Clark was elected on the second day, Elbert on the third, and Hempstead and Fisher on the fourth day of the session.

The regular session of the Sixth Legislative Assembly met in Iowa City on Monday, December 4, 1843. Colonel Cox succeeded in staving off the balloting for President until Thursday, December 7th, when his colleague from Dubuque, General Gehon, was expected to be present. Thursday arrived, but General Gehon was still absent. Indeed there is no mention of him in the *Senate Journal* prior to January 5th. He was probably absent until after the holidays, since after thirteen ineffectual ballots on Thursday and Friday, December 7th and 8th, in which the Council stood evenly divided, the "election of President of the Council was postponed to the 2d Tuesday of January next."<sup>62</sup>

Balloting was again resumed on Tuesday, January 9,

<sup>62</sup> *Council Journal*, 1843-1844, p. 16.

1844; and on January 11th, Thomas Cox was elected on the thirty-first ballot by a bare majority. While the contest started between Francis Springer and Joseph B. Teas, the votes cast on the final ballot were for William H. Wallace and Thomas Cox.<sup>63</sup> Both Springer and Teas withdrew their names during the contest — Springer doing so toward the last in order to throw his support to Teas, whose election he thought more probable than his own. There were occasions when an election might have been effected if a candidate had been permitted to refrain from voting or had voted for himself.<sup>64</sup>

After 1857 there could be no contested elections in the Senate since the President took the chair *ex officio*; but the contested elections for Speaker of the House in 1874 and 1890 made it impossible for the Lieutenant Governor to be inaugurated at the opening of the session which meant that he could not enter upon his duties as President as soon as he otherwise would have done.

## VI

### DUTIES, POWERS, AND PRIVILEGES

In many ways the President of the Senate in Iowa is the counterpart of the Speaker of the House of Representatives. While he might not be expected to be so closely connected with the body over which he presides, since he is theoretically a member of another branch of the government, yet in effect he is just as much an integral part of the law-making body as is the Speaker. He, too, occupies the dual position of parliamentary moderator and party leader within the Senate. In the scheme of government as outlined by the framers of the Constitution of the United States the President of the Senate is designed as moder-

<sup>63</sup> *Council Journal*, 1843-1844, p. 65.

<sup>64</sup> *Council Journal*, 1843-1844, p. 59.

ator only — and in Congress he is little else. In Iowa, however, the Presidents of the Senate have not always confined themselves to the routine duties of the chair.

The position of the President of the Senate is the outcome of natural developments, and whatever party influence he exerts is largely the result of political evolution. Indeed, some Presidents have considered it their only duty to preside: they have refused to lend their influence to the party by which they have been chosen. Thus President Warren S. Dungan upon assuming the chair announced: "In the discharge of my official duties as your presiding officer, I will endeavor as far as possible to divest myself of all partiality and favoritism. To know no party, no section and no interest above another."<sup>65</sup>

The President receives communications addressed to the Senate and receives and announces messages and reports from State officers and from the other house of the General Assembly; he receives resignations of members and employees; he receives guests in the Senate chamber; he represents the Senate at public ceremonies; and on various occasions he is the official mouthpiece and representative of the Senate.

In 1897 Lieutenant Governor Matt Parrott who had fathered the law under which an investigation was being conducted was called as an individual to testify before a House investigating committee.<sup>66</sup>

The orders and directions of the Senate are carried out by the President. In 1906 the President congratulated a Senator on behalf of the Senate.<sup>67</sup> He issues warrants for the arrest of offenders against the Senate.<sup>68</sup> He has

<sup>65</sup> *Senate Journal*, 1894, p. 22.

<sup>66</sup> *The Iowa State Register* (Weekly, Des Moines), April 2, 1897, p. 1.

<sup>67</sup> *Senate Journal*, 1906, p. 2.

<sup>68</sup> *Senate Journal*, 1873, p. 257.

charge of such ceremonies in the Senate as the selection of seats. He appoints several of the Senate employees, and supervises the work of and may remove many others. To-day he appoints the Lieutenant Governor's clerk, the Lieutenant Governor's messenger, the telephone messenger, the doorkeepers' page, and the six Senate pages; and he may fill any vacancies that occur.<sup>69</sup> He certifies to the time of Senate employees. All documents, acts, orders, and resolutions of the Senate must have his signature; and all writs, warrants, and subpoenas issued by order of the Senate are under his hand and seal.

The compensation of the President of the Senate is fixed at "the same mileage and double the per diem pay provided for a Senator, and none other."<sup>70</sup> Thus, he is now entitled to two thousand dollars per session, and mileage in addition. This was also the general rule of compensation during the period before 1857. The Lieutenant Governor, as such, receives no salary.

Parliamentary duties of the President of the Senate are those usually incident to such an office. The Constitution requires that the President shall sign all bills passed by the two houses, and the rules require that they be signed in the presence of the Senate. By statute he is required to preside in joint convention of the two houses. During the period prior to 1857 there were two notable exceptions to this practice. In a joint convention during the First General Assembly the Speaker of the House stubbornly refused to relinquish the chair and presided throughout the meeting.<sup>71</sup> In a packed convention of the Fifth General Assembly, when the President and several other members of the Senate refused to attend, the Speaker of the House pre-

<sup>69</sup> *Senate Journal*, 1917, p. 125; *Senate Rules*, 1917, Rule 4.

<sup>70</sup> *Constitution of Iowa*, 1857, Art. IV, Sec. 15.

<sup>71</sup> *Senate Journal*, 1846-1847, p. 61.

sided, and a Senator was elected to act as President *pro tempore*.<sup>72</sup> Occasionally some visitor is honored by being allowed to preside in joint convention. Thus in 1897 Susan B. Anthony presided over a joint convention of the Iowa General Assembly.<sup>73</sup> In November, 1908, during the extra session of the Thirty-second General Assembly, President *pro tempore* James A. Smith of the Senate and Speaker Nathan E. Kendall shared honors in presiding in joint convention.

Very many routine duties in the way of ordinary business fall to the President of the upper house. He preserves order and decorum, administers oaths, clears the house for executive sessions, and formally opens and closes the sessions.<sup>74</sup> He directs the order of business, recognizes members seeking the floor, and decides points of order — subject to appeal by the house. Courteous treatment must be given the presiding officer. Indeed, in early years when a member had been recognized and had the floor no one was permitted to walk between him and the President.

The power of recognition is one of the greatest in the province of the President of the Senate; and by its use he may accomplish much in the way of shaping legislation. In a body the size of the Iowa Senate it is ordinarily not difficult for any member to secure recognition, but in times of stress the power of recognition can be used to advan-

<sup>72</sup> This was really caused by the obstruction policy of the majority party in the Senate. They refused to meet in joint convention. In this particular instance they hastily adjourned while a messenger from the House was delivering his message that the House was ready to meet them in joint convention. "He was answered by the affable President of the Senate, still in his chair, that the Senate had just adjourned."—*Iowa Historical Record*, Vol. I, p. 88; *House Journal*, 1854–1855, pp. 184, 187; *Senate Journal*, 1854–1855, p. 122.

<sup>73</sup> *The Iowa State Register* (Weekly, Des Moines), February 5, 1897, p. 1.

<sup>74</sup> Theoretically actual adjournment can not take effect without formal announcement thereof by the presiding officer. Upon one occasion the Senate was declared adjourned while the Senator speaking yet retained the floor.—*Senate Journal*, 1906, p. 785.

tage. President Eastman in 1864 announced that he would not recognize members for the purpose of talking treason.<sup>75</sup> President Joseph Dysart in 1874 "in his official capacity as President of the Senate" rendered the Iowa State College of Agriculture "valuable service when a vindictive warfare was waged against it before the Legislature."<sup>76</sup>

Closely connected with the power of recognition is the authority of determining a quorum. Lieutenant Governor Alfred N. Poyneer was the first Senate President in Iowa to make use of the "Reed rule" in this matter. In 1892, in order to break a deadlock in the Iowa Senate, he held that "a quorum being present, a majority of those voting had the power to elect officers, or to transact any ordinary business"; and he exercised "the ruling of Speaker Reed . . . . in counting a sufficient number of Democrats 'present and not voting' to constitute a quorum."<sup>77</sup>

Another instance of the influence of the President of the Senate is in the case of the adoption of the rule with regard to reference and committee action and report on appropriation bills in the Senate. It was at the insistence of President Herriott that the Senate adopted this rule (then No. 19) in 1904 "in order to secure more careful consideration of the finance bills incorporated in the biennial budget."<sup>78</sup> Lieutenant Governor Herriott was throughout very fair in his official actions, and his influence was constructive rather than partisan. "Although a strong partisan in national and state politics Mr. Herriott did not allow his party zeal to control him in his presidential decisions from the chair. He early secured the complete confidence of the democrats that he would accord them im-

<sup>75</sup> *Senate Journal*, 1864, p. 65.

<sup>76</sup> *The Annals of Iowa* (Third Series), Vol. I, p. 238.

<sup>77</sup> *The Iowa State Register* (Weekly, Des Moines), January 22, 1892.

<sup>78</sup> *The Stuart Herald*, October 4, 1918.

partial and just decisions. The result was that they became his earnest supporters in any matter for the general good that he sought to get considered; and he never suffered embarrassment from petty maneuvering and filibustering such as is almost certain to embarrass a presiding officer in such an assembly if he alienates any considerable portion by arbitrary or grossly partizan decisions. The formal words of farewell had a ring of earnest good will when he laid down the gavel for the last time."<sup>79</sup> Because of the adoption of the constitutional amendment providing for biennial elections, Mr. Herriott's term of office was extended which made his the longest term of service of any in the long list of Lieutenant Governors.

At the session of the Twenty-fourth General Assembly an interesting situation in relation to the President of the Senate was developed. The retiring Lieutenant Governor was A. N. Poyneer, a Republican; and the newly-elected Lieutenant Governor was Samuel Bestow, a Democrat. Since the Senate was evenly divided on party lines, the vote of the President in case of a tie might mean much in party politics. A violent contest for the position of Secretary of the Senate complicated and intensified the rivalry between the parties. As long as permanent organization was postponed the new President could not take the chair. Finally, by invoking the "Reed rule" the Republican chairman declared the Republican candidate elected permanent Secretary. One Republican bolted on the election of the other officers and a permanent organization was effected; but as soon as the new President was sworn in, the Democrats by the aid of his vote, ousted the Republican Secretary and elected the Democratic candidate in his place.<sup>80</sup>

<sup>79</sup> *The Stuart Herald*, October 4, 1918.

<sup>80</sup> *Senate Journal*, 1892, pp. 7, 15, 21, 37, 38, 40.

Points of order are decided by the President, subject to appeal to the Senate. Appeals in the Senate are much less common than in the House. Sometimes a President will submit a written ruling on some mooted point, even when there has been no appeal.<sup>81</sup> A long list of precedents and authorities was cited by President William L. Harding in making a ruling in 1915.<sup>82</sup> Especially interesting from this standpoint, as well as from the aspect of the status of the President in the body, is the statement of President Ernest R. Moore in the session of 1919. He had been forced by the principles of parliamentary law to rule against the consideration of a bill providing for a State emblem, and his decision had been appealed from. President Moore made the following statement:

Every senator here has, during his service in this chamber, the right to rise, gain the recognition of the Chair, and speak from the standpoint of personal privilege. It is not within the province of the Chair to do so but for just a moment he is going to assume it.

This is the close of my second session as presiding officer and it is the first time that an appeal has been taken from my decision. I want to assure the senators who voted for sustaining the decision and those who voted against that I concede to them the right of conscientious action. I believe they voted their convictions.

I want to say this, however; you men have differences of opinion as to the value of this measure. I am not here as a legislator. I am here as a state officer who is ex-officio, the presiding officer in this body. I have no voice in legislation. I am not expected to either shape or influence it and I can say to you truthfully that I have not attempted to do so. Unfortunately in many cases he who sits in this chair is like the innocent bystander and "gets the brick."

May I be permitted to say that it has been to me a matter of very great regret that I was compelled to rule today against the consideration of a measure in which I have a very great personal interest. Had I been privileged to sit on the floor of the senate

<sup>81</sup> *Senate Journal*, 1911, pp. 336, 337.

<sup>82</sup> *Senate Journal*, 1915, p. 1041.

rather than where I now stand and had been privileged to have a vote it would have been a very great pleasure to have supported this measure, introduced and supported, as it was, by a Society of which many of my relatives are members and in which I personally have a very great interest.

I trust that I have not transgressed either in the matter of good taste or the privileges of this senate in making this brief statement.<sup>83</sup>

Such a statement from the chair is very rare. But no one will deny that it was both appropriate and in good taste. No one but a purist would object to this sort of participation in legislation by the President. Appeals made through zeal for a measure and without a substantial basis in parliamentary procedure have no justification. They are an injustice to the presiding officer.

All committees, standing and special, are appointed by the President, unless otherwise specified by the Senate. In 1858 under the first Lieutenant Governor there was an attempt to curtail the power of the President to appoint committees; but the effort was unsuccessful. There seem to be no compelling reasons, however, for conferring this power upon the Lieutenant Governor. He comes to the Senate *ex officio*, sometimes with no legislative experience, and usually unacquainted with Senate conditions and traditions and unable to properly judge the members. Thus his appointment of committees has come to be a party action, in which he is advised by leading Senators.

Heed has not always been paid to the principle of seniority in committee appointments: radical changes and indiscriminate shifting occur each session. In the early extra sessions the committees were entirely made over. In 1843-1844, when the President was not elected until after the holiday recess, the standing committees were appointed by the organization chairman. Later when Thomas Cox was

<sup>83</sup> *Senate Journal*, 1919, pp. 1416, 1417.

elected to preside his appointments on committees were transferred to the organization chairman.<sup>84</sup>

Various Presidents have taken occasion to explain their appointments. Lieutenant Governor Frank T. Campbell in 1878 made the following statement:

In framing these committees I have consulted first, the public interest, and yet sought, as far as practicable, to assign each individual member to such positions as his experience and qualifications adapt him, and where his labors can best be applied. I have also sought, in making up committees, to look after the different State institutions, to divorce, as far as possible, these institutions from all personal or local interest, and to recognize them as "the institutions of the *State*," believing that the interests of all these great humane and benevolent enterprises are identical, and their welfare desired by all.<sup>85</sup>

President George W. Clarke submitted the following in announcing his assignment of members to committees:

It has been suggested with reference to several committees having to do with special interests, such as, to illustrate, banks, telephones and the like, that of course the custom of placing all bankers on the committee on banks, and all senators interested to any extent in the telephone business on the committee on telephones, would be followed. I have not felt that I could do that. It is a fundamental fact in human nature that a man, or a combination of men, will look after and develop personal interests as against the interests of others. Their own business would be the matter of primary importance and legislation promotive of it would receive all possible encouragement. On the other hand, the public needing legislation in its behalf as against any particular interest would have little, or no show at all in a committee made up entirely of men in that particular line of business. The public must have representation here and I felt that it would be a plain violation of duty if I failed to see, so far as I could, that no question of legislation should be tried out before a packed jury directly and pecuniarily interested in the verdict. No particular line of business

<sup>84</sup> *Council Journal*, 1843-1844, pp. 17, 66.

<sup>85</sup> *Senate Journal*, 1878, p. 21.

should control any committee. Senators engaged in a particular work or business or interest should be on the committee to consider matters touching it, because of their expert knowledge and experience, but there should not be enough of them to control it. So far as I have had knowledge of the facts I have so constructed these committees. Senators, therefore, will understand that their absence from such committees is not because of want of appreciation on my part of fitness but only because of my belief that my public duty requires me to so construct these committees.<sup>86</sup>

President Warren S. Dungan was especially successful in his committee appointments. His remarks upon announcing them are peculiarly happy:

The indirect legislative power devolving on the presiding officer is in the formation of the standing committees. This is the most difficult and perplexing duty devolving upon him. My purpose has been to deal fairly with all parties, with all localities and with all contending interests. I have done the best I could. I do not indulge the hope that I have satisfied the just ambition of every member, nor that I have fully recognized the true ability of each. Indeed, I think that would be impossible. There are fewer chairmanships than there are worthy members to fill them. Here "there is not room for all at the top." Former legislative service and standing on committees must have recognition. Mistakes are more liable to occur with new members. It would be strange indeed if they did not.<sup>87</sup>

That Mr. Dungan was successful in his position as President there can be no doubt. "If ever the senate had a presiding officer who was generally liked", declared an Iowa editor, "it is Lieut. Gov. Dungan. The Republican convention made no mistake when it nominated the senator from Chariton. He has shown a strong grasp of mind. He is keen, quick-witted, and discriminating, and above all things very fair. Every one praises his impartiality. He set that high mark when he appointed his committees, and he has

<sup>86</sup> *Senate Journal*, 1909, pp. 67, 68.

<sup>87</sup> *Senate Journal*, 1894, p. 22.

never departed from it. Mr. Dungan is all right, and he looks eminently in place in the presiding officer's chair."<sup>88</sup>

When he announced the committees to the Twenty-ninth General Assembly, President John Herriott submitted a suggestion regarding a re-arrangement of the committees in the matter of their rank, stated the reasons for certain changes and additions made both in the number and names of committees and in the number of members on certain committees, and indicated the purpose in view in the make-up of some of the committees. He suggested that the committees should be arranged in groups comprising those assigned related subjects, with group following group in the order of relative importance. Some of the committees, he announced, were purposely composed to secure the enactment of legislation endorsed by the party convention.<sup>89</sup>

The President of the Senate also has the power of referring bills to the appropriate committee — and this gives him an opportunity to influence their course.

Prior to 1857, whenever the Senate went into Committee of the Whole, the President resigned the chair and was allowed to debate as a member. To-day the President does not speak from the floor; and he votes only in case of a tie.

## VII

### FORMALITIES AT CLOSE OF SESSION

In the Senate the closing days of each session have been marked by a vote of thanks tendered to the presiding officer for the able and impartial manner in which he has presided. These resolutions, although conventional, are usually sincere. The final vote of thanks is usually given the unanimous support of the members of the Senate. Occasionally, however, some disgruntled member balks. Thus

<sup>88</sup> *The Iowa State Register* (Weekly, Des Moines), March 2, 1894.

<sup>89</sup> *Senate Journal*, 1902, pp. 58, 59, 60.

in the Fourth Legislative Assembly one member was excused from voting.<sup>90</sup>

Since 1857 the ceremony of voting thanks to the President has been frequently transferred to the beginning of the next session, when the Lieutenant Governor retires from office and surrenders the gavel to the newly elected President.

It is customary to present the retiring President with the chair he has occupied, the gavel he has used, or with other valuable gifts.<sup>91</sup>

### VIII

#### THE PRESIDENT PRO TEMPORE

Provision was early made in the rules of the Senate that in the absence of the President, a President *pro tempore* could be elected by the Senate. Down to 1857 there was no real necessity for such an office, so regular were the early Presidents in performing their duties as moderator. Only occasionally was a substitute elected for the session. In the last session of the period, that of the Sixth General Assembly in 1856-1857, the President was absent on the day of adjournment for holiday recess and a President *pro tempore* was elected.<sup>92</sup> Francis Springer served a month as President *pro tempore* during the contest of 1843-1844. As a rule the presiding officer was on hand, and the only opportunity given the ordinary member to preside was when the body went into Committee of the Whole.

To-day the President *pro tempore* is elected regularly at the beginning of each session. Previous to the session of

<sup>90</sup> *Council Journal*, 1841-1842, p. 246.

<sup>91</sup> Jesse B. Browne, who presided in the first Council did not receive pay therefor until after the Second Legislative Assembly had convened.—*Council Journal*, 1839-1840, p. 144.

<sup>92</sup> *Senate Journal*, 1856-1857, p. 173.

the Thirty-fifth General Assembly it was the custom to name the chairman of the Senate Ways and Means Committee as President *pro tempore*. Senator James A. Smith of Mitchell County had a remarkable career as President *pro tempore* of the Iowa Senate. He served continuously from 1904 to 1913.

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