

Constitution Making in 1857

Gladstone was dealing in epigrams when he said that the Constitution of the United States is the most wonderful instrument ever "struck off at a given time by the brain and purpose of man." He was doubtless aware that constitutions are not struck off. They grow, like plants. Many of the political ideas and institutions that were incorporated in the Federal Constitution had their origin centuries before the convention in 1787. The written constitution was simply the culmination of years of experience in self-government. The task of establishing a new government, to which the genius of Alexander Hamilton, the scholarship of James Madison, the wisdom of James Wilson, the sagacity of Benjamin Franklin, and the various talents of other statesmen were directed, was chiefly a problem of describing forms and methods which had developed from a wealth of debate and experiment.

The same may be said of any constitution, not excepting the organic law of Iowa. Like the Federal Constitution, the Iowa Constitution of 1857 is not merely the product of "the brain and purpose" of a few political leaders who met in the Old Stone Capitol at Iowa City nearly three-quarters of a century ago. Many of its provisions can be traced directly to the first State constitutions of Virginia,

Pennsylvania, New York, and Massachusetts, while the doctrine of the separation of powers, the bicameral organization of the legislature, the pardoning power of the Governor, and many of the guarantees in the bill of rights had their origin in Magna Carta and the long experiences of Anglo-Saxon autonomy.

Among the local politicians, lawyers, farmers, bankers, and merchants who served as members of the Convention of 1857 no one stands out more clearly than William Penn Clarke. He spoke at least two hundred and sixty-six times, upon one hundred and thirteen subjects — a record in debate which was surpassed only by Rufus L. B. Clarke, a Republican delegate from Mount Pleasant, and Jonathan C. Hall, a Democratic delegate from Burlington. In the number of motions and resolutions offered and in the amount of committee work performed, William Penn Clarke far exceeded any other delegate.

No sooner had temporary officers been selected by the Convention on the morning of January 19, 1857, than Francis Springer, who later became president of the Convention, moved that Mr. Clarke be appointed to invite a clergyman to open the session with prayer. In response Mr. Clarke introduced Reverend Alcinous Young, who performed the duties of chaplain. Reverend Alpheus J. Kynett, upon the motion of Mr. Clarke, opened the session of the second day with prayer, and was later appointed as

the regular chaplain of the Convention. This action is chiefly significant in contrast with the long and acrimonious debate in the Convention of 1844 over a resolution providing for a daily invocation. In the Convention of 1846 prayer was offered only at the first session.

At the time the Convention met the legislature was in session. Consequently the Senate Chamber and the Hall of Representatives in the Capitol were occupied, and the only available place for the Convention was the smaller Supreme Court Room. Hotels in Iowa City were likewise crowded. Quick to sense the situation, delegates from rival cities invited the Convention to meet elsewhere, but Mr. Clarke of Iowa City, who was placed on a committee to consider these invitations, opposed any such move and attempted to secure better accommodations. For a time it seemed that the Convention might go to Davenport or Dubuque. On January 21st, however, Mr. Clarke proposed that the sessions be held either in the Masonic Hall or the Odd Fellows Hall. In the debate which followed, George Gillaspay of Wapello County offered a resolution that the Convention continue to meet in the Supreme Court Room until the General Assembly should adjourn. In explaining his position he said that "upon reflection" he had become satisfied "that it will be very inconvenient for the many fat gentlemen we have in this body to be climbing up and down the stairs of either of the halls offered". His resolution

was adopted and the sessions continued to be held in the court room until January 29th, when, upon the adjournment of the legislature, the Convention moved to the Senate Chamber—the north room on the second floor of the Old Stone Capitol—where the remainder of the sessions were held.

Early in the Convention, Mr. Clarke, in the interest of temperance, attempted on two occasions to secure a constitutional provision that the “right of the people to prohibit by law the manufacture and sale of intoxicating liquors, as a beverage, shall not be violated.” Both efforts failed.

But the character of the man was equally well portrayed in his attitude on the negro question. In debating this problem he said, “I take issue with the gentleman from Wapello, (Mr. Gillaspie) who says that he is here only to represent the white people of the State of Iowa. Now I stand here as a delegate to represent, not the white people of Iowa City, not the Republican party alone who elected me, but as the representative of my district, and of every human being in it. I should be false to my feelings, false to my party and false to my God, if I consented to have the franchises of the meanest or weakest of God’s creatures denied.” The opinions of Clarke and his fellow Republicans prevailed and in the bill of rights as finally incorporated in the Constitution no exceptions were made against negroes.

The opposition which the Constitution of 1846 offered to corporations was one of the chief causes

for calling the Convention of 1857. When the question of legalizing corporations came before the Convention there were reports from both a majority and a minority of the committee. In the minority report Mr. Clarke advocated that political and municipal corporations be allowed to become stockholders in corporations for the construction of internal improvements within the State. He favored a wide expansion of governmental powers and said that if he could have his way he would have the government educate every child, build every road, construct every bridge, in fact "do everything which would conduce to the general happiness and welfare of the people." He believed that corporations "instead of endangering the perpetuity of government, have the very opposite tendency." Railroads he thought would tend to strengthen the Union and develop the State. Every dollar invested in internal improvement "connects the holders of that capital, as it were with a chain of gold, to the support of the government", he declared with Hamiltonian logic. "And I think the perpetuity, and the successful and prosperous destiny of this government will be enhanced, and increased, just in proportion as you stretch these iron ribs from one end of the continent to the other."

Not infrequently in the course of the debates Mr. Clarke showed his keen sense of humor and ready wit by indulging in repartee. On one occasion Rufus L. B. Clarke of Henry County accused him

of being prejudiced in favor of the Supreme Court because of his office as Supreme Court Reporter. Spicing his remarks with a bit of sarcasm the Henry County representative said: "We need not make a constitution, but take one complete in all its provisions from the Reporter of the Supreme Court." Mr. Clarke replied that he did not desire to engage in a personal controversy and said that he would permit his opponent to enjoy the "manliness and generosity" of a demagogical appeal to the Convention, and would dismiss the subject by saying, "that if the intelligence and capacity of the gentleman from Henry were at all equal to his arrogance and presumption, he would be a very useful man upon this floor."

He then took issue with his opponent upon the question before the house. "The gentleman from Henry", he said, "takes the broad position, that banking institutions are an evil. If I thought so, I would not occupy the position of that gentleman. I would have the integrity and firmness to say, that I would not vote to create an evil. I would have told the people so in the canvass. If that gentleman had avowed that doctrine in the county of Henry during the canvass, I venture to say, that he would not to-day have been dictating to us, or manifesting his arrogance upon this floor."

Continuing to criticise the position of Mr. Clarke of Henry County, Mr. Clarke of Johnson County said the gentleman "wants to make a system of

banking, if we have one, that will shut out the capitalists of the east; and he wants whatever banks we have, owned solely and entirely by the people of Iowa. He has found a model bank at Winchester, in the State of Virginia — the last place I should suppose that the gentleman would go for a model — an old town, almost as dead as are now the cities of Sodom and Gomorrah; a place where there is no business, no life, and where, as the gentleman says, the stock of this bank is handed down from father to son for generations. This is the model which the gentleman had produced for the young, flourishing, and growing State of Iowa.”

Throughout the debate Mr. Clarke took the position that the capital to establish banks must come from outside the State. Indeed, one of the chief objects and purposes of calling a convention, in his opinion, was to form a Constitution favorable to banking interests and to encourage capitalists to come into the State. “I care not”, he said, “from what quarter they come — and give us the benefit of their capital. I am not so terribly alarmed, as some gentlemen are, at the mention of this name — Wall street. I think capital can be used advantageously here, whether it comes from Wall street, or Chestnut street.”

In the discussion of the report of the standing committee on State debts, Mr. Clarke took a stand against too much limitation of the power of the State government to incur indebtedness. The

people, he said, "are the source of power", yet a limitation upon indebtedness is a restriction upon the people. "If there must be a check, I am willing to give the government a very large latitude." I hope we shall make a constitution, he continued, "under which the government shall be established, and under which it will be enabled to work so that in ten years we shall not find ourselves, as we are now, under a government so cramped as to be inadequate to the wants and necessities of the people." He expressed a preference for placing the State debt limit at \$500,000 — an amount large enough to enable the State to expand and progress. But the Convention did not concur in this opinion, and the article as finally adopted placed the limitation at \$250,000.

After the Convention had been in progress for more than a month a resolution was presented to hold evening sessions. This motion was greeted with a storm of protest and was made the occasion for considerable humor. Man after man arose to express a hope that the proposal would not be adopted. Mr. Clarke said that if the resolution prevailed he would then move to have the sergeant-at-arms "instructed to furnish each member and officer of this convention with a lantern." Another member suggested that a contract might be entered into with an "omnibus line" to convey members of the Convention to their rooms after the evening sessions. The author of the original resolution,

upon being asked if he would concur in the suggestion of Mr. Clarke, replied, "No, sir; I have no desire to rob the State any more than we have already done." The resolution was laid on the table.

One of the most valuable contributions of Mr. Clarke to the work of the Convention was in connection with the article on the judiciary. His training as a lawyer and his experience as Supreme Court Reporter qualified him to act as chairman of the judiciary committee. Here again a majority and a minority report was submitted to the Convention — the latter signed by Mr. Clarke alone. The chief difference was that the majority report favored the establishment of superior courts, intermediate between the supreme and district courts. Being firmly convinced, yet not willing to rely entirely upon his own views, he wrote to each of the judges of the Supreme Court asking their advice in regard to the committee reports, a copy of which he enclosed without indicating his own attitude. It is a tribute to his judgment that all three of the judges concurred with him, and his plan in substance was adopted by the Convention.

While the article on education and school lands was being debated, Clarke moved that the "State University shall consist of a single institution, and be permanently located at Iowa City." The motion was lost. Later as a member of the committee on miscellaneous affairs he presented the question again, but the provision was stricken out by the

committee of the whole. It seemed that the attempt to secure a constitutional guarantee that the State University should be united and remain at Iowa City had failed. But to Mr. Clarke's surprise D. P. Palmer of Davis County introduced a resolution four days before the end of the Convention confirming the previous action of the General Assembly in removing the capital to Des Moines and further stipulating that the State University should be permanently located at Iowa City. After much debate this resolution was adopted, and the substance of Mr. Clarke's original motion became a part of the Constitution.

When the time came for taking a vote upon the final adoption of the Constitution as a whole, Mr. Clarke, rising to cast his vote, said that the instrument contained several articles which did not meet his approval and which he believed to be wrong. On the other hand he said that it contained much that met his "warmest approbation" and that he would vote for it, reserving the right to determine "upon mature reflection" how he should vote at the polls.

Just before adjournment several of the delegates took advantage of an opportunity to explain their conduct in the Convention. "I take this occasion to say", said Mr. Clarke, "that if, in the course of this debate, I have indulged in any severe criticism upon the conduct of others, I feel that I have had my full share in return." He expressed a hope that the

spirit of crimination and recrimination which had been indulged in might cease and that the closing hours of the Convention might "be marked by universal good feeling and harmony."

On the last day of the Convention, Mr. Clarke moved that the Constitution be referred to a committee of "three of the most critical scholars in the convention", to examine and report upon it. He said that he did not wish to be placed on the committee, as he did not include himself among "the most critical scholars of the convention". Notwithstanding this request he was made chairman of this committee and assumed the work of editing the Constitution.

Thus, from the opening to the close of the Convention, William Penn Clarke was a prominent figure. As Madison, Wilson, Morris, and others labored in formulating the Federal Constitution, so in the Iowa Constitutional Convention of 1857, William Penn Clarke worked for a better instrument of government and left his influence indelibly upon it. He remained in Iowa only a few years after the adoption of the Constitution, but he left behind him an influence such as was exerted by few men of his time.

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