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The Organic Act

In May, 1838, the Territory of Wisconsin extended from Lake Michigan westward to the Missouri River. The portions of that vast domain which were open for white settlement were rapidly filling with miners, farmers, and merchants. The population in the Black Hawk Purchase had doubled in two years. Congress had been asked to create a new Territory west of the Mississippi River. Not until the second session of the Twenty-fifth Congress was drawing to a close, however, did the measure receive serious attention. Passed by the Senate without debate, the bill to create the Territory of Iowa encountered stubborn opposition in the House of Representatives. Southern Congressmen contended that a new Territory in the North would disturb the "balance of power" to the disadvantage of the South.

Representative Charles Shepard of North Carolina presented the southern viewpoint. By creating the Territory of Iowa, he said, "a fresh rich

field might be opened to those who speculate in public lands, and a batch of new officials created for such as seek Executive favor". Opposed to any policy of westward expansion, he declared that "if the Territory of Iowa be now established, it will soon become a State; if we now cross the Mississippi, under the bountiful patronage of the Government, the cupidity and enterprise of our people will carry the system further, and ere long the Rocky Mountains will be scaled, and the valley of the Columbia be embraced in our dominion. This, then, is the time to pause".

Compensation of the Territorial officers was another subject of controversy. The original measure provided for a salary of \$2000 for the Governor and \$1500 additional for him as the Superintendent of Indian Affairs. An amendment was introduced to reduce these sums to \$1500 and \$1000 respectively. John Quincy Adams said he would always raise his voice against "extravagance" in government, but when the complaint was "merely against the salary of a Territorial Governor, whose jurisdiction extended over a great section of the country, and the effect was to save a thousand dollars" it was not the sort of retrenchment he favored. He did not think the salary proposed in the bill was too large. At length, however, the amendment was accepted.

In the Senate, Clement C. Clay of Alabama moved to extend the term of judges from four years to "good behavior". Senator Ambrose H. Sevier of Arkansas opposed the amendment, and spoke of the inconvenience of having officers for life, who must be continued in office, no matter how unqualified, unless they could be convicted under impeachment, which was an "exceedingly difficult" task. Senator John Norvell of Michigan favored the amendment and sought to clinch the argument by saying that if any defect or inconvenience resulted from the tenure for good behavior, the fault was in the Constitution of the United States, which, he contended, provided that all United States judges should hold office during good behavior. Territorial judges, Senator Norvell thought, were United States judges. "If they are not", he said, "they must be foreign judges, or no judges at all." Despite this argument, however, the amendment was lost.

The form of government was not questioned in Congress, for the organization outlined in the bill followed the traditional structure of Territorial governments. Accordingly, with minor differences reconciled, the House and Senate passed the organic act creating the Territory of Iowa on June 6th and the bill was signed by President Martin Van Buren on June 12, 1838.

The first section of the act provided that "from and after the third day of July next, all that part of the present Territory of Wisconsin which lies west of the Mississippi river, and west of a line drawn due north from the head waters or sources of the Mississippi to the Territorial line, shall, for the purposes of temporary government, be and constitute a separate Territorial Government by the name of Iowa".

After stipulating that nothing in the act should "be construed to inhibit" a further division by the Federal government, the organic act provided that the executive power and authority should be vested in the Governor. He should be appointed by the President of the United States, and hold office for three years, "unless sooner removed by the President". The Governor was required to reside within the Territory, be commander-in-chief of the militia, and perform the duties and receive the emoluments of the Superintendent of Indian Affairs. He could appoint inferior judicial officers, justices of the peace, sheriffs, and militia officers. It was also within his power to grant pardons for offenses against the laws of the Territory, and provisional reprieves for offenses against the laws of the United States.

An interesting innovation appears in the fact that the Governor was something more than the

chief executive. He was also a branch of the legislature. The organic act provided that "the legislative power shall be vested in the Governor and a Legislative Assembly". This arrangement was made effective by the stipulation that the Governor "shall approve of all laws passed by the Legislative Assembly before they shall take effect." Thus he was given the power of absolute veto, without designating the time or manner in which bills were to be approved or rejected.

In order to put the new government in operation, the Governor was directed to fix the time, place, and manner of conducting the first election. For this purpose he could cause a census of the inhabitants to be taken, but this was not necessary because the population had been counted in May. The Governor had the duty of declaring elected those candidates for the legislature who received the largest number of votes cast in each county or district for the seats to be filled. In case of a tie the Governor was directed to call a new election.

There can be no doubt that Congress intended that the Governor should be the real head of the Territorial government. His power of appointment, control of elections, direction of Indian relations, command of the militia, and pardoning power, combined with his extensive legislative authority endowed the first Governor of the Terri-

tory with a "power and prestige not since enjoyed by any Iowa executive — State or Territorial".

The third section of the organic act created the office of Secretary of the Territory, who should reside therein, and hold office for four years, unless sooner removed by the President of the United States. This officer stood next to the Governor in importance. In case of the death, removal, resignation, or necessary absence of the Governor from the Territory, the Secretary was authorized and required to execute and perform all the powers and duties of the Governor during such vacancy or necessary absence, or until another Governor should be appointed to fill the vacancy.

The Legislative Assembly was a representative body organized on the bicameral plan, and composed of a Council and House of Representatives. The Council consisted of thirteen members elected for terms of two years. The House of Representatives consisted of twenty-six members elected for terms of one year. The Legislative Assembly was required to meet annually, but no session could last longer than seventy-five days.

According to the organic act, the law-making power of the Assembly extended to "all rightful subjects of legislation". This appears to be a lavish grant of authority. Just what subjects were

contemplated is not clear, but judging from the Territorial laws that were passed and approved by the Governor, it is manifest that legislative competence included the establishment of local government, the creation of corporations, the protection of private property, the fulfillment of contracts, and the guarantee of personal security. Indeed, the sphere of legislation granted to the Territory was greater than that subsequently possessed by the State.

Legislative authority, however, was not unlimited. Specific prohibitions stipulated that "no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents." A general limitation provided that all laws be submitted to Congress for approval, and if disapproved by Congress they "shall be null and of no effect".

In addition to this there was a very brief bill of rights, which declared that the inhabitants of the Territory should be entitled "to all the rights, privileges and immunities heretofore granted and secured to the Territory of Wisconsin and to its inhabitants". Since the Territory of Wisconsin had been guaranteed the rights set forth in the Ordin-

ance of 1787, this instrument was by implication made a part of the organic act of the Territory of Iowa. Viewed in this larger sense, the organic act guaranteed that no man should "be deprived of his liberty or property, but by the judgment of his peers"; that there should be "neither slavery nor involuntary servitude" in the Territory, except in punishment for crimes; and that "religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

The judicial power of the Territory was "vested in a supreme court, district courts, and probate courts, and in justices of the peace." The Supreme Court consisted of a Chief Justice and two Associate Justices. They were appointed by the President for a period of four years, and were required to hold a term of court annually at the seat of government. The law further provided that the Territory should be divided into three judicial districts, that a district court should be held in each district by one of the judges of the Supreme Court, and that the judges should reside in the district respectively assigned to them.

At the national capital the Territory was represented by a Delegate who was elected by the people for a term of two years. The Delegate was

entitled to a seat in the House of Representatives where he could present memorials and participate in debate, but was not allowed to vote.

Touching the matter of salaries the organic act provided that the Governor should receive \$1500 a year as Governor and \$1000 as Superintendent of Indian Affairs. The Chief Justice and Associate Justices each received an annual salary of \$1500 and the Secretary was paid \$1200 a year. The compensation of members of the General Assembly was fixed at three dollars a day during attendance at the legislative session, and three dollars for each twenty miles traveled in going to and returning from the place of meeting, "by the nearest usually traveled route".

With regard to suffrage, the law provided that every free white male citizen of the United States, above the age of twenty-one years, who was an inhabitant of the Territory at the time of organization, should be entitled to vote at the first election, and be eligible to any elective office within the Territory. Subsequently the qualifications for electors were to be determined by the Legislative Assembly, subject only to the restriction that "the right of suffrage shall be exercised only by citizens of the United States."

As a whole the organic act was simple, direct, comprehensive, and effective. It was in the nature

of a constitution, drafted, however, by Congress, rather than by the residents of the Territory. Although subordinate to the Federal government, the Territory enjoyed a wide sphere of activity. The President of the United States was in theory the head of Territorial administration and exercised extensive appointive power. Notwithstanding this fact there was "a nice balance" between administration on the one hand and legislation on the other — a nice coördination between that which was supervised by the President and that which was controlled directly by the people of the Territory.

J. A. SWISHER