

# The PALIMPSEST

MARCH 1934

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BENJ. F. SHAMBAUGH

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### THE PURPOSE OF THIS MAGAZINE

THE PALIMPSEST, issued monthly by the State Historical Society of Iowa, is devoted to the dissemination of Iowa History. Supplementing the other publications of this Society, it aims to present the materials of Iowa History in a form that is attractive and a style that is popular in the best sense—to the end that the story of our Commonwealth may be more widely read and cherished.

BENJ. F. SHAMBAUGH

*Superintendent*

### THE MEANING OF PALIMPSESTS

In early times palimpsests were parchments or other materials from which one or more writings had been erased to give room for later records. But the erasures were not always complete; and so it became the fascinating task of scholars not only to translate the later records but also to reconstruct the original writings by deciphering the dim fragments of letters partly erased and partly covered by subsequent texts.

The history of Iowa may be likened to a palimpsest which holds the records of successive generations. To decipher these records of the past, reconstruct them, and tell the stories which they contain is the task of those who write history.

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# THE PALIMPSEST

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## Political Foundations

*No more fundamental or complex problem challenges the genius of mankind than the process of erecting a political structure. A sense of conscious responsibility and the inexorable power of democracy as displayed by the fathers of our Commonwealth are vividly portrayed in Benj. F. Shambaugh's volume on The Constitutions of Iowa, from which these pages are selected. — The Editor*

Three score years and ten after the declaration went forth from Independence Hall that "all men are created equal", and fifteen years before the great struggle that was to test whether a nation dedicated to that proposition can long endure, Iowa, "the only free child of the Missouri Compromise", was admitted into the Union on an equal footing with the original States.

Profoundly significant in the history of American Democracy are events such as these, since the real life of our Nation spreads throughout forty-eight Commonwealths and is lived in the

common places of the shop, the factory, the office, the mine, and on the farm. Through the Commonwealths the spirit of the Nation is best expressed; and every American community, however humble, participates in the formation and expression of that spirit. Nothing is more misleading than the idea that the life of our people is summed up in the census reports, the debates in Congress, and in the archives of the departments at Washington.

Here in the country west of the Mississippi a new Commonwealth has grown to maturity, and now by common consent occupies a commanding position in national politics. To narrate briefly the creation of this Commonwealth is the purpose of these pages. It is fitting that this should be done in commemoration of the one hundredth anniversary of the establishment of civil government in Iowa.

## Makers of the Constitution

Constitutions are not made: they grow. This thought is commonplace. And yet the growth of which men speak with such assurance is directed, that is determined, by the ideals and opinions of the people. Members of constituent assemblies and constitutional conventions neither manufacture nor grow Constitutions — they simply formulate current political ideals and opinions. It is in the social mind back of the convention, back of the government, and back of the law that the ideals of human right and justice are conceived, born, and evolved. A Constitution is a social product. It is the embodiment of popular ideals.

And so the real makers of the Constitutions of Iowa were not the men who first in 1844, then in 1846, and then again in 1857 assembled in the Old Stone Capitol on the banks of the Iowa River. The true "Fathers" were the people who, in those early times from 1830 to 1860, took possession of the fields and forests and founded a new Commonwealth. They were the pioneers, the frontiersmen, the squatters — the pathfinders in our political history. They were the real makers of our fundamental law.

All law and government rests upon the character of the people. Constitutions are the formulated expressions of political ethics. It is in this broad catholic sense that the ideals of pioneer character became the determining factors in Iowa's political evolution and the pioneers themselves the real makers of our fundamental law.

Two opinions have been expressed respecting the character of the early settlers of Iowa. Calhoun stated on the floor of Congress that he had been informed that "the Ioway country had been already seized on by a lawless body of armed men". Clay had received information of the same nature. Nor was the view expressed by these statesmen uncommon in that day. It was entertained by a very considerable number of men throughout the East and South, who looked upon the pioneers in general as renegades and vagabonds forming a "lawless rabble" on the outskirts of civilization.

The men who made these harsh charges were doubtless honest and sincere. But they were mistaken. Testimony based upon direct personal observation is overwhelmingly against the opinions they expressed. Lieutenant Albert M. Lea, who had spent several years in the Iowa District, wrote in 1836 that "the character of this population is such as is rarely to be found in our newly

acquired territories. With very few exceptions, there is not a more orderly, industrious, active, painstaking population west of the Alleghenies, than is this of the Iowa District."

The pioneers were young, strong, and energetic men — hardy, courageous, and adventurous. Caring little for the dangers of the frontier, they extended civilization and reclaimed for agriculture vast prairies and forests and deserts. They were distinguished especially for their general intelligence, their hospitality, their independence and bold enterprise. They built schoolhouses and supported schools, erected churches and observed the sabbath.

The frontier called for men with large capacity for adaptation — men with flexible and dynamic natures. Especially did it require men who could break with the past, forget traditions, and easily discard inherited political and social ideas. Above all the frontier was a great leveler. The conditions of life there were such as to make men plain, common, unpretentious — genuine. The frontier fostered the sympathetic attitude. It made men really democratic, and in matters political led to the threefold ideal of equality which constitutes the essence of American Democracy: equality before the Law; equality in the Law; equality in making the Law.

## Squatter Constitutions

It may seem strange to class the customs of the pioneers among the early laws of Iowa. At the same time history teaches that in the evolution of political institutions, customs precede statutes; written laws follow unwritten conventions; the legal is the outgrowth of the extra-legal; and constitutional government is developed out of extra-constitutional government. One need not search the records of antiquity nor decipher the monuments for illustrations of these truths; for in the early political history of Iowa there is a recurrence of the process of institutional evolution including the stage of customary law. In our local annals the extra-legal origin of laws and government is plainly writ.

Absence of legislative statutes and administrative ordinances on the frontier did not mean anarchy and disorder. The early settlers of Iowa were literally, and in the good old Anglo-Saxon sense, "lawful men of the neighborhood", who from the beginning observed the usages and customs of the community. Well and truly did they observe the customs relative to the making and holding of claims. And as occasion demanded

they codified these customs and usages into "Constitutions", "Resolutions", and "By-Laws". Crude, fragmentary, and extra-legal as were these codes, they nevertheless stand as the first written Constitutions in the history of the Commonwealth of Iowa. They were the fundamental laws of the pioneers; or, better still, they were Squatter Constitutions.

The Squatter Constitutions of Iowa, since they were a distinctive product of frontier life, are understood and their significance appreciated only when interpreted in the light of the conditions of western life and character.

It was through cession and purchase that the United States came into possession of the vast public domain of which the fertile farming fields of Iowa formed a part. Title to the land vested absolutely in the government of the United States. But the right of the Indians to occupy the country was not disputed. Until such right had been extinguished by formal agreement between the United States and the Indians, no white citizen was competent to make legal settlement therein.

The early settlers of Iowa had no legal right to advance beyond the surveyed country, mark off claims, and occupy and cultivate lands which had not been surveyed and to which the United States had not issued a warrant, patent, or certi-

ificate of purchase. But the pioneers on their way to the trans-Mississippi prairies did not pause to read the United States Statutes at Large. They outran the public surveyors. Some were bold enough to cross the Mississippi and put in crops even before the Indian title had expired; some squatted on unsurveyed lands; and others, late comers, settled on surveyed territory. The government of the United States made some successful effort to keep them off Indian soil. But whenever and wherever the Indian title had been extinguished, there the hardy pioneers of Iowa pressed forward determining for themselves and in their own way the bounds and limits of the frontier.

Hundreds and thousands of claims were thus located! Hundreds and thousands of settlers from all parts of the Union thus "squatted" on the national commons! All without the least vestige of legal right or title! In 1836, when the surveys were first begun, over 10,000 of these squatters had settled in the Iowa country. It was not until 1838 that the first of the public land sales were held at Dubuque and Burlington.

These marginal or frontier settlers (squatters, as they were called) were beyond the pale of constitutional government. No statute of Congress protected them in their rights to the claims they had staked out and the improvements they

had made. In *law* they were trespassers; in *fact* they were just plain, honest farmers.

It was to meet the peculiar conditions of frontier life, and especially to secure themselves in what they were pleased to call their rights in making and holding claims, that the pioneers of Iowa established land clubs or claim associations. Nearly every community in early Iowa had its local club or association. It is impossible to give definite figures, but it is safe to say that over one hundred of these extra-legal organizations existed in Territorial Iowa. Some, like the Claim Club of Fort Dodge, were organized and flourished after Iowa had become a State.

The influence of the Squatter Constitutions is clearly seen in a fourfold direction. First, they made it possible and practicable for the settlers to go upon the public domain (surveyed or unsurveyed) and establish homes without the immediate inconvenience of paying for the land. Secondly, they secured to the settlers the right to make improvements on the public lands and to dispose of them, or to purchase their improved land from the government at the minimum price of \$1.25 an acre.

Thirdly, they afforded settlers adequate protection in the peaceable possession and enjoyment of their homes without fear of being molested or

ousted, either by the government, or the newcomer, or the land speculator, until the land was offered for sale, or opened for entry, or until they were able to enter or purchase it for themselves.

Fourthly, they fostered justice, equality, and democracy on the frontier (*a*) by establishing order under a government founded upon the wishes of the people and in harmony with the peculiar conditions, social and economic, of the community, (*b*) by giving security alike to all bona fide settlers, (*c*) by limiting the amount of land any one settler could rightfully hold, (*d*) by requiring all disputes to be settled in regularly constituted courts, and (*e*) by conducting all public affairs in and through mass meetings, with the full knowledge and consent of all the people.

The Squatter Constitutions record the beginnings of local political institutions in Iowa. They were the fundamental law of the first governments of the pioneers. They were the fullest embodiment of the theory of "Squatter Sovereignty". They were, indeed, fountains of that spirit of western democracy which permeated the social and political life of America during the Nineteenth Century. But above all they expressed and, in places and under conditions where temptations to recklessness and lawlessness were greatest, they effectively upheld the Rule of Law.

## The Territory of Wisconsin

Even after the permanent settlement of the Iowa country in the early thirties and its union with the Territory of Michigan in 1834, constitutional government west of the Mississippi continued to be more nominal than real. This is true notwithstanding the fact that the archives of the Territory of Michigan show that the Governor and the Legislative Council made a serious attempt to provide for and put into operation local constitutional government.

In a memorial to Congress drawn up and adopted by a delegate convention of the people west of the Mississippi assembled at Burlington in November, 1837, this statement was made in reference to the two years from 1834 to 1836: "During the whole of this time the whole country . . . sufficient of itself for a respectable State, was included in the counties Dubuque and Des Moines. In each of these two counties there were holden, during the said term of two years, two terms of a county court . . . as the only source of judicial relief".

The position of the Iowa country for several months immediately preceding the organization of

the Territory of Wisconsin was indeed peculiar. In the eastern part of what had been the Territory of Michigan the people had framed and adopted a State Constitution. As early as October, 1835, they elected State officers. But on account of a dispute with Ohio over boundary lines, Congress was in no hurry to recognize the new State. For a time there were two governments — the government of the State of Michigan and the government of the Territory of Michigan — each claiming to be the only rightful and legitimate authority. It was not until January, 1837, that the existence of Michigan as a State was recognized at Washington.

The actual political status of the Iowa country prior to the organization of the Territory of Wisconsin is evident when to the documentary proof is added the testimony of the early squatters who declare that the only government and laws they knew or cared anything about were the organization and rules of the claim club. It is substantially correct to say, that the Territorial epoch in our history dates from the fourth day of July, 1836, when Wisconsin was constituted "a separate Territory," and that our first text of fundamental law, that is, the first Constitution of Iowa, was an act of Congress establishing the Territorial Government of Wisconsin.

The area of Wisconsin Territory west of the Mississippi was far more extensive than the area of the same Territory east of the river. In population the two areas were nearly equal; but the country west of the Mississippi tended to increase more rapidly than that east of the river. The importance of the western area is further evidenced by the removal of the capital in 1837 from Belmont in Eastern Wisconsin to Burlington in Western Wisconsin. The constitutional history of Wisconsin up to the division of the Territory in 1838 is, therefore, clearly a part of the Territorial history of Iowa.

The propriety of referring to the Organic Act of a Territory as a Constitution may be questioned. It is true that the act establishing the Territorial government of Wisconsin was not drawn up by the people of the Territory. It was not even submitted to them for ratification. Handed down to them by Congress, in the form of an ordinary statute, it was a product of legislation. Nevertheless, this instrument was a veritable Constitution, since it was a written body of fundamental law in accordance with which the government of the Territory was organized and administered. It was supreme, serving as the absolute rule of action for all departments and officers of the Territorial government.

## The Territory of Iowa

Scarcely had the act organizing the Territory of Wisconsin gone into effect, than an agitation for division was launched. By the fall of 1837 it had captured the public mind. The burden of the movement was taken up with enthusiasm by the inhabitants of the Iowa District. The people of Des Moines County were among the first to take formal action on what may well be called the first vital question in the history of the Constitutions of Iowa. At a meeting held in the town of Burlington on Saturday, September 16, 1837, they resolved "That while we have the utmost confidence in the ability, integrity and patriotism of those who control the destinies of our present Territorial Government, and of our delegate in the Congress of the U. States, we do, nevertheless, look to a division of the Territory, and the organization of a separate Territorial Government, by Congress, west of the Mississippi river, as the only means of immediately and fully securing to the citizens thereof, the benefits and immunities of a government of laws."

Delegates from seven organized counties west of the Mississippi met at the capitol in Burling-

ton on Monday, November 6, 1837, and organized themselves into a "Territorial Convention". In a memorial to Congress relative to the proposed division of the Territory, it was announced that representatives of the citizens of the Iowa District, "taking into consideration their remote and isolated position, and the vast extent of country included within the limits of the present Territory, and the utter impracticability of the same being governed as an entire whole," had availed themselves of their right of petition to ask for "the organization of a separate Territorial Government over that part of the Territory west of the Mississippi river." The members of the Legislative Assembly, impressed with the fact that the Iowa people were in earnest, also drew up a memorial within three weeks after the Convention had adjourned.

By January 1, 1838, the people had expressed their views. They had formulated their convictions into a definite request which called for immediate division of the Territory. The scene of debate and discussion now shifts from the prairies to the halls of Congress. Here on February 6, 1838, the Committee on Territories, to whom had been referred the memorials of the Territorial Convention and Legislative Assembly along with petitions from sundry citizens, and who had been

instructed "to inquire into the expediency of establishing a separate territorial government for that section of the present Territory of Wisconsin which lies west of the Mississippi river and north of the State of Missouri," reported such a bill.

In the report which accompanied this bill the Committee stated that they had become "satisfied that the present Territory of Wisconsin is altogether too large and unwieldy for the perfect and prompt administration of justice, or for the convenient administration of the civil government thereof." They were more specific in saying that "the judges of the Territory, as it now is, and also the Governor, district attorney, and marshal, are entirely unable to perform their respective duties in all parts of the Territory." They also pointed out that of the fifty thousand inhabitants in the Territory more than half resided west of the Mississippi River, that the population was rapidly increasing, that the natural line of division was the Mississippi River, that the capital would soon be removed to Eastern Wisconsin, and that "so much of the present Territory of Wisconsin as lies east of the Mississippi river must necessarily form one State."

It was not, however, until early in the month of June that "An act to divide the Territory of Wisconsin and to establish the Territorial Gov-

ernment of Iowa" passed both the Senate and the House of Representatives. On June 12, 1838, it received the approval of President Van Buren. As the Constitution of the Territory of Iowa it took effect on the sixty-second anniversary of the Independence of the American Nation. In the chronology of our Constitutions it stands as the second code or text of fundamental law.

But the Territory of Iowa was not established without opposition in Congress. From the records it appears that the sympathies of the Representatives were not all with the people on the frontier. Mr. Shepard of North Carolina intimated that the bill had been introduced to the end that "a fresh and rich field might be opened to those who speculate in the public lands, and a batch of new offices created for such as seek Executive favor". He had no sympathy with the squatters. "Who are these that . . . pray for the establishment of a new Territory? Individuals who have left their own homes, and seized on the public land. . . . These men pounced on the choicest spots, cut down the timber, built houses, and cultivated the soil as if it was their own property. . . . Without the authority of law, and in defiance of the Government, they have taken possession of what belongs to the whole nation, and appropriated to a private use that

which was intended for the public welfare. . . .  
The majesty of the laws should be vindicated."

The Representative from North Carolina was jealous of the growth and development of the West, and he objected to the liberal land policy of the United States since it encouraged the young men to leave their southern homes. 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 this Government, the cupidity and enterprise of our people will carry the system still 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."

The spirited debate, which took place in the House of Representatives, on the question of the establishment of the Territorial government of Iowa disclosed the fact that the creation of a new Territory at this time west of the Mississippi and north of Missouri was of more than local interest; it was, indeed, an event in the larger history of America. Some few men were beginning to realize that the rapid settlement of the Iowa country was not an isolated provincial episode but the surface manifestation of a current that was of National depth.

## Agitation for Statehood

The early agitation for the establishment of a State government can not rightly be interpreted as disaffection with the Territorial government. On the contrary, it was altogether natural for the people who settled in the new Territory west of the Mississippi to look forward to the early establishment of a State government. In fact it was everywhere understood that the Territorial organization was at most a temporary arrangement which in time would give way to the more perfect Constitution of the Commonwealth. Then, too, in the case of Iowa there was such a rapid growth of population that admission into the Union could not long be delayed under any circumstance.

The movement for the establishment of a State government was inaugurated by Robert Lucas as early as November 4, 1839. The Governor was of the opinion that in view of the "rapidly increasing population, and advancing prosperity of the Territory" the Legislative Assembly might "with propriety proceed to measures preparatory to the formation of a Constitution and State Government". He knew that some would object to such measures as premature, "inasmuch as our ex-

penses are defrayed by the United States", while the financial burdens of a State government would all have to be borne by the people.

He earnestly recommended to the Legislative Assembly "the early passage of a memorial to Congress, respectfully asking of that body the passage of an Act, at their ensuing session, granting to the inhabitants of Iowa Territory, the right to form a Constitution and State Government, and to provide for their admission into the Union upon an equal footing with the original States." Furthermore, the Governor recommended "the passage of a law to provide for the calling a convention to form a state constitution, so soon as Congress may grant by law the privilege to do so." He was seriously in earnest.

But the Legislative Assembly was more conservative. At the regular session of 1839-40 it neither memorialized Congress on admission into the Union nor passed a law providing for the calling of a Convention to form a Constitution. In opposition to the recommendations of the Governor and the views of a minority in the Assembly, it was argued (1) that the establishment of State government would increase the burdens of taxation "which must render the new State Government burthensome as well as odious to the people", (2) that "it could not add to the

prosperity of the agriculturalist, the merchant, the miner, or the mechanic; nor could it render any more fruitful the sources of profit which are open to honest industry and application", and (3) that the people of the Territory enjoy under the acts of Congress ample liberty and freedom in self-government. The second Legislative Assembly of the Territory was not willing to assume the responsibility of measures looking toward so radical a change in the political status of the people of Iowa.

The Assembly was willing, however, to allow the people to decide the question at the annual August elections of 1840. All who favored the calling of a Convention were required to write "Convention" on their ballots; while all who opposed the proposition were required to write "No Convention". When the official returns were counted the Governor in a proclamation declared the result to be 937 votes for and 2,907 votes against a Convention. The defeat, which was decisive, indicated that the squatters had not yet paid for their claims. And so the Organic Act of 1838 continued to serve the people of Iowa as the code of fundamental law.

When Governor Chambers sent his first message to the Legislative Assembly in December, 1841, he thought a vote on the question of a Con-

vention would demonstrate a marked change in sentiment among the people. First, the population of the Territory had increased phenomenally since August, 1840. Secondly, Congress had passed the "Distribution Act" which provided (a) that Iowa should participate in the *pro rata* distribution, along with the twenty-six States and three Territories, and the District of Columbia, of the net proceeds of the sales of public lands, and (b) that five hundred thousand acres of land for internal improvements should be granted to every new State that should be admitted into the Union. John Chambers thought the liberal provisions of the Distribution Act would remove the grounds of all objections based upon the argument that State organization would be followed by burdensome taxes. In the light of these considerations he recommended that the question of a Convention be again submitted to the people. Following this recommendation, the third Legislative Assembly passed "An Act to provide for the expression of the opinion of the people of the Territory of Iowa, upon the subject of the formation of a State Constitution and Government".

As to the propriety and wisdom of calling a Constitutional Convention there was from the beginning a decided difference of opinion. In favor of a Constitutional Convention it was urged

that the admission of Iowa into the Union would result in a more rapid increase in the population by immigration, since immigrants as a rule preferred States to Territories. Again, admission into the Union would give Iowa more influence at Washington, which would probably mean generous appropriations by Congress for the improvement of the rapids of the Mississippi. Politically the change would place the new Commonwealth on an equal footing with the other States, give the people a voice in the election of a President in 1844, and secure to them the long desired privilege of choosing their own Governor. It was even claimed that Statehood would promote character, foster independence, engender State pride, and inspire dignity. Finally, it was suggested that if Iowa did not hasten to make application for admission into the Union, Florida, the slave Territory which was then ready to be admitted, would be paired with Wisconsin.

On the other hand, the opponents of State organization were quite willing "to let good enough alone." They were satisfied with Territorial government and saw no good reasons for a change. They were not unmindful of the fact that under the existing arrangement the expenses of the Territorial government were paid out of the Treasury of the United States. Then, too,

the Whigs thought that the whole movement in favor of a State government savored of "jobs" and party aggrandizement.

Furthermore, some declared that Iowa was too young for Statehood, her resources were too limited, and the people were hardly prepared for the adoption of State government. Ralph P. Lowe, a future Governor, argued that the change would be undesirable because there really were no eminent men in the Territory fitted for the tasks of State government. This was intimating that the pioneers of Iowa were incapable of self-government.

But the vital argument against this or any measure looking toward the establishment of a State government was the one which appealed directly to the people as tax-payers. Salaries of Territorial officers, the expense of printing the laws, the erection of public buildings, and other incidental expenses were all paid out of the Treasury of the United States. A change from Territorial to State organization meant that in the future these public expenditures would have to be met by warrants drawn on the Treasury of the State, the coffers of which must be supplied through local taxation. The people protested. The men who were industriously breaking the prairies, clearing the forests, and raising corn pre-

ferred to invest their small earnings in lands and plows and live stock.

Under the circumstances a majority of the voters were not willing to abandon the Territorial organization for the "dignity" of a Commonwealth government. At the general elections in August, 1842, every county in the Territory returned a majority *against* a Convention.

Again in 1844 the Legislative Assembly responded to the Governor's suggestion that the people of the Territory be given another opportunity to express an opinion on what had come to be the most interesting question in local politics. In many respects the campaign of the spring of 1844 was a repetition of the campaign of 1842. On the main issue the political parties were divided as before, that is, the Democrats favored and the Whigs opposed the calling of a Convention. In the public speeches and in the utterances of the press all the old arguments of 1840 and 1842 were again paraded. But two years of growth and reflection had wrought a change in sentiment. The public mind had evidently settled down in favor of State organization. At the elections in April, 1844, the people returned a large majority in favor of calling a Constitutional Convention.

## The Convention of 1844

Seventy-three delegates to the Constitutional Convention were elected at the general Territorial elections in August, 1844. These delegates were chosen on partisan grounds. With the electorate the primary question was not, "Is the candidate well grounded in the principles of government and administration?" but "What are his political affiliations?" When the votes were counted it was found that the Democrats had won a great victory. The Whigs had succeeded in electing less than one-third of the delegates.

Events were making rapidly toward the realization of State government. On Monday, October 7, 1844, the delegates met in the Old Stone Capitol at Iowa City and organized themselves into a constituent assembly. The honor of the Presidency fell to Shepherd Leffler of Des Moines County, who admonished the delegates on the "permanent, elementary, and organic" character of their work. "Your enactments", he said, "are to be permanent and lasting, sovereign and supreme, governing, controlling and directing the exercise of all political authority, executive, legislative and judicial, through all time to come."

Of the seventy-two members who labored in the Convention and signed the Constitution there were twenty-one Whigs and fifty-one Democrats. Twenty-six of the delegates were born in the South, twenty-three in the Middle States, ten in the New England States, ten in the States of the Old Northwest, one in Germany, one in Scotland, and one in Ireland. Of those born in the United States thirteen were from Pennsylvania, eleven from Virginia, nine from New York, eight from Kentucky, eight from Ohio, six from North Carolina, six from Vermont, and one each from Massachusetts, Connecticut, New Hampshire, Maine, New Jersey, Tennessee, Indiana, and Illinois. The oldest member was sixty-six, the youngest twenty-seven; while the average age of all was about forty years. As to occupation or profession, there were forty-six farmers, nine lawyers, five physicians, three merchants, two mechanics, two miners, two mill-wrights, one printer, one miller, and one civil engineer.

The Convention lost no time in procrastinating delays. Committees were prompt in making reports. Parliamentary wranglings were infrequent. There was no filibustering. The discussions were, as a rule, neither long, wordy, nor tiresome. Indeed, the proceedings were throughout conducted in a businesslike manner. The Democrats

were determined to frame a Constitution in accordance with what they were pleased to call "the true principles of Jeffersonian Democracy and Economy"; and they had the votes to carry out this determination. And yet the proceedings of the Convention were by no means formal and without enlivening discussion. The fragments of the debates contain many remarks suggestive of the life, character, and political ideals of the people of early Iowa.

The liberal religious spirit of the pioneers is evidenced by the principle of toleration which was incorporated into section four of the Bill of Rights. As introduced by the committee the section provided that "no religious test shall be required as qualification for any office or public trust, and no person shall be deprived of any of his rights, privileges, capacities, or disqualified for the performance of any of his duties, public or private, in consequence of his opinion on the subject of religion." To make sure that it did not exclude atheists from giving testimony in the courts, Mr. Galbraith moved to insert the words "or be rendered incompetent to give testimony in any court of law or equity." When the test vote was taken it was found that only nine members of the Convention were willing to deny to atheists the right to give testimony in the courts.

An interesting debate on salaries culminated in fixing the compensation of the State officers "for the first ten years after the organization of the government." Sums ranging from \$600 to \$1200 were suggested for the Governor. Mr. Hooton "thought the salary was about right at \$1000." Mr. Davidson said that "he came here to go for low salaries. He did not like \$1000". The Convention finally agreed upon \$800 as a proper salary for the Governor of the State of Iowa, \$500 for the Secretary of State, and \$300 for the Treasurer. The Judges of the Supreme Court were allowed the same pay as the Governor.

Not even the Judiciary was spared from the influence of western Democracy as it asserted itself in the Convention of 1844. The day of executive appointment and life tenure of judges had passed or was passing. The Committee on the Judiciary recommended that "the Judges of the Supreme Court and District Court, shall be elected by the joint vote of the Senate and House of Representatives, and hold their office for the term of six years;" but a minority report, introduced by Mr. Fletcher, proposed that all of the Judges be elected by the qualified voters of the State.

In discussing this question the Convention desired to follow the wishes of the people; but it

was not known that the people themselves really desired to elect the Judges. On the other hand there is no evidence that anyone favored executive appointment. The outcome of the debate was a compromise. The Judges of the Supreme Court were to be named by the General Assembly; but the Judges of the District Court were to be elected by the people.

That the pioneers of Iowa, including the members of the Convention of 1844, were democratic in their ideals is certain. They believed in equality. They had faith in Jeffersonianism. They clung to the dogmas of the Declaration of Independence. They were sure that all men were born equal, and that government to be just must be instituted by and with the consent of the governed. Such was their professed philosophy. Was it universally applicable? Or did the system have limitations? Did the Declaration of Independence, for example, include negroes?

The attitude of the Convention on this perplexing problem was probably expressed in the remarkable report of a select committee. They freely admitted "that all men are created equal, and are endowed by their Creator with equal unalienable rights," and that these rights are "as sacred to the black man as the white man, and should be so regarded." At the same time they

looked upon this declaration as "a mere abstract proposition" which, "although strictly true, when applied to man in a state of nature . . . becomes very much modified when man is considered in the artificial state in which government and society places him. . . .

"However your committee may commiserate with the degraded condition of the negroes, and feel for his fate, yet they can never consent to open the doors of our beautiful State and invite him to settle our lands. The policy of other States would drive the whole black population of the Union upon us. The ballot box would fall into their hands and a train of evils would follow that in the opinion of your committee would be incalculable. The rights of persons would be less secure, and private property materially impaired. The injustice to the white population would be beyond computation. There are strong reasons to induce the belief that the two races could not exist in the same government upon an equality without discord and violence, that might eventuate in insurrection, bloodshed and final extermination of one of the two races. No one can doubt that a degraded prostitution of moral feeling would ensue, a tendency to amalgamate the two races would be superinduced, a degraded and reckless population would follow; idleness, crime

and misery would come in their train, and government itself fall into anarchy or despotism."

Although the report was laid on the table, it nevertheless represented the dominant opinion then prevalent in Iowa. Our pioneer forefathers believed that the negroes were men entitled to freedom and civil liberty. But more than a score of years had yet to elapse before there was in their minds no longer "a doubt that all men [including the negroes] are created free and equal."

When the delegates were elected to the Convention of 1844, the people of the Territory were still suffering from the effects of over-speculation, panic, and general economic depression. Many of them still felt the sting of recent bank failures and the evils of a depreciated currency. Hence it is not surprising to learn from the debates that not a few of the delegates came to the Convention instructed to oppose all propositions which in any way favored corporations, especially banking corporations.

Mr. Hall said that "Banking was a spoiled child; it had been nursed and petted till it had become corrupt." He objected to banking "because it conferred privileges upon one class that other classes did not enjoy." He believed that the people would find that "a Bank of earth is the best Bank, and the best share, a Plough

share." Mr. Gehon wanted to put his "feet upon the neck of this common enemy of mankind." In accord with this attitude, the Convention declared that "no bank or banking institution, or corporation with banking privileges" should be created without the specific consent of the people.

From the viewpoint of subsequent events the most significant provision of the Constitution of 1844 was the one which defined the boundaries of the future State. The Convention favored certain lines which were in substance the boundaries recommended by Governor Lucas in 1839. The Lucas boundaries were based upon the topography of the country as determined by rivers. On the east was the Mississippi, on the west the Missouri, and on the north the St. Peters. These natural boundaries were to be connected and made continuous by the artificial lines of the surveyor on the south and between the mouths of the Big Sioux and the Blue Earth rivers.

On Friday morning, November the first, the Constitutional Convention of 1844 adjourned *sine die* after a session of just twenty-six days. The Constitution of 1844 as submitted by the Convention to Congress and to the people of the Territory of Iowa contained thirteen articles, one hundred and eight sections, and over seven thousand words.

## The Constitution Rejected

On January 7, 1845, the Committee on Territories reported a bill for the admission of Iowa and Florida into the Union. It passed the House of Representatives on February 13, 1845, by a vote of one hundred and forty-five to forty-six. The Senate considered the measure on March 1st, and passed it without alteration by a vote of thirty-six to nine. On March 3, 1845, the act received the signature of President Tyler.

When Iowa applied for State organization in 1844, Florida had been waiting and pleading for admission ever since the year 1838. The reason for this delay was the avowed policy of admitting States not singly but in pairs. Florida was waiting for a companion. And so in 1844 it fell to Iowa to be paired with the peninsula. The principle involved was not new; but never before had two States been coupled in the same act of admission. The object sought was plainly the maintenance of a *balance of power* between the North and the South.

But back of the principle of the balance of power, and for the preservation of which that principle was invoked, stood slavery. The institu-

tion of free labor in the North was balanced by the institution of slave labor in the South, to preserve both. And so the admission of Iowa and Florida had to be determined in reference to this all-devouring question of National politics.

Now it so happened that the opposing forces of slave labor and free labor, of "States Rights" and "Union", came to an issue over the boundaries of the proposed State of Iowa. In the bill for admission, as reported by the House Committee on Territories, the boundaries proposed in the Iowa Constitution were retained without alteration. But Mr. Duncan, of Ohio, had other limits to propose. He would have the new State of Iowa bounded as follows: "beginning in the middle of the St. Peter's river, at the junction of the Watonwaer or Blue Earth river with the said river St. Peter; running thence due east to the boundary line of the Territory of Wisconsin, in the middle of the Mississippi river; thence down the middle of the last named river with the boundary line of the Territory of Wisconsin and State of Illinois to the northeast corner of the State of Missouri, in said river Mississippi; thence westwardly with the boundary line of said State of Missouri to a point due south from the place of beginning; thence due north to the place of beginning in said St. Peter's river."

Mr. Duncan pointed out that these were the boundaries proposed by Nicollet in the report which accompanied the publication in January, 1845, of his map of the basin of the Upper Mississippi. He preferred the Nicollet boundaries because they were "the boundaries of nature" and at the same time they left sufficient territory for the formation of two other States in that western country.

On the other hand, Mr. Brown, Chairman of the Committee on Territories, said that the question of boundaries had been carefully investigated by his committee, "and the conclusion to which they had come was to adhere to the boundary asked for by the people of Iowa, who were there, who had settled the country, and whose voice should be listened to in the matter."

The arguments for restriction prevailed, and the Duncan amendment, which proposed to substitute the Nicollet boundaries for the Lucas boundaries, passed the House of Representatives by a vote of ninety-one to forty. In the Senate the bill as reported from the House was hurried through without much debate. Here the question of boundaries seems to have received no consideration whatever.

No good reason had been urged showing why Iowa should not be admitted into the Union. All

of the essential qualifications for Statehood were present — a large and homogeneous population, wealth, *morale*, and republican political institutions. Congress did not pass an adverse judgment on the government provided by the Constitution of 1844. Only the boundaries were modified.

While Congress was discussing the area of Iowa and carefully considering the effect which the admission of the new State might possibly have upon matters of National concern, the Constitution of 1844 was being subjected to analysis and criticism throughout the Territory. Moreover, it is interesting to note that the only provision of the Constitution which was held up and debated in Congress was the very one which was generally accepted by the people of the Territory without comment. Whigs and Democrats alike were satisfied with the Lucas boundaries. Nor did the people of Iowa at this time think or care anything about the preservation of the "balance of power". Their adoption of, and adherence to, the Lucas boundaries was founded upon local pride and commercial considerations.

Opposition to the Constitution of 1844 was at the outset largely a matter of partisan feeling. The Whigs very naturally opposed the ratification of a code of fundamental law which had been

formulated by a Democratic majority. Then, too, they could not hope for many of the Federal and State offices which would be opened to Iowans after the establishment of Commonwealth organization. And so with genuine partisan zeal they attacked the instrument from Preamble to Schedule. Nothing escaped their ridicule and sarcasm.

As a party the Democrats favored the Constitution of 1844, defended its provisions, and urged its adoption by the people. They held that as a code of fundamental law it was all that could be expected or desired, and with a zeal that equaled in every way the partisan efforts of the Whigs they labored for its ratification at the polls.

An examination of the arguments as set forth in the Territorial press reveals two groups of citizens who opposed ratification. First, there were those who were hostile to the Constitution because they did not want State government. Secondly, there were others who could not subscribe to the provisions and principles of the instrument itself.

Fortunately for the cause of the opposition a new and powerful objection to ratification appeared in the closing weeks of the campaign. The news that Congress had, by the act of March 3, 1845, rejected the boundaries prescribed by the Iowa Convention reached the Territory just in

time to determine the fate of the Constitution of 1844. It was thought that a ratification of the Constitution would carry with it an acceptance of the Nicollet boundaries, while a rejection of the Constitution would imply a decided stand in favor of the Lucas boundaries. The Constitution of 1844 was rejected by a majority of 996 votes.

Believing that the rejection of the Constitution by the people called for some action on the part of the Assembly, Governor Chambers proposed that the question of calling another Convention to draft a new constitution, be referred to the people. But a majority of the Assembly were in favor of re-submitting the Constitution of 1844 with the Lucas boundaries. Just what effect ratification would have was uncertain.

The campaign of the summer of 1845 was very much like the campaign of the spring. All of the leading arguments both for and against the Constitution were repeated in the press and on the stump. The parties divided on the same lines as before, except that the opposition had the assistance of a much larger Democratic contingent.

The official returns of the August election showed that the Constitution of 1844 had been rejected a second time. But the majority against its ratification had been cut down by at least one-half.

## The Convention of 1846

When the members of the Eighth Legislative Assembly of the Territory of Iowa met in the Old Stone Capitol on the first Monday of December, 1845, they found that, as a result of the rejection of the Constitution of 1844, they were face to face with the question which for six years had confronted the pioneer law-makers of Iowa as the greatest political issue of the Territorial period. They found that the whole problem of State organization was before them for reconsideration.

Confident that the people of Iowa really desired State organization and were anxious for its immediate establishment, the Legislative Assembly passed a bill providing for the election of delegates to a Constitutional Convention.

Of the thirty-two delegates who were elected to seats in the Convention of 1846, ten were Whigs and twenty-two were Democrats. Fifteen of the members were born in the South, eight in the New England States, four in the Middle States, and five in Ohio. Of those born in the South six were from Kentucky, four from Virginia, three from North Carolina, one from Alabama, and one from Maryland. The eight mem-

bers born in New England were four from Vermont and four from Connecticut. The oldest member of the Convention was sixty-seven, the youngest twenty-three; while the average age of all was about thirty-seven years. As to occupation, there were thirteen farmers, seven lawyers, four merchants, four physicians, one mechanic, one plasterer, one smelter, and one trader.

It was on the morning of May 4, 1846, that the second Constitutional Convention met in the rooms of the Old Stone Capitol at Iowa City. Immediately after the roll had been called, Enos Lowe, of Des Moines County, was chosen, *viva voce*, President of the Convention. When the officers had been selected, "The Reverend Mr. Smith invoked a blessing from Deity upon the future labors of the Convention." This was the only prayer offered during the entire session.

It is unfortunate that only the barest fragments have been preserved of what was said in the Convention of 1846. The official journal and a few speeches are all that have come down to us. The debates could not have been very long, however, since the entire session of the Convention did not cover more than fifteen days.

The discussion for the most part was confined to those subjects upon which there had been a marked difference of opinion in the earlier Con-

vention or which had received attention in the campaigns of 1845. Indeed, the fact that Boundaries, Incorporations, Banks, Salaries, Suffrage, Executive Veto, Elective Judiciary, and Individual Rights were among the important topics of debate is evidence of a desire on the part of the Convention to formulate a code of fundamental law that would not meet with the criticisms which were so lavishly heaped on the Constitution of 1844.

The Constitution of 1846 was modeled upon the Constitution of 1844, although it was by no means a literal copy of that twice rejected instrument. Both codes were drawn up according to the same general plan, and were composed of the same number of articles, dealing substantially with the same subjects. The Constitution of 1846, however, was not as long as the Constitution of 1844 and was throughout more carefully edited.

As to boundary specifications, the only material difference is found in the shifting of the line on the north from the St. Peters to the parallel of forty-three and one-half degrees of north latitude. This new boundary was a compromise between the boundaries suggested by Lucas and those proposed by Nicollet.

## New Boundaries

While the people of the Territory of Iowa were preparing for and holding a second Constitutional Convention, and while they were debating the provisions of the new Constitution of 1846, Congress was reconsidering the boundaries of the proposed State.

As early as December, 1845, Delegate Augustus C. Dodge had introduced a bill to amend the act of admission by restoring the Lucas boundaries. Later, however, Stephen A. Douglas proposed the compromise line of forty-three degrees and thirty minutes for the northern boundary. For more than two months this bill was on the House calendar without being considered. Meanwhile, the same parallel had been adopted as the northern boundary by the Constitutional Convention in Iowa.

On the ninth of June, the Douglas amendment was taken up by the House and passed. It was reported to the Senate without delay, but was not passed by that body until the first day of August. On the fourth day of August the act received the approval of President Polk.

The strongest speech, perhaps, in the whole de-

bate was that of the Iowa Delegate. Mr. Dodge reviewed the history of the boundary dispute and pointed out that both he and the people of Iowa had pursued a firm and honorable course. He showed that many of the States were as large as or even larger than the proposed State of Iowa. Referring to the boundary proposed in the act of March 3, 1845, he said: "It will never be accepted by the people of Iowa." But he produced letters to show that members of the Iowa Convention of 1846 were willing to accept the compromise boundary proposed in the bill under discussion. "I admonish the majority of this House", he said, that if they diminish the territory, "they might as well pass an act for our perpetual exclusion from the Union. Sir, the people of Iowa will never acquiesce in it."

## Admission Into the Union

When submitted to the people the Constitution of 1846 was vigorously opposed by the Whigs who insisted that it was a party instrument. They declared that its ratification would "prove greatly detrimental, if not entirely ruinous to the nearest and dearest interests of the people, by retarding the growth of the proposed State, in population, commerce, wealth and prosperity."

They were supported by the more conservative Democrats who protested especially against the article on incorporations and the article on amendments. A large majority of the people, however, were impatient for admission to the Union. For the time they were even willing to overlook the defects of the proposed Constitution.

Yet the Constitution of 1846 narrowly escaped defeat. At the polls on August 3, 1846, its supporters, according to the Governor's proclamation, were able to command a majority of only 456 out of a total of 18,528 votes.

In accordance with the provisions of the new Constitution, the Governor designated October 26, 1846, as the time for holding the first general election for state officers. It was on Thursday,

December 3rd, that the Senators and Representatives assembled in the Hall of the House of Representatives in the Old Stone Capitol to witness the inaugural ceremonies. Here in the presence of the General Assembly, the Chief Justice of the Supreme Court of the Territory administered the oath of office to Ansel Briggs, the first Governor of the State of Iowa.

On December 15, 1846, Mr. Dodge presented to the House of Representatives at Washington a copy of the Constitution of Iowa. The document was at once referred to the Committee on Territories, from which a bill for the admission of Iowa into the Union was reported through Stephen A. Douglas on December 17th. It was made a special order of the day for Monday, December 21st, when it was debated and passed. Reported to the Senate on the twenty-second, it was there referred to the Committee on the Judiciary. This Committee reported the bill back to the Senate without amendment. After some consideration it passed the Senate on December 24th. Four days later it received the approval of President Polk. The existence of Iowa as one of the Commonwealths of the United States of America dates, therefore, from the TWENTY-EIGHTH DAY OF DECEMBER, ONE THOUSAND EIGHT HUNDRED AND FORTY-SIX.

## Comment by the Editor

### *THE TALENT OF SELF-GOVERNMENT*

Deep in the heart of every man is a sense of his own consequence. All men are born important. Children are by nature individualists. No matter how blurred the feeling of personal significance may become in the adversities of life, it is inherent still. Submerged beneath accumulated frustration, or controlled by the exigencies of social discipline, the egotistic character of personality survives. Complete freedom of expression may be denied, but the natural desire for independent conduct smolders in the breast of the most humble citizen. In a negative way this individualism is akin to the instinct of self-preservation. Positively it culminates in self-government.

Government requires more than individual self-control: personal discipline must be amalgamated into social righteousness. He who can govern himself must also deal justly with others. The competent ruler is guided by knowledge, persuaded by reason, and strives to promote the common good. Nothing is more difficult. And yet people attempt to govern themselves. Their

audacity, springing from the egoism in human nature, dares to administer the altruism of social welfare.

Between the aspiration for autonomy and the just administration of public affairs, however, lies a wide gulf of experience. The processes of self-government are no more automatic than the skill of artistic expression. Even a bird must learn to fly. Ambition alone does not produce mastery. Given the innate predilection, the ultimate achievement of autonomy can be attained only through extensive opportunity for individual initiative, self-reliance, and social responsibility. When a people can fulfill such qualifications they are capable of self-government.

To an amazing degree the pioneers of Iowa assumed the power and accepted the responsibility of governing themselves. The demonstration of their competence is revealed in the endurance of the political institutions they established.

J. E. B.

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