

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.