Shambaugh Benjamin Franklin

History of the Constitutions of Iowa

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PREFACE

To recur occasionally to the history and ideals of our pioneer forefathers will give us a more generous appreciation of the worth of our Commonwealth and a firmer faith in our own provincial character. It is believed that a more intimate knowledge of the political history of our own Commonwealth will not only inspire local patriotism, but give us a better perspective of the political life of the Nation.

This little volume was written for publication by the Historical Department of Iowa upon the request of Mr. Charles Aldrich. Since the work is intended as a narrative essay, it has been thought best to omit all foot-note citations to authorities. For the original sources upon which the essay is largely based the reader is referred to the author's collections of documentary materials which have been published by the Iowa State Historical Society. Quotations used in the body of the text have been reprinted *literatim* without editing.

The Convention of 1857 and the Constitution of 1857 have been little more than noticed in chapters XIX and XX. An adequate discussion of these subjects would have transcended the limits set for this volume by several hundred pages.

The author wishes to express his obligations to his friend and colleague, Professor W. C. Wilcox, of the University of Iowa, who has carefully read the proof-sheets of the whole volume.

BENJ. F. SHAMBAUGH.

UNIVERSITY OF IOWA

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I
INTRODUCTION

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 our political evolution are events such as these. They are milestones in the progressive history of American Democracy.

To search out the origin, to note the progress, to point to the causes, and to declare the results of this marvelous popular political development in the New World has been the ambition of our historians. Nay more, the "American experiment" has interested the talent of Europe; and our political literature is already enriched by De Tocqueville's "*Democracy in America*," by von Holst's "*Constitutional and Political History of the United States*," and by Bryce's "*American Commonwealth*." Ever since its adoption the Constitution of the "Fathers" has been the most popular text-book of constitution drafters the world over.

At the same time it is strangely true that the real meaning, the philosophical import, of this interesting political drama has scarcely anywhere been more than suggested. A closer view reveals the fact that all of the documents themselves have not yet been edited, nor the narrative fully told. At present there is not a chapter of our history that is wholly written, though the manuscript is worn with erasures.

To be sure, Bancroft has written exhaustively of the Colonies; Fiske has illuminated the Revolution and portrayed the "Critical Period;" Frothingham has narrated the "Rise of the Republic;" Parkman has vividly pictured events in the Northwest; McMaster has depicted the life of the people; von Holst has emphasized the importance of slavery; Rhodes has outlined more recent events; and a host of others have added paragraphs, chapters, monographs, and volumes to the fascinating story of the birth and development of a Democratic Nation. But where are the classics of our local history? Who are the historians of the Commonwealths?

These questions reveal great gaps in our historical literature on the side of the Commonwealths. Nor have the omissions passed unnoticed. Bryce likens the history of the Commonwealths to "a primeval forest, where the vegetation is rank and through which scarcely a trail has been cut." And yet it is clearly evident that before the real import of American Democracy can be divined the forest must be explored and the underbrush cleared away.

This is not a plea for localism or particularism. On the contrary, it suggests the possibility of a broader view of our National life. It points to the source of our political ideals. For nothing is more misleading than the inference that the life of our people is summed up in the Census Reports, the Journals of Congress, and the Archives of the Departments at Washington.

The real life of the American Nation spreads throughout forty-five Commonwealths. It is lived in the commonplaces of the shop, the factory, the office, the mine, and the farm. Through the Commonwealths the spirit of the Nation is expressed. Every American community, however humble, participates in the formation and expression of that spirit.

Thus the real significance of the Commonwealth in any philosophical consideration depends not so much upon its own peculiar local color as upon the place which it occupies in the life and development of the larger National whole.

It is so with Iowa. Here within the memory of men still living a new Commonwealth has grown to maturity, has been admitted into the Union, and now by common consent occupies a commanding position in National Politics. It is, moreover, from the view-point of these larger relations that the

political and constitutional history of Iowa will ultimately be interpreted. No amount of interest in merely local incident or narration of personal episode will suffice to indicate the import of Iowa's political existence. He who essays to write the history of this Commonwealth must ascend to loftier heights.

To narrate briefly the history of the Constitutions of Iowa, and therein to suggest, perhaps, somewhat of the political ideals of the people and the place which this Commonwealth occupies politically in the progressive history of the larger Commonwealth of America, is the purpose of these pages.

II
A DEFINITION

Definition is always difficult; it may be tiresome. But when a term has come to have many different meanings, then no one who seriously desires to be understood can use it in the title of a text without at least attempting a definition. This is true of the word "Constitution," which in the literature of Political Science alone has at least three distinct meanings corresponding to the three points of view, that is, the philosophical, the historical, and the legal.

From the view-point of Political Philosophy the word "Constitution," stands for the fundamental principles of government. It is the sum (1) of the general and basic principles of all political organization by which the form, competence, and limitations of governmental authorities are fixed and determined, and (2) of the general and basic principles of liberty, in accordance with which the rights of men living in a social state are ascertained and guaranteed. In short, it is the sum of the ultimate principles of government.

But from the view-point of Historical Politics this word has a different connotation. Consider, for example, the political literature that appears under such headlines as "Constitutional History" or the "History of Constitutional Government." Here Constitution means not abstract philosophic principles of Government, but concrete political phenomena, that is, political facts. Our constitutional historians do not as a rule deal directly with the ultimate principles of government; but they are concerned rather with their progressive phenomenal manifestations in the assembly, the court, the office, the caucus, the convention, the platform, the election, and the like. Thus Constitutional History is simply a record of concrete political facts.

It is, however, in the literature of Jurisprudence that the term "Constitution" is used in accordance with an exact definition. Constitutional Law, or the Law of the Constitution, means a very definite thing to the Jurist. It stands (at least in America) for a written instrument which is looked upon "as the absolute rule of action and decision for all departments and officers of government.. and in opposition to which any act or regulation of any such department or officer, or even of the people themselves, will be altogether void." In this sense a Constitution is a code of that which is fundamental in the Law. To be sure, this code or text, as everybody knows, does not provide for all that is fundamental in government. It usually contains much that is temporary and unimportant. But to the American Jurist all that finds expression in the written document labeled "Constitution" is Constitutional Law. Accordingly, he defines the Constitution as the written or codified body of fundamental law in accordance with which government is instituted and administered.

It is as a code or text of fundamental law that the word "Constitution" is used in the title of these pages. This is not a philosophical discussion of the ultimate principles of our government, nor an outline of our constitutional history, but simply a narrative touching the written texts or codes that have served the people of Iowa as fundamental law during the past sixty years.

III
THE CONSTITUTION MAKERS

Constitutions are not made; they grow. This thought has become a commonplace in current political literature. And yet the growth of which men speak with such assurance is directed, that is, determined by the ideals of the people. Members of constituent assemblies and constitutional conventions neither manufacture nor grow Constitutions-they simply formulate current political morality. 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. Aye, they were the real makers of our fundamental law.

The first of the Iowa pioneers crossed the Mississippi in the early thirties. They were preceded by the bold explorer and the intrepid fur-trader, who in their day dared much, endured much, and through the wildernesses lighted the way for a westward-moving civilization. Scarcely had their camp-fires gone out when the pioneer appeared with ax and ox and plow. He came to cultivate the soil and establish a home-he came to stay.

The rapidity with which the pioneer population of Iowa increased after the Black-Hawk war was phenomenal. It grew literally by leaps and bounds. Men came in from all parts of the Union-from the North-west, from the East, from the South, and from the South-east. They came from Maine and Massachusetts, from New York and Pennsylvania, from Virginia and the Carolinas, from Georgia, Kentucky and Tennessee, and from the newer States of Ohio and Indiana. It is said that whole neighborhoods came over from Illinois.

In 1835 Lieutenant Albert Lea thought that the population had reached at least sixteen thousand souls. But the census reports give a more modest number-ten thousand five hundred. When the Territory of Iowa was established in 1838 there were within its limits twenty-two thousand eight hundred and fifty-nine people. Eight years later, when the Commonwealth was admitted into the Union, this number had increased to one hundred and two thousand three hundred and eighty-eight.

Thus in less than a score of years the pioneers had founded a new Empire west of the Mississippi. And such an Empire! A land of inexhaustible fertility! A hundred thousand pioneers with energy, courage, and perseverance scarcely less exhaustible than the soil they cultivated!

In the location of a home the pioneer was usually discriminating. His was not a chance "squatting" here or there on the prairie or among the trees. The necessities-water and fuel-led him as a rule to settle near a stream or river, and never far from timber. The pioneers settled in groups. One, two, three, or more families constituted the original nucleus of such groups. The groups were known as "communities" or "neighborhoods." They were the original social and political units out of the integration of which the Commonwealth was later formed.

But the vital facts touching the pioneers of Iowa are not of migration and settlement. In political and constitutional evolution the emphasis rests rather upon the facts of character. What the pioneers were is vastly more important than where they came from, or when and where and how they settled; for all law and government rests upon the character of the people, Constitutions being simply 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 early settlers of Iowa. Calhoun stated on the floor of Congress that he had been informed that "the Iowa country had been seized upon by a lawless body of armed men." Clay had received information of the same nature. And about the same time Senator Ewing (from Ohio) declared that he would not object to giving each rascal who crossed the Mississippi one thousand dollars in order to get rid of him.

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. To them the first settlers were "lawless intruders" on the public domain, "land robbers," "fugitives from justice," and "idle and profligate characters." Squatters, they held, were those "who had gone beyond the settlement and were wholly reckless of the laws either of God or man." Nay more, they were "non-consumers of the country, performing no duties either civil or military." In short, gentlemen who had never even visited the Iowa frontier talked glibly about frontier lawlessness, anarchy, and crime.

Such wholesale defamation when applied to the early settlers of Iowa ought not to be dismissed with a shrug. The men who made these harsh charges were doubtless honest and sincere. But were they mistaken? All testimony based upon direct personal observation is overwhelmingly against the opinions they expressed.

Lieutenant Albert Lea who had spent several years in the Iowa District writes 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 Alleghanies, than is this of the Iowa District. Those who have used the name 'squatters' with the idea of idleness and recklessness, would be quite surprised to see the systematic manner in which everything is here conducted.. It is a matter of surprise that about the Mining Region there should be so little of the recklessness that is usual in that sort of life."

In 1838 Peter H. Engle, writing from Dubuque, says: "The people are all squatters; but he who supposes that settlers.. who are now building upon, fencing and cultivating the lands of the government are lawless depredators, devoid of the sense of moral honesty, or that they are not in every sense as estimable citizens, with as much intelligence, regard for law and social order, for public justice and private rights.. as the farmers and yeomen of New York and Pennsylvania… has been led astray by vague and unfounded notions, or by positively false information."

The statements of Lea and Engle fairly represent the views of those who from actual personal contact were familiar with the life and character of the pioneers.

We may then rest assured that the squatters of Iowa were as a class neither idle, nor ignorant, nor vicious. They were representative pioneers of their day, than whom, Benton declared, "there was not a better population on the face of the earth." They were of the best blood and ranked as the best sons of the whole country. They were young, strong, and energetic men-hardy, courageous, and adventurous. Caring little for the dangers of the frontier, they extended civilization and reclaimed for the industry of the world vast prairies and forests and deserts. They made roads, built bridges and mills, cleared the forests, broke the prairies, erected houses and barns, and defended the settled country against hostile Indians. They were distinguished especially for their general intelligence, their hospitality, their independence and bold enterprise. They had schools and schoolhouses, erected churches, and observed the sabbath.

A law abiding people, the pioneers made laws and obeyed them. They were loyal American citizens and strongly attached to the National government.

The pioneers were religious, but not ecclesiastical. They lived in the open and looked upon the relations of man to nature with an open mind. To be sure their thoughts were more on "getting along" in this world than upon the "immortal crown" of the Puritan. And yet in the silent forest, in the broad

prairie, in the deep blue sky, in the sentinels of the night, in the sunshine and in the storm, in the rosy dawn, in the golden sunset, and in the daily trials and battles of frontier life, they too must have seen and felt the Infinite.

Nor is it a matter of surprise that the pioneers of Iowa possessed the elements of character above attributed to them. In the first place, only strong and independent souls ventured to the frontier. A weaker class could not have hoped to endure the toils, the labors, the pains, and withal the loneliness of pioneer life; for the hardest and at the same time the most significant battles of the 19th century were fought with axes and plows in the winning of the West. 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. The key to the character of the pioneer is the law of the adaptation of life to environment. The pioneers of Iowa were what they were largely because the conditions of frontier life made them such. They were sincere because their environment called for an honest attitude. Having left the comforts of their old homes, traveled hundreds and thousands of miles, entered the wilderness, and endured the privations of the frontier, they were serious-minded. They came for a purpose and, therefore, were always *about*, doing something. Even to this day, their ideals of thrift and "push" and frugality pervade the Commonwealth.

And so the strong external factors of the West brought into American civilization elements distinctively American-liberal ideas and democratic ideals. The broad rich prairies of Iowa and Illinois seem to have broadened men's views and fertilized their ideas. Said Stephen A. Douglas: "I found my mind liberalized and my opinions enlarged when I got out on these broad prairies, with only the heavens to bound my vision, instead of having them circumscribed by the narrow ridges that surrounded the valley [in Vermont] where I was born."

Speaking to an Iowa audience, Governor Kirkwood once said: "We are rearing the typical Americans, the Western Yankee if you choose to call him so, the man of grit, the man of nerve, the man of broad and liberal views, the man of tolerance of opinion, the man of energy, the man who will some day dominate this empire of ours." How prophetic!

Nowhere did the West exert a more marked influence than in the domain of Politics. It freed men from traditions. It gave them a new and a more progressive view of political life. Henceforth they turned with impatience from historical arguments and legal theories to a philosophy of expediency. Government, they concluded, was after all a relative affair.

"Claim Rights" were more important to the pioneer of Iowa than "States Rights." The Nation was endeared to him; and he freely gave his first allegiance to the government that sold him land for $1.25 an acre. He was always *for the Union*, so that in after years men said of the Commonwealth he founded: "Her affections, like the rivers of her borders, flow to an inseparable Union."

But 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 three-fold ideal of Equality which constitutes the essence of American Democracy in the 19th century, namely:

Equality before the Law,

Equality in the Law,

Equality in making the Law.

The pioneer of the West may not have originated these ideals. The first, Equality before the Law, is claimed emphatically as the contribution of the Puritan. But the vitalizing of these ideals-this came from the frontier, as the great contribution of the pioneer.

IV
SQUATTER CONSTITUTIONS

It may seem strange to class the customs of the pioneers among the early laws of Iowa. But to refer to the "Resolutions" and "By-Laws" of the squatters as political Constitutions is more than strange; it is unorthodox. 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. Here in our own annals one may read plainly writ the extra-legal origin of laws and constitutional government.

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 that 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 their codes, they nevertheless stand as the first written Constitutions in the history of the Commonwealth. 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 through 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, entered into between the United States and the Indians, no white citizen was competent to make legal settlement therein.

As early as 1785 Congress provided that no settlement should be made on any part of the public domain until the Indian title thereto had been extinguished and the land surveyed. Again, in 1807, Congress provided: "That if any person or persons shall, after the passing of this act, take possession of, or make a settlement on any lands ceded or secured to the United States by any treaty made with a foreign nation, or by a cession of any State to the United States, which lands shall not have been previously sold, ceded, or leased by the United States, or the claim to which lands, by such person or persons, shall not have been previously recognized and confirmed by the United States; or if any person or persons shall cause such lands to be thus occupied, taken possession of, or settled; or shall survey, or attempt to survey, or cause to be surveyed, any such lands; or designate any boundaries thereon, by marking trees, or otherwise, until thereto duly authorized by law; such offender or offenders shall forfeit all his or their right, title, and claim, if any he hath, or they have, of whatsoever nature or kind the same shall or may be to the lands aforesaid, which he or they shall have taken possession of, or settled, or caused to be occupied, taken possession of, or settled, or which he or they shall have surveyed, or attempt to survey, or the boundaries thereof he or they shall have designated, or cause to be designated, by marking trees or otherwise. And it shall moreover be lawful for the President of the United States to direct the marshal, or the officer acting as marshal, in the manner hereinafter directed, and also to take such other measures, and to employ such military force as he may judge necessary and proper, to remove from land ceded, or secured to the United States, by treaty, or cession, as aforesaid, any person or persons who shall hereafter take possession of the

same, or make, or attempt to make a settlement thereon, until thereunto authorized by law. And every right, title, or claim forfeited under this act shall be taken and deemed to be vested in the United States, without any other or further proceedings."

In March, 1833, the act of 1807 was revived with special reference to the Iowa country to which the Indian title was, in accordance with the Black-Hawk treaty of 1832, to be extinguished in June. It was made "lawful for the President of the United States to direct the Indian agents at Prairie du Chien and Rock Island, or either of them, when offenses against the said act shall be committed on lands recently acquired by treaty from the Sac and Fox Indians, to execute and perform all the duties required by the said act to be performed by the marshals in such mode as to give full effect to the said act, in and over the lands acquired as aforesaid." Thus it is plain that 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 certificate 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. They ignored the act of 1807. And it is doubtful if they ever heard of the act of March 2, 1833. 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 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 farms were thus formed! Hundreds and thousands of homesteads were thus established! Hundreds and thousands of improvements were thus begun! 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 honest farmers.

Now, 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 the Commonwealth had been admitted into the Union.

In the "Recollections" and "Reminiscences" of pioneers many references are made to these early land clubs or claim associations, and Constitutions, By-laws, or Resolutions are sometimes reproduced therewith in whole or in part. But *complete and adequate manuscript records* of but two Iowa organizations have thus far come to light. The "Constitution and Records of the Claim Association of Johnson County," preserved by the Iowa State Historical Society, were published in full in 1894. The materials of this now famous manuscript, which are clear and complete, were arranged as follows: I. Constitution and Laws; II. Minutes of Meetings; III. Recorded Claims; IV. Recorded Quit Claim Deeds.

The Constitution of the Johnson County Association is perhaps the most elaborate Squatter Constitution in the annals of early Iowa. It was adopted March 9th, 1839, and consists of three articles, twenty-three sections, and over twenty-five hundred words.

Article I. fixes the name of the Association, and declares that "the officers of this association shall be one President, one Vice President, One Clerk or Recorder of claims, deeds or transfers of Claims, seven Judges or adjusters of claims or boundary.. and two Marshalls." All of the officers were elected annually.

Article II. relates to "sallerys." It provides that "the Clerk or Recorder shall receive Twenty-five cents for recording each and everry claim, and fifty cents for everry deed or conveyance.. and Twelve & a half cents for the privalege of examining his Books." The Judges and Marshals were allowed one dollar and fifty cents each for every day spent in the discharge of the duties of their respective offices.

Article III. contains ten sections bearing upon a variety of subjects. Section 1 indicates in detail how claims are to be made and recorded and the boundaries thereof designated. No person was allowed to hold more than four hundred and eighty acres. Section 2 provides that "any white male person over the age of eighteen can become a member of this association by signing the laws rules and regulations governing the association," that "actual citizens of the County over the age of seventeen who are acting for themselves and dependent on their own exertions, and labour, for a lively hood, and whose parents doe not reside within the limits of the Territory can become members of this association and entitled to all the privalages of members," but that "no member of the association shall have the privalege of voting on a question to change any article of the constitution or laws of the association unless he is a resident citizen of the county and a claimholder, nor shall any member be entitled to vote for officers of this association unless they are claim holders."

The same section provides that "any law or article of the constitution of this association may be altered at the semianual meetings and at no other meetings provided, however, that three fifths of the members presant who are resident citizens of the county and actual claim holders shall be in favour of such change or amendment, *except that section fixing the quantity of land that everry member is entitled to hold by claim and that section shall remain unaltered*."

By the same article semi-annual meetings of the Association are provided for in section 3. Section 5 declares that "all persons who have resided within the limits of the County for Two months, shall be recognized and considered as citizens of the County." Another section stipulates that "members of the association who are not citizens of the County shall be required in making claims to expend in improvements on each claim he or they may have made or may make the amount of fifty Dollars within six months of the date of making such claim or claims and fifty Dollars every six months there after until such person or persons becomes citizens of the county or forfeit the same." The 10th section relates to the procedure of the Claim Court. Finally, in section 11 the members pledge their "honours" for the "faithful observance and mantanance" of the Constitution by subscribing their names to the written document.

In addition to the Constitution, Resolutions were, from time to time, adopted with the force of laws. It is here that the real spirit and purpose of the pioneer squatters is best expressed. With characteristic frankness they resolved to "discountenance any attempts on the part of any and every person to intrude in any way upon the rightful claims of another," since "the presumption is that a person thus attempting to take away a portion of the hard earnings of the enterprising and industrious setler is dishonest & no Gentlemen."

That they insisted upon equity rather than upon refined technicalities in the administration of their law is seen in the following: "Resolved that to avoid difficulty growing out of the circumstance of persons extending their improvements accidentaly on the claims of others before the Lines were run thereby giving the first setlr an opportunity or advantage of Preemption over the rightful owner that any person who hold such advantages shall immediately relinquish all claim thereto to the proper owner and any one refusing so to do shall forfeit all claim to the right of protection of the association."

For the speculator who sometimes attended the land sales the squatters had little respect; so they "Resolved that for the purpose of garding our rights against the speculator we hereby pledge ourselves to stand by each other and to remain on the ground until all sales are over if it becomes

necessary in order that each and every setler may be secured in the claim or claims to which he is justly entitled by the Laws of this association." And remarkable as it may seem, the same protection which was pledged "before the sale" was guaranteed to "all such members as may be unable to enter their claims at the sale after such sale and until the same may be entered by them."

The following are typical records of claims as recorded in the claim book of the Johnson County Association:

"The following is a decription of my claim made about the 15 of January 1838, that I wish recorded. Situated on Rapid Creek About Two Miles above Felkners & Myers mill Johnson County Iowa Territory Commencing about 20 Rods South of Rapid Creek at a double white Oak Tree Blazed & 3 notches on one side and 4 on the other and then running West three fourths of a mile to a double white Oak on the east side of a small branch Blazed and marked as before described then running North about three fourths of a mile to a white Oak tree Blazed and marked as before then running East about three fourths of a mile to a small Bur Oak tree on the west side of Rapid Creek marked and blazed as before mentioned then running South crossing Rapid Creek to the place of beginning March 20th 1839. GRIFFITH SHRECK"

"The following claim I purchased of John Kight in February 1839, & I wish it registered to me as a claim made as I have not got his deed with me the same being the S W qr of S 14, & that part of the S 1/2 of S 15, that Lyes East of the Iowa River-T 79 N. R. 6 W. July 3rd 1840 handed in July 3, 1840 ROBERT LUCAS"

An illustrative quitclaim deed from the same records reads as follows:

"This bargen made and entered into by the following parties Viz this day I James Williams has bargened and sold to Philo Costly a certain claim lying on the E side of Rapid Creek boundrys of said claim as follows commencing at a white Oak tree standing about 80 Rods below the upper forks of Rapid Creek thence running south 1/2 mile thence E 1 mile to a stake standing on the Prairie near 2 Trees. thence N 1/2 mile to a stake thence W. 1 mile to the starting place-I the said Williams agree and bind myself to defend all rights & claims excepting the claim of the general Government and also singular all rights claims & Interests to said claim for and in concideration of the sum of one hundred Dollars the receipt thereof I here in acknowledge said Williams agrees to put up a House and finish Except putting up the Chimney & dobing and also said Williams is to Haul out Eight or Ten hundred rails all included for the receipt above mentioned. Receipt. Johnson County. I. T. January 25, 1841

JAMES WILLIAMS [SEAL]

Witness

CORNELIUS HENYAN

Handed in Februrary 3rd 1841"

The manuscript records of the Claim Club of Fort Dodge, discovered several years ago among the papers of Governor Carpenter, are now carefully preserved by the Historical Department at Des Moines. From these records it appears that the first meeting of the Claim Club of Fort Dodge was held on the 22d day of July, 1854. At this meeting a committee was chosen to draft a "code of laws," and the following motions were passed:

"First. That 320 Acres shall constitute a claim.

2d. A claim may be held one month by sticking stakes and after that 10 dollars monthly improvements is necessary in order to hold a claim. Also that a cabin 16 x 16 feet shingled and enclosed so as to live in is valued at $30.00."

Of the same date are the following By-laws or Resolutions:

"Whereas the land in this vicinity is not in market and may not be soon, We, the undersigned claimants deem it necessary in order to secure our lands to form ourselves into a Club for the purpose of assisting each other in holding claims, do, hereby form and adopt the following byelaws:

Resolved 1st. That every person that is an Actual claimant is entitled to hold 320 Acres of land until such time as it comes into market.

Resolved 2d. That any person who lives on their claim or is continually improving the same is an actual Claimant.

Resolved 3d. That stakeing out a claim and entering the same on our Claim Book shall hold for one month.

Resolved 4th. That $10, Monthly shall hold a claim thereafter.

Resolved 5th. That no mans claim is valid unless he is an actual settler here, or, has a family and has gone after them, in which case he can have one month to go and back.

Resolved 6th. That any person not living up to the requirements of these laws shall forfeit their claim, and, any Actual Settler who has no claim may settle on the same.

Resolved 7th. That any person going on anothers claim that is valid, shall be visited by a Com. of 3 from our club and informed of the facts & and if such person persist in their pursuits regardless of the Com or claimant they shall be put off the Claim by this Club.

Resolved 8th. That the boundaries of these laws shall be 12 miles each way from this place.

Resolved 9th. That this club shall hold its meetings at least once in each month.

Resolved 10th. That the officers of this club shall consist of a Chairman & Secty.

Resolved 11th. That the duty of the Chairman is to call to order, put all questions, give the casting vote when there is a tie, &c. &c.

Resolved 12th. That the duty of the sec. is to keep the minutes of the meetings and read the same at the opening of each meeting and have the book and papers in his charge.

Resolved 13th. That any or all of the bye laws may be altered or abolished by a majority vote at a regular meeting."

On the offense of "claim-jumping" the records of the Fort Dodge Club contain this suggestive entry: "On Motion of Wm. R. Miller that if any member of this Club finds his or any of his friends Clames has been Jumpt that they inform this Club of the fact and that this Club forthwith put them off of said clame without trobling the Sivel Law."

In the *Iowa News* of March 28, 1838, was printed "The Constitution of the Citizens of the North Fork of the Maquoketa, made and adopted this 17th day of February, A. D. 1838." It is a typical Squatter Constitution of the Territorial period.

"Whereas, conflicting claims have arisen between some of the settlers residing upon Government Lands, and whereas many individuals have much larger claims than are necessary for common farming purposes, Therefore, we, the subscribers, to preserve order, peace and harmony, deem it expedient to form an association, and adopt some certain rules, by which those difficulties may be settled, and others prevented. Therefore, we do covenant, and agree to adopt and support the following articles.

Art. 1. This association shall be called the North Fork of Maquoketa Association, for the mutual protection of settlers' claims on Government Lands.

Art. 2. That there shall be elected by the subscribers, a President, whose duty it shall be to call meetings to order, and preside as Chairman, and to receive complaint and to appoint a Committee of three from the Great Committee, to settle all difficulties that arise from conflicting claims, and also to fill vacancies.

Art. 3. There shall be a Vice President elected, whose duty it shall be to fill the office of President in his absence.

Art. 4. There shall be chosen a Secretary, whose duty it shall be to keep a correct Journal of the acts and proceedings of each and every meeting, and register all claims in a book kept by him for that purpose, who shall receive the sum of 25 cents for the registering of each and every claim.

Art. 5. There shall be elected a committee of nine men, to be called the Grand Committee.

Art. 6. No settler shall be entitled to hold more than three quarter sections of land. Each settler shall give in the numbers of the quarter sections that he may claim. Each and every settler shall make

an improvement on his, her, or their claim, sufficient to show that the same is claimed, previous to having the same recorded.

Art. 7. All minors under sixteen shall not be considered as holding claims, either by themselves, parents, or otherwise.

Art. 8. The Secretary, at the request of eight subscribers, shall call a meeting of the settlers, by advertising the same in three different places, not less than ten days previous to the meeting.

Art. 9. No person shall have any attention paid to his, her, or their complaint until they first subscribe to this Constitution.

Art. 10. All committees that shall sit or act under this constitution, shall determine in their decision and declare which party shall pay the costs, and each declaration shall be binding and be collected according to the laws of this Territory.

Art. 11. When complaints shall be made to the President, he shall immediately notify the sitting committee of three to meet at some convenient place. Then if said committee be satisfied that the opposing party has been timely notified, shall then proceed to investigate and try the case in dispute, receive evidence, and give their decision according to justice and equity, which decision shall be final: Provided, always, That either party considering injustice has been done, shall have a right to appeal to the Grand Committee, together with the President, who shall investigate the same, and shall give their decision in writing, from which there shall be no appeal. All appeals shall be made within ten days, or forever excluded.

Art. 12. There shall be held an annual meeting on the 1st Monday of November for the election of officers and committees.

Art. 13. The fees of each committee man with the President, shall not exceed one dollar per day.

Art. 14. This constitution may be altered and amended by a vote of two thirds of the members.

Art. 15. All committees made under this constitution shall be the judges of its meaning and spirit, and the resolutions of its meeting shall be governed according to their decisions.

Art. 16. All persons not settlers, having claims not settled before the 1st of May, 1838, shall be forfeited."

A hundred pages could easily be devoted to this interesting phase of our political history, but the details already given will suffice to indicate the nature, scope, and purpose of the Squatter Constitutions of Iowa. Their influence 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 bona fide settlers the right to make improvements on the public lands and to dispose of the same for a reasonable consideration, or to purchase their improved land from the Government at the minimum price of $1.25 an acre.

Thirdly, they afforded bona fide 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 the same for themselves and their families.

Fourthly, they fostered natural 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.

In their Constitutions and Resolutions the squatters suggested, and in a measure definitely determined, the manner of disposing of the public lands. The principles of the most important legislation of Congress relative to the public domain came from the frontier. A comparison of the

customs of the squatters with the provisions of the pre-emption and homestead acts reveals the truth that the latter are largely compilations of the former. These American principles of agrarian polity are products of frontier experience.

One is even justified in suggesting that herein we have, perhaps, come across the origin of the American principle of homestead exemptions. Is it not reasonable to suggest that the emphasis which frontier life and customs placed upon the importance and value of the homestead gave birth to the laws that are "based upon the idea that as a matter of public policy for the promotion of the property of the State and to render independent and above want each citizen of the Government, it is proper he should have a home-a homestead-where his family may be sheltered and live beyond the reach of financial misfortune?"

The Squatter Constitutions stand for 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 19th century. But above all they expressed and, in places and under conditions where temptations to recklessness and lawlessness were greatest, they effectively upheld the foremost civilizing principle of Anglo-Saxon polity-the Rule of Law.

V
THE TERRITORY OF WISCONSIN

The year one thousand eight hundred and thirty-six is memorable in the constitutional annals of Iowa, since it marks the beginning of the Territorial epoch and the advent of our first general code or text of fundamental law.

To be sure, the Iowa country had had a certain constitutional status ever since the acquisition of the Province of Louisiana in 1803. In 1804, it formed a part of the District of Louisiana, which was placed. under the jurisdiction of the Governor and Judges of the Territory of Indiana; in 1805, it remained a part of that district known henceforth as the Territory of Louisiana; in 1812, it was included within the newly created Territory of Missouri; in 1821, it was reserved for freedom by the Missouri Compromise; and finally, after being without a local constitutional status for more than thirteen years, it was "attached to, and made a part of, the territory of Michigan" for "the purpose of temporary government." Nevertheless, it would be sheer antiquarianism to catalogue the treaty and conventions of 1803 and the several acts of Congress establishing the District of Louisiana, the Territory of Louisiana, the Territory of Missouri, and the Territory of Michigan as Constitutions of Iowa.

Furthermore, a Constitution is the fundamental law of a *people*, not of a *geographical area*; and since the Iowa country was practically uninhabited prior to 1830, the earlier Territorial governments, which have been mentioned, had for Iowa only a nominal political significance. This is not to deny that Iowa has a history prior to 1830: it simply points out that this earlier history is largely a record of changes in subordinate jurisdiction over a geographical area, and in no sense the annals of a political society.

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 his message of September 1, 1834, addressed to the Legislative Council, Governor Mason referred to the inhabitants as "an intelligent, industrious and enterprising people," who, being "without the limits of any regularly organized government, depend alone upon their own virtue, intelligence and good sense as a guaranty of their mutual and individual rights and interests." He suggested and urged "the immediate organization for them of one or two counties with one or more townships in each county."

The suggestions of the Governor were referred to the committee on the Judiciary, and incorporated into "An Act to lay off and organize counties west of the Mississippi River." This act, which was approved September 6th, to go into effect October 1st, organized the Iowa country to which the Indian title had been extinguished in June, 1833, into the counties of Dubuque and Demoine. It also provided that each county should constitute a township, and that the first election for township officers should take place on the first Monday of November, 1834. The laws operative in the county of Iowa, and not locally inapplicable, were to have full force in the country west of the Mississippi.

Furthermore, the archives show that the offices of the newly created counties were duly filled by the Governor of the Territory of Michigan "by and with the consent of the Legislative Council." Letters and petitions addressed to the Governor are evidence that the people did not hesitate to recommend candidates or ask for removals. In Dubuque County they forced the resignation of the Chief Justice of the County Court and secured the appointment of a candidate of their own choice. And when a vacancy occurred in the office of Sheriff, the inhabitants of the same County, thinking that "the best method of recommending a suitable person for that office was to elect one at their

annual township meeting," voted for Mr. David Gillilan as their choice. The Clerk of the County Court, who was authorized to notify the Governor of the results of the election, expressed the "hope that a commission will be prepared and sent as early as practicable." The records show that Mr. Gillilan was subsequently appointed by the Governor. So much for the public archives of the Territory of Michigan respecting the political status of the Iowa country.

In a memorial to Congress drawn up and adopted by a delegate convention of of the people west of the Mississippi assembled at Burlington in November, 1837, this statement is 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 Demoine. 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 up to the passage of the act of Congress creating the Territory of Wisconsin."

The Legislative Council of the Michigan Territory, in a memorial which bears the date of March 1, 1836, went on record to this effect: "According to the decision of our Federal Court, the population west of the Mississippi are not within its jurisdiction, a decision which is presumed to be in accordance with the delegated power of the court and the acknowledged laws of the land; but that ten or twelve thousand free-men, citizens of the United States, living in its territory, should be unprotected in their lives and property, by its courts of civil and criminal jurisdiction, is an anomaly unparalleled in the annals of republican legislation. The immediate attention of Congress to this subject is of vital importance to the people west of the Mississippi."

On the floor of Congress, Mr. Patton of Virginia "adverted to the peculiar situation of the inhabitants of that Territory [the Territory which was soon afterwards organized as Wisconsin] they being without government and without laws." This was in April, 1836. On the same day Mr. George W. Jones, the delegate from Michigan, declared that the people of western Wisconsin "are now, and have ever been, without the pale of judicial tribunals." He "stated that he did not know of a single set of the laws of the United States within the bounds of the contemplated Territory."

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. Then 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.

Lieutenant Albert M. Lea, a United States army officer, who had spent some time in the country west of the Mississippi did not fail to observe the anomalous condition of the people. Writing early in 1836, he said: "It is a matter of some doubt, in fact, whether there be any law at all among these people; but this question will soon be put to rest by the organization of the Territory of Wisconsin within which the Iowa District is by law included."

But a general conclusion concerning the actual political status of the Iowa country prior to the organization of the Territory of Wisconsin is no longer doubtful when to these documentary evidences are added the sweeping testimony of the early squatters who declare that the only government and laws they knew or cared anything about in those days were the organization and rules of the claim club. It is substantially correct to say; (1) that the Territorial epoch in our history dates from the fourth day of July, 1836, when Wisconsin was constituted "a separate Territory," for the purposes of temporary government, and (2) that our first code or text of fundamental law, that is to say, the first Constitution of Iowa was "An Act establishing the Territorial Government of Wisconsin."

As regards this conclusion two criticisms are anticipated. First, it will be said that since the Territory of Iowa was organized in 1838, the Territorial epoch in our history could not have begun

in 1836. Secondly, it will be said that an act of Congress providing for and establishing a Territory is not a Constitution.

The answer to the first criticism lies in the fact that the Iowa country was not an outlying district attached to the Territory of Wisconsin, but really formed a constituent part thereof. 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 west tended to increase more rapidly than the east. The importance of the west is further evidenced by the removal of the Capital after the first session of the Legislative Assembly 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 assignment of the old name "Wisconsin" to the country east of the Mississippi and of the new name "Iowa" to the country west of that river in 1838, when the Territory of Wisconsin was divided, did *not give rise* to Territorial government among our people. The act of Congress of June 12, 1838, provided for the division of an existing Territory and the *continuation* of Territorial government in the western part thereof under the name Iowa.

When, however, all this is conceded, the propriety of referring to the Organic Act of a Territory as a Constitution is 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 pure product of legislation. It did not even have the label "Constitution," or "Fundamental Compact," or "Organic Law." 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 instituted and administered. It was supreme, serving as the absolute rule of action for all departments and officers of the Territorial government. The courts always took this view of the Organic Act, and refused to enforce acts which were clearly in opposition to its provisions.

VI
THE TERRITORY OF IOWA

In the year 1836 there was printed and published at Philadelphia a small book bearing on its title-page these words:

NOTES ON

WISCONSIN TERRITORY,

WITH A MAP

BY

LIEUTENANT ALBERT M. LEA,

UNITED STATES DRAGOONS

PHILADELPHIA

HENRY S. TANNER-SHAKESPEAR BUILDING

1836

The significance of this little volume lies in the fact that through it the country destined to give birth to "the only free child of the Missouri Compromise" was christened IOWA. Lieutenant Lea was familiar with the country described in his "Notes." He had traveled through it, had seen its beautiful prairies, had met its inhabitants face to face, and had enjoyed their frontier hospitality. He must have been deeply impressed by the Iowa river and its name. Referring to the country west of the Mississippi river he says: "The District under review has been often called 'Scott's Purchase,' and it is sometimes called the 'Black-Hawk Purchase'; but from the extent and beauty of the Iowa river which runs centrally through the District, and gives character to most of it, the name of that stream, being both euphonous and appropriate, has been given to the District itself."

The Iowa District was likely to become a separate Territory at an early day, since all indications pointed in the direction of a division of the Territory of Wisconsin. First, the geographical area of the Territory as designated in the Organic Act was sufficient for three or four ordinary Commonwealths. Secondly, this area did not possess geographical unity. Thirdly, historical traditions and considerations

favored the establishment of a separate Territory east of the Mississippi, which at the proper time should be admitted as the fifth State born of the Ordinance of 1787 within the limits of the old Territory of the Northwest. Fourthly, the population of the Territory, which was increasing with unparalleled rapidity, was so widely scattered as to make it practically impossible to give equal force to the laws and equal efficiency to the administration of government in all of the frontier communities. That the "Father of Waters" should serve as the natural line of division was generally conceded.

Scarcely had the act organizing the Territory of Wisconsin gone into effect, when the 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. They realized that the proposition to remove the seat of the Territorial government from Burlington to some point east of the Mississippi was likely to rob them of much political influence and some distinction. They felt that a Territorial government located somewhere "in the vicinity of the Four Lakes" could not successfully administer constitutional government in the Iowa District.

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