

The Constitution of 1857 and the People

ISSN 0003-4827

Material in the public domain. No restrictions on use.



This work has been identified with a [Creative Commons Public Domain Mark 1.0](#).

Recommended Citation

"The Constitution of 1857 and the People." *The Annals of Iowa* 8 (1907), 65-71.

Available at: <https://doi.org/10.17077/0003-4827.3391>

Hosted by [Iowa Research Online](#)

had served as a member of the Convention of 1846 which drafted the Constitution under which Iowa was admitted into the Union. The other was Samuel W. Durham, the only survivor of that oldest of all the conventions of Iowa; the Constitutional Convention of 1844. Tall in figure and clear of memory in spite of his ninety years, this pioneer settler told of the early days of the commonwealth. He said of J. Scott Richman, his colleague, as he called him, that in all his life, from the time he first knew him in 1840 down to the present time, he never made an enemy. All three men spoke at the luncheon Friday noon. They talked modestly of the conventions in which they had served, and told of men who have long since passed away—of Judge Charles Mason, and Joseph Williams and Thomas Wilson, the Judges who were appointed at the organization of the Territory of Iowa. It was J. Scott Richman in particular who remembered these men, for he had come to Iowa in 1839. The next year Samuel Durham reached the Territory, in the days when the first Governor was administering the government.

No one who attended the celebration will soon forget these three venerable figures. They came together, each one as the last of his group. It is perhaps safe to say that never again will the three gather together at a celebration, but though these pioneer constitution-makers must soon be beyond our ken, they have written their services into the enduring form of the fundamental law of the State of Iowa.

J. C. P.

THE CONSTITUTION OF 1857 AND THE PEOPLE.

The efficiency of laws or institutions, as of houses or shoes, is found largely, if not wholly, in the answers to the prosaic questions, "Are they comfortable and fit? Do they endure the wear and tear of life, and suffice?" If the people abide therewith contentedly, they then satisfy; at least the people so seem to think, and this is the important fact in an orderly society and a stable State.

On September 6, 1907, fifty years will have passed since Gov. James W. Grimes by proclamation declared the present Constitution of Iowa the supreme statute of this midland commonwealth. The instrument was drafted by thirty-six delegates who sat in convention in the old stone Capitol at Iowa City from January 19 to March 5, 1857. Excepting the subject of banks and corporations, the draft submitted to the suffrage of the people was chiefly a revision and enlargement of the Constitution adopted in 1846 upon the admission of Iowa to statehood, an instrument that was mainly agreed upon in 1844. The first Constitution was adopted under protest—the majority for it being only 456 out of a total of 18,528 votes. The keen popular desire to secure statehood was probably the chief fact that prevented its rejection. The absolute prohibition of banks of note issue and sundry limitations upon corporate enterprises, then matters of transcendental local interest in the rapid commercial expansion of the ambitious cities and counties of the State, caused immediate and continuously increasing agitation for revision that should strike “the fetters from the limbs of the young giant.” The opposition to the Constitution submitted to the people in 1857 and voted on August 3d was nevertheless decided and vigorous: out of a vote of 78,992 the majority for it was only 1,631. Few of the anticipations of the critics and opponents have been realized, while the predictions of its advocates have been largely fulfilled.

Speaking generally, the Constitution has undergone no material changes in the half century it has been in force. The civil war and national legislation incident to Reconstruction caused in 1868 and in 1880 the extension of the franchise and political privileges. Various amendments affecting elections, judicial districts, grand juries and county attorneys were made in 1884. Biennial instead of annual elections were provided for by amendment in 1904, and at the same time the membership of the House of Representatives was increased so as to give each county at least one representative. Two amendments proposed, viz., the one endorsed by a large popular vote at a special election in June, 1882, providing for the prohibition of the manufacture and sale

as a beverage of "any intoxicating liquors whatever, including ale, wine and beer," and the proposal for biennial elections submitted to the people in 1900, were declared invalid by the Supreme Court on account of serious disregard of mandatory provisions in the Constitution prescribing the method of procedure in the submission of such amendments.

All of the amendments enacted relate to executory or administrative matters, the first two being made necessary by reason of national legislation, and those of 1884 and 1904 being alterations in local administration and the method of conducting elections. In one instance only was a radical change in the policy of the State proposed, viz., in the amendment supposed to have been adopted in 1882 prohibiting the manufacture and use of alcoholic liquors as beverages.

The provisions of Article IX, providing for the establishment of a central Board of Education that should exercise both legislative and executive powers with respect to all of the educational agencies of the State, were eliminated or rendered inoperative by legislative act in 1864, the article itself making the General Assembly competent to abandon the plan authorized. While the act discontinuing the Board was not, strictly speaking, an amendment of the Constitution, it was a quasi amendment that materially modified the administrative machinery of the State government prescribed and provided for in that instrument.

The number and character of the amendments actually adopted indicate very decidedly that notwithstanding the evident doubt and distrust as to the wisdom of ratifying the draft submitted in 1857 as indicated by the narrow majority in its favor, the people have lived contentedly under the provisions of the present Constitution. Another fact enforces this conclusion: By the provisions of Section 3 of Article X, the General Assembly *may at any time* and in the last year of each decennial period *shall* submit to the people the proposition of calling a Constitutional Convention for the purpose of amending and revising the Constitution. Four times, viz., 1870, 1880, 1890, and 1900, the people have voted upon the matter; and on each occasion the re-

turns have shown an adverse public opinion. The result in 1900 was exceedingly interesting and instructive. The first amendment providing for biennial elections was submitted to the people that year—a subject that aroused an ardent discussion pro and con. The simultaneous submission of that amendment and the call for a Constitutional Convention produced not a little confusion in the minds of voters. Friends of the amendment to establish biennial elections in great numbers labored under the notion that it was necessary to vote for a convention in order to insure the success of the electoral reform. The result was that the proposal for calling a convention was negated by only 555 votes out of a total vote of 353,229. Owing to some errors in the footings of the returns it was first given out unofficially that the call for a convention had carried. When later corrections reversed the majority there was manifest relief throughout the State—as the people seemed to be of the opinion that the returns were the result of confusion and not indicative of a positive demand for serious changes in the constitution of the State.

This acquiescence of the people under their constitution adopted so hesitatingly fifty years ago is strikingly shown if we examine the ratios of votes for and against change and the aggregate thereof compared with the total vote cast by the people in selecting officers for their national or State government at the general election of the same year. In no instance was the vote for an amendment unanimous; in one case it was 85 per cent. of the total vote cast therefor, in another 62 per cent.; in all others the vote for the proposition did not exceed 56 per cent. The adverse votes on all amendments arousing great public interest viz., negro suffrage, prohibition, and biennial elections, have ranged from 44 to 47 per cent. of the total votes. The affirmative votes for a call for a convention was only 23 per cent. in 1870; 45 per cent. in 1880; but 14 per cent. in 1890; and 49 per cent. in 1900. The total votes cast for proposed amendments in no case equaled the aggregate vote cast at the general election of the same year. In 1868 the vote for and against the inclusion of negroes in the electoral franchise

was 186,562 ballots, or 95 per cent. of the votes cast at the general election; the prohibitory amendment received, pro and con, 281,149 votes, or 96 per cent. The proposals for biennial elections induced a vote of 64 and 45 per cent. in the respective years of 1900 and 1904. The total votes cast upon the proposal to call a convention was but 64 per cent. in 1870, only 47 per cent. in 1880 and 1890, and 66 per cent. in 1900.

The total votes in the general election, the votes for and against amendments and calls for conventions and ratios, are summarily presented in the following table.

VOTES ON CONSTITUTIONAL AMENDMENTS PROPOSED AND CALLS FOR CONVENTION SINCE 1857.

I. CONSTITUTIONAL AMENDMENTS.

Year	General Election	For		Against		Total on Am'ndment	Per Cent. of General	Subject
		Vote	Per Cent.	Vote	Per Cent.			
1868.....	194,730	105,524	56	81,038	44	*196,562	95	Whites
1880.....	322,699	90,237	62	51,943	38	142,180	44	Whites
1882.....	292,398	155,436	55	125,677	45	†281,149	96	Prohibition
1884.....	377,235	89,342	85	14,940	15	*104,182	27	Elec. jud. dist. etc.
1900.....	528,325	186,105	54	155,506	46	341,611	64	Biennial election
1904.....	482,337	198,974	53	176,251	47	375,225	45	Biennial election
1904.....	482,337	171,385	51	165,076	49	336,461	35	Repre'tion H. of R.

II. CALLS FOR CONVENTION.

1870.....	165,823	24,846	23	82,039	77	106,885	64
1880.....	322,709	69,762	45	83,784	55	153,546	47
1890.....	391,353	27,806	14	159,394	36	187,200	47
1900.....	538,325	176,337	49	176,892	51	353,229	66

*The proposition submitted to the people contained amendments to various sections, and here the vote cast for the amendment having the highest affirmative vote is taken.

† Contains thirty-six scattered votes.

The disinclination of the people of Iowa either to amend or to overhaul the provisions of their supreme statute may, of course, indicate a state of mind other than that of contentment or satisfaction. It may signify indifference to or disregard of its injunctions and specifications. The latter supposition, however, would seem to be untenable. Numerous decisions and elaborate opinions of the Supreme Court enjoining injurious actions or invalidating statutes because obnoxious to constitutional guarantees indicate decisively that citizens look upon the Constitution as a certain defense, and

courts scrupulously enforce its mandates. In the recent session of the Thirty-second General Assembly, Governor Cummins refused his signature to a bill because he believed that its enactment would violate the Constitution. So far there has not developed in our political life and practices any custom adverse to its express provisions, such as, e.g., the practice in our national politics of selecting our President by mass conventions and popular elections instead of through and by the Electoral College.

With respect to three articles only has there been much popular discontent; namely, the provisions establishing the Central Board with legislative and executive powers in the control and management of the school system of the State; the requirement (Art. VIII, Sec. 2) that corporations organized for pecuniary profit should be "subject to taxation the same as that of individuals;" and the limitations (Art. XI, Sec. 3) upon the fiscal powers of municipal corporations respecting debts. As to the first mentioned, it was abolished. The second, while vigorously deplored by sundry tax reformers who would radically reform the methods of taxation, has never aroused sufficient opposition to secure the submission of an amendment to popular vote. The limitation imposed upon the debt-making power, although it irritates the city and county authorities thwarted in their patriotic efforts to swell local budgets, at the same time rejoices the heart of the taxpayer.

The success of the present Constitution is due to its essential merits. It prescribes a scheme of government that coincides generally with the popular demand for and the traditions of democratic government in the United States. Further, it meets in the main the requirements that must be fulfilled in order to insure accountability and responsibility and general efficiency under republican or representative institutions. Its provisions were formulated near the close of the period that witnessed the complete overthrow of autocratic and aristocratic tendencies in the control and management of government. The rule of aristocratic leaders, of cliques and coteries that largely prevailed prior to 1830, was by the fierce and long continued onslaughts of the Jacksonian partisans almost universally displaced by democratic meth-

ods of control and procedure. Legislatures were generally restricted in the range of their powers; executives were curbed, their legislative veto in some cases being narrowly limited or denied, their appointive and supervisory powers sharply limited and dissipated by the requirement of popular election of purely administrative officials and short tenure; judges were elected and for short terms. As is usual with political and social agitation the reaction against the manifest evils of the first decades of the century was excessive. It went too far. Constitution makers injected into their State charters many administrative provisions not appropriate. The convention at Iowa City, although ardently democratic, in the sense that its delegates insisted upon the supremacy of the people over all departments of the State government, did not go so far as to eliminate central executive control by denying the Governor the veto or general appointive powers and authoritative supervision.

Iowa's Constitution contains more specifications as to what officers shall be elected and for how long than good constitutional law calls for. But in the large, the convention at Iowa City realized that there are two great functions in government—that of legislation and that of execution. In legislation a democracy should and must control through their representatives in a General Assembly, who express and formulate the wishes or the will of the citizens. In the execution of their will, however, the people attain the economy and efficiency in government they desire by concentrating control in the head of the administration, thereby insuring both accountability and responsibility. F. I. H.

DEDICATION OF THE IOWA MONUMENTS.

The recent visit of the Iowa Monument Commission to southern battle-fields was a trip of historical interest to the State. The government has established national military parks on three of the greatest battle-fields of the west; at Pittsburg Landing, where the battle of Shiloh was fought April 6 and 7, 1862; at Vicksburg, the scene of the mem-

Copyright of Annals of Iowa is the property of State of Iowa, by & through the State Historical Society of Iowa and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.