

## THE DRAFTING OF IOWA'S CONSTITUTION

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Iowa has had three constitutional conventions — all held in Iowa City. The first was in 1844. The constitution drafted then was later rejected in a popular vote. The second constitution, drafted in 1846, was the instrument by which Iowa became a state. A later convention was held in 1857 which drafted the document still used today (although much amended).

Each of the conventions had central disputes which were the subject of debate. Unfortunately, as the records of the 1844 and 1846 conventions are fragmentary, the full extent of the discussions is unknown.

In 1787 the founding fathers of the U.S. looked to European governments and political philosophers in drafting the federal constitution. Yet the result was the creation of a government largely new and unrecognizable from the models the drafters knew. When Iowa's drafters met, they had as models the federal constitution and the constitutions of previously admitted states plus the numerous territorial governments established by Congress. The evidence indicates that the drafters of Iowa's constitutions did indeed use the wealth of prior constitution drafting to arrive at the documents. In their broad outlines, all state constitutions follow the basic three-branch form of government found in the federal constitution. Unlike the drafters of the U.S. Constitution, the Iowa drafters were not trying to create a new form of government but only a variation of the existing form which would be relevant to Iowa's experience.

The immediate source of detail for Iowa's first constitution was the Organic Act for the Wisconsin Territory of which Iowa was part immediately prior to statehood.

The "Organic Act" was a law passed by Congress which was, in practical effect, the "constitution" for territories not yet admitted as states. Congress followed the pattern of the U.S. Constitution in creating the Organic Act. The Organic Act for the Territory of Wisconsin provided for a three-branch government — legislative, executive, and judicial — and a Bill of Rights. The executive power was vested in the Governor who was not elected but was appointed by the President. The Governor would be considered a strong executive because he possessed an absolute veto over acts of the Legislature. The only additional executive office was that of "Secretary." That office is the predecessor of the Secretary of State. The secretary's duty was to "record and preserve" the acts and proceedings of the Governor and Legislature.

The legislative branch consisted of the Governor and a bicameral legislature consisting of a "Council" and "House of Representatives." The actual inclusion of the Governor in the legislative branch somewhat blurred the distinctions between the branches of government. The Governor's role, however, was limited to the negative role of his veto power. The Legislature was vested with general legislative power without limitation on the subject areas of legislation. However, in addition to the Governor, the U.S. Congress also held a veto power over territorial legislation. The judicial branch consisted of a three-member Supreme Court and three district courts. The justices of the Supreme Court were also appointed by the President.

The key dispute in 1844 was the size of the prospective state itself. The convention proposed boundaries which encompassed not only the present-day state of Iowa but also virtually all of the present state of Minnesota south of Minneapolis and St. Paul. When Congress received Iowa's proposed constitution, they modified the boundaries to include, generally, only the eastern half of the boundaries as proposed by the drafters of Iowa's constitution. When this constitution was voted on in 1845 by the residents of Iowa, it was rejected because of the boundary question. This rejection delayed Iowa's admission. After the rejection of the 1844 constitution, the movement continued for another convention.

The 1846 convention essentially kept the same document as in 1844 except that the boundaries were changed to those familiar today. These boundaries were the result of a compromise reached during the period following the 1844 convention.

Both the 1844 and 1846 documents had one feature that is interesting as a historical curiosity. Both of them prohibited banks in Iowa. The "banks" which were prohibited were the then frequently existing "banks of issue." These banks printed and issued notes which were similar in appearance and use to our paper currency today. These banks were numerous in the early 1800s and were often wildcat operations. When one of these banks closed, those who held notes issued by that bank suffered a significant financial loss. Another kind of bank, a "bank of deposit," was not prohibited.

The 1857 constitution was drafted because of the soon perceived problems with the 1846 document. This convention, however, continued to follow a similar governmental structure as provided for in the earlier documents.

The three Iowa constitutions all had a “Bill of Rights” clearly modeled after the first 10 amendments to the U.S. Constitution.

The 1857 constitution provided for three branches and expressly prohibited any branch from exercising a function of the other. This explicit separation of powers is a difference from the federal constitution, which keeps the branches separate but does not explicitly say that they are separate. As in earlier documents, the Senate and House were again given broad powers — few subjects of legislation were prohibited. The 1857 document, however, did include more prohibited subjects of legislation than did the constitution of 1846.

The Governor could veto legislation, but his veto was to be limited, not absolute. The 1846 document allowed an override upon the vote of two-thirds of those members of the Legislature present and voting. The veto in the 1857 constitution required a two-thirds vote of the entire membership of the Legislature and thus was harder to override than the veto in the 1846 constitution. The veto provision was also modified to give the Governor additional time to consider his action on bills delivered to him in the three calendar days just prior to final adjournment.

From 1846 to 1857, the Executive Article was changed somewhat in form but not really in substance. The Governor was declared to have the “supreme executive power,” but there is otherwise little in the document which sets out exactly the nature of his executive power. The fact that the powers of the Governor were undelineated by the constitution indicates that those who drafted it envisioned the Governor as a weak officer performing routine duties. Indeed, the weakness of the office was accepted by Governors who were not full-time executives and often spent time attending to other than governmental activities. A great deal of the power of the Governor today resulted from subsequent statutory enactment and a somewhat related increase in prestige.

The 1857 constitution also added a Lieutenant Governor, but, like the Vice President in the United States Constitution, this officer has little other power than to preside over the Senate.\*

From 1846 to 1857, the judicial branch also remained largely unchanged. The 1857 document provided for the direct election of judges. Under the previous constitution, judges were elected by a joint vote of both houses of the General Assembly. One unusual feature of the 1857 constitution was that the Office of Attorney General was attached to the judicial branch of government rather than the executive branch where the office exists in most other states.

In the course of the 1857 convention, there were many arguments over matters which may not be guessed by looking at the mere words of the document.

One such issue was that of race. (The time of the convention was, of course, just prior to the Civil War when the Republican Party was on the rise.) There were lengthy debates at the convention as to whether blacks could vote, join the militia, testify in court, and so on. In 1857, those who favored restricting most rights of blacks won, although the issue of whether blacks could vote was submitted to the people as a referendum. In the referendum, the extension of the franchise to blacks was defeated. Reflecting the temper of post-Civil War times, Iowa voters approved a constitutional amendment giving the ballot to black males in 1868.

The new constitution was drafted over 39 days in February and March 1857. It was narrowly approved at a referendum in August and went into effect by proclamation of the Governor on September 3, 1857.

Since that time, Iowa’s Constitution has been amended 48 times but the basic document still remains. It is now one of the older state constitutions in America still in force.

*\*A constitutional amendment was voted on and approved by Iowa voters in 1988. Passage of this amendment significantly changed the duties and responsibilities of the Lieutenant Governor for the term beginning in 1991. As of 1991, duties of Iowa’s Lieutenant Governor no longer include presiding over the state Senate.*