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SOME QUANTITATIVE ASPECTS OF LEGISLATION IN KENTUCKY

RODMAN SULLIVAN*

There oughta be a law—
(and there probably is, or was)

According to an old proverb, the mills of the gods grind exceedingly slow, but they grind exceedingly fine. Legislative mills can't be said to imitate those of the gods in either of these aspects. Sometimes they pour forth an astonishingly varied grist of all degrees of fineness, and sometimes, if judged quantitatively, they do very little.

Appraisal of the quality of legislation is the province of the courts, of statesmen, and above all, of the public, though the historian is likely to have the final say. The very essence of the democratic process is the right of the common man to pass judgment upon men and upon measures of his day—not, retrospectively, only upon those of by-gone ages. The stability, safety, and progress of society is heavily dependent upon the wisdom of his decisions. Legislators, like the rest of us, have no beacon light to guide their steps. They must feel their way in the dark; they must experiment, improvise, compromise. They are faced with a condition, a fact, or an evil. For that reason their remedies appear all too frequently to be stop-gap expedients. Often there is the feeling that the door has been locked after the calves are gone, at least a sizable portion of them. However, it is inevitable that law-making should lag behind the chariot of progress, but woe to the society where it lags too far!

It is simple, comparatively, to measure the volume of output of the law-makers. Broadly, it is a matter of counting words—in practice/pages¹ The results of this tabulation for Kentucky session acts are shown in the accompanying graph.

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¹ There are, of course, certain difficulties. The size of the page, the margins, and the size of the print are the most important variables. Still another is the number of chapters. Where they are numerous and short, considerable space is lost to the headings. However, a sample word count for selected years indicated no great variation in the number of words per page, except in the early years when rather large type was used. (See footnote to graph).
The acts for the period 1792-94 were on larger sized paper than was used later. The large type used was continued through 1804.
The wide variations in output of the General Assembly are very evident. Is it possible to discern the reasons behind these fluctuations? Of what stuff did the great masses of law consist? Were the peaks influenced by wars, booms, waves of reform, or by internal rather than external factors? What subjects have engrossed the attention of the Solons at various times? It was such questions that occasioned this study. One of the by-products was intriguing glimpses into the state’s economic and social history.

It is a bit startling to realize that over 70,000 pages of acts have been turned out to govern the lives of Kentuckians since the state was admitted to the Union, yet the revised statutes of 1942 contained only 2,828 double-column pages. This shrinkage is mute testimony to the fleeting and transitory nature of a host of acts. In the language of finance, they “went through the wringer.” Hundreds of measures were repealed, sometimes with, but often without, re-enactment. Thousands required or permitted one specific thing which, having been consummated, or defaulted, made unnecessary any further reference to the matter.

It is self-evident that the average legislator could have known very little of the content of the bills passing across his desk in those periods when two or more weighty volumes were required to encompass the “law.” The volume of litigation over the interpretation of statutes is ample evidence of the difficulties involved in saying what you mean and meaning what you say. More pointed evidence of the haste and carelessness in preparing bills for consideration is the brief printer’s note sometimes found pointing out that the enrolled bills appear exactly as received, but that many errors are discernible, the more obvious of which have been put in brackets. An interesting recent occurrence illustrates vividly the point that legislators may not know the significance of their actions. A joint resolution of the 1944 regular session placed the General Assembly on record as opposed to federal income and estate tax rates in excess of 25 per cent. When the import of the resolution was called to the attention of the body, the House of Representatives reversed itself during the following special session. This resolution attracted no little attention in the press. Small wonder that the average bill or resolution can slip by unnoticed!

\* Acts 1944, regular session, c. 193, p. 418.
It would be natural to expect a considerable volume of legislation just after the state was admitted to the Union. There was a new constitution to be implemented and new social and economic problems to be faced. However, such was not the case. The very first sessions set the pattern which was to be followed for a century, a pattern consisting of a heterogeneous mess of public and private law, mostly private. No attempt was made to separate the public and private acts for several years, and, so far as can be found, there never was any legal cognizance of the problem of distinguishing between them. It appears to have been left up to the public printer to make the classification. That he did not always follow the same principle is evident from the inclusion of bank charters sometimes under public acts, sometimes under private acts, and sometimes under both.

It is impossible to say precisely what was the first measure enacted by a Kentucky legislature since three received the governor's approval on the same day, June 22, 1792. One created the office of Auditor of Public Accounts, and the other two divided Nelson and Woodford counties to form Washington and Scott counties, respectively.

Naturally, there was a mass of important legislation confronting this first session. It made provisions for elections in general, for elections of representatives to the Congress and for selecting electors for president and vice president. A revenue system was initiated, a land office created, and a system, capped by the Court of Appeals, of county, quarterly and oyer terminer courts was set up. The already existing militia was regulated, and an act destined to be much amended concerned itself with stray livestock. Forerunner of much private legislation in the years to come were two acts, one of which provided for the division of certain lands between three Craigs and Philemon Thomas, and the other being for the relief of Innes B. Brent.

All these session acts required 50 long, wide pages, yet the next year's session passed measures of much less import requiring 54 similar pages, and only one page less was required by the acts of 1794. Private and local legislation was already beginning to hit its stride.

In 1798 legislation concerning the state militia took up 26 pages and another 26 were devoted to reduction “into one
the several acts for the better regulating certain Officers Fees.’” Incidentally, the militia, directly and indirectly, gave the Assembly much grist for its mill. The duties of the citizen in the service of the state were set out with some elaborateness, but it was not easy to decide in all cases what was acceptable as a “tour of duty” and there were numerous private acts to care for special and unusual cases. Nine and one-half pages of the 1798 volume contained the act “to establish and endow certain Academies.” It is surprising that so many should have been authorized at one time at that early date. The list included Newport, Harrodsburg, Stanford, Rittenhouse, Newton, Montgomery, Harrison, Fleming, Shelby, Madison, New Athens, Bracken, Washington, Hartford, Bourbon, Lancaster, Hardin, Bullitt, and Woodford. Trustees were appointed for all of them, some were located, and others had their location left to the board of trustees. Several of these institutions were destined to play a prominent part in the educational history of the young commonwealth.

Establishment of ferries and roads, creation of courts and determination of their time and place of session, survey and settlement of public lands, regulation of slavery—these were some of the duties of the law-makers. There was never any surcease from the bills for the “relief” of someone, or for the benefit of some person or locality. This mass of local and private legislation defies classification. The astoundingly varied nature of the situations and circumstances necessitating action leads to the conclusion that anything could happen—and that it usually did. The assembly was continually importuned to grant a divorce, declare persons under twenty-one to be of legal age, grant a change of venue, grant or amend a municipal or other corporate charter, change the time or place of voting, create or alter the boundaries of a voting precinct or school district, grant a sheriff extra time to make his settlements with the state, admit a slave to the state (after importation was forbidden), change somebody’s name, relieve an executor of a will of some responsibility, legalize some act of county or city officials, etc., to the limit of the imagination. In fact the imagination soon runs out. It would appear impossible for anything new to happen that had not already happened
before in similar form, but before long there is a new twist or
quirk.

It should be borne in mind that much of this type of legisla-
tion merely gave legal sanction to what was already an accom-
plished fact. Government and record keeping were in a forma-
tive stage, great inconvenience or hardship to the people would
be occasioned by too strict adherence to technicalities, and per-
sonnel were not always available to perform the necessary func-
tions. In remote and isolated areas itinerant ministers of the
Gospel preached funerals for the dead who had died since any
minister had traveled that way, and united in wedlock couples
who had co-habited since some previous decision to be lawfully
united when opportunity permitted. Local officials, faced with
an existing condition, acted first and depended later upon the
Assembly to legalize what they had done.

Ignorance of the law was widespread and, though technically
no excuse for its violation, constituted in the eyes of the people's
representatives a strong and often valid reason for forgiveness,
especially if there was present no evidence of bad faith. Take,
for example, the act to legalize acknowledgments of deeds, mort-
gages, and other instruments before the late mayors of Newport.
Such acknowledgments were supposed to have been before the
clerk of the county court. It is possible that the citizens of Ger-
man antecedents in Newport may have followed European prece-
dent of going before the mayor for important transac-
tions. After such things were done, there was little the legislature could
do but legalize them. One is reminded of the logic of O’Henry's
mountain squire:

"The law and the statutes," said he, "are silent on the sub-
ject of divorcement as far as the jurisdiction of this court is con-
cerned. But, according to equity and the Constitution and the
golden rule, it's a bad bargain that can't run both ways. If a
justice of the peace can marry a couple, it's plain that he is
bound to be able to divorcement 'em. This here office will issue a
decree of divorcement and abide by the decision of the Supreme
Court to hold it good."

There was an upsurge of legislation in the 1812-16 period,
but little of it was concerned with the second war with England.
The higher level attained at this time held rather evenly until

"Acts 1861, called session, p. 22. Who the mayors were or
why they were all dead is not made clear.

*The Whirligig of Life."
1830 when it rose sharply, reaching a peak in 1834 which was approximately double that of the previous high in 1816. The rage for internal improvements had not left the state untouched. Though the state itself did not extensively participate in the movement, it permitted participation by units of local government. The permission granted to the Shelby County Board of Internal Improvements to erect a toll gate indicates the existence of local action.

President Jackson's veto of the Maysville Turnpike bill rudely jolted the state's ambition for nationally constructed or aided internal improvements. After a none-too-happy venture with a railroad and a bank, the state contented itself with encouraging counties and municipalities to support turnpikes and railroads. "Kentucky was conspicuous for the amount and extent of its local subscriptions."

Vastly more time-consuming than internal improvements was the ever-recurring conflict of interest between those who wanted mill dams, log booms, and watergaps on the streams and those who wanted navigation. Since transportation by water was often the most feasible method, flat boats and steam boats pushed into almost unbelievable nooks and crannies. When timber became relatively scarce in the more thickly populated areas, the more remote sections supplied the rising demand. Timber was an important cash crop, and floating it out during the spring freshets was often the only available marketing method. It was essential that the creeks and streams remain unobstructed. For 50 or more years scores of measures were enacted declaring such and such a stream to be navigable. Six such measures appear on one page of the table of contents of Vol. 1 of 1884. Some of these streams are so inconsequential as to be shown today only upon large-scale topographic maps. It is easy to criticize the law-makers for devoting so much time to this problem, but it did not lend itself readily to solution by a general act declaring all streams navigable if they fell within a certain classification. Each case was different. Occasionally repeal of one of the acts

5 Acts 1834, p. 357.

indicated that the need for navigation no longer existed. The titles of some of the enactments elicit a smile at the implied powers of the legislators. "An act to make and declare Blank Creek a navigable stream." They might declare it so but it is doubtful if they did or could make it so.

Once the legislature made a sweeping gesture and declared navigable all creeks and streams entering Cumberland River above Point Burnside, but was forced to modify the measure in 1888. An intriguing note on the money of account as late as 1834 is provided by the declaration of that year that Bayou de Chien Creek was navigable, and the further provision that the penalty for obstructing it should be a fine of fifteen shillings.

A small amount of the bulge in 1832-34 is accounted for by the prosperity of the time which caused a demand for some corporate charters, but the number of them was not great. The corporate form was still regarded with suspicion. The next great upswing in legislative volume came in the 1840's, yet in the 1844-46 period there is no evidence of any especial reason for it. A few charters were granted, a few towns incorporated, notably Mayfield, Shelbyville, Somerset, and Burksville. They had all been in existence for some time as villages of more or less importance. The University of Louisville was established, antedating, it is said, all other municipal universities in this country. Nevertheless the great mass of "law" was still the same old stuff:

- Divorcing Lindsey Lister from his wife,
- For the benefit of Jacob Cardwell's heirs,
- For a change of venue in the prosecution of S. Snyder,
- To authorize the trustees of Port Royal to change an alley,
- To extend the limits of Stanford,
- For the benefit of the Sheriff of Montgomery,
- To change the place of voting in Harlan County (the manner of voting in Harlan County was a matter of concern somewhat later),
- For the benefit of the County Courts in Cumberland and Boyle,
- To allow an additional justice of the peace in Pulaski,
- For the relief of executors of Carter Blanton, etc., etc.

Dick's (Dix) River was declared navigable in 1824 (p. 456) by an Act which was repealed in 1833 (p. 20). Marketable timber on this Bluegrass stream was exhausted relatively early.

The spelling is as given in the session acts.
Without some drastic change in the basis of enactment, it was inevitable that a growing, expanding society would require an ever increasing volume of legislation. With a few exceptions to be noted later, such a basic change did not occur until the last decade of the century.

In the 1840's there was no inconsiderable number of special benefit acts to enable slaves to be imported into the state without violating the provisions of the 1833 act prohibiting their importation. In these cases the importation was for a special reason. In fact it was necessary to make an affidavit before a justice of the peace in the county of the affiant stating that the slave was not brought into the state for sale but for private use. Sometimes a time limit was set before the slave could be sold. In others, nothing was said about sale. It was sometimes provided that if sale were ever made "he (the owner) shall suffer all the pains and penalties of the said act of 1833." In all fairness, it should be said that many of these importations were for the purpose of reuniting broken families and represented a praiseworthy motive.

The sharp upturn of 1859-60 was not due to any especially recognizable causes. There was a heavy volume, relatively, of measures regulating and changing court sessions in various counties and, in the field of private and local acts, a young flood of turnpike incorporations. There had been a sprinkling of such developments for over a decade. Interest in the movement was not destined to die out for thirty more years.

The legislature devoted many a page to charters and amendments to charters in that time. Of lesser importance was the popular interest in agricultural and mechanical associations. Churches and lodges felt they too must have a corporate charter. A few coal and oil companies were projected and a sprinkling of insurance companies. From the point of view of state history it is unfortunate that charters did not always make clear the contemplated production. For example, the Petroleum Sulphur Springs and Manufacturing Co. of Meade County received a charter stating that "The business of the company shall be the manufacturing of such materials as may be found on the prop-

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9 For example, Acts 1847–48, p. 113.
10 Ibid., p. 79.
The earliest charter to come to my attention which specifically granted permission to do business out of the state authorized the Kentucky Silver Mining Company "to carry on the business of working gold and silver mines in that portion of the Territory of New Mexico commonly called Arizona."

The sharp drop in law-making during the next biennium shows the sobering effects of war. The decline was largely in the field of private legislation since public legislation by this time did not occupy, quantitatively speaking, a very important place. There were no offsetting war-inspired measures. The called session of May 6-24, 1861, made 10 pages of public law and five times as much private law. Three pages contained the provisions for regulating the militia and for arming the state. The only other measure that had a war flavor, though war was not mentioned, was one permitting banks to suspend specie payments, but they were warned they must resume payments within six months after notification by the legislature to do so. By the time the regular session met late in 1863, the active front had moved deep into the South. The percentage of that session's work concerned with the war is indeed small. One page sufficed to empower the governor to raise a force for the defense of the state. Another act prevented judgment by default against soldiers in active service. A third authorized a debt of five million dollars to support the state's troop levies, and imposed a tax of 10 cents upon each $100 of assessed property value to pay interest and principal of the bonds. A scant two pages provided for disloyal and treasonable acts against the United States and the Commonwealth. All war acts together did not exceed 10 pages in length.

Although the bloody strife brought grave losses in manpower to the state, it did not seem to handicap its economic advancement. There was a sharp rise in business confidence and activity in 1864 which continued strong until the crash of 1873. The session held during the first three months of 1865 had no war flavor. True, the longest act, 20 pages, provided for the organization and discipline of the militia of Kentucky. It was approved just one month and five days before Lee surrendered at Appomattox! This resurgence of commercial and indus-

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trial activity in the state as soon as all danger of armed conflict upon its soil ceased is evident from the rush for corporate charters. It is impossible to know how many were besought in vain, but the number granted in the waning months of internecine struggle was the largest for any session up to that time, and must have made the thoughtful members wonder if the doctrine that corporate powers could be extended only by special legislative sanction was not likely to prove burdensome, unwieldy, and time consuming to the Assembly as well as prejudicial to public interest in a dynamic economy committed to the economic policy of laissez faire.

The spring of 1865 found the state "enjoying" an oil boom evidently of some proportions, as well as activity in lumbering, mining and manufacturing. As a rule the young hopefuls were not backward in asking for ample powers. A typical example was the Cook, Cardwell and Company Oil, Mining, and Manufacturing Company, the object of which

"...is to develop the petroleum, rock, and carbon oils, iron, coal, copper, and zinc, and other minerals, lumber, and vegetable resources in the State of Kentucky, and to manufacture, refine, and transport the same to market in crude or refined state; and to this end said company may open oil wells and mines for all manner of minerals; cut and transport to market lumber of all kinds; shall have power to erect all needful workshops, mills, refineries, and furnaces, depots, and other buildings which may be deemed proper for the prosecution of their business; may purchase, construct, and own wharves and landings upon any streams in this Commonwealth, and may improve the navigation of the streams in this State by the erection of locks and dams, and the removal of all manner of obstructions there-from, and when such improvements are made may charge such rates of toll as are charged on the Kentucky river for similar improvements; may construct boat-yards, build and own all kinds of boats; may construct turnpikes and railroads to and from any of the works and depots of said company and all points within the State where said company may wish to deliver their products in the raw or manufactured state; and when said turnpikes and roads are completed, may charge the same rates of toll, per capita, and per ton, as may be charged on the Danville and Hustonville turnpike, and upon the Louisville and Nashville railroad for similar and like purposes and improvements."

One group was frank enough to call itself the Wild Cat, Rockcastle County, Mining and Petroleum Company, whereas another took a tip from the Old Testament miricle and selected for its appellation Widow's Cruise Oil Company. The spell-
ing would indicate either that the boys were none too familiar with the story or else they really intended to take the widows, and anybody else, for that matter, for a ride. Subsequent history of the oil industry in the state suggests that many more seekers for "black gold" might have done well to have imitated the nomenclature of the Dry Run Oil Company.\textsuperscript{17} Henry Clay, Daniel Webster, and Tammany Hall were honored by having oil companies named for them. So were the Republicans. The astounding total of 263 charters, including five or six amendments to charters, was granted to oil companies during this one session. Every section of the state was represented. The promoters neglected no opportunities.

Sustained business activity at a high level kept the Assembly busy with corporate charters for the next six years. There was no lack of enthusiasm for mining, manufacturing, banking, insurance, railways and turnpikes, churches, lodges, seminaries and colleges. Exploration for oil was still popular, too. In spite of a steady stream of westward migration, the rapidly expanding population necessitated the incorporation of towns by the dozen. The exploitation of the great Lake Superior iron ore deposits had not yet come, so local deposits of iron ore still attracted attention. The act to create the Red River Iron Manufacturing Company is a typical example of the ample powers conferred upon such ventures. Certainly it left little to be desired from the point of view of the organizers. Mining, manufacturing, lumbering and transportation were to be its province of operation.\textsuperscript{18} There was also considerable interest in lead ore deposits. The importance of horses in the economy is hinted by the chartering of horse insurance companies. That the horse thief was still a menace is deduced from the name of one concern—Great Western Detective and Horse Insurance Company of Kentucky.\textsuperscript{19} Circumstantial evidence that kerosene was being commonly used arises from the founding of the Union Queen Petroleum Stove Manufacturing Company. Interest in public utilities was awakening. Columbus was promised a water works and Maysville a gas works. Incidentally, an innovation of this period was the creation in 1867 of the County of Henrietta, subject to the action of the voters.

\textsuperscript{15} Ibid., pp. 130, 165 and 388.
\textsuperscript{16} Acts 1866, c. 555, p. 463.
\textsuperscript{17} Acts 1866, c. 468, p. 402.

L. J.—
Ordinarily no such qualification was included in measures creating new counties. Henrietta was to consist of the portion of Trigg County lying between the Cumberland and Tennessee rivers and one square mile of Marshall County on the west bank of the Tennessee. Since no more was heard of it the electorate must have rejected the proposal.

So diverse and polyglot was this big legislative bulge in the late 1860's and early 1870's that classification is impossible. If all railroads chartered during the period had materialized, the state would have had perhaps as much mileage as it has now. The Masonic order grew lustily. Culture was represented by the Louisville Philharmonic Society and the Campbellsville Brass Band. More important to others was the Louisville Baseball Club. Building and loan societies began to be popular. The unrestricted sale of liquor became a lively issue destined to plague the voters and law-makers to the present day. For the next two decades a steady succession of measures to declare certain localities "dry" or to repeal such declarations consumed legislative time. Occasionally the process was varied by authorizing local option elections. The sale of ardent spirits was forbidden in Breathitt County in 1868, in Knox in 1869, and in Harlan in 1870. In 1872 Josh Bell County was authorized to hold an election on the wet issue and Breathitt's "dry" law was repealed, although re-enacted the next session. This time it was provided that "it shall be unlawful for any person or persons to sell, vend, or loan ardent, vinous, malt, spirituous, or intoxicating liquors, or the mixture thereof, in the county of Breathitt in quantities of less than ten gallons." It is doubtful if this quantitative limitation bothered Breathitt countians much, though it undoubtedly was put in to permit wholesaling operations. One naturally speculates on the validity of a "loan" of liquor. Although, from time to time, several counties and quite a number of municipalities were declared dry, the greatest number of dry acts, scores of them, came about to forbid the sale of liquor within a certain distance of churches—most commonly, country churches. Few of the latter were repealed. Many of the former were.

Occasional attempts were made to check the flood of corporate charter work by the enactment of general incorporation acts.

Vol. 1, p. 12.
The first seems to have been in 1854, although as early as 1796 there had been a provision authorizing county courts to establish towns. It provided: "That whenever any three or more persons may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical or chemical business, or transportation or vending of coal . . . they shall be a body politic and corporate . . . " upon the performance of the usual preliminary steps. To what extent incorporators availed themselves of this privilege, it is impossible to say. Though the provisions of the act are quite typical of general incorporation acts, there were two or three clauses that may have frightened away any would-be users. One read: "The stockholders of every company shall be individually liable, jointly and severally, for all debts due to laborers and servants, for services performed for such corporation."

Another provision made the president and directors individually liable, jointly and severally, to the creditors for the excess of any debt contracted beyond the amount of the capital stock. Furthermore, failure to make and publish an annual report setting out the paid-in capital and existing debt subjected the president and directors to personal liability for such indebtedness.

The longer 1867 law considerably liberalized these provisions. It added quarrying, boring for petroleum (rock oil), salt water, and other valuable minerals, and their refining and transportation, to the list of permitted activities. Preferred stock was allowed. Minimum and maximum size limits of $5,000 and $2,000,000 were established and no stock was to be issued for less than its par value. Though general limitation of liability of officers and stockholders was specifically set forth, the directors continued to be individually liable for excess of debt over capital stock unless they were absent from the meeting or opposed creation of the debt and notified the stockholders of their opposition. Again in 1870 the Assembly attempted to rid itself of this onerous burden. Any lawful business could be carried on except banking, insurance, and the construction of railroads. The usual corporate powers were granted, but there was still some ambiguity concerning complete limited liability of stockholders. At the same time two separate measures provided for the incorporation of life insurance companies, and for companies

writing all other forms of insurance. For some unexplained reason a general incorporation law with real limited liability was enacted by the 1871-72 session applicable only to Carroll County to the extent of participation in manufacturing, mining, transporting, mechanical or chemical purposes. The general law was made to apply "with the single exception and modification that the stockholders therein shall not be individually liable beyond the amount of stock held by them respectively, for any debt of any sort incurred by such company or corporation; and upon payment in full of the amount of stock subscribed by the individual, his liability shall cease, anything in any provision of the general laws to the contrary notwithstanding."

The sharp decline in the volume of legislation in the 1873-74 session is mute evidence of the effect of the serious business recession of 1873. Few indeed were the corporate charters issued in that year, and there was no great demand until 1880. There was a sprinkling of turnpike charters and a reviving interest in railroads. The Kentucky Trotting Horse Breeders Association received its charter in 1876, as did the State Grange of the Patrons of Husbandry. There was a flood of charter amending.

In 1878 the legislature took steps to prevent and punish intoxication of judges, clerks, county officers, and commonwealth attorneys. The same year it decided at last to do something about the problem of piecemeal regulation of toll roads and brought forth a general law. It had previously22 authorized county courts to subscribe to stock in turnpike companies, yet at the same time (1868) it permitted citizens of Clark County to pass free over toll roads to church and funerals. Why pick out Clark County for special legislation? The first law to come to the writer's attention using the principle of classification of cities according to size was enacted in 1886. It affected public schools in cities having a population of 20,000 or over.

The 1880-90 decade provided the all-time peak of legislative volume in Kentucky. It is reasonable to believe that such another peak is unlikely. No discernible policy is observable which would relieve the Assembly of the mass of detail and enable it to devote its time to more fundamental matters of welfare and policy. In 1884 it permitted turnpike, gravel, and plank road companies chartered by special act to reorganize and

operate under the general incorporation laws of the state, yet it went right on granting special road company charters. Two years previously it had provided that "any person or corporation engaged in manufacturing ice on the Sabbath day shall not be liable to the penalty denounced against persons who do work or business on that day. This act shall apply only to the Lexington Ice Manufacturing and Storage Company." The demand for charters during this period seemed to be insatiable. Optimism was unbounded. The railroad fever ran high. Street railways, too, were in great favor. Paducah, Henderson, Mt. Sterling, Nicholasville, Paris, Richmond, Irvine, Pineville, Florence, Erlanger, Georgetown, Winchester, Bowling Green, Beattyville, Danville, Princeton, London, Middlesboro, and Louisa were among the hopefuls. Safety vault and trust company stock was popular. Many banks were chartered. The Dollar Savings Bank of Louisville was outdone by the Dime Savings Bank. The Saturday Night Savings and Loan Association of Lexington could have connoted most anything. Occasionally all laws and amendments relative to the charter of a municipality were swept away and a new charter granted. Somerset was so favored with 46 pages of charter in 1888, and Middlesboro with 41 pages.

Long overdue, regulatory legislation directly or indirectly affecting the public welfare made its appearance in greater volume during the 1880's than ever before. Laissez faire had gone wild. Every session for years had taken notice of the destruction of food fishes and there had been occasional measures to encourage restocking the streams. Beginning in 1865 there had been a long series of acts governing the storage of petroleum products. The sale of opium, fertilizer, and lightning rods was scrutinized a little more carefully. The State Board of Pharmacy was created and the practice of pharmacy and medicine regulated. Diseased hogs were banned from the public highways. Attention was paid to fire escapes on public buildings. There was strengthening of measures relative to ventilation of coal mines and protection for miners.

However, it must not be inferred from all this that the chartering and regulating of business relieved the law-makers of a mass of heterogeneous measures for the benefit of persons and localities. Such legislation was ever present, but by 1890

it assumed much less relative importance than it had a half century earlier. Still it could have been a contributing factor if the governor took writer's cramp signing the bills—and well he might for there were 1,470 chapters of private acts in 1882, 1,640 in 1884, and 1,752 in 1890.

The sudden collapse of the lofty pinnacle of law-making after 1890 is a phenomenon deserving a word of explanation. It is found in paragraph 59 of the 1891 Constitution, which begins, "The General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes." The forbidden list contains 29 items. Most of the old standbys are included: jurisdiction, practice of courts, estates of persons under disability, declaring persons to be of age, descent or distribution, divorces, legalizing invalid instruments, legalizing invalid official acts, taxes, roads, streets, and public places, charters, navigable streams, tolls, elections and election precincts, game and fish, sale of liquor, restoring citizenship. These are the most important but there was the further provision that "In all other cases where a general law can be made applicable, no special law shall be enacted."

It remained for the regular and special sessions following this sweeping house cleaning to implement the new document. Much repealing was done. Elections were regulated by a 68 page measure. Two revenue acts took a total of 111 pages, and a general incorporation act, 122. First, second, and third class cities consumed 220 pages of print. After this rear guard action, the rout was complete. For over a decade the session acts would not have seriously encumbered a coat pocket. Occasional lengthy statutes contrasted strangely with the rapid fire character of the big volumes of an earlier time. In 1906 a new tax law required 161 pages, and in 1916 the subject of common schools commanded 130. There was only one resolution in 1906.

The first World War created scarcely a ripple of legislation. A Kentucky Council of Defense was created. It was made unlawful for aliens to possess firearms. A third measure was directed at idleness in the Commonwealth during the period of hostilities.

Prohibition required some attention by 1920, and there also appeared at the same time a new class of legislation that was to
bulk large for over 15 years. It all started in 1920 by the creation of a primary system of highways "which shall give to each county in the State at least one main thoroughfare and the roads thus established as a system of primary roads shall be as follows:"

A list of 59 (actually 68) numbered projects was set up. Just why the Legislature ever let itself in for so much trouble by specifying where the roads should be run is hard to say. A half-dozen other projects were added by that very session. Soon the trickle of additions became a flood. By 1928 the whole thing had become a comedy. So many roads had been made part of the primary highway system that the Highway Department's funds were insufficient to construct and improve but a tiny fraction of them. Obviously the Department was forced to ignore the stream of additions and put the highways where necessity or political expediency dictated. Yet the monotonous procession continued. "Be it enacted by the General Assembly of the Commonwealth of Kentucky: That there is hereby established as a part of the primary system of highways of the Commonwealth of Kentucky, a road leading from a point on the Bosworth Trail at or near Big Hill Postoffice in Madison County, thence by way of Berea and Wallacetown to a point on the state highway near Paint Lick in Garrard County, Kentucky."

The public printer adopted the habit of grouping these highway acts at the end of the volume. In 1928 they took up 147 pages. This ridiculous and absurd enacting continued undiminished through 1936. Two years later a general act put all public roads of the state on the primary system.

Though there has always been more or less resolving done by the Assembly it has not come in a very steady stream. For example, part of the decline in that body's output in 1944 is occasioned by the sharp drop in the volume of resolutions. Previous to the session of 1944 there had been for several years a large number of resolutions permitting suits to be brought against the state. As many as 133 pages of such actions appeared in one year (1938). Not one occurred in 1944. However, the omission was due to a change of procedure and not to a change of policy. The Statute Revision Commission held that these

24 Acts 1920, c. 17, p. 76.
claims and suits could be grouped, thereby eliminating a large number of roll calls. The House combined them into eight resolutions and the Senate into two, but the Governor vetoed them too late for the Assembly to consider passage over his veto.

The social legislation of the 1934-44 decade left its imprint both figuratively and literally upon the statutory law. The Unemployment Compensation Act took up 56 pages in 1938 and another 62 in 1940. In 1936 one special session effected a rather sweeping reorganization of the state government (58 pages), and another extensively overhauled the revenue system (171 pages). The budget had come to consume from 40 to 60 pages as a regular thing. Game and fish, voting machines, banking and securities, teacher retirement plan, sanitary districts, welfare institutions, housing commission, city and county planning and zoning, city and county electric power systems—these are some of the longer and more comprehensive acts that distinguish recent legislation from the brief, pointed, and staccato enactments of an earlier day.

Like other wars, World War II created scarcely a ripple on the legislative stream. Daylight-saving time was inaugurated in 1942. Four brief acts in 1944 completed the picture. It may be that the so-called G. I. Bill of Rights relieved, and will relieve, the states of an obligation in this field.

**Conclusion**

It would be rash indeed to prophesy from the past the future of legislation in Kentucky, either from a quantitative or qualitative standpoint. There is neither a discernible trend nor cycle. The conditions which have existed most certainly will not exist again, certainly not in the same proportions. There is little likelihood that ever again will there be the mass of disjointed, piecemeal, rapid-fire legislation which so strongly characterized nineteenth century law-making. Local and private legislation surely has gone for good. Classification of cities for legislative purposes undoubtedly has come to stay. As the statutes have grown and developed, there is increasing effort to fit the acts of each session into the picture without too much distortion or

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27 Letter from Speaker of the House Harry Lee Waterfield.
inconsistency. More care is now being taken to put the bills introduced into good form. Also the work of the Legislative Council and the Statute Revision Commission has been very fruitful.

Nevertheless, there is need for a carefully planned legislative program. Extensive sections of the statutes have been amended until a thorough revision is necessary before they can be considered to be clear and in good form. The section on divorce is a good example. There are many others. In the field of social and economic affairs there are gaps and omissions to be filled if the state is to keep up with the parade. The time may be ripe for the preparation by students in these and other fields of a proposed legislative program for Kentucky to be submitted to public discussion, with or without benefit of a new constitution. Such a program might do much to focus attention upon the question of a new constitution. If substantial agreement could be had on the proposals—on what we want to do—the adequacy or inadequacy of the organic framework within which we must work would become fairly self-evident.
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