North Dakota Law Review

Volume 6 | Number 9 Article 6

1929

Report of Committee on Comparative Law

A G. Burr

E J. Taylor

W H. Stutsman

The first step in securing a higher intelligence and better understanding of the law with a resulting better service is to now urge forcefully and persistently the repeal of the present provisions of the statute which limit a Sheriff to four years in office.

It should be obvious to a mere casual observer that even a dull Sheriff will absorb some knowledge of his duties and acquire some added ability to perform those duties by experience. Making it possible to pursue indefinitely the busines of Sheriff and the possibility of long service in that office, will attract to it men of intelligence and outstanding ability.

Police experience is needed in the apprehension of criminals and our Sheriffs are logically and by law charged with that work. That work cannot be done effectively under the present plan of electing these officers. The office of Sheriff requires more than candidates of outstanding ability in the art of campaigning and handshaking. What the office needs is experience and ability.

In remoulding our criminal procedure it should be realized that our greatest difficulty is in the apprehension of criminals, and it is evident that men of experience and ability are needed in the office of Sheriff, and men of that type cannot be attracted to offices of limited tenure.

The committee would further suggest that the present law surrounding the State's Attorney's Contingent Fund be entirely revamped. As the law now stands it has been construed by some of the Judges to mean that the State's Attorney is compelled, in making expenditures in the investigation of crime, to act blindly and virtually spend his own funds with the hope that when he submits a statement of expenditures to the Court, the Court will approve it.

The State's Attorney holds an important and responsible office, and a contingent fund, reasonable in amount, should be at his disposal in cases of emergency and he should have the power under the statute to use it in proper cases, without delay or red tape.

T. L. BROUILLARD, Chairman.

REPORT OF COMMITTEE ON COMPARATIVE LAW

It is not feasible to analyze and compare recent legislation of the various States, and the use of selected topics for analysis may not be profitable.

Your Committee deems it advisable to ascertain the amount of legislation and hopes by comparison with quasi-public returns to show whether the legislation correctly reflects public sentiment and demand, and thus be of more service to this Association.

Of the legislatures of the forty-eight States of the Union that of Alabama meets once in four years; New York, Rhode Island, and South Carolina annually, and those of the remaining States biennially.

Since January 1, 1929, all of the States, excluding Alabama, have held regular sessions of the legislature as have also the territories of Alaska and Hawaii. These legislatures have been prolific in the enactment of laws. Since January 1, 1929, 16,703 new state and territorial laws have been enacted. This is exclusive of special acts, concurrent resolutions, memorials and resolves.

Though Alabama had no session of the legislature in 1929 there were 400 laws enacted in 1927. The legislation of the remaining states and territories is as follows:

Laws enacted in 1929—

Alabama (no session) 1927	400
Arizona	114
Arkansas	375
California	891
Colorado	187
Connecticut, 513 special acts	302
Delaware	307
Florida, 1309 special acts	278
Georgia	400
Hawaii	258
Idaho	288
Illinois	418
Indiana	221
Iowa	416
Kansas	335
Kentucky	599
Louisana	293
Maine (public) 179 private laws and resolves	130
Maryland	578
Massachusetts	668
Michigan	326
Minnesota	434
Mississsippi	380
Missiouri, approximate	300
Montana	185
Nebraska	200
New Jersey	363
New Mexico	210
New York	713
North Carolina	218
North Dakota	260
Ohio	202
Oklahoma	357
Oregon	482
Pennsylvania	601
Rhode Island (general) 100 local and private	197
South Carolina	602
Tennessee, 83 special session	933
Texas, 137 special session	314
Utah, 12 special session	102
Vermont	187
Virginia	469
Washington (1927)	315
West Virginia	164
Wyoming	162
Wisconsin	537
Total	16,703

In addition we find a total of 927 laws were enacted in the first two sessions of the 71st congress out of 19,284 measures introduced.

Thus we see Florida stands at the head of the list in production having enacted 278 new general laws in 1929 with 1309 special acts during the past two years; Tennessee is a close second with 933 laws enacted at the regular session and 83 at a special session or a total of 1016 laws.

But California makes a respectable showing with 891 new laws at the last session of its legislature; and the Connecticut legislature nears that mark having adopted 302 general laws and 513 special acts.

New York's output was 713 general laws, which is found to be about the average annual production in that State.

The State with the least amount of legislation is Utah, the legislature of which passed but 114 enactments.

A large number of the laws are mere amendments to existing law. Frequently these changes are minor in their nature; but in a great number of instances the amendment is of such character as to change materially the statute, making it difficult for the ordinary citizen to know just what the law is on a given subject. Many of these amendments are products of experience in the use of the former legislation, and are called forth because of such experience.

The subjects dealt with by the different state legislatures cover every field of human activity from abandoned oil wells to the most intricate matters of finance both public and private. It does not seem possible that this flood of new legislation can continue unless the legislature should repeal a number of laws now on the statute books which have become obsolete, or are ignored by tacit understanding.

There have been a large number of amendments proposed to state constitutions. Easy amendment has been made possible through change in the provisions for amendment, and the adoption of the principle of the initiative. The tendency today seems to be toward loading the constitutions with matters that were formerly left to the legislature.

During the past four years many laws have been enacted affecting the legislators themselves, generally for increase in pay. In Arkansas the legislators now receive $1000.00 for the two-year term and $6 per day for extra sessions, with mileage cut to 5 cents per mile. New York pays its legislators a set salary of $2500.00. Michigan pays each member of the legislature $3.00 a day during the term for which the members are elected. North Carolina raised the compensation of members from $4.00 per day to $600.00 a term with $8.00 per day for extra or special sessions of not more than 20 days.

Oregon attempted to fix the maximum at $10.00 a day instead of $3.00 but the bill was defeated; and we are familiar with the result of a similar attempt in our own state.

In Texas the state constitution allows not over $5.00 per day with 20 cents a mile as mileage. An unsuccessful atempt was made to increase the compensation to $1500.00 and traveling expenses.

In Wisconsin, where the legislators receive $500.00 a term, at a recent session of the legislature three proposals regarding pay of members were made, one to make the salary $1000.00 per term, another to permit the legislature to fix its own compensation, and a third to remove from the state constitution all provisions regarding legislative salaries. The third proposal was ratified; and the others rejected.

Sessions and Terms

The legislative sessions range in length from 60 days upwards; there being no limit in New York and one or two other states. West Virginia fixes the limit in that state at 60 days; thus eliminating the split session which had hitherto prevailed. California is now the only state having the compulsory split session; though Massachusetts has a provision permitting it.

Virginia makes members of the general assembly "ineligible to offices filled by it, but eligible to offices by appointment."

A resume of legislation shows administration of justice, transportation, public utilities, social legislation in various form being uppermost in mind. We have selected a few states which will give a fairly good idea of the trend of legislation. Making provision for dependents, defectives and delinquent children is a subject of legislation in Arkansas, California, Maryland, Minnesota, North Carolina, Ohio, Oregon, New Jersey, Mississippi, Michigan, Kansas, New York and almost all others.

Mothers' Pensions is a form of relief that is receiving attention in most States. Among those that have recently enacted laws on this subject are Florida, Minnesota, Kentucky, Mississippi, Nebraska, New Hampshire, New York and others. Old age pensions is also beginning to receive attention.

In all states taxation receives its perennial attention, and as this seems to be perhaps the most difficult question before the public, it is little wonder that many new laws on all phases of taxation are enacted every two years. We see no evidence that efforts are being made to reduce taxation. The trend seems to be to appropriate more money and seek new sources of revenue. An interesting feature is that in a number of states bills have been introduced to make a qualification for voting on all municipal bond issues that the voter must be a taxpayer.

Railroad regulation has received attention; and banks and banking have brought forth laws on branch banking, cooperative banks, public depositories, duties, limitations and powers of directors, stockholders, insolvency, liability of banks on instruments, loans, minimum capital, and bank robbery. The law makers are trying to safeguard the rights of both bankers and depositor. Along with this banking legislation we find laws governing saving banks, trust companies, building and loan associations, etc.

The subject of public utilities receives attention. Arizona, California, Connecticut, Maryland, New York, North Dakota, South Dakota, Utah, Virginia and West Virginia require proof of value to the public as a condition precedent to doing business as selling stock. Wisconsin, Indiana, Maine and Maryland give their commissions wide powers in the matter of regulating rates. Massachusetts more fully regulates state supervision over rates and charges. Nevada includes radio and airship common carriers as public utilities. North Carolina provides that dividends shall not be paid if debts exceed three-fourths of assets. Vermont authorizes towns to appropriate money for aid to public utilities serving their inhabitants.

All kinds of insurance received attention in practically every state in the union. The tendency is to require absolute safety for the insured. Automobile liability and security laws are a live subject all over the

country and many states have enacted laws to protect the public. This subject is to come before our meeting in another report so we shall not discuss the legislation that has been enacted on this subject. On account of the appalling list of casualities from auto accidents and the rapidly increasing litigation arising from auto accidents we believe that this subject should have the most serious attention of both lawyers and law makers. Many states are enacting laws regulating trades and professions. The barber as well as the doctor and the lawyer must be licensed to practice in most states. This resume must not be construed as indicating the subjects mentioned are being considered in these states for the first time. Much of the legislation is amendment, as we stated before, and has a familiar sound to us for our own statute books show the same trend.

The initiative and referendum are being invoked more and more in matters and methods of legislation and particularly in the matter of amending state constitutions. These forms of legislation are in more general use in the western states than in those east of the Mississippi river. Oregon and Arizona lead in the number of initiated and referred measures with Oklahoma and North Dakota well represented.

If we were to offer a criticism on legislation enacted it would be that most subjects have been over legislated and too often there has not been enough careful thought in the preparation of bills. The advice to make haste slowly is pertinent in the matter of enacting laws as well as other fields.

As a general rule it may be stated that legislation reflects to a large extent the public agitation in government problems. This is borne out by a comparison of the subjects of legislation in the various states and the degrees of attention paid to these different subjects, with the proceedings of quasi-public organizations and organizations whose object is the intelligent discussion and solution of economic and political problems. Here we find a remarkable similarity between the subjects presented to the legislature and the subject attracting public attention. For example: The national Council of the National Economic League submitted a questionnaire to its members last January and asked that each submit a list of paramount problems of the United States for the preesnt year. Some of the problems that were considered paramount were administration of justice, prohibition, lawlessness or disrespect for law, crime, law enforcement, taxation, education, law revision, unemployment, child welfare, election laws, highways and waterways, group banking, prison reforms, motor traffic regulation and many others.

Of course some of these problems, strictly speaking, are not so much subjects for legislation as they are for business conduct; but those subjects which are strictly speaking within the realm of legislation are the subjects which appear to be treated by the different legislatures. Better co-ordination of the efforts of the legislature with the work of these semi-public organizations might result in more serviceable and workable legislation.

It will be interesting to notice whether future legislation will reflect the present day discussions in the National Economic League and similar organizations in a field quite peculiarly our own. Just recently the following question was submitted to the members of this league:

"What, in your opinion, are the most important steps to be taken for the improvement of the administration of justice in your State?"

This question was addressed to members in every State in the Union. Over 7000 answers were received and of these

634 said: Giving more power to judges in instructing jury.

629 said: Better method of selecting judges.

596 said: Higher Requirements for admission to bar.

575 said: Giving less than twelve jurors power to return verdicts in both civil and criminal cases.

441 said: Providing for experts to determine mental capacity of defendant.

437 said: Providing small juries for misdemeanor cases.

437 said: Providing for arbitration of business disputes.

412 said: Better method of determining rules of practice and procedure.

396 said: Improving technic of law making.

373 said: Giving defendant right to waive jury trial.

372 said: Establishment of judicial council.

342 said: Official state bar organization with powers of self discipline.

324 said: Unification of judicial system.

285 said: Change in tenure of judges.

247 said: Giving more power to court of appeals.

229 said: Reclassification of crimes.

202 said: Better method of prescribing organization of administrative and clerical side of courts.

181 said: Providing for public defenders.

Giving more power to judges in instructing the jury was considered to be first in importance in Arkansas, Colorado, Georgia, Louisiana, Maine, Minnesota, Montana, Nevada, New Hampshire, New Mexico, Virginia and Washington. Better method of selection of judges was considered to be of first importance in Alabama, California, Idaho, Illinois, Mississippi, Missouri, Nebraska, New York, North Dakota, Ohio, Oregon, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee and West Virginia.

Giving less than twelve jurors power to return verdicts in all cases was considered first in Arizona, Kansas, Kentucky, Rhode Island, Texas and Vermont. Lawlessness was placed first in Connecticut, Florida, Indiana, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, Wisconsin and Wyoming.

Delaware considered improvement in rules of practice as the most important problem, and increased power of the judges second. Iowa placed improved technic of law making first and increased power of judges second, while Utah placed unification of the judicial system first, and higher requirements for bar admission second.

Giving more power to the judges was first or second choice in twenty-two of the States, while higher requirements for admission to the bar was first or second choice in sixteen states.

Your Committee on Comparative Law presents this report in this manner trusting that the review presented may furnish information

regarding the process of legislation, the subjects demanding attention and the currents of public opinion suggesting the same.

Respectfully submitted,
A. G. BURR, Chairman,
E. J. TAYLOR,
W. H. STUTSMAN.

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

The fundamental principles of jurisprudence are practically the same now as in the days of Justinian. Yet law reform has been an important subject for discussion both by the profession and the people during the intervening years.

At times there has been a great popular clamor for a reform of some branch or phase of our law. Yet on the whole the important reforms in our jurisprudence have originated with our legal profession and have been sponsored and carried through by it.

It is true that on occasion it has taken a Shakespeare or a Dickens to lampoon the Bench and the Bar in order that needed reforms might be made and I think we will have to admit that two of the greatest reforms in recent years have originated and been carried through by the people without much assistance from our profession. I refer to the Child Labor Laws and the Workmen's Compensation Acts of the various states.

Still the general rule holds good that it is up to our profession to take note of changing conditions calling for new laws or changes in the old to properly meet such conditions.

In order to get some idea as to what should be covered by the report of this committee I read over the reports made by this committee at the Grand Forks meeting in 1927 by G. F. Dullum, Chairman, at the Minot meeting in 1928 by Judge Bagley, Chairman, and at the Valley City meeting in 1929 by Judge Wartner, Chairman.

There were many good recommendations in those reports and some of them have already borne fruit.

The question of what crimes involve moral turpitude within the meaning of our habitual criminal act touched upon by Mr. Dullum in his 1927 report has been clarified to some extent by a recent decision of our Supreme Court holding that a violation of our intoxicating liquor laws is such a crime, thereby making it possible for an offender under those laws to get a "life for a pint."

The question of the finality of administrative decisions by our various boards and bureaus stressed by Mr. Dullum in his 1927 report, and taken up again by Judge Bagley in his 1928 report, continues to remain as it did without legislative action.

As I recall several laws have been introduced in our legislative assembly purporting to give the courts full power of review both upon questions of law and of fact on appeal from decisions of these administrative boards but so far they have failed of passage. The prevailing opinion of our legislative assembly so far has been that such a law would increase the business of the courts to an alarming extent and would be unwise and that as long as these boards keep within the limits