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The Product of the Fifty-Fourth General Assembly

Ernst Freund

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acquittal of the guilty, and does it not do much to occasion delay and to clog the wheels of justice? It is a notorious fact that only a relatively small number of those who are held over to the grand jury or are kept awaiting trial in the Cook County jail are afterwards convicted. Is not this at least partly due to the fact that not only are some entirely innocent of even the lesser offense, but that the witnesses who have been called upon to appear before three tribunals (the municipal court, the grand jury and the criminal court), have become discouraged or have been tampered with or have otherwise fallen by the way so that even the lesser offense cannot be proved?

We all know the temptation there is to the state's attorney to thus pad the information, for but little political capital can be made out of a conviction for a misdemeanor, but the province of the state's attorney is not to make political capital but to further the ends of justice, and there can be no doubt of the great saving of time and of money if more cases could be disposed of by the committing magistrates. Often, too, the difference in moral obliquity between the felony and the misdemeanor is difficult to determine. In many states, for instance, a difference of one cent will change a petit into a grand larceny and a mere trifling incident, a theft into a burglary or a robbery. Yet often in order that the prosecuting officer may 'point with pride' and have the added reputation which comes from a conviction for a felony, or that the individual spite or interest of the complaining witness may be gratified, a desperate effort is made to pad the record and to exaggerate the value of the stolen article so that the necessary amount may be proved and the same padding is resorted to in the cases of the other offenses.

These practices result in numerous acquittals. They always result in delay and they often result in the corruption and disappearance of witnesses. No one, too, can doubt that thousands of young men and boys and first offenders have been ruined by their association with hardened criminals in the county jail while they have been awaiting trial and sometimes when they have been entirely innocent.

ANDREW A. BRUCE.

THE PRODUCT OF THE FIFTY-FOURTH GENERAL ASSEMBLY

The acts passed by the 1925 session of the legislature of the State of Illinois have been listed in a previous number of this REVIEW; this note is intended to offer a few comments upon the work accomplished.

If brevity is the soul of wit, our legislature is a progressive body: the volume of Session Laws for 1919 numbered 1,021 pages, that for 1921, 884 pages, that for 1923, 639 pages, the present one, 617 pages; but it is doubtful whether we shall ever again reach the low (or high?) level of 192 pages, which was the record of 1883.

The volume is needlessly swelled by a deplorable practice, for which the draftsman will assign responsibility to the constitution or to its judicial interpretation; if the City of Chicago desires a new power, e. g., to impose a registration fee for electrical contractors, it is believed to be necessary to re-enact the entire first section of Article V of the city act, covering eight printed pages. The same is true where a new licensing act requires a new board of examiners, where an officer is created in one of the state executive departments, or his salary is increased; these changes involve re-enactment of three long sections of the civil administrative code, likewise covering nearly eight printed pages.

This method of drafting is supposed to be necessitated by the constitutional provision forbidding amendment by reference and requiring re-enactment of the section amended. That provision was intended to prevent amendments on their face unintelligible; and where the amendment consists in addition or substitution and not in mere omission, the object is accomplished in the bill as introduced in the legislature by printing the new matter in italics. But since this device is not carried into the printed session laws, the new method is as 'blind' as the old one was, and it requires careful comparison of the new with the old section to discover in what respect it has been amended. The prevailing method has the undeniable advantage that the amendment can be fitted at once into a new statutory revision without requiring textual alterations by the editor. The advantage might be retained without the present prolixity if future draftsmen would, in connection with new propositions to amend lengthy subdivided sections, take the opportunity of re-numbering the subdivisions as independent sections, as was done in the County Court Act of March 26, 1874. Compliance with the constitution would thereafter be possible without the present inconvenience.

The following classification of the Session Laws may be of interest: Not counting appropriations or joint resolutions, there appear to be two hundred acts. Of these, one hundred and forty-eight are acts to amend previous acts or to add sections, and ten are validating or legalizing acts, leaving only forty-two acts purporting to be of an independent character, and of these two, at least, the one

relating to an additional circuit term in one of the counties (p. 327), the other relating to salaries of county judges (p. 398), are virtually amendments, and it is surprising that the county judges should have thought it safe to proceed otherwise than by amending section 5 of the present Fees and Salaries Act.

The county judge salary act belongs to a large category of measures inspired by the same general object: thirty-eight acts, or nearly one-fifth of the whole, impose or open the way for new financial burdens by raising tax rates, enlarging debt limits, creating new spending powers, or increasing fees, salaries, or other statutory benefits, without requiring the legislature itself to find the necessary funds. Naturally, a legislator feels less responsibility in consenting to expenditures which are not to be met out of state appropriations. He may also be justified in yielding to local demands where the statute involves only a grant of local power, leaving the final responsibility with the local community. But it is different where payments under the statute are made mandatory, as in the case of many salary increases or the increases of other benefits, e. g., under the Workmen's Compensation Act. The latter are understood to be the result of agreements reached between the parties concerned, so that legislative acquiescence was natural. Undoubtedly, also, there may have been a legitimate case for the increase of other fees and salaries. But this important subject should be comprehensively and systematically considered, and not upon the basis of pressure exercised by the parties in interest. The legislature has no independent sources of information; opposition is invidious, and the check of direct responsibility to the people, in the form of the total of appropriations and the consequent tax rate, is lacking.

It is more difficult to speak of the very technical subject of public employees' pension funds. That relating to the employees of Cook County covers over 50 pages, by far the longest of the acts. The amendment of the Chicago police pension act covers 20 pages. It must be asked whether it would not be possible to consolidate these statutes in such a way that funds can be created and managed in accordance with standard provisions.

The more important of the independent acts may be placed under the following categories: conservation (river control, state parks, and forests); public health (bovine tuberculosis, pasteurization of milk, and quality of cheese); public morals and safety (athletic exhibitions, carnivals, dance halls, deadly weapons, county bureaus of public welfare); private finance (credit unions); practice of professions (beauty culture, public accountancy); labor (injunctions), and real estate (rent concessions).

While only a careful study of all these measures would justify passing judgment upon them, the following points of comment or criticism suggest themselves upon cursory examination:

The constant additions to the compulsory license system are to be regretted. There can be no reasonable objection to optional certification, which serves every legitimate purpose; but usually it proves but to be the first step toward the compulsory license system. So in the matter of accountancy. The compulsory system makes it necessary to define what constitutes practice, a difficulty fortunately avoided under the optional method. The demand for licensing claims to serve the public interest, but is really an expression of the perpetual tendency toward retrogression in economic liberty. What 'profession' next after "beauty culture"?

It is safe to say that the new deadly weapons law will not be the last word on a concededly difficult matter. The provision against selling small firearms to aliens is as futile as it is narrow-minded. If it is proper for a citizen "to keep in his home or place of business any firearm reasonably necessary for the protection thereof" (s. 7), why should not an alien have the like benefit? The legislative fashion is to treat the alien as a semi-outlaw. There is, of course, nothing to prevent the alien to procure the weapon from out of the state.

The act restricting the granting of injunctions in labor disputes appears to be a conservative measure; it formulates what is regarded by many as the better law, irrespective of statute, namely, the protection of the usual strike methods if practiced peaceably, and without threats or intimidation.

The act in relation to actions or suits concerning damage or injury to real estate affected by a nuisance is apparently waste paper, for it is so drawn as to make no sense whatever. It may be guessed that the draftsman intended that the settlement of a cause of action for a permanent or continuing nuisance should bar further actions by subsequent acquirers of the property; but he did not succeed in putting his thought into intelligible English.

The provision amending section 8 of the Administration Act by giving the probate courts power to adjudge controversial title to property and to determine the right of property is in line with the endeavor to extend probate jurisdiction so far as it can be done within the limits of the constitution.¹

Illinois follows the example of other states in permitting the organization of credit unions. The act for this purpose appears

1. *Mortenson's Estate* 248 Ill. 520.

to be carefully drawn. The authorization of corporations for the purpose of loaning money is on the other hand accomplished by amending several sections of the corporation act so as to delete the present reference to loans in the list of prohibited exceptions. This is one of the cases in which neither the text of the law nor its title indicates in any way in what respect the present law is changed. This form of authorization leaves the business free from any supervision.

An example of careful and elaborate legislation is furnished by the act concerning athletic exhibitions, which is drawn generally on the lines of the New York act. The law is a referendum measure, to be in force in the municipalities adopting it.

In a collection of statutes conspicuously lacking in distinction, passing notice may be taken of an act establishing a state song. The words of the song and the music are printed as part of the act, and will make a unique feature of the statute book. When one reads at the top of the song the words: "Air: Baby Mine," one feels indeed inclined to exclaim: Illinois, Illinois!

ERNST FREUND.

DID THE UNITED STATES CONSTITUTION CREATE 97 VETO POWERS?

1. The makers of our Federal Constitution thought the veto power in legislation important enough to be provided for in a special clause. They vested this power in the executive—and wisely, because of his detached position, aloof from the legislative body.

Their object was to prevent hasty legislation by a majority. The object was no more than this—delay to cause reflection; for if the majority reach two-thirds, the veto is ineffective.

The Constitution-makers fully believed in majority rule as the normal practice. Had they disbelieved in a majority rule 'per se,' they could and would readily have placed the veto power within the Senate itself. This could have been done by requiring unanimity; i. e., by thus giving each senator a veto-power. Of that kind of veto-power, they had before them the sad example of Poland, in history. Their refusal to follow that amounted to a distinct constitutional sanction of majority rule in Senate deliberations. Any establishment of an individual senatorial veto-power is therefore distinctly unconstitutional, as well as 'per se' preposterous.

2. But what have we today in practice? Just this very veto-power in each individual senator. Thus, there are ninety-six veto-powers in the Senate, besides one in the executive.