

Foreword, Statutory Enactments

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FOREWORD

With this issue, the Marquette Law Review begins the sixth year of its existence. On its merits it has gained the good will of a large measure of the bench and bar. Now, as ever, it aims to further extend its usefulness. To make itself indispensable to every judge, to every lawyer is the aim of the editorial board. To enable it to do this it invites the coöperation of the bench and bar.

STATUTORY ENACTMENTS

The legislature of Wisconsin is still in session. Some four hundred bills have been introduced in the Assembly, and over three hundred in the senate. A great many of these will become laws, to regulate the order of conduct of the citizens of the state. A great many new laws will be added to the statute books. And a great many more decisions will be necessary to eventually construe the laws. The practicing attorney knows that nearly every new enactment requires judicial construction before its meaning becomes definitely fixed. He has learned, that a necessary element of every statute is the annotation. In a sense the new statute is a mere expression of legislative intention, susceptible to addition or subtraction by the Supreme Court, certainly to clarification.

If, then, each statute requires juridical interpretation, does codification reduce the mass of the common law? Does not, asks the conservative lawyer, codification defeat the purposes intended by its promoters, and by necessitating judicial construction, rather increase the case law? That, it must be admitted, is actually its effect. Our Supreme Court alone annually writes nearly three volumes of opinions, the larger percentage of which involve a judicial construction of statutes.

Lawyers are inherently conservative, and often blindly reverent to the past. Our Supreme court had a long difficulty adapting itself to the Code of Civil Procedure. So reverently did it cling to the common law that nearly fifty years of Code practice have not entirely effaced the exemplifications of that reverence. But the lawyer's reverence for the Common Law is sound. He knows that the law expressed in the cases is soundly reinforced by the wisdom of centuries. Case law, he knows, is founded on reason, thorough and voluminous. Moreover, he asks, if statutes require even more voluminous determinations because more involved and hyper-technical, will codification cut down the output of case law?

No one is so foolhardy as to advocate an abolition of statutory enactments. The modern world requires them. The marvellous progress of the age is impatient, and new industry cannot await slow development of case law. Nor, perhaps, could case law as effectively take care of simplified adjective law, though Common Law states assert the contrary. But the maze of enactments of legislatures at present, is the precise opposite of the congestion prevailing under the Common Law. Reason was controlling under the old system; mere expediency is controlling the new. The effect of the statute is too often not even conjectured under modern legislative schemes. Worse, statutes are passed and added to the books without any attempt at correlation so that one often contradicts or merely reiterates another. Judges are always wary of the effect of their decisions, ever insisting on harmony.

Perhaps it is this extreme conservatism, this determination to be always right before announcing the law, that has made the people impatient with courts. If the law is not fixed—business risks will not be taken; business will not thrive. Hence predicted certainty is attempted by legislative enactment. It, at least, expresses the legislative intent, binding in some degree on the courts.

Is the flood of statutory enactments justified? Ought legislation not, to some extent, curb itself? The proper legislation is

truly a blessing when employed to correct an evil in the corpus juris, or to provide for an exigency, but let it be less profusely exercised. After all, both statutory and case law should be identical, in adhering to the same immutable principles of justice, of what is right and wrong. If new conditions arise, from new industrial, social, or economic problems, let there be legislation providing for the same. But if the occasion arise, let the statute be most accurately framed; let its probable effect be most carefully considered. In this state there is a legislative library for the use of the legislators to enable them to study the nature and effect of bills. However, as long as the legislature is not made up entirely of members who are experts in the law, the meaning of enactments must be ever more or less indeterminate. The suggestion that a commission be established to advise the legislature of the effect of a bill, is sound. The bill would then go through a quasi-judicial determination before passage. Construction would precede the law. If such a committee could not prevent overlegislation, it could keep it from becoming mischievous.

People clamor that the power of the court should be curbed; that popular legislation be more respected by the courts. Evils there may be in the courts, but they are not so great as those arising from indiscriminate and voluminous legislation. Courts ever attempt to be honest in declaring the common law. The reason, the justice, remains the same, whether announced by an elective court, or an elected political body. In the former case there is a body of experts considering rules of conduct, guided by the experience of centuries (precedent), by reason, and by a highly developed sense of justice. In the latter, non-experts, untrained, too frequently, aggregate the clauses of the statutes chiefly for expediency.

Let the Legislature curb itself, or it will soon find itself hedged between committees, like irresponsible schoolboys, one to pass on whatever is to be enacted, and the other to see that it has been dutifully performed. Let the legislature consume the session, not in passing more bills, but in giving more consideration to those that it does pass.

W. F. KUZENSKI, *Editor-in-chief.*