

LEGISLATION IN IOWA PRIOR TO 1858.

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"In modern legislatures we find our lawmakers chiefly concerned with promoting the rights of property and the privileges and the profits of corporations as against the rights of man and of Labor."

It was the expression of this sentiment, by a leading representative of labor unions in the United States in the course of an address to a mass meeting, some years ago, in the capital city of our State that first suggested to the writer to analyze and compare the enactments of Iowa's legislature and from the experience of a typical state to determine if possible what the real nature and drift of our laws have been. The sentiment is quite common and, if true, is a matter of serious moment to the nation; for no people can long live content, let alone prosper in their industry, under the domination of unjust laws and persistent and oppressive favoritism in their enactment and execution.

I.

In what follows there is presented some of the results of what may be called a study in the statistics of Iowa's statutory enactments during the first twenty years of the State's legislative history. In a subsequent paper the results respecting a similar study of legislation since 1858 may be given. The time here covered divides naturally into two divisions that constitute two well marked periods in the State's career. The first is the period of the territorial government from 1838 to 1846, and the second is the period of the first State government under the constitution of 1846, from 1846 to 1858. In the first the lawmakers were subject to various national statutes that served as a quasi constitution and to the somewhat dim, uncertain and distant supervision of Congress; in the second period they were

restricted only by the restrictions of the supreme statute set above and roundabout them by the people themselves. But while there was a fundamental change in the political status of the sovereign power and in the jurisdiction of the law-making bodies we shall find no marked change in the character of the legislation in the two periods prior to 1858, although there begin to appear in the second period signs of the changes in the direction of legislative regulations that became prominent from 1860 down.

In many respects the legislature was much less restricted during the first twenty years than subsequently. In matters of local, and special or individual concern there were but few limitations on the power of the territorial legislature to pass acts benefiting or adversely affecting localities, particular interests, corporations or persons. Under the provisions of the "Organic Law" creating the territory the legislature was given power over "all rightful subjects of legislation"—a grant of power world-wide in its scope. Under the first constitution special legislation respecting business corporations was prohibited. Banks of note-issuing power were prohibited. Another fact of great importance in explaining the drift of early legislation in these two periods is that Iowa was in the pioneer and formative stage of her history. Travel and traffic were primitive. Commercial and industrial interests did not begin to exert upon the life of the people a positive influence that compelled much legislative attention until after 1850. So that if the golden age of laws, as well as of manners and morals, lies in the past the special virtues engendered by pioneer conditions must become apparent in the superiority of the laws enacted.

One does not of course comprehend the entire body of laws that regulate men's relations and conduct in society in studying the formal enactments of the legislature. Besides the vast and complex mass of rules known as the common law which we inherited along with our governmental institutions from England, we have the extensive additions

made thereto by our courts of law whose rulings and decisions affecting innumerable relations of life, not specifically regulated by statute, constitute a body of law fully equal in importance, if not in bulk, to that of statutory law. But in addition to all this we should still have the laws of our national government and the decisions of our federal judiciary to consider, before we could compare the laws governing our citizens and institutions. This, however, is to be observed of statutory laws. They conspicuously represent the direct and conscious expressions of public policy and determination. What is designated as "Judge made" law, while no less authoritative or influential, develops in a manner wholly different from legislation. The rulings of courts come unannounced and unexpected; they enter into the popular consciousness and the people adjust themselves to them, whereas in legislation, social, economic or political conditions resulting in mal-adjustments first produce popular demands and in full consciousness of the need for better regulation, legislation follows in response.

Before plunging into the midst of things a preliminary caveat may here be given. The writer does not delude himself with the notion that it is easy, or indeed possible, completely to indicate the nature of legislative enactments by statistical exhibits and comparisons. The real significance of a legislative measure often cannot be even surmised from its provisions because its enactment may have been the feeble outcome of fierce factional strife or the pretense of shrewd men, who, for political reasons divert and delude the public by skillful manipulation of words and by parliamentary maneuvers; while on the other hand a compromise may be forced by an aggressive minority, or by insurgent forces in the dominant political party threatening secession and union with the minority party, that means the initiation of important modifications in the nature of laws and of public policy—yet but little of this can be successfully shown in statistical exhibits. Moreover the main interest of the

people during legislative sessions generally centres about one or two measures urged or pending. Their passage or attempts thereat absorbs the major portion of general legislative thought and activity particularly if they happen to be measures that develop sharp divergence in partisan interests. The multitude of measures that are put through and which constitute the regular routine work of the legislature attract but little attention. Such a study as the writer has ventured upon must perforce be concerned wholly with the chief characteristics of the laws, not with a comprehensive consideration and comparison in detail of all the provisions of acts. This restriction, while it is a serious limitation does not prevent us from so classifying and presenting the laws as to make manifest their general character, their predominant tendencies and most of their peculiarities. It is only when we view legislative activities in the aggregate, when we realize their mass and general composition that we can really know the drift of legislation. Extraordinary circumstances that may give prominence to one or two measures in a legislative session do not necessarily indicate the vast fundamental interests and common needs of the public or the general necessities of governmental administration, the consideration of which constitutes the main task of legislation. The main lines of such developments can only be perceived when we contemplate the items or units of the aggregate, classified under logical schedules that show the co-relations of legislative enactments.

If one would fully understand the significance of legislation in such a commonwealth as Iowa he must appreciate the social, industrial, religious and political conditions and atmosphere that surround and animate the lawmakers who enact its provisions. For in the physical environment and economic life, in the social and political inheritance of the people such as the ideas and institutions that they have brought with them into the State or that have developed in the course of the State's history, in these we find what the

metaphysicians would call the "efficient causes" that produce the political demands that materialize in legislative regulations of the people's affairs. In short we should be familiar with what we may call the social psychology of the people. Here one may find an exceedingly interesting and instructive field for investigation in the fusion of race elements and in the conflict of various political, social and economic interests of the various classes that settled in the State in its formative period.* Another preliminary investigation that would afford us much instructive data, would be a study of the character of the men who made up the assemblies with respect to the nature of their general education and their occupations or pursuits prior to and during their membership. Their ordinary interests in life, their occupations and associations determine largely their "state of mind" towards political questions which is the all important thing in politics and legislation. Another matter of great consequence in explaining the character of our laws that usually is not much thought of in popular discussion, is the parliamentary methods that prevail in legislative proceedings. The influence of the procedure in the drafting of proposed laws and in the consideration of their provisions and the wisdom of their enactments is at once subtle and potent; and in these respects American state legislatures are behindhand. Especially do they fall short as regards thoroughgoing examination of projected laws and vigorous revision during the various stages of passage with a view to precision and their harmony with existing laws. Needless to say this has resulted in much ill considered legislation that entails both redundancy in laws and a vast amount of judicial execution of invalid statutes.†

*The writer has already pointed out some of the main lines of social and political development that must be taken into account in explaining the course of legislation prior to 1858 in an article in these pages entitled, "The Transfusion of Political Ideas and Institutions in Iowa" (ANNALS OF IOWA, vol. vi, pp. 46-54).

†The writer has dealt at some length with legislative procedure in Iowa as it affects the State's budget and finance in his studies of "Institutional Expenditures in the State Budgets of Iowa," published in the *Bulletin* of the Board of Control in

But we shall not now enter upon any of these interesting phases of the subject. We shall deal here first with the bulk of the legislation projected and actually accomplished, and second with the character of the laws passed during the two periods covered.

II.

The membership of the territorial legislature remained throughout, 13 in the Council or upper house and 26 in the House of Representatives. By the act creating the territory, sessions of the legislature were annual and the length of the session was limited to 75 days. At first the governor was given the power of absolute veto, the chambers being unable to pass bills over his adverse action by subsequent votes.* Under the first State constitution the General Assembly, as it was and is now designated, met biennially. The governor's veto could be overcome by reconsideration and a two-thirds vote. Prior to 1858 the membership of the lower house ranged from 39 to 72, and that of the Senate from 19 to 36. There was no limitation on the length of session except indirectly. The compensation of the members was limited to two dollars per day for a period of 50 days. If lawmakers were all philosophers and savants this limitation might not have interfered with prolonged deliberation if the public needs called for it, but with average men who for the most part were elected it may be presumed that the short allowance in remuneration tended decidedly to short sessions.

Our understanding of the laws actually enacted would be greatly enhanced if we could analyze the character and know the fate of the numerous bills introduced at each session that failed of passage either through neglect or deliberate rejection. But such knowledge is unattainable for the

1901, 1902 and 1903, especially part V "Legislative supervision and Control of Institutional Expenditures," vol. IV, 437-451, and in particular the section (not yet complete) dealing with "The Preparation and Passage of the Budget," vol. V, 214-237.

*Governor Lucas was a strict constructionist and his insistent vetoes caused such a serious deadlock that his power of absolute veto was taken away by Congress in 1839.

earlier period of Iowa's history here considered. The originals of bills introduced have not been preserved until 1860, and thereafter until about 1870 the files are incomplete; and the purport of bills can not be discerned always with certainty from their titles. But their number and somewhat of their conclusion we can give.

During the first session of the territorial legislature that convened November 12, 1838, and lasted 54 days, adjourning January 25, 1839, there were 159 bills introduced in the House and 59 in the Council or upper house—a total of 218 laws proposed, or an average per member of five bills. Of these bills 147 were passed by both Houses. Seven bills however, encountered Governor Robert Lucas' veto. The total output was 140 laws. Besides these 12 resolutions were passed that may be regarded as quasi statutes, as for the most part they affected in varying degrees the disposition of funds, the conduct of officials and signified public desire and policy. The percentage of laws passed to bills introduced in that first session reached 64 per cent., the largest proportion reached by any session in the time of the territory. Their bulk in pages—octavo size—all told was 513. This was more than twice the bulk reached by the laws passed by any subsequent legislature until we reach 1850-51, when the code of 1851 caused the grist to bulk big. The book of laws of that first session however, may be regarded more or less as a compilation that approximates a code, although its authors made no pretense to scientific or orderly arrangement other than the primitive alphabetical order. But more of its contents later.

Summarizing briefly the work of the territorial legislature, the average length of their regular session was 51 days or 47 days if we include the two extra sessions in 1840 and in 1844. The number of bills introduced at the sessions ranged from 87 to 215 in the House and from 48 to 152 in the Council.* In one session there were more bills intro-

*The figures above contain some of the resolutions and memorials. In some of the sessions the files were not classified and each consecutively numbered as in the journals of the General Assembly.

duced in the Council than in the House, viz: in 1846 when the numbers were 132 and 114 in the respective houses. The proportion of Council bills to House bills ranges from 11 per cent. in the Council, to 89 per cent. in the House, in 1840, to 47 per cent. in the House, and 53 in the Council, in the eighth and last territorial session in 1845-46. As a rule the proportion of bills introduced in the Houses corresponds to the respective membership. The number of bills passed by both Houses ranged from 41 and 18 in the extra sessions, and 71 in regular sessions, to 147, the number passed by the first legislature. Of these Governor Lucas vetoed 12, Governor Chambers 4 and Governor Clarke 3. The bulk of the laws placed upon the statute books varied from 513 pages in the first session down to 14 pages in the extra session in 1844. The percentage of laws passed to bills introduced varied from 16 per cent. to 64 per cent.

In the work of the General Assemblies under the State constitution of 1846 we find about the same amount of legislation attempted and accomplished. The House bills introduced numbered from 144 in the first session to 357 in the sixth Assembly in 1856; while the Senate considered bills aggregating 107 in the third regular session to 253 in the sixth. In the regular sessions the bills passed by both Houses ranged from 104 in the third to 267 in the sixth. Governor Briggs interposed his veto in one instance in 1848. Governor Hempstead objected to 8 bills during the third and fourth Assemblies and vetoed them; while Governor Grimes was adverse to 10 measures presented to him. Sundry resolutions and memorials to congress were also passed. The number of laws passed varied from 112 to 260. Their bulk varies from 204 pages in the first session to 467 in the sixth in 1856. Those of extra sessions were less in amount. The percentage of laws enacted out of the bills introduced was somewhat less on the average than during the territorial government. In the session of 1850-51 the Mason code was considered and adopted, being introduced and passed as one bill; it contained 209 chapters totaling 469 pages. In many

respects it was a reenactment of laws in force, yet in the thoroughgoing revision and codification to which they had been subjected by Judge Mason and his colleagues of the code commission, its chapters constituted new acts of legislation as they were adopted.

Comparing the gross results of legislative efforts in the two periods prior to 1858, the thing most noticeable perhaps is that the same general average, as well as approximately the same aggregate results were attained in each period. Under the territorial government the House considered 1446 bills, and the Council 700; during the State government the House passed upon 1430 and the Senate 996. In the first period 903 bills were passed and 19 were vetoed, and in the second 1053 were passed and 19 overruled by the governors. The mere bulk was 1538 pages for the eight years under the territory and 2336 pages under the first State constitution. The average length of the session was 47 days in the first period and 42 in the second. Forty-four per cent. of the bills introduced became laws in the territory and 42 per cent. under the State government. As there were ten sessions in the first and but eight in the latter period it is apparent that either the lawmakers of the territory were not so anxious to indulge in the art of lawmaking as were their successors in the General Assembly, or the developments in the political, social and industrial or economic life of the people in the territory had not produced conditions that generated such urgent demands for governmental interference and regulation as was the case during the first years of the State government. When we come to analyze the acts of the two periods we shall find but little general difference in the character of the legislation, and the latter conclusion just suggested is probably the one more warranted. In the two tables that follow (I and II) will be found most of the items or data upon which the foregoing is based.

We may now proceed to the analysis of the laws themselves.

TABLE I.
DATA RELATIVE TO TERRITORIAL LEGISLATION IN IOWA.
1838-1846.

SESSION.	1ST	2D	2D EX.	3D	4TH	5TH	6TH	6TH EX.	7TH	8TH	TOTALS
Date convened.....	Nov. 12 1838	Nov. 4 1839	July 13 1840	Nov. 2 1840	Dec. 6 1841	Dec. 5 1842	Dec. 4 1843	June 16 1844	May 5 1845	Dec. 1 1845	
Bills introduced in House.....	159	174	215	147	149	131	170	*	87	114	1346
Bills introduced in Council.....	59	48	28	72	152	87	74	.....	65	132	717
Total introduced.....	218	222	243	219	301	218	244	.....	152	246	2,063
Proportion House Bills.....	73	79	89	77	50	61	70	.....	58	47	66
Proportion Council Bills (%).....	27	21	11	33	50	39	30	.....	42	53	34
Bills passed both Houses (%).....	147	99	41	101	129	86	144	18	71	124	903
Bills vetoed by Governor.....	7	4	1	46	2	2	.....	.....	2	1	19
Laws enacted.....	140	95	40	101	127	84	144	18	69	123	884
Ratio of Laws to Bills (%).....	64	42	16	4	42	38	59	.....	45	50	42
Joint Resolutions.....	12	32	4	4	9	10	20	2	18	26	137
Bulk in pages.....	513	199	71	115	126	99	170	14	96	135	1538
Date of adjournment.....	Jan. 25 1839	Jan. 17 1840	Aug. 1 1840	Jan. 15 1841	Feb. 18 1841	Feb. 17 1843	Feb. 16 1844	.....	June 11 1845	Jan. 19 1846	
Length of session (days).....	54	54	17	54	54	52	52	.....	37	49	44

*The Journals of the House and Council for the extra session of 1844 seem not to have been printed and the originals could not be found in the office of the Secretary of State.

†Average.

TABLE II.

DATA RELATIVE TO STATE LEGISLATION IN IOWA.
1846-1858.

SESSION.	1ST G. A.		2D G. A.		3D G. A.		4TH G. A.		5TH G. A.		5TH EX. G. A.		6TH G. A.		TOTALS
	Nov. 30 1846	Jan. 3 1848	Dec. 4 1848	Dec. 2 1850	Dec. 2 1850	Dec. 6 1852	Dec. 4 1854	Dec. 4 1856	Dec. 4 1856	Dec. 4 1856	Dec. 4 1856	Dec. 4 1856	Dec. 4 1856	Dec. 4 1856	
Date convened.....	{														
Bills introduced in House.....	144	72	177	206	225	184	65	357	1430						
Bills introduced in Senate.....	116	51	117	107	133	186	33	253	996						
Total introduced.....	260	123	294	313	358	360	98	610	2426						
Proportion House Bills (%).....	56	59	61	66	63	50	67	59	59						
Proportion Senate Bills (%).....	44	41	39	34	37	50	33	41	41						
Bills passed both Houses.....	125	85	135	104	115	171	51	267	1053						
Bills vetoed by Governor.....	.....	1	.....	5	3	2	1	7	19						
Laws enacted.....	125	84	135	*99	112	169	50	260	1034						
Ratio of Laws to Bills.....	48	69	45	31	31	45	51	42	42						
Joint Resolutions.....	23	25	40	36	19	39	9	24	185						
Memorials.....	1	3	8	6	3	8	3	4	36						
Bulk in pages.....	204	102	204	*733	219	299	108	467	2336						
Date of adjournment.....	{														
Length of session (days).....	34	22	42	65	49	53	14	59	†42						

*Code of 1851 was introduced and passed as one bill. It contains 209 chapters having 469 pages.

†Average.

III.

The vital prerequisite in such an investigation as is essayed here, is, of course, the principle or method of classification whereby we indicate the purport of laws. Our schedule must serve both as base line and as transit by which we fix and measure the nature and bearing of legislative enactments.

It is in the formulation of such a schedule that the investigator receives his first important lesson. If he goes about the matter earnestly and resolutely, banishing preconceived notions from his mind, seeks honestly to secure an accurate, impartial and consistent exhibit of the laws, he first becomes oppressed with the almost interminable difficulties in the way of hasty conclusions. He will realize forthwith that such sentiments and opinions as that quoted in the opening sentence of this essay are almost certain to be not merely extremely ill-considered and superficial observations, as a rule, but in the form in which they are usually expressed such assertions are almost, if not quite, non-demonstrable. For even where the weight of presumption inclines in general respects in their favor specific verification is impossible; for partisan declarations and popular opinions in such complex matters are nearly always so indefinite, variable and delphic, and withal inconsistent, that they cannot be either wholly affirmed or completely refuted.

Examine, for instance, the delphic utterance to which reference is made. What did the speaker mean, what can one mean by asserting that our legislatures are "chiefly concerned with the rights of property and the privileges and profits of corporations as against the rights of man and of labor?" Are not laws of property at one and the same time laws of man—essential as guarantees of life, liberty and the pursuit of happiness alike for the laborer and for the property holder? The laws that insure a man his wages, that give him a prior lien to insure their receipt, affect and guarantee the laborer's rights of property no less than his rights of

labor. Our law that we have long had on our statute books exempting a man's homestead from execution for his debts affects property and labor or man equally. On one side man, or if you please the laborer, is protected from the consequences of misfortune, bad judgment and alack too often his own rascality; while at the same time another man—who is just as likely to be and usually is a laborer also, as well as a creditor and capitalist, is deprived of his common law right to regain property loaned to his fellow laborer which represents the fruits of the creditor's toil and thrift and saving in years gone by. Take the great mass of legislative regulations affecting business corporations, determining their method of organization, their privileges, powers and conduct, are they not as important to labor as to property owners? Laborers are wage earners in their employ; they put their earnings in the custody of their officials, in bank deposits, in policies of insurance, in investments in their stocks and securities. In short the rights of property are the rights of man and of labor. No rights whatsoever can exist dissociated from man and his larger self, so to speak, the State. The contrary notion is at once a legal impossibility and a logical absurdity.

The truth underlying such sweeping and fallacious assertions as that quoted, is, that those uttering them regard some of the laws and their administration or certain social or economic conditions with disfavor, and they entertain sundry desires and views as to reforms and are anxious to promote their adoption, and greater or less modification in law and in public administration is essential and imperative in their estimation. Often such assertions grow out of the dissatisfaction and dread that result from the frequency of gross perversions, in legislative halls where the representatives of corporate business enterprises are omnipresent, aggressive and persistent, and too often their unscrupulous agents exercise a pernicious influence in seeking legislative favors or in preventing wholesome legislation adverse to the pecuniary

interests of such undertakings, while the interests of the public suffer from inattention and indifference or from clashing views and fruitless attempts at reform.

With the grounds for such criticisms and proposals the present writer is not now concerned although he would not have it inferred that he considers the body of existing laws sufficient and satisfactory or their administration all that may be desired. His immediate concern is the analysis of Iowa's statutory enactments in such wise as to make clear their nature and the lines of their progression.

In such an analysis as is contemplated several objectives may be kept in view although, as we shall see, their attainment is not easy. First and in general, if the analysis and compilation is effective we ought to be able to realize clearly the relative growths of what jurists and codifiers designate as Private and Public laws—that is the growth and character on the one hand of those rules that relate exclusively to the rights and duties of individuals as such, the enforcement of which depends chiefly on individual election or volition, and on the other hand of those regulations and statutes that establish the agencies and institutions of government, outline their province and functions, determine their relations to the citizens and the relations of citizens to government, that define crimes, and create and control those artificial creatures of the State known as corporations and altogether prescribe the procedure whereby all rights and obligations whether private or public are enforced.* This exposition, if successful, should also enable us to trace the growth of paternalistic and of socialistic legislation as distinct from what may be called individualistic legislation. Coincident with these results the schedule should make apparent the growth and the drift in development of Administrative

*The reader with an acute logical faculty may urge and with propriety insist that all law is public law. Private law the Austinian may well say is a misnomer. All rules of conduct that have the force and effect of law in these days at least are declared and their effect invariably announced as well as enforced by public tribunals and officials or by the sovereign lawmaking body, the legislature. The classification followed, however, is serviceable and consistent and "common."

law—that body of regulations instituting and governing the various departments, institutions and agencies, whereby the immense and constantly accumulating mass of governmental work is accomplished. Here again we shall find that laws are but the indices of social evolution. In their growth we may simultaneously trace the growth of social or economic conditions that produced the agitation and public opinion that insisted upon the need for governmental interference, regulation and control in certain lines of industry and public care or protection of certain classes or interests in society.

These several results or objectives could unquestionably be attained in the most satisfactory fashion if each were sought under separate schedules especially designed for each class of laws. But the physical task that such an undertaking entails is rather formidable and forbidding and I have contented myself here with but one scheme of classification. The plan of the schedule used is briefly as follows:

The index sign by which acts are classified is the title. If this does not disclose the general purport of the measure, then the contents are scrutinized. Acts often contain various classes of provisions that belong clearly under various distinct titles or heads but which under the scheme followed are ignored. An act establishing a department or institution of government may contain an appropriation or various administrative regulations, but the latter could not be considered except as necessarily implied in the entry made to record the title or general purport of the act.

Laws are regarded as in one or the other of two grand divisions, as lying within either (I) Private Law or (II) Public Law. In assigning particular acts or statutes I have followed Professor Holland's lucid analyses and luminous definitions and in a large degree I have taken his subdivisions.* In the distracting and irksome work of practical classification I have made constant use of Professor Stimson's

*See *The Elements of Jurisprudence* by T. E. Holland, (9th ed.) 1900, Chapters IX to XVI inclusive, but especially the first and last.

schedules (adopting them almost bodily for the most part in the first general division) as set out in his monumental volumes containing his analysis and classification of our American Statute Law relating to property, persons and corporations.*

Private laws are those first presented. As the individual, his life and welfare, constitutes the *raison d'être* of the State or of government, gives rise to and comprehends the one great object of corporate agencies or institutions and processes, this order is at once chronological and logical. Private law is presented under two subdivisions—1, Normal law and 2, Abnormal; by the former is designated all that law which relates to normal persons as such; while by the latter is included that body of rules affecting the rights and obligations of juristic "persons" that may be artificial legal concepts or real persons under disability, examples of the two being debtor and creditor and infants or insane.†

Under Normal are classed laws affecting such matters as real property succession, administration, personal property and contracts, and under the second title, Abnormal, are assigned: 1—Contractual relations such as those of debtor and creditor, principal and surety, principal and agent and partnerships, and, 2—Natural relations such as of persons, marriage, divorce, husband and wife, infants and insane. These groups give us somewhat roughly what is often classified as the *law of things* and the *law of persons*. I have varied materially, however, from the authoritative classification here patterned after, in assigning that great body of "Adjective" law, namely, the law prescribing the procedure and processes whereby private persons maintain their "Sub-

*See *American Statute Law—Persons and Property*, by F. J. Stimson, 1886, Vol. II, Corporations, 1892. See especially Tables of Contents for outlines of schedules.

†See Holland's *Elements*, pp. 133-135. The term "Abnormal" while appropriate and perfectly clear in Professor Holland's exposition is open to the objection that it connotes or suggests that the law designated is in some way "unnatural," "extraordinary," "exceptional" and such like implications. These latter are far from his thought and yet it is likely the average reader first so conceives a law that is labeled "Abnormal."

stantive" rights or secure reparation when they suffer injury and deprivation. Instead of placing such laws under Private Law, I have for reasons which will appear later, classified such acts under the subdivision of public law pertaining to the departments of government.

Under Public Law is classed, of course, all the great mass of rules not included under Private Law. First come laws relating to incorporations; second follow those respecting crimes; and third the laws affecting the organization and conduct of government. The central and dominant thought underlying this division of law is the direct interest of society, of the body politic, of each and every citizen not individually but generally, because of his organic relations with his fellows in his community and state, in the due observance of the rights and obligations here called public and in the due control either immediately or ultimately of all processes and agencies whereby all rights and obligations whatsoever are enforced.

The reasons for so classing laws affecting Incorporations—the creatures of the State—and those defining crimes are obvious. In dealing with laws affecting government, however, I have run athwart the classifications of Professors Holland and Stimson; for herein I include all that body of rules prescribing the procedure of courts and litigants in the maintenance or reparation of rights or in punishing offenders against the criminal laws. These rules, while they comprehend a large amount of adjective law that depends upon the election of private parties whether it shall be invoked or not, are first prescribed by the State or law-making power, whether acting through its supreme legislature or its judiciary and public officials, whether constable, sheriff, justice or jurors summoned by due process executed by agents of the corporate powers in society. There are many perplexities in pursuing this plan but perhaps no less than under the one referred to. The subtitles of the divisions on government, contain the following: 1—Citizen's

Political Status and Civil Rights*; 2—Inauguration and Jurisdiction in which such matters as general election laws, terms of office, boundaries and jurisdiction, publication of laws and their effect are included; 3—Organs or Departments of Government, and hereunder are grouped the great bulk of the laws relating to the organization or constitution of the legislature, executive (State and local) and the judiciary (superior and inferior together with the acts affecting their procedure), the militia, highways, registration and statistics, general police and the furtherance of the general welfare in material, intellectual and moral matters; and maintenance under which revenue and taxation and public accounting come. Finally, there is a miscellany in which legalizing acts and special grants are classified.

The legislation of the first twenty years in the several subdivisions in which it is classed, is grouped under two general heads: 1—Permanent and general acts; and 2—Temporary, special, local and private acts. In the first two periods considered, the latter includes only the local and private acts. Temporary acts, such as appropriations for a definite fiscal period are grouped with the general acts as they relate chiefly to general public purposes and not local. This classification, however, is defective. The general and permanent acts should comprehend only the acts continuously in force until formally repealed or modified; and in the classification of the laws passed after 1858 this separation will be made.

One is seriously perplexed frequently to determine the proper disposition of a law. For instance is the attorney general or county attorney, likewise the sheriff, clerk and constable, to be regarded as an executive or judicial officer? Under either they could be classified with propriety. Here I have classed them as officers of the courts. One's greatest

*The great array of ordinary civil rights usually thought of are, of course, to be found in the bills of rights contained in the constitution, but constitutional provisions are not considered at all in this essay.

difficulty, however, comes where acts relate to business corporations and to the promotion of the general welfare and in this particular, especially, are the exhibits of the schedule followed inadequate. Thus an act or a chapter in a code provides for the rights or powers of a banking corporation and at the same time it provides for the supervision of such institutions by a State examiner. The latter provision is obviously for the promotion of the general welfare, yet under the plan here pursued, the act is assigned wholly to the division in which laws relating to corporations are shown. The long and the short of the matter is that in classifying great numbers of acts one must be more or less arbitrary in their disposition. Unfortunately as different persons are concerned with or interested in different phases of laws, no two would coincide in their arbitrary assignments and thus each can find grounds for divergent opinion and criticism.

IV.

One is tempted to take up and discuss in greater or less detail the peculiarities and virtues of particular laws, but our space prevents any considerable attention to individual acts; and in what follows we shall deal almost entirely with the character and quantity of classes of legislation and with the most conspicuous features and tendencies of the laws enacted and of the manner of making laws prior to 1858.

The laws enacted during the first legislative session in 1838-39 consisted of 87 general acts and of 53 local and private acts. Of this number eight related to private law, two dealing with the law of succession to property, one with contracts and one each with the subjects, debtor and creditor, principal and agent, partnership, marriage and the rights of infants. Thirty-two acts related to business incorporations, of which three were general and 29 special or local. Among the latter number six acts gave private parties the right to erect and maintain dams, 12 gave ferry franchises, two incorporated plank road or turnpike companies; four acts granted manufacturing and commercial

companies the right to do business. Three educational institutions were incorporated. The great bulk of the acts pertains to the constitution and administration of government; 52 general acts and 21 local acts relate to the organization of the general offices or departments, the legislative, executive and judicial branches, to the public domain, highways, the militia; 18 general acts deal with matters of police and the material welfare; one with schools; four with questions of revenue and taxation; and three are miscellaneous acts. In bulk the acts relating to the organization of the courts make the largest showing, 78 pages alone being required for the three acts providing for the courts and the costs of adjudication. The longest single act relates to wills and administration (47 pages with 136 sections); the next deals with crimes (42 pages with 109 sections).

Glancing down through the various classes of laws exhibited in the schedule the noteworthy features of the legislation during the territorial and State periods are briefly:

The total acts dealing with private law reached 35 during the territorial period and 26 under the constitution of 1846; of these 13 related in each period to real property; and six likewise to succession and administration. During the territorial days there were eight general acts dealing with marriage and divorce. One of the special industries, so to speak, of the legislature prior to 1858, was the incorporation of business and other companies by special acts. The territorial legislature passed 42 acts relating to the creation and maintenance of dams, 44 acts respecting ferries. There were eight insurance companies organized; 18 commercial and mercantile companies; 36 academies, lyceums, colleges and "universities," and seven religious organizations were given corporate powers and privileges. The total number relating to incorporations reached 175, of which 10 were general laws and the remainder local or special acts. During the first State period the grand total reached only 80—13 being general

and 67 local statutes. In the second period the majority, as in the first period, relates to dams and ferries. In the prominence of these subjects we may realize the importance of mills to the pioneer citizens and the primitive character of modes of locomotion in the cross country travel.

The most noteworthy fact in connection with the laws affecting corporations passed prior to 1858, is the absence of statutes dealing with financial institutions, such as banks and investment and insurance companies. The business of insurance in those days was still in its infancy and the eight territorial acts referred to above relate entirely to the incorporation or business of particular companies. The business of insurance itself had not attained such a volume or importance as seriously to involve the welfare of any considerable number of people, and there was no general effective popular demand for State regulation until 1856 when the first comprehensive act was passed. With regard to banks on the other hand, Iowa, during the two periods considered, stood conspicuous among the states as a commonwealth without banks with note-issuing powers. The old Miner's bank of Dubuque, the only bank authorized during the territory, had been chartered by the legislature of Wisconsin in 1836, but its career was not one of success and the widespread disasters and demoralization in banking and business following the crisis of 1837 produced a pronounced popular aversion to bank-note issues among the people of Iowa. This antipathy culminated in the absolute prohibition of banks of note-issue in the constitution of 1846. Hence the remarkable absence of laws affecting banks from Iowa's statute books prior to 1858. It was the general dissatisfaction resulting from the lack of adequate banking facilities under the constitution of 1846 that was a potent factor among the causes bringing about the revision of 1857.

There were but ten acts passed before 1846 defining crimes and offenses and providing punishment, and only fifteen were enacted under the State constitution of 1846.

Such acts were passed in five separate sessions during the territory, while all those passed during the first State period were included in the report of the code commission and enacted at the time that code was adopted in 1850-1851. The latter it is to be noted were practically reenactments of previously existing territorial laws defining crimes and imposing punishments.

It is apparent that the great bulk of the lawmaking prior to 1858 related not to property nor to private law nor to the rights and privileges of corporations, but to Government—its establishment, its province and functions, its administration and maintenance. During the territorial government 721 acts out of the 941, or 76.6 per cent., related to government, and during the first years of the State, 1111 out of the 1232, or 90.9 per cent., referred to governmental matters. Or, to put it differently, only 3.7 per cent. of the territorial statutes enacted dealt with private law, but one per cent. with crime and but 18.6 per cent. with the laws affecting business corporations; and in the State period the percentage was less for private laws (2.1 per cent.) and slightly more for crimes (1.2 per cent) while there was a sharp falling off in the proportion dealing with incorporations, the total number reaching only 80 or 6.4 per cent. of all. Of the total directly relating to corporations, 13 were general and 67 were special or local.

Examining the details we find that the majority of the acts affecting the organization of government relates to local government and to the establishment and procedure of courts. Thus under the territorial government there were 10 general laws defining the work of State offices, and 23 general laws and 111 local acts prescribing the work of county and other local administrative offices. Under the State government the proportion of general laws was somewhat changed. There were 25 affecting State offices and 27 local executive offices. The local acts, however, greatly increased, reaching 280. The organization of the courts called for 45 general

acts and 15 local statutes prior to 1846, and 42 general and 55 local measures between 1846 and 1858; while in the matter of judicial procedure there were enacted during the territory 12 acts prescribing general rules, 34 dealing with civil processes and 14 with criminal procedure, and in the State period there were 32 statutes determining general rules of practice, 49 declaring civil and 58 criminal procedures.

In the first period there were passed eight general laws and 175 local acts dealing with highways and roads, and in the second period there were three general laws and 139 local acts.

The number of laws dealing with matters of police and the general welfare do not constitute a large proportion. Out of the total number enacted prior to 1846 only 44, or 4.6 per cent., related to police regulations, charities and corrections, general trade definitions, the regulation of trades and professions, and the promotion of the general welfare. The amount and the percentage increased to 80 general acts and eight local laws, or 7.1 per cent. between 1846 and 1858. The great majority relates to public health, order and safety, to charities and corrections and to general trade definitions. In the second period the acts dealing with charities and corrections number 22 as against nine in the period of the territory. The care of the blind, the deaf and the insane became matters of public concern about 1850 and we perceive the effect of public agitation in the statute books.

A similar and more pronounced increase took place in the amount of legislation for promoting the intellectual and moral welfare of the people. Under the territorial government but four acts were passed relating to schools and libraries; while under the State government 37 general laws and six local acts were passed. These were nearly equally divided between the State and local schools. In considering these figures it should not be forgotten that acts relating to fiscal matters, such as funds and appropriations allotted to educational institutions, appear under another title, viz.:

Maintenance. Laws affecting education constituted but 0.4 per cent. in the first period and but 3.4 per cent. between 1846 and 1858.

The laws passed dealing with matters of finance, with the custody of funds, the assessment and collection of taxes and with public accounting call for little comment. They consisted of only 44 acts during the territorial period and 113 in the second period. The largest number related to appropriations; and next in order those providing for the care of school funds. Such acts constituted 4.6 per cent. and 9.9 per cent. of all acts passed in the respective periods considered.

One of the most interesting and instructive subdivisions of the schedule is that wherein are shown various and sundry acts, such as those granting legal relief, giving parties special authority to do various acts, changing persons' names, granting divorces and legalization. The total number of such statutes in the first period was seven general laws prescribing procedure in such matters and 112 local or private acts, and in the second, two general acts and 59 private enactments. At the outset these acts dealt with each case separately, but they increased so much in number and in their perplexities that the legislature began rather early to bunch them in omnibus bills. There was of course both economy and politics in this development. When such matters are "pooled" the chances of passage are greatly increased while individual bills would encounter wreck.

The totals given briefly in the foregoing are compactly presented in Table III, in which the number of the various classes of laws are exhibited. The items or the detailed enumeration will be found in the schedule.

TABLE III.
CLASSES OF LAWS PASSED IN IOWA PRIOR TO 1858.

CLASSES OF LAWS	1838-1846				1846-1856			
	GEN'L	SPEC-IAL	TOTAL	PER CENT.	GEN'L	SPEC-IAL	TOTAL	PER CENT.
Private Laws.....	35	.....	35	3.7	26	.....	26	2.1
Public Laws.....	306	600	906	96.3	558	648	1206	97.9
1. Incorporations.....	10	165	175	18.6	13	67	80	6.4
2. Crimes and offenses.....	10	.....	10	1.1	15	.....	15	1.2
3. Government.....	286	435	721	76.6	530	581	1111	90.9
a. Organization.....	199	311	510	54.1	319	488	807	65.3
b. Police and material welfare.....	44	.....	44	4.6	80	8	88	7.1
c. Intellectual and moral welfare.....	4	.....	4	0.4	37	6	43	3.4
d. Maintenance.....	32	12	44	4.6	93	20	113	9.9
e. Miscellaneous.....	7	112	119	12.6	2	59	61	4.9
Grand Total.....	341	600	941	.....	584	648	1232	.....

[The schedule of laws which should follow here will be printed along with the schedule showing the laws passed after 1858 that will appear in a subsequent issue of the ANNALS.]

V.

A general view of Iowa's territorial and early State legislation discloses several facts that stand out prominently; and before closing we may well consider them briefly. They will become all the more conspicuous and significant when we shall have reviewed the legislation subsequent to the adoption of the constitution of 1857, and can take the long view of the entire range and sweep of our legislative enactments.

The fact that will first attract the lawyer perhaps is the effect of the early legislation on the common law. As regards the primordial rights and obligations of man, his rights of personal liberty, of property and of contract—and the definitions affecting crimes there was but little addition to and not much modification thereof during the first twenty years of the State's legislative history. The pioneers came into Iowa from Southern, Middle and New England states. They brought with them an inheritance of English common law and a stock of political ideas and institutions with which they had been familiar in their ancestral states. The early lawmakers adopted almost *en bloc* the statutes either of Wisconsin and Michigan (whence organically we descend as a political organization), or of other states from which they hailed. These laws were more or less of a kind, at least they were all built up about a common stock;* and

*The history of the beginnings of the statute laws of Iowa is a subject of profound interest; but so far it constitutes practically an undiscovered country. A few excursions have been made within its borders; but no extensive or detailed accounts exist of the ancestry or pedigrees of the important statutes first adopted. See T. L. Cole's "Historical Bibliography of the Statute Law of Iowa" in *Law Bulletin* of the State University of Iowa No. 2. In 1882 Chancellor Emlin McClain, now of Iowa's Supreme Court, in a lecture entitled "Introduction of the Common Law into Iowa," outlined the development of our law governing the ordinary rights of citizens prior to the beginning of Iowa's existence as a separate territory—published in *Iowa Historical Lectures*. Professor B. F. Shambaugh has given us much respecting the beginnings of our constitutional enactments and forms of local government. See his Introductory Notes to sections of his "Documentary Materials," vols. I and II.

As regards the character of the early laws and the manner of their making, accounts are as yet fragmentary. Any one who cares to seek may find some interesting and instructive data in Prof. T. S. Parvin's *Memorabilia*, especially his account of the Administration of Governor Lucas, *ANNALS OF IOWA*, 3rd series, vol. II, 409-437; in Dr. Wm. Salter's writings, such as his "Life of Governor Grimes," and in particu-

while a few additions or rather modifications were made in the laws affecting private persons in the next decade, they suffered no material change until they received the thorough overhauling of Judge Mason and his colleagues of the code commission appointed in 1848, whose codification was accepted and adopted in 1851. But the work of Judge Mason was not that of the lawmaker, he did not add to or modify the statutes. His work was simply the work of the codifier. He assembled under rational categories the miscellaneous provisions of acts scattered here and there in masses of temporary and local acts. He greatly reduced the bulk of the laws by applying the knife vigorously to the luxuriant verbiage of the earlier statutes and brought the parts together in a compilation that legal experts pronounce a work of literary as well as legal art.* But excepting certain laws affecting trade definitions and beneficial regulations and governmental changes, which we shall consider, we may almost say that the legislature neither added to nor materially altered the ordinary laws affecting persons and property in the legislative enactments prior to 1858.

Another fact that must needs strike the eye as one courses through the early statute books is what we may call the "particularistic" exercise of legislative power. Our theory of popular sovereignty and of the predominance of the lawmaking body in the State presumes or implies necessarily the possession of superior wisdom and ability in the

lar his address in "Commemoration of the Meeting of the First Legislative Assembly" at Burlington, November 11, 1900, reprinted in the *ANNALS*, vol. IV, 614-624; in Professor Jesse Macy's "Institutional Beginnings of a Western State," *Johns Hopkins University Studies in History* (2nd series), also reprinted in *ANNALS*, vol. III, 321-350; and in Judge Emlin McClain's article on "Charles Mason—Iowa's First Jurist," *ANNALS*, vol. IV, 595-609.

The writer has previously dealt with some phases of our legal and institutional genealogy; see the article on "The Transfusion of Political Ideas and Institutions," already cited herein and in particular "Iowa's Treasury Deficit in the Light of the Constitutional Debates," *ANNALS*, vol. III, 631-640, "The Regulation of Trade and Morals by Iowa Town Councils Prior to 1858," *Ibid*, vol. V, 126-134, "Chapters in Iowa's Financial History," *Ibid*, 352-373 and 425-446, in "Publicity in Local Finance," *Ibid*, vol. VI, 129-137 and "Transplanting Iowa's Laws to Oregon," *Ibid*, 455-463.

*See Judge McClain's article on Judge Mason already cited.

people's representatives. The theory assumes that the lawmakers are not only competent to do all things and to supervise all things, but that they can do so and in the process of lawmaking and in the regulation of the affairs of their citizens they will regard all matters and do all things with an eye single to the public good—the greatest good to the greatest number—and especially will they resolutely exclude personal feeling, interest or prejudice from their deliberations and actions. This in general was the assumption underlying much of the territorial and early State legislation in Iowa. The power of the legislature extended to “all rightful subjects of legislation,” and the lawmakers undertook to deal not only generally but individually with all manner of subjects, persons and interests. Not only was action taken upon the common and State-wide needs but laws benefiting or adversely affecting particular localities and interests and individuals were freely passed. The incorporation of particular business companies, of towns and counties, of churches and colleges were matters separately and individually dealt with. This particularistic legislation reached its extreme in the granting of divorces and in the changing of the names of private parties and in divers and sundry acts at each session, legalizing innumerable omissions and commissions, and in granting authority to particular individuals to do an endless variety of things.

As suggested, if lawmakers were philosophers and servants they might compass such a mass of complex and conflicting matters with efficiency in their dispatch and with equity in their decisions. But human nature is too weak. The conditions under which a legislature must do its work make impossible careful and impartial consideration of a vast miscellany of local or private interests that press tumultuously upon the members, if there is afforded any opportunity for legislative action thereon. In the first place their consideration interferes constantly and seriously with the primary and practically the chief function of a lawmaking body. A

legislature should concern itself almost entirely with determining the need for general rules of action and in deliberating upon the nature of their provisions defining the rights and duties of citizens, prescribing the province and powers of governmental agencies—and not with the innumerable and endlessly varying problems of practical administration. The intrusion of the latter into legislative proceedings confuses and darkens counsel and invariably clogs the transaction of the legislature's most important work with results that usually issue in more or less perversion, if not corruption. Even now-a-days, when the legislature is narrowly restricted by the bars of a constitutional prohibition against special and local legislation, we know how aggressive and persistent is the invasion of legislative precincts by private and corporate interests seeking governmental benefits in the way of favorable legislation and largess. If now and then we are disturbed by the gross intrusion of the lobby within the halls of the people's General Assembly, what must have been the feelings of the judicious prior to 1858 as they witnessed the clash of city cliques and county clans, of rival business corporations and special interests in hotel lobbies and committee rooms as they severally struggled for legislative consideration. But if such matter-of-fact affairs were disconcerting what sort of a distraction must have been the business of granting divorces! What varied scenes must have been enacted as angry couples faced each other in crowded committee rooms and told their tales of woe, one seeking, the other striving to prevent, the sundering of their matrimonial bonds! What floods of sentiment must have inundated the premises as attorneys appealed to the hearts of the senators and representatives and the sympathetic members under the glow of tender feelings and (with perhaps an eye to the gallery) attacked obdurate members who opposed such petitions! Those who have witnessed the gush of sentiment in recent years in appeals for pardons before legislative committees and the utter rout of reason and common sense in the

debates can easily imagine the varieties in diversion that interfered with the serious work of lawmaking in the first stages of the State's history. In 1843 the evils of granting divorces became so conspicuous that the House of Representatives by resolution condemned the practice, but the "pressure" on the members was too strong and they continued granting them. Governor Chambers has to his credit a vigorous message in which he vetoed an omnibus bill in which 19 discordant families were granted dissolution by legislative decree. But his protest did not avail much until years afterwards when the practice was stopped and the consideration of such matters committed exclusively to judicial tribunals. Our laws and our practical affairs would be still vastly improved if a multitude of matters of like character were thus committed to the courts or to commissions which would act in a judicial manner free from the intervention of partizan bias and personal or corporate interests.

But of the many phases of modern legislation none perhaps is of greater interest and moment to the public than the relative growths of what are commonly called individualistic, paternalistic and socialistic legislation. Society or the State now-a-days employing the enginery of government plays a prominent and ever-increasing part in the life of man. The intrusion of the corporate agencies into his private life and into the common life of the people has become the most noteworthy feature of modern political development. Not a few regard this increase of State interference in man's affairs with alarm; many contemplate it with doubt and much anxiety, while many, perhaps the majority, rejoice in this augmentation of governmental power and in the extension of the State's supervision as a necessary and beneficent development in our collective life. The course of legislation in Iowa in these respects is most interesting and instructive because it has taken place under what we may in somewhat paradoxical language describe as

extraordinarily normal conditions. Here in a region wonderfully fertile, and favorable alike for human habitation and for industry, with a population made up of vigorous pioneers from Southern, Middle and New England states with which later successfully fused sturdy industrious foreign elements, with agriculture in the predominance, yet with commerce, mining and manufactures crowding lustily to the fore, with no immense cities with their evils and problems preponderating in her life, politics and industry (yet with nearly half her population to-day living in cities and towns), with her government, State and local, fairly efficient and economical and for the most part free from the grosser forms of corruption—here in America's Mesopotamia for three-quarters of a century laws have been in the making. The attitude of such a people, under such conditions, towards governmental regulation and control in man's affairs as shown in their laws must needs be at once typical and instructive.

Here again if we would avoid confusion, definitions of terms are expedient, although lack of space prevents any adequate discussion that will anticipate the many erroneous assumptions and conflicting inferences that the terms individualistic, paternalistic and socialistic suggest.

In this essay "individualistic" legislation implies those laws, the aim of which is primarily to define and to guarantee rights and duties as regards personal liberty, property, its inheritance, and contracts, and in consequence to insure citizens against external invasion and internal violence, and against imposition and intimidation together with means for enforcing reparation in damages for injuries done. The general rule or principle sought is the utmost freedom of action for all alike and in the attainment of this condition it is deemed best *laissez faire laissez passer* so long as there results no conflict of interests; and should the latter contingency arise, the interference of the State should go no farther than to insure the rule of equal freedom. The assumption underlying individualistic legislation is, that

individuals know best what they want and need, and that they can and will best secure what they need if they are assured of their fundamental rights of life, liberty and property, and the sanctity of contracts; and when such guarantees are assured, society's interests are thus most effectually promoted. By enforcing this principle we permit free play for the maintenance of what the late Herbert Spencer insisted is the great law of social progress namely the rule of conduct and consequence in a condition of equal freedom. By "paternalistic" legislation is meant that species of State regulation which coerces the individual to do that which the legislature or the dominant majority in society decides is for his good, just as the parent in the exercise of parental authority compels the child for its own sake to observe a certain course of action whether the child would or no. Paternalism collides squarely with man's time-honored prerogative of "making a fool of himself so long as he does not run amuck" in his community. The term "socialistic" signifies laws whose original purpose is to conserve, sometimes in negative fashion but usually in a positive manner, the general or collective interests of citizens by the State's interference and assumption of control and, if needful, the actual conduct of affairs where the free play of individual interests and self-seeking would result adversely to the common interests.

In popular debate there is little discrimination in the use of these terms, and the same is to be observed of much of our academic discussion. This arises partly from proverbial laxity in the use of terms and partly from the inherent difficulties in the way of precise differentiation of the three classes of laws. In politics, laws and government, we can not always present their phenomena in sharply defined categories. We can not set them out, arrange, classify and label them as easily as does the botanist or zoologist the specimens in his museum. In the hurly burly of business and politics, in the practical administration of man's affairs

through the agencies of government, the phenomena of law fuse and confuse, class with class; and seldom is the public heedful of the social significance of the changes resulting. Individualism implies not only negative but positive action on the part of the State in order fully to maintain man's primordial rights. The State is bound not simply to protect him from foreign foes and highwaymen at home but from fraud and imposture. This necessity induces a vast augmentation in governmental functions in the exercise of the "police" power. But this expansion of the State's police function inevitably pushes legislation up to the borders of paternalism and of socialism, and popular logic, little discriminating, compels lawmakers to enter upon regulations and policies that come within the bounds of either class. Thus it is common to protect the public against incompetence and fraud. For instance we require lawyers and physicians to attain a certain modicum of education before they can practice. Those unlicensed we prohibit practicing and thus by short, swift steps our lawmakers, originally staunch individualists for the most part, proceeded in their effort to secure the public against fraud to the ultima of paternalism and deny us the sweet privilege of employing shysters, pettifoggers and quacks to our heart's content and purse's limit. Our common and State schools we inaugurated as socialistic undertakings—because it was assumed that private schools would not afford all the educational facilities that many deemed needful; but while private citizens are not denied the right to educate their children where and how they please, we are in effect with no little rapidity entering upon a career of pure paternalism that is bound at no distant day to develop into the unmitigated communism that Herbert Spencer just fifty years ago prophesied would ensue.* It is clear that private and public interests do not always coincide, and that wisdom suggests vigorous public supervision and regulation if not control and management in numerous

*See his *Social Statics*, pp. 361-362.

instances, as in the preservation game, forests and land parks, and in the control of highways and common carriers. Laws governing such matters may be regarded as merely the exercise of the police power of the State in the furtherance of the general welfare and thus individualistic or they may with equal propriety be pronounced socialistic. Keeping these considerations in mind let us briefly note the general developments in legislation in Iowa prior to 1858.

As we have already seen, the great preponderance of laws in the pioneer days related to the constitution of offices and departments of government and to their administration. Comparatively few dealt with either private law or with crimes. The major portion of the legislation was therefore Administrative or Regulative; and in the main we may say that either would be classed as strictly individualistic in character. Take for example the establishment and control of roads, the regulation of weights and measures and the definitions of fences. These are merely regulative laws that may be considered as exercises of the police power necessary to insure peaceful industry. Many of the acts were designed primarily as positive protective measures—such as the acts relating to prairie fires, public health, order and local decency.

We find, however, various decided developments in both paternalistic and socialistic legislation in the two periods considered. In the former class may be mentioned the regulation of interest rates, the law exempting homesteads from execution for debts, and various beneficial regulations designed to benefit certain classes such as mechanics' liens and various exemptions affecting taxation. Laws relating to poor relief and care of defectives might be so classed but they can be with equal propriety classed as individualistic acts of legislation, designed for the protection of society from classes whose existence constitutes more or less of a menace to social well-being. The most noteworthy paternalistic law passed before 1858 was the act of 1855 for the suppres-

sion of intemperance. An examination of the charters given various cities in the early periods discloses more or less of paternalistic tendencies with respect to morals and trade.*

In the sense in which the term is used here there were but two notable acts of socialistic legislation during the territorial days, namely, the laws providing for the establishment of the common schools and the act providing for the State library. As I have once before stated, the earliest settlers in Iowa were largely southerners either immediately or remotely. Their theory and practice of government did not go much beyond the "individualistic minimum" of State activity. With them the least government was necessarily the best government. The demand for socialistic legislation became more pronounced after the adoption of the constitution of 1846, because of the influx of great numbers of immigrants from New England, New York and Pennsylvania, who brought with them recollections of public schools, libraries, and greater or less governmental interference in industry, trade and morals for the promotion of the general social welfare. The effect of their views began to be marked about 1850. The establishment of the common schools was aggressively promoted until the radical reorganization urged by Horace Mann went into effect in 1856. It was after 1846 that the movement for a State University, for State Normal schools, for the education of the deaf and the blind at public expense, got under headway and resulted in legislative establishments and appropriations therefor. During the first State period occurred Iowa's chief and somewhat disastrous socialistic experiment in the promotion of Internal Improvements in the attempt to make the Des Moines river a great inland waterway for commerce. Finally in the latter portion of the period occurred the initial efforts with a view to State encouragement of agriculture, that evolved the institution at Ames and the State Agricultural Society

*See the writer's account in "Regulation of Trade and Morals by Iowa Town Councils prior to 1858," already cited.

and the numerous county institutions, with their fairs and institutes and activities for the promotion of agriculture and allied pursuits, that now play a large and growing part not only in the agriculture but in the politics of the State.

These sprouts in paternalistic and socialistic legislation which sprang up in the decade under the constitution of 1846 we shall see grow and spread rapidly and vigorously in the decades following the civil war. We shall find likewise a great increase in the exercise of the State's police power in positive protective measures and in general regulations and definitions of spheres of trade and industrial activity.

THE NOBLE IOWA HORSE.—The noble horse! The day of his mutilation in Iowa is passed. No longer shall he be made to suffer a thousand deaths while his beauty is being sacrificed upon the altar of commercialism. Both house and senate of the State legislature have passed the bill making the docking of horses in this State a misdemeanor and punishable by a fine of \$100. We congratulate Mrs. Irene Rood, the intelligent and tireless representative of the American Humane association. She has haunted committee rooms, labored with members and driven the sordid emissaries of the market-place from every position which they have assumed. The victory which she has won is but another addition to those achieved in the other states of the union. We congratulate the press of Iowa which responded nobly to the support of this measure. We recall but three papers in the State which undertook to belittle the bill. And, lastly, we congratulate the people of Iowa. Again have they demonstrated through their senators and representatives that while thrift, energy and prosperity may be their dominating characteristics, they are nevertheless ready to respond to every demand which shall be made upon them in behalf of the highest types of civilization. They glory in being in the forefront of every good work.—*Des Moines Daily Capital, March 26, 1904.*

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