

A REVIEW OF THE WORK OF THE IOWA CODE COMMISSION

Six different times since the year 1838, when the Territory of Iowa was organized, have the people of this Commonwealth seen their statute law collected and committed to a single book known as a "code" to the end that such law when presented in a logical, concise, and orderly manner might be clear and simple even to the ordinary citizen.¹ The last and bulkiest of these volumes, the *Code of 1897*, was barely off the press when the legislature added a book of several hundred new laws and repeated the performance at every session thereafter. So confusing and time-consuming were these volumes of session laws issued since 1897 that their contents have been consolidated three times in the form of supplements to the code, each one in turn being rendered obsolete by its successor. After the compilation of the *Supplement of 1913*, the statute law again assumed a condition bordering on chaos; and when the Thirty-eighth General Assembly closed its session in 1919, Iowa statute law had to be sought in the *Code of 1897*, the *Supplement of 1913*, the *Supplemental Supplement of 1915*, and the acts and resolutions of the Thirty-seventh and Thirty-eighth General Assemblies.

Had the plan provided by law in 1915 been followed down to date, there would be only three instead of five deposi-

¹ The reader who desires to know the history of codification in Iowa previous to the year 1914 should read a series of articles by Clifford Powell in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vols. IX-XII. For shorter accounts of the subject see Dan E. Clark's paper in *Iowa Applied History*, Vol. III, pp. 399-427, and Emlin McClain's summary in the *Iowa Law Bulletin*, Vol. I, pp. 1-28.

tories of the law. The *Supplemental Supplement* published in 1915 was a compilation of the statutes enacted in that year under title, chapter, and section numbers corresponding to those of the two existing code volumes, the intention being that subsequent legislation would be fitted into it in like manner, thus resulting in a cumulative supplement which would be reprinted every two years. This scheme of taking care of the legislative output of each General Assembly, elaborately set forth in a law covering more than two pages, contemplated the early publication of a one-volume code and the use thereafter of but two volumes of statute law — the code and a biennial cumulative supplement.² One of the first enactments of the Thirty-seventh General Assembly in 1917, however, overthrew this plan and caused a return to the old system of issuing a separate volume of laws for every session of the legislature. Whether this action was the result of accident, misunderstanding, or ill-will it is not easy to determine; but be that as it may, when it was later discovered that the law creating a supplemental supplement had been killed, a bill to revive it was sidetracked only because another measure was confidently expected to provide for complete code revision.³

RECENT AGITATION FAVORING REVISION AND CODIFICATION

In his inaugural address of 1917 Governor Wm. L. Harding, himself a practising lawyer before he assumed the office of chief executive, showed that he was deeply impressed by the welter of Iowa statutes. His own words⁴ addressed to the General Assembly were as follows:

What the people of this State want is fewer laws, plainly written,

² *Supplemental Supplement of 1915*, p. XI and Sec. 224-i.

³ *Laws of Iowa*, 1917, Ch. 5, Sec. 11.

⁴ *Journal of the Senate*, 1917, p. 121; *Journal of the House of Representatives*, 1917, p. 122.

easily understood, and well enforced. They expect you to reduce the number of laws; expect you to put them in such shape as that the average man may read as he runs, and patriotically obey. This is a task too large for a single session. I therefore recommend that a body be provided by this legislature, to report to the succeeding one, in harmony with this thought, their findings for action.

When our laws shall be reduced to readable limits, they will be understood, and respected, and, so, easily enforced.

The Governor made rather more constructive recommendations some time later in a message to the same body: he suggested that a legislative committee take up the problem of revising the laws for the raising of revenue; that a similar committee grapple with the problem of the overlapping authority of State departments and officers; and that there be appointed "a small number of skilled and competent persons, trained in the law, to edit the existing codes and to clarify and simplify them."⁵ Legislators acquainted with the situation were so generally in favor of the latter suggestion that the Van Alstine Bill creating a commission of five members to codify the laws and report to the General Assembly was passed by an overwhelming majority in the Senate. Unfortunately the measure got caught in the jam of the closing days of the session and failed to emerge from the hands of the House Sifting Committee.⁶ So pressing was the need of untangling the law that the Iowa State Bar Association at its meeting in June, 1917, went on record urging immediate recodification.⁷

Legislative consideration of this important subject was resumed when the General Assembly met in January, 1919. Indeed, the second bill introduced in each house provided for a code commission; later bills covered the same ground

⁵ *Journal of the Senate*, 1917, pp. 301, 302.

⁶ Senate File, No. 2. For the record of this bill see *Journal of the Senate*, 1917, p. 2033, and *Journal of the House of Representatives*, 1917, p. 2308.

⁷ *Proceedings of the Iowa State Bar Association*, Vol. XXIII, pp. 51, 53.

in a somewhat different way; and eventually the measure prepared by a Senate Judiciary Committee, slightly modified, obtained the right of way to enactment by practically unanimous votes in both houses, obtained the Governor's signature, and went into effect by publication on March 18th.⁸ A brief digest or analysis of this act will reveal its scope and character.

ACT OF 1919 CREATING A CODE COMMISSION

The law provided for a commission of three members, one of whom was to be the Supreme Court Reporter and the others were to be selected by the Governor from a list of five especially qualified persons recommended by the Chief Justice of the Supreme Court. After subscribing to an oath to support the constitutions of State and Nation and to perform their duties faithfully and impartially according to the best of their knowledge and ability, the commissioners were required to take up the work assigned to them on or before April 1, 1919, at a compensation of \$25.00 each for every day of eight hours actually employed, together with all necessary traveling expenses. This per diem paid to the Supreme Court Reporter was in lieu of his regular salary; and during his membership on the commission he might employ an assistant to continue the work of reporting at the State's expense for not more than \$2000 per annum. Vacancies for any cause were to be filled in the same manner as the original appointments.

The commission was granted the following powers: to obtain suitable rooms and supplies; to call upon the Supreme Court, State departments, and State officials for information and assistance; to employ a chief clerk or stenographer at an expense of not more than eight dollars per day when necessary and such other stenographers as were

⁸ *Journal of the Senate*, 1919, pp. 629, 630, 864; *Journal of the House of Representatives*, 1919, pp. 778, 917; and *Laws of Iowa*, 1919, Ch. 50.

needed at an expense of not more than five dollars per day each; and in order to complete their work by January 1, 1920, to secure, with the approval of the Executive Council, other additional assistants.

From the wording of the act it would seem that the legislature lacked a clear conception of the nature of the duties to be performed: its language in this respect leaves the reader in reasonable doubt.⁹ In the first place, the law declares that the "commission shall carefully edit and codify the laws of Iowa, omitting all laws or parts repealed, omitting all laws of local or temporary character, and all annotations and decisions, and collect such general laws of Iowa, including such laws of the thirty-eighth general assembly, printed and bound in one complete volume in such shape as to be amended and adopted as the permanent code of the state." In preparing this volume the commission was to give new numbers to the sections of existing code publications, number the lines of sections, include a table of corresponding sections and an index of the principal words without cross-references, and have the book completed and printed on or before December 1, 1919.

A second duty of the commission is stipulated in the following words:

Accompanying said proposed code, the commission, and after its discharge the code editor, shall submit a report to the legislature calling attention by reference to section of the code, to all repealed laws by section and reference to the session repealing same and calling attention to such portions of the laws as may be found to be conflicting, or redundant or ambiguous or such as otherwise require legislative action to make clear; and shall include in such reports the comments and recommendations of the commission or editor upon the subject of any part of said code.

This report was to be completed and printed on or before January 1, 1920.

⁹ The statute does not conform to the best standards of draftsmanship.

The drafters of the law above outlined, realizing to some extent what the effect of the code commission's work would be, took occasion to devote another part of the law to laying down new duties for the Code Editor after the commission dissolved. It is clear from the provisions of the law that the Code Editor will in the future be expected to advise the legislature on the condition of Iowa statute law. Furthermore, he is required to edit and prepare for publication a book of annotations of the code "to be printed in a separate volume arranged in the same way as to divisions, titles, chapters, and sections, as the edited code containing the annotations of all statutes construed by the supreme court of Iowa, and the federal courts, which book of annotations shall continue to be edited by the code editor up to date from time to time and printed, sold and distributed in the same manner as the code." Unless the Supreme Court should extend the time for good cause, the first book should be completed on or before January 1, 1920;¹⁰ but after every session of the General Assembly the Code Editor is required to edit the code and the book of annotations so that they "may be printed from time to time as ordered by the general assembly to meet all demands for the same."

Another section of the act creating the commission specifies that the slugs, monotype or linotype matter of the new code shall be of the same style as the *Supplemental Supplement of 1915*; that "they shall be preserved as the property of the state so that by correction of same from time to time

¹⁰ Owing to the fact that the Supreme Court Reporter served continuously in the work of codification and revision until the commission adjourned late in February, 1920, the completion of the book of annotations was postponed to July 1, 1920, by order of the Supreme Court and a second extension of time was given until sixty days after the convening of the Thirty-ninth General Assembly in 1921.

The present article does not include an account of the work of annotation by Mr. Whitney and his assistant, O. K. Patton, because it is not a part of the work of the code commission; but a brief report of their labors will no doubt be published as a preface to the book of annotations.

the code and book of annotations may be successively printed as edited to date"; that the "linotype slugs set for the supplemental supplement 1915, and now owned by the state, shall be used for the code and book of annotations"; and that the "printing of the code and book of annotations shall be from electrotype plates and not from the linotype slugs direct, and the electrotype plates need not be preserved." The type face for both books is also described.

The remainder of the act covers the following matters: the number of copies of the code to be printed; the distribution of the code, the report, and the book of annotations; the sale price of the code and the report; the auditing and payment of expenses growing out of the work of the commission; and a blanket appropriation of money from the State treasury.

When critically analyzed the whole act is seen to present a curious mixture of law of a permanent nature and law of a temporary nature, and combines under one title two different subjects: the creation and duties of the code commission and the duties of the Code Editor after the dissolution of the commission, the work of each being distinct and independent, although the one grows out of the other. The most unique feature of the act, however, is the sentence which declares "the great necessity for the adoption" of the report of the code commission and requests the Governor "to convene the legislature in extra session during the month of January, 1920, or as soon thereafter as practicable, for the consideration of said report and code." By going on record in this way it would appear that the legislature sought not so much to thrust an obligation on the Governor as to relieve him of the responsibility for calling an extra session which would mean additional expense to the taxpayers.

THE CODE COMMISSION

In accordance with the authority conferred by the legislature Chief Justice Scott M. Ladd promptly submitted the following list of nominees: W. A. Helsell of Odebolt, J. C. Mabry of Albia, E. D. Perry of Des Moines, J. H. Trewin of Cedar Rapids, and Chas. M. Waterman of Davenport. Governor Harding appointed Mr. Mabry and Mr. Trewin, who on March 19th, together with Supreme Court Reporter U. G. Whitney, took the oath of office. The commission immediately organized with Mr. Trewin as chairman and Mr. Whitney as secretary; E. F. McMahon was chosen chief clerk; a staff of stenographers and other assistants was employed; the rooms of the Lieutenant Governor were occupied as working-quarters; and Mr. Whitney was placed in charge of the work at the State House.

Since without aid the code commissioners could not hope to complete the work within the time prescribed by the legislature they exercised the power to employ additional assistants: with the approval of the Executive Council they engaged Ralph Maclean to assist Mr. Trewin at Cedar Rapids, C. A. Robbins to assist Mr. Mabry at Albia, and O. K. Patton to assist Mr. Whitney at the State House. Somewhat later the commission obtained the services of Professor John E. Brindley¹¹ of Ames to aid in the compilation and codification of the State's tax laws, Professor J. Van der Zee of Iowa City to prepare an index, and Professor H. C. Horack¹² of Iowa City to analyze the uniform conditional sales act and show its effect on existing law if adopted in Iowa. A few words about the commis-

¹¹ Mr. Brindley is professor of economics in the Iowa State College of Agriculture and Mechanic Arts. He has written a book on road legislation in Iowa and a two-volume work on the history of taxation in Iowa.

¹² Mr. Horack is professor of law in the State University of Iowa and also secretary-treasurer of the Iowa State Bar Association.

sioners and their regular assistants will not be out of place in this connection.

Born in Carroll County, Virginia, in 1860, Jefferson C. Mabry obtained his early training and education in Illinois, later graduating from Carthage College at the age of twenty-two. After being admitted to the Iowa bar at Burlington the next year, he removed to Albia for the practice of his profession and has been so occupied ever since with the exception of the years 1891 and 1892 when he taught in the law department of Drake University.¹³ An attorney of wide experience, Mr. Mabry has come to be recognized as a specialist in railroad, mining, banking, and corporation law.

Ulysses G. Whitney was born on a farm in Hardin County in 1864 and attended the rural schools. After teaching for five years, he spent two years as a student at Cornell College, then read law, and graduated from the law school of Drake University in 1890. Upon being admitted to the bar he opened an office at Sioux City; served ten years as county attorney for Woodbury County; and became State Representative in the Thirty-fourth and Thirty-fifth General Assemblies. Since January, 1915, Mr. Whitney has held the positions of Supreme Court Reporter and Code Editor.¹⁴ As Supreme Court Reporter Mr. Whitney has written the head notes for the opinions of the Supreme Court contained in the last eighteen volumes of Iowa reports which have been published under his supervision; and as Code Editor he completed the *Supplement of 1913*, edited the *Supplemental Supplement of 1915*, and brought out the session laws enacted subsequent to his appointment. Mr. Whitney is also the author of *Whitney's*

¹³ Cole and Ebersole's *The Courts and the Legal Profession*, Vol. II, p. 863.

¹⁴ *Iowa Official Register*, 1917-1918, p. 228; Brigham's *Iowa, Its History and Its Foremost Citizens*, Vol. II, pp. 125, 126.

Digest covering volumes 168 to 178 of the Iowa reports. In recent years he has frequently been called upon to draft bills for members and committees of the legislature; and it is well known that he assisted in the preparation of the original draft of the important road legislation of 1919.

Born near Chicago, Illinois, in 1858, James H. Trewin came to Iowa in 1872. His early education was in the common schools, in Bradford Academy (Chickasaw County), Cedar Valley Seminary, and Lenox College at Hopkinton. He engaged in teaching for about seven years, then studied law in an office at Dubuque, Iowa, and was admitted to practice in 1882, first opening an office at Earlville, Delaware County, Iowa. He moved to Lansing, Iowa, in 1889 and to Cedar Rapids, Iowa, in 1902. Since admission to the bar he has been in active general practice. Mr. Trewin's interest in the condition of the State's law began with his membership in the lower house of the Twenty-fifth General Assembly in 1894. At that time he championed codification by fathering the bill which was passed creating a commission. At the next session of the legislature, as a member of the Senate committee on code revision, he took an important part in the consideration of the code commission's work. In the extra session of 1897 he served on a joint committee which had certain duties to perform in connection with the publication of the code; and when the General Assembly had adopted the proposed code piecemeal with numerous modifications, a committee of five legislators was appointed to supervise the editing and preparation of the new *Code of 1897* for the press and report to the session after a brief recess. This committee organized under the chairmanship of Mr. Trewin, and made reports on July 1, 1897, and to the Twenty-seventh General Assembly in 1898. During the legislative session of 1900 Mr. Trewin was a member of the joint committee to "carefully revise and codify all the special assess-

ment laws, and such other laws in relation to the government of municipal corporations, as may be by the committee deemed necessary and expedient, and recommend such changes therein as may be desirable." In the Twenty-ninth General Assembly Mr. Trewin urged the publication of the *Code Supplement of 1902* and became a member of the legislative committee which supervised the editing. Subsequent to his career in the Senate his advice has been frequently sought by legislators who have introduced bills dealing with the codification of the law. Mr. Trewin also acted as the first president of the Iowa State Board of Education from 1909 to 1914.¹⁵

Caleb A. Robbins of Winterset, a native of Kansas and now fifty-two years of age, attended the rural and Winterset schools, Valparaiso University, and the University of Iowa law school. For nearly thirty years he has been active in the practice of law. From 1911 until 1918 he filled the positions of special counsel and assistant under Attorneys-general Cosson and Havner.

Ralph Maclean of Carroll was born at Columbus City in 1876, obtained an education in the schools of Atlantic, engaged in nearly every phase of newspaper work, and has practised law continually since 1912.

Odis K. Patton of Iowa City spent his youth in Story and Marshall counties, Zearing being the place of his birth in 1889. After graduation from the schools of Marshalltown, he continued his studies at the University of Iowa which granted him four degrees in arts and law — B. A., M. A., Ph. D., and LL. B.— the last in 1917. He had meanwhile devoted part of his time to the teaching of political

¹⁵ Gue's *History of Iowa*, Vol. IV, p. 266; THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XI, pp. 365, 366, 387, 388, 409, 414, 416, 420, 431, 432, 434, 440. Mr. Trewin has been deeply interested in the simplifying of the law by revision and codification and has thought and read a great deal on the subject.

science in the same institution and to research for The State Historical Society of Iowa. As related to the law of Iowa his writings cover the following subjects: marriage and divorce legislation, home rule in cities, the removal of public officials, methods of statute-law making, and the interpretation and construction of statutes.¹⁶ Shortly after beginning the practice of his profession at Sioux City in 1917, Mr. Patton enlisted in the army for service in the World War.

Almost the first act of the code commission was the clear and definite determination of what the General Assembly intended its duties to be. Since the words of the statute were not as illuminating as they might have been in this matter, the commissioners addressed a communication to the legislature with a view to explaining their understanding of the statute in order that the General Assembly might have an opportunity to set them right if they were mistaken. When no response of any kind was forthcoming, the commissioners, acting on the theory that silence gives approval, proceeded to carry out their own construction of the functions hinted at in the law. Their interpretation of the legislature's intent deserves to be stated in full because it clears up the not always apparent distinction between "compilation" and "codification" of the laws. The commission's duties were assumed to be the following:¹⁷

First, to prepare an orderly compilation of the laws, omitting all laws of a local or temporary character, etc., and to cause the same to be printed on or before December 1st, 1919, without any change in wording;

Second, to prepare a report setting forth a codification of such parts of the law, as, in the judgment of the commission, is necessary, and that such codification shall be prepared in the form of bills as substitutes for the sections or chapters codified, as the case may be;

¹⁶ *Iowa Applied History*, Vols. II and III.

¹⁷ *Journal of the Senate*, 1919, pp. 1116, 1117.

Third, to separately report such amendments to the laws as codified, as, in the judgment of the commission, are necessary and for the public interest.

Realizing the magnitude of this program and the impossibility of executing it thoroughly in the few short months allowed, the commission also took occasion to inform the General Assembly that the time was scarcely more than would be necessary to complete the compilation, thus leaving scant opportunity for the more important and difficult work of codification. It did not hesitate, therefore, to address the following appeal to the members of the legislature:¹⁸

First, point out specifically all defects, conflicts, inconsistencies and errors in the laws of the state which you have been able to discover;

Second, rewrite any section or sections of the law which, in your judgment, can be made plainer and more concise, without change in the meaning of the law;

Third, make specific suggestions in the form of amendments to sections, or substitutes for sections which in your opinion would improve any of the laws of the state and be for the public benefit. Mere general suggestions will be of small value because of the lack of time to formulate them into amendments, but all specific suggestions will be of great aid to the commission and much appreciated.

Impressed by the commission's complaint about its inability to come through on schedule time, the Senate unanimously passed a joint resolution authorizing the Committee on Retrenchment and Reform to extend the period not more than thirty days if necessary, but in the lower house the Sifting Committee failed to report this measure out. It is also worthy of note that on the day before final adjournment the members of the legislature almost succeeded in reversing themselves in regard to a matter which

¹⁸ *Journal of the Senate*, 1919, p. 1117.

they believed on second thought would bring confusion to the legal profession: the Senate Sifting Committee introduced a bill to abandon the plan of renumbering the sections of the code. Although this measure passed both houses by unanimous votes the process of enactment missed completion before adjournment.¹⁹ Had its duties been modified to such an extent, not only would the code commission have been effectively hobbled, but its progress and ultimate usefulness also would have been seriously impaired.

THE COMPILED CODE

First among the steps to be taken to put the State's storehouse of law in order was to discover and assemble the rules of law enacted by the Iowa legislature. The code commission's task did not, of course, extend to the gathering of all the law as set forth in the statute books and in the reported decisions of the Supreme Court — an undertaking of such tremendous proportions has never been essayed in Iowa, although it has been accomplished in a few American States²⁰ with doubtful advantage in the end. On the contrary, the code commission was to focus its attention on legislation of a permanent and general nature only.²¹ This required the collecting of law from five official depositories: the *Code of 1897*, the *Supplement of 1913*, the *Supplemental Supplement of 1915*, and the two volumes of statutes enacted by the General Assembly in 1917 and 1919. Some permanent legislation accidentally omitted from the books above named was also unearthed by the commission.²² The

¹⁹ *Journal of the Senate*, 1919, p. 2166; and *Journal of the House of Representatives*, 1919, pp. 2216, 2225.

²⁰ California, North Dakota, South Dakota, Montana, and Idaho.

²¹ Temporary appropriation and legalizing acts were omitted.

²² See *Compiled Code*, p. 2639. At the same time the new compilation lacks the permanent law included in chapter 50, *Laws of Iowa*, 1919.

statute law thus gathered up from the several sources aggregated approximately 12,000 sections.

Inasmuch as a considerable fraction of this mass of legislation consisted of repealing and amendatory statutes, the next step was to cull out dead matter that had been accumulating for over twenty years and at the same time to preserve the living law in its entirety. Great care was required to preserve existing statutes in the form in which the legislature had left them. Sections of law amended or expressly repealed by other sections were handled in the manner authorized by the legislature. Obsolete law thus ferreted out was then discarded, and authorized changes in the wording of numerous sections in the *Code of 1897* and its supplements were also carried out. Thus, for example, wherever the old law required the Executive Council to audit specific claims against the State, the words "State board of audit" were substituted;²³ "State Normal School" now appears as "State Teachers' College"; and where certain State educational institutions once managed by boards of trustees were later placed under the State Board of Education, the name of the new board was substituted. Those who suppose that the mulct law has been completely shelved by the recent prohibitory amendment to the United States Constitution may be surprised to learn that the *Compiled Code* retains those provisions of the old law which impose a fine for the illegal sale of liquor: sixteen sections providing for the collection of a tax for bootlegging will now operate as a penalty in addition to the penalties elsewhere laid down in the law.

This process of overhauling nearly 12,000 sections of law, without changing their meaning or eliminating any portion unless expressly authorized, resulted in the survival of a

²³ This change was omitted in *Compiled Code*, Secs. 921, 4753.

total of 9589 sections.²⁴ Even in cases where two or more sections, as in the collateral inheritance tax law, or even whole chapters like those dealing with drainage concern the same subject, no matter whether certain provisions be redundant or cumulative or plainly contradictory, the code commission allowed the law to stand: in its preparation of the *Compiled Code* it gave effect to express repeals, but never took the liberty to omit sections repealed by implication.²⁵ By not assuming to sit as a court to interpret the meaning of the law in such cases the commission steered a safe course: not wishing to tamper with the law during the first stage of its labors, it wisely reserved for the legislature the task of eradicating repetition or confusion in the law as such elimination might be suggested in bills to be drafted by the commission later. The *Compiled Code* accordingly presents all redundant or contradictory sections either placed consecutively or in close proximity so that the reader will be more likely to note the defects in the law.

It should be pointed out that the code commissioners endeavored to make their work of compilation a stepping-stone to the more important work of revision and amendment; and so the *Compiled Code* is in no sense the result of an attempt to codify Iowa statute law. Had the commission undertaken to effect any far-reaching changes in the wording of the law, it would have laid the ground for censure and prejudice in the legislature where some members

²⁴ Sometimes very lengthy sections were divided into several consecutive shorter sections. See *Compiled Code*, Secs. 1978-1984, 8953-8957, 9001-9004, 9015-9018. On the other hand, widely separated but related sections were occasionally combined as paragraphs of the same section. For an illustration of this see section 4516.

²⁵ For instance, an old law required the immediate burning of hogs dying from disease and forbade persons to deal in dead swine or to convey diseased or dead diseased swine upon a public highway; but a very recent statute legalized the utilization and disposal of all dead animals in a certain way for scientific purposes. Since the old law is not expressly repealed, the commission had both statutes printed in the *Compiled Code*.

are always ready and eager to take advantage of the slightest excuse for criticism. Nowhere in the *Compiled Code*, therefore, has the language of the law undergone any modification except as authorized by the legislature.

When the clearing out of dead timber from the law had been finished, the commissioners and their assistants began the task of familiarizing themselves with the thousands of sections which survived the ordeal. These sections, separately pasted upon loose, large-size sheets of stiff paper, were sorted according to subject-matter. In this phase of the work, the old principles of classifying the law, pursued in previous code publications of the State, served the general purpose of lighting the commissioners on their way, but gradually they evolved a different scheme of classification by titles. The *Code of 1897* consists of four parts: Public Law, Private Law, Code of Civil Practice, and Code of Criminal Procedure; each is divided into titles; and these twenty-six titles are further subdivided into chapters. All legislation enacted by the General Assembly since 1897 has been fitted into this arrangement. A general survey of the law as a whole convinced the code commission that it would be unwise to pattern an up-to-date compilation after the *Code of 1897*, and so a rearrangement was decided upon as both necessary and proper.

A comparison of old and proposed title headings in parallel columns below reveals not only the scope and contents of the *Code of 1897* and the *Compiled Code* but suggests in a superficial way the superiority of the latter in at least one respect: simple and orderly arrangement. Indeed, the code commission's analysis and proposed classification of the law is more thorough and scientific than the one heretofore prevailing. The omission of the archaic and useless word "Of" as the introductory word of titles is a decided improvement.

COMPARATIVE TABLE OF CODE OF 1897 AND COMPILED CODE

(Figures in parentheses indicate the number of chapter subdivisions)

TITLES IN THE CODE OF 1897	TITLES IN THE COMPILED CODE OF 1919
I. Of the Sovereignty and Jurisdiction of the State, and the Legislative Department (5)	I. Sovereignty and Jurisdiction of the State, and the Legislative Department (8)
II. Of the Executive Department (9)	II. Executive Department (16)
III. Of the Judicial Department (15)	III. Military Code and Related Matters (4)
IV. Of County and Township Government (11)	IV. Elections and Officers (29)
V. Of City and Town Government (14)	V. Regulations under Police Power (24)
VI. Of Elections and Officers (12)	VI. Public Health (15)
VII. Of the Revenue (4)	VII. Dairy and Food Department (14)
VIII. Of Roads, Bridges and Ferries and the Destruction of Thistles (3)	VIII. Department of Agriculture, Horticulture, and Animal Industry (22)
IX. Of Corporations (13)	IX. Charitable, Correctional and Penal Institutions (20)
X. Of Internal Improvements (9)	X. Education (38)
XI. Of the Militia (1)	XI. Highways (18)
XII. Of the Police of the State (21)	XII. County and Township Government (24)
XIII. Of Education (18)	XIII. City and Town Government (41)
XIV. Of Rights of Property (11)	XIV. Taxation (22)
XV. Of Trade and Commerce (10)	XV. Certain Internal Improvements (5)
XVI. Of the Domestic Relations (8)	XVI. Common Carriers (10)
XVII. Of the Estates of Decedents (5)	XVII. Corporations (6)

XVIII. Of Procedure in Courts of Original Jurisdiction (16)	XVIII. Insurance (12)
XIX. Of Attachments, Garnishment, Executions, and Supplementary Proceedings (4)	XIX. Banks (5)
XX. Of Procedure to Reverse, Vacate, or Modify Judgments (3)	XX. Building and Loan Associations (1)
XXI. Of Procedure in Particular Cases (18)	XXI. Trade and Commerce (14)
XXII. Of Justices of the Peace and Their Courts (1)	XXII. Personal Property (2)
XXIII. Of Evidence (1)	XXIII. Real Property (12)
XXIV. Of Crimes and Punishments (15)	XXIV. Certain Special Liens (7)
XXV. Of Criminal Procedure (50)	XXV. Legalizing Acts (7)
XXVI. Of the Discipline and Government of Jails and Penitentiaries (2)	XXVI. Domestic Relations (10)
	XXVII. Justices of the Peace (1)
	XXVIII. Courts of Record of Original Jurisdiction (8)
	XXIX. General Provisions Relating to Civil Practice and Procedure (17)
	XXX. Estates of Dece- dents (6)
	XXXI. Particular Actions (32)
	XXXII. Supreme Court (3)
	XXXIII. Criminal Law (63)
	XXXIV. Criminal Procedure (47)

A study of the foregoing table explains in some measure what the code commission has done in its compilation of the law. Twenty-one of the old title headings, some slightly altered, have been carried over into the *Compiled Code*; and of the remaining five, Title III has been broken up into new ones covering "Courts of Record of Original Jurisdiction" and "Supreme Court", and Titles XIX, XX, XXIII, and XXVI have been quite properly reduced in

importance to the status of chapters under other titles. It is to be noted, moreover, that eleven subjects formerly relegated to chapters have now been raised to the prominence of titles. The introduction of several new titles and nearly 300 new chapter headings represents an outstanding departure from the style of the *Code of 1897* and is justified on two grounds: first, if the General Assembly approves them, the statute law of Iowa thus arranged can not be so easily thrown into confusion by subsequent amendments by the legislature; and secondly, when the General Assembly meets to pass upon the commission's 253 bills for the amendment, revision, and codification of certain portions of the law, the task of comparing existing and proposed provisions will be considerably simplified and greatly facilitated because neither the chapters affected nor the bills proposed are especially lengthy.

Legislative activity during the twenty-two years which have elapsed since the publication of the *Code of 1897* had so enormously developed certain aspects of Iowa statute law that the code commission found the time ripe for the invention and adoption of several important new title headings. Title XII "Of the Police of the State" had come to be a sort of general receptacle for legislation that could not be classified otherwise, and so the commission broke it up and distributed its contents elsewhere. Some of it relating to the State board of health, medicine, surgery, nursing, embalming, pharmacy, and dentistry afforded the nucleus for a new title on "Public Health". Another chapter became the starting-point of an important new title on the "Dairy and Food Department". Two chapters on domestic animals and the State veterinary surgeon and a chapter in the old Title IX on agricultural and horticultural societies and stock breeders and dairy associations, and other statutes, all relating to a field in which the State has gained

distinction, were combined under "Department of Agriculture, Horticulture and Animal Industry". What remained of the old Title XII and similar but widely scattered State regulations for the protection of the people were then compiled as "Regulations under Police Power". Another new title was manufactured out of the State's charitable, correctional, and penal institutions. Other important subjects deemed worthy of separate titles were common carriers (formerly under "Internal Improvements"), insurance, banks, building and loan associations, personal property, and certain special liens. The commission also brought together all general legalizing acts which affect notaries public and acknowledgments, judgments and decrees, real property, corporations, cities and towns, bonds, and certain elections.

Having separated the statute law into appropriate titles without slavishly following the scheme of classification in the *Code of 1897*, the commission effected another improvement by arranging the titles in a more logical order. For instance, the new work devotes the last eight titles to subject-matter relating to the courts and their procedure now scattered throughout the old compilation. This means that in the future lawyers, county attorneys, and judges will know simply that all rules of law concerning the practical or procedural side of their daily activity can be found at the end of the code, related matters being bunched together. The officers of our courts will be compelled, of course, to familiarize themselves with the new arrangement and discard the old: having known for over twenty years that they could find separate titles for execution, attachment, garnishment, and proceedings auxiliary to execution, general principles of evidence, and procedure to reverse, vacate, or modify judgments, they must now learn that these matters are more logically placed under "General Provi-

sions Relating to Civil Practice and Procedure" and "Particular Actions". A few minutes of study should commend to any practitioner the admirable arrangement of the last eight titles of the *Compiled Code*: of course, many members of the bar who have memorized the numbers of frequently consulted sections will grieve because the new section numbering ruins their ability, acquired in over twenty years of practice, to turn to the law without consulting the index.

The number and the headings of titles having been determined, the next step in the process of preparing the *Compiled Code* was the orderly and logical grouping of title contents. By common consent each code commissioner was assigned the special task of arranging certain titles, his final product to be submitted to his colleagues individually and to the commission as a whole for criticism. It was only by such a division of labor that the commissioners could hope to have the compilation ready for distribution by December 1, 1919. To assemble related subject-matter and thus improve upon existing code volumes, which frequently offer together incongruous, unrelated statutory provisions in a most illogical and tantalizing manner, required no little exercise of discrimination.

As rapidly as titles were chapterized, beginning with Title I, the sections received numbers and the loose sheets on which they were pasted were strung together and tied into strong binders for future handling and safekeeping. In the end four sets of the new compilation were made up in this ponderous form, one set for each of the commissioners and the indexer. If the *Compiled Code* was to be printed and bound by the date specified by the General Assembly, there was no time to lose in getting copy ready for the press. The new compilation, therefore, underwent a large amount of editorial supervision: besides arranging the 34 titles and 565 chapters in logical order and selecting

appropriate headings, the commissioners also supplied each of the 9589 sections of the law with proper catchwords at the beginning and bracketed historical references at the end. After July 1, 1919, copy for the *Compiled Code* flowed to the printer without interruption and soon galley proof was being sent to the different commissioners for corrections. Final proof, however, came from the office at Des Moines where Mr. Whitney, qualified by experience as Supreme Court Reporter and Code Editor for several years, had charge of a staff of clerks, proof-readers, and stenographers for the routine duties connected with the work. It is estimated that the process of compiling the law alone consumed four months.

In appearance the *Compiled Code* as printed and bound by The Homestead Company of Des Moines makes a rather bulky quarto volume of 2945 pages. Title headings might well have appeared in larger type than chapter headings. The number and catchwords of each section, not as in previous code publications, now occupy a separate line and stand out in black-face well above the body of the section which is given in clear, readable type on paper of good quality. For easy reference the lines of each section are, moreover, consecutively numbered in the lefthand margin of the page. Bracketed and abbreviated below each section is the reference by the use of which the original enactment can be found in previous statute books of the State, such as the *Code of 1851*, the *Revision of 1860*, the *Code of 1873*, the *Code of 1897*, the supplements to the code, and the session law volumes of 1917 and 1919. These historical references enable the reader to trace the development of a particular section of the law back to its original form.

Allotting two or more extra lines and spacing to the catchwords and historical references of each of the 9589 sections has made the *Compiled Code* much bulkier than it would

have been had they been joined to the beginning and end of each section; but the usefulness of the volume has been very much enhanced by these new visualizing devices. An occasional editorial note is inserted whenever the language of a section needs to be explained for the user's enlightenment.²⁶

Besides the commission's introductory statement addressed to the Governor and the General Assembly, the volume includes a topical index by titles and chapters and, immediately following the body of the law, an eighty-four-page table showing in consecutive numerical order all sections of existing law in one column, amendments and repeals in a second, and corresponding *Compiled Code* sections in a third column. The user of the new volume who knows existing law familiarly by section numbers, some of them used for twenty-three years, and wants to learn where the code commission has placed them, is by means of this table enabled to locate quickly what he seeks.

A closer examination of the contents of the *Compiled Code* reveals the fact that the code commission followed a few simple rules: sections once beginning with "That" have been rid of the superfluous word; and those time-honored friends of legislative draftsmen, the words "provided that", have been everywhere changed to a simple "but". It would not be surprising if some sections in their new positions are really out of place. Close inspection, for instance, makes it clear that section 5009 reads intelligibly and logically only after 4959, and section 5010 after 5239. Section 8603 logically follows 8716; sections 8685, 8691, 8692, and 8693 logically belong in the title on trade and commerce; sections 1061-1067 on fire escapes belong after chapter 6 of Title V; 8050-8055 on property stolen or embezzled should come after chapter 19 of Title V; and sections 8967-8980 on impeachment properly deserve a berth

²⁶ See notes subjoined to sections 1810, 1814, 1936, of the *Compiled Code*.

after chapter 21 of Title IV. Nevertheless, very few mistakes are discoverable, and none of these are vital except perhaps the first one above enumerated. As the result of an oversight on the part of proof readers, paragraphs 22, 23, and 24 were omitted from section 1478; and the section referred to in 3760 should have been 3342 instead of 3134. In the course of time users of the new volume may possibly uncover accidental omissions of law of a permanent nature.

In distributing 9589 sections of law among 565 chapters and arranging the latter under thirty-four titles, the code commission has followed one general rule, namely: wherever possible, subject-matter should be placed after the official body administering the law. Thus, the laws relating to bees and nursery stock are found under "Agricultural College" in Title X because the State apiarist and State entomologist are members of its faculty; and the State bacteriological laboratory, the psychopathic hospital, and the children's hospital belong under "State University" in the same title instead of in Title VI on public health. The soldiers' orphans' home and the juvenile home, however, are managed by the Board of Control and would appear to belong more properly in Title IX on "Charitable, Correctional and Penal Institutions" than in the title on "Education".

After devising a scheme for the classification of the subject-matter of the *Compiled Code*, it was not always possible for the commission to carry out the scheme, especially when two possible arrangements presented themselves. Some might argue that if the last eight titles were to be reserved for the courts and their procedure, mayors' and police courts might have been given a place in the title devoted to the justice of the peace court, whereas they constitute a chapter in the title on "City and Town Government" in the new compilation. Similarly, municipal courts might

have appeared in the same title; but now they are grouped in Title XXVIII on "Courts of Record of Original Jurisdiction".

The extent to which related subject-matter may be assembled is also well illustrated in the case of law dealing with taxation: general provisions are found in a separate title, including State tax levies, but sections of law which confer taxing authority upon local government agencies like cities and towns, counties, townships, school districts, and drainage districts have been allowed to stand in the titles covering those large subjects. If the extraction of tax law wherever it occurs in such places had been undertaken, important parts of the law would have been separated from their context and orderly arrangement might have been seriously disrupted.²⁷

That there was a limit to the plan of allocating branches of the law to separate titles is proved by the difficulties encountered by the commission when it made an attempt to collect the criminal law. County attorneys and judges will discover that Title XXXIII is not all-inclusive so far as this big subject is concerned. When it is realized that very many chapters of the *Compiled Code*, such as those on railroads, warehousemen, bills of lading, and the new housing law, somewhere contain provisions penalizing persons guilty of the violation of "any of the foregoing provisions" or "the provisions of this chapter", it must be clear that these chapters would have been dismembered if the criminal features had been extracted and relegated to a single title somewhere else.²⁸ Of course, a title embracing the State's entire penal code would have been desirable; but to accomplish that is the work of codification, not of simple

²⁷ The index to the *Compiled Code* combines references to all phases of such subjects under appropriate index headings.

²⁸ See Mr. Mabry's remarks in *Proceedings of the Iowa State Bar Association*, 1919, p. 30.

compilation, and would require long, laborious consideration of all those penal sections of the law which incorporate by mere reference hundreds of other sections which are not penal. Under the circumstances, however, there is one place in the *Compiled Code* where one may be expected to go for an indication of all criminal offences and that is the index under "Criminal Law" with eleven pages of references. It should be noted in passing that the new title on criminal law with its sixty-three chapters, each devoted to a separate offence or class of offences and some only a section or two in length, represents a simpler and better classification than the old title of the *Code of 1897* with fifteen chapters under such general, nondescript headings as "Offenses against property" and "Offenses against public policy". Moreover, in a few instances where sections seemed to embrace too much (particularly in Titles XXXIII and XXXIV), the commission has seen fit to split them into appropriate sections of moderate length without, of course, affecting the meaning. A good example of this is the flag desecration law: one section (a solid page and a half) seventy-one lines long is now converted into five sections.²⁹

One part of the *Compiled Code* will be hailed by the hundreds of local officials in the State and that is Title XIII on city and town government—the most voluminous title in the book. So far as the process of compilation permitted, it makes a satisfactory municipal code. It is worthy of note that the last chapter is in fact the first step in the direction of codifying the law relating to cities under special charters. In the *Code of 1897* and its supplements, besides a chapter on this subject, there are scattered sections conferring powers upon cities and towns "including cities under special charters". The commission has every-

²⁹ *Compiled Code*, Secs. 8837-8841. Sections 1978-1984 were formerly 2727-a96. See also sections 8953-8959.

where removed the words quoted, and out of them in every case has constructed a short new section for the chapter dealing with such cities. A typical instance of this method of handling the law may be indicated here. A section³⁰ of the old law reads as follows:

That there is hereby created and established a board of police and fire commissioners in cities with a population of eight thousand or more in cities having a paid fire department and cities under special charters, which, according to any state or national census heretofore or hereafter taken, are shown to have a population of more than twenty thousand.

In the *Compiled Code* this section³¹ is made to read without the first word and the words "and cities under special charters", but the omission is accounted for in section 4307 which declares: "Chapter five of this title is applicable to cities acting under special charters". The effect of the law remains the same, but the form has changed: whereas all the law on the subject appears in one section of the old code, now it appears in the new compilation in two sections widely separated. Omitting the same words from numerous other sections of the old law and constructing new sections for insertion in chapter 41 on special charter cities has resulted in the assembling of all the law applicable to these cities.

If the uninitiated user of the *Compiled Code* happens to know what the commission has done in chapter 41 of Title XIII, he will use it as a handy codification of the law on the subject; otherwise he may get into difficulty. Suppose he should turn to the chapter on "Municipal Court" to see if such a tribunal may be established in special charter cities: on consulting section 6840 (Title XXVIII, Chapter 1), he will conclude that they may not, although section 4325 pro-

³⁰ *Supplement of 1913*, Sec. 679-a; *Laws of Iowa*, 1917, Ch. 195, Sec. 1.

³¹ *Compiled Code*, Sec. 3563.

vides that "Chapter one of title twenty-eight is applicable to cities acting under special charters." The user might argue, therefore, that the effect of a great many sections which formerly included certain words to show what cities were affected are now misleading because those words have been omitted without informing the reader of that fact: he can illustrate his point by showing that chapters 11, 14, 17, 19, 20, 21, 25, 28, 35, 37, and 38 of Title XIII contain no reference whatever to special charter cities although all are applicable, chapter 41 incorporating them by reference in every case. This criticism is not really fatal because the index, through which such information is usually obtained, will cite the user to the law, and also because the people who are most concerned are the inhabitants of Wapello, Glenwood, Muscatine, and Davenport — the only cities in the State to which chapter 41 is applicable.³²

To estimate the value of the *Compiled Code* it is necessary to consider the purposes which it has served and will serve. First of all, this compilation placed before the code commission the whole body of the statute law in its present form — with all its repetitions, ambiguities, inconsistencies, and other imperfections. It thus afforded the commission an easier approach to the more important and difficult problem of converting the confused, chaotic body of the law into an harmonious whole. The *Compiled Code* is, therefore, the first and indispensable step toward providing the State of Iowa with an up to date code — it was employed by the commission as the basis or ground work in the formulation of bills to be considered by the General Assembly for the improvement of the law.

In the second place, of the 2500 copies of the *Compiled Code* issued at an expense of about \$35,000, enough have

³² The people of Dubuque not long ago voted to abandon their special charter in favor of the city manager plan of government.

been distributed free of charge to supply members of the General Assembly, members of the code commission, judges of the supreme, district, superior and municipal courts, all State officials, the State Library, and the libraries at Iowa City; and at a price of \$3.00 per copy the compilation has also been placed in the hands of persons who have ordered it. These and other possible users are enabled to find within the covers of a single book such matters as are otherwise embraced in five books: State statutes, formerly badly scattered and heaped on top of one another, have now been printed in one volume wherein related provisions are brought together and all the law appears in logical order. Lawyers and judges especially will appreciate the great value of such a work. But most important of all, when the General Assembly undertakes the consideration of the code commission's 253 proposed bills amending, revising, and codifying certain portions of the law of Iowa, the *Compiled Code* containing the law as it is will enable the members to grasp more quickly the nature of those proposals. It will be used for purposes of comparison by the members and committees of the legislature and thus result, it is hoped, in speeding up the business of the session — a saving of time, therefore, the value of which can not be calculated in dollars and cents. If the General Assembly acts favorably upon the commission's report and existing law is modified by alterations and additions, the publication of a new permanent code will be necessary at once and the *Compiled Code* will then become a book chiefly of historic interest. If the General Assembly believes that code revision is a job too big for a regular session at a time when certain large general needs and problems of the State are demanding solution, the *Compiled Code* will serve some of the purposes of a permanent code until the work of revision and codification is accomplished. In any event the *Compiled Code* will

be scarcely more than a makeshift devised for the temporary convenience of those who want a handy compendium of the law.

INDEX TO THE COMPILED CODE

Impressed by the importance of making the contents of the new compilation of the laws readily accessible, and especially responsive to the complaints and suggestions of lawyers in the State, the code commission took up correspondence with law book publishers and asked not only for criticisms of existing Iowa code indexes but also for the suggestions and advice of experts as to a new one. Upon being told, among other things, that the ideal indexer is not easy to find because his work calls for much "ox-like patience and, when well done, makes a heavy drain on the nerves," after inquiry and consideration of the necessary qualifications of an indexer, the commission employed J. Van der Zee of Iowa City.³³

Immediately after his appointment on the 9th of April, the indexer made a study of the indexes of important law publications and particularly those in the more recent Iowa code volumes with which the people are most familiar. The knowledge of defects detected there was expected to be invaluable in the preparation of a superior code index in the future. Altogether about one month was consumed in the examination of the work of predecessors in the field; and although this investment of time resulted in a fairly clear notion of the main principles on which the index to the *Compiled Code* should be constructed, the real problems involved in indexing became apparent only after actual work commenced: a sample index of several chapters submitted to the code commission for inspection convinced the indexer

³³ The commission's indexer had acquired considerable experience indexing the *Proceedings of the Iowa State Bar Association*, the *Iowa Law Bulletin*, and publications of the State Historical Society of Iowa.

that "the tedious and sublunary task" of grasping and holding the eel of legal science is more than ordinarily difficult. The General Assembly had given the commission only one direction in regard to the compilation of an index: the principal words in each section of the code should be indexed alphabetically by giving "the number of section, chapter or title as best adapted to find a section sought without again referring to the index."³⁴ The policy followed with regard to the profuse employment of cross-references in the index of 1915, the "snake-chasing-its-tail" or "ring-'round-a-rosey" index, was doubtless aimed at in this provision.

The *Compiled Code* index of 293 pages — nearly two hundred pages shorter than that of 1915 — gives effect to the reasonable intent of the General Assembly. Law which may be looked for under synonymous heads can be found referred to in the index without extensive duplication of index contents. Where a subject has been completely indexed under one word and the law is briefly referred to under another word covering the same subject, the reader consulting the latter head is satisfied to find a general reference — otherwise a parenthetical note advises him to turn to the former "for a more detailed index". If this device had not been employed, the index might be as voluminous as the law itself. Nevertheless, the possibility of using more synonyms was by no means exhausted.

The index has been prepared with the view of meeting the needs of particular groups of people affected by the law, namely: thousands of public officials, comparatively fewer practitioners of law, and a considerable number of laymen engaged in business, trade, and the professions. Whether the index will adequately serve these classes only time and constant use can demonstrate. The compiler has

³⁴ *Laws of Iowa*, 1919, Ch. 50, Sec. 4.

aimed to achieve a standard that calls for simplification of arrangement, readiness of reference, and completeness of detail. Space forbids a discussion of whether these primary requirements have been met. It suffices to say here that those who have had occasion to run down particular points of law in the new compilation must have noticed the difference between its index and the one to which they have tried to accustom themselves during the past five years. Lawyers and judges especially will find themselves under the necessity of revising somewhat their procedure in the search for provisions of Iowa statute law. A short preface to the index, explaining clearly its plan of construction, would not have been out of place: it would have served as a guide or key to the method of using the index.³⁵

Perfection need hardly be looked for in an index of such size — errors and omissions will undoubtedly be discovered and it would not be at all surprising if its content and structure should be subjected to sharp criticism many times. Nevertheless, every critic of the index and the *Compiled Code* can well afford to be indulgent when he realizes that most of their shortcomings are due to the rush which attended the work of compilation at every step.³⁶

THE REPORT OF THE CODE COMMISSION

After devoting approximately four months to the work of compiling the laws of the State, the commission had not quite a half year left for codification, amendment, and revision. Thoroughly convinced that the time would be all too short to permit a complete survey of the laws, the commission almost immediately after its organization in March

³⁵ Such a guide can be found in Scott and Beaman's *Index Analysis of the Federal Statutes*, prepared for the United States government.

³⁶ A more detailed discussion of the making of the index of the *Compiled Code* is given in an article entitled *Indexing the Compiled Code*, by Jacob Van der Zee, in the present number of the JOURNAL.

sent out an urgent call for help. When it is realized that the *Compiled Code* prepared by the commission contains the *Code of 1897* (which itself is very largely only a compilation) and all legislation subsequently enacted, it is not difficult to understand the condition of existing law: it teems with conflicts, repetitions, and ambiguities, and abounds in passages characterized by doubt, confusion, and verbosity. It is not surprising, therefore, that the code commissioners found themselves confronted by an overwhelming task. Recognizing their own limitations under the circumstances and desiring to make the new permanent code "the result, as nearly as may be, of the united efforts of the people of the State",³⁷ they summoned to their assistance all those persons and interests who were in a position to volunteer specific amendments and revisions of the law. Accordingly, fully 12,000 form letters or questionnaires asking suggestions for the improvement of the statute law were addressed to State officers, boards, and commissions; judges of all courts of record; county officers and boards of supervisors; educational institutions and experts; bankers; business and professional men; manufacturers, and chambers of commerce; farm, dairy, and stock associations; and practising lawyers.

The appeal to these sources for active coöperation in producing as creditable a codification as was possible in the limited time allotted brought a large volume of correspondence. By the middle of May the commissioners had received not only general suggestions as to necessary or

³⁷ In referring to this feature Mr. Trewin declared: "We have adopted a method in regard to code revision which, so far as we know, has never been undertaken before. Rather than proceed in our supposed wisdom and possible self-sufficiency, we called upon the Bench and Bar and the people of Iowa to help. These laws do not belong to the Commission and to the General Assembly; they belong to all the people of Iowa, and they are all entitled to be heard".—*Proceedings of the Iowa State Bar Association*, 1919, p. 25. See also pp. 32 and 34.

desirable changes in the laws but also the more valuable sort of information that was specially invited, namely: specific references to defects, inconsistencies, conflicts, and errors in the laws, and specific amendments to sections or substitutes for sections. But the request to re-write sections of the law which could be condensed by eliminating mere verbiage without change of meaning generally went unheeded. Thus, a huge collection of useful suggestions based on the experience and judgment of many men awaited the attention and study of the commission when it was ready to undertake to introduce order into the chaos embodied in the *Compiled Code*.

In attacking the problems involved at this stage of their labors the commission decided upon a policy that would guarantee the most efficiency and conserve the most time. The titles which each commissioner and his assistant had put into shape for the *Compiled Code* were also assigned to them for the more difficult and tedious process of polishing up. It seemed clear at the outset, however, that it would be futile to attempt to examine under the microscope each of the 9589 sections of the compilation; and so the commission undertook, first, to codify only those parts of the compilation which were best adapted to restatement in orderly, clear, concise, and simple language; secondly, to cure the more patent defects of form wherever amendments to that effect could be accepted by the legislature without serious question; thirdly, to amend the substance of many sections which deserved modification without proposing very sweeping or radical changes or provoking controversial matters in the General Assembly; and fourthly, to recommend a small but indispensable amount of new legislation in order to make existing law harmonious. To carry out this program was felt to be preferable to the alternative plan of selecting various complicated, involved and contradictory

passages in the law and informing the General Assembly that they were in bad shape and needed attention.³⁸ Thus, the commission believed it would be of no value to tell the legislature that the present drainage laws should be repealed and a new statute enacted — something that everybody has known for twenty years. To be of real service to the State in such cases the commission decided to formulate and present concrete proposals in the form of bills to remedy undesirable conditions in the law, thus giving the legislature something tangible to act upon.

With regard to the mechanics of statute revision and codification the commission followed one general plan. Each member worked over the chapters or titles assigned to him, amending and redrafting sections wherever he thought necessary or codifying related subject-matter. The tentative bill which emerged from his individual efforts was then mailed to his colleagues to be carefully scrutinized and criticised in writing or even restated by them and returned to him for further consideration. Before his bill was reduced to final form, it was gone over again and subjected to the combined intelligence and judgment of all the commissioners meeting in joint session.³⁹ Thus, very frequently the commissioners indulged in ruthless criticism of each others' bills before reaching unanimous agreements on the form and contents of the final drafts.⁴⁰

The evolution of the proposed bill relating to drainage admirably illustrates the course of the commission in tight places. Mr. Mabry who had charge of this extremely troublesome subject began the work of revision as early as

³⁸ *Report of Code Commission*, 1919, p. 1.

³⁹ The minutes of sessions of the commission are preserved in a book kept by the Supreme Court Reporter, Mr. Whitney.

⁴⁰ The manuscript copies of the bills which went through the commission's mill in the way here described are still in possession of the individual commissioners. They show an enormous amount of editing.

the middle of April by holding conferences with drainage lawyers, judges who had wide experience with drainage litigation, and others who were vitally interested in clearing the legal jungle now existing. Later, when a tentative bill had been formulated after a very full discussion by the entire commission, Mr. Mabry arranged another conference of the leading authorities on the subject together with five members of the General Assembly and submitted the measure to them at Fort Dodge for suggestions. Still later, the bill was not regarded as a finished product until its engineering provisions had been referred for thorough weighing by an expert, W. G. Raymond, dean of the College of Applied Science of the University of Iowa. The drainage bill was thus threshed out and rewritten several times: altogether Mr. Mabry in collaboration with the other commissioners spent nearly two months on this body of law.⁴¹

In many respects the laws relating to State and local administration also underwent a vast amount of the same patient toiling. Conferences and discussions with administrative officials such as mine inspectors, the labor commissioner, the industrial commissioner, the fish and game wardens, railroad commissioners, the highway commission, the dairy and food commission, the board of public health, and the pharmacy commission proved invaluable whenever tangles in the law had to be unraveled. In re-drafting the mining laws coal operators and the legal department of the United Mine Workers were also consulted, and the final draft of the bill submitted to them seemed to meet the approval of all concerned. Repeated conferences with the industrial commissioner, labor union officials, and large employers of labor resulted in a favorable re-draft of the workmen's compensation law. The same may be said of

⁴¹ This explanation of Mr. Mabry's procedure is taken from a letter to the writer.

the bills dealing with the safety appliance and child labor laws. In the hope of reducing the tax laws to some sort of system Professor Brindley wrote for the suggestions of county auditors and treasurers and met them for a conference at Muscatine. Mr. Trewin enlisted the interest and support of the State Teachers' Association, county superintendents, the heads of State educational institutions, and the chairmen of legislative committees, and from a conference at Cedar Rapids obtained very useful information with reference to the school laws. At a State convention of building and loan association representatives an important amendment to the law was agreed upon. Most of the twenty-eight recommendations of the State association of county attorneys were adopted. The commissioners also took advantage of an opportunity in June, 1919, to infect the State bar association with enthusiasm for code revision.⁴² Moreover, the League of Iowa Municipalities was requested to voice its opinions and did some excellent work in connection with the codification of the law of municipal corporations, although no radical changes were recommended. The representatives of various insurance companies also met to consider amendments to the insurance laws.⁴³ Thus, at every step, the code commission sought and availed itself of the advice of those who were interested in and directly affected by certain portions of the law and always aimed to give them an adequate and reasonable understanding of the bills proposed in its report.

The bills eventually prepared by the commission, 253 in number, were separately printed, one thousand copies of each were made, and as fast as they came from the press they were forwarded to members of the General Assembly who expected to be called into extra session some time after

⁴² *Proceedings of the Iowa State Bar Association*, 1919, pp. 23-34.

⁴³ These facts were gathered from the correspondence of the commission.

New Year's day, 1920: any preliminary study that legislators might devote to bills would help to advance matters when final action should be taken by legislative committees and by each house as a whole. Later, when all the bills had been separately printed, they were bound together in a volume of 2050 pages entitled *Report of the Code Commission*, thus making a permanent record of the commission's proposals for the improvement of the statutory law of Iowa.

Each bill as drawn and submitted for passage by the General Assembly conforms to the same general plan. Taking the first bill as an example, the following features are to be noted: at the top are the words "Code Commissioners' Bill No. 1", and below that, the subject: "Form of Bills". Then come certain blanks to be filled to indicate the number of the bill either as a Senate or a House file, the name of the introducer, the name of the committee to which the bill is referred, and the date. On a separate line appear the words "A Bill For", then the legislative title, next the enacting clause, and lastly the enactment itself introduced by the words "That sections forty-two (42) and forty-three (43) of the compiled code of Iowa are amended, revised and codified to read as follows".

These formal features, common to all the bills, aim to facilitate the handling of the code commission's proposals in the legislature. Furthermore, at the bottom of each section of a bill stands a bracketed reference note to indicate whether the section codifies or revises the language of some particular section or sections of the *Compiled Code* or presents a wholly new provision, thus enabling the General Assembly to see at a glance what the code commission proposes to have done to existing law. Where these references show that changes in the law or new law are suggested, specific reasons for such proposals are not set out because the commission believed that the reasons would be ap-

parent on comparing the bills with corresponding portions of the *Compiled Code*.⁴⁴ There is one more advantage in the way in which the commission's bills are drawn: when the General Assembly has acted upon them, the Code Editor will have no difficulty fitting the new laws into their proper places for the purpose of making a well arranged permanent code for the State.⁴⁵

BILLS OF THE CODE COMMISSION

Measures prepared for enactment by the legislature may be weighed and criticised both as to form and substance. The writer has neither the time nor the inclination to take up each of the 253 bills comprising the code commissioners' report and thus attempt to anticipate or help to decide the results of the deliberations of committees of the General Assembly. Do these bills conform to the best standards of draftsmanship? Do their contents represent the fruit of the highest wisdom and the ripest experience? These are the questions which legislators must thresh out in the committee room and upon the floors of both houses when the proper time comes. To undertake at this point a discussion or scientific analysis of the bills drafted by the commission as its contribution to the end that Iowa statute law may be put in better shape is neither feasible nor necessary: the writer would be engaged on an endless task if he should try to do more than give a general idea of the nature of the commission's proposals to codify, amend, and revise somewhat more than one-third of the sections of the *Compiled Code*.

From the standpoint of the bill drafter and the codifier it will be found that certain bills achieve a higher degree of

⁴⁴ *Report of the Code Commission*, 1919, p. 1.

⁴⁵ A brief commendation of the work of the code commission can be found in the *American Law Review* for July-August, 1920, pp. 638, 639.

excellence than others. Those, for example, which deal with primary elections (Bill No. 21), the conduct of elections (Bill No. 25), public health (Bill No. 63), the food and drug department (Bill No. 64), charitable, correctional and penal institutions (Bill No. 84), and drainage (Bill No. 185) show that existing law on such subjects has undergone a great amount of study and touching up. The same may be said for the self-criminating and self-disgracing testimony bill⁴⁶ and the bills relating to education and municipal corporations. A model for draftsmen and code-makers is the uniform limited partnership act (Bill No. 74) but it is not the work of the code commission at all. Like the uniform laws on conditional and fraudulent sales which are also recommended, it is typical of the best work done in the United States in the field of codification and drafting. The commission's bills prove the truth of the well-known rule that the longer a measure is polished the better the final product.

It has been rumored that the commission's bills invite the General Assembly to make a large number of changes in substantive or lawyer's law, thereby upsetting court interpretations that have freed many statutes from doubt; but the commission has denied any intention to disturb or touch well settled law of that kind. It does, however, advise a great many changes in administrative law and the procedure thereunder for the purpose of clarification and better protecting the public interest. Of the total number of nearly 5000 sections which make up the 253 bills, two-thirds constitute a restatement of the law in different form; just a few in excess of 1200 modify existing law; and 500 are labeled "new". A glance at the titles reveals the fact that scarcely more than a score of very short bills concern mat-

⁴⁶ For an excellent discussion of this bill see D. O. McGovney's article in *Iowa Law Bulletin*, Vol. V, pp. 175-199.

ters once found in the domain of the Common Law and that all the others affect the body of administrative law, that is, those statutes which lay down the powers and duties of public officials and government regulations of private and corporate affairs. A closer view of the contents of these "administrative" bills shows that the commission's re-drafts of laws or parts of laws do not in the main call for changes in substance but rather for changes in form and for more logical arrangement: the commission has divided long sections so as to make each proposed section treat of but one subject or a single phase of a subject; it has pruned away a great deal of surplus and redundant language; and it has tried to make the law speak in the simplest and most concise English.

By far the largest proportion of the 1200 modifying sections and the 500 new sections of the proposed bills are "administrative" in character. Thus, of bill number 12 nearly one-half of the sections modify existing law on public printing and binding, the State board of printing, and the document editor. A similar modification of the existing law is effected by nearly one-third of the sections of bill number 54 on fish and game; by 149 out of 355 sections of bill number 63 on public health; by 48 of the 223 sections on the food and drug department; by 39 of the 99 on animal industry; by 22 of the 58 on estrays and trespassing animals; by 86 out of 519 sections of bill number 84 on charitable, correctional, and penal institutions; by one-third or more of the sections of bills on the board of educational examiners, the county superintendent, school districts, school meetings and boards of directors, compulsory education, municipal street improvements and sewers, and special charter cities; and by 15 of the 30 sections dealing with taxation and 10 of the 11 relating to the collateral inheritance tax. The complete re-draft of the State's drain-

age laws (Bill No. 185), a composite bill made from the two statutes which have given rise to endless litigation and expense, greatly hampering legitimate drainage projects and at the same time fostering some that were not meritorious, requires modifications of existing law in 47 out of the 257 sections. The bills relating to water power improvements, eminent domain, the board of railroad commissioners, the construction and operation of railways, electric wires and transmission lines, interurban railways, certain special liens, and municipal courts — all call for a considerable number of changes. The last thirty-five short bills dealing chiefly with civil and criminal procedure in the courts,⁴⁷ probate matters, and State police contain many very important modifications of and additions to the law.

In concluding this cursory review of the commissioners' bills some mention should be made of those which contain the largest sprinkling of sections designated "new". Particular attention is called to the first bill in the report; the earliest consideration by the General Assembly is asked for it because it sets forth the procedure which the legislature should follow in taking up the bills of the commission.⁴⁸ Six of the eleven sections propose new law, a natural outgrowth of the work of the commission, and merely direct the legislature with regard to the formal features of bills to amend, revise, and codify the laws. Section 7 is especially noteworthy because it relates to bill-drafting and aims at one evil of statute law-making: it requires that sections of bills, where practicable, shall not exceed sixteen

⁴⁷ A very good discussion of some of these proposals may be found in *Proceedings of the Iowa State Bar Association*, 1920, pp. 89-135. The Bar Association spent one afternoon considering the report of its committee on law reform relative to court rules for conciliation, pleadings in equity actions, depositions, instructions to jurors, estates of decedents, security for witnesses in criminal proceedings, and three proposals by the National Conference of Commissioners on Uniform Laws.

⁴⁸ See also *Iowa Law Bulletin*, Vol. V, pp. 3-5.

lines in length. Of similar import are the last three sections of the third bill providing for a new legislative "committee on bills" enumerating its duties as a means of preventing as far as possible the confusion into which Iowa codes have been thrown by subsequent haphazard legislation.

The bills which propose most of the additions to existing law relate to the following subjects: absent voters, workmen's compensation, the State fire marshal, the State board of health, the food and drug department, instruction in patriotism in the schools, the county attorney, drainage, water power improvement, eminent domain, stop signs at railway crossings, and certain special liens. Besides the uniform agricultural seeds law (Bill No. 64, Ch. 11), the uniform limited partnership act in 58 sections is recommended "to take the place of our archaic law on the subject." The code commission also pays a high compliment to the uniform laws on conditional sales and fraudulent sales, incorporates them in its report by reference, and urges the State legislature to adopt such codifications, because like the negotiable instruments law already on the statute book all these uniform laws represent years of work by the ablest lawyers of the country.⁴⁹ What effect the adoption of the uniform conditional sales act would have upon Iowa statutes and decisions is shown in an article by Professor H. C. Horack who was engaged by the code commission to make a thorough analysis.⁵⁰

There is one bill in particular which has aroused more interest perhaps than any other because it provides a plan of reorganizing an important part of the State's administrative machinery by creating a new State board of health and investing it with all the rights, powers, and duties now

⁴⁹ *Report of the Code Commission*, 1919, p. 2.

⁵⁰ *Iowa Law Bulletin*, Vol. V, pp. 129-174.

granted to the State boards of health, medical examiners, dental examiners, and optometry examiners, State oil inspectors, and the pharmacy commission.⁵¹ The abolition of the offices above enumerated and the construction of a real State board of health deprives the Governor of nearly thirty appointments and confers upon the new board supervision over the administration of the housing law. Accordingly, to make it clear that the code commission was moved not by personal considerations but by a desire to serve the public interest, the commissioners and their assistants have frequently appeared at conventions of those most concerned, until it is believed that all are convinced of the reasonableness of the reorganization proposed in the bill.

One other code commission measure that has received the commendation of those who are interested in the subject is the bill permitting judges of district and municipal courts to adopt and enforce rules for the settlement of certain controversies involving claims of \$100 or less by conciliation and to appoint conciliators or themselves act as such. The bill, if enacted into law, will tremendously affect that large body of plain citizens who believe justice is too frequently denied to them and who can not afford to pay the expense of litigation in the form of lawyers' fees and court costs: under the proposed arrangement the parties to a dispute will be brought face to face without counsel in a private hearing where they can talk matters over and possibly reach a speedy settlement without resorting to the courts.⁵²

EXTENSION OF THE TIME OF THE COMMISSION

In the midst of the important work of formulating bills for the report to the General Assembly, the first of January,

⁵¹ See *Report of Code Commission*, 1919, Bill No. 63, Ch. 20.

⁵² This bill has attracted the attention of writers in *The Journal of the*

1920, arrived — the day on or before which the report of the code commission was to be ready if the terms of the law were to be complied with. The commissioners, however, found it impossible to complete their labors within the allotted time.⁵³ Deeming it contrary to public policy and the best interests of the State to have the work stop, they determined to continue until they could perform all the duties prescribed. Since this decision necessitated the auditing and payment of salaries and other necessary expenses out of the State treasury and since the Executive Council — believing the code commission to be legally dead regardless of a contrary opinion rendered by Attorney-General Havner — doubted its authority to approve bills for expenses after the date fixed by law, the chairman of the commission instituted an action of mandamus against the Executive Council and the State's finance officers. This friendly suit or test case, begun in the District Court for Polk County on January 20th, was decided by Judge Lawrence De Graff in favor of the commission three days later, and on appeal to the Supreme Court was affirmed on January 26th. Immediately after the decision of the Supreme Court was filed the Executive Council ordered the payment of the bills covering legitimate code commission expenses. Although the court promised to file an appropriate opinion later, in its decision Chief Justice Ladd took occasion to emphasize the importance of having the commission's work completed without delay.⁵⁴

A brief discussion of the arguments in the case may be

American Judicature Society, Vol. III, p. 153, and *Iowa Law Bulletin*, Vol. V, pp. 200-205, 249-252. See also the discussion in *Proceedings of the Iowa State Bar Association*, 1920.

⁵³ The code commission had warned the Executive Council in a communication on November 25, 1919, of the physical impossibility of completing its report by January 1, 1920. See also *Report of Code Commission*, 1919, p. 1.

⁵⁴ *The Des Moines Register*, January 27, 1920.

presented here lest the reasons for the court's decision be misunderstood. The defendants maintained that the legislature intended January 1st as the date of the dissolution of the code commission and that the language of the statute absolutely commanded the commission to cease work at that time even though the work was not completed. If, therefore, the date stipulated was mandatory, the defendants could not legally honor the commission's bills for expenses and therefore lacked authority to pay out State funds.⁵⁵ The plaintiff contended that the General Assembly's directions as to time were not of the essence of the statute's provisions prescribing the commission's duties; that it was a well settled principle of law "that even though mandatory words are used, no statute will be held to be mandatory when to do so is against public policy"; and that therefore the legislature's prime object was to secure the report of the commission as a basis for the amendment, revision, and codification of the laws although the time needed to complete the report should extend beyond the date fixed. The plaintiff cited two Iowa cases applicable to the point at issue and quoted the following words in favor of his contention:

Provisions regulating the duties of public officers, and specifying the time for their performance, are in that regard generally directory. Though a statute directs a thing to be done at a particular time, it does not necessarily follow that it may not be done afterwards.⁵⁶

Judge Cooley's statement of the rule is also quoted by the Iowa court with approval:

Those directions which are not of the essence of the thing to be

⁵⁵ See Mr. Ramsay's statement in *The Des Moines Register*, January 10, 1920.

⁵⁶ *Hubbell v. Polk County*, 106 Iowa 618, at 621.

done, but which are given with a view merely to the proper, orderly, and prompt conduct of the business, and by the failure to obey which the rights of those interested will not be prejudiced, are not commonly to be regarded as mandatory; and if the act is performed, but not in the time or in the precise mode indicated, it will still be sufficient, if that which is done accomplishes the substantial purposes of the statute.⁵⁷

The code commission submitted its report on February 20, 1920, and adjourned. Mr. Whitney as Supreme Court Reporter at once turned to the only remaining task imposed by chapter 50 of the laws of the Thirty-eighth General Assembly: the preparation of a book of annotations. He was authorized by the Executive Council to retain Mr. O. K. Patton, his assistant on the commission, as assistant annotator, and the Supreme Court issued an order giving him until July 1, 1920, to complete the work.⁵⁸

REFUSAL OF THE GOVERNOR TO CALL AN EXTRA SESSION OF THE GENERAL ASSEMBLY

It will be recalled that the act creating the code commission contained a request urging the Governor to summon a special session of the General Assembly soon after January 1, 1920, so that the commission's bills might be examined and passed upon and the State's new code might be completed for publication during the year. Governor Harding on November 25, 1919, despatched a letter to members of the legislature announcing his decision not to call them together before March 15, 1920. On the same day the commission informed the Governor that its report would be ready on or about February 1st. Shortly after January 1st, when it was certain that the Governor opposed an early

⁵⁷ *Hawkeye Lumber Co. v. Board of Review*, 161 Iowa 504, at 508.

⁵⁸ A further extension of time has since been made, permitting the Supreme Court Reporter to continue the work of annotating until some date early in 1921.

session of the General Assembly, the chairman of the commission declared there was no reason why the legislature might not have entered upon a consideration of the bills already prepared while the commission was finishing the work upon bills still remaining.⁵⁹

The interesting controversy which took place between the Governor and the commission is too long to be related in this connection, and it is after all only incidental. The public press took up the matter by publishing interviews⁶⁰ with the men principally involved, but the merits of this discussion do not concern us here.⁶¹ Suffice it to say that under date of March 6, 1920, the Governor issued a seven-page printed letter as a final statement to the members of the Thirty-eighth General Assembly, recalling his recommendations in the past on the importance of code revision and setting forth the reason why the work could wait a little while longer. His conclusion is contained in the following quotation:

The best thought of the hour is that in order to get back to nor-

⁵⁹ *The Des Moines Register*, January 7, 1920.

⁶⁰ For details the reader is referred to *The Des Moines Register*, especially the issues of January 7, 27, 28, February 9, 11, 23, 25, 27, 29, and March 8, 9, 1920.

⁶¹ That the practically unanimous opinion of the General Assembly in March, 1919, in favor of a special session should have been thrust aside by the chief executive was believed by many to be an unfortunate event. The Governor, of course, only exercised his constitutional privilege. Had he called a special session in response to the wishes of the people's representatives, he could have pinned the responsibility on them although he might still have deemed a special session unwise. If the members of the General Assembly sincerely believed in the wisdom and necessity of an extra session and had suspected the Governor's intention to thwart their wishes, they could have made the consideration of code revision an absolute certainty by adjourning to meet again when the code commission's report was ready: such an adjournment in April, 1919, would have obviated the necessity of the Governor's calling an extra session, but it would not have entitled the individual legislator to any compensation in addition to that which he had been allowed by law for the regular session, namely, \$1000.

mal conditions in the business world, we should eliminate unnecessary or avoidable expenditures. If my memory serves me correctly, it costs the State about \$3000.00 a day each day the legislature is in session. If the State wants the individual citizen to practice rules of economy, it seems but proper that the State should set the example. . . .

From all of the above information, I have concluded that the work assigned to be performed under Chapter 50 was of such volume and is so delayed in its completion, that it will be impracticable to call a special session for the purpose of revising the Code and you are, therefore, notified that no session will be called for the purpose of revision. If a session was called as late as July 1st, it would be a physical impossibility to get the work completed and have the result of your effort printed in time for the next regularly convening legislature. I am satisfied in my own mind that a regular session can take up the work of revision with very little inconvenience and with very little more time than would ordinarily be required in a special session. I have taken occasion to go back through the Senate and House Journals and I find that during the first half of practically every session, running back for a period of years, there has been but about two hours of session each day. The report of the Commission is made in the form of bills. These will be on the desks of the members, so that in regular session, after the preliminaries of organization, there is no good reason why the legislature cannot meet from six to ten hours a day in the work of Code Revision. In such session, whatever of change in the way of new law or amendment is desired, can be proposed at the time and thus the work of the special session and regular session can be done in the limit of time usually occupied in the regular session and at a saving of about \$300,000 to the state.

Thus the Thirty-ninth General Assembly when it assembles in January, 1921, will be confronted by the important and difficult problem of code revision.

THE FUTURE OF CODE REVISION

At this time one can only speculate on how the Thirty-ninth General Assembly will dispose of the problem of code revision. If it believes that the time of a regular session

affords insufficient opportunity for business of such far-reaching importance, it may proceed with the business of legislation as usual and leave the work of codification and revision to an extra session in the autumn of 1921 or the early months of 1922.

On the other hand, should the legislature seriously consider undertaking the work at the regular session in 1921 two things ought to be unmistakably clear: first, the members should proceed at once to the business of the session, consuming only such time as is absolutely necessary to the efficient organization of the houses; and, second, in the matter of code revision the schedule of bills offered in the code commission's report should be closely adhered to, since it contains enough to keep the members busy during the whole session. The number of new or additional measures proposed by the members should be reduced to a minimum. To conserve time at the beginning of the session, the code commission bills should be referred to the committees of both houses for immediate attention; and the new bills providing for State revenue and appropriations for the coming biennium should be disposed of as quickly as possible. Furthermore, it is clear that to act upon some of the code commission's proposals and ignore others would be unfortunate since some of the bills are interrelated, that is, so drawn as to avoid needless repetition and to coördinate the various parts of the code into a series of harmonious sections, chapters, and titles.

In the consideration of the problem which will confront the Thirty-ninth General Assembly some helpful lessons can be drawn from the unsuccessful effort of the Twenty-sixth General Assembly in 1896 to accomplish the task of code revision.⁶² At that time, after both houses and their committees had shown great diligence throughout the entire

⁶² For a detailed account of the proceedings connected with the creation of

session, it became apparent that the regular legislative business and code revision could not be completed together by the date set and so the work on the code proposed by the commission was abandoned shortly before adjournment. The reasons for discontinuing the examination and discussion of the code commission's report were fully stated: first, the legislature had been compelled to consider 950 bills in addition to the proposed code; second, code revision had required the slow and laborious comparison of the proposed code with the *Code of 1873* and the acts of eleven General Assemblies; third, the code commission had recommended numerous changes in existing law and doubts had arisen as to the accuracy of certain parts of the report; and fourth, copies of the proposed code had been published and distributed only a short while before the General Assembly was called to consider it. Under the circumstances the legislators could not swallow the complicated revision proposed by the code commission along with 950 other measures: on the contrary, the General Assembly believed that in such a contingency haste should be made slowly. Accordingly, at a special session in 1897 lasting about 114 days, the Twenty-sixth General Assembly took action which was generally designed to restore as nearly as possible the words of the old laws, although much new legislation was also enacted, producing in the end the *Code of 1897*.

the *Code of 1897* see THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XI, pp. 379, 385, 386, 405.

The experience of the Fourteenth General Assembly in dealing with the problem of revision and codification was not unlike that of the Twenty-ninth General Assembly. At its regular session in 1872 it was confronted with the task of considering the report of a code commission. After many unsuccessful attempts to seriously consider and dispose of the business of revision and codification the Fourteenth General Assembly finally resolved to meet in adjourned session in January, 1873. The product of its labors in this adjourned session was the *Code of 1873*.—For a complete account of the compilation and adoption of the *Code of 1873* see Powell's *The Code of 1873* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XI, pp. 166-221.

The Thirty-ninth General Assembly will not be confronted by the second and fourth obstacles which faced the Twenty-sixth General Assembly because existing law is now collected in the *Compiled Code* and the proposed revision and codification will have been accessible to members of the legislature for many months before they assume their seats. Furthermore, much could be done to eliminate the first obstacle, provided the legislature is able to limit the number of bills arising in the houses themselves. There would remain, then, the work of examining the code commission's 253 bills affecting some 3600 of the 9587 sections of existing law. Where the reasons for any proposed revision or codification are not clear on the face of a comparison with existing law, the code commissioners might well be called upon to appear in person and to supply the legislative committees with the explanation of the changes recommended.

Of the work accomplished by the code commission the report consisting of 253 bills is of paramount importance: it puts before the General Assembly in a concrete way the matters which in the opinion of the commission deserve most to be considered at the present time. Surely it is not unreasonable to believe that the time has arrived when the legislature should take an inventory of the stock of legislation now on the Iowa statute books, evaluate every single portion, and on the basis of the code commission's suggestions or those of any other competent authority improve or even expand such law as we have in order that the whole may be reduced to the best possible form.

There can be little doubt that the State at this time needs some legislation not recommended by the code commission: its report of 253 bills represents the efforts of a few men laboring over a period of about eight months; and therefore neither finality nor perfection need be looked for in the

improvements which they propose, but they have at least made a substantial beginning of codification and revision, they have blazed the trail which the legislature can afford to follow and perfect with satisfactory results to the people of the State. The code commission does not offer for the legislature's consideration the work of a life time — on the contrary it offers only such measures as go to the root of the worst portions of the law.

Years could well be spent if a complete and thorough codification and revision were to be accomplished in Iowa. This is simply another way of saying that it is unwise for the legislature to assign work of such magnitude to a few men and then crack the whip over their heads to make them hurry when the nature of the work does not admit of speed. Only those who have been initiated into the mysteries, dangers, and difficulties of law revision and codification can know what a time-consuming occupation it really is — only actual experience with the problems involved is needed to prove that it is not a simple process of walking the floor and dictating something to a stenographer: it is rather the slow, deliberate, and concentrated study of the details of the law and its effects in daily life coupled with an ability to express its provisions clearly and logically in the fewest possible words. The Iowa code commission did what it could under severe limitations and was enthusiastic to do more.

It should be added that when the General Assembly meets to supply the finishing touches to their work, members of the commission promise to file a supplementary report containing the suggestions of individuals and organizations not only relative to the bills already formulated but also to many sections of the law not affected in the commission's main report. The chairman of the commission personally has been investigating "Blue Sky" laws for the purpose of

submitting a bill that will aim to protect the people of Iowa against fraud and deception.

THE FUTURE OF IOWA CODE VOLUMES

Whether the Thirty-ninth General Assembly adopts the *Compiled Code* with the new section numbering as the State's official permanent code without acting upon the modifications recommended by the commission, or whether it subjects the *Compiled Code* to the revision and codification proposed by the commission and perhaps by individual legislators as well and thus provides the State with a permanent code whose section numbers will necessarily differ from those of the *Compiled Code*, one naturally raises the inquiry as to how long the new code volume will remain permanent. It is plain that as soon and as fast as the legislature turns out new legislation the adopted code volume will not contain all the State's law. How is it possible to avoid the dismay and confusion and expense to which the State has been repeatedly put in the past? Are those who frequently consult the law doomed to submit to the periodic recurrent trouble and expense of codification and revision, or can a plan be devised whereby every outpouring of fresh statutes can be fitted into the existing code volume and their contents noted in its index? To regular users the code becomes a faithful and constant companion — the lawyer at any rate dogears his book and thoroughly dislikes to part company with it when supplanted by a new one.

There are at least five ways of caring for the biennial output of new statutes after all old law has once been collected in a single volume. They can be issued in a separate book for each session, every statute to be given its own chapter number and the index to be modeled after that of the code. To obviate the necessity of consulting several

of these books after lapse of time the statutes in them might be assembled every four or six years in code supplements such as were compiled in Iowa on three different occasions since 1897, all titles and chapters to be arranged in the same order as in the code and sections of the law to be distributed among them and numbered to correspond to those in the code. The scope of the index to the supplement should also match that of the code. A third method of making new legislation accessible is to fit it into a cumulative supplement to the code. Given a trial in 1915 but discontinued in 1917, this plan requires a new supplement and a new index to be prepared and published after every session of the General Assembly. A fourth scheme contemplates the publication of a new code volume every two years, thus aiming to keep all the law together in one book. Finally, it has been suggested that the expense of carrying out the last three plans might be avoided by devising some sort of loose leaf system of publishing the code and subsequent session laws, although the index would have to be revised and republished every two years.

Space need not be taken here to discuss the advantages and drawbacks of the various devices above enumerated — each presents difficulties even to the superficial observer. Suffice it to state, however, that no matter which of the five plans is followed not one is capable of doing away with the need of a thorough clean-up of the State's store-house of law by periodic codification, revision, and consolidation. So long as the General Assembly of the State continues to turn out a more or less haphazard grist of new laws and amendments and repeals of old laws at every session, this process of periodically overhauling all the law can not be escaped — although the members of the General Assembly who introduce bills and the committees which consider bills can greatly improve matters in the future by having the

assistance of expert draftsmen who can tell the effect of proposed legislation upon existing law and vested rights and give advice on how to keep the law free from error, obscurity, contradiction, and confusion. More care bestowed upon the law in its embryonic stages is the only means so far discovered of guaranteeing the people against the misunderstandings and useless litigation so frequently caused by hasty and ill-considered legislation. Any code of laws, no matter how near-perfect, is easily reduced to a veritable chaos by heaping new statutes upon it, unless those statutes have been comprehensively studied as bills and carefully drafted so as not to produce undesired effects upon existing law and the life of the people.

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