

Bruno of the Dept. of Social Work, Washington University.

Law and Public Opinion, by Isaac H. Lionberger of the St. Louis Bar.

Humanizing Legal Thinking and Practice, by Hyman Meltzer of the St. Louis Psychiatric Child Guidance Clinic.

Law as a Growth: Its Evolution as Illustrated Particularly in the Development of Equity, by Hon. Charles P. Williams of the St. Louis Bar.

Problems in Penal Administration, by Hon. M. F. Amrine, Warden of the Kansas State Penitentiary.

The Purpose and Work of the American Law Institute, by Hon. Fred L. Williams of the St. Louis Bar.

Enrollment in the School of Law shows a slight decrease from 1929, but there is a considerable increase in the number of entering students who have college degrees or have completed three years of college work. The first-year class contains 49 students.

A seminar, which is conducted by the Faculty Advisor in connection with the editing of the Law Review, has been instituted this year. The seminar will consider the functions of law reviews as well as give attention to the technical aspects of legal writing. It is planned also to make a concerted attack each year upon a single topic to which one of the issues of the Review will be devoted. This year members of the Law Review staff are, with a few exceptions, members of the seminar.

SAMUEL BRECKENRIDGE NOTE PRIZE AWARD

The committee of members of the bar which is judging the notes in Volume 15 of the ST. LOUIS LAW REVIEW has announced that the fifteen-dollar prize for the best note in the issue of April, 1930, has been awarded to Wallace V. Wilson, Jr., for his note entitled *Recent Developments in State Taxation of Intangibles*.

Notes

THE QUANTITY OF REGULATORY LEGISLATION

The statistics contained in this note are intended to present for whatever they may be worth the figures which have been gathered in an effort to correct current misapprehensions regarding the volume and character of American legislation. Popular discussion reveals a widespread belief that the American people are being engulfed in a constantly-issuing flood of regulatory laws. These laws, it is said, are being enacted at the rate of some 23,000 statutes each two years—a figure which

represents the biennial product of Congress and the several state legislatures. A number of errors are implicit in the use of these statistics to demonstrate the rising tide of regulation.

It is obvious, of course, that the number of new laws in all of the 48 states taken together furnishes no measure of the added governmental control to which any individual is being subjected. No one lives in more than one state at a time. Only certain businesses, national in scope, are subject to the action of all of the legislatures simultaneously. In so far as the varying character of state regulation subjects the ownership of property and the conduct of business to harrassment, the fault lies with the federal system of government rather than in an excess of zeal on the part of law-making bodies. If statistics of the whole number of new statutes are to be used at all in measuring the volume of current regulatory legislation, they should show the number of enactments of Congress and of each state legislature separately.

The acts and resolves of the Seventieth Congress,¹ according to the figures compiled by the Library of Congress, numbered 1722. In New York State during 1928 and 1929 the legislature adopted 1595 new measures. In the other states the number of new statutes enacted during the same period ranged from slightly over 1000 in South Carolina to 111 in Utah. The average number per state² was 437. It is fair to say, then, that the citizen of New York is confronted each two years with something like 3317 new statutes of all sorts and that the mythical "average American" is faced with 2159 such measures.

But, of course, if the purpose is to get at the volume of "regulatory" legislation, it is necessary to discriminate between various kinds of statutes and, if possible, to segregate the number of those which actually can be called "regulatory." For this purpose the Acts of the Seventieth Congress and the session laws of five states during the years 1928 and 1929 were examined page by page in an effort to classify the statutes for this purpose. The table on page 53 collects the figures for the five states.

The statistics gathered in this table are not arranged scientifically so as to serve other purposes than the one for which they were collected. Thus the class of acts "Providing for Operation of Government," whose content is specified in the footnote to the table, would have to be subdivided if the purpose were to form a more detailed picture of modern state legislation. In each class of acts appearing under the general heading "Regulatory," statutes of local application are classified with more

¹ Dec., 1927—March, 1929.

² The Alabama legislature, which holds its sessions every four years, did not meet during this period.

TYPES OF STATUTES ENACTED DURING 1928 AND 1929 IN FIVE SELECTED STATES

Whole Number	"NON-REGULATORY"											"REGULATORY"										
	Library of Congress Total ¹	Appropriation	Providing for Operation of Government ²	Providing for Judicial Functioning ³	Election	Prescribing Treatment of Offenders	Enabling ⁴	Repealing ⁵	Local Enabling ⁶	Private Relief	Proposing Constitutional Amendments	Total	Percentage of Whole Number	Tax ⁷	Condemnation ⁸	New Criminal	Amendatory Criminal	New Control ⁹	Amendatory Control ⁹	Total	Percentage of Whole Number	
California.....	983	972	33	419	109	16	15	11	11	35	32	21	702	71.4	65	9	19	29	32	127	281	28.6
Colorado.....	202	203	49	68	14	3	1	1	1	0	10	2	149	73.8	14	0	4	2	14	19	53	26.2
Missouri.....	214	215	15	74	18	5	1	4	9	0	0	3	129	60.3	27	4	3	4	13	34	85	39.7
Virginia.....	535	533	3	187	64	6	7	8	10	37	10	4	336	62.8	61	9	25	34	20	50	199	37.2
Massachusetts..	913	913	4	323	52	18	8	96	51	53	37	1	697	76.3	45	16	10	37	11	97	216	23.7
Totals.....	2847	2836	104	1071	257	48	32	120	36	225	89	31	2013	70.7	212	38	61	106	90	327	884	29.3

¹ Included for comparison. Variations in the figures here presented from the Library of Congress totals doubtless are due, except in California, to inaccuracies in the former. In California several unimportant resolutions have possibly not been included in the Library of Congress figures.

² Acts fixing salaries and terms of office, establishing public agencies, governing public property and institutions, providing for memorials, etc.

³ Acts governing procedure, fixing terms of court, etc.

⁴ Incorporation statutes, acts providing for recording of private documents, and acts extending other similar facilities to private persons.

⁵ Statutes repealing parts of other acts or entire acts.

⁶ This item includes only such statutes as confer special powers upon local electorates or officials.

⁷ Acts establishing tax rates, providing for methods of collection, etc., whether of local or state taxes.

⁸ Acts providing for condemnation of property, whether by the state or by local subdivisions.

⁹ These items include all "regulatory" statutes in the narrow sense of the term—that is, acts which control private affairs other than personal behavior. As in the case of criminal statutes, new acts are distinguished from those which merely amend pre-existing laws.

NOTES

general statutes. Separation would be difficult but should perhaps have been attempted in the interest of greater accuracy.

For the purpose in hand, however, the table amply demonstrates the falsehood of the popular impression regarding the number of regulatory statutes which is being enacted currently. The classifications under the general heading of "Regulatory" in the table are believed to include all the statutes that bear directly upon private persons, including acts of local application and acts which merely amend existing statutes; yet their number is less than thirty per cent of the whole number of statutes enacted. The average of the percentages in the five states is 31.9 per cent. When this percentage is applied to the average state legislative product of 437 statutes each two years, the result is 140 new "regulatory" laws.

A similar examination of the Acts and Resolutions of the Seventieth Congress reveals a still smaller proportion of "regulatory" laws. Out of 1183³ public laws enacted, only 36 that apply outside the territories and the District of Columbia are "regulatory" in the sense in which that term is employed in the foregoing table of state legislation. As might be expected, Congress concerns itself largely with providing for the operation of the government (436 acts and resolutions), with the public domain (107 acts and resolutions), and with the Indians (73 acts and resolutions). In order to authorize the construction or completion of bridges over navigable streams, 376 measures had to be enacted. There were fifty appropriation acts. Sixteen laws applied to the functioning of the Federal judiciary, 22 to the territories, and 36 to the District of Columbia. There were five acts dealing with immigration and naturalization. Five were classified as "enabling," three as "repealing," and one as providing for the treatment of offenders. Of the "regulatory" laws, two were new criminal acts,⁴ five amended prior criminal statutes, five imposed new control upon some private interest, fifteen amended prior control acts, and nine provided for taxation and condemnation.⁵

If the number of Federal "regulatory" acts is added to the 140 similar laws passed in the average state, the total is 176. It reveals, so far as figures of the mere number of statutes can do so, the mass of new laws, in any way bearing directly upon private persons, with which the average American citizen is

³ The Library of Congress figures list only 1145, together with 577 private acts and resolutions. Treaties to the number of 17 and concurrent resolutions numbering 38 are included in the figures here given.

⁴ Including the act to preserve order at the Hoover inauguration, which had penal provisions.

⁵ Including the Mississippi flood control act.

confronted in two years' time. The discrepancy between this figure and 23,000 is apparent.

These statistics, of course, have no value in the study or solution of modern legislative or administrative problems. They throw no light upon the real character of legislation, because they do not differentiate statutes according to length or difficulty of enforcement. Obviously they have nothing to do with the drafting of statutes or with legislative procedure. In dealing with such questions, which are in no sense quantitative, statistics can give no aid. But the use of false statistics can create a great deal of confusion and misplaced emphasis. Clearly both lawyers and laymen have recently been guilty of much statistical misrepresentation.

RALPH F. FUCHS.

THE FEDERAL TRADE COMMISSION'S POWER WITH REFERENCE TO STOCK ACQUISITIONS

The trend of modern industry towards combination and monopoly and the persistent endeavor of Federal anti-trust legislation to prohibit restraints of competition, give rise to an increasingly confusing mass of laws. The confusion is increased rather than diminished by strict judicial construction limiting the final powers of the administrative bodies entrusted with enforcement of the statutes.

The Clayton Act¹ and the Federal Trade Commission Act were intended to supplement existing legislation by arresting monopolies in their incipency.² With this objective, the acts created the Federal Trade Commission to secure the advantages of administrative action by a body of experts and specifically prohibited certain practices, many of which were within the general scope of existing legislation. Section 7 of the Clayton Act prohibits the acquisition by one corporation of the stock of another where the result is "to substantially lessen competition."³ Section 11 of the act authorizes the Commission to proceed against violators of this provision, and to enforce its

¹ 38 Stat. 730 (1914), 15 U. S. C. secs. 12-27.

² *Standard Fashion v. Magrane-Houston Co.* (1921) 258 U. S. 346, 356.

³ "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is acquired and the corporation making the acquisition, or to restrain such commerce in any section or community or tend to create a monopoly of any line of commerce." 38 Stat. 731 (1914), 15 U. S. C. sec. 18.