THE OHIO STATE BAR ASSOCIATION: THE FIRST
GENERATION, 1880-1912

DISSERTATION
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INTRODUCTION

The role of the professions in the Progressive Era is a common theme among historians. Statistics show that many leading progressives were professionals.\(^1\) Only recently have historians begun to study the growth of the professions for clues to explain their interest in reform during the early twentieth century\(^2\) and many of them still base their generalizations on a few general secondary works because detailed historical accounts of most

\(^1\) Those gathered by H. L. Warner on Ohio show 34 professionals, 28 of whom were lawyers. There were also 11 businessmen, 5 editors and 8 labor leaders. The occupations of the rest were unknown. Hoyt Landon Warner, Progressivism in Ohio, 1897-1917, Ohio State University Press, Columbus, Ohio, 1964, 46. See also: Richard Hofstadter, Age of Reform, Vintage Books, New York, 1955, 144-145, Quadrangle Paperbacks, Chicago, 1951, 87-88; Alfred D. Chandler, Jr., "Origins of Progressive Leadership" in Elting Morison, Letters of Theodore Roosevelt, Harvard University Press, Cambridge, 1954, VIII, 1462-1465; Herbert Janick, "The Mind of the Connecticut Progressive," 52 Mid-America, April, 1970, 84, 86-87.

\(^2\) Monte A. Calvert, The Mechanical Engineer in America, 1830-1910: Professional Cultures in Conflict, John Hopkins Press, Baltimore, 1967 is an example of one of these recent works. He believes that a detailed and analytical investigation of the nature of the conflict between the friends and foes of professionalism in one occupational group may lead to a better understanding of change in American urban-industrial society, xvii.
professions do not exist. The original impetus for this study was a complaint by Robert Wiebe in the bibliographical essay of *The Search for Order* that except for the profession of medicine, about which there was adequate information, little work has been done on the development of professions in the United States. The legal profession was one of those he was especially interested in.  

The growth of new professions and the further professionalization of older professions seems to be an important characteristic of urban-industrial development and the Progressive Era.  

A knowledge of the major characteristics of this process of professionalization provides a necessary background for studies of the professions in this period. All professions center around a basic systematic, technical knowledge which is expressed in a special language and is fully meaningful only to its members. As an occupation becomes more professionalized many members see a need for prolonged and specialized study of this

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knowledge by each newcomer under more formal learning experiences in institutions of higher learning. They also develop a self-consciousness about their social status and role which strengthens desires for better methods for control of both young and old practitioners and for the training of new members with the proper professional attitude. Professional associations, an interest in the use of titles, attempts to improve admission standards and moves to punish unprofessional action are all symptoms of these characteristics. Another indication of growing professionalization is an increased sense of responsibility to society and a service orientation that de-emphasizes self-interest and considers the profession as a public trust. A final attribute is the increasing importance of peer recognition. Maintaining professional standards and ethics becomes more important than pleasing the public, the boss or even the client.5

The legal profession showed all of these

characteristics of increasing professionalization during the post Civil War period and played a conspicuous part in several historical accounts of the Progressive Era, yet very few detailed studies of the profession exist. Most of these show a lack of local studies of the profession which the authors could use as a basis for their conclusions and generalizations. Except, for example, for a few books on the American Bar Association, occasional dissertations, some centennial histories and scattered articles, there are very few studies of the many bar associations that were organized during this period. Why were they organized? What specific problems were they interested in? Who joined and who did not? Was there any opposition to them? Why were these associations more successful in the late 19th and early 20th century than earlier? What was their role in the Progressive Movement? Did the men who joined these organizations belong to the new middle class and play as important a role in progressive

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6 Hofstadter, Age of Reform, 131-173; Wiebe, The Search for Order, 111-132; Warner, Progressivism in Ohio, 22-23, 46.

reform as Wiebe indicated? In order to answer these questions more detailed studies need to be made of these bar associations, their activities and their membership.

This paper is a study of the beginnings and activities of the Ohio State Bar Association during its first thirty-three years. Although it will not attempt to answer all of the above questions it will be trying to fill the gap of information on a local bar association in an important state. Ohio was not only a leader in some aspects of progressive reform but it also was an important industrial state that played a key role in national politics. Perhaps this may provide information and conclusions for future national studies.
CHAPTER I

GENERAL TRENDS OF THE PERIOD AND THE FOUNDING
OF THE AMERICAN BAR ASSOCIATION

A basic outline of the development of the legal profession shows a period of decline in professionalization during the pre-Civil War period from the activities of colonial and early national America. During the years from approximately 1840-1870 standards for the profession were lowered and consequently its reputation declined. As a result of the democratic, anti-privilege movement of the Jacksonian Era, requirements to enter the legal profession had been lowered to good moral character, citizenship in the area concerned and acceptance by the court.\(^1\) As a

\(^1\) Regulations varied from state to state. The court involved, how it decided on candidates, whether one court could admit for all and the amount (if any) of study of what kind a candidate needed were issues that were often argued throughout the period. The requirements mentioned above applied for the majority of states at the end of the Civil War. Reed, Training for the Law, 71-73, 90-93, 100-103, 247-248, 256-263; Hurst, The Growth of American Law, 277, 280-283. A study by the American Bar Association in 1881 provides specific information on the situation after a movement to improve the standards started. 4 American Bar Association Report (ABAR), 1881, 236-304. Roscoe Pound, "A Hundred Years of American Law," in Law a Century of Progress, 1835-1935, New York University Press, New York, 1937, 8-16, The Lawyer; 5 American Law Review, April 1871, 443-448 and Hurst, The Growth of American Law, all discuss the effect of Jacksonian Democracy on the legal profession.
result it proved fairly easy for a man to become a lawyer. During the 1870's a movement began to change the situation. Bar associations on local, state and national levels formed to work for reform and individual courts began demanding a period of study and/or an exam before they would accept a candidate. In some cases this was done without changing the existing laws. Some lawyers who accepted apprentices, began paying closer attention to their students' activities. Georgia's bar association president, for example, insisted that this was particularly important since his state did not have a law school. Along with this interest in improving standards for admission to the bar went an interest in legal education. As a result a law school education became increasingly important during the twentieth century. The statistics gathered by Reed dramatically indicate this growing emphasis. Of the thirty law schools founded from 1779 to 1860, twenty-one were still operating in 1860. One-hundred-two more schools were in operation in 1900.  

Another indication of the growing professionalism after the Civil War was the proliferation of legal periodicals. Publication of legal periodicals by law schools began in America. After 1885 there have always been examples of this sort of periodical published. An index

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2 ABAR, 1881, 145-146, 261, 293; 5 Georgia Bar Association Reports, (GBAR) 1888, 57; Reed, Training for the Law, 444.
of legal periodicals published in the English language prior to 1887 shows that eighty-eight of one-hundred-fifty-eight publications included were begun in America after the Civil War.  

The founding of the Association of the Bar of New York City in 1870 marks the beginning of the movement to form professional associations. The 1870's, 80's and 90's saw a rapid increase in the number of bar associations, most of which organized for the double purpose of socializing and improving the profession. The following objectives were the most common ones found in a study by the president of the Georgia Bar Association: to advance the science of jurisprudence, to promote improvements in the law, to promote the administration of justice, to uphold the honor of the profession by elevating the standards, to establish cordial intercourse among members of the bar and for the intellectual, social and physical enjoyment of members and their families. Some societies were formed specifically to maintain a law library and a few attempted to regulate non-lawyers connected with the profession, such  

as those maintaining legal records. The largest number of associations (forty-eight) were founded during the 1880's. The 1870's are next with thirty-seven and finally the 1890's added twenty-four. According to the figures gathered by Hurst from lists in the American Bar Association Reports there were 188 state and local associations existing in 1890 and 298 in 1900; of these twenty and forty, respectively, were state and territorial associations. Rogers summarized the growth of bar associations in these words:

There were a number formed in the late Sixties and early Seventies, as quickly as we got our heads

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4 Pound argued that the Franklin County Bar Association (now the Columbus Bar Association) founded in 1869 can not properly claim this role because its goals and activities were not clearly those of modern associations. Rather this association marks a transition between what Pound called the Era of Decadence (1836-70) and the truly professional organization of the following period. The Lawyer, 249, 254-255; James Grafton Rogers, "The American Bar Association in Retrospect," in Law: A Century of Progress, 173; 5 GBAR, 1888, 57-61. These are listed in order of occurrence. The first objective was listed by all the associations which responded to his questionnaire and the last by only one association.

5 Reed, Training for the Law, 206, said Maine had a state association by 1877. It was not included in this figure since other sources give dates in the 1880's. Pound, The Lawyer, 273 (1882); Hicks, Materials and Methods of Legal Research, 463 (1881).

6 Four of these were reorganizations of associations which were founded earlier and failed to survive.

7 Figures on associations were compiled from lists given in the following books and journals: 5 GBAR, 1888, 89-90; Reed, Training for the Law, 206; Pound, The Lawyer, 265-269, 272-275; Hicks, Materials and Methods of Legal Research, 440-491; Hurst, The Growth of American Law, 213, 287.
out of the turmoil of the Civil War. It was in the air everywhere. 8

One of the places where the idea of a bar association was in the air was Saratoga in 1877 at the annual meeting of the American Social Science Association. During an informal discussion stimulated by a paper given in the Section of Jurisprudence by Simeon Baldwin on graduate courses in law schools and a resolution of the ASSC that the question of what should be taught in law schools should be left to the profession, a lawyer from Louisiana 9 suggested the formation of a national bar association. The others at the meeting agreed. There had been suggestions favoring this in some of the legal periodicals previous to this meeting. 10

Simeon Eben Baldwin (1840-1927), the man everyone credits as the founder of the American Bar Association,

8 James Grafton Rogers, "Fifty Years of the American Bar Association," 14 American Bar Association Journal (ABAJ), 1928, 521.


was a very active man. During one period of his life he was a judge, a professor of law at Yale, an author of legal, historical and social science articles and books and a member of many professional organizations. Many of these organizations considered him important enough in their field to elect him president. \(^1\) Rogers described him this way:

Simeon Baldwin was a most interesting figure. The man's activities are amazing. He wrote about everything, and he wrote about everything well. He did everything, and he talked about everything, he organized everything. He was a judge and a governor, law teacher, advocate, historical student, economist, philosopher, and what have you? He was an amazing figure in the extent of his intellectual activities. \(^2\)

In the fall of 1877, following the ASSC meeting, Baldwin wrote Anthony Higgins, a college classmate, for his opinion concerning the need for a national association. \(^3\) At the January meeting of the Connecticut Bar

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\(^2\) James Grafton Rogers, "Fifty Years of the American Bar Association," 14 ABAJ, 1928, 521.

\(^3\) Jackson, Simeon Eben Baldwin, 80.
Association, Baldwin made a motion that they see what could be done to organize a national association. A committee of three, Baldwin, Richard Hubbard, then governor of Connecticut, and William Hamersley, asked several leading lawyers if they would be willing to sign a circular calling the first meeting. As secretary, Baldwin handled most of the correspondence and did most of the work. Of the original twelve men asked to sign the circular, all but five agreed. Most of these agreed that a national association was a good idea, but for reasons of health or time, felt their name should not be included. The final circular was sent to 607 men from forty-one states and territories (including Washington, D. C.). The fourteen men who signed were given extra copies to distribute among friends they thought would be interested. The circular proposed an informal meeting at Saratoga, New York, August 21, 1878, to consider the feasibility and expediency of establishing an American bar association.

A body of delegates representing the profession in all parts of the country, which should meet annually, for a comparison of views and friendly intercourse, might be not only a pleasant thing for those taking part in it, but of great service in helping assimilate the laws of the different States, in extending the benefit of true reforms and in publishing the failure of unsuccessful experiments in legislation.14

141 ABAR 1878, 4.
It also asked those who could not come to the meeting to send their thoughts on the subject to Baldwin.

Although Baldwin received only one adverse reply,\textsuperscript{15} sixty-four of the 118 who responded to the circular approved of the meeting but said they couldn't come. A common phrase among those responding was that something good could result from the movement. A few of those approving worried that the association might not succeed.\textsuperscript{16} Another common suggestion was that an association based on representation rather than individual lawyers would be best. Although this suggestion was not followed at first, during the 1930's the constitution was revised to establish a House of Delegates of representatives from state, territorial and important city bar associations as the policy making body. Several of these responses point out the various motivations and hopes that made these men welcome the idea of a national association of the bar. Many were interested in improving and removing differences in state and local legislation.

The science of legislation in matters of internal policy has received too little public attention

\textsuperscript{15}John C. Ropes of Boston thought that such a meeting might be pleasant but doubted that any practical benefits would result. Baldwin, "Founding of the American Bar Association," 672.

\textsuperscript{16}Ohio's Governor George Hoadly, one of the signers of the circular, was one of these. Ibid., 672.
and has been left too much to the local thought of particular neighborhoods and I cannot but think great advantages will result from a general study of the subject and a comparison of views by men who bring experiences from every portion of the field.17

A statement by Clarkson Potter, a future president of the association, accented an important reason for this interest during the 1870's and 80's.

The unity of the country and its business seems to require a greater unification of its laws and their determination.18

Others were interested in improving the standards and reputation of the profession.

In addition to the benefits suggested in the circular, I think a national association may be made to advance professional learning and character, and to raise the lawyer's sense of duty and dignity of his profession and (not least) to improve the administration of justice in our courts.

I cannot think a great profession should forbear efforts for its own improvement, so long as its members are not more generally respected because they are lawyers, than is now the case, in this country.19

At least one southerner hoped the association would provide a conservative force that would support reasonable reform.


18Ibid., 678.

19Dorman Eaton, a participant in the founding of the New York City association, Ibid., 676.
Living under a government founded upon the popular will, and at a time when the distress of the people is attributed to unwise legislation—when innovation and change are demanded in every quarter, there ought to be found somewhere in our system a calm conservative power which can expose fallacies, point out abuses and suggest reforms without violence or shock to our government. 20

Remembering the recent divisions of the country, some of them also saw the association as an organization which might do a lot to help reunite the nation. 21

One young man, who became the second most important supporter of the association, heard of these circulars and enthusiastically wrote Baldwin to see if he could join. Baldwin said yes, and Francis Rawle, the treasurer of the American Bar Association, 1878-1902, attended the first meeting. Rogers called him the chief navigator of Baldwin’s ship. Rawle played an important role by planning the topics and speakers for toasts for the annual banquet in a way that inspired and united the participants from


different parts of the country and encouraged them to return yearly.22

Saratoga was chosen as the meeting place because it was a favorite vacation spot with lawyers from both the north and south, and was about the only American resort at the time with three hotels. Seventy-five men from twenty-one states and territories gathered in the court room of the town hall on August 21, 1878. Temporary officials were elected. There was some argument at first whether to allow those who had come without invitations to join in the planning of the organization. According to the Weekly Law Bulletin the intention was to confine the organization to those who had the circular with the view of keeping out disreputable parties. Committees were established to write a constitution, and to nominate additional members. The final membership list included all those who had received and responded to the circular, all others present at the meeting, and some men nominated by those there. During the early summer of '78, Baldwin drafted a constitution which was accepted with a few relatively minor alterations and the first official

meeting of the American Bar Association began.23

The purposes of the association were to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation, to uphold the honor of the profession, and to encourage cordial intercourse among members of the bar. Any person who had been a member of his state bar for five years, was nominated either by the local council from his state or the Grand Council of the association, and elected by the members at the annual meeting could join. Although five no votes could defeat a candidate, this did not occur during the period covered by this study. In 1912 there was some argument when three black lawyers were admitted by the executive committee which did not know of their race. After this the five no votes provision was effectively used to keep blacks out. The following permanent committees were established: Jurisprudence and Law Reform, Judicial Administration and Remedial Procedure, Legal Education and Admissions to The Bar, Commercial Law, International Law, Publications and Grievances. Although all of these committees were not active immediately, this list shows the interests of Baldwin and the members.

23 Weekly Law Bulletin, August 26, 1878, 639. The name of this journal changed over time, but it will always be referred to as the Weekly Law Bulletin in the text. For the changes see the Bibliography. 1 ABAR, 1878, 5-21.
Each year the President was to present a report on any changes in the laws of the states and the national government during the previous year which he felt would be of interest to the members. This was very useful to members who were interested in professional developments outside of their states and in reforming their own state laws.\textsuperscript{24}

During the first meeting resolutions were passed giving some of the permanent committees research projects. The committee on Legal Education and Admissions to the Bar was asked to check on

\ldots assimilating throughout the Union, the requirements of candidates for admission to the bar, and for regulating, on principles of comity, the standing, throughout the Union, of gentlemen already admitted to practice in their own states.\textsuperscript{25}

Many lawyers were interested in the second part of this assignment because improvements in transportation and communication meant that more of them were involved in matters in more than one state. The \textit{Weekly Law Bulletin} also pointed this out.\textsuperscript{26}

Four other assignments also reflect this interest in


\textsuperscript{25} ABAR, 1878, 26.

\textsuperscript{26} \textit{Weekly Law Bulletin}, September 13, 1880, 618.
other states and an interest in making laws and procedures more uniform. Each committee was asked to check current methods and make suggestions toward uniformity. The committees on Judicial Administration and Remedial Procedure, Jurisprudence and Law Reform and Commercial Law were asked respectively to investigate procedures for taking testimony out of court, procedures in authenticating real estate papers and executing wills, and the form and requisites of negotiable paper and the steps necessary by the holders to fix the liability of the parties to the paper. The executive Committee was asked to invite speakers for the next meeting and to devise a plan for establishing close relations with state associations. Thus ended the first annual meeting of the American Bar Association. 27

Membership in the association grew slowly and during its early history meetings were informal social gatherings. Groups of men gathering around tables with cigars or strolling around the resort, telling stories, discussing the political issues and personalities of the day, and debating the issues presented by various committee reports and papers were common. The information learned here probably was more important to the participants than the formal debates published in the association Reports. Even the important decisions concerning the

271 ABAR, 1878, 21-29.
future activities and officers were made by a small informal group that met on the hotel porch after lunch. 28

Evidence of the characteristics of professionalization discussed previously are indicated by the association's interest in legal education, admission requirements, professional ethics and the formation of local bar associations. Although three of these items appeared in the first meeting, actual accomplishments were slow. The committee on legal education, for example, in response to the resolution quoted above, presented a detailed report on the advantages of law school training, some of the problems faced by law schools, their teaching methods and an ideal curriculum. The resolutions offered established detailed standards for the law schools, which they requested state and local bar associations to work on establishing. It took two years of debate and study before the association accepted most of the committee's work. The final resolutions were more general, less detailed and weaker than those of the original report.

After a pause of almost a decade, interest in the problems of legal education and admissions revived. In 1892 the association backed a resolution favoring central

administration of admissions by the highest court and two years of study. The next year the first of several separate sections, that of Legal Education, was organized. Although this section and the association took stands concerning legal education and admissions, the actual results were very small because it was up to the states to act. Its most important role was probably that of stimulating interest, gathering information and setting goals the better law schools could attempt to live up to.

Influence by the American Bar Association on local associations and contacts with them throughout this period were rather tenuous and informal. A by-law giving delegates from state associations (local if there was no state association) privileges of membership at meetings was passed in 1879. The associations's secretary wrote state

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30 This provision was added in 1880, 3 A BAR, 1880, 9, 55.
associations and committees, often asking them to help gather statistics. Individual members or vice-presidents for states occasionally brought up matters in local associations in response to resolutions passed by the national association, but this appears to have been at their own initiative. The association probably indirectly stimulated the formation of local societies because members who attended the national would not like their state to be behind the others. Publication of officers of state and local associations begun in 1881 and summaries of state associations' activities begun in 1901 probably also stimulated some increase in state activity.\footnote{2 ABAR, 1879, 25; 1-37 ABAR, 1879-1912; Sunderland, History of the American Bar Association, 42-45; Rutherford, The Influence of the American Bar Association, 16-17, 19-34.}

The subject of professional ethics did not receive any specific attention until 1905 when a committee was appointed to consider the need for a national code of ethics. This was written and adopted in 1908.\footnote{32 Sunderland, History of the American Bar Association, 110-112; Rutherford, The Influence of the American Bar Association, 86-89; 28 ABAR, 1907, 61-64; 32 ABAR, 1907 entire (Sharswood's Ethics); 33 ABAR, 1908, 55-57, 61, 567-573.}

The interest in uniformity manifested in the first meeting became a chief activity of the association. At first the association itself attempted to conduct the necessary studies, but in 1892 the National Conference of
Commissioners on Uniform State Laws was formed and took over this work. It met annually before the association did and the association adopted all bills the Conference passed. Most of the items they obtained success with concerned commercial topics such as its first and most successful item, The Uniform Negotiable Instruments Act. 33

Generally the association has taken a conservative stand on issues. One of its most important conservative campaigns was that against judicial recall. Rogers called this one of its greatest achievements. After ten years of debate on the proper method to solve the problem of congestion in the United States Supreme Court the association finally recommended the establishment of the United States Court of Appeals and worked to get the bill successfully through Congress. Although final success did not come until 1919 the association was also interested in an

increase in salaries for federal judges. This brief list of activities does not cover all the accomplishments, discussions or interests of the association. Its most important activity, however, was that of providing a forum for discussion and communication for leading members of the profession which in turn helped the professional growth of lawyers in America.  

CHAPTER II

THE ORGANIZATION OF THE OHIO STATE BAR ASSOCIATION

The idea of forming bar associations may have been in the air after the Civil War, however, in Ohio, the spark that led to the formation of the Ohio State Bar Association was a growing need for reform of the courts. The situation was so bad that a case involving a horse which began in 1848 remained unsettled by the Supreme Court until 1878. By this time the horse, the plaintiff and his executors were all dead.¹ This problem was given prominence throughout the movement to form the association and was a constant interest at the annual meetings.

Throughout her history Ohio has had problems with delay in the courts. Two out of three constitutional conventions since the first constitution have been called primarily because of judicial problems.² In 1830 Ohio was operating with a system that had been changed very little

¹II Ohio State Bar Association Report (OSBAR), 1890, 172.
since 1851. According to the constitution the judicial power was vested in

   . . . a Supreme Court, in district courts, courts of Common Pleas, courts of probate, justices of the peace, and in other courts, inferior to the Supreme Court in one or more counties as the General Assembly may, from time to time, establish. 3

Since the three highest courts received the most attention from the reformers this discussion will concentrate on them.

The Supreme Court consisted of five judges, a majority of whom were necessary to form a quorum or to pronounce a decision. The appellate jurisdiction of the court was left to be established by law, and was occasionally changed in attempts to improve the system. Charts I and II show the plan followed in 1852 and 1860. The judges were elected on a rotating basis so that one five year term ended each year. The court was required to hold at least one term each year in the capital. Additional terms were up to the legislature. By 1880, the Supreme Court was holding two sessions in Columbus. 4


CHART I - OHIO JUDICIAL SYSTEM IN 1852.

SUPREME COURT
- O O C.J. O O
- Original: quo warranto; mandamus, habeas corpus; procedendo.
- Appellate: as indicated.

DISTRICT COURT
- C.P. C.P. S.C. C.P. C.P.
- Original: quo warranto; mandamus, habeas corpus; procedendo.
- Appellate: as indicated; appeals only in civil cases.

CRIMINAL COURT OF HAMILTON COUNTY
- O
- Criminal jurisdiction only; same as C.P.

COMMON PLEAS
- O
- Original: all civil cases above justice of the peace jurisdiction; divorce and alimony; all crimes except minor offenses triable by justices of the peace.
- Appellate: as indicated; appeals only in civil cases.

POLICE COURT
- In first class cities
- O
- Criminal only; same as J.P., plus all violations of ordinances and all offenses not requiring indictment.

MAYOR'S COURT
- In villages and second class cities
- O
- Civil and criminal same as justices of the peace.

PROBATE COURT
- O
- Exclusive in general probate, guardianships; etc., concurrent with Common Pleas in land sales and habeas corpus and appropriations; proceedings by public utilities; criminal offenses where no indictment is required; also as an examining court.

JUSTICE OF THE PEACE
- O
- Same as 1838

BOARDS AND OFFICERS exercising judicial functions

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Amer. The Ohio Judicial System, 22.
The District Court caused the most problems because lawyers did not trust it. Its prestige, for various reasons, gradually declined to the point where it became simply a step to the Supreme Court rather than the final appellate court for all but the most important cases.

District Courts shall be composed of the judges of the Court of Common Pleas, of the respective districts, and one of the judges of the Supreme Court, any three of whom shall be a quorum, and shall be held in each county therein, at least once each year; . . . 5

This constitutional provision had two weaknesses that became increasingly apparent as the business of the courts increased. First it meant judges of both the Common Pleas Court and the Supreme Court must take time from an increasingly crowded calendar to hold District Court sessions. More time was lost in traveling from court to court, and decisions were often made quickly under the pressure of time. Judges also complained that many counties did not have adequate libraries for them to make decisions that would hold up on appeal. By 1880 in many Common Pleas districts and for the Supreme Court, business was such that each was a full time job. The Supreme Court judges managed to solve this problem by deciding that the constitution did not require them to attend District Court sessions.6 This was one of the major reasons for the

decrease in its prestige. The Common Pleas Courts tried to handle it by increasing the number of judges from thirty to seventy, and continually demanded more. The second weakness was that occasionally a Common Pleas judge could consider the same case on both levels. Even when this did not occur it was easy to accuse the judges on district duty of favoring the rulings of their peers, who might sit on one of their cases in a future session, rather than considering themselves on a level above the Common Pleas judge and ruling on the merits of the case. The legislature was given the power to establish the districts and the appellate jurisdiction of this court.

The jurisdiction of the Court of Common Pleas was left to the legislature and they became the basic civil and criminal courts of the state. Attempts to decrease the burden on these courts were made by establishing superior courts in some of the busy counties with basically the same jurisdiction (see Chart II) and by increasing the amount of money that must be involved in civil

\[7\] Cincinnati Enquirer, November 6, 1882; 3 Ohio Law Journal, December 28, 1882, 296-298; Amer, The Ohio Judicial System, 32; Reed, Bench and Bar of Ohio, I 28; 21 Weekly Law Bulletin, March 18, 1889, 145.

cases before they could begin litigation at the Common Pleas level. As a general rule appeals went from the lower courts to the Common Pleas Court, to the District Court and finally to the Supreme Court (see Charts I and II).9

Several attempts were made previous to 1880 to reform the system. The first one came in 1857 in the form of an amendment that provided for the election of separate District Court judges. Although this amendment received a majority of the votes cast for it, it was not adopted because it did not receive a majority of all the votes cast in the election. In 1871 the voters agreed to call a constitutional convention to try to reform the judiciary but when the resulting constitution came up for vote in 1874 it failed. Some of the changes proposed in this constitution eventually were accepted as separate amendments to the constitution. In 1875 the voters approved an amendment that established a commission of five members appointed by the governor to last from February 1876 to 1879 and gave the legislature authority at the request of the Supreme Court to establish future commissions of two year duration and no more than once every ten years. The commission was to operate in the same manner and with the same authority as the Supreme Court. Lawyers, however,

found fault with this solution. First, although the commission did help clear some of the backlog, it did not eliminate all of it and its effects were only temporary. The second problem was that occasionally the court and the commission would rule different ways on the same issue. In 1877 an unsuccessful attempt was made to pass an amendment providing for the election of a District Court judge who would work with the Common Pleas judges. The General Assembly next tried to accomplish the same reform through legislation rather than an amendment, but the Supreme Court declared it unconstitutional.\textsuperscript{10} Another minor amendment was proposed in 1879 but also failed. The lawyers campaigned for both of these amendments but due to lack of interest on the part of the voters and opposition or similar indifference by political parties their work was not successful.\textsuperscript{11} These experiences affected the actions of the profession in their next major campaign for reform.

By 1880 the lawyers were complaining that it took five to seven years to settle cases. Many of them told stories

\textsuperscript{10}In re Appointment of Judges, 34, O.S. 431; Amer, The Ohio Judicial System, 33.

concerning the death of litigants and the bankruptcy of companies before cases were finally settled. The case of Rhodes and Gunn described below by a writer to the Cincinnati Gazette is a typical example. Two men arguing over a farm in Hardin County began litigation in the Common Pleas Court on August 28, 1872. In September 1875 the District Court ruled and in December the case went to the Supreme Court. It was argued orally on March 20, 1879 and the court finally reversed the lower court in March 1880, on the grounds that the charges to the jury had been in error. The court, however, had not yet written its opinion and the writer feared that unless that opinion also ruled on some of the important questions involved, the entire process would have to be repeated, even though the defendant was already dead. To make matters worse, many other suits involving 120,000 acres of land in the Virginia Military District were being delayed until the Supreme Court ruled on some of the important issues involved in the first case. Lawyers and editors also complained that many people were putting up with unjust, dishonest practices, settling cases out of court and compromising rather than standing up for their rights and principles. The Cleveland Leader, for example, compared the situation to an old German fable that compares a court to a briar bush that a lamb escaping a wolf runs into but can not get out unless
it leaves part of its fleece behind. The Herald commented that:

Even the dullest layman, however, recognized one crying need of the day—one whose voice drown all other complaints—the annihilation of the vexious delays of the law.

Solutions suggested were numerous and the lack of success in the legislature or with the voters was one of the reasons for the formation of a state bar association.

The Ohio State Bar Association does not have one man whom everyone considers responsible for its organization, as does the American Bar Association. Support and agituation instead seems to have come from several people and one local bar association in particular. The first suggestion that a state association might be useful came in the editor's introduction to a report of a meeting of the Cincinnati Bar Association in the Weekly Law Bulletin.

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12 Cincinnati Gazette, March 22, 1880; Cleveland Leader, May 18, 1880. Similar complaints concerning the situation can be found in the following: 1 Ohio Law Journal, November 11, 1880, 100, December 20, 1880, 153-154; 2 Ohio Law Journal, July 13, 1882, 608; 3 Ohio Law Journal, December 21, 1882, 282-283, January 13, 1883, 327; 6 Weekly Law Bulletin, February 7, 1881, 3, February 14, 1881, 37, March 31, 1881, 277; Cleveland Herald, March 17, 1880; Cincinnati Gazette, December 22, 1880, December 27, 1882; Ohio State Journal, December 28, 1880, November 7, 1882, December 27, 1882, January 25, 1883; Columbus Dispatch, December 28, 1880; Akron Daily Beacon, April 9, December 29, 1880; Cincinnati Enquirer, November 6, 1882; Newark Daily Advocate, December 28, 1882.

13 Cleveland Herald, July 8, 1880.

14 These solutions are discussed in more detail in the next chapter.
At the quarterly meeting in January, Rufus King introduced a resolution that the association appoint a committee to investigate and report measures for the consideration of the association that would expedite business in the courts of the county and the Supreme Court. On January 27, they held a special meeting to consider the resolution and drew a larger attendance than the quarterly meeting. Everyone agreed that some reform was necessary. Even the one man who insisted there was no difficulty for lawyers who were prepared and pushed sharply, suggested some improvements. The remarks of W. A. Hutchins clearly summarized the feeling of the members.

Unless relief of some kind could be obtained for the Supreme Court, it was hardly worthwhile for gentlemen to devote their time to the profession. At present a lawyer could not go into a case with much hope of getting through with it before the parties were dead, the securities broken up and the lawyer himself probably dead.15

After discussing the problem and its possible causes and solutions, King's resolution was passed and a committee of King, Stanley Matthews, John F. Follett, A. F. Perry and Thomas A. Logan was appointed. The editor of the Weekly Law Bulletin was pleased with the results and called on all bar associations in the state to appoint similar committees that could work together to bring reform.

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15 *Cincinnati Commercial*, January 28, 1880.
As we have no State Bar Association in Ohio—in which respect Ohio is also behind her sister States—the Bar of the State will have to depend largely on the local Bar Associations in the larger cities in the State for an organized movement to secure the necessary relief, and we call the attention of the Bar Associations of Cleveland, Toledo, Akron, etc. to this matter.\textsuperscript{16}

King remarked that the subject of his resolution was an old one. Several years before the association had discussed and written a bill but nothing had happened.\textsuperscript{17} The same thing seems to have happened to this committee because the next reported meeting was to choose delegates for the convention to organize a state association.

Cleveland, whether in response to the challenge presented in the \textit{Weekly Law Bulletin} or to independent action by equally reform minded men, is not clear, initiated the call for a state association. At the March first meeting of the Cleveland Bar Association, S. E. Williamson introduced a resolution requesting the judiciary committee to correspond with the judiciary committee of the Cincinnati Bar Association on the matter of adopting some plan for the more speedy disposition of appellate business. At the same meeting several suggestions concerning possible reforms were also referred to the judiciary committee. At the next

\textsuperscript{16}\textit{Weekly Law Bulletin}, February 2, 1880, 1163.

meeting on March 6 George Kain introduced the following resolution:

Resolve. That it is the sense of this Association that a State Bar Association be formed and the Corresponding Secretary correspond [with] various City and County associations of [the] State upon the subject to obtain if possible their cooperation.18

W. J. Boardman also presented a series of resolutions which contained specific suggestions for reform. He wanted to increase the Supreme Court to twelve judges. This would decrease the District Court load of each judge, make it possible for the Supreme Court to participate in District Court sessions and still have time for its own work. The association adopted his resolutions and asked the secretary to send them to other bar associations asking them to add their support.19

Amos Denison, the corresponding secretary, reported back at the annual meeting on May 8 that he heard favorably from several cities and Cincinnati was especially enthusiastic about it. George Foster reported that he had recently discussed the project with Judge William White of the Supreme Court, who thought such an organization was very important to have "... to prevent pernicious legislation,

18 Minute Book, Cleveland Bar Association, March 6, 1880, 34.
19 Ibid., March 6, 1880, 34-35; Cleveland Plain Dealer March 8, 1880.
if for no other purpose."\textsuperscript{20} After some discussion concerning objectives and uses of such an organization, the association passed a resolution introduced by W. J. Boardman that a committee of three (with the corresponding secretary as chairman) be chosen to communicate with other bar associations in the state and prominent lawyers in counties that did not have associations, to appoint a time and place for a convention to organize a state bar association and to request that each local association send delegates. Delegates were to be chosen on the basis of one delegate for every ten members of the local association or of the bar in counties without associations. Those with less than ten members could send one delegate. Amos Denison, W. J. Boardman and George Foster, the appointed committee, quickly drew up a circular to mail to lawyers, associations, judges and newspapers stating the origin of the idea, calling for a convention on July 8, 1880, describing the methods of choosing delegates, and requesting that their names and addresses be sent to the committee to help them perfect arrangements.\textsuperscript{21}


\textsuperscript{21}Minute Book Cleveland Bar Association, May 1, 1880, 38; Cleveland Plain Dealer, May 10, 15, 1880; Weekly Law Bulletin, May 17, 1880, 340-341; Cleveland Herald, May 10, 1880; 1 OSBAR, 1880, 3; Cleveland Leader, May 15, 1880; Columbus Dispatch, May 17, 1880.
It added that:

It is the intention to make the proposed organization co-extensive with and embracing the best legal ability of the Commonwealth and of a permanent, practical and influential character, in all matters pertaining to the profession and judiciary.  

Direct editorial response to this was sparse outside of Cleveland, probably because most editors were too absorbed in the spring political conventions and maneuvering prior to the 1880 presidential election. The Weekly Law Bulletin was the most enthusiastic.

Ohio is to-day, if not the only State, certainly one of the very few States of the Union, that have no State Association. The very fact that such associations have been organized in most all the States shows their usefulness.

Certainly in Ohio it could be at least as beneficial, because the judicial system was entirely insufficient for the growing needs of the state and all efforts for change had failed so far.

It is believed that a State Bar Association would secure that concert of action among the bar of the whole state which will be more apt than anything else to secure the necessary changes in our judicial system.

The editor thought the call should find a ready response and that Cincinnati would certainly be fully represented. In spite of the Bulletin's confidence in Cincinnati's

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23 Ibid., 340.
24 Ibid.
response the association did not gather to choose delegates until July 7. Fifteen members came and the chairman appointed all those present who were willing to attend. The committee's chairman, Durbin Ward, called the delegates together to organize that afternoon and they left that night for Cleveland. If the association had sent the full number of delegates allowed by the circular, Hamilton county would have been represented by twenty men instead of the five they sent. By contrast some associations chose delegates in early June and debated what sort of association they wanted. The Dayton association appointed a committee to plan the organization and the Franklin County Association debated a proposed constitution. 25

Most of the Cleveland papers printed the circular in full and the Leader commented that there could be no doubt that such an organization not only would be useful to lawyers in elevating the profession by keeping out the unworthy, but it could also be of an advantage to many

25 Weekly Law Bulletin, May 17, 1880, 340-341; Cincinnati Commercial, July 7, 1880; 1 OSBAR, 1880, 5; The bar of Columbiana County met May 31, 1880, Cleveland Plain Dealer, June 5, 1880. Dayton appointed delegates and alternates, a man to check on railroad rates and a committee of three to report a plan of organization. Dayton Daily Journal, June 30, 1880. The Franklin County Bar Association chose delegates at a meeting reported in the Columbus Dispatch, June 18, 1880, and debated a constitution for the state association at their July 1 meeting, ibid., July 1, 1880, Ohio State Journal, July 2, 1880.
outside the profession because radical changes were necessary in the courts and administration of justice in the state. For years there had seldom been a legislative session where efforts were not made to find a solution and the Leader believed they would never act until the leading members of the bar representing all sections of the state concluded exactly what was needed and worked for that program. This desire for the bar of the state to unite behind one program was a strong motivating force behind the call for the association, and its success in both securing the reform and developing into a permanent organization. The editorial ended with a cordial invitation to lawyers throughout the state to support the Cleveland Bar Association in this matter. The Columbus Dispatch was the only other paper of those surveyed that told its readers about the circular and commented on the welcome movement to form bar associations. Although they did not comment on the need for a state bar association or the circular, four other papers commented on the need for judicial reform prior to the July meeting. Three of them favored Judge Rufus P. Ranney’s program.  

26Cleveland Leader, May 18, 28, 1880. On May 28 it summarized events up to that point and reminded its readers how important the meeting would be. Columbus Dispatch, May 17, 1880. Those supporting Ranney’s program were: Cleveland Herald, March 17, 1880; Plain Dealer, January 31, 1880 and Cincinnati Gazette, January 30, 1880. This article lead to a letter to the editor published March 22, 1880 supporting
Meanwhile the Cleveland Bar Association continued meeting to prepare for the July convention. At their June meeting the committee reported that they had sent out over 100 copies of the circular and received many encouraging replies and promises to send full delegations. They also had received "documents of a valuable character"27 from the American Bar Association and from the State Bar Association of Illinois. Stanley Matthews of Cincinnati, a known and respected lawyer-politician, had agreed to deliver an address to the convention. After some debate a resolution establishing a Committee on Arrangements to handle the other details, and requesting the Executive Committee to write a constitution and by-laws for the use of the convention's constitution committee and to draw up a suggested list of subjects for the convention to consider was adopted. A. M. Adams, J. H. Rhodes, G. E. Herrick, N. A. Gilbert and E. Sowers were appointed to the arrangement committee. On the 19th this committee recommended that Judge Rufus P. Ranney be asked to act as temporary chairman of the convention, give the welcoming address and appoint sub-committees to make transportation

the program of Boardman and the Cleveland Bar Association mentioned above. The Akron Daily Beacon, April 9, reported a bill the Franklin County Bar Association had presented the legislature.

27Minute Book, Cleveland Bar Association, June 5, 1880, 40.
arrangements (discounts on the railroads), meet the delegations and plan entertainment.²⁸

The choice of Ranney and Matthews was a very good move. Both were well known throughout the state among the profession and the public. Newspapers invited the public to attend Matthews' speech and showed interest in both men's remarks.²⁹ Geographically this meant that the local leader had a state-wide reputation as an advocate of judicial reform and that the featured speaker represented a very important legal community from the other end of the state. Since they were from different political parties they were a good choice politically as well. Judge Ranney, 1813-1891, was a self-made son of an early Ohio pioneer, who worked his own way through a year at Western Reserve and his studies in the law office of Joshua Gidding and Benjamin F. Wade to admission to the bar in 1836. By 1851, at the age of thirty-six, he was elected to the constitutional convention, and was considered one of the leading men there.

²⁸Minute Book, Cleveland Bar Association, June 5, 19, 1880, 40, 42.

²⁹Cleveland Leader, July 9, 1880; Cleveland Herald, July 9, 1880; Cleveland Plain Dealer, July 8, 1880; Cincinnati Commercial, July 9, 1880; Cincinnati Gazette, July 9, 1880; Cincinnati Enquirer, July 9, 1880, Ohio State Journal, July 9, 1880; Akron Daily Beacon, July 12, 1880; Toledo Blade, July 9, 1880; Dayton Daily Journal, July 9, 1880.
In this body of distinguished lawyers, jurists and statesmen, there were few members who had as thorough knowledge of political science, constitutional law, political and judicial history, and the principles of jurisprudence, as Judge Ranney displayed in the debates of the convention.\footnote{Reed, \textit{Bench and Bar of Ohio}, II, 187.}

Marshall described him as "probably the ablest jurist" at the constitutional convention and "possibly in the State."\footnote{Marshall, \textit{A History of the Courts}, I, 110.}

He submitted one of the plans for the judiciary section of that constitution, helped write several other sections and was chiefly responsible for the constitutional provision requiring a majority of all voters in an election to pass amendments. Although he changed the number of judges involved and some other minor details Ranney was to advocate the same plan for years. Basically he desired to return to the system under the first state constitution when the Supreme Court judges rode circuit, but with more judges to handle the increased business.\footnote{Ranney presented a revised version of this plan in 1875 at the request of R. A. Harrison and L. J. Critchfield of Columbus. This plan originally appeared with a letter from Ranney arguing for it in the \textit{Cincinnati Gazette} of January 9, 1875. It was reprinted by the \textit{Gazette} on January 30, 1880 in response to the \textit{Cincinnati Bar Association}'s meeting to consider reform described above and copied again with added editorial comments in the \textit{Cleveland Herald}, March 17, 1880.} Although his plan was not adopted by the convention Ranney endorsed the constitution and was elected to the new Supreme Court. He
was elected to two terms on the court (1852-1857, 1863-1865), was the Democratic candidate for governor in 1859 and practiced law in between. He gradually withdrew from practice near the end of his life but often agreed to take cases for old friends or cases involving important principles. When he did so,

... the announcement that Judge Ranney was to make an argument never failed to bring together an audience of lawyers, eager to learn from him the art of reasoning of which he was the consummate and acknowledged master. ... 33

S. E. Williamson, who wrote his memorial for the Ohio State Bar Association in 1892, said the following:

For many years Judge Rufus P. Ranney represented to Ohio lawyers all that they admired and emulated. The unanimity with which he was elected the first President of the Ohio State Bar Association was not marred by even the thought that any other choice was possible. 34

Although Stanley Matthews, (1823-1889) didn't reach the high point of his career until after the convention when he was appointed to the United States Supreme Court, he was already well known by 1880. He began his legal career in Kentucky in 1843, but moved back to Ohio in 1844 and by 1845 was prosecuting attorney of Hamilton County.

Professionally he was a Hamilton County Common Pleas

33 13 OSBAR, 1892, 189.

Judge (1850-53), United States District Attorney for the Southern District of Ohio (1858-61), Cincinnati Superior Court Judge (1863-4) and United States Supreme Court Justice (1881-1889). Politically he was Clerk of the Ohio House (1848-9), editor of an abolition newspaper in Cincinnati and United States Senator (1856-8, 1877-9). During the Civil War he also served in the army. His friend Judge Cox described him as a hard, studious worker (he didn't think any other lawyer worked so hard) and admirable speaker. During the period between his Superior Court job and the Supreme Court appointment Cox said,

... I think I may say without contradiction, he stood at the head of the Bar of Ohio, was one of the clearest, most able, learned, and dignified members of the profession.35

Although Presidents Hayes and Garfield had trouble obtaining the consent of the Senate for his appointment to the Supreme Court, because he was a distinguished railroad attorney and one of the counsel for Hayes in his contested election, Marshall says that

... he won the confidence of his colleagues and the men who practiced in the Supreme Court, as a fair and kindly judge, patient and attentive, a lawyer of undoubted, unquestioned learning, judicial capacity and independence. His opinions evidenced deep research and great care and were worded cautiously but clearly.36

35 10 OSBAR 1889, 42.
His speech before the convention shows the same characteristics. 37

At the July 19 meeting the Cleveland Bar Association also considered the executive committee's constitution. Although there was some attempt to amend it the report was adopted in full. The association also modified its rules for choosing delegates to allow newly organized bar associations to base their representation on membership or the number of lawyers in their county because they feared some associations otherwise might not support their movement. 38

These new associations had not had time to develop a membership 39 that was truly representative of their county, and


38 Minute Book, Cleveland Bar Association, June 19, 1880, 42. The Franklin County Bar Association, for example, met to consider association business and then resolved itself into a meeting of the bar of Franklin County to discuss the state association's constitution and purposes and to elect delegates. Columbus Dispatch, July 1, 1880, Ohio State Journal, July 2, 1880.

39 This is an indication of the newness of the movement toward organizing bar associations. Even those that had been in existence longer were having problems staying active. As recently as 1878, for example, Blackstone complained to the 1 Cleveland Law Reporter, May 18, 1878, 105, that the Cleveland Bar association was inanimate.

On June 1, 1878, 121, the editor complained that since the association was doing nothing it should distribute the treasurer's funds and disband. The Minute Book, Cleveland Bar Association records no meetings between May 12, 1877, 28-29, and March 1, 1880, 30. The Columbus Dispatch also commented on the inactivity for the past few years of the Franklin County Bar Association, June 16, 1880.
the Cleveland association feared lawyers in the area might feel discriminated against because they could not send a delegation that represented their true position in the profession. Cleveland's delegates to the convention were also chosen at this meeting. One final meeting was held on July 3 to decide where to hold the meeting and other last minute details. Denison reported that they could count on more than two hundred delegates.\(^{40}\)

Newspapers commented on the good job the Cleveland Bar Association did in arranging for the meeting. As the details given above indicate, they certainly left nothing to chance. The reception committee met the incoming delegates, helped them get settled and introduced them to other delegates. Cool, comfortable Case Hall was divided according to judicial districts and the Cleveland organizers were pleased that each district had representatives. Jarvis Adams, president of the Cleveland Association, briefly welcomed the delegates, invited all judges to sit up front, and introduced Ranney, who delivered his speech, which was received with expressions of highest satisfaction.\(^{41}\) Ranney then appointed committees on Credentials, Permanent Organization, and Order of Business.

\(^{40}\)Minute Book, Cleveland Bar Association, June 19, July 3, 1880, 43-44.

\(^{41}\)Cleveland Herald, July 9, 1880.
Following a two hour lunch break, the delegates gathered again to "... take up the chain of evidence that must eventually fasten the crime of slow litigation more tightly upon the Buckeye State and result in a verdict against the badly clogged machinery." First, however, the Credentials Committee reported the delegates and permanent officers for the convention and a Constitutional Committee was chosen. While the Constitutional Committee was meeting, Judge William White, of the Supreme Court, spoke concerning the problem of delay in the courts. He provoked laughter when he began by saying he found it difficult to say anything new because it was a problem that had troubled the community since Shakespear's time. He complained that the quality and quantity of legislation protracted litigation and expressed the belief that the new state bar association must work in perfecting laws.

Though the Constitution Committee may have had more than one draft to consider, the constitution adopted by

42 Cleveland Herald, July 9, 1880.

43 Cleveland Herald, July 9, 1880. This speech was reported in more detail in some papers than in the official proceedings of the meeting.

44 The Franklin County Bar Association debated a proposed constitution at its July meeting. Newspaper reports do not make it clear whether this was a draft sent by the Cleveland Association for their consideration or one of their own. Ohio State Journal, July 2, 1880, Columbus Dispatch, July 1, 1880.
the convention was substantially the same as the Cleveland Bar Association's draft.\textsuperscript{45} An attempt by John W. Heisley, of Cleveland to add a provision providing for special meetings was vigorously opposed because everyone wanted the association to be above special interests.\textsuperscript{46} Attempts to eliminate the Executive Committee approval of all amendments before the association voted on them, and the one term only rule for presidents to allow non-consecutive re-elections also failed. The one term only rule was probably included because the constitution was written during a time when many people were objecting to a third term for Grant.

THE CONSTITUTION

1. NAME

This Association shall be known as "The Ohio State Bar Association."

2. OBJECT

The Association is formed to advance the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to uphold integrity, honor and courtesy in the legal profession, to encourage thorough liberal legal education and to cultivate cordial intercourse among the members of the Bar.\textsuperscript{47}

\textsuperscript{45} \textit{Cleveland Plain Dealer}, July 9, 1880.

\textsuperscript{46} A similar attempt by Heisley at the June 19 meeting of the Cleveland Bar Association also failed. \textit{Minute Book}, Cleveland Bar Association, 1880, 42; \textit{5 Weekly Law Bulletin}, July 19, 1880, 491-497.

\textsuperscript{47} \textit{1 OSBAR}, 1880, 10.
Requirements for membership were payment of the admission fee, membership in a local bar association if one existed where the lawyer resided, good standing in the profession, a residence or a practice in the state and nomination by the Committee on Admissions. The admission fee and membership in a local association provisions were to cause problems in the future and were eventually changed.\(^{48}\) The practice during the period covered by this study was for interested lawyers to fill an application form and send the admission fee to the Committee on Admissions which checked to see if he met the requirements. The constitution allowed a formal ballot if requested on any name with one no vote in every five bringing defeat; however, during the period under study no formal ballot was ever taken. The officers were president, a vice-president for each judicial district having members, a secretary and a treasurer. The standing committees had one member from each judicial district. They were Executive, Admissions, Judicial Administration and Legal Reform, Legal Education, Grievances and Legal Biography. The constitution briefly spelled out the duties of each of these committees.\(^{49}\)

\(^{48}\) OSBAR, 1890, 123-124 fee must accompany all applications; 22 OSBAR, 1901 membership local bar association no longer necessary; 23 OSBAR, 1902, 25-26 admission fee will cover dues for the first year.

\(^{49}\) The Ohio State Bar Association Constitution can be found in 1 OSBAR, 1880, 10-14 or in the beginning of all following reports.
The Judicial Administration and Legal Reform Committee, which made a report annually, was the most active and most important,\textsuperscript{50} except possibly for the Executive Committee, which planned all meetings and published the proceedings. The Legal Biography Committee was to prepare memorials of the deceased members. Once it got organized it attempted to get each member to fill out a form giving his vital statistics so the committee would have the correct facts when they prepared the reports. This committee also reported annually.\textsuperscript{51} Although the Legal Education Committee produced some useful results there were many years when it made no reports at all.\textsuperscript{52} Least active was the Grievance Committee. The one year the association attempted to do any real investigating of improper practices was 1897 when a special committee was chosen to investigate reports that some lawyers were lying when they filled out certificates showing that candidates for admission had studied with them. The committee discovered that no one knew the source of the report or wanted to get

\textsuperscript{50} 1-33 OSBAR, 1880-1912. Activities of this committee will be discussed in greater detail in following chapters.

\textsuperscript{51} This book was started in 1883, 4 OSBAR, 1883, 23-24.

\textsuperscript{52} 3 OSBAR, 1882, 70-80; 7 OSBAR, 1886, 110-111; 12 OSBAR, 1891, 55-63; 13 OSBAR, 1892, 74-90; 14 OSBAR, 1893, 25-27, 64-67; 15 OSBAR, 1894, 22-23; 17 OSBAR, 1896, 59-71; 18 OSBAR, 1897, 68-84, 139-145; 19 OSBAR, 1898, 38-51; 24 OSBAR, 1903, 35-43, 105-106; 20 OSBAR, 1908, 24-27.
involved so it did nothing. Several attempts were made to give the committee work but the committee does not seem to have acted on them. During the first thirty years of the association’s history the Grievance Committee presented one report objecting to the practice of advertising legal services, especially by those specializing in injury cases. The association decided to inform the local bar associations and ask them to take action against offenders. 53

Dues were $2.00 annually and amendments required the approval of the Executive Committee and a majority vote of those at the annual meeting. 54 The constitution made no provision for a time and place for the annual meeting. At first the association met in several different cities and at various times of the year. There were several debates over whether July or December would be most convenient and therefore attract the most members. Many argued that July was too hot and would interfere with people’s vacations while December was more comfortable for meetings and near the sessions of the legislature. Others argued that December also interfered with holidays and involved

53 OSBAR, 1880-1881, 54; 8 OSBAR, 1887, 35-36, 73-74; 9 OSBAR, 1888, 42; 17 OSBAR, 1896, 56-58; 18 OSBAR, 1897, 144-145; 19 OSBAR, 1898, 52-54; 33 OSBAR, 1912, 24. The 38 Weekly Law Bulletin, November 29, 1897, 261 reported that the Summit County Bar Association was investigating in response to Judge Hall’s and the state bar association’s charges and that they were taking action against one man.

54 OSBAR, 1880, 13-14.
bad weather. Eventually they tried a new hotel at Put-in Bay in July and decided to return. Except for one year when there was a mix-up in which the hotel scheduled two conventions at the same time\textsuperscript{55} everyone seemed satisfied with Put-in Bay for twenty-two years. In 1910 they moved to Cedar Point because that resort was more accessible and the association was hoping for better attendance at its meetings.\textsuperscript{56}

This writer suspects that much of this constitution was copied after that of the Illinois State Bar Association. The similarity between the two constitutions is too close to be accidental and the committee on forming the Ohio association reported receiving important documents from Illinois. Compare, for example, the beginning of the Illinois constitution with that of Ohio given above.

\textsuperscript{55}This led to a few comments concerning the members of the other convention because the lawyers considered themselves more professional than the grain dealers attending it. 23 OSBAR, 1902, 80-90.

\textsuperscript{56}Cleveland, July 8-9, 1880; Columbus, December 28-29, 1880; Toledo, July 20-21, 1881; Cincinnati, December 27-28, 1882; Columbus, December 26-27, 1883, December 30-31, 1884; Dayton, December 29-30, 1885; Springfield, December 28-29, 1886; Toledo, December 27-28, 1887. 5 OSBAR, 1884, 63-65; 7 OSBAR, 1886, 116-125; 2 Ohio Law Journal, June 22, 1882, 571; 8 OSBAR, 1887, 20; 54 Weekly Law Bulletin, July 12, 1909, 267, December 6, 1909, 473; 1-33 OSBAR, 1880-1912.
I.

NAME.

This Association shall be called THE ILLINOIS STATE BAR ASSOCIATION.

II.

OBJECT.

The Association is formed to cultivate the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to elevate the standard of integrity, honor and courtesy in the legal profession, to encourage a thorough and liberal legal education and to cherish a spirit of brotherhood among the members thereof.57

The provisions in the two constitutions concerning dues are also significant. The Illinois constitution clearly states that new members must pay both a $2.00 admission fee and the dues for that year. The Ohio officials interpreted their constitution the same way, but because the constitution did not so clearly state this they were constantly explaining and demanding the dues for the first year. Collection of dues was a problem throughout the period studied. The many hard feelings that resulted led them in 1902 to change the regulations so that the admission fee covered dues for the first year.58


58 23 OSBAR, 1902, 25-26; complaints involving dues appear in the following reports; 7 OSBAR, 1886, 36-37; 8 OSBAR, 1887, 91-92; 9 OSBAR, 1888, 23-25; 10 OSBAR, 1889,
After adopting the constitution the convention chose permanent officers and turned to discussing the cause for organizing. Supreme Court Judge William Lawrence moved that the Judicial Administration and Legal Reform Committee

... prepare the plan of a judicial system for the State, which, if properly administered, will render it practicable to secure a final disposition of every litigated case in courts, in one year or less ... 59

and present it to the legislature. He also thought that Judge Ranney, as president of the association, should become chairman of the committee. Lawrence preferred legislative action to a constitutional amendment because of the urgent nature of the problem. Although the final resolution passed was a modified version of this one, it is important because many newspapers printed Lawrence's resolution in full and later stated that it was adopted. 60

This put the association on the record, in the minds of the public, in favor of a court system that would settle all cases in a year or less. Before voting on this


59 1 OSBAR, 1880, 16.

resolution, however, the association adjourned for dinner and Matthews' speech.

Matthews drew a full audience of delegates, many of the best citizens of Cleveland and a sprinkling of ladies. The Cleveland papers and the Weekly Law Bulletin printed both Ranney's and Matthew's addresses in full and spoke highly of them. Both men spoke of the purposes and hopes of the new organization and attempted to inspire their listeners by discussing the importance of the profession. Ranney spoke at length on the need to improve the education of new recruits, to check closely the qualifications of candidates for admission, to keep out those who were unworthy and to exclude those already in the profession who did not meet the standards.

I leave you to consider whether your own interests, the interests of those who are leaning upon you, as the whole community does and must, the interests of the great State you inhabit, its honor and glory, do not all demand that you should concur, after full discussion and full understanding, in supplying worthy associates while you live and in providing worthy successors when you and I have passed away . . . and whether, with this sort of feeling, you are going to permit that the wolves who find their way into your flock shall remain there, . . .

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61 Cleveland Herald, July 9, 1880.

62 Weekly Law Bulletin, July 12, 1880; 473-482, July 19, 1880, 492; Cleveland Leader, July 9, 1880; Cleveland Herald, July 9, 1880 (extensive quotes) Cleveland Plain Dealer, July 9, 1880.

63 OSBAR, 1880, 45-46.
Most of Matthews' speech analyzed jurisprudence in a way that must have been inspiring to his legal listeners. He also emphasized the importance of obtaining the support of an enlightened public opinion that understood the basic principles of jurisprudence and its importance to their daily lives. They must be convinced that lawyers were interested in doing justice between men and that law wasn't an arbitrary, artificial and technical system that lends itself to oppression.  

Although Matthews listed some specific measures he thought the association should consider and Ranney mentioned the need for judicial reform as well as better regulation of the membership, neither man offered specific suggestions or concentrated on the current court problems. This led the Cincinnati Commercial to complain that they contented themselves with exalting the profession to lofty grounds and missed the opportunity of giving their audience some practical advice.

Friday's meeting was devoted to discussing Lawrence's resolution and a number of details such as appointing committees and getting them organized. All judges and ex-judges of the State Supreme Court were made ex-officio members and the Cincinnati Daily and Weekly Law Bulletin was made the official organ and asked to publish the

64 OSBAR, 1880, 47-62.
65 Cincinnati Commercial, July 18, 1880.
proceedings of the meeting and other important notices throughout the year. The association also adopted a motion requesting lawyers throughout the state to form local associations. They agreed to adjourn to Columbus on December 28, 1880 to consider the problem of judicial reform while the legislature was in session and a resolution offered by L. J. Critchfield that the Judicial Administration and Legal Reform Committee with the president, prepare and publish a plan to facilitate the administration of justice for the consideration of the membership at that meeting was substituted for Judge Lawrence's resolution and adopted. During the debate on these resolutions Judge Ranney delivered another speech, also at the request of the Cleveland Bar Association, on the need for reform and the advantages of his plan. He began by describing a case of his own concerning a tract of land owned by widows and children. This was just the sort of dramatic case that would appeal to the newspapers and his listeners. The case began in the Superior Court in November of 1873 and after six or seven years the Supreme Court had finally ruled. Ranney complained,

I have followed it straight along as fast as the wheels of the judicial machinery would permit me to do, and finally it came to a decision in the

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66 Minute Book, Cleveland Bar Association, June 19, 1880, 43.
Supreme Court—not complaining of the decision here—and was reversed.\textsuperscript{67}

He vowed that he was not giving up but would find another means of defense and go through the entire process again if necessary.

\textit{... if it shall take another seven years to run the rounds to have it determined whether these widows and children own this land or whether the claimants of it are entitled to it, I beg you to reflect about how much use will it be to the widows and children or to anybody else by the time we get to a final decision of the controversy.}\textsuperscript{68}

He ended by emphasizing the importance of everyone getting together to help the committee study the problem and supporting whatever program the association decided to adopt.

In spite of the stormy weather many of the delegates and their families took a steamer excursion on Lake Erie the final afternoon. The Cleveland Bar Association arranged for the boat, refreshments and music. Everyone had a wonderful time singing, story telling and organizing a debate. Thus ended the first annual meeting of the Ohio State Bar Association.\textsuperscript{69}

The \textit{Herald} reporter occupied some of his time during

\begin{footnotes}
\item[67] OSBAR, 1880, 65
\item[68] Ibid.
\item[69] Cleveland Leader, Cleveland Herald, Cleveland Plain Dealer, July 10, 1880. This account of the meeting unless otherwise stated is based on 1 OSBAR, 1880.
\end{footnotes}
the steamer ride asking the lawyers what they thought about the new organization and the meeting. The responses indicate both the reasons why the association began and their hopes for its future activities. All of them agreed that it would be an important, beneficial organization. A common theme was that it would be able to do something about the court problem which as J. H. Rhodes of Cleveland said, "In delaying cases before the courts our system is the worst in the country." Many of those interviewed felt that the association would be able to accomplish this because now the profession could unite their power behind one program which both political parties would find it easier to support. They felt that unity in the profession would make it easier to convince the legislature. Although the association did not obtain all the changes in the judicial system that it hoped for, these predictions and hopes were generally fulfilled.

Another common theme was that the association would be able to do much in elevating the standards of the profession by strengthening admission standards, giving younger members of the bar a chance to meet the prominent old timers and removing the shyster, the ignorant practitioner and others with low morals. Judge Thomas Robinson and Prosecutor A. H. Lewis insisted that the association should deal strongly with all offenders no matter who

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70 Cleveland Herald, July 10, 1880.
they were. Those who expressed this hope were to be disappointed. Although the association worked sporadically to improve standards and achieved some successes in this field it did nothing about those already in the profession which many members and the newspapers hoped the association would be able to eliminate. The constitution did not provide specific provisions for expulsion. In spite of the statement that no one in arrears for dues could exercise the privileges of membership, unless one resigned, the treasurer and the association followed the rule of once elected always a member. After many futile attempts to collect dues no matter how long they had not been paid, the by-laws were strengthened to allow suspension if dues were not paid by the end of the next meeting and reinstatement for those who paid either the back dues or $5.00.71 Except for numerous suspensions under these provisions no one during the period studied was expelled or investigated for misconduct.

Finally many of those interviewed stressed the importance of the social factor. Getting the legal profession together annually would be good for everyone. It would stimulate an exchange of ideas, break down the political feeling among members of the bar, cultivate an esprit d'corps, provide a good influence on the young attorneys

717 OSBAR, 1886, 65-67; see also John A. Mahon's presidential address, 8 OSBAR, 1887, 17-19.
by acquainting them with the distinguished ones and increase the political strength of the profession by unifying its requests. Only two men expressed a negative opinion and they did so while they spoke of the good the association could do. W. A. Davidson of Hamilton County, for example, thought the annual interchange of views would be the source of the greatest benefit, but expressed doubt that the association would be able to affect the legislature. Judge S. S. Knowles of Washington County, on the other hand, predicted that the legislature would appeal to the association for information on proper laws and the courts to the extent that they would be relieved of at least 1/3 of their work. H. F. Blackstone thought more results would come from the local bar associations but agreed the new association had some benefits socially.\textsuperscript{72}

As with the American Bar Association membership in the Ohio State Bar Association grew slowly. Figures on membership during the early years are sparse and inaccurate. The published lists of members do not present a true picture of those interested, because until 1886 they included everyone who had been admitted whether or not they paid the annual dues. The treasurer, for example, complained in 1886 that many who had been members since the beginning only paid the admission fee. The amount of back dues in fact totaled $2,200. Even after passage of the

\textsuperscript{72}\textit{Cleveland Herald}, July 10, 1880.
constitutional amendment providing for suspension of those in arrears, the treasurer, who was anxious not to lose any members, waited as long as he possibly could and the printed membership list included many who had not yet paid dues in hopes they would do so before the next meeting. Occasionally statements made by the secretary and treasurer, or figures given in different years also conflict. Chart III gives the figures which can be gathered from the published reports. Newspapers reported at the end of the first meeting that the membership was 311, however, the published report lists only 184 members as of December 1, 1880 and the secretary in 1883 said 175 joined. If newspaper estimates of the attendance at the adjourned meeting are more accurate, their figures show that more attended the meetings than became official members. The number admitted at the first meeting was the record until 1912 when Cleveland attorneys decided to go on a recruiting

73 OSBAR, 1886, 36-37; 11 OSBAR, 1890, 27-31.


75 1 OSBAR, 1880, 26-30; 4 OSBAR, 1883, 48.

76 The majority reported about 300 at the adjourned meeting. 6 Weekly Law Bulletin, January 10, 1881, 892; 1 Ohio Law Journal, January 1, 1881; 161; Ohio State Journal December 29, 1880. The Cincinnati Gazette, December 29, 1880 reported about 200, while the Cincinnati Enquirer, December 19, 1880 said there were over 250.
## CHART III

**MEMBERSHIP OF THE OHIO STATE BAR ASSOCIATION**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>ADMITTED</th>
<th>TOTAL MEMBERSHIP</th>
</tr>
</thead>
<tbody>
<tr>
<td>1880, July 165 delegates, 314 admission rpt. 184 as of Dec. 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1880, December 110</td>
<td></td>
<td></td>
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<tr>
<td>1881</td>
<td>56</td>
<td></td>
</tr>
<tr>
<td>1882</td>
<td>128</td>
<td></td>
</tr>
<tr>
<td>1883</td>
<td>48</td>
<td>now 450 in round numbers</td>
</tr>
<tr>
<td>1884</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>1885</td>
<td>50</td>
<td>now 547 on rolls</td>
</tr>
<tr>
<td>1886</td>
<td>19</td>
<td></td>
</tr>
<tr>
<td>1887</td>
<td>25</td>
<td></td>
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<tr>
<td>1888</td>
<td>12</td>
<td></td>
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<tr>
<td>1889</td>
<td>95</td>
<td></td>
</tr>
<tr>
<td>1890</td>
<td>94</td>
<td>356</td>
</tr>
<tr>
<td>1891</td>
<td>53</td>
<td>389</td>
</tr>
<tr>
<td>1892</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>1893</td>
<td>20 reinstated 2</td>
<td>451 (90 delinquent)</td>
</tr>
<tr>
<td>1894</td>
<td>55</td>
<td>413</td>
</tr>
<tr>
<td>1895</td>
<td>22 reinstated 2</td>
<td>364</td>
</tr>
<tr>
<td>1896</td>
<td>27 reinstated 1</td>
<td>390 (many delinquent)</td>
</tr>
<tr>
<td>1897</td>
<td>55 reinstated 2</td>
<td>not quite 380</td>
</tr>
<tr>
<td>1898</td>
<td>71 reinstated 11</td>
<td></td>
</tr>
<tr>
<td>1899</td>
<td>147 reinstated 10</td>
<td>332</td>
</tr>
<tr>
<td>1900</td>
<td>65 reinstated 3</td>
<td>259 roll last report showed 523 active 26 honorary</td>
</tr>
<tr>
<td>1901</td>
<td>22 reinstated 5</td>
<td></td>
</tr>
<tr>
<td>1902</td>
<td>60 reinstated 5</td>
<td>496</td>
</tr>
<tr>
<td>1903</td>
<td>46 reinstated 8</td>
<td>530</td>
</tr>
<tr>
<td>1904</td>
<td>52 reinstated 5</td>
<td>549</td>
</tr>
<tr>
<td>1905</td>
<td>68 reinstated 4</td>
<td>571</td>
</tr>
<tr>
<td>1906</td>
<td>123 reinstated 1</td>
<td>615</td>
</tr>
<tr>
<td>1907</td>
<td>46 reinstated 1</td>
<td>708</td>
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<tr>
<td>1908</td>
<td>115 reinstated 1</td>
<td>723</td>
</tr>
<tr>
<td>1909</td>
<td>57</td>
<td>787</td>
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<tr>
<td>1910</td>
<td>53 reinstated 1</td>
<td>793</td>
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<tr>
<td>1911</td>
<td>37 reinstated 1</td>
<td>766</td>
</tr>
<tr>
<td>1912</td>
<td>345 reinstated 3</td>
<td>751</td>
</tr>
<tr>
<td>1913</td>
<td>185 reinstated 1</td>
<td>1011</td>
</tr>
</tbody>
</table>

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1. l-34 OSBAR, 1880-1913.
2. From yearly admissions reports. Not all those listed paid dues and became members.
3. These figures are from the secretary or treasurer's reports and refer to the previous year. There are two figures given from 1897 because the secretary and treasurer both reported but with different figures.
campaign in honor of the president of the association for that year, who was from Cleveland. Most years the number admitted was under fifty. The problem of judicial reform which the association was debating must have drawn many new members, because as soon as a solution was found admissions dropped from a high of 128 in 1882 to forty-eight in 1883. By 1888 it was down to a low of twelve. Periodically either the secretary or treasurer would complain about the low membership and a low keyed temporary campaign to get more members sometimes followed. The secretary's complaints in 1895-96 finally brought an increase in 1897 because the Executive Committee recruited some. In 1905 a special committee of two was appointed to be available in Columbus sixty days before the meeting to recruit. Another year the secretary sent circulars, the program, the Judicial Administration and Legal Reform Committee report and an application blank to every lawyer in the state. Each time this led to a small temporary increase. The total numbers gradually

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16 OSBAR, 1895, 17-20; 17 OSBAR, 1896, 17-19; 18 OSBAR, 1897, 22-26; 26 OSBAR, 1905, 26; 29 OSBAR, 1908, 2-3; 15 OSBAR, 1894, 17-19 the secretary sent programs to about 500 non-members. The Weekly Law Bulletin also helped recruit by announcing meetings, the attractions of belonging (see also fn. 81), and urging the Admissions Committee to work for an increase in members. 48 ibid., April 6, 1903, 292. It also published the program. On one occasion the editor announced that application blanks were available at his office, 30 ibid., July 10, 1893, 17. It is also interesting to note the increase in announcements and the editor's enthusiasm around the turn of the century. 10 ibid., December 24, 1883, 433; 12 ibid., December 22, 1884, 313; 21 ibid., June 25, 1888, 424; 22 ibid., July 8, 1889, 1, July 15, 1889, 17;
grew til they reached 500 about the turn of the century. 
In the next six years it grew to 700 and broke 1,000 in 1912.

The social aspects of this association were as important during these years as they had been for the American Bar Association. In 1880 there were still many men around who could remember the days when both the court and the bar rode circuit. Those who had not participated themselves had been listening to stories about the exploits of their circuit riding colleagues since they joined the profession. Many of the older and middle aged men who joined the bar

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23 ibid., April 21, 1890, 271, June 2, 1890, 387; 24 ibid., July 7, 1890, 1; 25 ibid., June 22, 1891, 409; 27 ibid., June 20, 1892, 393, June 21, 1892, 409 program; 32 ibid., July 2, 1894, 1, July 16, 1894, 29 program; 33 ibid., June 10, 1895, 297; 35 ibid., June 22, 1896, 357; 37 ibid., June 28, 1897, 423; 41 ibid., June 12, 1899, 351, June 19, 1899, 363 an announcement by the Admissions Committee giving an address from which to obtain applications; 42 ibid., July 3, 1899, 1 program; 43 ibid., May 21, 1900, 379, June 18, 1900, 437-438 program; 45 ibid., June 24, 1901, 421 program; 47 ibid., June 16, 1902, 409 program, July 7, 1902, 467-468 program repeated; 48 ibid., April 6, 1903, 291, May 4, 1903, 435 announce speaker; June 22, 1903, 553; 49 ibid., March 14, 1904, 101, June 13, 1904, 263, June 22, 1904, 556-557 program, July 4, 1904, 302-304 program and comments; 50 ibid., March 27, 1905, 113 announce speaker, June 26, 1905, 212-213 program; 51 ibid., June 11, 1906, 217-218 program, July 2, 1906, 237, July 9, 1906, 241; 52 ibid., January 7, 1907, 2, May 20, 1907, 252, June 10, 1907, 291-292, June 17, 1907, 313-315 program and comments, July 1, 1907, 337-340, July 8, 1907, 349; 53 ibid., June 8, 1908, 192, June 15, 1908, 206, June 22, 1908, 221-223 program and comments, July 6, 1908, 253; 54 ibid., May 17, 1909, 179, June 7, 1909, 219, June 21, 1909, 244-246; 55 ibid., May 9, 1910, 149, July 4, 1910, 225-226 program; 56 ibid., July 3, 1911, 225 program and comments.
association probably hoped it would provide the same comraderie and professional closeness as riding circuit had. Many of the early papers presented to the association were reminiscences which the Executive Committee purposely requested because they believed the younger members should learn about their professional past. Socializing, in fact, became such a problem that the Executive Committee in 1905 decided to try morning meetings, free afternoons and evening entertainment in hopes that this would increase attendance, because there had been too much wandering around, visiting, and sitting on the veranda smoking. Complaints such as the following by H. J. Booth were common at business meetings, especially those held near the end of the session or that continued too close to meal times.

I think the further matters that might come before us should be postponed on account of the small numbers present.

Newspaper reports of meetings and announcements of coming ones often emphasized the speechmaking and banquets as reasons for attending. J. D. Sullivan, secretary of the Executive Committee, who took over when the president had to leave, closed the 1899 meeting by commenting that he had been coming to the meetings for twenty years and that he found them not only more and more agreeable, but also

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78 OSBAR, 1883, 19; 26 OSBAR, 1905, 9.
79 21 OSBAR, 1900, 70.
growing more sociable and tending to advance the professions. 80 The Weekly Law Bulletin summed up the advantages of the annual meetings in the following manner.

While the object of the meeting is the discussion of live topics and questions of interest to the profession, yet there is ample time for the enjoyment of the pleasures afforded at one of the best summer resorts. The latter is regarded as not the least of the benefits to be derived from the meeting, . . . 81

The activities of the Ohio State Bar Association manifest the same characteristics of professionalization as the American Bar Association. Interest in legal education appeared at the second annual meeting. In spite of numerous years when the Legal Education Committee was inactive, the association was responsible for many changes in


81 49 Weekly Law Bulletin, July 18, 1904, 337.
admissions and legal education within the state. As with the American Bar Association the connections between the Ohio State Bar Association and local bar associations was informal and tenuous. At first the founding of the state association was a stimulus to local associations. The Columbus Dispatch reported that the movement to organize a state bar association which was formed in 1869, remained inactive for a number of years. During the first few years the local associations met to consider the state association's programs and made specific recommendations to them. The association, however, tended to favor the recommendations of its own committees which did not always consider the suggestions of others, and the local associations soon discontinued the practice unless there was something directly concerning them. The association on its part passed several resolutions advocating the encouragement of local associations and complained about the lack of or quality of the locals, but does not appear to have accomplished much improvement. The reason for changing in 1901 the constitutional provision concerning the requirement for membership

in a local bar association was due to the quality of these associations. Some were exceedingly weak and others were split into many factions. This meant that many lawyers did not belong. The Admissions Committee often found itself turning down many attorneys they thought should belong to the association, because they did not meet the constitutional requirement of membership in the local association. Occasionally the state association did refer matters to the local associations but the result of these actions is not known. The issue concerning advertising by lawyers involved in injury cases mentioned previously is one example of this. Another example is a request that the association's desire for a longer term for Supreme Court judges be presented to the local bar associations as well as the legislature.\textsuperscript{83} The list of local bar associations published in the American Bar Association Reports gradually grew but if they drew any inspiration, obtained any aid or had any real connection with the state association, it does not show in the reports.\textsuperscript{84}

\textsuperscript{83}Columbus Dispatch, June 16, July 1, December 19, 1880; 3 OSBAR, 1882, 26-30; 4 OSBAR, 1883, 14-15; 17 OSBAR, 1896, 85-86; Ohio State Journal, December 27, 1880; 29 OSBAR, 1908, 28-29; 25 OSBAR, 1904, 7-9; 38 Weekly Law Bulletin, August 30, 1897, 129-132; 7 OSBAR, 1886, 104-105; 8 OSBAR, 1887, 89-90, 92-93; 27 OSBAR, 1906, 25; 22 OSBAR, 1901, 43-44, 90; 17 OSBAR, 1896, 58; 28 OSBAR, 1907, 14.

\textsuperscript{84}10 ABAR, 1887, 443-444, 4 associations; 11 ABAR, 1888, 367-380, 11 associations; 12 ABAR, 1889, 387-389, 11 associations; 13 ABAR, 1890, 388-389, 24 associations; 14 ABAR, 1891, 462-464, 24 associations; 15 ABAR, 1892, 477-478,
Ohio began considering the question of professional ethics about the same time as the American Bar Association and enthusiastically adopted their code. In the area of uniform legislation, which became such an important activity of the American Bar Association, Ohio was slow in acting although the subject was brought up several times. As the list of speeches and topics considered by the association in the Appendix shows, the activities and interests of the association were broad. They range from an interest in general reforms of the judicial system, election laws, taxation, municipal codes, codification and divorce laws to specific minor legal changes such as the regulations for cognovit notes, warrants of attorney, when laws take effect, married women, recording of deeds and corporate financing. Another similarity with the American Bar Association is their interest in increasing judicial salaries and the controversy over the initiative, referendum and recall. The association also took occasional interest in such items

as the state's centennial celebration, a memorial to Salmon P. Chase, the location of a naval training center in the great lakes, a monument to Admiral Perry and the condition of John Marshall's grave. However, the matter which received more attention than any other throughout the period was that of judicial reform.

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85 28 OSBAR, 1907, 16; 30 OSBAR, 1909, 23-34, 40. Ohio did not establish a commission on uniform legislation until 1898-1899 and again in 1902. For more on the uniform legislation issue see Chapter V. 7 OSBAR, 1886, 25, 111-12; 24 OSBAR, 1903, 158-159; 17 OSBAR, 1896, 25-26; 27 OSBAR, 1906, 10-11.
CHAPTER III

JUDICIAL REFORM

The major activity and reason for the existence of the Ohio State Bar Association was judicial reform. The problem was discussed at its first session and postponed to a special adjourned meeting in December just before the legislature convened. In spite of all the interest described in the previous chapter the question remained dormant until just before the adjourned meeting. Except for the Columbus papers which reported the Franklin County Bar Association's preparations for the meeting, the newspapers made no mention of the problem or the association until December.\textsuperscript{1} Of the two legal periodicals in the state, the \textit{Ohio Law Journal} was the only one to discuss some of the issues involved and possible solutions to the problem. On November 11 an editorial on the subject listed the members of the Judicial Administration and Legal Reform Committee and expressed the hope that they would be active, because,

\begin{quotation}
The fact is that the administration of justice in this state is almost as much of a farce in many
\end{quotation}

\textsuperscript{1}Ohio State Journal, November 16, 23, December 7, 20, 1880; Columbus Dispatch, November 15, 22, December 6, 18, 1880.
cases as the long-drawn contest known in history as Jarndyce against Jarndyce,\textsuperscript{2} and the machinery of the courts not entirely unlike the machinery of the Circumlocution Office.\textsuperscript{3}

The job the committee faced was a delicate and difficult one. Although the \textit{Law Journal} expressed the hope that the committee would meet and publish its results so that the members would have plenty of time to consider their report and gather opinions in their locality, the committee did not decide until December 28 after the meeting began.\textsuperscript{4}

Six of the eleven committee members first gathered in Cleveland in the end of November. For two days they debated several possible solutions and although most of them favored a plan similar to that advocated by Ranney in 1875, they adjourned to December 27 in Columbus without choosing one because of the small number at the meeting. In spite of the history of failure of constitutional amendments only two of the four suggestions the committee considered required legislation only. The favored plan was an amendment that created a new Supreme Court of nine judges with nine-year terms and replaced the District Court with Circuit Superior Courts. The Supreme Court was to hold one term in Columbus and the other terms there or


\textsuperscript{3}Ohio \textit{Law Journal}, November 11, 1880, 100.

\textsuperscript{4}Ibid., December 2, 1880, 124, January 1, 1881, 161.
elsewhere as provided by law. The Circuit Superior Court was to meet at least once a year in each county unless this proved unsatisfactory. In such a case the General Assembly was to arrange sessions so that each Common Pleas District would have three Circuit Superior Court sessions in three different places. Each Circuit Superior Court was composed of two Supreme Court judges and had the same original jurisdiction as the Supreme Court and such appellate jurisdiction as the General Assembly authorized. The present Supreme Court was to continue as a commission to handle unfinished business for no longer than three years. Election of the judges was to take place in April rather than October when other state officials were elected. The other suggested constitutional amendment was a modification of this one. It abolished the District Court and created a Circuit Court composed of either two Supreme Court judges or judges elected specifically for Circuit Court duty. A third plan also attempted to abolish the District Court, however, since its advocates feared any constitutional amendment was destined to ultimate failure, it proposed to do so by legislation. First the General Assembly was to divide the state into five districts and create five Circuit Courts with all statutory jurisdiction of the current District Court. Next they were to give the original jurisdiction of the District Court to the Court of Common Pleas and rule that appeals went from that court
to the Circuit Court. This would eliminate the District Court by giving it no practical reason for existing and create an appellate court that was entirely independent of either the Common Pleas Court or the Supreme Court. The last plan attempted to solve the problem by changing methods of appeal rather than radically changing the system. The current practice was for most cases to continue to the Supreme Court when the attorneys filed with the clerk. The advocates of this plan hoped to cut down on the number of cases on the court's docket by providing that except for certain cases, petitions in error must receive permission of the court or one of its judges in order to be filed. Also in those cases filed without leave the defendant in error could ask the Supreme Court to affirm the lower court's decision on the grounds that the proceeding in error was merely frivolous. If the court agreed he would receive his thirty-dollar deposit back and the plaintiff would be taxed thirty dollars plus costs. If, on the other hand, the court disagreed with the defendant's argument, the thirty dollars minus costs would go to the plaintiff. The committee also considered requiring that the appellate court depend on the testimony of the Court of Common Pleas rather than completely re-hearing the case, as was the current practice; the need for devising a plan
to shorten records in error causes; and making the appellee court findings upon issues or questions of fact final. 5

R. A. Harrison, a member of the Judicial Administration and Legal Reform Committee, later sent a plan proposed by C. C. Martin to the editor because he thought the bar should consider it along with those already published and he liked the idea of allowing the Supreme Court to divide into two sections. Although Martin's plan involved a constitutional amendment it did not radically change the existing system. It added one Chief Justice, appointed by the governor, to the current court, provided for division of the court if business required it and required at least one Supreme Court judge to participate in the District Court sessions. The Law Journal published one other plan contributed by a reader and wrote an editorial on the subject before the association acted. R. A. Constable recommended a separate intermediate appellate court of three judges per district. All cases in which the court upheld the lower court would end there. 6 Editorially the Law Journal supported the amendment establishing the Circuit

5 1 Ohio Law Journal, December 16, 1880, 140-141.

6 1 Ohio Law Journal, December 1, 1880, 134, December 23, 1880, 134, December 10, 1880, 153-154, 156. This was published the 28th before the meeting opened, January 12, 1881, 172.
Superior Court, although it also liked the appointed Chief Justice and Constable's amendment.

The Ohio State Journal was the only newspaper surveyed that commented editorially or published any of these plans previous to the meeting. It briefly summarized two of the plans and commented that any attempt to amend the constitution was a waste of time and money. Also many lawyers would object to the Circuit Superior Courts as they did to the District Court because the same judges would be involved in the courts at more than one level. The editor greeted the gathering lawyers with another editorial against a constitutional amendment and for a Circuit Court created by the legislature to replace the District Court. He also favored restrictions on appeals and asked the association to also consider the laws covering the selection of juries.  

The Judicial Administration and Legal Reform Committee gathered again on the afternoon and evening of the 27th, but postponed the decision again due to absent members. Their meeting the next day delayed the opening session and they did not make a final report until after three o'clock. According to the Ohio Law Journal there was much

7The amendment establishing the nine-judge Circuit Superior court and replacement of the District Court with a Circuit Court by statute.

8Ohio State Journal, December 18, 28, 1880.
anxiety and foreboding at these meetings over the reception of their plan.\textsuperscript{9} Besides these two meetings the members corresponded with each other on the subject. The amendment they finally suggested was basically the favored plan given above. The committee added Martin's suggestion of a division of the Supreme Court to the basic plan of a nine-member circuit riding Supreme Court. The parts of the report that created the most debate were the April and minority election provisions. The advocates of April elections believed that this would eliminate some of the politics involved in judicial elections by removing them from the highly partisan fall elections. Their opponents argued that April elections would be just as bad if not worse because local officials were elected in the spring and the judges could easily get involved in and be influenced by local politics and lawyers. In an attempt to insure that minority party candidates would also be elected each voter would be required to vote for less than the full number of positions open. If, for example, three positions on the Common Pleas Court in the First District were open, each voter would be able to vote for only two men. Since the three men with the largest number won, the advocates of this measure hoped at least one member of the minority

\textsuperscript{9} Ohio Law Journal, January 1, 1881, 164. Since this was part of a sarcastic attempt to ridicule the editor of the Ohio State Journal who came out against the association's program this may not be an accurate description of the actual atmosphere of the committee meeting.
party would be successful. The committee also resolved that appeals from the Common Pleas Courts involving re-hearing of facts were wrong in principle and one of the reasons for delay. Both Ranney and R. A. Harrison spoke for the amendment. The Ohio Law Journal was particularly impressed by Harrison's eloquent and logical two hour effort.¹⁰ Debate over the program lasted through the rest of Tuesday and Wednesday morning until pressured by the desire of many to catch the noon trains, the association passed the amendment seventy-two to eight, and asked the committee to present it to the legislature and to prepare legislation to carry out the resolution concerning appeals and one asking for an increase in judicial salaries.¹¹

Reaction to the association's program was mixed. The two legal periodicals printed numerous letters to the editor but only the Ohio Law Journal clearly took a favorable position. Although the letters found some good points in the amendment, they all objected to it or offered other plans. Judge Welch suggested three referees to help the Supreme Court judges with their research and decision


making. Welch felt this would improve the quality of decisions because each case would be considered twice and that it would clear the docket because the three referees working individually on the cases could work faster than the judges as a group currently did. S. C. Wheeler cautioned against change because change did not necessarily mean improvement and insisted that all the system needed was enough judges to handle the business of District Court. E. H. Kerr of Dayton argued for a division of the Supreme Court according to the kind of case into two co-ordinate sections. G. Bamback complained that with eighty-eight counties the court under the association's plan would have no time to hold both circuit and general sessions. Instead he favored judges elected for District Court duty, who met in a fixed place in each district, an increase in Common Pleas judges so that there was one or more per county as needed, an end of appeals to the District Court in chancery suits and more liberal provisions for retrial in the Court of Common Pleas. One other letter to the editor bitterly blamed all the delay on too much learning or search after learning by those not having it. Decisions by the early judges were made promptly without a constant search in books for precedents. James H. Thompson thought the people should be allowed to vote on a judicial amendment. The profession had done its part by offering the
best one it could agree on and the legislature should adopt it or think of a better one. 12

Newspaper comments and letters were also discouraging to those favoring the association's program. The Ohio State Journal made the most vehement objections. Its stand on a constitutional amendment had been clear since its December 18 editorial. On December 29 it again warned, "Gentlemen, you will do well to drop this constitutional 'plan' and try the reforming power of law." 13 It pleaded that if the association must continue along this misguided path at least it should accept amendments changing elections to October and eliminating the minority representation provision because the legislature would be sure to turn it down with these provisions included. The editorial ended with another strong anti-amendment statement.

The lawyers seem determined to discuss the question of a constitutional amendment in order to reform the judiciary. In our opinion they are simply wasting their breath. Their time costs nothing during the holiday season. 14

The State Journal also professed amazement that seventy-two of eighty learned lawyers could approve the proposed


13 Ohio State Journal, December 29, 1880.

14 Ibid.
amendment. It then proceeded to analyze, or as the Dayton Daily Journal put it, to rudely take the association's plan by the ears and pull it to pieces. The State Journal pointed out some problems the new system would face because of the constitutional provision requiring majority decisions. If the entire Supreme Court went on circuit duty at least one of the Circuit Superior Courts would have three members. What would happen when their cases reached the Supreme Court and the three judges were disqualified? At least five of the six remaining judges would have to agree in order to meet the constitutional requirement of a majority of the entire court. If the court decided to send four judges out on circuit duty while the other five held Supreme Court sessions, all five would have to agree for the court to do any business. 15 In January the State Journal wrote another scathing editorial in response to the article in the Ohio Law Journal reporting the Judicial Administration and Legal Reform Committee's meeting and criticizing the newspaper for its opposition to the amendment. The Ohio Law Journal stated,

With that calm deliberation born of a genius which with ease might amend the laws propelling and directing the systems of the eternal universe; which might sift the sciences and laugh to scorn the mysteries of nature's handicraft, this law writer of the Journal

holds up the plan--by the tail, as it were--and picks a thousand flaws in its substance and its form.

Now were the objections contained in the expose of the 30th ult., found in any ordinary sheet, or the product of any other less gifted mind than that of their learned author, we would feel inclined to say that the writer had not read the proposed amendments; or if he had done so, that he had not been able to understand them.16

The newspaper's editor responded that the proposed amendment was past all understanding and that even the calm deliberations of a born genius could never get to the bottom of it. The Ohio Law Journal argued that the amendment should receive better treatment because,

We would say that the proposed amendments were drawn by men whose long experience at the bar, and on the bench, render them pre-eminently well qualified to determine what is feasible and practicable, and what is not so, . . . .17

The newspaper responded that it agreed the writers of the amendment were men of first class ability, great learning, and long experience who were honestly trying to reform a system that badly needed reform but this did not mean their plan should be accepted without question. The men who framed the current constitution were equally eminent and learned. When that constitution was presented Judge Ranney, who had a great deal to do with the judicial article,

16 Ohio Law Journal, January 1, 1881, 164.
17 Ibid.
said that it was very near the perfection of human wisdom.\textsuperscript{18} He turned out to be mistaken then and it was just possible he was mistaken again. Finally the \textit{Ohio Law Journal} complained that it was too bad the problem had to be solved by a constitutional amendment that must be submitted to the people

\ldots and that the people may probably be influenced in voting by slushy objections to such proposed amendments, occasionally to be found in newspapers whose editors or law writers, have neither the ability to understand such amendments or the discretion to prevent a blundering opposition to any plan that could be devised to correct the existing evil.\textsuperscript{19}

In return the \textit{Ohio State Journal} cautioned the \textit{Law Journal} not to assume that editors were ignorant of the law and that their opinions on legal subjects were slushy writing. The editors of the \textit{State Journal} were lawyers who had read more law books than eighty percent of the state's practicing lawyers. The newspaper insisted that the majority of thoughtful lawyers in the state favored the same plan they did.\textsuperscript{20}

The \textit{Gazette} believed the plan was far from perfect

\textsuperscript{18}The actual statement was, "I will say after a careful review of the whole instrument—of all its parts—of every line and word, I believe before God and man that it is one of the best, if not the best, of the constitutions of the United States." Marshall, \textit{A History of the Courts}, I, 115.

\textsuperscript{19}\textit{Ohio Law Journal}, January 1, 1881, 164.

\textsuperscript{20}\textit{Ohio State Journal}, January 6, 1881.
but that it was an advance over the present system. It objected to the April elections as nonsense, but approved of circuit duty for the Supreme Court because it would mean returning to the old system which had worked so well before. It believed that most cases would end at the circuit level because decisions there would not be very different from those of the Supreme Court. The proposal was also commendable because it would bring judges of a higher character and greater independence into closer contact with local judges and lawyers. The Gazette also wondered if nine judges would be enough for both circuit duty and regular court sessions.  

Letters to the newspapers generally favored the amendment. "Scioto Valley" told the Ohio State Journal that he liked all but the minority representation clause and added a few suggestions of his own. He thought it would also speed business if the judges no longer wrote out opinions and the state discontinued the practice of having juries in magistrate's courts. The Ohio Law Journal agreed that business would go faster if the court would announce an opinion as soon as a majority agreed on it and worried about writing opinions later. Such opinions should be as brief as possible and if they were read orally and recorded by a

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Ohio State Journal, January 10, 1881 criticized the Gazette's editorial because it found both good and bad in the amendment. Cincinnati Gazette, January 8, 1881.
stenographer, the time involved in writing opinions would be much less. George W. Houk, a vice-president of the Ohio State Bar Association, wrote a letter supporting the amendment to the Dayton Daily Journal. He pointed out that New York, Illinois and a number of other states used the minority election method and had found it quite satisfactory. He argued that the best means of obtaining a proper remedy for the current evils was to rely on those with experience with the problem and a knowledge of methods that had been adopted elsewhere with success. The committee that wrote the program included men of this kind who had deliberated on the subject very carefully. Although he admitted he could not expect all features of the plan to receive the individual approval of all members of the bar, this amendment reflected the judgment of the one organization that had the right to assert the opinion of the bar of the state and if they expected its influence to be felt they should give the proposal hearty and unanimous support.²²

When the legislature gathered in January several newspapers mentioned judicial reform as one of the subjects they should consider. The governor, however, made no mention of it in his address to the General Assembly. Senator Pond presented a long memorial giving the constitutional

amendment, reasons why it was necessary, and arguments for it from the Ohio State Bar Association, to the Senate on January 25 and the next day the Senate ordered it published. The appeals resolution and the salary question were not mentioned because the committee thought it best to approach the legislature with one thing at a time. In March, General Durbin Ward, Judicial Administration and Legal Reform Committee chairman, and Judge Ranney appeared before a joint session of the judiciary committees of the legislature to argue for the amendment. The judiciary committees had two amendments for judicial reform to consider, but neither one was reported out of committee. This led the Ohio Law Journal to complain that the legislature had ignored the bar association's plan and was more interested in laws putting bounties on scalps of chipmunks or bald eagles. The bar association, they suggested, should pass a resolution thanking the legislature for the undisputed zeal, unmistakable patriotism and statesmanship the legislature displayed in passing some forty-seven dog laws while it did nothing to reform the administration of justice.

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23 The Ohio State Bar Association's amendment and one by Representative Hathaway that the General Assembly resubmit Article IV of the 1875 constitution. Cincinnati Gazette, March 17, 1881.

24 Cincinnati Gazette, January 1, March 12, 1881; Ohio State Journal, January 4, 5, 26, 1881, the House concurred on the 28th, Ibid., January 29, 1881; 2 OSBAR, 1880-1881, 31; 1 Ohio Law Journal, June 30, 1881, 459; 2 Ibid., October 6, 1881, 113.
Before the session began the Cincinnati Gazette predicted that the Ohio State Bar Association's proposed amendment would probably form a topic of a good deal of discussion but that after the solons had aired their rhetoric they would probably conclude to sit down on it. If they did air rhetoric on the subject it did not create enough of a stir to reach the newspapers. There are several possible reasons for this failure. According to the Gazette, the legislature had a small number of lawyers who might be interested in it and a hobby of economy. It could cost from $50,000 to $100,000 to submit an amendment to the people who had a long history of rejecting them. The Ohio Law Journal, on the other hand, stated,

It is and has been a source of much wonderment that the plans heretofore proposed by the State Bar Association were not kindly considered by the legislature, made up as it largely is of lawyers.\(^25\)

The Journal's explanation of this was that too many of them were from small counties where the problem was not so important and they did not have the personal experience with delay which led many lawyers to support reform. As the letters to the legal periodicals discussed above indicate, the legal profession was not united behind the amendment. The Columbus reporter of the Cincinnati Gazette reported an interview with a prominent attorney holding a high official position who thought that the Judicial

Administration and Legal Reform Committee had made the greatest blunder he had ever known men of equal ability to make. Several legislators he interviewed were also strongly opposed. The action of the Cincinnati Bar Association which met in March to consider the state bar association's pending bill indicates this lack of unity and probably lessened the bill's chances. In spite of the presence of Ranney as spokesman for the Ohio State Bar Association, the Cincinnati Bar Association eventually decided that a few amendments might make the bill more acceptable to the people of Hamilton County. They appointed a committee to present their changes to the legislature. These changes would have allowed Hamilton County to keep its District and Superior Courts as well as give the General Assembly more leeway in changing the regulations covering appeals. Senator Pond, who as sponsor of the bill, was supposed to campaign for it in the Senate, became more interested in other matters. The issue which occupied most of the legislature's time during that term was temperance. Senator Pond as author of one of the bills being considered became directly involved in that controversy and probably lacked the necessary time to successfully guide the association's bill through.26

Following this rebuff the association did not approach the legislature with another program until 1883. Due to a mix-up in arranging the 1881 meeting attendance was small. The association continued its debate of the year before over the proposed amendment and decided the Judicial Administration and Legal Reform Committee should reconsider the plan. They also asked the Committee to consider the idea of increasing the number of Supreme Court judges, requiring them to sit on the District Court and restricting appeals from the District Court to the Supreme Court.27

The next session of the legislature considered a number of bills involving jury reform, more room for the clerk of the Supreme Court, an increase in judicial salaries and a bill to prevent a Common Pleas judge from sitting on the same case on the District Court level, but did not consider making any changes in the system. By the meeting of the association in December, the demand for and interest in judicial reform was increasing again. The Ohio Law Journal opened the campaign with an editorial in July complaining again about the delay and the lack of legislative action. Many methods had been discussed by the Law Journal and state and local bar associations, but "The difficulty now existing seems to be the absolute imbecility of the majority of the wise men sent here annually

27 OSBAR, 1880-1881, 30-47. The mix-up involved the last minute postponement of the meeting due to the shooting of President Garfield.
to make laws." The editor expressed doubt that the legislature would act unless some special Moses got elected. In August the Law Journal used an account of the debate at the American Bar Association meeting over the Davis bill to launch into an editorial about the local situation. It complained that lawyers were constantly meeting in conventions where they haggled and quarreled over various measures and failed to unite on anything. Lawmakers were not going to act when they saw all this dissention among the lawyers.

There is but one thing to do; and that, to fully harmonize upon the recommendation of a "plan" and then present a bold front and demand its adoption. Until this is done, nothing will be done.

In November Judge Alfred Yaple of Cincinnati wrote a letter to the Cincinnati Enquirer presenting a plan of his own. He began by describing the problems of the court already described in this paper. Following some arguments for his plan he included his bill. He thought the solution

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29 This bill was pending in Congress to reform the federal judiciary due to the problem with delays in the federal courts by establishing an appeals court. The association after some debate decided to support the bill. 5 ABAR, 1882, 14, 18, 101, 343-386.

30 Cincinnati Gazette, January 4, 12, 21, February 1, 3, 1881; 3 Ohio Law Journal, August 24, 1882, 17-18.

31 Ibid., 18.
was an efficient, independent, intermediate court created by the legislature. His intermediate court consisted of twenty judges who would hold court twice a year in every county. This would eventually mean the state could cut down on the number of judges because fewer men could handle the Court of Common Pleas business if they did not have to worry about District Court sessions, and if his plan worked the legislature could also eliminate the Superior Courts. This would save the Cincinnati taxpayers $3,500, and if they contributed some money towards the salary of the new judges it would be easier to bear because the tax base would include the entire county, not just Cincinnati. The bill also provided that the judges would be reimbursed for any traveling expenses. This would eliminate their need to rely on railroad passes. If the legislators could be paid for their expenses when they went to Washington to attend President Garfield's funeral, certainly, judges should be paid for expenses they incurred while on official business. Although the judges were elected locally they could serve in any Circuit Court in the state. The Chief Justice of the Supreme Court would meet with them annually to map out the assignments. Each court would have two judges. If they disagreed a third judge would be called in and a special session held to handle that case. The bill also included many details concerning absence of judges, disqualifications of judges, salaries and
jurisdiction. Appeal from these courts to the Supreme Court was limited to certain cases. Yaple believed that these changes could be made without a constitutional amendment which was expensive and probably would fail. The cost of taking an amendment to the voters would cover the expenses of the new court for one year. His bill met with great favor both in and out of the profession.  

This suggestion stimulated the Franklin County Bar Association into action. Knowing the subject would come up at the annual meeting of the Ohio State Bar Association they debated his bill, appointed a special committee to study it and held a special meeting to consider their report. The committee reported in favor of Yaple's bill with a few changes that would make it more efficient. Some of the changes were meant to decrease the length of Yaple's bill and simplify some of its complicated machinery. They eliminated, for example, the role of the Chief Justice in planning the terms of the court.

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32 Cincinnati Enquirer, November 6, 1882. This was also published in pamphlet form in Ohio Law Journal, December 21, 1882, 279. Ohio State Journal, December 20, 1882; Newark Daily Advocate, December 28, 1882. The 3 Ohio Law Journal, January 6, 1883, 309, did receive a letter to the editor from T. W. Emmerson criticizing it as unconstitutional.

33 Yaple's program was described in detail in the Ohio State Journal, which thought the plan should be thoroughly considered by the profession.

34 It filled two full columns of small print in the newspapers.
Instead, the Circuit Court judges would meet annually, appoint one of their members to be supervising judge and arrange their own terms. They also changed Yaple's figures on salaries and eliminated completely the provision for expenses. The change which caused the most debate at their meeting was that providing for a second trial with two different judges if the first ones disagreed. The association finally amended the report so that if these two judges also disagreed the case was reserved to the Supreme Court and ordered that their version of Yaple's bill be presented at the Ohio State Bar Association meeting.35

Several more editorials and letters to the editors that give some indication of the increasing interest and demand for action appeared before the meeting. The *Ohio Law Journal* went so far as to work out five possible districts for the new court and expressed the hope that everyone would come to the meeting with a spirit of moderation and concession rather than already pledged to a pet plan and full of self-assertion, aggression and tenacity in its favor. O. W. Aldrich, soon to become associate editor of the *Law Journal* and once a professor of law at the University of Illinois, praised the Illinois system as a workable solution to a problem similar to the one Ohio

now had. His solution was an intermediate appellate court of five districts which would meet in Cincinnati, Columbus, Cleveland, Toledo and Athens. Each division would have three elected judges. Discussion of judicial reform was wide spread enough to stimulate a layman, who called himself vox populi to offer a plan of his own. He called for dividing the Supreme Court into two courts and establishing an independent intermediate court to replace the District Court. One of the goals of his plan was not to disturb the existing system which was well matured and understood by lawyers, judges and the people. Although the Newark Daily Advocate did not discuss the details of the many plans or take a stand, it clearly saw a need to do something. Remembering someone several hundred years ago who thought the law's delays was one of the best reasons for suicide, the Advocate stated that if this man lived today he wouldn't even take time to talk about it before he committed suicide.

But, one thing is sure, some plan must be determined on, and that soon, by which the client, who begins a suit when a young man, may expect, at least, to reach a final trial before he is gathered to his fathers.


37 Newark Daily Advocate, December 28, 1882. It did say that Yaple's plan upon a cursory examination was good as far as it goes and expressed a belief that a constitutional amendment might be necessary.
The lawyers gathered at Gibson House and College Hall in Cincinnati on December 27th eager to settle on a solution. The evening before a reporter from the Gazette interviewed General Charles H. Grosvenor, chairman of the Executive Committee, who emphasized that, though they were going to have a good time, the important thing was to find a solution to the court problem. In spite of the good work done by the Supreme Court, the list of cases on the docket had increased in the past year by 157 cases. There would be two questions for the meeting to consider. First, whether or not to ask for another commission and second, some permanent solution. The weight of opinion, he reported, was against an increase in the number of judges and Yaple's bill would be a prominent matter of discussion. Grosvenor clearly thought it was impossible to obtain a constitutional amendment.

The Judicial Administration and Legal Reform Committee met and modified its original proposal. Membership in this committee was changed only slightly at the 1882 meeting. Three districts appointed different men and the new president was made a member at large along with now ex-president

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38 At one point they voted to forget the rest of the papers and program so they could spend all their time on the Judicial Administration and Legal Reform Committee Report, 3 OSBAR, 1882, 52.

39 Rufus King agreed that public opinion was against an increase in the number of judges in his presidential address. 3 OSBAR, 1882, 119; Cincinnati Gazette, December 27, 1882.
Ranney. Whether this had any effect on the decision to revise the proposed amendment is not clear. Ward said some of them were not satisfied with the report at the Toledo meeting, but the opposition by the public and many lawyers described above probably had more influence on the committee. They still insisted, however, that a constitutional amendment was the only safe solution. Included in their report was a letter from the clerk of the Supreme Court, the only court with a large backlog of cases, that described the extent of the delay. In December, 1880 there were 885 cases pending. By the end of 1881 the court had settled 245, but 368 new ones were added to the list. The figures for 1882 were 272 settled and 396 new. This meant that as of December 16, 1882 the Supreme Court had 1,146 cases pending! No wonder pressure for action was increasing. The committee's new amendment made two significant changes. First it abolished the District Court and replaced it with an independent intermediate appellate court to be called the Circuit Court. Second, it left many more details up to the legislature than the previous constitution in order to make it easier to change as the situation required. The number of Circuit Court districts, the salaries, the appellate jurisdiction, the number of judges per district and the terms were all left to the legislature. The legislature was also given
authority to increase the size of the Supreme Court and to authorize its division.

Following this report, M. A. Daugherty of the Franklin County Bar Association, presented their bill, and emphasized their belief that a constitutional amendment would not succeed. Judge Hunter, of Newark, also offered a plan, which he had discussed with some people in his district. This plan called for an increase in the number of Supreme Court judges so some of them could preside over the District Court while others held regular sessions. Hunter favored a constitutional amendment but offered a bill because he did not think a constitutional amendment could succeed. Judge Yaple also offered the following resolution:

Resolved, That this Association is in favor of a court intermediate between the court of common pleas and the Supreme Court, possessing all the appellate jurisdiction of the district court, to be created by the legislature, and the judges of which shall not be either judges of the court of common pleas or Supreme Court, but judges specially elected to compose such court.\(^{40}\)

The association decided to print all of these plans and consider them the next day.\(^{41}\)

After some debate over procedure, the association settled down to debate the various plans. The Ohio Law Journal's request for concession and moderation was

\(^{40}\) OSBAR, 1882, 31.

\(^{41}\) OSBAR, 1880, 19; 2 OSBAR, 1880-1881, 57; 3 OSBAR, 1882, 18-35.
answered because speakers throughout the debate expressed a similar desire for unanimity and a willingness to compromise in order to get it. They spent more time arguing the issue of constitutional amendment versus legislation than they did the other details of the plans. The history of past constitutional amendments led many, who were not absolutely certain that the legislature could create the kind of intermediate court they wanted, to support a bill of some kind. Those favoring the amendment insisted the clause of the constitution allowing the legislature to create courts "... inferior to the Supreme Court, in one or more counties, ..." did not give them the right to create a state-wide court like the proposed Circuit Court, especially if it meant taking constitutionally established jurisdiction from a constitutionally established court. If they could do that, then they could do the same with the Court of Common Pleas. The association finally adopted Yaple's resolution minus the phrases "to be created by the legislature," and "appellate," so the court would have the same jurisdiction as the District Court. An attempt to substitute "to be created by constitutional amendment" in the resolution failed at this point, but as the debate continued more speakers argued for,

\footnote{Ohio Law Journal, January 13, 1883, 321 thought so too.}

\footnote{Marshall, A History of the Courts, I, 116.}
or admitted they really favored, a constitutional amendment. One of these was Critchfield, a member of the Franklin County Bar Association's special committee to consider Yaple's bill, who had since decided that a constitutional amendment would be best. What would happen if they got the new system going and then the Supreme Court declared it unconstitutional? Also the people would probably give the new system more support if they had been able to vote on it first. Judge Hunter, seeing the support for an independent court, eventually withdrew his plan and the association turned to Daugherty's. Two men pointed out that the legislature would balk at increasing the number of judges by such a large amount without first taking the issue to the people. Durbin Ward closed the debate with a detailed explanation of why the committee thought they must try a constitutional amendment and the association unanimously adopted the committee report with a few minor amendments. The most significant one, because it would later lead to much debate, was that,

The judges who may be in office when this amendment takes place shall continue in office until their terms expire, respectively.

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44 One allowed the legislature to authorize three divisions of the Supreme Court instead of two. The other eliminated the provision that two-thirds of the members of each house was necessary to authorize such a division. 3 OSBAR, 1882, 36-62.

45 3 OSBAR, 1882, 58-59.
A special committee of twelve\textsuperscript{46} was appointed to present this program to the legislature. The association also passed a resolution asking the Supreme Court to apply for another commission. Another issue the association considered was that of the need to change the rules of practice. Charles Kent of Lucas County offered a resolution directing the Judicial Administration and Legal Reform Committee to prepare bills limiting the appellate jurisdiction of the Supreme Court in civil cases to questions of law only, and ruling in cases appealed to the District Court that the testimony be certified and no more oral testimony be taken. The published proceedings show no record of action taken on the first section of this resolution and the second part was voted down.\textsuperscript{47} Immediate comment by the newspapers surveyed and the legal periodicals was minimal. The \textit{Ohio Law Journal} did print a speech by Charles Kent given before the Lucas County Bar Association favoring the constitutional amendment. Kent pointed out the major problems and reasons why the current system should be changed. The remedy, he believed, was an intermediate court that was independent of the other courts and

\textsuperscript{46}One from each district plus two more from Franklin County. Only two men, one of whom was Durbin Ward, was on the Judicial Administration and Legal Reform Committee, 3 OSBAR, 1882, 65, 81.

\textsuperscript{47}\textit{Ibid.}, 67-70.
an increase in the working force of the Supreme Court, none of which could be properly done without a constitutional amendment such as that proposed by the state bar association. The constitution allowed the legislature to increase the number of Supreme Court judges but without the bar association's amendment such an increase would only mean an increase in the number of judges necessary to reach a majority decision rather than helping the court work faster.\textsuperscript{48}

Later in January Samuel R. Reed, an editor for the \textit{Cincinnati Commercial Gazette}, wrote a series of signed editorials attacking the amendment which stimulated a series of general judicial reform suggestions from F. A. Thomson\textsuperscript{49} and three pro-amendment letters. Reed began by saying that the bar association's plan deserved consideration due to the high character of the association and on its own merits. Although he later admitted a need for some reform, he complained that the lawyers were dissatisfied with the current situation because the delay in the courts decreased their business and severely criticized the amendment. The most important court was that of Common Pleas. It should have high caliber judges and be

\textsuperscript{48} \textit{Ohio Law Journal}, January 13, 1883, 327-328. The current constitution required majority decisions in all cases.

\textsuperscript{49} Reed signed his editorials SRR and Thomson signed his FAT.
given more responsibility. The only reason the members of the bar association could give for eliminating the District Court was that because of the custom of judicial courtesy the other judges would defer to the opinion of the one who sat on the case at the Common Pleas level. This was an unfair attack on the integrity and quality of these most important judges.

Only in a time of professional good fellowship could the Bar Association of a great State harmonize on a judiciary plan which impeached the Judges of the most important Court, and yet leaves this Court to be run by such Judges, while it provides no other means to create better Judges, for the proposed improved Court.\(^{50}\)

Next he objected to the proposed division of the Supreme Court. He insisted that the bar association meant for the legislature to increase the court by one and divide it into three sections of two judges each. Two judges at the final review level went against all current thinking concerning the number of judges that should sit on a case. If the voter accepted the argument concerning judicial courtesy then this plan of dividing the court would ruin it. In every case on which the two judges could not agree, the rest of the court, when it reviewed the case, out of courtesy to each man would divide into two factions. If this argument did not apply to the Supreme

\(^{50}\)Cincinnati Commercial Gazette, January 16, 1883.
Court then why was the District Court, which had a similar set-up, bad and why did the state need twenty or thirty new Circuit Court judges? Reed insisted that the bar association's plan called for ten Circuit districts. More judges was not the solution. The problem was the system of practice that allowed all issues to be considered by all the reviewing courts. There was no reason why a competent judge who saw and heard the actual testimony was not a better judge of facts than another judge who had to rely on the written record. The lawyers at the 1874 constitutional convention also agreed the problem was not the system but the practice. These lawyers devoted more time and study before they reached their conclusions than the bar association could at an annual social gathering. Thus their conclusion was more accurate.

It shows that if the jurisdiction of the Courts were arranged for the administration of justice for the people, instead of for the trade of the poorer sort of lawyers, the present judiciary would be adequate. SRR 51

Reed's solution was to change the system of practice to limit appeals to questions of law. In order to maintain high standards and avoid the problem of judicial courtesy by the Common Pleas Court judges, the legislature should require the Supreme Court judges to participate in District Court sessions. If Reed had his way the judges would be

51 Cincinnati Commercial Gazette, January 26, 1883.
appointed for life and receive salaries fit for men of high standing plus expenses. Without these changes he believed that the Circuit Court would also fail because it had the same problems as the District Court. Reed also questioned the chances of getting such an amendment passed and raised the point that lawyers were responsible for the current constitution and problems.\textsuperscript{52}

But after such lamentable failures of lawyers in forming a judiciary; after they have so long tinkered only to spoil; a new shift, which founds itself wholly on the declaration that all their prior contrivances are failures, can not be received upon the mere dictum that this is of the lawyers.\textsuperscript{53}

Durbin Ward wrote two letters defending the amendment. He corrected Reed's statements that the plan meant twenty judges for ten circuits or a Supreme Court divided into three sections of two judges each. He believed the legislature had some common sense. He also gave some reasons for the desire to change the District Court and for the choice of a separate intermediate court. Many members of the association who favored a circuit riding Supreme Court changed their minds when it was pointed out that it would take at least a dozen judges to handle the whole state. As it was, the District Court in Cincinnati was a full time job for three judges. If the present system was

\textsuperscript{52}\textit{Cincinnati Commercial Gazette,} January 16, 17, 24, 26, 27, February 2, 4, 15, 1883.
\textsuperscript{53}\textit{Ibid.}, January 24, 1883.
maintained it would take all of the time of the five
Supreme Court judges to attend District Court sessions.
The association did not mean to question the integrity or
ability of the Common Pleas judges by taking them off the
intermediate court. On the contrary, the whole association
thought this court the most useful one and wanted the
judges to have full time for their work there. Ward also
objected to Reed's criticisms of the legal profession and
presented the arguments he gave to the association for a
constitutional amendment rather than a legislative solu-
tion. The other letter defending the proposed amendment
was that of Charles Kent of Toledo. He argued that the
new amendment was an improvement over the old constitu-
tion, which contained too many details, because it left so
many items for the General Assembly to arrange according
to current needs. The larger constituency which would
elect the new judges was another improvement. The major-
ity of the state's lawyers believed a constitutional
amendment was necessary to obtain the new court. Kent
counteracted Reed's objections to a divided court in which
questions the judges could not agree on would be referred
to the whole court by pointing out that few dissents were
filed. He agreed that there was a need for reform in
practice but that was a divisive subject and hopefully
the new system might make such changes easier.\textsuperscript{54}

\textsuperscript{54}\textit{Cincinnati Commercial Gazette}, January 25, 29, 1883,
"F.A.T." offered his own solutions to judicial reform in a series of letters that supported Reed's demand for changes in practice and objected to the proposed amendment. The day the legislature was considering the bill for the last time he wrote a letter saying that the measure should die along with all other measures that tended to multiply rather than decrease the evils of delay. How could a General Assembly of so many experienced lawyers favor so much tinkering with the judicial system? All the amendment was doing was substituting one court for another rather than changing the faulty system.55

Governor Foster called the attention of the legislature to the inadequacy of the judicial system for the needs of business and the people, and emphasized that it was important for the legislature to provide relief soon. The next day the Senate adopted a resolution establishing a special joint committee to study the problem of relief for the Supreme Court and the cramped quarters of the Supreme Court clerk. The House agreed the following day. This committee met with the Supreme Court judges on the evening of January 19 and concluded that a number of procedural changes would improve the situation without a

Reed's answers can be found January 29 and February 1, 1883, Kent's February 4, 1883.

constitutional amendment. In fact there was no mention of the bar association's program in the newspaper report of this conference. The suggestions included limiting appeals according to the amount involved, how the District Court decided an issue and the kinds of questions involved. At this meeting the participants did not make any decision on the question of a Supreme Court Commission. Accordingly Senator Wilson, chairman of the joint committee, introduced a bill amending the revised statutes to provide the Supreme Court with a reporter and limiting appeals by requiring a case involving at least $500 or a unanimous opinion of the District Court that the case should be appealed to the Supreme Court. It also limited the Supreme Court to reviewing errors of law. The Ohio Law Journal complained about the confusing language of this law,

... a law, in fact, so wonderful in its construction and application that it bewilders at once its involuntary creators and its unfortunate victims.

The Ohio State Bar Association formally presented its program to the house January 18. Further action did not

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56 Sections 435, 455, 6710, 6711 and 7356.

57 Ohio State Journal, January 3, 4, 5, 1883; Cincinnati Commercial Gazette, January 20, 25, 1883; a copy of the bill as passed is given April 15, 1883 and in 3 Ohio Law Journal, April 28, 1883, 555-556.

58 Ibid., 556.
occur immediately and by January 25 the Ohio State Journal editor was complaining about the lack of activity on the part of the bar association in getting its programs through the legislature. He also expressed the belief that if the Supreme Court asked for another commission, as he thought they should, the legislature would respond. That same day the State Journal reported that General Jones introduced a resolution containing the bar association's program to the House. Another Mr. Jones introduced a bill increasing the size of the Supreme Court and assigning them to specific District Courts. In February the Supreme Court officially asked for a commission and General Jones introduced a bill to create one. The Ohio State Journal reported that people were so confident that this bill would pass that they were already canvassing for the offices. A large delegation from Dayton, for example, called on the governor the same day the bill was introduced to urge that he appoint Judge Haynes. In spite of this optimism the commission bill ran into some opposition from the Democrats who did not like the idea of giving the Republican governor a chance to appoint five new officials. The Ohio Law Journal saw this as a disaster and asked the Democrats to forget party for once because there was a great need for relief. By the end of the month, however, the commission bill passed both houses and the next month the governor made his appointments. The commission organized immediately
and by December 20th the commission and court had disposed of 454 cases. During the two years it was in existence they were able to dispose of 1210 cases. The constitutional amendment was adopted by the House sixty-eight to eight, but it took two tries before it passed the Senate because the first vote, although there was only one senator opposed, did not have the necessary three-fifths of the Senate. The next day the bill was reconsidered and adopted. 59

Once the bill was adopted comment on judicial reform in the papers surveyed disappeared until just before the election. Mr. Reed wrote two more editorials objecting to the amendment and the method of printing tickets.

As a monument of foolishness in distracting and destroying a judiciary, in the name of improvement, and of departing from all which wisdom has approved in the centuries of the development of a judiciary in English law, it is a prodigy.

A practicing lawyer must have taken leave of his lawyer sense and experience in order to believe that what is contemplated by this amendment will improve the judiciary. 60

The majority of the tickets described by Reed were printed "judicial amendment, yes" which meant all unmarked ballots were counted as yes votes instead of no. Reed pictured


60 Cincinnati Commercial Gazette, October 6, 1883.
the whole action in terms of intrigue and conspiracy. The amendment was written by a combination of lawyers of both parties, log rolled through the legislature and now they were getting favorable ballots written throughout the state. Except for the added detail that the expenses of all the new judges sure to be created would equal at least $150,000 a year, Reed’s arguments against the amendment were the same as those described above. 61

Judge Ranney also came out against the amendment just before the election. 62

... I can see no good in it. It undertakes to create an entirely new court, with an unlimited number of judges, and a large increase of office-holders, with a corresponding increase in the expenses of the judicial system.

But worse than all that, it completely destroys the present independent position of the judges of the Supreme Court, as well as of the Court proposed to be created. 63

This was because the new system allowed the legislature to fix terms and salaries as it pleased rather than protecting the judges by establishing such items in the constitution. Ranney was not planning to publicize his objections until

61 Cincinnati Commercial Gazette, October 6, 1883.
62 Cleveland Leader, October 7, 1883; also published in the Ohio State Journal, October 8, 1883 with the comment that it was too bad he had not spoken earlier so the amendment could receive full discussion.
63 Cleveland Leader, October 7, 1883.
he heard about the plans to get the ballots printed favorably,

If such a conspiracy really exists [to print such ballots] and is attempted to be carried out, I have no hesitation in denouncing it as a base fraud and imposition upon the electors, and an attempt to change the Constitution, by a species of jugglery, without the free assent of a majority of them.\textsuperscript{64}

The members of the Constitutional Convention had meant to leave the Constitution open to easy amendment but they did not plan for people to make such a mockery of it.

But to change it by fraud, surprise, or coercion, is to render it valueless as a permanent safeguard of the rights and interests of the people.

Certainly such a scheme was a fraud and

I still deem it my duty to myself and to my colleagues, whether dead or alive, to resist all insidious attempts to make of the Constitution a rope of sand instead of the guardian protector of the rights and liberties of a free people.\textsuperscript{65}

The legal periodicals both favored the amendment. A letter to the \textit{Ohio Law Journal} stimulated the action that angered Ranney and Reed. In May H. C. Carhart wrote the editor saying that past experience showed that support or at least silence by both political parties was not enough to get an amendment passed. He suggested that in addition to a full and open discussion to educate the voters,

\textsuperscript{64}Cleveland Leader, October 7, 1883.

\textsuperscript{65}Ibid.
the association advocate printing favorable ballots. The editor agreed that every lawyer should work for the amendment and the Executive Committee of the Ohio State Bar Association responded by calling a meeting to consider how to get the amendment passed. The committee decided to appoint two members of each party in each county to aid them in working for the amendment and later reported that everyone asked did so even though the committee had not checked their position on the amendment before asking them. A circular sent to these men asked them to work to get the amendment on the state ticket so it would avoid getting involved in local controversy and to have the ballots printed "Judicial Constitutional Amendment, Yes."

The results of the special committee's activities has already been described.  

As with the Supreme Court Commission Amendment in

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66 The local controversy they were worried about was the liquor issue. The liquor amendments were on the county tickets which were easier to change than the state ticket and varied from county to county and party to party. 4 OSBAR, 1883, 28-29; George Hoadly, successful Democratic candidate for governor in 1883, suggested earlier that since this tactic had helped the profession obtain the Supreme Court Commission the method should be used again. 3 OSBAR, 1882, 56; 3 Ohio Law Journal, May 12, 1883, 579-580, May 19, 1883, 597, June 2, 1883, 629; 4 OSBAR, 1883, 27-28; just before the election both legal periodicals reminded their readers of the importance of the amendment and urged them to work for it, 10 Weekly Law Bulletin, October 1, 1883, 165-166; 4 Ohio Law Journal, September 29, 1883, 169. Some people were still complaining about the association's methods as late as Ohio State Journal, April 1, 1898.
1875, this tactic was important because it probably was the major reason why the amendment passed.\(^67\) Most voters were more interested in the candidates and the two temperance amendments.\(^68\) In spite of its successful passage the amendment immediately created controversy. S. R. Reed and many others questioned its validity because of the trickery used to get it passed.\(^69\) Aaron A. Ferris, a members of the bar association, wrote the *Weekly Law Bulletin* concerning the effect of the amendment and on this point concluded

It must be admitted by every one that the Constitution so amended is now in full force. This is not to admit that the amendment has been legally adopted. For it is possible to suppose that a Constitution, the adoption of which has been procured by fraud, either in the method of voting thereon, or by misunderstanding or irregularity, may become the Supreme law of the state. So long as the people acquiesce in the Constitution fraudulently adopted, or adopted through irregularity, they of course are bound by its provisions.\(^70\)

More discussion and confusion developed over the wording of the amendment than the methods used to obtain its passage. Harrison's clause concerning the term of the Supreme

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\(^67\) Total votes in the election, 721,310; total cast for the amendment, 400,922, *Ohio State Journal*, October 29, 1883.

\(^68\) These two amendments failed.

\(^69\) *Cincinnati Commercial Gazette*, October 13, 1883; *Ohio State Journal*, November 24, 1883.

\(^70\) *Weekly Law Bulletin*, February 4, 1884, 61.
Court judges was changed before the amendment was presented to the legislature\textsuperscript{71} to read,

The judges of the supreme court in office when this amendment takes effect, shall continue to hold their offices until their successors are elected and qualified.\textsuperscript{72}

In the same 1883 election that the voters accepted the amendment they elected two Supreme Court judges to fill two vacancies on the court. In considering the question of when the amendment went into effect and when the judges were elected, many assumed that the two new judges could not take office unless a new election was held. Some lawyers also believed that the new amendment meant the Superior Court in Cincinnati had been abolished. R. A. Harrison wrote a widely published letter to the \textit{Weekly Law Bulletin} explaining the change, the original meaning of his amendment and arguing that those who believed the new judges should not take their seats were unconstitutionally sound. The \textit{Ohio State Journal} found a Supreme Court decision of Ranney's\textsuperscript{73} that supported Harrison's argument that the new judges could take office. The controversy quietly died down and the two judges eventually took office as though it had never occurred. The following year the legislature

\textsuperscript{71}10 \textit{Weekly Law Bulletin}, November 5, 1883, 269-270.

\textsuperscript{72}3 \textit{OSBAR}, 1882, 170.

\textsuperscript{73}\textit{State v. Dudley}, 1 OS, 437-442.
passed a bill making their election legal. The controversy over the Superior Court suffered a similar fate especially since the three judges involved insisted that the whole idea was unworthy of consideration and continued working. Reed used the entire argument to make more comments concerning the wise legal profession that wrote the amendment and now couldn't understand its meaning. By November 20 the Ohio State Journal reported that many lawyers were having second thoughts about the amendment. It predicted that the legislature would not bother to pass any of the legislation necessary for the amendment to be carried out.  

The bar association met in December and proceeded to consider how to implement the amendment. This proved to be a two year project. The meeting began with an excellent address by President R. A. Harrison which summarized the actions of the General Assembly, listed eight issues the legislature had to decide in order to carry out the amendment and offered suggestions on most of these. His speech took two hours and the Cleveland Leader recommended it to the legislature. The success or failure of the Circuit Court depended on how well the legislature solved the

issues of the appellate jurisdiction of the court, the
number of judges and circuits, the boundaries of the cir-
cuits, the terms of the judges, when they would be elected,
when the terms would begin and the salaries. One other
issue was whether or not to change the Supreme Court as the
new amendment allowed. Harrison also expressed the hope
that the new court would have enough judges to handle its
business, because "A judge may be able to toil mentally,
thirteen or fourteen hours out of every twenty-four hours,
for a few weeks, but he can't do it 'the year round.'"
The legislature should also be careful to draw the circuit
districts so that each court could finish most of its busi-
ness each term without rushing the work.

. . . experience has abundantly demonstrated that
when dispatch amounting to haste, and not a fixed
resolution to adjudicate rightly after thorough
investigation is the motive power which moves
such tribunals they soon lose the respect and con-
fidence of the community and the bar.  

Although the Cincinnati Bar Association presented a pro-
gram, the state association, after much debate, adopted

75 OSBAR, 1883, appendix, 25-27, for entire speech
see 1-55.

76 OSBAR, 1883, 14-16. In spite of the fact that
Durbin Ward attended the Cincinnati Bar Association meet-
ing and thought that the report contained some suggestions
of merit when it was presented to the Judicial Administra-
tion and Legal Reform Committee they declined to adopt it
because they had already adopted their own plan. The Cinc-
ninnati Bar Association met after the Ohio State Bar Associa-
tion meeting and decided to present their program to the
legislature anyway. 10 Weekly Law Bulletin, December 24,
1883, 434; 11 Ibid., January 21, 1884, 29.
the report of the Judicial Administration and Legal Reform Committee with few changes. They decided it was best to leave the Supreme Court alone and concentrate on organizing the Circuit Court. The report suggested seven circuits, twenty-one judges elected for a six year term with a $4,000 salary and a jurisdiction similar to the old District Court. There was an unsuccessful attempt to change judicial elections to April. The number of circuits created some debate and was finally solved by rewording the report so that it recommended seven or more circuits. The Judicial Administration and Legal Reform Committee was given authority to draw up the necessary bills and present them to the General Assembly. 77

Although Governors Foster and Hoadly reminded the legislature of the need to act, they did not recommend a specific program. The Senate showed interest by considering a resolution to gather information from the clerks of the Common Pleas Courts to help them draw circuit boundaries but specific action did not occur until much later in the session. The Judicial Administration and Legal Reform Committee had their bill, which carried out the association's program, completed by the first part of February. At this point the Ohio Law Journal predicted prompt endorsement by the legislature. Meanwhile the Weekly Law

77 Cleveland Leader, December 27, 1883; 4 OSBAR, 1883, 39-77.
Bulletin was asking why no bill concerning the Circuit Courts had been introduced. The chairman of the House Judiciary Committee, Bargar, eventually introduced a bill calling for ten circuits of three judges each with six year terms and $4,000. They were to be elected in October and the first term would begin February 9, 1885. The jurisdiction of the court was to be concurrent with the Supreme Court and the court was to have final jurisdiction in all matters of fact. The Ohio State Journal noted that the districts were equally apportioned and compact in territory with a population of 308,000 to 324,000, but objected to their political inclinations. In 1883 all but two of them went Democratic. A month later the Democratic caucus decided to change the bill to seven circuits because of the opposition to the original plan and the large number of new officials it involved. This bill with a few minor changes in the boundaries of the circuits finally passed in April and the Ohio State Journal thought it was fair.  

The Cincinnati Commercial Gazette, however, commented that,  

Even by its friends the bill is acknowledged to be a very unsatisfactory one, and it was passed under a feeling of "good riddance" more than anything else as the members are heartily

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sick of the whole business and want to go home.\footnote{Cincinnati Commercial Gazette, March 28, 1884.}

This is exactly what the legislators did, without passing a law authorizing the new Circuit Court to do anything except begin their term on February 9, 1885. In December a special Senate Committee met in Columbus to consider the problem. T. J. Godfrey, the chairman, wrote a letter to Governor Moadly asking him to let the bar and the newly elected judges know of the meeting so they could help the committee.\footnote{Published in the Ohio State Journal, December 12, 1884. The 6 Ohio Law Journal, December 13, 1884, 349 also reported that the judges were invited to participate. They also reported the results of a meeting early in December and described a bill the chairman of the House Judiciary Committee was considering introducing. December 20, 1884, 362-363.} The Senate committee met with the Ohio State Bar Association's Executive Committee the night before their annual meeting and drew up a report which the association finally accepted after considerable discussion that included nearly every member. Much of the debate involved a minority report that would limit the jurisdiction of the Supreme Court by making all decisions in the Circuit Court that upheld that of the lower court final unless it involved a constitutional question or an important question of law which the Circuit Court judges thought the Supreme Court ought to consider.\footnote{One of those supporting this was Durbin Ward, the current president. 5 OSBAR, 1884, 36.} Some felt it would be
better to wait until they saw how the Circuit Court worked, while others objected to limiting the Supreme Court on principle. The Ohio State Journal sided with those favoring limitation of jurisdiction. Another subject of debate, which the Ohio State Journal thought had the greatest divergence of opinion was whether or not to require the presence of all three judges in order for the court to do business. The association by a large majority sided with the committee's recommendation to make two judges a quorum. The bill basically gave the Circuit Court the same jurisdiction as the District Court except that it made it easier to appeal questions of law to the Supreme Court without requiring a new trial and changed the rules covering injunctions so that they remained in effect during appeal. Godfrey introduced the resulting bill into the Senate on January 8 and with a few minor amendments it was finally passed a few days before the court was due to begin work. This did not end the legislation necessary to get the courts established. The judges at their organizational meeting asked for some changes and legislation arranging such things as clerks and stenographers for the courts were being considered in April. Chart IV describes this new court system.

82 Ohio State Journal, December 30, 31, 1884, January 1, 9, 23. February 7, 9, 11, 13, 27, 29, March 13, 20, 21, April 25, 1885. In fact the next session considered a bill repealing all statutes involving the abolished District Court. February 22, 1886. 5 OSBAR, 1884, 83-119.
CHART IV  OHIO JUDICIAL SYSTEM IN 1885.

SUPREME COURT

O O C.J. O O
Original: quo warranto; mandamus; habeas corpus; procedendo.
Appellate: as indicated. Petition in error only by leave of court, except as to judgment of Circuit Court.

SUPREME COURT COMMISSION
O O O O O
same as Supreme Court

CIRCUIT COURT

O P.J. O
Original: quo warranto; mandamus; habeas corpus; procedendo.
Appellate: as indicated. Appeal only where no right to jury trial below.

COMMON PLEAS

O
Original: all civil cases above $100; divorce and alimony; all crimes except minor offenses triable before a justice of the peace.
Appellate: as indicated. Appeal only in civil cases.

SUPERIOR COURT OF CINCINNATI

O
same as 1860

PROBATE COURT

O
same as 1850

POLICE COURT in first class cities

O
same as 1852

MAYOR'S COURT in villages and second class cities

O
same as 1852

JUSTICE OF THE PEACE

O
same as 1860

BOARDS AND OFFICERS exercising judicial functions

Key

Appeal
Proceedings in error

Amer. The Ohio Judicial System, 30.
This reform was the first one attempted by the association and one of its most successful. In later years it was referred to as proof of the importance of the association and as something to live up to. At first some members felt that because the legislature accepted this with very few changes they would accept anything the association suggested. 83 Although it did not completely solve the problem of the Supreme Court's crowded dockets, the profession seems to have been generally satisfied with the operation of the Court. There was some effort to change the terms and circuit districts. In 1885 the association accepted a resolution that the General Assembly should study the working of the court to see if any changes in circuits, the number of judges or their duties were necessary now that people had a chance to see how the court worked. A couple of years later the General Assembly created an eighth circuit. There was also some debate during 1898 over creating a ninth circuit. There was some complaint in 1886 that the legislature was not living up to one of the promises used to get people to support the new amendment because the General Assembly was increasing Common Pleas judges rather than decreasing them. On the other hand, there were occasional rumors and suggestions from a few

83 6 OSBAR, 1885, 29-30; 8 OSBAR, 1887, 21; 10 OSBAR, 1889, 114-118; 15 OSBAR, 1894, 106; 26 OSBAR, 1905, 81; 33 OSBAR, 1912, 17-19.
individuals that the legislature was going to consider eliminating the intermediate appeals court altogether. Such suggestions were strongly objected to by the Weekly Law Bulletin. Except for these there were no major complaints about the new court system.84

Another topic of almost constant interest was judicial salaries. The association just before it closed the adjourned session in December 1880 asked the Judicial Administration and Legal Reform Committee to present a request for an increase in judicial salaries, along with its proposed amendment. The committee decided it would be better to ask for one thing at a time and this request was postponed until 1883 when the subject was brought up again. Meanwhile the legislature considered a bill to increase judicial salaries. A suggestion was also made at the 1883 meeting that the Supreme Court judges who had served ten years on the court continue receiving one-half their salaries after retirement. The Judicial Administration and Legal Reform Committee did not think it was the proper time to make such a request, but favored salaries of $5,000 for the judges. In 1885 the subject came up

84 6 OSBAR, 1885, 153-154, 202; Ohio State Journal, January 6, March 6, 10, 1886, January 6, 14, February 2, 24, 25, March 11, 19, 21, 1887, February 3, 1898; 20 Weekly Law Bulletin, August 13, 1888, 120-121; 21 Ibid., March 18, 1889, 145; 26 Ibid., December 21, 1891, 366-367; 29 Ibid., January 30, 1893, 73; 39 Ibid., January 17, 1898, 37, February 1, 1898, 93-94.
again and the association adopted a resolution that the Common Pleas judges' salaries should be increased to $3,000, the Supreme Court judges' to $5,000 and the attorney general's to $3,000 plus fees not to exceed $6,000. In 1888 the Judicial Administration and Legal Reform Committee again recommended that the association work for an increase in Common Pleas' salaries to $4,000 and the Supreme Court's to $6,000 and the association adopted it after hearing several speeches favoring action. With another change in figures the committee made and the association adopted the same recommendation the next year. This year they faced the problem that the current tax level did not bring in enough revenue for such increases and the committee was forced to make another recommendation favoring an increase at the 1890 meeting. 85

A few years later in response to complaints that the Judicial Administration and Legal Reform Committee was not paying enough attention to letters suggesting matters of

85 2 OSBAR, 1880-1881, 19, 31; 4 OSBAR, 1883, 10, 78, The increased salary question was debated but no action was taken, 48-51, 53; 5 OSBAR, 1884, 87-90; 6 OSBAR, 1885, 84, 197-199; 9 OSBAR, 1888, 69-73; 10 OSBAR, 1889, 93, 102, Supreme Court $10,000, Circuit Court $6,000, Common Pleas $5,000; 11 OSBAR, 1890, 41, 55, 72; One writer to the 22 Weekly Law Bulletin, August 12, 1889, 91-92 complained that such an increase in salary would decrease the efficiency of the court because more party hacks would be interested in the job and more money did not increase the judges' intelligence or work capacity; Ohio State Journal, January 24, February 7, 1889, $6,000.
importance, the Committee sent letters to a number of attorneys asking for suggestions. A. C. Dustin of Cleveland suggested a salary of at least $7,500 for Supreme Court judges. The association decided instead to have the Judicial Administration and Legal Reform Committee ask the legislature for $6,000. The Senate cut the figure by $1,000 and the House did not act, so the association decided that perhaps if they asked for $8,000 they might get the $6,000. The *Weekly Law Bulletin* and the local bar associations also joined in this movement. In February, 1898 the *Bulletin* reported that the Cincinnati Bar Association at its January meeting resolved to work for an increase and asked the other bar associations to join in. When S. M. Johnson moved in 1898 that it was the sense of the association that the salaries of the Supreme Court judges ought to be increased so that they were commensurate with the dignity of their position and their arduous duties, the association responded with applause. J. J. Moore, however, complained that he could see no point in making an effort along these lines since they had been trying since the beginning without success. C. E. McBride pointed out a reason for this lack of success.

I was unfortunate enough to be in the General Assembly several terms, and if the Bar Association will not put in so much time in passing resolutions as to what they want but each member will keep in touch with the members of their particular counties and will interview them a
little and put in a little time asking them to pass certain measures, we will accomplish more that way than we can here. 86

Johnson insisted that past history was no reason not to continue and the association passed his resolution after amending it to include the figure $6,000. The next year at Johnson's insistence, a special committee of five was appointed with authority to appoint a subcommittee of one member in each county. Although they were not able to get a salary they considered adequate, this committee did manage to get an increase of $1,000. They recommended $7,500. The House defeated a bill for $6,000 which had passed the Senate, so the General Assembly compromised on $5,000. One year later the association at the suggestion of S. M. Johnson unanimously decided to try again and appointed another special committee. This time they got an increase to $6,000. Although members referred occasionally to the low salaries of other state judges, no major effort was made to change these. The association also supported an increase in judicial salaries on the federal level. 87

86 19 OSBAR 1898, 129-130.

87 16 OSBAR, 1895, 34; 17 OSBAR, 1896, 31, 75-76; 19 OSBAR, 1898, 129-131; 20 OSBAR, 1899, 95-96; 21 OSBAR, 1900, 33-34; 22 OSBAR, 1901, 91-92; 23 OSBAR, 1902, 34; 27 Weekly Law Bulletin, February 1, 1892, 53; February 29, 1892, 109; 36 Ibid., August 10, 1896, 53; 39 Ibid., February 7, 1898, 93; 43 Ibid., January 29, 1900, 41; February 12, 1900, 61, March 19, 1900, 145, April 9, 1900, 249; 46 Ibid., December 16, 1901, 273; 49 Ibid., December 14, 1903, 958; 49 Ibid., April 11, 1904, 162-173; 50 Ibid.,
President William J. Gilmore reported in 1886 that the new Circuit Courts were creating a problem that no one had anticipated. Because the new system was able to handle cases faster, more people decided to take cases to the Supreme Court and the business reaching its docket increased. By 1888 the *Weekly Law Bulletin* complained that something needed to be speedily done. The court was now four years behind and was falling further behind. The need to do something about this was brought up again in 1889 by J. J. Moore, the association's president. Interest in this problem led the association to consider various methods to help the Supreme Court. They considered increasing and dividing the court, changing methods of practice limiting the jurisdiction of the court and even new rooms for the court to work in. Attempts to limit the jurisdiction of the court were common throughout the period. Advocates of this supported three different approaches.

February 19, 1905, 45-46; 51 Ibid., March 5, 1906, 57-58; attempts were made to increase judicial salaries by the legislature in the following years, Ohio State Journal, $5,000 January 19, 29, February 24, 1892, $6,000 decreased to $5,000 Januray 24, March 14, 18, April 10, 11, 20, $6,000, January 24, 1896 requested by Edward Fitch for the Ohio State Bar Association, March 18, April 10, 11, 20, February 21, 1898, $6,000, January 4, 24, February 7, 8, 9, March 8, 29, April 6, 1900, $6,000 February 7, 1902, $7,500 decreased to $6,500, February 3, March 10, 19, 31, April 11, 14, 1904. 4 OSBAR, 1883, 20, 48-51, 53; 6 OSBAR, 1885, 84, 197-198; 9 OSBAR, 1888, 69-73; 10 OSBAR, 1889, 93, 102; 11 OSBAR, 1890, 55, 72; 19 OSBAR, 1898, 131; 21 OSBAR, 1900, 65-66.
The first to appear and the most acceptable to the rest of
the profession was the suggestion that the Supreme Court
be restricted to questions of law only. Although no immedi-
ate action was taken on this matter due to the broader
interest in reforming the entire system the suggestion
was brought up again and eventually enacted at the request
of the Supreme Court. Another method that was much less
popular was to limit appeals to cases involving money or
property over a certain value. The most often mentioned
figure was $500. This brought vigorous opposition each
time it was suggested from those who feared that some im-
portant question might not reach the court because it did
not involve enough money and thought that such a rule was
unfair to the poor. The third method has already been
described in the 1884 debate over the minority report
suggesting the court be limited to constitutional questions
and those in which the Circuit Court reversed the lower
court or thought it involved an important question the
Supreme Court should rule on. Supporters of this believed
one appeal was all that was necessary in most cases,
especially those in which both courts agreed. The pur-
pose of the Supreme Court was to rule on important ques-
tions involving the constitution and the construction of
laws and to maintain uniformity in the state by settling
questions the lower courts interpreted in conflicting ways.
If the jurisdiction of the court must be limited, they
argued that this was the most fair. The plan advocated by many who opposed limitation was that the number of judges be increased and the court be divided. This suggestion also appeared early in the association's history when provisions making such action possible were made part of the constitutional amendment which established the Circuit Court. The first attempt to use it appeared in 1886 when a resolution recommending this step was referred to the Judicial Administration and Legal Reform Committee which did nothing with it. 88

Often these methods were combined as they were during the major attempt to do something to relieve the Supreme Court during the 1890's. This movement began with the presidential comments mentioned previously. 89

88 7 OSBAR, 1900, 65-66, 22 Weekly Law Bulletin, August 6, 1888, 108. In 21 Ibid., January 7, 1889 the editor complained that it would take four years to clear the current calendar while twice as many cases were being filed as the court settled. 10 OSBAR, 1889, 169-172; 2 OSBAR, 1880-1881, 15; 13 Weekly Law Bulletin, April 27, 1885, 435. In this same edition it complained that the court was still a year behind when the commission expired, 437; 3 OSBAR, 1882, 67; 2 OSBAR, 1880-1881, 31; 4 OSBAR, 1883, 39, 51-53; Cincinnati Commercial Gazette, January 21, 25, April 15, 1883; 2 OSBAR, 1880-1881, 37; 4 OSBAR, 1883, 14; 6 OSBAR, 1885, 203-208; 7 OSBAR, 1886, 84, 105-106; 10 OSBAR, 1889, 93, 133-135; 11 OSBAR, 1890, 128-136; 5 OSBAR, 1884, 91-93, 104-119; 7 OSBAR, 1886, 113-115; The Weekly Law Bulletin, however spoke on several occasions as though the association adopted this resolution for an increase. 21 Ibid., January 7, 1889, 2; 20 Ibid., August 13, 1889, 119.

89 The legislature during 1889 at the suggestion of a special constitutional revision commission had already considered bills to limit the jurisdiction of the Supreme Court to cases of $300 or more and to increase the size of the
the Judicial Administration and Legal Reform Committee presented a program in 1889 that among other things raised the issue of jurisdiction when part of the committee recommended that the Supreme Court be limited in civil cases to those involving $1,000 or more unless a constitutional issue or the construction of a statute was involved. Judge Doyle argued that this would decrease the business of the court 33 percent. He saw no reason why the Circuit Court was not as competent as the Supreme Court to settle important questions. If not, what was the point of having intermediate courts? Also it was not worth the expense to take cases involving small amounts all the way to the Supreme Court and justice would be increased by this measure because those who really needed to go to the Supreme Court could do so more quickly. One member of the Committee suggested the court be increased to ten judges and divided into two sections. After much debate the association accepted the limitation with an amendment of Pratt's that the money limit would not apply if the Circuit Court decision reversed the lower court or the decision was not unanimous. 90

90 10 OSBAR, 1889, 93, 103-135. This action led to a
The legislature took up the problem and Senator Adams drew up several bills which the association considered at a number of meetings. Adam's bills abolished the general term of the Superior Court in Cincinnati and limited the jurisdiction of the Supreme Court. All criminal cases except those involving murder and life imprisonment and in all civil cases where the Circuit Court affirmed the Common Pleas Court could not be taken to the Supreme Court. Constitutional questions and cases involving disagreement between two Circuit Courts were allowed to go to the Supreme Court even if these rules would have otherwise prevented it. Although the Weekly Law Bulletin gathered some statistics to support this second bill and recommended that the bar association consider it, the bill concerning the Superior Court created the most debate at the meeting. The current practice was for a case to go from the special term to the general term of the Superior Court and then to the Supreme Court with its leave. This meant the court had to take time each year to review these cases and allow or refuse appeals. Some men felt this took time that might be better spent hearing regular cases so they supported the Judicial Administration and Legal Reform Committee's series of letters on the subject in the 22 Weekly Law Bulletin, August 12, 1889, 91-92, J.R.M. 93-96, Thomas McDougal, August 26, 1889, 124, B., 124-126, E., 126, S.H. Bright.
suggestion that Superior Court appeals go through the Circuit Court the same way as appeals from the Common Pleas Court. Others objected that this really meant that some cases would have to go through two intermediate appeals courts and that the Supreme Court eliminated many cases that might otherwise be on the docket by refusing to hear them. The association compromised and adopted a resolution which eliminated the system of leave and made appeals from the Superior Court wait their turn on the regular docket along with appeals from the Circuit Court. They also adopted the judicial Administration and Legal Reform Committee’s recommendation that the Supreme Court be increased to ten. Adams’ bill concerning limitation was not considered. This led Judge Doyle to demand a reconsideration of the vote concerning the increase-division stand. This action was contrary to last year’s stand for limitation which Adams was working for, he complained. The association was quickly living up to editor Reed’s uncomplimentary statements that the Ohio bar was incapable of formulating any judicial plan satisfactory to themselves or the people. Doyle’s motion to reconsider failed. 91

91 11 OSBAR, 1890, 55, 57-72, 98-110, 120-123, 128-136; Ohio State Journal, April 3, 1890; 12 OSBAR, 1891, 89; 23 Weekly Law Bulletin, April 21, 1890, 271-275; 24 Ibid., July 12, 1890, 21-22; Cincinnati Gazette, January 8, 1881
The Adams bill concerning Supreme Court jurisdiction described above stimulated more debate at the 1891 meeting.\textsuperscript{92} Although he supported this bill Charles Pratt, chairman of the Judicial Administration and Legal Reform Committee, admitted that two years before he would have objected, now he thought that the current situation brought a worse denial of justice than Adams' bill might occasionally cause. H. T. Van Fleet, a member of the Judicial Administration and Legal Reform Committee for nine years, vehemently objected because it emasculated the Supreme Court and cut out the poor entirely. In effect it abolished the Supreme Court except for specific purposes and replaced it with seven supreme courts. He preferred the increase-division plan. In spite of his objections the association resolved to support the Adams bill.\textsuperscript{93}

Although the Adams bill failed, mostly because of opposition by the Cincinnati Bar Association, the legislature increased the court by one and authorized division if the court so desired. The following year the Judicial and Legal Reform Committee decided that since there were so many conflicting opinions on the proper solution to the problem that the best one was another commission to handle

\textsuperscript{92}During the 1891 legislative session Adams revised his bills and introduced one bill for the relief of the Supreme Court which included the provisions described above. 25 Weekly Law Bulletin, February 9, 1891, 77-78; Ohio State Journal, January 13, 17, February 11, 1891.

\textsuperscript{93}12 OSBAR, 1891, 89-95, 101.
the 984 cases now on the docket, while the regular court handled new cases. The minority report advocated both limitation of jurisdiction and division of a larger court. This raised some complaints that the association was only confusing the issue by demanding new things even before anyone had a chance to see how the recent action of the legislature would affect the situation. As the account given above indicates, these complaints were justified. In 1889 the association voted for limiting the court's jurisdiction. In 1890 they adopted a resolution urging the General Assembly to increase the number of judges to ten and divide the court. In 1891 the association endorsed the Adams bill. Now the committee wanted them to turn to another plan after the legislature had given them a modified version of their 1890 resolution.

9413 OSBAR, 1892, 58; Ohio State Journal, February 24, March 4, 16, 23, 29, April 9, 13, 14, 1892; 25 Weekly Law Bulletin, February 9, 1891, 77; 27 Ibid., January 18, 1892, 25, February 29, 1892, 109, March 28, 1892, April 4, 1892, 217, April 18, 1892, 249, April 21, 1892, 269-270; 13 OSBAR, 1892, 27-28; The figures given in the Weekly Law Bulletin which was constantly asking the legislature to act throughout this period gives a clearer idea of the court's dilemma. It began the 1891 term with 971 cases pending. During the year the judges disposed of 258 cases but ended their term with 1,016 cases pending or a gain of 45 cases. The year before the gain had been 53 cases. 27 Weekly Law Bulletin, January 4, 1892, 1; see also 20 Ibid., August 6, 1888, 108; 21 Ibid., January 7, 1889, 1-2; February 25, 1889, 109, March 4, 1889, 122, April 8, 1889, 205, April 15, 1889, 217, April 29, 1889, 245; 22 Ibid., October 7, 1889, 219; 23 Ibid., January 20, 1890, 41, March 3, 1890, 141, April 21, 271, June 30, 1890, 467; 24 Ibid., July 14, 1890, 21-22; 25 Ibid., January 12, 1891, 12; 27 Ibid., January 18, 1892, 25; February 1, 1892, 53, April 11, 1892, 237.
Instead, the association turned to the minority report, removed the request for more judges and adopted the limitation section. Judge Doyle continued his arguments for this action in the presidential address of 1893 but the association's interest in these reforms waned for a number of years. In 1907 the limitation idea appeared again in the form of a resolution, which the association adopted, that civil causes begun in the magistrate or mayor's court should end on the Circuit Court level unless they involved the construction or constitutionality of a statute.  

The association also considered a number of other changes that they hoped would speed up business in the courts. They believed that the Supreme Court would be able to spend less time on each case if they followed the United States Supreme Court practice of oral hearings rather than reading the entire record and long written briefs.  

They also spent several years considering changes in the statutes involving the length of time in which petitions in error, motions for a new trial and

95 14 OSBAR, 1893, 125-128; 13 OSBAR, 1892, 54-71; 28 OSBAR, 1907, 9, 15. When he appeared before the legislature in 1896 to present the bar association's request for an increase in salaries for the Supreme Court, Judge Fitch also suggested a Supreme Court Commission. Ohio State Journal, January 24, 1896.

96 8 OSBAR, 1887, 124-125 brought up in a response to a toast at the banquet; 10 OSBAR, 1889, 93, 102; 11 OSBAR, 1890, 57,110-111; The Weekly Law Bulletin agreed. 22 Ibid., November 18, 1889, 313; 25 Ibid., January 12, 1891, 13.
various classes of civil actions could be made. 97

Although the association's actual role in obtaining more space for the Supreme Court was minimal, the association was very interested in this project and pleased with the final results. This reform eventually became tied to the problem of the crowded Supreme Court docket because after the legislature authorized the court to divide they discovered it was impossible in their current locations.

In his annual report to the legislature the clerk of the Supreme Court complained in 1882 that the court did not have enough space to work or store its records. "It is the most ill-appointed room for its use in the Capitol Building," 98 and valuable records must be stored like wastepaper. In 1883 the legislature studied the problem because the situation had not improved.

The present place for transacting the business of the Court is so insignificant that it is scarcely worthy the name of an office. 99

The legislature decided to partition part of a hall for use of the court. 1

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97 18 OSBAR, 1897, 42-45, 128-137; 22 OSBAR, 1901, 29, 45-59; 23 OSBAR, 1902, 61, 64-65; 24 OSBAR, 1903, 24, 26-28, 132, 156; 25 OSBAR, 1904, 10-11, 13-14, 44-45; 30 OSBAR, 1909, 8, 38.


99 _Ohio State Journal_, January 4, 1883.

1 2 Ohio Law Journal, January 26, 1882, 323; _Cincinnati Gazette_, January 4, 1882. In 1888 the bar association president E. P. Green complained that this partition gave the clerk's office the appearance of a modern hen house. 9 OSBAR, 1888, 125; _Ohio State Journal_, March 10, 1883.
The association took up the matter in 1884 when Judge
Johnson complained that the law library books and the papers
in the clerk's office were fast disappearing. A special
committee of three was chosen to investigate the problem
and recommend some action to the legislature. The clerk
was storing some of his papers in part of the hall and the
attic, while part of the Supreme Court room had been con-
verted into a library. The committee in its report to
the association in 1885 feared chaos if something was not
done. They recommended that a department of justice
with its own building be established. This touched off a
debate over how this could be done without spoiling the
architecture of the State House. Senator Godfrey reported
that the legislature had considered an annex, a third
story or additional buildings on the corners, and could
not decide which was best. Judge Green commented that,

There is one of two things that, it seems to me,
the State of Ohio ought to do; either stop brag-
ging about our size, mentally, physically, re-
ligiously or otherwise, or else in keeping with
our boast make a building for the Supreme Court
that would be in keeping with what we claim; . . .

The association adopted the special committee's report
and appointed a special committee of five to work for it.
When the legislature found it could not agree nothing
more was done.  

\[6\] OSBAR, 1885, 74.

\[5\] OSBAR, 1884, 75-76; 6 OSBAR, 1885, 64-79; 7 OSBAR,
1886, 59.
The issue came up again in the legislature in 1892 because the larger Supreme Court could not divide unless another room was found. When the court began its first session with the additional judge that February, the only reason he had a place to sit was that one of the other judges was sick. In 1893 the Supreme Court petitioned the legislature for a building for the use of the court, the library and the clerk. The consultation room where all six judges had to work on their opinions as well as consult together was about twenty-five feet square and much too small. The law library, which was completed in 1858, was planned to hold 5,000 volumes. The number now exceeded 16,000 and was increasing daily. The court reporter was forced to work in a corner of the court room. The legislature agreed something should be done and passed a joint resolution authorizing the governor to appoint a commission to study the best way to solve the Supreme Court's problem. They also tried to find temporary space for the court, but when the auditor refused to give up one of his rooms nothing further was done. 4

That summer the bar association decided to join the movement. A committee of five was chosen to ask the legislature to build the necessary addition. This committee

met with the Supreme Court, governor and the judiciary committees of the legislature during the next year. During the next session of the legislature the commission recommended a new building on the south side of the State House. No action was taken on the commission's report but the legislature did authorize another committee to look for temporary quarters. This was done by allowing one division of the court to use the House of Representatives' quarters while the legislature was not in session during 1895. The bar association continued its committee, but it appears to have been inactive during the last two years.\(^5\)

When the legislature gathered again in 1896, it decided to establish another commission with $400,000 to spend soliciting bids for plans. This committee had problems deciding on a final plan, and in 1898 the governor recommended buying land for a separate building. The legislature agreed with this new plan and the building was built.\(^6\)

\(^5\) 14 OSBAR, 1893, 22, 33-37, 55; 15 OSBAR, 1894, 35; 17 OSBAR, 1896, 51-55. The committee chairman reported nothing was done by the committee as far as he knew. He was also vague on the action taken by the legislature. Another member of the committee rose to report that the committee's work had been accomplished and briefly described the most recent legislation concerning the building. Ohio State Journal, January 15, March 16, April 13, May 9, 1894; 31 Weekly Law Bulletin, February 5, 1894, 69; 33 Ibid., April 8, 1895, 169.

\(^6\) Ohio State Journal, January 2, March 14, April 7, 9, 16, 17, 21, 23, 24, 28, 1896; January 4, 21, 26, March 15, 16, 23, 30, 31, April 7, 13, 1898.
Occasionally, the association took an interest in the federal courts. Their support of an increase in salaries has already been mentioned. At the 1882 session the association agreed to support the Davis bill establishing federal appellate courts. The American Bar Association also supported this. In 1890, although they avoided supporting a specific bill they supported an independent appellate federal court. In 1904 the Franklin County Bar Association asked the association to support their move for a new federal district court centered in Columbus. The sponsoring senator and congressmen wanted to know the association's opinion. Business had been growing in the current district and the judge complained about the work. At the rate of one case a day it would take him over a year just to get through what was currently on the docket. At first the association unanimously adopted the request but later reconsidered their vote because some of the counties suggested for the new district did not want to leave their current district. They finally decided to support the proposed district. If Congress did not agree then they requested an additional judge for the current district.7

One other judicial reform occupied the association and newspapers for a number of years and created a great

7 3 OSBAR, 1882, 66-67; 5 ABAR, 1882, 19-52, 100-102, 343-386; 11 OSBAR, 1890, 57, 117-120; 25 OSBAR, 1904, 7-9, 24-25, 28-42; 48 Weekly Law Bulletin, November 28, 1903, 906.
deal of debate. This question of reforming the regulations covering juries appeared in 1880, when R. A. Harrison introduced a resolution asking that a special committee look into the statutes concerning jurors and recommend solutions to any abuses and defects. This committee twice asked for more time and then disappeared. Some bills concerning jury reform were introduced into the General Assembly during 1882.

Newspapers and the legal periodicals were also interested in this topic. In 1884 the Weekly Law Bulletin mentioned that a good deal was being said about changing the rules requiring unanimity in jury decisions and took the position that a constitutional amendment was necessary. This subject appeared again in 1887 when the Bulletin published an article on jury trial by John D. Brandon and asked the state bar association to consider it. A bill introduced by Senator Hardacre of Cincinnati allowing two-thirds jury decisions had been defeated and the Bulletin thought the lack of discussion of the idea by the association was one of the reasons. This led to a letter to the editor on the need for laws of safeguarding the jury from corruption, and another from Isaiah Pillars

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82 OSBAR, 1880-1881, 8-9, 25. Before this meeting the Ohio State Journal, December 28, 1880 suggested that the association consider the problem of "professional" jurors; 3 OSBAR, 1882, 36. Cincinnati Gazette, January 5, 12, 1882.
pointing out that the association had considered the question of unanimity.\footnote{Cincinnati Gazette, December 8, 9, 10, 11, 13, 14, 1880, January 7, 1881; Cincinnati Commercial Gazette, January 25, February 18, 24, 1883; 11 Weekly Law Bulletin, April 21, 1884, 205. The Ohio State Journal also suggested majority decisions for grand juries, October 23, 1885; 18 Weekly Law Bulletin, August 15, 1887, 91, 95-101; Ohio State Journal, February 19, 25, 1887; 18 Weekly Law Bulletin, September 5, 1887, 147; September 12, 1887, 175}.

President Durbin Ward raised the issue when he questioned the practice of unanimous juries in all cases and complained about the problem of "professional jurors." The Judicial Administration and Legal Reform Committee thoroughly considered the question of juries and reported that they had some doubts concerning the need for a change but that perhaps allowing nine to three decisions in civil cases might be useful. However, they believed that debate was academic because such a change was probably against the Bill of Rights. Although the association adopted the committee's recommendation the editors of the Law Bulletin rightly pointed out that they spent all their time on the issue of codification and did not really consider this question. The editors also pointed out that the court had not directly ruled on the question, provided some evidence that it might be constitutional and urged the bar association to consider the subject further. They later
published a letter to the editor that strenuously objected to changing the unanimity rules because juries made enough mistakes under the current system. The change that was needed was in how the jurors were selected. The Judicial Administration and Legal Reform Committee did consider the jury question further in 1887. They were still unable to agree concerning the issue of unanimity. All but Van Fleet, who approved the existing system, agreed on changing the method of choosing jurors by establishing a special commission to draw up a list for the judges to draw jurors from. Van Fleet argued that the township trustees and ward officials, who now chose jurors, made good choices because they knew the voters better than the commission would. Perhaps if they were corrupt in the cities a change was needed there, but in the country area where he practiced he heard no complaints and saw no need for change. As the debate progressed it became clear that the association was divided along country versus city lines and Elliot, committee chairman, suggested the possibility of special acts to change the system in those areas where there were complaints. He was surprised at the number of attorneys who were satisfied with the current system but felt the debate had accomplished the desired end by showing the committee how the association felt. Some expressed the opinion that there was a need for reform but did not like the committee's plan. As a result the association failed to
agree and voted to refer the subject back to the committee. The subject of choosing jurors did not appear again but the legislature did consider establishing jury commissions for specific areas. In 1887, for example, such a commission was established in Franklin County.  

The question of unanimity was debated in 1912 because of the action of the constitutional convention which passed an amendment allowing the General Assembly to authorize a verdict of not less than three-fourths in civil cases. The supporters of this reform thought it might facilitate their attempts to prevent abuses by corporations. They hoped this would make it easier to convict corporations that often avoided prosecution by influencing one juror so that a mistrial would result. The more conservative opposition feared decisions would be made without the full consideration that was often necessary before they reached a unanimous verdict. There was also some attempt to postpone or avoid a decision on this issue but the association finally decided to support the amendment, in spite of the opposition of the conservatives who made defeat of

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105 OSBAR, 1884, 24; 6 OSBAR, 1885, 190; 18 Weekly Law Bulletin, September 12, 1887, 176, October 3, 1887, 223; 8 OSBAR, 1887, 45-73; Ohio State Journal, March 5, 21, 1887. This brought a letter complaining that this was a backward step and a stab at the heart of liberty. January 16, 1888. Originally the Journal had argued for such commissions state wide. November 6, 1885. There was some brief discussion of juries following a speech of H. A. Morrill on the jury system, 11 OSBAR, 1890, 88-96, 234-244.
this measure their major goal. Judge Wanamaker and George Ritter, who made the closing arguments, probably helped convince many. Wanamaker pointed out that the amendment only gave the legislature authority to act if it wanted to. The number twelve and unanimity were not sacred. Majority decisions were accepted on the Circuit Court and juries were often waived in civil cases such as those to which the amendment would apply. Ritter made a strong plea for the association to take some action against the powerful corporations. Later a special committee was appointed to work with the legislature in carrying out the amendment if it passed. 11

When the legislature provided for a constitutional convention in 1910, the association turned to the same questions involving the organization of the courts which they faced in the beginning. Their 1911 meeting was devoted to considering what the association should recommend to the convention.

The constitution (sic.) convention is of great importance to all people of this state and especially to this association and to all its members. We should take great interest at least in the provisions to be made for the courts and for the administration of justice. Some changes in the constitution are desirable but not all radical and experimental changes suggested by some reformers theorists and faddists .... Let us as lawyers turn aside from our cases and briefs and

11 33 OSBAR, 1912, 89-107, 140; Sandusky Register, July 10, 11, 1912; Ohio State Journal, July 10, 11, 1912.
from the commercial pursuit of fees and emoluments long enough to join with all good citizens in the work of constitution revision which is now upon us in this state.12

The Judicial Administration and Legal Reform Committee made seven suggestions concerning the courts. It thought the number of Supreme Court judges should be increased from six to nine in order to have an odd number of judges and make three divisions possible. Under existing rules when the court was evenly divided the decision of the lower court was automatically affirmed. Since this had happened several times during the last year everyone agreed an odd number was necessary, and this readily carried. The committee's recommendation that the governor appoint the judges with the consent of the Senate created debate. J. R. Johnson's objection that this ought not be done because it would take from the people their right to select the men who administered their laws and his emphatic statement that the present system was good enough for him brought applause. So did Gilbert Stewart's statement that in these times of unrest it was better to trust in the choice of a governor who could deliberate than to trust the blind chance of an election which could go different ways each year. One member accurately pointed out

12 Allen Andrews, presidential address, 32 OSBAR, 1911, 44-45.

13 32 OSBAR, 1911, 57.
that, "It will stand about as much show as a lighted match in a gunpowder barrel."\textsuperscript{13}

The idea of appointed judges was not new to the association and always brought a debate.\textsuperscript{14} Although a postcard vote on the issue favored appointed Supreme Court judges 120 to 98, the association's vote at the meeting was against 58 to 19. The provision that no one could become a Supreme Court justice unless he was licensed to practice law in the state was quickly adopted. So was the recommendation that each county should have its own Common Pleas Court with as many judges as the General Assembly determined was necessary. There was enough question concerning the recommendation that it be left up to the counties to decide whether or not they also needed a probate judge that it was necessary to count. It carried twenty-three to eleven. Next the association considered a recommendation concerning justices of the peace. In order to obtain districts large enough to insure the appointment of competent men the Judicial Administration and Legal Reform Committee recommended that the General Assembly arrange for their election or appointment in each county, their terms of office, powers and duties. This was amended so that

\textsuperscript{13}32 OSBAR, 1911, 57.

\textsuperscript{14}16 OSBAR, 1895, 34; 29 OSBAR, 1908, 11, 37; 30 OSBAR, 1909, 8, 42; 31 OSBAR 1910, 78.
their jurisdiction would not include cities that had established municipal courts, when Judge Manual Levine pointed out that Cleveland had recently established a municipal court because county justices had become so dishonest. After a slight change in wording the association accepted the recommendation that no person be eligible to run for judge unless he was licensed to practice in the state, and that all judges be required to reside in the district or county for which they were elected. The recommendation that the judges run on a non-partisan ballot was also adopted. The committee recommended giving the General Assembly the power to increase or diminish the number of judges, the number of circuits for the Circuit Court, change the circuits and establish other courts of whatever jurisdiction they chose in any county or counties. The association eliminated the terms in any county or counties and added the requirement that the General Assembly could not diminish the size of the Supreme Court. Finally the association agreed that no changes in the present constitutional provisions covering the Circuit Court were necessary. After naming a committee of four to present these items to the constitutional convention, the association adjourned.\textsuperscript{15}

\textsuperscript{15}OSBAR, 1911, 52-66, 192-196.
The 1912 meeting was devoted to considering eleven of the proposed amendments the constitutional convention was presenting to the voters that fall. Some of them included suggestions of the association, but others did not. Judge E. B. King was a member of the constitutional convention and the association's committee to present their suggestions so there was no problem presenting the association's opinion to the convention. The first amendment the association considered at its 1912 meeting was the Peck Amendment to change the judicial system. The Cincinnati Bar Association supported this proposal and influenced the convention to accept it. The changes in the Supreme Court were not great. A chief Justice was added to the current six justices and the legislature was given authority to decide on a term of not less than six years. This gave the court the odd number the bar association thought was so important but did not add as many as they suggested. The jurisdiction of the court was as follows:

. . . original jurisdiction as at present, and appellate jurisdiction in all cases involving questions arising under the constitution of the United States or of this State, in the cases of felony, on leave first obtained and in cases which originated in the Court of Appeals, and such revisory jurisdiction of the proceedings of administrative offices as may be conferred by law.16

16 33 OSBAR, 1912, 12-13.
In cases of great importance and interest the Supreme Court could also, within time limitations to be established by the General Assembly, consider and rule on any Court of Appeals judgment. One important change that led to problems was the provision that,

No law shall be held unconstitutional and void by the Supreme Court without the concurrence of at least all but one of the judges, except in the affirmanace of a judgment of the court of appeals declaring a law unconstitutional and void.17

The convention adopted this in order to make it more difficult to overturn legislation because many reformers were complaining about the amount of progressive legislation courts were declaring unconstitutional. This meant that if the Court of Appeals declared a law unconstitutional, a four to three vote by the Supreme Court could affirm the lower court's decision. On the other hand, if another Court of Appeals declared the same law constitutional, the same four to three vote against the law would not be enough to declare it unconstitutional. Thus it was now possible to have conflicting decisions depending on the ruling of the lower court.

The major change the Peck amendment made was to eliminate the Circuit Court, which the bar association thought did not need change, and replace it with the Court of

17 OSBAR, 1912, 42.
Appeals. This court was to consist of three judges in the current Circuit Court districts with the same original jurisdiction as the Circuit Court. The General Assembly was to decide appellate jurisdiction in trials of chancery cases and jurisdiction to review, affirm, modify or reverse the judgments of the Common Pleas, Superior Court or other courts of record within the district. Judgments of this court were to be final in all cases except those the constitution clearly gave to the Supreme Court. A unanimous decision was necessary if the court wanted to reverse the lower court's judgment on the weight of the evidence. For all other questions a majority was enough. If the court's decision was contrary to that of another Court of Appeals the judges could certify the case to the Supreme Court to settle the difference. The Chief Justice of the Supreme Court was given authority over the disability and disqualifications of the judges and could reassign them if necessary.\(^{18}\) Chart V shows this court system.

Although the association's President, Frederick Taft,
described it as "... a radical change in our judicial system," it was not radical in a political sense. It created a fundamental change in the judiciary of the state of Ohio, but it followed the precedent of the last major reform of the federal judiciary when the United States Circuit Court of Appeals was established to relieve the United States Supreme Court. The idea of an independent intermediate court of appeals which settled all but those constitutional and other important issues sent to the higher court had also been suggested during the 1880 debates over a solution to the problem of court delay. Previous attempts to pass legislation limiting the jurisdiction of the Supreme Court have already been discussed. President Taft approved of the change and predicted that,

The result of the adoption of the proposal by Judge Pack will be to reform the judicial system of Ohio; to limit the work of the Supreme Court; and to dignify and increase the importance of the Court of Appeals. The delay now resulting from taking cases to the Supreme Court will be eliminated, and it will be possible for litigation to be finally disposed of in from eighteen months to two years sooner than theretofore. The Circuit Court will no longer be a mere passageway to the Supreme Court, as the Court of Appeals will have a finality of jurisdiction that will clothe it with authority and give it greater importance.21

1933 OSBAR, 1912, 14.


2133 OSBAR, 1912, 20.
Much of the opposition to this amendment objected to these statements. Thomas H. Tracy specifically attacked them. The new court would do nothing to end delay. Much progress was already being made under the existing system. The argument

... that these proposed amendments should be adopted, because it would add to the dignity of our present circuit courts to have them called by another name, and by conferring upon them final jurisdiction in certain cases, does not appeal to me. Courts should be able to uphold their own dignity by wise and just decisions, without the aid of artificial power.22

The record of the Circuit Courts was outstanding. "They need no bolstering up,—the people are entirely satisfied with them"23 Taft liked the new system because it maintained two important principles.

The new judicial system complies with the fundamental rule that each suitor is entitled to one trial and one appeal ... The revisory power of the Supreme Court will be retained, so as to require uniformity in all the Courts of Appeals, and to consider cases of public or great general interest.24

Much of the debate at the meeting was taken up by S. M. Johnson, chairman of the Judicial Administration and Legal Reform Committee, and E. B. King defending and explaining the amendment. The opposition wondered if the amendment contained too much detail. Thomas H. Tracy

23Ibid.
received applause when he asked if the federal system, which
this amendment was supposed to be based on, was so good.
His firm had a case in the federal courts for over seven
years. Allen Andrews objected to the provision requiring
six votes to declare a law unconstitutional. The constitu-
tion was supposed to be the supreme law of the state, yet
this provision meant that two votes could uphold a statute,
but the constitution needed more. King answered this by
pointing out that although the courts had the right to
declare laws unconstitutional, they were supposed to do so
only if the law clearly was unconstitutional. Everyone
agreed that a divided decision was not clear. A large
majority of the convention supported requiring a unanimous
decision, but King convinced them they should allow one
dissenting vote in order to leave room for a crank. The
association voted to support the amendment sixty-three to
twenty-one. They also decided to appoint a special com-
mittee to help the judges of the Court of Appeals prepare
the rules for the new court if the amendment carried.²⁵

After the meeting Thomas H. Tracy published a pamphlet
which attacked these amendments, the bar association, Taft’s
speech and the other supporting speeches given at the con-
vention. He complained that the eighty-four lawyers who

²⁵ 33 OSBAR, 1912, 44-64, 140.
voted at the meeting after a brief forty minute discussion
did not represent the about 7,000 lawyers in the state.

I submit that, if the Ohio State Bar Association
can only muster a total of eighty-four votes on
a question so momentous as that involved in the
complete overturning of our judicial system,
it would be more in accord with becoming
modesty for the association to adjourn for
lack of a quorum.26

He agreed with Allen Andrews' objections at the meeting
to the provisions requiring five votes to declare most
statutes unconstitutional. He complained that "... al-
most every amended section is so imperfect in structure
and in the language used that it will require judicial
construction before its meaning is made clear."27 He also
complained that the new amendment eliminated the flexibil-
ity of the old one by placing more restrictions on the
authority of the General Assembly to make changes concern-
ing the court. One of the supporters of the amendment em-
phasized the importance of the provisions creating a chief
justice. Tracy objected that this was not necessary. The
legislature had already made a chief. He also thought that
the provisions which limited the Supreme Court's jurisdic-
tion were too strong. Few lawyers would be able to take
their cases to the Supreme Court.

26 57 Weekly Law Bulletin, August 12, 1912, 338.
27 Ibid., 339.
It is certainly anything but progressive or democratic to maintain, at the expense of all of the taxpayers of the state, the most expensive, and presumably the most able judicial tribunal in the state, and then limit its jurisdiction to practically only those questions in which the great and powerful are interested.28

He also feared this limitation would lead to confusion and laws which were not uniform throughout the state because of the possibility of different decisions by several Courts of Appeals.

The next proposition the association considered was that allowing three-fourths jury decisions in civil cases, which has already been discussed. The third proposal was that of James W. Halfhill, a member of both the bar association and the constitutional convention. He was responsible for getting the convention to accept the bar association's recommendation that each county have its own Common Pleas judge. The bar association had recommended elimination of the probate judge unless the county asked

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2857 Weekly Law Bulletin, August 12, 1912, 343. For other articles and letters to the editor concerning the proposed amendments see also: Ibid., August 12, 1912, 337-352, August 19, 1912, 353, September 2, 1912, 369, 372-383. Seven of these articles discussed the judicial amendments discussed above. Four of them attacked the amendments and two supported them. The other writer did not definitely state his opposition but he raised a number of questions about the application of the amendments. One writer attacked Tracy's pamphlet but agreed with him that the provision concerning the Supreme Court's ruling on constitutional questions was bad. One of the favorable articles was written by Judge H. Peck and attacked the accuracy of Tracy's facts.
for it. Instead the convention kept the Probate Court unless
ten percent of the voters for governor at the last election
in counties with a population of less than 60,000 par-ti-
toned the Common Pleas judge and the majority of the voters
in the next election approved of combining it with the
Common Pleas Court. This proposal also gave the legis-
lature the authority to increase or diminish the number of
judges in both the Supreme Court and the Common Pleas Court
(provided each county always had one Common Pleas judge)
and to establish other courts inferior to the Court of
Appeals when two-thirds of the members of each house agreed.
The association accepted this amendment without debate. 29

One other amendment dealing directly with the judicial
system was considered and adopted. This provided essenti-
ally the bar association's suggestion concerning justices
of the peace. This amendment was not very important be-
cause if the voters adopted the first one described above,
the section of the constitution this one amended was re-
pealed and the amendment had no effect. 30 Thus the associ-
ation ended the period considering the same questions that
led to its formation.

29 33 OSBAR, 1912, 12, 14, 107-108.
30 Ibid., 157-158.
CHAPTER IV

LEGAL EDUCATION AND PROFESSIONAL STANDARDS

Although the time devoted to efforts to improve professional standards, admissions requirements and legal education is small compared to judicial reform, this was another reason for the founding of the association and is one of its important accomplishments. In some ways this was more significant because the association was often responsible for reforms in this area when the demand for and interest in them was less widespread. Delay in the courts affects the entire population, while professional admission requirements are usually of interest only to law students. On several occasions the legislature attempted to counteract the profession's attempts to improve standards.

When the association was founded the state had one law school in Cincinnati.\textsuperscript{1} Although Ohio's admission laws were better than many states,\textsuperscript{2} it was still fairly easy to

\textsuperscript{1}This school began in 1833 as a private law school. A new school was organized in 1896 under the University of Cincinnati and in 1900 these two schools combined. Marshall, A History of the Courts, III, 665-666.

\textsuperscript{2}See 4 ABAR, 1881, 238-304 for information on other states.
obtain a license to practice in Ohio. The requirements were as follows:

560. No person under twenty-one years of age can be admitted to such examination, or is not a citizen of the United States, or has declared his intention to become one, or has resided in the state one year; and, in addition to this, he must produce a certificate from some attorney at law, setting forth that he had regularly and attentively studied law during two years previous to his application, under the tuition of some attorney, and that he believes him to have sufficient legal knowledge and ability to discharge the duties of an attorney and counselor at law. Attorneys from other states may be admitted to practice in this state by simply producing satisfactory evidence that they are persons of good moral character. ³

The Supreme Court had just recently been given sole power to admit candidates. Although the Supreme Court had charge of the examination, the law allowed it to appoint a commission to conduct it. ⁴

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³S. S. Bloom, Popular Edition of the Laws of Ohio in Force September 1882; Containing in a Conveniently Arranged and Compact Form All the Laws of the State with the Amendments and Supplementary Sections as They Appear in the Revised Statutes of Ohio and Subsequent Volumes of the Session Laws, Robert Clarke and Company, Cincinnati, Ohio, 1882, 43. The Court interpreted this to mean that out of state candidates must also have proof of two years of study before they could be admitted to the exam. Arnold Green, Ohio Supreme Court Practice; Containing the Law, Decisions and Forms with Full Directions for Proceeding in Mandamus, Quo Warranto, Habeas Corpus, Error in Civil and Criminal Cases with Rules of the Court; also the Record of Causes by Writ of Error from the Highest Court of a State to the Supreme Court of the United States, Ingham, Clarke and Company, Cleveland, Ohio, 1880, 391, 392.

⁴Ohio Law Journal, December 15, 1883, 653. The District Court previously could also admit candidates. In 1891 the Chief Justice of the Supreme Court observed that
Ohio was the second state to establish such a commission.\(^5\) This was begun as a result of an 1879 Supreme Court rule which soon became law.\(^6\) The students' knowledge of

... the law of real and personal property, personal rights, contracts, evidence, pleading, partnerships, bailments, negotiable instruments, principal and agent, principal and surety, domestic relations, wills, corporations, equity-jurisprudence, criminal law, and upon the principles of the Constitution of the State and of the United States.\(^7\)

was tested by written and oral exams prepared and administered by the special commission. The law also provided details concerning disbarment and stated that no one could be prohibited from admission and practice on the basis of sex. There were a few colleges in Ohio

not only did this change bring uniformity but it also brought much higher standards than were observed before the change. 14 ABAR, 1891, 307. The number on the commission varied as the law left this up to the court as long as there were at least three. Bloom, Popular Edition of the Laws of Ohio, 43. In 1880 the number was 12. 1 Ohio Law Journal, August 18, 1880, 1. In 1882 it was 15. 2 Ibid., January 5, 1882, 300-301. It was 10 in 1893. Edgar B. Kinkead and Samuel L. Black, Ohio Supreme Court Examination Questions for Admission to the Bar, and Annotated Answers; Being the Questions Propounded to Applicants by the Commission Appointed by the Court to Conduct the Examinations, W. H. Anderson and Company, Cincinnati, Ohio, 1893, v.

\(^5\) 39 ABAR, 1914, 854. New Hampshire which established a commission in 1878 was the first. In the sense that the membership of the commission changed each year and the law did not require the court to appoint one, this commission was not yet permanent.

\(^6\) 21 ABAR, 1898, 549; Bloom, Popular Edition of the Laws of Ohio, 43.

\(^7\) 1 Ohio Law Journal, August 18, 1880, 1.
whose graduates the Supreme Court was required by law to accept upon presentation of the diploma and a certificate from an examining committee appointed for that school. Those who failed could try again in six months. By 1912 the state had eight law schools, and the Supreme Court rules and laws covering admissions had become more stringent and detailed.

In spite of the fact that requests for reports by the Legal Education Committee were often answered with statements which revealed a lack of knowledge of the committee's members and officers as well as inactivity, the Ohio State Bar Association was responsible for many of these changes.  

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8 Bloom, Popular Edition of the Laws of Ohio, 43; 1 Ohio Law Journal, August 18, 1880, 1; Green, Ohio Supreme Court Practice, 392; The Ohio State Journal, January 9, 25, 31, 1890 reported passage of a bill amending section 561 authorizing the Supreme Court to appoint special committees to examine law school graduates and attend their graduations. It stated that the previous law required students to come to Columbus to procure their certificates.

9 Marshall, A History of the Courts, III 665-676, 680. These schools were: College of Law of University of Cincinnati, 1833, College of Law of Ohio State University, 1891, Warren G. Harding College of Law of Ohio Northern, 1885, Franklin Thomas Backus Law School of Western Reserve University, 1892, Cincinnati YMCA Law School, 1893, Cleveland Law School, 1897, Law School of University of Toledo, 1909 and Youngstown School of Law, 1910.

10 Such responses appear in the following reports: 2 OSBAR, 1880-1881, 44; 6 OSBAR, 1885, 56; 7 OSBAR, 1886, 40; 10 OSBAR, 1889, 38-39; 11 OSBAR, 1890, 42.
second annual meeting that it had done nothing since it was organized July 9, 1880 because nothing had been referred to it, the association specifically requested it to study the question of establishing a law school under the auspices of the association and to suggest a list of textbooks for students to use in preparing for exams. This task was given the committee because exam results clearly showed that the students did not always choose the best books and that there was a lack of uniformity in the ones they choose.11

The committee had no trouble deciding that a law college in Ohio was "... not only expedient but in all respects highly desirable—nay, imperative."12 The committee confessed that it was ashamed of Ohio's attempts to insure that the legal profession kept up with her growth in population, education, wealth and enterprises. Ever since 1853 it was entirely too easy to become a lawyer.

Every ignoramus who applied, and who could get a certificate from some other ignorant who had been admitted before him, was admitted to the Bar. The result was that the Bar was inundated with an ignoble host of empty-headed lawyers, who crowded the ranks and disgraced the profession in Ohio.13

11 Osbar, 1880-1881, 44, 50.
12 Osbar, 1882, 70.
13 Ibid., 71.
This state of things could not continue. The world was becoming more complex and the profession was faced with many new problems which rapidly expanded the area of legal science.

Indeed, we say there never was a time when the world is making such rapid strides as at this very time, and there never was a time, in Ohio, when there was such an imperious demand for elevated lawyers as at this very moment.14

The question of how to establish such a school was harder to answer. Most colleges were founded through donations gotten by appeals to religion. This would not work in the case of soliciting funds for a law school. Such funds would probably be hard to obtain from the profession because it would mean an increase in the number of lawyers and the committee did not know how to get people outside the profession to recognize the need. An even greater problem was how an association such as theirs, which did not have authority over its own members, could control and supervise a law college. Another problem was where such a school should be located. Cincinnati, Columbus and Cleveland were all possibilities. Cincinnati already had one, Columbus was centrally located and Cleveland offered a university which would cut down expenses by providing facilities and faculties for the necessary non-legal subjects. At the committee's

14 OSBAR, 1882, 74-75.
suggestion the association gave them another year to study these problems. 15

The committee also suggested the following list of text books as those most accessible to students because almost every practitioner and law college used them. There were other books on special departments of the law that might also be profitable but students probably would not have time for them in two years of study.

... students preparing for admission to the Bar should read Walker's American Law, Blackstone's Commentaries and Kent's Commentaries; and, in addition to these, they should read upon the subjects therein specially treated of, Stephen on Pleading; Pomeroy's Remedies and Remedial Rights; Greenleaf on Evidence, and Stephen's Digest of Evidence; Parsons on Contracts; Williams on the Law of Real Property; Story on Agency; Daniel on Negotiable Instruments; Adam's Equity; Angell and Ames on Corporations; Cooley's Constitutional Law, and Harris' Criminal Law. 16

After another year's study the Legal Education Committee decided that the difficulties involved in establishing a law college under the association were too formidable and impractical to consider the matter further. They also suggested that two years of study was not sufficient and that the association ought to work to increase the requirement to three years. This suggestion was not new and the examining commission had

15 OSBAR, 1882, 70-79.
16 Ibid., 80.
already prepared a report on the question for the Supreme Court. The report showed that many students who failed after two years of study were very well prepared at the end of three years. The Cleveland Leader predicted that the subject would be brought up in the next session, and supported the change. 17 Supporters of this change, however, did not accomplish anything for another decade.

The following year a resolution of R. A. Harrison that applicants for admission be required to read and be examined on Sharswood's Legal Ethics or some other work on the subject was referred to the Legal Education Committee. On this occasion Harrison obtained his goal without any apparent action by the committee or the association. In 1885 when the chairman asked for the Legal Education Committee's report only one member responded. It was necessary to check the previous association's report in order to find who belonged and who was chairman. The lone respondent knew of no meetings or actions by the committee. Nevertheless the Supreme Court acted on Harrison's resolution and added legal ethics to

17 4 OSBAR, 1883, 78-79. The need for three years of study rather than two was earlier recognized by Ohio's respondent to an American Bar Association circular on the subject. 4 ABAR, 1881, 292. Cleveland Leader, November 15, 1883. A few years earlier the American Bar Association considered a resolution requiring three years before taking the exam but decided instead to adopt one asking members to work for three year law schools. 2 ABAR, 1879, 210-236; 3 ABAR, 13-24, 19-45; 4 ABAR, 27-30.
the list of subjects for students to prepare.\textsuperscript{18}

In 1886, the Legal Education Committee decided to gather during the session and prepare some recommendations which the association readily adopted. They complained that one of the state's law schools was taking advantage of the special provisions for their graduates by giving a diploma after one year's study. This diploma and a certification of a successful examination by a special committee would admit the applicant without further evidence of his qualifications or further examination by the Supreme Court or the regular examining board in Columbus. The committee recommended that the time of study should be increased to three years and the sections of the law giving law school graduates special treatment should be abolished. The association gave the Legal Education Committee the job of presenting this to the General Assembly so nothing was done.\textsuperscript{19} The \textit{Weekly Law Bulletin} remarked in 1889 that this was one of the recommendations of the association which the legislature had not yet acted on and added,

One who looks at the matter from any other standpoint than that of a law student anxious

\textsuperscript{18} \textsuperscript{5} OSBAR, 1884, 77; 6 OSBAR, 1885, 56; 13 \textit{Weekly Law Bulletin}, February 23, 1885, 102.

\textsuperscript{19} Green, \textit{Ohio Supreme Court Practice}, 392; 4 ABAR, 1881, 292; 7 OSBAR, 1886, 110-111; 8 OSBAR, 1887, 73; 9 OSBAR, 1888, 42; 10 OSBAR, 1889, 38-39; 11 OSBAR, 1890, 42.
to get in a way of making money, cannot but regard it as a very wise move.\textsuperscript{20}

Columbia Law School after many years of deliberation had decided to change to a three year course, and the \textit{Columbia Times} agreed this was a necessary move. "'When one considers the ground to be covered if one is to acquire only the necessary foundations for a professional usefulness, a three year course does not seem long.'\textsuperscript{21}

During this time, however, the legislature considered, but did not pass, some laws changing the requirements, most of which attempted to ease standards. One allowed applications and admissions to be handled by the Circuit Court of the county in which the applicant resided. Another would admit out-of-state lawyers with certification that they had practiced five years without an exam. The next year it was revised slightly to include a local examination instead of the centralized Supreme Court one. The bill allowing out-of-state attorneys in without an exam eventually became law. One representative publically stated that he wanted to change the law so that graduates of law schools would not have to take the exam. Their diploma was a sufficient credential for admission. However, he did not act on this statement.\textsuperscript{22}

\begin{itemize}
\item [\textsuperscript{20}] \textit{Weekly Law Bulletin}, January 7, 1889, 1.
\item [\textsuperscript{21}] Ibid.
\item [\textsuperscript{22}] \textit{Ohio State Journal}, January 6, February 12, 1887, January 6, 1888, March 8, 1889, March 5, 1892, January 31,
During the 1880's the legal periodicals contained several complaints about the exams prepared by the Supreme Court's committees because of the large percentage of applicants who failed. In March of 1883 ten of twelve applicants failed. Eighteen of twenty-three failed that December and the following year seventeen of twenty-one failed. Those writing the periodicals about this complained about the questions and the lack of uniformity in difficulty of the exams. Two writers suggested fewer exams and more permanent personnel on the examining committee. The two editors of the Ohio Law Journal disagreed over the severity of the exam involved in the 1883 incident, but by 1888 the Weekly Law Bulletin was calling for improved standards and greater severity in the exams.  

The association began seriously considering legal education in the 1890's. The Weekly Law Bulletin brought the subject up in August of 1890 in an editorial following its report on the National Bar Association meeting. One of the speakers at the meeting praised Ohio as an example of the sort of thorough examination of applicants by an

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examining commission which other states should copy. The editor was pleased that the National Bar Association was interested in advancing admission standards and complimented Ohio, but he thought there was room for improvement. The special committees for the law schools should make sure that their exams maintained the same standards as those of the Supreme Court's committee. He warned about law schools that ignored the state's two years of study requirement, suggested that some practical experience in a law office would also be good for all applicants, and recommended increasing the requirement to three years' study.\(^{24}\)

Although the Legal Education Committee did not meet during the year the chairman presented his own report in 1891. He reported that many states were increasing the requirements for admission and that both medicine and dental surgery now required three years of study. He gave figures on the number admitted which showed an increase in the percentage of those who attended law schools. In 1889, seventy-one of the 235 admitted graduated from law schools and in 1890 the figures were eighty-one of 232. In the first six months of 1891 seventy of the 171 admitted were law school graduates. Since an increase in the number of years required for study was an increase

\(^{24}\) 20 Weekly Law Bulletin, August 18, 1890, 113.
which might create hardship he suggested the association appoint a special committee to study whether the period of study should be increased to three years and whether the exam should include general studies as well as legal. His suggestion carried unanimously.\(^{25}\)

At this same meeting Godfrey announced that Ohio State University was taking measures to establish a law school. A committee of five would meet the following week to make preparations and Godfrey thought they would be ready to begin by winter. Columbus offered several advantages. It was centrally located and had access to the legislature and courts of all levels. Its connection with the university was also an advantage. One law school could not handle all the students in the state and it was about time Ohio stopped sending its students out of state for legal education. One reason he came to the meeting was to tell the Bar about the new school, and he hoped they would encourage it.\(^{26}\)

\(^{25}\)12 OSBAR, 1891, 27, 55-59, 63; 26 Weekly Law Bulletin, July 27, 1891, 64-65. Ohio, in this case was ahead of the American Bar Association which adopted a resolution favoring two years of study at its 1892 meeting. 15 ABAR, 1892, 317-393.

The following year the Legal Education Committee left all action up to the Special Committee which reported favorably on both matters. They prepared a bill to present to the legislature and recommended a special committee to present it. The bill required three years of study, one of which had to be spent in the office of a practicing attorney. It also required an exam of all persons, who were not graduates of a college, university, academy or high school, by some one appointed by the Common Pleas judge in English composition, English and United States history and other traditional subjects before they served a one year clerkship. The bill neglected to change the two year requirement for out-of-state attorneys.

The association's first reaction was not favorable. Judge Doyle wondered if it could be enforced, and moved that the requirement of a year's clerkship for admittance to a law school be eliminated. This was not fair to those who wanted to go to law school first. Others objected to the loophole of maintaining two years for those from out of state, and W. E. Cushing raised the question of how the bill would affect three year law schools. The association moved to have the committee consider these objections and report the next day. Judge Tibbals, who was presenting the program for the committee chairman, Edgar Kinkead, did not want to substantially change the report Kinkead had worked so hard on without his opinion. Office work was
absolutely necessary and he was not willing to change that requirement even for three year law schools. He saw no way to solve the out of state problem due to the principle of comity. The only change he was willing to make was to allow the general subject exam along with the bar exam. Cushing attacked the bill because of its out of state loophole and the clerkship requirements. The bill did not define a clerkship and it discriminated against Western Reserve, which had just announced the opening of a three year graduate law course. He also objected to requiring this on the basis of a close vote after short consideration, especially since many had already left. Instead of the committee's bill he suggested they simply substitute three years for two in the current statute. Major King thought this was a makeshift solution which did not solve the problem of an insufficient literary education. Judge Moore ended the debate by pointing out that such an important subject should receive more consideration than it was receiving. Many members were anxious to catch the 11:45 boat or had already left. Since no one would be hurt if a decision was delayed for a year he suggested the Special Committee reconsider the resolutions and that its report be given a major spot in next year's program. The association agreed.\(^27\)

\(^{27}\) 14 OSBAR, 1892, 74-90; 28 Weekly Law Bulletin, August 1, 1892, 49, announced the beginning of Western Reserve's Law School.
This time the regular Legal Education Committee was active and it presented a report at the 1893 meeting. They decided that since the one year clerkship idea was unfair to three year law schools it should be omitted. They prepared a bill requiring three years of study or three years of study and practice for those coming from states with lower requirements. They also prepared a resolution for the Supreme Court requesting them to modify their rules to include an examination in general knowledge for those who were not graduates of some institute of learning above the elementary level.

There was some debate whether this would conflict with recent legislation admitting out of state attorneys with five years experience without an exam and providing special examining committees for law school graduates, but the report was readily adopted. Later the association agreed that it was necessary to change the wording of the committee's bill so that it was clear that law school graduates taking the special exams still had to meet the three year requirement. They also suggested that the provisions of the bill be delayed until 1895 so that it would not adversely affect those currently studying.  

The committee concentrated on getting the association's bill through the legislature and did not present the

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resolution to the Supreme Court. The legislature adopted the bill with a few amendments. There was some difficulty with the bill in the house. Several members who were law students objected to the increase in years required for study. The debate was long and vicious. The Ohio State Journal described it as a battle between the professionals and the non-professionals. The bill was originally defeated because it lacked a constitutional majority, but it was later reconsidered and passed. The new standards were to go into effect July 1894. At the next meeting the committee suggested that if the association wanted further action on the resolution to be presented to the court they ask the new Legal Education Committee to do so. The association adopted the Committee's report without specifically asking the new committee to act. As a result the Legal Education Committee made no report for several years.\(^\text{29}\)

In 1896, however, M. R. Patterson\(^\text{30}\) of Columbus prepared a short paper of his own on legal education which he agreed to read when some members of the association insisted that he do so. He made several suggestions for

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\(^{29}\) OSBAR, 1894, 22-23; 16 OSBAR, 1895, 37; 17 OSBAR, 1896, 34; 18 OSBAR, 1897, 65; 19 OSBAR, 1898, 38; Ohio State Journal, February 15, 16, 17, 22, April 5, accusations of cheating on exams were made during the debate; 31 Weekly Law Bulletin, April 9, 1894, 185, 188.

\(^{30}\) He was not a member of the Legal Education Committee, 17 OSBAR, 1896, 94.
improving the machinery for testing candidates. This was very important because the place to begin the process of making the lawyer equal to the new demands being placed on him was at admission. The new three year system was working fairly well but some attorneys and students were cheating. To avoid this he suggested the lawyer file the name of his student with the Supreme Court when he began studying. Patterson also objected to the practice of designating a special committee to examine law school graduates. This destroyed any chance for uniformity in exams and was unfair to those who had to travel to Columbus for their examination. Finally he advocated a more permanent board. It took skill and experience to prepare fair questions that clearly discovered the student's ability. Changing the membership of the examining committee yearly invited inferior work. He thought New York's system was better. They had a permanent board with salaries, and a rotating membership which insured that at all times at least part of the board had experience. A fifteen-dollar examination fee helped pay costs. New York also had a general exam for those who were not college graduates and their rules covering the proof an applicant must present before taking the exam were more specific than Ohio's. The association unanimously agreed with Governor Jones's motion that
Colonel Patterson be appointed to present his suggestions to the Supreme Court. 31

Patterson met with the Supreme Court in January and presented them with a detailed set of new rules embodying the principles he suggested at the meeting. The court showed some interest but set them aside until the next time the rules were to be revised. In 1891 in response to a questionnaire from the American Bar Association the chief justice favored an appointed examining commission with three year terms, one-third to retire each year, which met at set times in various parts of the state and had its expenses paid. 32 Judge Shauck reported to Patterson that they would consider the rules before the end of 1897. He also stated that he was in favor of the best set of rules that research judgment and experience could produce. Patterson presented his suggested rules to the association and urged a vigorous renewal of the effort to get the Supreme Court to accept rules that were at least as efficient as those of New York and New Hampshire.

Patterson's suggested rules made three major changes. A more permanent committee of nine members with three year rotating terms was established. Special committees

31 17 OSBAR, 1896, 59-71; This idea of registration of students was not new. The 10 Weekly Law Bulletin, December 17, 1883, 405, suggested it.

32 14 ABAR, 1891, 308, 310.
for college students were abandoned. All applicants who did not have proof of one year's satisfactory study at a college or a state school examiners teacher's certificate were required to take an examination in English composition, United States history, math and English history. All law students had to file with the Supreme Court at the beginning of their studies. The list of legal subjects for examination was also changed slightly as follows.

"Torts" is substituted for "Personal Rights" under the present rules, for the reason that the subject of "Personal Rights" has been found by experience to be too general, and is largely included in the Constitutional Law. "Federal Procedure" is added to the present list of legal subjects in deference to the recommendation of the American Bar Association, and the ample reason given in the printed proceedings thereof for the year 1895.\(^{33}\)

The examination fee was increased to ten dollars to provide a small salary to the committee members while they were conducting the exams.\(^{34}\) There was an attempt to improve the training received by students in law offices by requiring personal instruction of at least ten recitations of one hour each in each subject. The rules also included details to cover out of state attorneys who did not meet the five year no exam standard. The aim was to treat these attorneys fairly without creating a loophole.

\(^{33}\) 18 OSBAR, 1897, 79.

\(^{34}\) A fee of five dollars was originally established January 5, 1882; 2 Ohio Law Journal, January 26, 1882, 324.
Patterson noted that some questioned the ability of the Supreme Court to make these rules without legislation but he thought the court could act on its own. The matter had already been presented to them and the association could turn to the legislature later if necessary. He also suggested that the association help the court choose competent men for the examining committee. The association appeared to be overwhelmed by all the details because they did not debate the proposed rules. Instead the first speaker suggested that it be referred to the Legal Education Committee because it would be impossible for the association to take up and pass all the specific propositions involved in the report. Judge Shauck moved that a special committee of five experts be appointed to draw up rules to present to the Court along with a list of twenty-five names of those eligible for the commission. This brought the complaint that Shauck was not being fair to the standing committee. Judge Stewart, a member of the committee, answered by saying that the committee was too large to handle such an important question. If it were put in the hands of the committee nothing would be accomplished. This was the primary work of the association and it should be in the hands of men prepared to begin work at once, not those who had to study up on it. Shauck's amendment and Patterson's report carried. The
Ohio State Journal predicted that this action would be generally approved. In response to a complaint that some students were presenting false certificates of the amount of time spent studying, a special committee of J. J. Moore, E. B. Dalton and A. D. Follett was appointed to investigate and suggest proper action to the Supreme Court.  

Although only three of the five reported to the association the next year, the special committee prepared another list of rules and presented them to the Supreme Court, which adopted new rules on December 17, 1897. The committee had four goals. They wanted a more permanent tenure for the Examining Committee, public registration of students, uniform exams and reasonably high and definite standards of general education as a condition for admission to the exam. The court adopted all of the committee's suggestions except that they did not establish standards of general education as high as the committee proposed. Francis B. James, who reported the change to the American Bar Association's section on Legal Education, gave credit for these changes to Lawrence Maxwell, Jr., Chairman of the Special Committee of five, and Judge John A. Shauck.  

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3518 OSBAR, 1897, 70-84, 139-145; Ohio State Journal, July 24, 1897.

3619 OSBAR, 1898, 38-40, the committee's suggested rules are on 40-45; 21 ABAR, 1898, 551.
The rules adopted by the court provided that except for those who had been admitted and were practicing in the highest court of another state or before the United States Supreme Court for a period of five years, no one would be admitted without taking an exam. The statutes prevented their insisting on an exam for the excepted persons. The Court appointed a Standing Committee on Examinations of nine men with three year terms arranged so that only three would be new each year. Exams were to be given in Columbus in March, June and October by the Standing Committee only. The Supreme Court's rules were better than those suggested by the committee because they clearly stated that no one would be given special treatment. The committee's rule called for exams in June and October in Columbus or some other place or places in the state to accommodate graduating classes of law schools. A student had to receive a grade of at least seventy-five percent

... on an examination embracing the following subjects: The law of real and personal property, torts, contracts, evidence, pleading, partnership, bailments, negotiable instruments, agency, suretyship, domestic relations, wills, corporations, equity, criminal law, constitutional law and legal ethics. 37

The list of subjects did not include federal procedure as the committee suggested. Before he could take an exam

37 OSBAR, 1898, 46-47.
the applicant had to produce evidence that he had at least a common school education. The more detailed rules concerning general education which the committee had hoped for were as follows:

Unless the applicant produces a diploma or certificate showing that he is a graduate or matriculate of a college or university, a graduate of a public high school, or of a private academy of equivalent standing, or the holder of a high school certificate issued by the Ohio State Board of School Examiners, the examination shall also embrace the following subjects: English composition, arithmetic, algebra to quadratic equations, plane geometry, the outlines of English and American History, and first year's Latin, or as a substitute for Latin, French or German.38

Every resident, even those studying at out of state law schools, had to file a certificate with the court from the school's chief officer or the attorney in whose office he was working when he began his studies. The required three years of study would be calculated from the date the applicant filed. Those who had already begun their studies were also required to register by March 1898 showing when they began their studies. The committee suggested a one dollar fee with these documents, but the court decided on fifty cents. Non-residents had to file similar certificates and the required one year residence in the state would begin from the date they registered. The rules also required

38 19 OSBAR, 1898, 41.
that applicants notify the court at least one month before the date they wanted to take the exam, pay a five dollar fee, and file the certificates required by law giving proof of their studies. This was to give the court time to check these papers before the exams began. The Standing Committee on Examinations was given authority, subject to the court's approval, to make any rules for conducting the exams it thought necessary. The money collected from the fees was to be used to pay the cost of conducting the exams, and the expenses plus five dollars a day of the Standing Committee on Examinations. The association's committee suggested ten dollars per day. Those who failed could take the exam again after six months upon showing proof of further study, except that those who had a grade of sixty percent to seventy-four percent could try again the next time an exam was given. Patterson's attempt to regulate the studies by requiring a specific number of recitations was rejected by both the committee and the Supreme Court.

The _Weekly Law Bulletin_ expressed pleasure with the new rules, and reported that they were received with much satisfaction by the bar.

The section of the new rules requiring a general educational qualification will be specially welcome.

While this standard is not as high as might be desired, still it is a standard,
and as such it is a distinct gain over anything heretofore required in this state. 40

It saw the new rules as a distinct gain for the profession and the public. The association's president, Judson Harmer, thought this was a great triumph. Some people, however, did not approve of these actions. The legislature passed a bill exempting those who were already studying for the law but did not have the required common school diploma. The next session the legislature considered a bill which eliminated the requirement for a diploma from an educational institute. Such action led the Legal Education Committee to report in 1899 that since people were still complaining about the new standards they thought it would be wise to wait until the grumbling stopped before they acted further. As a result there was another series of years during which the Legal Education Committee made no reports. The Special Committee on Investigation of Unprofessional Conduct found it impossible to gather any evidence on which to act. They learned that Judge Hall of Akron was the originator of the complaint, but when they contacted him they discovered that he did not want to get involved in the investigation and that he refused to name the man he heard was involved. Warner Bateman, introducer

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of the resolution, also did not know names or facts. 41

The Supreme Court, in 1899, changed the rules so that after January 1, 1901 the applicant needed a high school education or its equivalent and three years study of legal subjects. The Supreme Court found that it had problems with local examiners for those who did not have the diploma so it eventually replaced them with court appointed examiners. In 1902 the legislature further weakened the court's ruling. It divided the high schools into three grades based on the number of years it took to get a diploma and stated that a diploma from any grade or a teacher's certificate made one eligible to take the bar exam. This meant that an applicant with a two year high school education and three years of legal studies could take the exam. 42

The Legal Education Committee in its 1903 report expressed the belief that the legislature did not have the power to do this since the courts in common law had the exclusive right to determine the qualifications for admission to the profession. The committee, therefore,

41 OSBAR, 38, 52-54; 38 Weekly Law Bulletin, December 27, 1897, 303; 20 OSBAR, 1899, 32-33; 21 OSBAR, 1900, 28; 22 OSBAR, 1901, 35; 23 OSBAR, 1904, 28; Ohio State Journal, February 15, April 13, 24, 1898, March 15, 1900; 39 Weekly Law Bulletin, April 11, 1898, 231, April 18, 1898, 241. See also fn 54, Chapter II.

recommended that the Supreme Court clearly state that by high school they meant the four year, first class high school. They also recommended a further change in the court's rules to make a high school education a minimum requirement before anyone could begin his legal studies. They quoted statistics showing that a higher percentage of law office trainees failed the bar exams than law school graduates. In New York, in 1900, twenty-five percent of the office candidates failed, while only ten percent of those who spent some time in law school failed. They argued that a law office no longer offered the kind of opportunity for learning it once did. The stenographer and the typewriter had taken over the work which used to help the clerk learn. Since the law schools were becoming so important the committee also suggested that the association should appoint a committee to visit them and report to the association. The association adopted the committee's report without debate. 43

Judge Stewart and Judge Spear suggested that the association consider the laxness of some lawyers who certified study in their office. Stewart thought they should require more details in their certificate. Spear thought that all those who did any studying at a law school should be required to present a certificate from the dean. The

43 24 OSBAR, 1903, 35-42.
committee considered these matters and reported later in
the meeting recommending further changes in the Supreme
Court rules which the association adopted. The rule re-
quiring a lawyer to certify that a student had studied
with him stated that the certificate should contain the
following information: 1) the subjects studied, 2) the
number of hours given to each subject, 3) a list of the
text books used, 4) the number of exams, 5) the subject
and type of exam used, and 6) how much time was given to
instruction. The committee also suggested that each
applicant be required to report if he attended a law
school and failed to obtain a certificate or diploma. If
so, a certificate from an attorney showing that the student
was studying with him during the same period would not
admit him to the exam. The last suggestion was made
because of a recent case of a student who studied for a
year with an attorney and two years in a law school. When
he failed the final exam, he got the attorney, who did
not know of the failure, to certify that he had studied
for three years. The Weekly Law Bulletin approved of
this suggestion. 44

Again there appears to have been little action dur-
ing the next year because at the 1904 meeting when the

44 24 OSBAR, 1903, 40-43, 103-106; 26 ABAR, 1903, 574-
president called on the Legal Education Committee for its report the chairman announced they would meet after the day's session. Later in the meeting he reported that the educational requirement and the length of time devoted to legal studies were sufficient. All that was needed now was a thorough exam. This report was followed by another period of inactivity. 45

The association also was interested in legal ethics. In 1907 they adopted a resolution establishing a committee of three to five, with Judge E. B. Dillon as chairman, to write a code of ethics. 46 Dillon did not make it to the next meeting, and the committee was given a continuance to wait to see what the American Bar Association's Committee on Legal Ethics did. When the association met in 1909, the American Bar Association had accepted its code of ethics and New York and Maine had already adopted it. Dillon's committee recommended that the Ohio State Bar Association do the same. A copy of the code was sent to members as part of the Judicial Administration and Legal Reform Committee's report which also recommended its

45 26 OSBAR, 1905, 24; 17 OSBAR, 1906, 10; 28 OSBAR, 1907, 8.

46 28 OSBAR, 1907, 16. Following the meeting the Weekly Law Bulletin pushed the idea by publishing speeches, articles and copies of other association's codes. 52 Ibid., August 19, 1907, 458-461; August 26, 1907, 466-470. October 28, 1907, 542-547; 53 Ibid., January 6, 1908, 4-5, June 15, 1908, 206-212.
adoption. The association unanimously agreed. Later in the meeting the Legal Ethics Committee decided further action was necessary. They resolved that the association ask the Supreme Court to amend its rules to require the applicants to become acquainted with the code, to promise to conform to it, and to be examined on it. Also law schools should be asked to teach the subject of legal ethics. The association unanimously agreed to this. Finally someone suggested the association should endeavor to see that all members of the bar as well as the association should receive a copy. The association, therefore, agreed to send paper bound copies of the proceedings of the meeting containing the code to all lawyers in the state.\footnote{29 OSBAR, 1908, 22; 30 OSBAR, 1909, 8, 23-35, 39-40, 43.}

The last action by the Legal Education Committee during the period studied was taken in 1908 when they attempted to further regulate the applicant's studies. They suggested that certificates be accepted from only those law schools that met certain standards. They must have a library with a suitable reading room for the students that was open at least eight hours a day, six days a week. Each library had to have at least the following books:

(a). The reports of the courts of last resorts of Ohio, New York, Massachusetts,
Indiana and Illinois, or Michigan and the latest digests thereof.

(b). The latest edition of the revised statutes of Ohio.

(c). The reports of the Supreme Court of the United States and the Federal Reporter or United States Circuit Court of Appeals.

(d). The latest edition of at least one standard text book on each of the subjects hereinafter enumerated as required for admission to the bar.

(e). A complete set of some one of the encyclopedias of law or General Digests.48

During the three year course the school had to give at least 1200 lectures or recitation periods of not less than forty minutes each. These were to be as equally as possible divided among the subjects required by the Supreme Court rules. The grades of their exams were to be filed with the Supreme Court. The school was required to keep a record of attendance. Applicants who studied with an attorney had to devote as much time to their studies. At the end of each year's studies each student was required to file a record of his progress during the previous year. They also attempted again to require a four year high school education before the applicant took the exam. The association adopted this report.49

48 29 OSBAR, 1908, 25.
49 Ibid., 24-27.
The association also took an interest in the education of its own members. It instituted the debates given along with the speeches in the Appendix with this in mind. Speakers and topics were chosen for both the entertainment and the education of the members.

Thus the association, in spite of the repeated inactivity of the Legal Education Committee, opposition by the legislature and the indifference of many in and out of the profession, managed to have a direct influence on the important development of higher admission standards. They were directly responsible for the two most important developments of an increase in the number of years of legal study required and the establishment of a Standing Committee on Examinations.

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50 OSBAR, 1903, 111-112.
CHAPTER V

CODIFICATION AND UNIFORMITY OF LEGISLATION

The issues of codification and uniformity of legislation interested many lawyers during this period. Uniformity was a movement, which began in the late nineteenth century, to make legislation in certain fields such as commercial law, or marriage and divorce laws more uniform throughout the United States. This was the direct result of the development of a national economy which increased the number of people who found themselves directly affected by and involved in the laws of other states. Although the two subjects are somewhat related, codification was a separate movement to prepare codes of the current law covering various legal subjects such as criminal procedure, civil procedure and many other specific topics. Some advocates of codification thought it could be successfully applied to all branches of the law. An important idea behind both of these movements was to eliminate some of the complex aspects of the law so that both lawyers and the public would find it easier to understand and discover the law. Hopefully
this would also eliminate some of the litigation which was then clogging the courts.

The center of the codification movement was New York where David Dudley Field had been conducting what amounted to a one man campaign for codification since the 1840's. The debate, however, soon spread to other states. During the 1880's both the Ohio State Bar Association and the American Bar Association debated the issue. In Ohio the subject was first mentioned during the period under study by the Weekly Law Bulletin, when it published an article from the American Law Review on an American Civil Code. It also published reviews of some of the literature involved in Field's fight in New York and reported that a postcard vote taken by the New York Tribune magazine was against Field's proposed civil code. In the Fall of 1884 it printed in full a speech by George Hoadly on "Codification in the United States" delivered at the Yale Law School graduation, discussed the sections of Judge John F. Dillon's address to the American Bar Association dealing with codification and

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reprinted *The American Law Review's* comments on Hoadly's speech.²

Hoadly's arguments are especially of interest since as governor of Ohio he tried to carry out his ideas. He complained that the doctrine of *stare decisis*³ made common law inflexible. Under it judges were timid concerning changes and often sacrificed the spirit for the letter of the law. European nations, which based their jurisprudence on Roman Law, had had their law codified.

Has any jurist of those great nations shown a disposition to exchange their codes for the Common Law of England? Have not the continental nations enjoyed methods, rules, principles of law as flexible, of as easy and sufficient adaption to new social exigencies and inventions, as the Commonwealth of England?... On the contrary, did not Mansfield borrow the law of insurance from the Continent? These codes contain rules simple, definite, concise, certain, but ample for the progress of society.⁴

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² 25 *Weekly Law Bulletin*, September 13, 1880, 603-609;
12 *Ibid.*, September 1, 1884, 106-112, September 8, 1884,
113, 124-128, October 27, 1884, 219.


The common law was an unorganized, obsolete, uncertain and widely scattered mass of undigested customs that often clashed.

The search for the fountains of analogy at Common Law is the search for a lost coin in the desert, a weary turning over the pages of innumerable reports, digests, text-books, commentaries.5

A code, on the other hand, even if today's codifiers could not produce one flexible enough and capacious enough to last for many generations, could be digested, collected and stated concisely in a few volumes. Judges could devise new rules or applications by analogy from the code at least as easily as they could from common law precedents. True codifiers could not anticipate every exigency,

But the wisest men of our time, acting by legislative commission in the creation of a code can do much; and it is better to do something than nothing: . . . better to try and anticipate and thus prevent controversy, than to wait until the exigency may arrive, and then resort to a suit, with its paraphernalia of judges, opposing counsel, jurors, witnesses, depositions, continuances, judgments, order interlocutory and final, nonsuits, and finally appeals to the judgment of courts of last resort, too often, alas!6

Codification clearly was successful. Many European nations had had successful codes. So did several American

512 Weekly Law Bulletin, September 8, 1884, 125.
6Ibid., 126.
states. Only American and English lawyers seemed to doubt. Hoadly was confident codification would eventually be adopted in all the states and the federal government.

Does anyone believe that in another generation any considerable fragment of the Common Law will be left in force in England or in New York, Ohio, Indiana, or any other of the Great States of the South or West, except as far as it may be preserved in statutory form by re-enactment.7

Dillon favored a more conservative approach than Hoadly. His code would cover the principles of law relating to the ordinary and daily affairs of life. It would state what was clear, remove what was obsolete and settle what was doubtful. The Weekly Law Bulletin, however, concluded that in the final analysis both men were expressing similar ideas.8

The subject was first presented to the Ohio State Bar Association when Judge E.P. Green at the 1884 meeting resolved "That by reason of the want of certainty, want of publicity and want of convenience of our law, the interests of the people demand that it be codified."9

712 Weekly Law Bulletin, September 8, 1884, 127

8Ibid., 115; 7 ABAR, 1884, 224-233, Annual Address by Dillon entitled "American Institutions and Laws". Dillon was one of the advocates of codification in New York and at the American Bar Association meetings. The 6 Ohio Law Journal, September 6, 1884, 89-90 also summarized this speech.

95 OSBAR, 1884, 67.
Since it was a current topic at many state associations and the American Bar Association, he thought Ohio should discuss the question. Codification was needed to eliminate the uncertainty of law so that there would be fewer lower court decisions overruled by the Supreme Court and briefs would be easier to prepare. The last three Supreme Court reports showed that the court affirmed 153 cases and reversed 163. Green suggested a commission to draw up the necessary code. The *Weekly Law Bulletin* reported that the association was obviously taken by surprise by Green. This probably explains why a subject which caused a furor in New York and much debate at several following meetings of the association was accepted at this meeting with very little discussion. Only one member spoke against it. He thought that codification was unnecessary because the problem was not the law but poor legal education. The problem of so many reversals by the Supreme Court could be solved by simply giving the Common Pleas judges and the lawyers more time to consider, prepare and present each case. Many cases were being reversed due to mistakes which were the result of haste not uncertainty in the law. The *Weekly Law Bulletin* correctly predicted that the subject would occupy much of the association's time in the future, and expressed the hope that the Judicial Administration and Legal Reform Committee would
give the subject earnest consideration.\textsuperscript{10}

During the following year Governor Hoadly briefly advocated codification in his annual address.

If the whole body of the law of Ohio were reduced to writing and enacted into statutes, great progress would be made in giving to it accessibility and certainty, and in the economy of its administration. This was done with the Roman law in the days of Justinian, and the body of the civil law prepared under the auspices of that emperor (revised in France in the Codes of Napoleon) is today the legal system of the whole civilized world, except the English-speaking nations, and largely affects even their jurisprudence. The practicability of such a work has therefore been tested by the experience of ages. In California and Dakota, codification has been successfully accomplished so that no unwritten law is administered, and the courts no longer indulge in guesses as to the customs of England as the basis for judicial action.\textsuperscript{11}

New York's legislature had twice passed the complete code only to have it vetoed. Since Louisiana passed a code of procedure and a civil code early in the century twenty-four states codified their civil law and nineteen codified their criminal law.

The work which has been so well done in Ohio in the codes of civil and criminal procedures in the laws of testamentary succession, usury, guardianship, and many other topics, may be extended with profit to the whole body of the

\textsuperscript{10} Weekly Law Bulletin, January 12, 1885, 29-30; 5 OSBAR, 1884, 67-71.

\textsuperscript{11} Ohio State Journal, January 7, 1885.
law. I recommend that it be undertaken through the agency of a commission to be created for that purpose.\footnote{12}

Some men responded to this by circulating a petition calling on the governor to push the codification commission he requested in his address. The \textit{Weekly Law Bulletin} was glad to see the subject being agitated but thought this might be a bit premature since the state's bar association had just begun to study the idea.\footnote{13} The General Assembly ignored both the governor's speech and the petition.

During the year the \textit{Weekly Law Bulletin} continued occasionally publishing articles on codification. The \textit{Bulletin}'s comments mentioned above concerning Green's resolution and the association's actions led to a letter to the editor from Clement Bates. He thought that many changes in the legal test books and teaching had to occur before codification could be successful.

If codification is really necessary as a relief from an intolerable load of precedents, there must be, in my opinion years of preliminary work done, before any body of lawyers, however accomplished or any legislature, however free from ignorance or indolence, can succeed in it, or any part of it. To thresh a field sown with different kinds of grain, by threshing one

\footnote{12}{\textit{Ohio State Journal}, January 7, 1885.}

\footnote{13}{\textit{Weekly Law Bulletin}, February 2, 1885, 105.}
stalk of each at a time, before separation and gathering into shocks, would be easier and more possible.\textsuperscript{14}

In Bates' opinion the law had never been really codified. Justinian's Digest and the European codes were selections, abridgments or adaptations of Roman law rather than true codes. Bates did not object to codification, but he wanted the profession to proceed cautiously.

This article is not against codification, but merely to insist that the development of our law might be permanently injured by any present production possible from the best of legislatures, though guided by an earnest and enlightened bar.\textsuperscript{15}

The \textit{Law Bulletin} sent copies of the issues containing Hoadly's address to C. Reemelin, the author of a bill providing for codification of American constitutional law, and asked him to comment on the subject. Reemelin wrote his bill because he believed the initiative for codification should come from the federal government. It should be a national movement that reformed the law in all the states along similar lines. Codification, to him, meant comprehensive law reform.

It seems easy to engage public attention to the subject of codification, but this is true only so far as the comparatively lighter and well paying works of mere collations of statutes is to be done. The moment it is seen that

\textsuperscript{14} 13 \textit{Weekly Law Bulletin}, February 2, 1885, 107.
\textsuperscript{15} \textit{Ibid.}, 108.
comprehensive law reform and a breaking with prejudices is to be accomplished, then hesitancy steps in and protracts all efforts at thorough codification.\textsuperscript{16}

Reemelin's library contained four different large collations of Ohio's statutes and voluminous digests of her judicial decisions.

How much of this was a ripening, how much a rotting process? That's the question we can only settle by codification in the highest sense, that of comprehensive law reform.\textsuperscript{17}

One of the reforms Reemelin wanted was a limit on the power of legislatures to initiate legislation. A council of state of the chief executive officers of the state or a special body of ex-judges, now retired from politics should have this power. He also wanted the chiefs of executive departments to have more authority to operate on their own under the guidelines of general laws.\textsuperscript{18}

Just before the association's next meeting the \textit{Weekly Law Bulletin} published a letter to the editor from William R. Rockel of Springfield urging better attendance at the coming meeting. He listed codification as one of the important issues that would be discussed. The long sharp and bitter contest over the issue in New York was fresh in the minds of all and the subject was both

\textsuperscript{16}13 \textit{Weekly Law Bulletin}, March 2, 1885, 208.

\textsuperscript{17}Ibid.

\textsuperscript{18}Ibid., 208-213.
interesting and worthy of the attention of every lawyer in Ohio. Whatever the Judicial Administration and Legal Reform Committee's report it was certain not to meet the approval of everyone. Whether codification was feasible, practicable and desirable were very grave questions for the association to consider. 19

Rockel was right when he described codification as a divisive issue. Even the Judicial Administration and Legal Reform Committee found it could not agree. Judge Elliot wrote the section of their report arguing for codification which was signed by himself, E. P. Green, Isaiah Pillars and Lawrence Maxwell, Jr. Judge A. K. Dunn and the association's current president, Asa W. Jones, objected and Dunn thought the other five, who had not been at the committee's meeting the night before, shared his view. In his presidential address Jones cited a number of recent mistakes by the legislature and warned the codifiers that the argument that the only remedy for mistakes was by reducing the principles of common law to statutes was not a good argument. 20

Elliot argued that codification was a solution to the three complaints mentioned in his resolution of the

year before. These complaints were especially true of the unwritten common law. This law was uncertain, poorly publicized and inconvenient,\textsuperscript{21} otherwise lawsuits would be swiftly and certainly settled once the facts of the case were ascertained.

Many lawyers on the losing side now felt surprised and decided the decision was based on an incorrect interpretation of the law. This was not the way things should be. Both the attorney and his client should be able to ascertain with reasonable certainty what law is applicable to a given set of facts.

We feel proud of the fact that law is in very truth a science, but that is not true science which is open to the charge of such uncertainty that the parties to a dispute cannot know the law until they reach the end of a litigation.\textsuperscript{22}

Elliot admitted that there would always be a difference of opinion concerning written laws but statutes were more certain and convenient. The criminal law in Ohio had long been codified and it had worked well. Also Ohio had made much progress in codifying the civil code but more needed to be done. Elliot thought it would not take long to codify the laws relating to domestic relations, real and

\textsuperscript{21}Judge Dillon used these same words in his speech before the American Bar Association in 1884, 7 ABAR, 1884, 224-233.

\textsuperscript{22}6 OSBAR, 1885, 92-93.
personal property, partnership, private corporations, contracts, negotiable instruments, public and private ways and water courses, and evidence so that even the business community could be reasonably sure of the laws provisions. If the association did not consider all of this practicable now, why not choose the six most important branches of the civil law.

The law covering contracts, domestic relations, partnerships, negotiable instruments, real property and evidence certainly should be codified. What had been done in France, Spain, Prussia and Italy could be done in America. What was being done slowly in England could be done in the United States.

Codification was no longer an experiment. Louisiana, Georgia and California had already codified their laws. Let Ohio follow the lead of these vigorous and prosperous states of the south and west by adopting the following resolution.\(^{23}\) "That the civil law, as far as practicable, should be reduced to the form of a statute."\(^{24}\)

This was very similar to a resolution which caused a lively discussion at the previous American Bar Association

\(^{23}\)In 1853 Ohio adopted a Code of Civil Procedure. 12 Weekly Law Bulletin, September 8, 1884, 125; 6 OSBAR, 1885, 85-95.

\(^{24}\)6 OSBAR, 1885, 95.
meeting. They had decided to postpone the issue for a year so their members could study the question and vote intelligently. By the time of the Ohio State Bar Association's December meeting this debate had been published and many members used it during the debate over this resolution. Judge Gilmore began the debate by moving that the association should also postpone the issue for a year because they were not qualified to intelligently vote on the issue now. William Robinson of Cleveland agreed,

And I tell you when you come to a question as radical as this, as high, broad and deep, a question that applies so generally and to every variety and relation of life, and that may affect us so lastingly—a new and untried question—you should hesitate to rush into it with your eyes closed, and especially when these old sailors, captains and navigators say, "Hold and take your soundings." Let us, fellow citizens, consider this coolly. We are not any of us prepared to discuss this thing.

Since many of the speakers agreed with Gilmore that they did not know enough about the subject some of the speakers mentioned some pamphlets and books they thought would help. One of these was written by Judge Green, whose name was so closely connected with the issue that his colleagues occasionally teased him about it. Others argued

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266 OSBAR, 1885, 125.

27 Ibid., 74-76. 165
that this was just an excuse to avoid taking a stand on an issue which had been before the profession and country since 1836. The association applauded when L. A. Russel argued that life was too short to delay the issue another year. He also thanked the committee from the bottom of his tired heart for such a clear report. They made a wise decision, in deference to those who needed to know more, when they decided to limit this year's decision making to the question of whether or not to codify and left the problem of how until later. Although he did not know how far codification could go, the report was a practical start in the right direction.

All I can say is, I want to face that way; and I want an opportunity at this time, before I go away tonight, or (sic.) get my vote on record that I want to face towards order instead of chaos in regards to the science of law. (Applause.) 28

Opponents thought codification was impossible or impractical. Field had been working for forty-five years on New York's codes. Codification had been tried in Ohio in 1853 and had gotten nowhere. Much of this code was now a dead letter. Judge Cox argued that codification had been going on since 1787 at least.

Codification, if by that term is meant simply putting into statutory form the common law, will be bound to have been the practice of

286 OSBAR, 1885, 119.
every state of the Union, and every lawyer who has practiced at the Bar will, if he stop for a moment to consider and examine what he knows about this procedure, recognize the fact.\(^{29}\)

Durbin Ward thought codification would not make the law any more certain because it would still be necessary to interpret the code.

It seems to me that it will turn out to be about as difficult to construe a code as to apply the rules of common law, because doubtless you have got to have the facts upon which the law arises before you can determine what the law is, much as you may say that the law shall be so and so under a given set of circumstances.\(^{30}\)

Several other speakers also agreed that the volumes of comments and interpretations on the code would soon be as long as the volumes on the common law which the codifiers were now complaining about. Codification would also destroy the flexibility which was such an important characteristic of the common law.

When you put a rule upon principle, when you say to a man, "So far and no further," when you undertake to dogmatize the principles of the common law, I submit, sir, that law ceases to be a science, or if it be a science, it at least ceases its growth, and the people who live under it grow no more in the science of liberty and law.\(^{31}\)

\(^{29}\) 6 OSBAR, 1885, 175.

\(^{30}\) Ibid., 97-98.

\(^{31}\) Ibid., 123.
One member started for the convention almost persuaded for codification but on the way to the meeting read both Pillar's and Green's pamphlets. He found himself changing his mind because he did not like the basis of support for codification they presented. He also feared that codification would end attempts to advance the growth of jurisprudence. Perhaps the old way of making statutes of the common law as legislatures had been doing since the beginning would be better.

The opponents also wondered if the small percentage of the profession at the meeting should impose a policy on the rest of the bar, which they were confident was also against codification.

The advocates of codification were equally eloquent and certain of their stand. Lawrence Maxwell attempted to answer the arguments of Ward and others by arguing that the goal was not to end legislation by solving all questions or to make the law available and understood by every layman, instead,

The simple question is whether we shall gather up what is now scattered through thousands of volumes—what is now uncertain—whether we shall gather that up at the hands of able men, and put it where it can be seen together in logical, systematic order, and known with certainty.\(^\text{32}\)

\(^{32}\)6 OSBAR, 1885, 103.
He was so certain codification was needed that he could not understand all the argument over the committee's resolution. The important question in his mind was what was the best method to obtain a good code. Green also thought there should be no question of the need for the law to be reduced to statute from the current "chaotic, bewildering mass of Common Law," which made many lawyers wish for simplification as they worked. If someone had not considered the subject in all the years it has been before the profession they probably wouldn't bother to do so now. He also pointed out that last year the Kentucky Bar Association unanimously adopted codification, and that California had it for thirteen years. Green wrote Judge Belcher, one of the participants in California's codification about the subject.

He says in reply to my letter: "When a dozen years ago, it was proposed to adopt codes here I was not in favor of it. I considered it a somewhat risky experiment. ... The codes came nevertheless, and we have been acting under them since January, 1873. Now, I should be unwilling to give them up. Our Civil Code serves us well. The profession and the people generally, I think, are well satisfied with it. It solves a great many questions which would be in confusion without it. You will probably never regret it if you adopt a similar code in your State." 

Elliot hoped that Ohio would decide in favor of codification before the American Bar Association or New York.

336 USBAR, 1885, 108.

34 Ibid., 110-111.
Even if commentaries were written on the code it would be an improvement over the need to go to other states' laws to get at the common law. Why couldn't the profession have its laws written down as the other sciences did.

Judge Cox argued that much of the law was already codified because the legislature was constantly adopting the common law in its statutes. He believed that a legislature made up of intelligent lawyers could study changing situations and pass new rules as easily as the courts could. He also thought the legislature should put each new ruling of the Supreme Court into statutes as the court made its decisions. He suggested that the legislature proceed at once with the process.

After devoting Tuesday afternoon and most of Wednesday morning to codification the association finally voted. Gilmore's motion to postpone lost forty-five to thirty and the association adopted the committee's resolution favoring codification.35

The newspapers surveyed did not comment on this issue. The Dayton Daily Journal, which reported the gathering in its city in some detail, mentioned that the issue "initiated considerable discussion and debate" and that "After protracted discussion by various members" the committee's

356 OSBAR, 1885, 95-127, 161-182.
report was adopted. The Ohio State Journal made no mention of the debate or the discussion. The Weekly Law Bulletin summarized the debate and congratulated Green on his victory. In a later issue it also printed Judge Cox's speech. During the year it kept the issue before the profession by reporting events in other states and referring its readers to more pamphlets on the subject.

In September it published two separate reports and comments on the debate on codification at the American Bar Association meeting. The Albany Law Journal, which the Law Bulletin quoted, thought the debate was trifling and undistinguished on both sides.

At all events, the debate will certainly do a great deal of good in exposing the puerile and contemptible argument against the practicability and advisability of codification.

The Law Journal noted that the chief opposition to codification came from New York, Massachusetts, New Jersey and Pennsylvania, while the south and west were favorable. The New York Daily Law Register, which the Law Bulletin quoted, clearly pointed out a problem that confused the

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38 Ibid., 177.
debate and issue for both the American and the Ohio State Bar Associations.

We apprehend that with many of them and with most of the minority the project is one on which the whole question of whether depends on the question How; and if the latter can be satisfactorily answered the minority of opposition would dwindle to a very faint dissent. 39

The Judicial Administration and Legal Reform Committee reported at the 1886 meeting that since the last meeting there had been much discussion of the subject in bar associations, law schools and the journals of the country. In August the American Bar Association adopted a proposition identical to Ohio's. 40 It would take time and patience to accomplish but the committee was convinced that the association would act now. They therefore recommended that in 1888 the association ask the General Assembly to provide for a commission appointed by the Governor of experienced jurists to reduce to statutory form the laws relating to contracts, domestic relations, partnership, negotiable instruments, real property and evidence. The commission was to publish its decisions so that the rest of the


40 ABAR, 1886, 5, 11-75, 325-361. The American Bar Association's resolution was "The law itself should be reduced, so far as its substantive principles are settled, to the form of a statute." 74.
profession could make comments and report to the General Assembly, after making any revisions the public discussion suggested.

The opponents again tried to postpone the issue because they did not think a great many lawyers had considered the matter fully.

It is a radical change, this matter of codification, and how far you can go in making statutes take the place of common law is a question of great importance; it ought to be considered with very great care; it is one in which the Bar should take a great interest. 41

Judge Green had copies of a pamphlet on codification for those who wanted to know more. This time the association, after another debate along the lines of the year before, supported the opponents' resolution to postpone. 42

The **Weekly Law Bulletin** did not mention the subject of codification during 1887 until about a month before the association's meeting, when Alexander L. Smith of Toledo wrote a letter. In preparation for the coming debate, he read the report of the last session's debate and decided that the most important fact was overlooked. Was it wise to take the development of the law from the judges

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41Judge Lincoln, 7 OSBAR, 1886, 95.

42The 1887 session was an adjourned one which the committee thought was illegal. They also thought the further debate which could occur before the 1888 session would win over more lawyers and did not object to the postponement. 7 OSBAR, 1886, 80-83, 86-102.
and give it to the legislature? Codification wouldn’t lessen the number of cases going to the courts since 99/100 of the litigation in the fields they were discussing involved the application of known principles to the particular case rather than questions concerning the principle. It would not lessen the number of cases the lawyer had to study while preparing his case.

Had the judges botched the work so far? Had the legislature shown itself competent to do the kind of work codification involved? Smith also believed that the codified law would not be as flexible as the judge made law. Flexibility was important in most of the areas the association was thinking of codifying.43

President John A. McMahon began the 1887 meeting with some references to codification in an address, which attempted to inspire the audience to do more to solve the problems and evils currently faced by the profession. The law’s complicated machinery, unequal ability among lawyers, poor or crooked juries, inadequate judges, ignorant, corrupt or stupid witnesses, technicalities which delayed trials and the uncertainty of both judge made and statute law all

. . .have made the law, as a practical science, the terror of the peaceful and the honest, a

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snare and a delusion to the public, the disgust of the honest lawyer, and worse than all, the favorite weapon of defense of the dishonest, and occasionally, the means of oppression by the rich. 44

One method he suggested to overcome this attitude was making the law more plain through codification. He summarized the history of the issue of codification and stated that, although he was willing to admit that the codes would be imperfect, he hoped for great results from the Judicial Administration and Legal Reform Committee's work. He also suggested codification of the laws covering professional conduct. 45

The association also listened to a paper in which A. L. Smith presented in more detail the arguments he began in the *Weekly Law Bulletin*. Codification asked the profession to take the development of a large part of the private law out of the hands of the judiciary where it had been for centuries. This was a step which should only be taken after most careful consideration and for the most weighty reasons. The original resolution adopted by the association stated that because the law lacked certainty, publicity and convenience the association should work for codification.

448 OSBAR, 1887, 17-18

Smith did not think codification was the solution to these problems. True, it was convenient and practicable to logically and systematically state the general rules relating to the subjects under discussion, but since most litigation involved the application of the principles to specific cases and facts this would not help the profession much. He admitted that it might help the layman. Smith thought the laws were as public as necessary. Most people didn't consult the law books or care whether the source of a particular principle was a judge or the legislature. The most serious problem the codifiers were attempting to solve was the lack of certainty in the application of the law. Codification would not help this problem. The laws involving the political structure and organization of the state, the punishment of crime and court procedure were fully codified because they were important to everybody. There had been a public demand for codes in these areas but there was no real demand for codification of the private law. Codification would mean an inflexibility which would create many problems and hardships because private law required more frequent changes than public law. A further objection to codification was the unfitness of most legislatures to deal intelligently and honestly with such subjects. "Is it not better far to bear the ills we have than to fly to others we know
full well?46 Except for these speeches the association did not consider or act on the issue of codification at the 1887 meeting.

Although Judge Green as president reminded the association that codification was an important subject for the association to work on and that the members should study the question thoroughly so they could vote intelligently when it came up for a vote, the association did not debate or vote on the subject in 1888.47

The association also debated specific reforms of subjects such as municipal and election laws which were extensive enough to be referred to as codification of these laws. These movements will be discussed in detail in the next chapter. In 1895 Charles Pratt, in his presidential address brought up Field’s codes and recommended some radical changes in the civil code. The next year, however, the Judicial Administration and Legal Reform Committee reported that it was not prepared to recommend re-codification of the civil code and asked to be discharged from further consideration of the subject. The association without debate agreed.48 Although the association clearly

468 OSBAR, 1887, 80-85 (quote 84).

479 OSBAR, 1888, 127.

4816 OSBAR, 1895, 101-115; 17 OSBAR, 1896, 32, 76.
did not intend to end the debate when it decided in 1886 to postpone the section of the Judicial Administration and Legal Reform Committee's report concerning codification, the decision for all practical purposes killed the resolution.

On the whole the issue of uniformity was not as controversial. Many members of the profession welcomed the organization of the American Bar Association as a useful tool in furthering uniform legislation in the various states.

This Association is capable of doing much good. In this day of railroads and telegraphs, and multiplied commercial intercourse between the states, it would seem that the policy of the Bar should be in favor of uniform laws throughout the United States in all cases where it can be accomplished.49

The American Bar Association, however, was not the source of the movement for uniformity by the Ohio State Bar Association until the 1890's. The subject first came before the association in response to a local stimulus. The Weekly Law Bulletin published "A Plea For 'Uniform Laws on the Subject of Bankruptcy Throughout the United States,' and for the Uniform Administration of the same by 'such inferior Courts' of Bankruptcy as Congress 'May from Time to Time Ordain and Establish.'" by James H. Thompson of Hillsboro. Thompson addressed his plea to

495 Weekly Law Bulletin, 1880, September 13, 617-618.
the presidents of the American Bar Association and the Ohio State Bar Association. In response Senator Godfrey introduced a resolution that the article was worthy the consideration of Congress and Ohio's legislators ought to introduce such a bill. His resolution was referred to the Executive Committee which did nothing.50

The next time the stimulus was from outside the state. In 1887 Secretary Holmes reported receiving a circular from the Alabama Bar Association asking other state associations to work on uniformity in legislation. The circular was referred to the Judicial Administration and Legal Reform Committee. Meanwhile Governor Foraker responded to a circular from New York calling for a conference to discuss establishing uniformity in laws covering extradition by sending his executive clerk as Ohio's representative.51

At the next meeting Elliot, the author of the first report on codification, reported writing Frederick T. Bomber of Mobile concerning the circular. He also reported that the Bar Association of the district of Columbia had issued an invitation to all of the bar associations in the country to gather in Washington in May to consider a


national organization to work for uniform legislation. The result of this meeting was the National Bar Association which provided the third stimulus for the Ohio State Bar Association's activity in the field of uniform legislation. Although everyone insisted that the new association was not a rival of the American Bar Association because their goals and organization were different, it was organized because some members of the profession were dissatisfied with the American Bar Association's actions in the area of uniform legislation. The American Bar Association's elitist character and its Saratoga meeting place were probably also important reasons. Eight states, eight county and fourteen city associations from eighteen jurisdictions sent delegates to the organizational meeting. The bar associations of Hamilton, Montgomery, and Lucas counties, Cleveland, Columbus and Dayton sent delegates. James Broadhead, the first president of the American Bar Association, was chosen president. John Doyle of Toledo was a vice-president and, Lewis P. Gunckle of Dayton was chosen treasurer. The first regular meeting was going to be in Cleveland August 8 and Elliot thought the Ohio State Bar Association should consider whether or not to join. The National Bar Association was organized on the basis of representation and any bar association ratifying the constitution could send delegates.
A committee of three was chosen to study the National Bar Association's Constitution and to report to the Ohio State Bar Association the next day.\textsuperscript{52}

The committee unanimously agreed that the association should continue the practice of sending delegates to the American Bar Association but disagreed about how to respond to the National Bar Association. President Green objected to the idea of dividing into two national bar associations. The profession could better obtain its goals with one such organization. The other two committee members decided that the new association's objectives were the same as Ohio's and that there was no conflict with the American Bar Association. Ohio could accomplish much for the small cost of five dollars for each of its twenty-one delegates by joining the new organization. How would it look for them to have their first meeting in Ohio and not have the state's bar association participate? If they were not pleased with the results then they could discontinue membership by not paying dues next year.

General Lee thought that both the National Bar Association and the American Bar Association would be more

\textsuperscript{52}\textsuperscript{9} OSBAR, 1888, 31-38, 51; Reed, Training for the Law, 210-212; Ohio State Journal, May 23-24, 1888.
effective because each would stimulate the other. J. D. Sullivan thought the whole debate was premature and that the association should wait to see how the American Bar Association felt. He also objected to the high dues and the small number present at the meeting to decide for the entire association. He suggested therefore that the question be referred to the Executive Committee for debate at next year's meeting. Another member responded that Sullivan sounded like the typical too cautious lawyer. If the American Bar Association was too weak to survive the formation of another national association then it wasn't worth worrying about hurting its feelings. The more bar associations the better. Uniform legislation was greatly needed and within the goals of the Ohio State Bar Association. There should be no objection to meeting with others to debate this subject. Sullivan was not even a member of the American Bar Association. One of Ohio's delegates to the May meeting of the National Bar Association reported that they had worked to get the association to unanimously decide to join. The association finally agreed to choose delegates and attend the August meeting.\textsuperscript{53} The \textit{Weekly Law Bulletin} reminded the profession of the coming meeting which it thought could be the most

\footnotesize{\textsuperscript{53}}\textsuperscript{9} OSBAR, 1888, 78-95.
important gathering of the profession ever, if other states showed as much interest as Ohio had. The state and local association's delegates were of the highest character. However similar the new association's goals were to the American Bar Association, it was already obvious that it would be much more important and influential than the American Bar Association ever had been or could be due to the representative character of the National Bar Association. It later reported that the meeting, although the attendance was less than expected, was a success. Sixty-five of all delegates at the meeting were from Ohio and Ohio contributed the most money.\textsuperscript{54} Ten of the twenty-five associations that paid dues were from Ohio. The association adopted the reports concerning negotiable paper and acknowledgement of deeds debated by the Ohio State Bar Association in 1890 and described below. It postponed the report concerning limitations and gave its committees assignments concerning the law on the rights of out of state executors, administrators and guardians, and the problem of immigration into the United States of paupers, criminals and the insane. At their 1889 meeting the association agreed to the report on limitations and

\textsuperscript{54}Not all of these represented the state association. Ohio contributed $150 the next highest amount was $75 from Chicago. $215 more came from local Ohio associations.
listened to reports of the other committees. Little was done with any of these because the lawyers did not have time to consider the reports before they were presented on the floor of the convention. 55

Governor Campbell expressed an interest in the American Bar Association's work on a uniform code in commercial law in his inaugural address in 1890, but the legislature took no action. In 1890 the Ohio State Bar Association's secretary presented copies of the legislation suggested by the National Bar Association and asked the association to act on them. They were referred to the Judicial Administration and Legal Reform Committee which recommended action on two of the three items. They approved the recommended legislation concerning the negotiability of promissory notes and the acknowledgments of instruments affecting real estate because there was little difference between these and Ohio law. The only change involved a section making more specific the methods of acknowledgment to be followed by corporations. The third bill

55 20 Weekly Law Bulletin, July 23, 1888, 65, July 9, 1888, 21, August 13, 1888, 119, 126-143; 22 Ibid., August 12, 1889, 92. At the 1889 meeting the Ohio State Bar Association did nothing more than appoint delegates. During 1889 the legislature considered and defeated a resolution authorizing the governor to write others on the subject of uniform divorce, marriage and inheritance laws. Ohio State Journal, January 21, February 27, 1889.
concerned the length of time within which actions could be brought upon contracts in writing not under seal. The committee did not like the National Bar Association's bill because it meant decreasing the period of time after which no action could be taken to recover money on such a contract from fifteen years to six.\footnote{56}

The debate which followed centered around the principle of uniformity as much as it did the specific details of the legislation involved. Judge Jones began by asking what point was there in adopting the National Bar Association's recommendations if the law was already on the statute books? He was against the whole idea of uniformity.

\begin{quote}
It seems to me that that chimera, that little piece of moonshine, that has been pursued by the Bar Associations of this country all over everywhere, about securing uniformity of laws--that it is about time it stopped.\footnote{57}
\end{quote}

The profession might as well try to secure uniformity in the heights of mountains as to try to secure and maintain uniform legislation in all the states. The only way to accomplish that would be to abolish the states. Judge Elliot and others argued that there was a need for uniformity especially in areas such as the acknowledgment of deeds and the form of promissory notes. If the Ohio

\footnote{56}{11 OSBAR, 1890, 22-25, 55-56; Ohio State Journal January 14, 1890.}

\footnote{57}{11 OSBAR, 1890, 75.}
State Bar Association endorsed the National Bar Association's program it would help that association reach its goal by setting an example for other states. Even if the legislature did not act because it called for little change from the current law, the association's action would help. The first two items had been adopted unanimously by the National Bar Association and the American Bar Association also endorsed them. Even if only a few states adopted them it would be an improvement. The current system of different forms and rules for different states was an inconvenience to both the profession and its clients. The Ohio delegation to the National Bar Association fought the limitation bill but since Ohio and Connecticut were the only ones with such a long period the association compromised on six. General Lee thought the association should at least avoid directly taking a stand in opposition to the National Bar Association on the issue and suggested it be postponed. The association, however, decided to adopt the committee's recommendations.\(^5^8\)

The treasurer, L. H. Pike complained that only five of the forty-two delegates and alternates for which he paid dues went to the last National Bar Association meeting. Only two of those were willing to vote for a

\(^5^8\)\textit{OSBAR, 1890,} 73-84. The legislature in its next session considered two uniform legislation bills on divorce and the acknowledgement of deeds from the National Bar Association which passed the House. \textit{Ohio State Journal,} March 24, 1891.
decrease in dues. No other bar association there paid over two-thirds of what Ohio did. In the past two years it absorbed twenty percent of the annual resources of the association and in 1890 the association's expenses exceeded the receipts by $29.70. In response the association agreed that the delegates to the National Bar Association would work for a decrease in dues. This led to a speech against the National Bar Association by John J. Hall of Akron. He saw no reason why the Ohio State Bar Association should be taxed for the purpose of keeping the National Bar Association going. There was no need for it. Its only purpose was to cripple the American Bar Association which was older, more prosperous and capable of doing all the same things the National Bar Association could. The fact that one of the Ohio State Bar Association's members was the current president of the National Bar Association did not change Hall's attitude toward it. It is significant that no one rose to defend the National Bar Association. In spite of his complaints about the National Bar Association, Pike was elected their treasurer at their next meeting. By the time they gathered in 1891, however, Pike had resigned. 59

In 1891 Pike again complained at the Ohio State Bar Association's meeting about the National Bar Association even though the dues had been cut to $3. Only seven delegates went to the 1890 meeting and he suggested that Ohio do the same as other associations. Instead of choosing the full number of delegates that the National Bar Association allowed, they chose a smaller number and paid only for them. This led the Executive Committee to recommend that the association appoint no new delegates and pay only for those who actually attended meetings. After considerable discussion Judge Moore's substitute resolution that the association officially withdraw from the National Bar Association was carried thirty-five to thirty-three. Some of the statements made during this debate must have been strong because the association later agreed to strike the entire discussion from the minutes and not publish it.

The American Bar Association was responsible for raising the issue of uniformity again a few years later. James Hoyt, a member of the American Bar Association's Local Council for Ohio, received a letter on the subject of uniform legislation from that association. He

60 The number of delegates was based on the total membership of the member association.

6112 OSBAR, 1891, 22-24, 63-64, 101.
approached William E. Cushing, a member of the Judicial Administration and Legal Reform Committee who was interested in the subject, and asked him to present it to the committee. Cushing did so at their January meeting and was assigned the job of preparing a report for the annual meeting. He reported that in 1890 the New York legislature authorized the Governor to appoint a Board of Commissioners to promote uniformity. This commission invited other states to follow their lead and meet with them regularly to consider changes. The American Bar Association soon joined in and in 1892 helped form the National Conference of Commissioners on Uniform State Laws. By 1894 twenty-one states had commissioners attending the national conference which had already recommended several laws that some states had already adopted. The need for uniformity was well recognized. The problem had been finding a practical way to achieve it. Cushing believed this new way might work and recommended that Ohio join. The committee agreed and asked the association to grant permission for the committee to urge the General Assembly to adopt a law similar to New York's. The association readily approved.  

62 16 OSBAR, 1895, 24, 27, 30-33, 46. The New York law was included in the appendix, 213-214.
The committee prepared a bill giving the governor authority to appoint three Commissioners for the Promotion of Uniformity of Legislation in the United States. The commissioners were

... to examine the subject of marriage and divorce, insolvency, descent, and distribution of property, the form of notarial certificates, acknowledgment of deeds, execution and probate of wills, and other subjects on which uniformity of legislation is desirable, to ascertain the best means to bring about uniformity in the laws of the states, and to represent the State of Ohio in conventions of like commissions appointed by other states for the consideration and recommendation of uniform forms of laws to be submitted to the several state legislatures for action, and to devise and recommend such other course of action as shall best accomplish the purposes of this act.63

The Senate passed the bill but the House did not act before the legislature adjourned so the committee recommended that the association try again. This recommendation was adopted without debate.64

In 1897 the committee again recommended that the association work for this bill. Twenty-nine states and one territory were now participating in the national conferences. Most of the states not yet participating were from the south and extreme west. The national

63 OSBAR, 1896, 30.

64 OSBAR, 1896, 30–31, 75; Ohio State Journal, February 27, March 22, April 4, 20, 1894 establish a national commission for uniform divorce laws, House yes, Senate no, January 10, 1895, February 4, 21, April 10, 14, 28, 1896.
conference's suggested law concerning negotiable instruments had already been passed by New York, New Jersey, Connecticut and Colorado. During the debate on the committee's report, however, this section seems to have been forgotten. This time the legislature agreed and Ohio had such commissioners for two years. The legislature received their reports but did not act on them.  

At the 1901 meeting W. L. Parmenter, a member of this commission, at the request of the Executive Committee, wrote a paper, which was read at the meeting by a friend, on "Uniformity of Legislation Between the States." He briefly described the growth of the current movement to the point where in 1896 more than one-half of the states had commissioners for the promotion of uniform legislation.

It is a matter of some surprise, however, that Ohio, with her recognized determination to advance all measures conducive to promoting business interests and the welfare of her people and her well-known reputation of furnishing officials for all public places, had so far forgotten an opportunity of increasing her force in public service as to fail in promptly creating a commission similar in authority with those of sister states.  

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66 22 OSBAR, 1901, 182.
He also described some of the bills the Conference of Commissioners on Uniform State Laws had considered. The Ohio Commissioners had recommended Ohio pass some of the conference's suggestions but the legislature did nothing. The Executive Committee asked him to prepare the speech because they thought the association should consider the matter and Parmenter urged them to request a permanent commission. Since Parmenter was not present at the meeting to press for the program urged in his paper the association moved to the next report on the program without taking any action.67

Ohio established a permanent commission and rejoined the National Conference in 1902. Although Ohio enacted some of the legislation recommended by the conference the state bar association did not play a role in obtaining this legislation. The only indication that the association maintained an interest in the subject was a speech by Ben W. Johnson in 1908 which described the history and current actions of the National Conference. Although he suggested further topics for consideration and solutions to some problems, the association did not express an opinion on his speech. Thus once the association helped get Ohio a Commission on Uniformity it lost interest

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6722 OSBAR, 1901, 180-195.
in the movement. 68

In some ways this interest in uniform legislation and codification was a sign of the growing interest in what became known as progressive reform. Advocates of both agreed that the reforms were needed to simplify the law so that it would be more efficient and the layman, especially the businessman, could understand it. Both plans relied on experts to draw up the codes or uniform laws which the non-expert legislatures and people would accept. Interest in both of these reforms occupied a small proportion of the association's time and were easily eclipsed by other subjects and reforms that are more closely connected with the Progressive Era.

CHAPTER VI

OHIO STATE BAR ASSOCIATION AND PROGRESSIVE REFORM

Most of the period covered by this study was one in which various groups were interested in many reforms which came to be labeled progressive. The specific reforms involved and positions taken by progressives varied from locality to locality and among the individuals involved. It was a highly complex movement that contained many seemingly contradictory concepts. It is possible, however, to make some generalizations concerning progressive reforms in Ohio. Ohio progressives were interested in making changes in the following areas: monopoly, taxation, election procedures and suffrage, the organization of municipal and state government, the treatment of criminals, labor, prohibition and corruption. Most progressives hoped their reforms would make the system operate more efficiently, for the good of all rather than a few.¹ Thus they attacked special privileges and corruption. They attempted, for example, to amend Ohio's constitution so that the state would gather enough taxes

¹Their view of what was good for all was usually colored by their background and personal interests but most progressives, this writer thinks, were genuinely interested in others and believed their rhetoric.
in a way that would plug some of the obvious loopholes and remove unfair burdens from others. They wanted a more rational method of taxation than judicial interpretations of the state's constitution allowed. Their interest in making the system more efficient and rational led many progressives to get involved in organizational and structural reforms. They considered, for example, new methods of conducting elections and organizing city governments. One of the biggest arguments in Ohio in which the bar association also became actively involved was the argument over the proper organization for city governments.

The progressive movement contained some conflicting tendencies which make it difficult to discuss and categorize. Much of its rhetoric emphasized the people. Progressives talked about their faith in the people's ability to do something about the evils of society once they were pointed out. They believed that if the people were given more power in government much of its inactivity and corruption would disappear. The demands for initiative, referendum and recall, so often connected with progressive reform, were often supported because they would give the people more control over the government. On the other hand, specific reforms suggested often tended instead to benefit the reformers' social or economic class and limit the people's power. Municipal reform that changed the representation on councils from ward to city wide
constituencies is an example of this. Another reform which is in direct contrast to the emphasis on the people's power is the progressives' interest in a constitutional amendment giving the governor the veto. Supporters of this reform argued that the governor, whom they hoped would be an expert, should have the authority to prevent the mistakes and bad legislation of the General Assembly, the branch of government directly responsible to the people. The veto had been left out of the 1851 constitution because its writers did not believe one man should be able to block the people's will, yet this was a popular progressive demand.

Although aspects of each of the areas listed above can be found in the Ohio State Bar Association Reports, the association did not play an important role in all of them. Complaints about monopoly, for example, appeared occasionally in debates, but the association made no direct effort to participate in the state's anti-trust movement. They did show some interest in measures to regulate corporations to prevent fraud and protect stockholders. Except for debates at a local bar association over liquor at bar association entertainments and comments at some of the banquets, the prohibition issue was not considered.  

216 Weekly Law Bulletin, November 15, 1886, 361; 19 Ibid., January 2, 1882, 2; Ohio State Journal, December 7, 1880.
the case of election reform the association practically ignored the debates concerning suffrage, the secret ballot, registration and primaries.

Some progressive reforms were debated in response to action already taken by the General Assembly or because one or two members were specifically interested in them. The taxation issue, for example, usually appeared because the legislature was debating the problem or an amendment was being presented to the voters in the coming election. The association's interest in workmen's compensation and divorce reform was due to the speeches and enthusiasms of a few individuals. On the other hand, the association became directly involved in some progressive reforms. Municipal reform is the best example of this. As the following discussion will show, the Ohio State Bar Association took both progressive and anti-progressive stands.

One of the first reforms considered by the association which reflects some of the progressive characteristics discussed above was election reform. It is also an example of a reform which depended on the interests of a few individuals. The progressive reformers became interested in making several structural changes in election practices as a way of eliminating corruption and weakening the city bosses. The Australian ballot,
primaries, the change from ward to city-wide elections for council seats, women's suffrage, voter's registration and nonpartisan elections were all part of the progressive campaign. The Ohio State Bar Association, however, showed little interest in most of these reforms, yet their particular election reform also bears the marks of progressive interests.

In 1885 General John C. Lee, in a very forcible manner, read a paper entitled "The Judiciary: The Proper Tribunal for the Contest of Elections." According to Ohio law, disputed elections for all county officials and probate judges were settled in the Common Pleas Court, while the Senate considered cases involving state officials. Lee argued that experience showed that the Common Pleas judges made just and satisfactory decisions, because,

... the pride of the bench, the dignity and justice of a court, and the fearless investigation and profound research, supplemented by a

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3 A few women lawyers did become members of the association, and in 1912 when an amendment giving women the right to vote was being considered, the association listened to a speech for it by Florence Allen. 33 OSBAR, 1912, 40. This speech was given on the beach rather than in the convention hall where the annual address and debates had been held. According to the Sandusky Register, July 11, 1912, her "argument was so convincing that many of the lawyers declared that 'if all women were like Miss Allen he (sic.) would not hesitate to extend woman (sic.) the ballot.'"

sense of the universal expectation of all that the right will be found and declared, which so nearly universally characterizes the judges of Ohio, insure, yes, insure such judgments as the law delights in . . . Unfortunately the county election is almost, yes quite, the only oasis, the only well-spring in the great desert of election contests for offices in the State, and the United States.\(^5\)

Legislatures were too large and had too many other responsibilities. This made it impossible to have everyone attend the necessary hearings which had to be squeezed in with the responsibilities of legislating. It also meant that responsibility became too diffused and it was easy for individual legislators to disregard the importance of their vote.

In the case of the election contest, the Senator fails to appreciate and to realize the fact, that he is not something more than a mere voter at the ballot-box with an unrestricted right to vote for which of the aspirants he sees proper. He fails to fully recognize the full measure of his position and his obligation as one of thirty-three independent impartial judges.\(^6\)

This disrespect for the vote set a bad example for the ordinary voter and furthered corruption. The most objectional fact, however, was that the standard of judgment was not the facts of the case or the law involved.

\(^5\)OSBAR, 1885, 133-134.

\(^6\)Ibid., 138.
who is of the same political party with the Senator. Right and justice, as shown by the law and the evidence, take on colors according to the party eyes through which the Senator looks. 7

Lee's progressive tendencies show in his faith in the expert courts, his emphasis on the importance of the people's decision, and his objections to the politics and corruption involved in the current system. 8

With such a tribunal and such a method of procedure, four-fifths of the expense and cost now necessary for the parties in a contest would be dispensed with. Incompetent testimony would be excluded, whatever the law there is, statutory and common, would be intelligently applied. The office would be held as the popular will indicated. The accident of the party politics would not be the criterion guiding the courts in the decisions. There would be an honest searching for the actual expression by the voting citizens for the office. 9

After Lee's speech General Durbin Ward introduced a resolution that a committee of five be appointed to ask the legislature to codify the election laws, to render them more simple, accurate and certain, so that corruption could be prevented. Although this action was reported in the Weekly Law Bulletin and the newspapers, none commented on it. 10

7 Osbar, 1885, 137.
8 Ibid., 130-150.
9 Ibid., 140-141.
10 Members of the committee were Generals Ward and Lee, Rufus King, L. A. Russell and John J. Hall. Ibid., 151, 153; 15 Weekly Law Bulletin, January 11, 1886, 23; Dayton
The bills drawn up by this committee called for state and county election boards to appoint election officials, established penalties for fraud, and provided that contested elections be settled by the courts. The legislature, although it did not pass the committee's bill, passed one establishing election boards for Cincinnati, Cleveland, Columbus and Toledo. Perhaps the high number of contested elections in the 67th General Assembly had something to do with their lack of interest in the Association's bill until the 68th General Assembly. Four senators and ten representatives (the entire Hamilton County delegation) found themselves involved in election contests. The senatorial contest created quite a sensation and had to be settled by the Ohio Supreme Court.\footnote{Daily Journal, December 30, 1885; Ohio State Journal, December 31, 1885.}

Although the committee, with the association's permission, remained active,\footnote{OSBAR, 1886, 54-57; Ohio State Journal, January 27, February 3, 17, 20, 1886; The Democratic senators left the state to prevent a quorum in the senate. While they were gone, the senate proceeded to seat the four Republican candidates, which the Supreme Court upheld on the grounds that they could not question the journal. The journal did not show whether or not a quorum was present. William A. Taylor, Ohio Statesmen and Annals of Progress for the Year 1788 to 1900, Westbote Company, Columbus, Ohio. 1898, II, 96-98.} their 1887 report was discouraging. Their bill had never been reported out of committee. In 1888, the ever optimistic committee expressed the hope

\footnote{The bill passed in 1886 forced them to revise their
their bill would pass the next session and suggested that a committee of two from each district be appointed to help them lobby for it. This may have helped, because their next report showed some progress. Senator Coulter introduced their bill which passed the Senate but then was reconsidered and defeated. According to the committee, many people showed interest in the contested election aspects, but objected to the rest of the bill because it would increase bureaucracy. Another reason for its defeat, they thought, was that many cities had already obtained special legislation establishing similar reforms. The committee suggested that the association separate the contested election bill from the rest and concentrate their efforts on that. The association agreed.¹³

By 1890 election reform had become popular enough to be mentioned in the governor's inaugural message. He summarized the reasons further election reform was necessary and made some specific suggestions. Governor Campbell was interested in the Australian ballot and further refinement of the recently established election boards.¹⁴ The bill. ⁷ OSBAR, 1886, 57.

¹³ ⁹ OSBAR, 1887, 85-87; ⁹ OSBAR, 1888, 53-56. In 1888 a bill was introduced placing some contested elections in the jurisdiction of the Circuit Court. Ohio State Journal, January 19, 1888; ⁱ⁰ OSBAR, 1889, 55-60; Ohio State Journal, March 21, 1889.

¹⁴ Ohio State Journal, January 14, 1890.
Australian ballot was to take up much of the legislature's time during the next few years, but the bar association continued working only for their contested election bill. In February, Representative Lewis C. Laylin prepared and introduced a contested election bill\textsuperscript{15} which placed election contests involving Circuit Court Judges, Supreme Court Judges and all state officials under jurisdiction of the Supreme Court. The Circuit Court was given jurisdiction of contests involving Superior Court and Common Pleas Court Judges. The \textit{Ohio State Journal} called it "One of the most important bills so far introduced,"\textsuperscript{16} but when it soon became clear the General Assembly was in no mood to consider the bill dispassionately, the committee decided not to push the bill. In May, the \textit{Weekly Law Bulletin}, in comments on the governor of New York's recommendation that his legislature consider a constitutional amendment giving contested elections to the judiciary, proudly pointed out that Ohio was already considering this desirable reform.\textsuperscript{17}

\textsuperscript{15}This bill modified the committee's recommendations, but General Lee, the chairman, approved. 23 \textit{Weekly Law Bulletin}, February 24, 1890, 121-122.

\textsuperscript{16}February 18, 1890.

\textsuperscript{17}23 \textit{Weekly Law Bulletin}, May 12, 1890, 327; 11 OSBAR, 1890, 52-53.
When the legislature reconvened in January, 1891 it had two pending election bills to consider: Representative Mallon's bill establishing a state board of elections and the Australian ballot, and Representative Laylin's contested election bill. The governor again pressed for the Australian ballot and compulsory primary elections, while he ignored the contested election bill. The legislature concentrated on the Australian ballot reform and eventually passed Mallon's bill in April. After a day's debate Laylin's bill passed the house. Opposition was confined to the Democrats, who found it easier to obtain a majority of the Senate than the Supreme Court or most of the circuit courts. The bill, however, was not successfully passed until April 16, 1892.18

The question of elections was brought up again near the end of the period under study when the members from Lucas County brought up the issue of nonpartisan elections for judges. The issue of nonpartisan elections was a favorite reform of followers of Samuel M. "Golden Rule" Jones. This was one of his major principles. The association provided a chance for Lucas County to bring up this

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18 Ohio State Journal, January 5, 7, February 28, March 4, 12, 19, April 10, 17, 24, 1891. In 1890 the association voted to continue the committee but when General Lee died the following March, the committee died with him. 11 OSBAR, 1890, 54; 12 OSBAR, 1891, 182; Ohio State Journal, February 11, March 4, April 17, 1892; 27 Weekly Law Bulletin, April 25, 1892, 271.
issue when they began debating whether or not to change to appointed rather than elected judges in 1908. Previous to the meeting, ninety members of the Lucas County bar called a meeting which resolved that they should work to get the legislature to pass a statute establishing nonpartisan elections of judges and to get the Ohio State Bar Association to support it. After some discussion the association decided to refer the question to the Judicial Administration and Legal Reform Committee, which continued to ask the association's opinion on appointing judges. In 1910 the committee asked the association to consider what stand to take on issues such as nonpartisan judicial elections, which the legislature was considering. With very little debate the association decided to let the committee decide what it thought best.\(^{19}\) The General Assembly passed a bill establishing nonpartisan judicial elections in 1911 and President Allen Andrews expressed the fear that judges with no legal training might be elected. When the association began considering amendments for the coming constitutional convention they adopted a motion recommending nonpartisan judicial elections along with the requirement that all judges be licensed lawyers. The constitutional

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\(^{19}\) Hoyt Landon Warner, *Progressivism in Ohio, 1897-1917*, Ohio State University Press, Columbus, Ohio, 1964, 31-34, 152-157; 29 OSBAR, 1908, 11, 28-29, 37; 30 OSBAR, 1909, 8; 31 OSBAR, 1910, 57-58.
convention, however, left questions of qualifications of judges and regulations of their election to the legislature.\textsuperscript{20}

In 1889 two more progressive reforms were discussed at the association's meeting. The first was a minor matter, but it was another indication of progressive interest in governmental methods and bureaucracy. Many progressives placed strong faith in trained, experienced men who worked in a scientific, professional manner. In 1889 the association debated whether to establish a statutory draughtsman who would check all legislation as it went through the General Assembly. This trained person would be able to correct mistakes in language, avoid duplication and possibly prevent unnecessary legislation. The reformers hoped this expert could improve the quality of legislation. They also wanted his expert guidance to help them draw up bills that would operate as the reformers meant them to. The opposition argued that the legislature already had committees to check the language of bills and the attorney general was also available to provide expert legal advice on bills. The association also debated in 1903 whether to establish a committee to provide these services to the legislature. In both cases the association took no definite action.\textsuperscript{21}

\textsuperscript{20} 32 OSBAR, 1911, 45, 195-196; Marshall, \textit{A History of the Courts, I}, 161-165.

\textsuperscript{21} 10 OSBAR, 1889, 93, 96-102; 24 OSBAR, 1903, 49-101.
The other reform issue the association began considering in 1889 was that of taxation. Although this was a very important item to many reformers, it was of less interest to the association. Throughout the period there were almost constant demands for both economy in government and a more equitable method of taxation which would increase the revenue without increasing the burden on the taxpayers. Much of Ohio's tax and financial program did not work well in the industrial society which developed after the Civil War. The Ohio State Journal at one point complained that "Probably no state in the Union is suffering more severely from unscientific taxation legislation than the state of Ohio."\(^{22}\)

The popularity of Henry George's single tax theories with Tom Johnson and his followers was another reason for the reformers' interest in taxation.

Between 1851 and 1912 fourteen amendments concerning taxation were submitted to the voters and failed to obtain the necessary majority of those voting in the election. Most of these tried to change the following section of the constitution, which was interpreted so that the state's ability to tax was severely limited.

\begin{quote}
Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its
\end{quote}

\(^{22}\)March 22, 1900.
true value in money; . . . [Article XII, Section 2] 23

The legislature often argued over the exact meaning of "by a uniform rule," and whether or not the state could tax items such as franchises, which were not specifically mentioned in the constitution. The Supreme Court complicated matters by ruling that only property was taxable. The phrase "true value in money" also created problems. 24

The association's role in the area of taxation was to listen to speeches and to debate some of the constitutional questions involved rather than to instigate or directly participate in the movement. The association's first consideration of this subject is a good example. In 1888 the legislature established a Commission to consider the subject of taxation. 25 The association showed no interest in the commission's work, but in 1889 when one of the many taxation amendments was being considered by the voters, the man who gave the annual address mentioned the constitution's provisions concerning taxation. J. T. Brooks addressed the association on "The Morality of the Profession." He argued that lack of moral purpose and patriot


spirit among lawyers was responsible for many conditions of injustice which were crying out for reform. Ohio's system of property taxation, which flagrantly disregarded the constitution's provisions requiring uniformity and taxation according to the true money value, was Brooks' first example. He called on the lawyers to consider how they participated in maintaining the current system and asked the bar association

. . . as the only vehicle through which reform can be accomplished, to consider the question; unite, if it can, on measures of relief, and bring to bear its great influence for the success of its scheme.\(^{26}\)

In response the association adopted a resolution directing the Judicial Administration and Legal Reform Committee

. . . to inquire what if any changes are necessary in the laws covering the valuation and assessment of taxes upon real and personal property, in order to render effective the constitutional provision that taxes shall be uniform, . . . .\(^{27}\)

This led Lawrence Maxwell, who was presenting the Judicial Administration and Legal Reform Committee's report, to begin by informally reminding the association of the pending constitutional amendment which if adopted, would practically end current practices concerning uniformity by giving the legislature the power to classify taxable objects and applying the uniform rule to each class separately.

\(^{26}\) 10 OSBAR, 1889, 186-187.

\(^{27}\) Ibid., 90.
Although the minutes do not show any formal debate on the amendment or any votes on it, the *Weekly Law Bulletin* reported that the association took a position against the amendment because, although it kept provisions requiring uniformity of classes of property, it gave the legislature more power in the classification of property than was safe.28

Although the amendment was not adopted, the Judicial Administration and Legal Reform Committee in 1890 did not recommend that the association respond to Brooks' appeal and become involved in taxation reform. They felt the association should stay out of the taxation debate because it involved questions of economics rather than legal issues. This did not prevent them from listening to several speeches on taxation.29

The next time the association considered the matter of taxation it changed the pattern slightly by taking a definite stand. This began in 1899 when President Virgil Kline mentioned taxation as a reform the association should

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29 11 OSBAR, 1890, 55, 72. The chairman of the current tax commission which was also meeting at Put-in-Bay, for example, spoke to the association in 1893. 14 OSBAR, 1893, 119-125.
work on. His suggestion led the Judicial Administration and Legal Reform Committee to suggest an amendment to the constitution that separated state and local taxes and gave cities and counties the power to tax for local purposes subject to the authority of the legislature to limit indebtedness and fix the maximum rate. The first man to respond agreed that something should be done, but recommended a special committee to study the question because he thought no one was ready to vote intelligently. Although A. F. Broomhall agreed, he also complained that the association had considered the question and heard speeches on it without acting before. 30

The special committee reported favorably in 1901. Broomhall, in his speech entitled "The Fundamental Principles of American Government Applied to Taxation," argued that because the principle of distributing and limiting political power had a long tradition the resolution under consideration was a return to old ideas rather than a radical reform. He also reported that the American League of Municipalities, the Ohio State Auditors' Association, the New York Chamber of Commerce, the Colorado legislature and other public bodies had already endorsed the ideas of separating state and local taxes, and giving local areas more control over financial affairs. The Ohio State Bar

30 20 OSBAR, 1899, 53, 64-86.
Association joined this list by adopting the Committee's amendment. This whole question of local control of taxation was part of the debate over a municipal code which occupied the legislature in 1902. The legislature took a step in this direction by decreasing the real and personal property levy for the school and sinking funds and omitting a levy for the general revenue fund.\footnote{22 OSBAR, 1901, 74-87; Bogart, \textit{Financial History of Ohio}, 247} The association listened to several more speeches, took a definite stand against the 1903 taxation amendment,\footnote{This was done in spite of a speaker who favored the amendment. This was one of several amendments which attempted to rewrite the taxation section of the constitution quoted above.} and appointed another special committee which recommended the 1906 taxation commission's amendment, which was being considered by the voters that fall. In this case since the chairman of the committee was not able to present the report, the association listened to a favorable speech by Morrison R. Waite on the amendment and adjourned without taking action.\footnote{25 OSBAR, 1904, 22, 199-211, listened to the pro side of a debate; 27 OSBAR, 1906, 21, 102-157, voted to recommend Attorney General Wade Ellis's taxation speech to the General Assembly and listened to a debate; 28 OSBAR,} 

Another issue of public finance was that of changing the fee system of payment for many officials to a salary system. Many of the supporters of this reform saw it as
an economical move. They hoped not only to decrease the fees for various services but also to decrease the income of many government employees. This was a popular reform with the Farmers' Alliance, and was also part of the progressive interest in rationalizing the government's finances and employment practices. Tom Johnson made this one of the Democratic Party's platform planks in 1906.34 This issue was a topic of debate in the legislature from the 1890's into the twentieth century, but the bar association showed an interest only during the 1890's. The issue appeared the first time in 1890 when S. S. Wheeler and H. Elliot presented a resolution asking the Judicial Administration and Legal Reform Committee to consider the question of abolishing the fee system.35 The editor of the Weekly Law Bulletin agreed that the system should be abolished. He also asked,

You hear these complaints as to costs on all sides from the members of the bar; you have a bar association, you are organized. Why don't you move in the matter?36

Before the association could take an official position, the legislature passed a bill providing salaries

1907, 22, established a committee; 29 OSABR, 1908, 31, 153-173; 30 OSBAR, 1909, 139-181 another speech; Bogart, Financial History of Ohio, 248-253.

34 Ohio State Journal, January 7, 1891; Warner, Progressivism in Ohio, 175.

35 11 OSBAR, 1890, 54.

36 24 Weekly Law Bulletin, September 15, 1890, 182.
for county officers. However, according to the Ohio State Journal, the bill was not referred to with any degree of pride or satisfaction by those involved and there was soon agitation to repeal it. The Common Pleas Court Clerks met the day before the Ohio State Bar Association in 1892 to form their own association. The main topics of discussion were how to conduct the clerk's office and the fee versus the salary system of compensation. They passed a resolution asking the state bar association to request a repeal of the law. Although the secretary read their request, the association took no action.37

The General Assembly repealed the bill in 1893 and the bar association began agitating for another salary bill. They sent a plea to the General Assembly, which considered a bill on the subject, but did not act. In 1896 the Judicial Administration and Legal Reform Committee reported that the legislature had passed separate salary bills for county commissioners in eighteen counties. Although the committee disliked this piecemeal approach, they asked to be relieved of the duty of working for salaries, for all except probate judges. They thought the

37 Ohio State Journal, May 4, 1891; 27 Weekly Law Bulletin, February 15, 1892, 77-78; Ohio State Journal, February 20, March 16, April 8, 13, 1892; 28 Weekly Law Bulletin, July 25, 1892, 39. The minutes do not show that the association considered the clerk's resolution although the Law Bulletin says it was read.
legislature would ignore salaries for these judges unless the association pushed for them. The association, however, asked the committee to continue agitating for salaries for all officials. S. S. Wheeler's complaint that some clerks were earning more through fees than the judges influenced this decision. Although the legislature did not pass a state-wide salary bill until 1906, the association discontinued agitating the issue without any formal vote in 1898.  

The next reform the association considered which showed progressive characteristics was the Torrens or Australian system of land registration. This reform indicates their interest in rationalizing and making more efficient governmental operations. Its backers emphasized the complex inefficiency of the current system of registration.

It is scarcely necessary to point out the vexations and harrowing defects of our present system. Every lawyer who has been obliged to wade through the tons and tons of unnecessary literature deciphering the crabbed and wretched handwriting of a recording clerk; every land owner who is informed in mystical language of some hidden

defect which his counsellor tells him may possibly, though not probably, crop up, can and must testify to the failure of our present system. 39

One argument they used was similar to one used by those interested in codification. The current system involved too many books and their numbers were increasing rapidly.

In Hamilton county, in the recorder's office, there are now 716 deed books, each about 640 pages; 610 mortgage books, 4 series of indices, besides leases, mechanic's lien books, etc., and in addition there are 23 indices of the common pleas court, and 10 indices of the superior court. The books in which the deeds are recorded are increasing at the rate of fifteen to twenty a year. 40

Every time a piece of land was purchased or mortgaged a lawyer had to go through all these records. It made no difference how many times this had been done previously. Each lawyer had to plough his way through a lot of verbiage, "... with pitfalls and snares all around him, formed either through the carelessness or ignorance of a former attorney." 41 A small technical deficit could weaken the title and lead to much litigation. Under the Torrens system such repetition and technical mistakes were avoided. It would prevent fraud, decrease expenses, simplify titles and speed transactions.

The Torrens system was basically a government program to guarantee titles. When an individual applied to

40 Ibid.
41 Ibid., 209-210.
register his lands, the registrar and his attorneys would make a complete search of the title. In order to prevent fraud he would advertise that the land was being searched so that anyone could come forward to present his claim to the land. Once all these counter claims had been settled, in court if necessary, the registrar issued a certificate guaranteeing title. This simple form would include all the necessary information describing the lands and any incum- berances on it. When any liens, mortgages, sales or wills changed the status of the land a new or amended certificate would be issued. Once the land was registered under the Torrens system it was no longer necessary to do a complete search every time the land changed hands. The system would facilitate business transactions because a man using his lands as collateral would have a certificate which creditors all over the United States would recognize and accept almost immediately. This would also lead to increased value for the land and lower the interest rates on loans secured by land. Many supporters of the system argued that its advantages were so obvious that everyone would want to use it and it would not be necessary to make it compulsory.

Interest in this reform also surfaced in the 1890's. Jesse Lowman's letter to the editor, quoted above, suggesting that the legislature and the profession consider it,
appeared in April, 1891. At the meeting of the association the following July, President Henderson Elliot mentioned registration of real estate as an area needing reform. He noted that the Torrens system was attracting attention and suggested the association study it. The Judicial Administration and Legal Reform Committee responded by stating that they were in favor of some new system of preserving and proving titles in line with the Torrens system, but that they did not know enough about it to make a more definite resolution. The association decided to refer the question back to the committee for further study.42

The following year Edward Fitch gave a detailed speech describing the Torrens system in Canada. The Judicial Administration and Legal Reform Committee's report summarized the main points of the system, and the results of correspondence with a Canadian attorney who reported the system was working well. The committee was convinced that it would take great labor and care to draft a bill establishing the program and get it accepted by the legislature. Therefore, they suggested the legislature establish a commission to study the matter. They also recommended articles for those who wanted to learn more. Charles Pratt, the committee chairman, stated that he knew of no one who

42OSBAR, 1891, 67, 89, 141-142.
opposed the scheme once they had studied it. The association agreed to ask the legislature to establish such a commission. \footnote{13 OSBAR, 1892, 22-25, 53, 149-183.}

Although the issue was not raised at the meeting, the \textit{Weekly Law Bulletin} received a letter in October which questioned the constitutionality of the system. According to the constitution, no one could be deprived of his property without due process of law. Since under the Torrens system once someone received a certificate guaranteeing his title it was considered permanently valid, the writer could imagine many ways which a man could be deprived of his property without due process. What if someone got a certificate, and sold it to one man under the old system and a second man under the Torrens system? What if a man was out of the country while the registrar was advertising his lands because someone else was trying to register them? What happened if a man presumed dead returned after the registrar had issued a new certificate? \footnote{28 \textit{Weekly Law Bulletin}, October 10, 1892, 198-199. Fitch wrote an answer which was published December 5, 1892, 313-315.} This issue of constitutionality was to become an important one.

When the legislature met the following January, the Judicial Administration and Legal Reform Committee gathered in Columbus to prepare and present their proposal. Their bill authorized the governor to appoint a commission
of three men who would draft a bill embodying the Torrens system with whatever changes were necessary to adapt it to Ohio's laws and constitution. The commission could hire the necessary clerical help. The committee left it up to the legislature to decide how much money to appropriate. The Ohio State Journal commented that the bill was likely to meet opposition from attorneys. The legislature also considered a bill establishing the system but decided to adopt the association's bill.⁴⁵

By July the secretary of the association was able to report that Illinois had adopted the system and that Fitch's speech of 1892 had been sent to the second Congress of the National Real Estate Association. Fitch, chairman of the commission, presented a report on the commission's work and some of the issues it still had to solve. Both Fitch and the Judicial Administration and Legal Reform Committee asked the association to help the commission. The association agreed to help but did not formally debate or comment on Fitch's speech.⁴⁶

The commission reported to the legislature in 1896. Their bill was approximately 160 sections long and except


⁴⁶14 OSBAR, 1893, 21, 34, 48, 154-157; Fitch renewed his request in 1894, 15 OSBAR, 1894, 27-28, 41.
for its language closely followed the Illinois law. The Real Estate Guide thought it was more simple, and easier to understand. Use of the system was optional, except for administrators and assignees. Established county officials were to handle the necessary paper work. The courts or court appointed referees were to go over the details gathered by the recorder before each new piece of land was registered. The Ohio State Journal thought it was a reform which should be adopted. They pointed out the advantages and goals of the bill by quoting Sir Robert Torrens, the Australian responsible for the original reform.

It has substituted security for insecurity; it has reduced the cost of conveyances from pounds to shillings and the time occupied from months to days; it has exchanged brevity and clearness for obscurity and verbiage; it has so simplified ordinary dealings that he who has mastered the "three R's" can transact his own conveyancing; it affords protection against fraud; it has restored to their just value many estates held under good holding titles, but depreciated in consequence of some blur or technical defect, and has barred the recurrence of any similar faults; it has largely diminished the number of chancery suits by removing the conditions that afford ground for them.

When the General Assembly adopted the system both the speaker of the House and the Ohio State Journal thought

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47 This act was subsequently amended to make it optional for everyone except assignees.

48 March 22, 1896.
it was a wise and most important decision. 49

From the beginning, however, problems with the new law appeared. There were mistakes in printing which had to be corrected and no funds were appropriated for the committee of the Secretary of State, Auditor and Attorney General, who were to draw up the necessary forms. The Weekly Law Bulletin feared that as a result nothing would be done to establish the system. They also reported the same constitutional questions had been raised and asked the courts to quickly consider the question so that everyone would be sure. In November the Illinois Act was declared unconstitutional and the pressures for a decision on Ohio's law increased. As a result, the attorney general began an action in mandamus against the secretary of state and the auditor, who refused to draw up the necessary forms in order to have the matter tested in court. The Supreme Court heard arguments in April, 1897 and declared the act unconstitutional because it conferred judicial rights on the county recorder; it attempted to authorize the taking of private property without

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49 Ohio State Journal, March 30, April 14, 15, 18, 19, 20, 22, 23, 28, 1896.
compensation for uses that were not public; and it violated the due process sections of the constitution. 50

This did not completely end agitation for the Torrens system. The Weekly Law Bulletin quoted an article in the American Lawyer that favored the system and called for a campaign of education to convince people to support it. In 1908 Allen McDonald introduced a rewritten version in the house. The constitutional convention of 1912 drew up an amendment allowing the Torrens system and the association recommended its adoption. This was among the amendments adopted by the voters. 51

In 1891 the association also began its occasional interest in corporations. The progressive movement's approach to corporations was varied. Many progressives were anti-monopoly and anti-big business. Others did not want to eliminate big business. Like Theodore Roosevelt they saw both good and bad corporations and wanted programs to regulate corporations in a way that would eliminate the bad aspects and reward good businesses and practices. Still


others were businessmen who wanted the government to act to help the corporations. These men supported govern-
ment regulation of business when it was in their interest to do so. Bankers, for example, participated in the pro-
gressive movement for the Federal Reserve Act.52 The Ohio State Bar Association did not participate in the anti-
trust movement but showed an interest in regulating cor-
porations. Generally they seemed more interested in the stockholders and creditors than the corporations. They were especially interested in protecting the rights of minority stockholders and preventing over capitaliza-
tion and stock fraud. In this sense their interest was part of the reformers' movement against corruption. The association also showed some interest in the question of who should have the power to regulate corporations and the progressive's attempts to regulate banking.

The association's first action in this field came when the Judicial Administration and Legal Reform Com-
mittee suggested that a committee be formed to codify all the laws concerning corporations. The members agreed. This committee was totally inactive but Judge Doyle con-
tinued interest in the subject when he complained that

minority groups of stockholders should have at least some representation on the board of directors. It was unfair for one group to have complete control of a corporation by controlling 51 percent of the stock. His suggestion was referred to the Judicial Administration and Legal Reform Committee which was unable to agree. In 1894 the association decided to withdraw this question from consideration.  

In 1895 Warner Bateman took up the question at the request of the Judicial Administration and Legal Reform Committee. He was the prime mover in this aspect of the association's interest in corporations. He complained that the Ohio corporation law was "... an insufficient and un-harmonious patch-work; a mottled and ill-assorted accumulation of laws and amendments, made without reference to previous legislation, ...." These laws had been passed to meet emergencies and special demands instead of based on a general plan and principle. The general interests of society were also disregarded.

The constitutional convention in 1851 recognized the

53 12 OSBAR, 1891, 67, 89; 14 OSBAR, 1893, 128-129; 15 OSBAR, 1894, 28, 41. A bill allowing stockholders to place all their votes for one director rather than the current practice of one vote per share for each position open, was considered by the General Assembly during 1894 but failed to make it through the Senate. This was also referred to as cumulative voting. Ohio State Journal, January 26, May 9, 19, 20, 1894.

54 16 OSBAR, 1895, 150.
need to carefully restrict the granting of corporation franchises. One of their practical provisions was "... that the 'dues from corporations shall be secured by such individual liability of the stockholders, and other means, as may be prescribed by law; but in all cases each stockholder shall be liable over and above the stock by him owned, and any amount paid thereon, to a further sum at least equal in amount to such stock.'" 55 The idea underlying this provision was that debts 'should be secured' but the legislature was ignoring it.

No adequate provisions for a capital have been made; the remedy for enforcing the additional liability is crude and ill defined, and no laws exist to further secure the creditor: while there has been given, on the other hand, ample authority for the issuing of bonds and incurring of debt. In this condition of legislation the State has equipped its irresponsible creatures and sent them out, clothed with an imposing, though false, appearance of substance, with authority to trade and contract debt among its citizens. 56

The law required a subscription of ten percent of the capital stock as a condition of organization. It did not require payment of any portion of it before the corporation could begin operating. This meant the corporation could begin contracting debts and issuing bonds before it had accumulated any funds to pay their creditors.

55 16 OSBAR, 1895, 153.

56 Ibid., 154.
Such practices led to increased costs for the consumer and lower wages for the workers. If the business failed, "With no capital, with its property mortgaged as an insufficient security for the payment of its bonds, and a general indebtedness without any security, the deceived creditors find themselves bearing the sole burden of the loss." 57 Workers also suffered. "Stock liability is inadequate or wholly worthless as a security for the creditor." 58 One reason was that the legislature was not enforcing the constitutional provisions concerning the liability of stockholders. Another was that the stockholders were hard to track down and they often assigned the stock to innocent third parties in anticipation of insolvency. Ohio stockholders also avoided the law by incorporating under the laws of other states. Bateman thought the legislature should prohibit the organization of the state's industry by Ohioians under the laws of other states. Businessmen were also taking advantage of the law by turning failing partnerships into corporations or reorganizing failing corporations. "I cannot believe that it is necessary to legitimate and prosperous business, under the conduct of corporations, that their stock

57 OSBAR, 1895, 156-157.
58 Ibid., 157.
books should be made substantially 'lies', and their stock and bonds the juggler's scheme for deceiving the public."\textsuperscript{59}

Bateman made six suggestions for legislation. First, no corporation established for profit should be permitted to organize until no less than 50 percent of the capital had been subscribed and 25 percent paid. Corporations for public use should have all their capital subscribed and paid. Second, no shares should be issued as part of this subscription or sold without full payment in money or some other property which the corporation needed. Bateman thought the money obtained in this original subscription should be set aside in a trust fund for the payment of debts if the corporation failed. Third, no business already in operation could become a corporation or be purchased by a corporation at other than its true value, which would be ascertained by public authority. Fourth, stockholders should be liable for the whole amount of the corporation's indebtedness over and above its capital and assets. In other words, the double liability provision of the constitution quoted above should be enforced. Fifth, all assignments of the stock which were made in contemplation of insolvency or with intent to evade such liability should be void, and sixth, no bonds should

\textsuperscript{59} 16 OSBAR, 1895, 161.
be issued in excess of the amount of capital actually paid. Bateman hoped these provisions would protect the security of creditors and improve the public dealings of corporations. He also thought it might be a good idea to issue periodic statements of the corporation's condition to stockholders. The association unanimously resolved that his suggestions should be presented to the legislature.  

*The Weekly Law Bulletin* thought, "This important undertaking will attract the general interest of the bar of the state, and will probably attract a still larger number of lawyers to the next meeting of the association."  

Bateman drew up a bill incorporating his suggestions and those of Judge Doyle concerning minority representation of stockholders and the Judicial Administration and Legal Reform Committee presented it to the association in 1897. The probate court was designated as the public authority which would appoint appraisers to decide the value of businesses about to become incorporated or acquired by other corporations. The bill also made directors personally liable for debts in excess of the capital stock. The committee thought some action was necessary on the issue

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60 16 OSBAR, 1895, 149-169. The minutes do not show any action by the association. 34 Weekly Law Bulletin, July 22, 1895, 28 reported this action.  

61 Ibid.
of minority representation of stockholders, who should be able to obtain information on the company's status and make some input in the running of the company. The committee also thought something should be done to enforce the double liability provision of the constitution but since it had not had time to fully study the rest of Bateman's bill it asked the association to decide. The association sent the report back to the committee for further study. 62

The following year the committee decided to increase the amount of capital needed before the corporation could begin business from 50 percent to 100 percent. After some debate in which everyone agreed something needed to be done to regulate the corporation's speculative use of stock, and one man questioned the provision allowing property as well as money in payment, the association decided to refer the question to a special committee. 63

This committee was unable to agree so they presented two reports to the association. 64 Judge Munson favored action. Massachusetts and New York both required cash payment. To allow a corporation to advertise a specific

62 OSBAR, 1897, 49-57, 139.

63 OSBAR, 1898, 35-36, 92-106.

64 There were three members on the committee but one of them could not work so the two others reported separately.
amount of stock when it actually had less was deceiving and should be prevented. Gustavus Wald thought it was against the association's constitution to become involved in questions like this.

Upon these questions, precisely as upon a proposed law concerning a single standard of money, concerning a tariff for revenue, or protection, or a law prohibiting trusts, or creating or regulating charitable institutions, prohibiting the sale of cigarettes, permitting or forbidding the manufacture or sale of intoxicating liquors, providing for the municipal ownership of public utilities, or a tax law embodying the theories of Henry George, we would vote as individual citizens, each according to his views as such, not in his professional capacity as a lawyer. I submit, therefore, that the matter is not within the province of the Association.65

Wald also thought the bill under consideration would drive business out of the state. The association decided to relieve the committee of further consideration of the problem.66 Although Bateman's bill can be seen as part of the progressive's anti-monopoly and anti-corruption interests, his specific solution was not progressive. His bill was reactionary because it tried to enforce an out of date provision of the constitution in a way that would have severely limited corporations by establishing liability rules similar to those covering partnerships.

In 1901 Smith W. Bennett brought up the issue of

65 20 OSBAR, 1899, 44.
66 Ibid., 37-46, 84, 89-92.
double liability again. He described the events that led to its incorporation into the constitution. One of the reasons the 1851 convention was called was to eliminate the need for special legislation to charter corporations. The provision concerning liability presented by the standing committee to the convention was,

Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law; provided the liability of each corporator or shareholder, shall never be less than the amount of stock in any corporation by him or her subscribed.67

Judge Ranney, who liked the English idea of individual liability to the full extent of a partner, except for corporations engaged in quasi public business, suggested the following amendment.

Together with a further sum of equal amount; and provided further, that in all corporations intended to secure pecuniary profits to the stockholders, except for corporations erected to construct public improvements, the stockholders shall be individually liable for all debts and liabilities of any such corporation.68

Ranney feared corporations would "... depress private enterprise, and break down men of small capital who undertake to compete with them, thus destroying the private independence of our mechanics and businessmen, ..."

67 22 OSBAR, 1901, 156
68 Ibid.
He argued that, "This great and increasing tendency to engulf every branch of business in the vortex of corporations must be met with prompt and energetic guarantee against their frauds, or they would be converted into the worst of all nuisances." Bennett believed that the double liability feature would have established a higher standard of corporate honesty and checked many of the evils of over capitalization if other states had adopted similar provisions. Since this did not happen and the provision was doing more harm than good, it should be repealed. Ohio was losing capital and taxes. Out of state corporations over which the state had no control were becoming increasingly numerous. These corporations had an unfair competitive advantage. The rule also decreased the value of stock and many Ohio companies had found legal ways to circumvent it. Repeal could also be used to help recruit business for the state. This is a more progressive approach to the problem of double liability, because it represents their interest in rationalizing all aspects of business and government. It does not attempt to return to a time when corporations were less important as Bateman's bill did. The association took no action on Bennett's suggestions.

6922 OSBAR, 1901, 157-158.

70Ibid., 149-170.
The General Assembly first showed interest in repealing the double liability provision in 1898. Another resolution to repeal the provision was adopted in 1902 and presented to the voters in the 1903 election. At the 1902 meeting the Judicial Administration and Legal Reform Committee asked the association if they thought this amendment should be adopted. The association, however, decided to table the issue since the amendment was not to be presented to the voters until after the next meeting. At this meeting the Judicial Administration and Legal Reform Committee asked the association's opinion again. This time the association decided to recommend the amendment.  

In 1905 the association sponsored a debate on the question, "What changes, if any, can be made in the law defining the purposes for which corporations may be formed, and regulating their management, which would operate for the benefit of the public and obviate the necessity of federal action on the subject?" Several of the speakers again brought up the problems of overcapitalization and stock fraud. Thomas H. Hogsett decided that the place for restrictions was not so much in the purposes for which the corporations were formed as in their conduct and

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71 Ohio State Journal, March 12, 17, April 7, 1898, February 7, 19, 20, April 23, May 12, 1902; 23 OSBAR, 1902, 51-58; 24 OSBAR, 1903, 26, 154-155.
management after organization. He thought Ohio should institute something like England's system which required corporations to issue periodic financial reports. Such reports filed with the proper officials or a special commission of corporations would give prospective investors and possible creditors ample means of estimating the value of corporation property and the basis of its credit. He believed this would be more conducive to stability and confidence than the policies previously tried. Charles T. Lewis stated that more regulation of the corporations than was the current practice was needed. The state was not justified in granting powers to the corporations without protecting the public from any injurious results they might bring about. He made three specific suggestions on how the state could do this. First the purposes for which corporations could be organized should be clearly and distinctly stated. Corporations should not have the same free range of business activities possessed by the individual because this would make it more difficult for the state to regulate them. Second, "... the state should see to it that there is in the treasury of the company, at the time of its organization, an amount of money, or its equivalent, equal to all of the capital stock which it is then authorized by the state to issue and sell." 72 Such stock would represent its face value and

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72 26 OSBAR, 1905, 142.
in the future would depend on the management of the company." It might be inconvenient to the incorporators to require this to be done, but only because it would prevent the issuing of the certificates of capital stock founded only upon wind, and by means of which the public would be deceived and defrauded, . . . "73 Third, all corporations should make a detailed statement showing their general condition to the state. They should also be subject to spot checks by state inspectors. These last two provisions would mean an increase in state personnel but this was necessary if people wanted to continue living in a complex society in which corporations were important. Certainly this was better than continuing the corporations without such state supervision. Howard C. Hollister discussed the problem of state anti-trust regulation and concluded that states could not constitutionally restrict their corporations to successfully solve the problems.74

In 1907 Smith W. Bennett drew on his experiences as special counsel to the attorney general and presented another speech on corporations, entitled "The Problem of Regulation of Corporations and the Commerce Clause." 'Can Congress license and regulate corporations? Should the states' power to create corporations that could operate in interstate commerce be taken away?,' he asked. He answered

73 26 OSBAR, 1905, 143.
74 Ibid., 118-183.
both questions positively and argued that such action would be good. States found they were unable to regulate inter-
state commerce effectively and corporations ought to be required to do business the same way everywhere. The federal government was already acting to control railroads and it should do the same thing for other corporations. 75 Many progressives were making similar arguments.

At the same meeting the association became involved in the issue of regulating banks, 76 when Gilbert H. Stewart introduced a resolution calling for the creation of a banking department to supervise banks. A special committee was appointed to study this. Regulation of banking was part of Tom Johnson's progressive reforms. One plank in the 1905 Democratic Party platform which Tom Johnson helped write called for careful inspection of state and private banks. In 1908 the legislature passed a bill which created a superintendent of banks and strengthened the state's supervision of banks. All state banks were to be examined twice a year. All banks had to make four reports to the superintendent each year and maintain a reserve of fifteen percent of which from two and one-half to six percent must be kept in the bank's vaults. The law also regulated loans

75 28 OSBAR, 1908, 186-209.

76 In 1898 and 1899 the bar association considered and adopted a bill making it a crime for bank officials, managers or cashier to accept deposits after they knew the bank to be insolvent or in failing circumstances. 19 OSBAR, 1898, 36, 113-117; 20 OSBAR, 1899, 56-57, 65.
and investments. 77 Thus the association's actions concerning corporations were both reactionary and progressive.

The most important area of progressive reform which the Ohio State Bar Association became directly involved in was that of municipal reform. Many progressive reformers became interested in changing the organization of city governments. In Ohio this became a major controversy in 1902 when the Supreme Court overturned the city of Cleveland's charter, but suspended the ruling until October so the legislature would have a chance to enact a replacement.

The 1851 constitution had attempted to end the practice of special legislation by stating that, "All laws of a general nature shall have a uniform operation throughout the State;" "The General Assembly shall provide for the organization of cities and incorporated villages by general laws, and restrict their power of taxation, assessment, borrowing money, collecting debts, and loaning their credit, so as to prevent the abuse of such power," and that the "General Assembly shall pass no special act conferring corporate powers." 78 The legislature soon found it could circumvent these provisions by classifying cities. One reformer later complained that the problems of Ohio's

77 Warner, Progressivism in Ohio, 161-162, 172, 199; 28 OSBAR, 1907, 21; 29 OSBAR, 1908, 22, 29-30.

78 Article II section 23, Article XII section 6, Article XII section 1, Taylor, Ohio Statesmen and Annals of Progress, II, 7, 18.
municipalities all resulted from "Classification run mad." 79

At first the State's Supreme Court upheld the system but by
the 1890's the legislature had developed it to such an ex-
tent that each city was separately classified.

. . . there has been provided by the various
Ohio legislatures, a system of municipal class-
ification by which at present there are fourteen
distinct classes of municipal corporations, viz:
Three grades of first class cities, eight grades
of second class cities, two classes of incorporated
villages, and hamlets,—with legislation to a
greater or less extent separate and distinct for
each class. In the eleven classes of cities there
is a special charter or distinct form of government
for each class and grade. By this artificial and
almost ridiculously arbitrary classification,
Cincinnati is the only city of the first grade
of the first class. 80

The General Assembly refined the system further by adding
population figures so the law would apply to all cities
with a specific population. Thus laws were written that
appeared to be general laws but applied to the only city
in the state of a certain grade and specific population.

It is sufficient to say that the constitutional
requirement that municipal corporations shall be
organized by general laws, is a dead letter!
Indeed, so thoroughly dead, as to amount at this
day to a reminiscence. 81

This system also enabled the legislature to pass "ripper"
legislation, which changed the laws covering a city to

79 Ibid. 41 Weekly Law Bulletin, January 23, 1899, 42.
80 Ibid., 43.
81 Ibid.
weaken the power or replace those in control there, or to help some special interest to obtain its desires. Complaints about the system gradually increased and the politicians began considering reform several years before the Supreme Court forced it on them. 82

As early as 1896 Governor Bushnell suggested that a general law regulating municipal government would be beneficial. Although the legislature debated a bill establishing a commission to revise the municipal code, one was not established until 1898. The Governor appointed Judge David F. Pugh and Edward Kibler to the commission. As a member of the Ohio State Bar Association, Kibler kept the members informed of the commission's activities and solicited their opinions. The commission also used the Weekly Law Bulletin to keep their profession informed and solicit information and suggestions. One interview with Judge Pugh pointed out the scope of their work as well as some of the problems involved. They had to investigate the organization of towns, the management of their streets, police, fire and sanitation departments, local tax assessments and school affairs. One of the big problems Judge Pugh reported was how to classify cities and towns. It seemed to him almost impossible to avoid some kind of classification system.

82 22 OSBAR, 1901, 242-251.
"What would be a good system of government for Cincinnati would not be for Mount Vernon, because of the difference in size."\textsuperscript{83} Without classification the commission would be forced to limit its law to a few generalizations and leave everything else to local officials. Other knotty questions studied by the commission were the question of municipal ownership of electric light plants and street car systems and which officials to make elective.\textsuperscript{84}

In addition to issuing a general invitation for suggestions in the Law Bulletin, the commission also sent out 500 to 1,000 letters and planned to hold hearings. "It is expected by the commission to open the doors and invite everybody who wants to appear and make his speech."\textsuperscript{85} They also studied the proceedings of the Municipal Reform League and went to Toronto to study Canadian methods. During 1899 the commission worked on the final details and publicized its ideas at various meetings around the state. In January Kibler appeared before the Ohio State Board of Commerce. The Cincinnati Bar Association listened to Kibler's proposals and resolved to publish his speech.

\textsuperscript{83} 40 Weekly Law Bulletin, October 24, 1898, 264.


\textsuperscript{85} 40 Weekly Law Bulletin, October 24, 1898, 265.
According to the *Weekly Law Bulletin* it was said that the measures proposed were very radical. In July Kibler reported to the state bar association and August Pugh addressed the Optimists Club of Cincinnati.\(^{86}\)

One of the earliest decisions of the commission was to decide on civil service reform. Kibler considered this,

Greater than the need of the abolition of classes, and the uniformity of legislation, and as a sine qua non of home rule, in the judgment of the commission, a complete and comprehensive merit system of appointments is essential to municipal convalescence.\(^{87}\)

The progressives interests in home role, nonpartisan election, city wide election of councilmen and a strong executive with centralized control of the government also appeared in the commission's code. Kibler complained that,

Under the present system there is in the broader sense really very little self government in the cities of the state. They are managed, not by themselves, but largely by the legislature. This policy is utterly mischievous and wrong.\(^{88}\)

Both men complained about the corrupt party rule of Ohio's cities. Kibler sounded like many progressives when he complained about the spoils system and the need to run the government in a more businesslike manner.

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\(^{87}\) *Weekly Law Bulletin*, January 23, 1899, 44.

\(^{88}\) *Ibid.*, 43.
In my judgment, this evil becomes insignificant when contrasted with those which result from the complete control of municipal affairs by party politics and the almost total failure to make incumbency in office depend not upon party zeal or service, but upon fitness to perform the duties. The business interests of our cities have become too enormous any longer to be regarded by the average citizen as the legitimate spoils of party politics, and to rescue them from partisan control and to require that public affairs be managed only by those of ascertained fitness, can violate the spirit or letter of no law, constitutional or statutory, nor any principle dear to any lover of free institutions.\(^9\)

The goal which we as good citizens ought to seek, is the control and management of municipal affairs upon something like good business methods and principles, by honest and capable men...\(^9\)

The commission hoped that nonpartisan elections and city wide election of councilmen would enable honest and capable men to obtain positions in city government. The commission's plan reduced the number of councilmen to seven (four elected by district and three by the city at large).

Experience is demonstrating that the election of councilmen at large attracts a much better class of men than ward representation.\(^9\)

Judge Pugh explained why the commission did not recommend a more complete change.

\(^8\) 41 Weekly Law Bulletin, January 23, 1899, 42.

\(^9\) 20 OSBAR, 1899, 230.

We believed that the true rule is to elect all of the councilmen at large; but a certain degree of deference must be paid to the sentiment in favor of local, or ward, representation in the council, which is deep, universal and abiding.\textsuperscript{92}

The system of government recommended by the commission was the federal rather than the board plan. The executive department was to be divided into four administrative departments under direct control of the mayor. This was to decrease the number of offices the mayor could appoint and eliminate the problem of divided responsibility that currently enabled so many bosses to maintain their power.

The new law will give you a strong Mayor and a strong council. The council will have the prerogative of levying the taxes and spending them, and of defining and inaugurating the policies of the city government. The Mayor and his subordinates will possess all the executive power, and the council, after the money has been appropriated and the policy defined, will have no ability to impede or defeat him and his subordinates in the exercise of their powers.\textsuperscript{93}

The question which seems to have created the most problems for the commission was that of municipal ownership of public utilities. They believed that until the merit system was accepted and safely operating, municipal ownership would not work. They finally decided to allow municipal ownership of telephone and street railways in cities with

\textsuperscript{92} 42 \textit{Weekly Law Bulletin}, August 21, 1899, 154.

\textsuperscript{93} \textit{Ibid.}, 156.
a population of 50,000 or more if the voters approved. They also provided specific regulations for granting franchises. Before the franchise was actually granted the question of whether or not to grant the franchise and which of the bids presented the council should be accepted was to be submitted to the voters. Kibler's closing remarks in his speech before the state bar association are interesting because they show the commission's attitude toward their bill and reform in general.

The commission is aware that in the preparation of this bill it has placed its standard high; so high, indeed, that it cannot escape, in some quarters, the imputation of impracticability of being top heavy with virtue, and the predictions that the passage of the bill by the legislature will be rendered improbable, at least in the near future; for in no respect has the bill in its preparation been marred or compromised with any view of furthering its passage; but we have considered that the evils designed to be corrected are growing intolerable, and that it is only a question of a short time when the popular protest against municipal mismanagement will become so unmistakable as to affect the legislation of the state, and the commission has dared to hope that an aroused public sentiment, through the instrumentality of the bar of the state, the commercial bodies and other organizations devoted to the cause of better municipal government in Ohio, may soon so touch the legislative conscience, that in the near future this bill or one embodying its essential features, may be found upon the statute books of the state.\textsuperscript{94}

The bill was long and complicated. Instead of debating its many points the association listened to Kibler's

\textsuperscript{94}20 OSBAR, 1899, 234-235.
speech and voted to adopt the following resolution.

That this Association, appreciating the importance of a uniform code for the organization and government of the cities of the State, will give its earnest support to such bill appropriate to that purpose, as may be reported to the General Assembly by the Municipal Commission, and that a Committee be appointed to present to the General Assembly our views of the subject. 95

Later in the meeting the association decided to appoint a special committee to present the association's views to the general assembly. 96

The commission's final report was sent to the legislature January 4, 1900. One objection that was raised almost immediately was the length and complexity of the bill. The Ohio State Journal began its first editorial on the code by praising its basic principles but went on to complain that the commission violated one of its own cardinal principles.

The truth is that there is too much of the proposed code. It is too extensive; it covers too many subjects; it goes too much into the details of administration. Too much law is almost if not quite as bad as no law at all.

It is declared to be fundamental that the municipality shall have just as great a measure of self-government as possible and then the code proceeds to define and limit all the power granted in such manner as to practically nullify the grant of local self-government. 97

95 20 OSBAR, 1899, 55.
96 Ibid., 59, 98, 85, 213-235.
97 Ohio State Journal, January 24, 1900.
The *Journal* favored municipal charter conventions under general supervision of the legislature and as much home rule as possible. It also recommended that the code be simplified, and that the nonpartisan election and merit system sections be considered separately. The provision allowing municipal ownership was "the most radical and far reaching." It was "a new and dangerous theory" which alienated many who otherwise favored municipal reform.  

In another editorial the *Journal* said that many of the code's provisions "were ill-advised, if not positively vicious," and that the commission's "whole labor was a failure."  

Those editorials led to a letter to the editor from H. H. McMahon. He pointed out that,

Most of the advocates of municipal reform are united upon this proposition, that there should be uniform legislation embodying the principles of local self-government, the non political ballot, the merit system and the separation of the legislative and executive powers.  

He then complained about the commission's provisions concerning home rule and agreed that the code should be simplified.

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98 *Ohio State Journal*, January 26, 1900. The question of municipal ownership was one of the issues which Tom Johnson and many reformers agitated for. It was a very controversial issue in Ohio politics during this period and was one of the objections raised by many opponents to the bill.


But the bill prepared by the commission violates that principle by attempting to fix the form of administrative organization. The principle of local self-government demands that each municipality be permitted to organize its own way and to suit its own peculiar circumstances. The code may specify the powers which the municipality may exercise. It may place proper limitations upon the exercise of those powers. It may provide in general terms for an executive and legislative branch of the city government and for the complete separation of those departments of the government, but any attempt to fix the details of the internal organization of the municipality is a violation of the right of self-government and contrary to the theory of the constitution.2

In April a substitute municipal code which incorporated most of these suggestions was written by A. R. Foot, James R. Garfield, Gilbert H. Stewart and F. B. James3 for the State Board of Commerce. When the legislature adjourned both bills were still pending.4

When the bar association met in July, Kibler was on hand to defend the commission's bill. The Judicial Administration and Legal Reform Committee recommended another effort to secure a uniform plan of municipal government without directly endorsing either bill, but the association debated the commission's. Kibler was willing to drop the provisions of nonpartisan elections and municipal

2Ohio State Journal, February 1, 1900.

3Foote was from Chicago. The others were members of the Ohio State Bar Association.

4Ohio State Journal, April 11, 1900.
ownership but the provisions concerning the merit system were another matter. These were essential and could not be removed without completely rewriting the bill. He suggested that the association appoint a committee to study the commission's bill and recommend those changes it thought necessary. After some debate over how much authority to give the committee and what measures could be gotten through the legislature, the association agreed to a committee to revise the code by eliminating nonpartisan elections, municipal ownership and any other matters it saw fit. The committee was also instructed to write a separate bill establishing the merit system.\(^5\)

After careful consideration the special committee to revise the commission's bill decided that the provisions concerning the merit system should be kept in the bill. The committee also removed those sections allowing municipal ownership and nonpartisan elections, even though several members of the committee felt that the removal of the nonpartisan feature was a mistake. They had nothing but praise for the commission's bill and recommended that it be presented to the legislature with their minor changes. In addition to those already mentioned, the committee

\(^5\) 21 OSBAR, 1900, 27, 45-63. Members of the committee were Aaron A. Ferris, chairman, John W. Warrington, James R. Garfield, Charles Lewis and E. O. Randall.
decreased the bill’s length and simplified its language.\textsuperscript{6} The association without any debate accepted the committee’s report and asked them to urge other organizations such as the State Board of Commerce to join them in presenting the bill to the General Assembly.\textsuperscript{7}

In 1902 the General Assembly considered both the revised municipal bill, and establishing another commission but did not agree on anything before it adjourned. Although almost every commercial and business group favored the bill, it faced a struggle in the legislature. George Cox and the Cincinnati delegation opposed it, the delegates from Columbus objected to the merit system, Tom Johnson, after some vacillation, came out against it because municipal ownership had been removed. Toledo provided the only group of delegates from a large city who publically announced support for the bill. The Ohio State Journal wrote a scathing editorial which objected to the bill and the bar

\textsuperscript{6}The bill was still long enough for the Ohio State Journal to describe its introduction into the house in the following manner. It was presented in a cloth bound book of about 1,000 pages and several thousand sections. "The little page who carried it had all he could do to get the book up the aisle to the desk . . . . The clerk looked at it in wonder, and with a faint voice began to read its provisions. 'Skip it,' 'Skip it,' shouted the members, and the first and last sections were read and the bill sent to the printer." February 2, 6, 1902.

\textsuperscript{7}46 Weekly Law Bulletin, August 26, 1901, 94-99; 22 OSBAR, 1901, 41-2, 89, 196-211.
association's part in its revision. The only way to make the original bill satisfactory would have been to write another bill.

It is, therefore, not to be wondered at that the present measure, which is an amended revision of the original revision, is also unsatisfactory. The committee of the State Bar Association evidently did not make a searching examination of the provisions of the act. It is rumored that their revision was, in fact, made by one of the original revisers.8

The revised bill still contained many meaningless and inconsistent provisions. "The original measure was a miserable failure. The amended measure is a miserable and mutilated failure." The work of the bar association's committee "is thoroughly discredited" and the endorsement by the association of the bill was "purely perfunctory." The General Assembly was wasting any time spent on the bill and it should be "consigned to the limbo of failures."9

A. G. Comings, the chairman of the committee on municipal affairs, led the fight for the code in the House.10 The bar association's special committee provided every member with a copy of the bill and a synopsis before the

8Ohio State Journal, April 10, 1902.
9Ibid.
10Comings worked so hard on this that at one point he said that he lived, ate and slept with the code. Ohio State Journal, April 17, 1902.
session began. They also organized delegations from different parts of the state to lobby for the bill. After much debate the house decided to ask Comings to revise the bill a third time. His bill, which was introduced near the end of the session so it could be printed and publicized, further simplified the code by eliminating the sections covering such matters as schools, bond issues, finance, taxation and police pension boards. In less than eighty-five pages, his code briefly outlined a classification of city and village, the federal plan of government,\textsuperscript{11} the merit system and the powers of various officials.\textsuperscript{12}

In June the Supreme Court declared an act reorganizing Toledo's board of city commissioners and Cleveland's city charter unconstitutional, because both were acts of special legislation which the constitution clearly declared illegal.\textsuperscript{13} Since most of Ohio's cities had special legislation charters it was essential for the General Assembly to enact a uniform municipal code before October. The mayor of Akron summed up the situation as follows: "There is not at the present time a legally constituted city in the state; not a city with a valid charter, not a city

\textsuperscript{11} The federal plan established a centralized form of city government.

\textsuperscript{12} Ohio State Journal, February 2, 6, March 14, 28, April 10, 17, 22, 29, May 2, 1902; 23 OSBAR, 1902, 34-36.

\textsuperscript{13} 47 Weekly Law Bulletin, June 30, 1902, 462, July 7, 1902, 480-481.
constitutionally organized and provided for." Until the General Assembly acted "there will exist only de facto governments in all of them." 14

The Ohio State Bar Association held its annual meeting in this atmosphere and spent most of its time considering a new bill. The Weekly Law Bulletin reported that the subject was thoroughly discussed, but the published proceedings show only a general approval of the Supreme Court's action and the appointment of a special committee to aid the Governor. The Governor, who attended the meeting, had asked for a committee to help him to prepare a program to present the legislature when it convened in August. 15

Several layers, important Republican leaders such as Senator Hanna, the new president of the bar association, John W. Warrington, and the Governor remained at Put-in-Bay after the bar association meeting to discuss a new code. Governor Nash with the help of Wade Ellis, assistant Corporation Counsel of Cincinnati, Smith W. Bennett, 16 special counselor of the attorney general and

14 47 Weekly Law Bulletin, October 2, 1902, 739.

15 Governor Nash attended the meeting and issued the call for the special session from there. Ohio State Journal, July 9, 1902; 23 OSBAR, 1902, 34-50, 59-60, 68-69; 47 Weekly Law Bulletin, July 14, 1902, 483.

16 He was also secretary of the bar association.
Senator Longworth wrote a new municipal code. Since the governor insisted on keeping the code under wraps until he presented it to the General Assembly, the bar association's committee of John W. Warrington, Thomas Hogsett and E. B. King had to meet in the state house to study the governor's bill. Hogsett read the bill before the rest of the committee saw it, and expressed the opinion that they might write an entirely new bill. Instead the committee recommended one major change. Governor Nash wanted a police board for each city appointed by the Governor. The bar association committee provided a nonpartisan board of four men appointed by the mayor to control both the police and fire departments.\textsuperscript{17}

The governor's code, which was the one eventually passed, provided for a council of at least nine men, six elected by wards and three elected at large.\textsuperscript{18} Provisions were made for more councilmen for cities over 10,000.\textsuperscript{19} The executive department consisted of the following elected officials: mayor, president of the council (who took over in the mayor's absence), auditor, treasurer and a board of public service. Appointed executive officials were the

\textsuperscript{17}Ohio State Journal, July 12, 14, 27, 31, August 5, 13, 16, 1902.

\textsuperscript{18}In the final bill this was changed to seven councilmen, four from wards and three city-wide.

\textsuperscript{19}In the final bill this was changed to 25,000.
solicitor and members of the board of public safety. The mayor's authority over all of these officials was minimal. The council was given the power to grant franchises provided none were given for more than twenty-five years and the council advertised its plans. Every ten years such franchises could be reconsidered and readjusted.\textsuperscript{20} The \textit{Ohio State Journal} was very pleased with this code. It had been shortened from Comings' one-hundred-five pages to sixty-eight. "Considering the ordinary fate of the laws in this state, this is an achievement to be heartily commended. Even should the legislature have other ideas as to details, it will be likely to use the governor's code bill as a model, simply because it is a model of the way laws ought to be constructed. Clearness, compactness, absence of all ambiguity are the marks of every paragraph."\textsuperscript{21}

Participation in the writing of the code by the special committee of the bar association did not mean that all members of the association supported the bill. Three code bills were introduced in the General Assembly. Judge Gilbert H. Stewart, a member of the association, Harry H. McMahon and Allen Ripley Foote of Chicago drew up a bill

\textsuperscript{20} \textit{Ohio State Journal}, August 17, 23, September 9, October 19, 1902.

\textsuperscript{21} \textit{Ibid.}, August 17, 1902.
for the State Board of Commerce. Judge George B. Okey of the Democratic minority introduced the third bill. Both the Board of Commerce and Okey's bills provided for conventions by each city to draw up their own charters. James R. Garfield, who participated on an earlier bar association municipal reform committee and Thomas Hogsett of the 1902 special committee both appeared before a senate committee opposing the governor's code. Under questioning Hogsett admitted that he and the rest of the bar association's committee agreed that the governor's code was constitutional. Hogsett and Garfield objected to the mayor's role under the governor's code. They preferred the federal plan which provided for a centralized form of city government in which the mayor had control over all the administrative departments.\footnote{Ohio State Journal, August 3, 10, 18, 19, 1902.}

The most progressive position was that favoring city charter conventions and home rule. Progressives also favored the federal plan of government. Thus although the bar association directly participated in the progressive issue of municipal reform and during the debate supported the progressive programs included in the municipal commission report of Judge Pugh and Kibler, its final position was on the side of the conservatives.

Another progressive issue during these years which the
bar association appeared to support at first but later changed its mind was that of giving the governor the veto. This reform was the result of the progressive's interest in strengthening administrative reform. Resolutions for a constitutional amendment giving the governor the veto began appearing in the legislature in 1893, but the bar association did not become involved until the issue was presented to the voters. After years of trying, the supporters of the measure finally got it through both houses in 1902. At its annual meeting the association listened to a speech on the amendment by John W. Warrington, one of the authors of the resolution, and voted to officially support it.  

Since the proposed amendment was not to be voted on until the 1903 elections the association considered the measure a second time that summer. The Judicial Administration and Legal Reform Committee presented the amendment for debate without taking a stand on it. Warrington began by objecting to it. The resolution which the General Assembly adopted was not the one he worked on. He especially objected to the section allowing the governor to veto sections of a bill without nullifying the entire bill. He also agreed with Simeon M. Johnson, the secretary of the

23 Ohio State Journal, March 24, 1893, March 26, 30, April 2, 23, 26, May 12, 1902; 23 OSBAR, 1902, 63-64, 114-131.
committee, that the section concerning the number of votes necessary to override a veto was ambiguous. Others argued that the veto was too important to worry about such small details. After some debate a motion to recommend the resolution was withdrawn because the number of members present was so small their endorsement would not mean anything. There was an attempt to consider a motion rejecting the amendment but the association decided instead it would be best to indefinitely postpone the question. The Weekly Law Bulletin, which also objected to the amendment, thought this action was significant. In spite of the lawyers' uncertainty concerning the amendment, the voters approved it.24

One reform often connected with the progressives is their demand for the initiative, referendum and recall. Resolutions for amendments establishing the initiative and referendum in Ohio appeared in 1893 but the bar association did not become involved until 1907 when they debated the issue. The Weekly Law Bulletin thought it was important enough to write a short editorial pointing out to its readers that the question was going to be discussed by two of the ablest lawyers in the state.25


progressive Democrat who eventually became a United States senator, argued for the initiative and referendum. He argued that advocates of this reform were seeking to avoid the exercise of practically arbitrary power by the legislative branch of government. This was nothing new because our forefathers also rebelled against arbitrary legislative power. The principle involved was as old as New England town meetings. The constitution recognized the people as a source of power and in this day and age they were needed as a check on the legislature which was becoming too powerful.

It is consistent with the sense of safety that the people who are the repository of all power should delegate to the legislature the power to act for it in the making of laws and bind itself thereby hand and foot, and reserve no right unto itself to correct the evils which may result to them from an improper or ill-advised course of action by its agents? Is it consistent with good business sense that a principal may appoint an agent for a stated period of time and within that period he shall not have the power to control the acts of the agent, though they may be diametrically opposed to the wishes or interest of the principal?26

The legislature often responded to the wealthy, powerful, organized interests rather than those of the disorganized, helpless people. Pomerene cited several recent examples of corrupt legislation and asked if these things could have happened if the people had the initiative and referendum to use. Would the reformers have to wait so long for

26 OSBAR, 1907, 133-134.
a salary law, laws regulating banks or other reforms if this measure was part of the constitution? Opponents said the initiative would lead to badly drawn laws because the people were not trained to write laws. Pomerene had faith in the people. In order to get enough backing for any law they wanted, the people would need a well drawn bill and would turn to those with training to get it. Certainly they could do no worse than the legislature did. "I ques-
tion the good faith and patriotism of anyone who refused to go to the voters for what he wants."²⁷ This reform was

Like Banquo's ghost "it will not down,"
It has come to stay and it will not do to meet
it with the sneer that it is but the child
of long haired men or short haired women.²⁸

The profession should consider it seriously as an important reform which was based on American principles and ideas.

E. B. Kinkead argued against the reform. He argued that the founding fathers had purposely created a govern-
ment that guarded against the dangers of pure democracy.

Are we a great and progressive nation, the best
governed in the world, to go back to peculiar little Switzerland, with its varied history and
its two hundred and twenty-one miles in length and one hundred forty miles in breadth with an area of 15,976 square miles, hardly one-third of Ohio, with its diversified population, for the best processes of making laws?²⁹

²⁷²⁸ OSBAR, 1907, 143.
²⁸Ibid., 134.
²⁹Ibid., 152.
The advocates argued that it would prevent corruption, yet scandals had continued in Oregon since they adopted the initiative and referendum. This reform weakened rather than strengthened representative government by decreasing the responsibility of the legislators and taking away their incentive to be creative. Not enough people would become sufficiently well acquainted with the issues to make this system any better than the current one. Most people were too busy and would not participate. Remedies for the evils in the twentieth century's social and industrial life could be found by the national government rather than through direct legislation by the people.

If this were a political meeting, I would be inclined to suggest that this new plan is being proposed by the "Outs," who would like to hold the reins of our republican government. But as this is not a political meeting I will be content with stating merely that a more vicious scheme of legislation could not be devised, because it would array class against class, sect against sect, race against race, forment strife and discord, and give every man who has a firecracker or a dynamite bomb a chance to explode it. 30

The association listened to these speeches but did not take a position on the issue. 31

The initiative and referendum continued to be an important issue in the General Assembly and state politics

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30 OSBAR, 1907, 181.

31 Ibid., 17, 127-185.
during the rest of the period. In 1911 the reformers made it the issue in the campaign for delegates to the constitutional convention. In this atmosphere the Ohio State Bar Association listened to another speech on "Representative as Against Direct Government" by Congressman Samuel W. McCall of Massachusetts. His position was very similar to Kinkead's. The founding fathers had deliberately decided against direct government. The essential issue raised by this reform was, "Is it for the interest of the individual members of our society to have the great mass of us pass upon the intricate details of legislation, to execute our laws and to administer justice between man and man?"  

Such direct government by the people would not work.

With an infinitesimal responsibility, with only one vote in a million, how seriously would each of us feel called upon to withdraw from his own private pursuits and explore in all their details the complicated questions of government? It would be imposing an impossible task, scattered as we are and unable to take common counsel, to require us in the mass to direct the work of government.  

He cited examples of the operation of the initiative in Oregon. In one case salmon fishermen on the lower end of the river initiated legislation outlawing the fishing methods of their up river competition. At the same time the

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32 OSBAR, 1911, 72.

33 Ibid.
competition initiated a bill outlawing the nets used by the down river fishermen. In the following election the voters adopted both bills. McCall thought the referendum was useful only for basic constitutional issues or municipal affairs where the voters were apt to be more familiar with the issues. He ended his speech by arguing that "... there is no evil for which the Initiative, the Referendum, and the Recall are proposed as a remedy that cannot effectively be dealt with under our republican institutions ...".  

The progressive reform of recall brought stronger opposition from the bar associations than the initiative and referendum. They were especially worried about the effects of the recall on judges who should be able to make decisions on the facts and legal aspects of a case without fearing that the voters would remove them from office for each decision. This issue had been brought up in the General Assembly and the association's president referred to it specifically when he called the members' attention to the coming constitutional convention.

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34 32 OSBAR, 1911, 88.
36 Ohio State Journal, January 19, 20, 1911.
Some changes in the constitution are desirable but not all radical and experimental changes suggested by some reformers, theorists and faddists. Among these is the proposition to recall officers. This plan applied to any officer may be unwise, and applied to judges is sure to prove pernicious.37

At this same meeting McCall also attacked the recall. It was dangerous because it would make it difficult for politicians and judges to take a long view. If the recall had been legal during the Civil War, Lincoln would have been removed, or faced election with every reverse of fighting.38 During the debate over the Judicial Administration and Legal Reform Committee's recommendations for the new constitution, one member stated that the lawyers of Ohio should stand against judicial recall. Although the association did not vote on the initiative, referendum or recall, the fact that they were not among their recommendations to the constitutional convention is significant. This is especially so when one considers that the reformers' campaign to elect delegates pledged to the initiative and referendum was clearly under way when the association met in July.39

In 1912 the association ignored the proposed initiative

37 32 OSBAR, 1911, 44.
38 Ibid., 82.
39 Ibid., 44, 61, 67-89; Wagner, Progressivism in Ohio, 297.
and referendum amendments to the constitution and listened to a speech by Frank B. Kellogg against judicial recall. Kellogg was chairman of the American Bar Association's committee to fight it.\(^{40}\) Thus although the association listened to discussion on these three reforms and individual members occasionally spoke out against them, the association took no official position on them.

The bar association became involved in several other reforms because specific members were interested in them. The association's brief interest in employer's liability and workmen's compensation is one example of this. Actual action by the association in this field was minimal.

In 1909 James R. Garfield got the association involved when he gave a speech on "Employer's Liability and the Compensation Laws and the Difference Between them." His goal was to show that the current laws and judicial decisions concerning employer's liability were not in harmony with modern industrial needs and that the profession should consider radically changing the doctrines of contributory negligence, assumed risk, and fellow servant. The courts were crowded with personal injury cases. It was time the profession considered the social side of these cases and the conditions of the working man. Even employers were beginning to think there was something wrong with the

\(^{40}\) 33 OSBAR, 1912, 65-89.
current system. They were forming voluntary associations, providing various welfare plans for employees and attempting to settle cases out of court. Garfield then described the English and German systems of workmen's compensation. He thought the English system would probably be the easiest to incorporate into American law. The system had many advantages, the costs would be spread among many individuals. Industry would be influenced to improve working conditions in order to decrease accidents. The money would go to the workers who needed it rather than being wasted in litigation. The public would be relieved of supporting the injured. Relations between employers and employees would improve and so would public and private morality. Garfield suggested the association refer the question to a committee which would study it and recommend legislation. The association agreed and Garfield was appointed chairman of the committee. 41

During the following year the General Assembly established a commission to study the same problem. The result was that the bar association's committee did very little. They decided that commissions with the funds and the authority could do a better job of gathering evidence than the committee could so they suggested that the

41 Osbar, 1909, 45, 128-138.
association appoint another committee to work with Ohio's commission. The association decided instead to continue Garfield's committee. The Executive Committee also scheduled a discussion on "What Legislation is Needed in Ohio with Reference to the Liability of Employers for Personal Injuries and Compensation to Injured Employees." The following year the association also listened to a speech by James Harrington Boyd, president of the commission appointed by the state to study the question. Garfield's committee made no more reports because the legislature adopted a bill providing a voluntary system of state supported compensation.  

The association also briefly became involved in another labor question when it considered the proposed constitutional amendments in 1912. One amendment limited the power of the courts to issue injunctions in cases involving labor to situations where an injunction was necessary to preserve property from damage or destruction. The man the Judicial Administration and Legal Reform Committee asked to speak for the amendment was not at the meeting and Allen Andrews spoke instead. He objected to

42Ohio State Journal, April 29, May 1, 1910; 31 OSBAR, 1910, 50-52, 60-73; 32 OSBAR, 1911, 38, 90-172; Ohio State Journal, January 1, 20, February 9, 10, 15, March 7, 9, 17, 22, 23, 28, 29, April 28, May 3, 17, 19, 1911.
it as class legislation. The courts would no longer be able to act to protect personal freedom or security. Under this measure union and non-union crowds could fight and the courts would not be able to act. Non union members had a right to go into factories on strike. As a result the association adopted a motion saying that they did not recommend the voters adopt this amendment. This is significant because it was one of two progressive amendments considered by the association which failed to receive its endorsement. After the meeting the progressives said

... that weak-kneed brethren and the "Conservatives" will have to bear anticipated criticism from union, labor and the Democratic party, sure to follow as a result of the association's refusal to endorse the one proposal which above all others, organized labor and Democracy advocated.43

The other proposed amendment involving labor took from the legislature the power to fix a limit on the amount of damages one could recover in injury cases involving death. The association readily agreed to recommend this amendment.44

The other issue which the association took some interest in because individual members actively pushed it was

43 Sandusky Register, July 12, 1912. The Ohio State Journal, on the other hand, approved of this action. July 18, 1912.

44 33 OSBAR, 1912, 109-114. For details concerning the other amendment rejected by the association, see fn. 56 below.
divorce reform. Many progressives were worried about the quality of family life and the increasing divorce rate led many of them to become interested in legislation concerning divorce. The issue first appeared at the association's meetings in 1883 when Judge Elliott presented a motion that a committee of ten be appointed to consider divorce laws and report on the problem of uniformity in divorce legislation and changes needed in Ohio laws. The problem of uniformity was an important one for divorce reforms because as long as people could move elsewhere to obtain divorces then local reforms had little real meaning. This committee and a special three man committee wrestled with the problem for a number of years and finally made separate reports because they were unable to agree.45

The subject was revived a few years later by George W. Houk. He called for a committee of five to consider the problem because the practical operation of the current law was detrimental to good morals and social purity. Houk was appointed chairman and when he was unable to get it together he prepared a speech. His major interest was to make divorce proceedings quasi-criminal, so that when charges

454 OSBAR, 1884, 77; 5 OSBAR, 1884, 73-74; 6 OSBAR, 1885, 62-63. At one point the appointees tried to resign but the chairman insisted. General Jones insisted that he was not interested because his wife behaved remarkably well. 7 OSBAR, 1886, 50-55; 8 OSBAR, 1887, 87-88; 10 OSBAR, 1891, 51-55.
of adultery, fraud or cruelty were involved the guilty parties could be punished. The association established a new committee to prepare a bill embodying Houk's ideas. This committee did nothing.  

The most detailed attempt at divorce reform was that of Judge Dillon. In 1903 he offered six issues he thought the association should consider. First, the right of the person at fault to remarry should be limited. Second, some actions, such as a court appointed attorney to investigate the character of the plaintiff and his statements, should be taken to protect the defendant in uncontested divorce cases. Third, marriage licenses should be required of everyone, and fourth, restrictions should be established on the issuance of licenses to imbeciles, insane, inmates of asylums and those with dangerous inheritable diseases. Fifth, arrangements should be made so that when divorces were given for causes which were criminal the offending party would be criminally prosecuted. Sixth, what other provisions might be necessary to prevent abuse of the laws and improve enforcement. The association considered this motion by sections, argued over the wording of them and

461 OSBAR, 1890, 138; 12 OSBAR, 1891, 65, 155-162; Houk's committee was listed until 1894, 15 OSBAR, 1894, 75. A speech on the subject was given by Charles Pratt in 1899 but no action was taken 20 OSBAR, 1899, 211-212.
eventually adopted all six. The committee, appointed to consider the question, met January 11, 1904 and drew up two bills to present to the legislature. 47

The first was that licenses issued in the bona fide residence of the female be required in all cases. The second was a bill concerning divorces which attempted to provide more specific definitions of the term "Cross neglect of duty," one of the grounds for divorce allowed by the then current law. 48 It also made arrangements for court appointed attorneys for the defendant in uncontested cases and for a six-month waiting period before a divorce decree would become final. Both of these bills were introduced, the bill concerning marriage licenses passed but the divorce bill failed to get through the house. At the 1904 meeting the association decided that, since the legislature did not meet again until 1906 the committee should continue and they would consider the report further at the next meeting. 49

In 1905 Dillon added two more provisions. No marriage license should be issued to a divorced person for one year


48 Willful refusal or failure to fulfill obligations and duties of the marriage contract for a period of three years.

49 15 OSBAR, 1904, 14-17, Ohio State Journal, January 12, 15, February 11, March 17, April 5, 15, 1904.
following the divorce, unless he wanted to remarry the original partner, and restrictions should be placed on licenses for discharged inmates of asylums and those with inheritable diseases. The association voted to decrease the number of years in the gross neglect of duty clause from three to one and then decided to lay the report on the table.  

In 1906 the Judicial Administration and Legal Reform Committee took up the reform when they recommended court appointed counsel in uncontested cases and the six-month wait before a decree became final. The association agreed after eliminating a clause concerning fees for the court appointed counselor. During the 1908 session the legislature considered a bill endorsed by the Divorce Reform Congress as well as some of the various reforms recommended by the bar association, but did not enact any bills in this field. As a result the Judicial Administration and Legal Reform Committee renewed its report of 1906 concerning divorce. This time the association failed to adopt the provision for delay in issuing the decree. Although they adopted the provision calling for court appointed counselors no further action was taken.

In 1909 the association listened to a speech on the

50 16 OSBAR, 1905, 10-13.
movement for "Uniform Marriage and Divorce Laws," by Walter George Smith, which reported on actions in the field taken by the American Bar Association, the Divorce Congress and the Conference for Uniform State Laws. The association listened but took no action.  

Ohio's 1912 constitutional convention was the result of progressive demands for reform. Progressives dominated the convention and were responsible for most of the amendments presented to the voters that fall. The association's response to this development is therefore important. Although the association did not join those demanding a constitutional convention, once the legislature decided to hold one the association passed a series of resolutions recommending various changes in the state's judicial system. These resolutions have been discussed in detail in a previous chapter. Except for the resolution favoring non-partisan judicial elections they were not specifically progressive suggestions.

At their 1912 meeting the association considered eleven amendments which applied to the judiciary. Their action on these amendments and several other events at

51 OSBAR, 1906, 9, 15; Ohio State Journal, January 8, 17, 1908; 19 OSBAR, 1908, 9-10, 33; 20 OSBAR, 1909, 107-127. The legislature did consider this provision calling for counselors in 1911 but took no action. Ohio State Journal, January 25, 1911.
this meeting are indicative of the association's response to an important progressive event. The association's members realized the importance of this meeting because attendance was higher than the previous year. President Taft, who called himself a progressive, arrived from Cleveland with the largest delegation. Many of these were new members who had responded to a recruiting campaign by a fifteen member committee under H. M. Rogers of Cleveland. 52 After the first day's meeting the Sandusky Register reported:

To approve or disapprove proposed amendments to the constitution of the State of Ohio, affecting the judiciary is a question that has divided the membership of the Ohio State Bar Association, at Cedar Point for its thirty-third annual meeting, into factions nearly if not quite equal, it is said. 53

Its headlines read "'Progressives' Confident; 'Conservatives' Positive."

Everyone agreed that the Judicial Administration and

52 OSBAR, 1912, 36-37. Cleveland was a center of progressivism in Ohio. The committee made its own list of local lawyers it thought should join the association and then issued them personal invitations. The minutes did not name the members of this committee and since Rogers did not participate in the debate concerning the amendments it is not clear whether he was a progressive. He was appointed an alternate delegate to the American Bar Association. These delegates and alternates were chosen by the president and all of the delegates were progressives. Ohio State Journal, July 12, 1912. If so many of these new members may have been progressives.

53 Sandusky Register, July 10, 1912.
Legal Reform Committee was being very tactful when they presented their report asking the association to consider it and act as they deemed advisable. However, Simeon M. Johnson, the committee's chairman, was a progressive and the committee arranged for various members to speak on behalf of each amendment. On the second day the Register reported that the conservatives were outnumbered three to one and since the progressives had control it predicted that all the amendments would be ratified. Most of these have been discussed in detail above. The first amendment to be considered was the Peck Court amendment, which slightly changed the Supreme Court and replaced the Circuit Court with the Court of Appeals. This amendment carried sixty-one to twenty-one. Many lawyers used the hot meeting room as an excuse to leave after this vote. One of these was Judge Schauck, one of the most outspoken opponents of the amendments. The Register reported that he was "... bitter in his denunciation of what he was pleased to term 'tom foolery.'" 54 As a result the next vote on the jury proposal, which the conservatives objected to most, was ratified, forty-five to eleven. "The rest was easy." 55 The progressives even won in a struggle over the presidency.

54 Sandusky Register, July 11, 1912. Earlier Judge Schauck made the following statement concerning the proposed amendments. "This so called 'progress' is born of a restlessness, ... Thinking men are against it." Ibid., July 10, 1912.

55 Ibid., July 11, 1912.
Harlan F. Burket, chairman of the Executive Committee, was considered the likely candidate when the meeting began, but both factions claimed him. The progressives eventually decided that he was not progressive enough and elected Simeon M. Johnson instead. The atmosphere was such that Frank Kellogg, the annual speaker, felt it necessary to warn the association not to go too far and apologized if some of his remarks seemed out of place. The progressives' only important failure involved a pro-labor amendment concerning injunctions which the conservative voted down later in the session.\(^{56}\)

Whether or not, this progressive victory was an indication of a long term trend for the association or the result of the publicity of the issues while the constitutional convention was in session and prior to the meeting is a matter for further study. The Weekly Law Bulletin editorialized:

The twenty-third [sic.] meeting of the Ohio State Bar Association has come and gone and with the going the old regime. New blood, new thoughts, new inspirations, the same that now actuate and dominate the American Bar Association, are in control. The blinding light of a new dispensation halts the orthodox exponent of the right of things that are, he may rail against the "new fangled," and "heretical" doctrines; but ere

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\(^{56}\) Sandusky Register, July 10, 11, 12, 1912, Ohio State Journal, July 10, 11, 12, 1912, 33 OSBAR, 1912, 40-114, 139-159. The association also rejected an amendment which regulated depositions taken by the state for witnesses who could not attend the trial and allowed attorneys to comment when the accused refused to testify in criminal cases. The association thought the first section was impractical and that the second would cause numerous injustices.
long he will find it useless to "kick against the pricks."\textsuperscript{57}

Perhaps a new generation was beginning to influence the association. On the other hand, 1912 was the high point in the demand for progressive reforms in Ohio, and the association, as usual, may have been reflecting the wider society around it.

The Ohio State Bar Association can not be labeled a progressive organization in the same sense as the Constitutional League or the Direct Legislation League of Herbert Bigelow which agitated for specific progressive reforms during the 1912 convention and the fall campaign. On the other hand, the association was not a conservative, reactionary or anti-progressive association. Its members represented all aspects of the political spectrum and the differences of opinion often showed at the meetings. Most of the reforms discussed in this chapter were brought up because they were important issues of the times which affected the legal profession. Of the fifteen issues discussed in this chapter the association supported seven. Only three of these were clearly and enthusiastically supported. Although it did not continue the struggle to its successful conclusion, the association voted several times in favor of replacing the fee system with salaries. The association played a major role in the fight for the

\footnote{\textsuperscript{57}Weekly Law Bulletin, July 22, 1912, 305.}
Torrens system, and adopted nine of eleven progressive amendments to the constitution considered at the 1912 meeting. In two cases the association, favoring some action, appointed a committee to study the issue and work out the necessary details. Before the association could vote in favor of a specific plan of employers' liability and workmen's compensation or a bill improving the state's regulation of banks, the legislature acted. The last two issues involved election reform. In this case although the association's interest in a contested election bill was progressive, it ignored more important and more popular progressive election issues. The association also managed to ignore or avoid taking a stand on the progressive demand for nonpartisan judicial elections until 1911 when it recommended such elections to the constitutional convention.

On several important progressive issues the association vacillated. It usually took no action on taxation issues. When it did act, it supported the progressive idea of separating state and local taxation but rejected the 1903 taxation amendment. The proposals of Bateman concerning corporations, which the association considered for a number of years before it decided to discontinue considering them, were not progressive. On the other hand, the amendment to repeal the double liability provision of the constitution, which the association adopted, was
progressive. On the issue of municipal reform the association adopted and worked on the code drawn up by the state's municipal commission. This code included the progressive ideas of more home rule for the cities, nonpartisan elections, city wide election of some of the councilmen, civil service reform, a strong executive with centralized control of the government and some aspects of municipal ownership of utilities. When the legislature failed to adopt the commission's code, the association revised the code. It removed the sections allowing municipal ownership and nonpartisan elections and agreed to present it to the legislature. In spite of these progressive stands, the association eventually helped Governor Nash write a more moderate code which lacked all of the progressive measures except some civil service reform and city wide election of some of the councilmen. The association did not debate or vote on this bill but the part their committee played in drawing up the governor's code clearly placed them on the non-progressive side of the issue. On the issue of giving the governor the veto the association voted to support the measure and then changed its mind. Instead of voting to recommend that the voters defeat the amendment, the association avoided taking a clear stand by voting to postpone the issue. Attempts to postpone or table measures was a common tactic of
opponents, especially when they did not have the strength to defeat them. The same thing occurred with the issue of divorce. At first the association adopted Dillon's proposed reforms, but later it voted to table them.

On a number of progressive issues the association showed an interest by listening to speeches and debates, but avoided taking any official action on them. Although statements made at the meetings show that most members were opposed to judicial recall, the association did not vote on the issue. It also avoided taking a stand on the issues of the initiative and referendum. This could have easily been done by including the initiative and referendum amendment in the list of amendments the association considered in 1912. The association also avoided taking a stand several times on the issue of taxation and a statutory draughtsman. On the other hand, the only definite anti-progressive stand taken by the association was in opposition to the pro-labor injunction amendment. Thus the Ohio State Bar Association can best be categorized as a moderate organization that did not oppose reform when it seemed practical or when it seemed necessary to solve a specific problem.
CHAPTER VII

CONCLUSION

The Ohio State Bar Association was founded because of the demand in the profession for judicial reform. It survived as an organization in spite of numerous problems because it filled a need for some members of the profession.¹ During its first crucial years it survived a rebuff by the General Assembly, attacks by Samuel R. Reed of the Cincinnati Commercial Gazette, organizational problems, provincialism, and a general lack of publicity. The legislature's lack of action on the association's first proposal for judicial reform and Reed's attack on the association and its second proposal have already been described in detail in earlier chapters.

Organizational problems centered around planning for meetings. Just before its second annual meeting, for example, the Toledo Bar Association, which was making arrangements for the meeting, decided to ask the

¹A doctor invited to the banquet at the adjourned session congratulated the bar for successfully organizing and wondered why Ohio's lawyers had not organized such an association long before. Columbus Dispatch, December 29, 1880.
association's president and Executive Committee chairman if the meeting should be postponed because President Garfield had been shot. President Ranney angered the Toledo association and several lawyers from the southern part of the state by delaying his decision until the last minute. Toledo sent him several telegrams and a special messenger before they decided it was too late to cancel. Ranney finally notified the Associated Press that the meeting was postponed to July 19 without checking with Toledo to see if that date was convenient for them. By this time many lawyers from the Southern part of the state were already on their way to the meeting. The result was that the Toledo Bar Association had to plan and pay for entertainment twice. As The Toledo Blade reported the day the meeting was originally supposed to begin, the Toledo Bar Association was in anything but an agreeable state of mind. Many lawyers who missed the announcement and came for the original meeting could not afford to return a few weeks later.\(^2\) This meant a small attendance and little positive action at the association's second meeting. It also angered some members of the profession at a time when attracting more members was crucial.

\(^2\)Toledo Blade, July 5, 6, 1881. There was also some misunderstanding concerning the room rates at this meeting. 1 Ohio Law Journal, July 28, 1881, 515.
The third annual meeting was announced for Cincinnati in July but was postponed until December. This time notification came soon enough to prevent the mix-up of the year before, but it must have been confusing to many members. The association also made mistakes in planning two other meetings, when they planned them the same time the Democrats and Republicans were holding their state conventions. ³

The bar association also had to overcome rivalry and mistrust among lawyers from various parts of the state. At the 1881 meeting, for example, a reporter asked one member why he did not see many lawyers from Cincinnati. The response was that "Cincinnati attorneys are slow to take hold of anything not begun by Cincinnati and officered by Cincinnati."⁴ The association's response to this was to hold the next meeting in Cincinnati and elect Rufus King of that city president. Cincinnati lawyers were also angered when the bar association ignored its suggestions for reform. When the bar association did not

³ Cincinnati Gazette, June 21, 1882; Ohio State Journal, June 17, 1882, Republican State Convention, July 15-16, 1890, Democratic State Convention, July 14-16, 1891. In 1887 attendance at the meeting was small because the worst blizzard of the season happened to come just before the meeting. 19 Weekly Law Bulletin, January 12, 1888, 2.

⁴ Toledo Blade, July 20, 1881.
adopt their suggestions for judicial reform during the first year, the Cincinnati Association voted to advocate them anyway. In 1897 the Weekly Law Bulletin published a letter from Aaron A. Ferris complaining about the summary manner in which the Judicial Administration and Legal Reform Committee handled their recommendations for the improvement of regulations concerning civil practice.⁵

Publicity of their meetings was also a problem at first. After the first few years newspaper reports were sporadic, except for those in the city where they were meeting. Often the only mention was a notice among the society items that some well known local attorney was attending the meeting. It was not until the mid-1890's that the Ohio State Journal began regularly reporting the meetings. Even the reports of meetings and comments on the association's activities in the Weekly Law Bulletin did not become detailed, enthusiastic or numerous until around the turn of the century.⁶


⁶At one point the Ohio State Journal was carrying more detailed reports of teacher's association meetings. On July 18, 1889 it reported the meeting of the prosecuting attorney's association which was meeting the same time as the Ohio State Bar Association at Put-in-Bay but did not report the bar association meeting.
Yet in spite of these various problems the association persisted and by 1912 it could boast of several important accomplishments. The association's main reason for organizing and an area of major interest throughout the period was judicial reform. Its first four meetings were devoted almost exclusively to the problem of delay in the courts. This problem of delay led to many complaints in and out of the profession. The bar association drew up an amendment which replaced the District Court with the independent, intermediate Circuit Court, and successfully campaigned for its adoption. The association also helped the General Assembly draw up the legislation necessary to implement the amendment. This amendment and legislation remained the basic outline of the state's judicial system until the progressives decided to replace the Circuit Court with the Court of Appeals at the 1912 constitutional convention. This amendment establishing the Circuit Court, the association's successful campaign for increasing the salaries of the Supreme Court judges and its influence on the court's decision to wear formal garb were the association's most important accomplishments in this field. Although the association debated and influenced several other matters concerning judicial reform, these are the only ones in which the association's activity was clearly a major factor.
The General Assembly did not always adopt the association's other suggestions in this field, but its role was important because it provided a forum for debate, and gave the General Assembly some guide for opinion in the profession on legal matters. An example of this would be the association's arguments during the 1890's over several methods to help the Supreme Court decrease its growing backlog of cases. It considered increasing and dividing the court, changing methods of practice, and limiting the jurisdiction of the court. Versions of all three programs were adopted by the legislature. The association also helped the Supreme Court agitate for a new building which was begun in 1898. Jury reform was another matter the association briefly considered. At first it rejected the idea of allowing less than unanimous jury decisions in civil cases, but in 1912 it endorsed a constitutional amendment giving the legislature authority to allow this. Another example of the association's limited contribution to the state's consideration of judicial matters was its role in the 1912 constitutional convention. The association adopted a series of resolutions for the convention to consider, and although it did not adopt many of its suggestions, the association endorsed most of the amendments concerning judicial matters which the convention presented to the voters.
The association made its biggest and most lasting contribution in the area of professional standards and admissions to the bar. In spite of opposition by the General Assembly the association managed to obtain legislation increasing the period of study required before an applicant could take the bar exams from two years to three. It also helped the Supreme Court improve its regulations. The Court eliminated special exams for law school graduates and made the examining committee a permanent one. It also increased the minimum education of applicants to high school or its equivalent. When the American Bar Association adopted a code of legal ethics, the Ohio State Bar Association quickly adopted it and persuaded the Supreme Court to include it in its exams.

The issues of codification and uniformity of legislation also interested many lawyers during this period. The Ohio State Bar Association participated in both. It debated and finally rejected codification. Uniformity was more popular and the association actively supported legislation for Ohio to join the National Conference of Commissioners on Uniform State Laws. As a result Ohio appointed a Board of Commissioners to promote Uniform Legislation in 1898 and 1901. The association's interest in uniformity also made it one of the more active participants in the abortive attempt to establish the National Bar Association.
One of the original purposes of this paper was to study the Ohio State Bar Association's role in progressive reform. Although the association actively participated in a number of progressive reforms, it was not a progressive organization. It clearly supported progressive programs of replacing the fee system with salaries, the Torrens system of land registration, and nine of eleven amendments to the constitution presented to the voters in 1912. It ignored the more popular progressive election reforms of primaries, the Australian ballot, voter registration and women's suffrage, and sponsored its own bill for regulation of contested elections. On the important progressive issue of municipal reform the association helped draw up the municipal code recommended by the municipal commission. This code contained progressive ideas of more home rule for the cities, nonpartisan elections, city wide election of some of the councilmen, civil service reform, the federal plan of city government and some aspects of municipal ownership of utilities. The association supported this code, but when the General Assembly was forced to quickly adopt a code because the Supreme Court declared Cleveland's code and other similar special legislation unconstitutional, the association helped the governor draw up a more moderate code. The only definite anti-progressive stand the association took was in 1912 when it voted against
two of the progressive constitutional convention's amendments. The association also considered several other progressive programs but vacillated or took no significant action. On the whole the Ohio State Bar Association was a moderate organization which took an interest in and occasionally supported progressive reforms.

The Ohio State Bar Association was also part of the increasing professionalization of lawyers during the period after the Civil War. Its members were interested in improving the education of law students and those already admitted to the profession. Many speakers showed an interest in defining proper professional actions and improving the profession's standing in public opinion. Although it did not act to eliminate members for unprofessional activities, the association occasionally discussed unprofessional activities and conducted one investigation. Members and speakers also emphasized the association's and the profession's responsibility to society. The Weekly Law Bulletin described it this way, "While seeking to benefit the masses in their liberties, their persons, and their properties, the association is also an aid to the studious lawyer, by having learned and distinguished lawyers read important and instructive papers on various legal subjects of interest to the profession." 7

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The association's interest in professional standards and ethics is another indication of its interest in professionalization. This growing professionalism was probably one of the important reasons why lawyers joined the association and attended its meetings. The *Weekly Law Bulletin* made several statements which indicate that its editor thought the association's role in developing professionalism was an important reason for attending its meetings. "No lawyer can afford to miss these annual meetings to revive the professional feelings and interests of the bar of the state." "Nothing appeals to the professional feeling of members of the bar as do these annual gatherings." "We are pleased to note this growth in the association for it indicates a meritorious increase and development of professional spirit among Ohio lawyers." 8 This growing professionalism was probably one of the reasons for the association's growth during its first thirty-three years.

During the first generation of its existence the association grew from a small organization with little influence to an active influential organization. By 1912 it was important enough to be part of the progressive's struggle for their constituional amendments. Its

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membership was at an all time high and rapidly increasing.\footnote{In spite of this the American Bar Association complained in 1913 that the Ohio State Bar Association had the smallest percentage of lawyers in the state as its members. Only nine percent belonged. 38 ABAR, 1912, 674.} The association had a number of successes it could boast about and its members could look forward to the next generation with confidence that their organization would continue to grow and respond to the professional needs of its members.
APPENDIX

ADDRESSES PRESENTED BEFORE THE OHIO STATE BAR ASSOCIATION

1882
Early Judges of Ohio
Proper Punishment of Criminals
Criminal Procedure
English Courts
James Thompson
M. D. Follett
Emmitt Tompkins
Gustavus H. Wald

1883
Treason Trial in Ohio
Chips from the Memory of the Early Bench and Bar of Northwestern Ohio
Reminiscences of Early Judges, Courts and Members of the Bar of Ohio
James Thompson
Judge Lang
Henry B. Curtis

1884
Medical Jurisprudence
Dr. Van Klein

1885
Judiciary: Proper Tribunal for the Contest of Elections
John C. Lee

1887
Codification
Legal Ethics
Law and Lawyers
A. L. Smith
Joseph Cox
Aaron F. Perry

1888
Impending Perils: Failures of Remedial Justice and Wrongs Without Remedy
H. C. Bonney

1889
Morality of the Profession
J. T. Brooks

1890
Relations of the Lawyer to Court and Client
John C. Lee

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<table>
<thead>
<tr>
<th>Year</th>
<th>Title</th>
<th>Authors</th>
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<tbody>
<tr>
<td>1891</td>
<td>Remedy for Law's Delays</td>
<td>F. C. Daugherty</td>
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<td>Divorce Reform</td>
<td>George W. Houk</td>
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<td>Pardons and Criminals</td>
<td>C. C. Cook</td>
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<td>1892</td>
<td>American Jurisprudence</td>
<td>Simeon E. Baldwin</td>
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<td>Torrens System of Land Transfers</td>
<td>E. H. Fitch</td>
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<td>1893</td>
<td>Taxation in Ohio</td>
<td>S. S. Wheeler</td>
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<td>Torrens System of Land Transfers</td>
<td>Report of Commission</td>
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<td>1895</td>
<td>Private Corporations</td>
<td>Warner Bateman</td>
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<td>Statutory Construction</td>
<td>Frank Monnett</td>
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<td>Recent Phases of Legal Development</td>
<td>Lawrence Maxwell, Jr.</td>
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<td>Suggestions to Young Lawyers</td>
<td>Cortland Parker</td>
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<td>Law and Lawyers</td>
<td>Martin Welker</td>
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<td>1896</td>
<td>The Constitution of the United States:</td>
<td>John Randolph Tucker</td>
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<td>the Best Product of Political Science for the Security of Man</td>
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<td>Choice of the Forum (choice of Ohio or Pa. courts in personal injury cases)</td>
<td>James P. Wilson</td>
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<td>1897</td>
<td>Function of the University Law School</td>
<td>Lawrence Maxwell, Jr.</td>
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<td>Construction: Some of Its Uses and Abuses</td>
<td>F. E. Hutchins</td>
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<td>1898</td>
<td>Agency of the Bar and Bench in Making and Developing Written and Un-</td>
<td>F. J. Dickman</td>
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<td>written Law (anti-codification)</td>
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<td></td>
<td>Remarks (on reunification of the country resulting from the war)</td>
<td>Eli S. Hammond</td>
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1899

Development of Law and Jurisprudence in Spain
Court Room Oratory
Unreported Cases

Divorce Cases
The Work of the Municipal Code Commission

1900

Judicial Power in a Constitutional Government
Relation of Bench and Bar
Education of Lawyers

1901

An Inquiry as to the Effect of the Double Stock Liability Incident to Ohio Corporations
Uniformity of Legislation Between the States
Our Place in the International Family
Fundamental Principles of American Government Applied to Taxation

1902

Insular Cases

Present Methods of Work by the Supreme Court of Ohio
The Governor and the Veto Power

1903

Debate: Resolved that it is advisable for the General Assembly to adopt and maintain a Joint Commission to revise and report on the necessity and effect and validity of every bill before passage.

Constitutional View of the Race Question
Taxation: Effect of Proposed Constitutional Amendment

1904

Debate: Resolved that municipal ownership under the constitution may and public policy requires that it would be extended to all utilities which can be enjoyed only through occupancy of the streets and public ground.
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<tr>
<th>Year</th>
<th>Topic</th>
<th>Authors</th>
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<td>1905</td>
<td>Debate: What Changes, if any, can be made in the law defining the purposes for which corporations may be formed and regulating their management, which would operate for the benefit of the public and obviate the necessity of federal action on the subject. Corporation Problem and Lawyers' Part in Its Solution</td>
<td>Peter S. Grosscup</td>
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<td>1906</td>
<td>Panama Canal Taxation in Ohio</td>
<td>William H. Taft Wade Ellis, attorney general</td>
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<td>Debate: Can the accumulation of great wealth be regulated by taxation?</td>
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<td>1907</td>
<td>Lawyers' Part in the Administration of Corporations and Commerce Clause</td>
<td>Smith W. Bennett</td>
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<td>Debate: Initiative and Referendum</td>
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<td>1908</td>
<td>The Law's Delays Criminal Law</td>
<td>William Bourke Cockran Charles H. Grosvenor</td>
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<td>Taxation Under Proposed Constitutional Amendment Uniform Laws by Interstate Compact</td>
<td>Morison R. Waite Ben. W. Johnson</td>
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<tr>
<td>1910</td>
<td>Debate: What legislation is needed in Ohio with reference to the liability of employers for personal injuries and compensation to injured employees?</td>
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1911
Some Scattered Thoughts on Public Opinion
and Its Relation to the Law
Representative as Against Direct Govern-
ment
Liability Legislation, Its Purpose
and Methods of Enforcement
Arid Land Reclamation (Stereopticon
lecture)

Allen Andrews,
President
Samuel W. McCall
James Harrington
Boyd
Stanley E. Bowdle

1912
On Behalf of the Constitutional
Amendment on Women's Suffrage
Judicial Recall

Florence Allen
Frank B. Kellog

LIST OF ACTIVITIES OF THE OHIO STATE BAR ASSOCIATION

Delay in the courts
Restriction of appeals to the Supreme Court
Establishing a Law School under authority of the association
Increase judges salaries
Support Davis Bill on reform in the federal courts
Ask Supreme Court to establish a commission
Increase the requirements for study before admission to
practice to three years
Organization of the new Circuit Court
Supreme Court Library hours
Salary for Supreme Court judges upon retirement after ten
years service
Codification
Suggested textbooks for legal students
Stenographers for the Supreme Court
Grand jury foremen be given authority to administer oaths
Change in laws allowing Court of Common Pleas judges to
conduct some business during vacations
Regulation of preferences of insolvent debtors
Assessing costs of taking and recording bills of exceptions
by party taking up bill
What is to go into court records
Unanimity in juries
Rules concerning verification of pleading
Change in methods of processing cognovits
Establish a Department of Justice
Codification of election laws, especially those covering
contested elections
Amendments to Ohio's homestead laws
Federal uniform bankruptcy laws
Married women be subject to the same liabilities as unmarried
Laws regulating instruments under private seal
New building for the Supreme Court
Need for legislation concerning foreign corporations sued
   by Ohio citizens
Organization of local bar associations
Division of the Supreme Court
Increase in number of Supreme Court judges
State Centennial celebration
Double stock liability
Increase length of term of Supreme Court judges
Removing persons of 16-30 years of age from the pen into the
   new reformatory
Veto by the governor
Requiring four years of high school or its equivalent for
   candidates for admission
Committee to study law schools and report on their quality
Establishing a naval training station at Put-in-Bay
Change of time for attaching of lien for taxes on real
   property
Rules covering wills
Regulations disqualifying a judge from a case
Establishment of a new federal district court in Ohio
Formal garb for the Supreme Court judges
Codification of laws covering insurance corporations so that
   there would be one law for all
Jurisdiction of probate judges
John Marshall's grave
Monument for Perry
State Tax Commission
Code of ethics
Establishment of a banking commission to regulate banks
Appointment of judges by governor for fixed or life terms
Election of judges by nonpartisan ballot
Laws regulating charge by judge to jury
Establishment of requirements for law school libraries and
   keeping of records on students for use of Supreme
   Court
Regulations covering the right of appeal from judgments and
   final orders of Common Pleas Court to Circuit Court
Employer's liability and compensation laws
Methods of selecting judges
Changes in code of civil procedure that might speed cases
Possible constitutional amendments covering judiciary for
   1912 convention
Salmon P. Chase memorial
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