

## PREFACE

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ON JANUARY 4, 1804, an Ohio lawmaker rose in the grand jury room on the upper floor of the Ross County Courthouse and presented Hannah Willis's petition for divorce to the state Senate. Chillicothe, the chief settlement of the county, was then the temporary state capital. The new log courthouse, poorly heated and roughly furnished, served as the General Assembly's meeting hall. Mrs. Willis wanted the legislature to dissolve her marriage to her husband, Isaac, and to grant her guardianship of their two young children. The Senate referred Mrs. Willis's petition to a select committee of two for examination and report, "by bill or otherwise." The committee reported a bill to grant the petition. The committee of the whole—that is, the entire fifteen-member Senate sitting as a committee—discussed and amended the bill, and the Senate passed it. Senator Benjamin Tappan then carried the bill downstairs to the courtroom, where the House of Representatives met, and asked for the House's concurrence. Two days later the House passed the bill, freeing Hannah Willis from her husband, restoring to her the legal rights of a *feme sole* (an unmarried woman) and giving her guardianship of her two children. When the speakers of the two houses signed the bill, they transformed it into a law.<sup>1</sup>

One hundred years later, the General Assembly convened, as it had for nearly half a century, in the Greek Revival statehouse in Columbus, a thriving city of more than 100,000 souls. The lawmakers of that time rarely dealt with individual cases. If Hannah Willis had wanted a divorce in 1904 instead of 1804, she would have had no choice but to go to court. The legislature still passed laws involving marriage and divorce but not for the benefit of particular individuals. The manner in which the General Assembly handled legislation had also changed. For example, in 1904, Senator Lewis Houck introduced a bill to amend the section of the Revised Statutes that required marriage banns, the public announcement of an intended marriage. Instead of presenting a constituent's petition for relief, which an ad hoc committee might then turn into a bill, Houck filed an already prepared bill with the Senate clerk. The clerk numbered the bill so that its progress could be tracked. A member of the clerk's staff formally introduced the

bill by reading the title when the introduction of bills came up in the regular order of business at a session of the Senate. The Senate clerk of 1804 may or may not have had helpers—a law passed in January of that year allowed the clerks of the two houses \$1.50 per day for “clerk hire and incidental expenses”—but the twentieth-century clerk had a bevy of assistants to help him handle his responsibilities.<sup>2</sup>

The committee of the whole, which had discussed and amended Hannah Willis’s bill in 1804, had practically disappeared by 1904. Houck’s bill went to the Judiciary Committee, one of more than three dozen standing committees of the Senate that typically considered bills in particular subject areas. The Judiciary Committee amended the bill, and the full Senate passed it. Neither Houck nor any other senator deigned personally to inform the House that the bill had passed. Rather, the Senate clerk sent an employee to do the job. The House judiciary committee reported the bill favorably, the full House passed it, and Governor Myron T. Herrick, who could have vetoed the act, signed it into law.<sup>3</sup>

Fast-forward another century. From his office in the Riffe Center across the street from the statehouse, Representative William J. Seitz’s aide sent to the director of the Legislative Service Commission (LSC) a request for a draft of a bill to declare same-sex marriage contrary to the public policy of the state. The director assigned an LSC lawyer to prepare the draft. Seitz filed six copies with the House clerk, who gave it a number and, after formal introduction, posted it on a public Web site. The House Rules and Reference Committee referred the bill to the Juvenile and Family Law Committee. LSC specialists provided the committee with an analysis of the bill and a fiscal note explaining what impact, if any, the bill would have on state and local government finances. The committee reported a substitute bill, which the House passed and sent to the Senate. The Senate Reference Committee referred the bill to a standing committee. The LSC staffers assigned to that committee provided an updated analysis and fiscal note. The committee reported another substitute bill, drafted by an LSC lawyer. The Senate passed the bill, a conference committee reconciled the differences between the House and Senate versions, both houses accepted the conference committee’s report, and the governor signed the bill.<sup>4</sup>

The path followed by Seitz’s bill bore some of the same earmarks of modernization as had Houck’s a hundred years earlier. It first appeared in the General Assembly as a bill, not a petition. It was introduced by an individual member, not a committee. The clerk accepted the bill for filing and assigned it a number. Standing committees considered its merits, made changes, and recommended

passage. The legislature presented it to the governor for his consideration. But there were remarkable differences, too. Advances in technology had made possible the filing of multiple copies, a phenomenon in its infancy in the early twentieth century. Modern technology also allowed the dissemination of the bill to the entire world via the Internet. A standing reference committee in each house directed the bill to a subject-matter committee. The committee hearings were open to the public, which was not legally required in 1904. All along the way, the sponsor, the committees, and every member of the General Assembly had the assistance of a full-time staff of attorneys, budget analysts, and other professionals. The General Assembly's basic functions in 2004 were much the same as they had been one hundred and even two hundred years earlier, but the institution had changed.

Alan Rosenthal, an eminent observer of modern state legislatures, wrote in 1981, "Legislatures are durable. They have persevered for over 200 years. Legislatures are significant. Their involvement in our lives runs the gamut from womb to tomb. Legislatures are fascinating. Although complex, and each with its own pattern and rhythm, they are very human institutions." Those are good reasons for studying legislatures, their evolution no less than their modern incarnations. Unfortunately, Rosenthal, a political scientist, has no counterpart among historians. Historians have paid some attention to colonial assemblies, but they have practically ignored nineteenth- and twentieth-century state legislatures.<sup>5</sup>

This book is an attempt to fill the gap. My charge in writing it was to produce a "comprehensive" history of the Ohio General Assembly. A truly complete history of a large state's most important political institution, one that is now more than two centuries old, would be a never-ending project. Every scholar, having only a limited amount of time, has to make hard decisions about what goes into a book and what gets left out. A few words ought to be said about the ground this book covers.

This is a history of the General Assembly as an institution, not as an arena in which political parties duked out their differences over policy and patronage. Raymond W. Smock, a historian of the U.S. House of Representatives, has offered this recipe for the institutional history of that legislative body: "[T]ake the Constitution, add House rules, slowly add committees, political parties, traditions, the biographies and personalities of members of the House, and parliamentary procedure—then mix these ingredients vigorously with United States history and a dash of world history and finally fold in the desires of the American people." I did not have this formula before me when I wrote this book, but if I

had the result would have been the same. The book examines the constitutional parameters within which the General Assembly functioned, the development of legislative rules and procedures, and the physical setting in which the legislature operated. It looks at the legislators: who they were, how they got elected, how they interacted with other members and with interested nonmembers both inside and outside the statehouse, and what standards of conduct they maintained. It also considers the employees who made the institution function: clerks, doorkeepers, pages, porters, stenographers, legislative aides, and others. Employees have gotten short shrift from historians. I have attempted to give them their due.<sup>6</sup>

What of politics? A legislature is an inherently political institution, one of the main forums in which political parties contend for power. But political battles are fought everywhere, and political history can be and usually is written with little notice of the institutional aspects of a legislature. To venture into political history is to risk going far afield and losing the legislative focus. George B. Galloway's history of the U.S. House of Representatives, first published in 1962 and updated twice since then, barely mentions politics. Not wishing to go that far, I have taken account of partisan conflict in a selective but, I hope, revealing manner. Joel Silbey has described the period from the late 1830s to the 1890s as a golden age of political parties in which parties replaced personal relationships and family ties as the framework of politics and "the American political nation reflected the impulses of a unique, partisan era." In chapter 10, I look at the partisan battles of that age as they occurred in the General Assembly, particularly with regard to what may be called party-defining issues: banking and currency, race and sectionalism, and Prohibition. According to Silbey, electoral reforms, the rise of nonpartisan pressure groups, and other political and social changes beginning in the 1890s drained the dynamism from the party system. Despite the challenges they faced, Ohio's major political parties remained viable institutions in the twentieth century, but partisan divisions took on a different hue. In chapter 20, I examine the rise of peculiarly urban issues, the interplay between the urban-rural divide and party politics, and the partisan impact of two great changes in legislative apportionment.<sup>7</sup>

Then there is the subject of statutory law and public policy. Statutes are the chief work-product of a legislature and can hardly be ignored, although Galloway gave them scant notice. But to catalog all the laws passed over the course of two hundred years would be a mind-numbing job. The end product might be a reference work of some use to specialists, but no one would actually read it. Some histories of state legislatures concentrate on public policy, and do it reasonably well, but they do not tell us much about the legislatures themselves.

In the belief that the primary work-product of the General Assembly ought to be part of a history of the institution but not its centerpiece, I have examined some distinguishing characteristics of statutory law as it developed in the nineteenth and twentieth centuries. In the nineteenth century, the General Assembly, even as it enacted broad public policy in the form of general laws, passed thousands of “special” laws to grant divorces, change people’s names, issue corporate charters, and perform other acts that later came to be regarded as more properly judicial or administrative in nature. In chapter 11, I examine both the creation of public policy regarding sexual morality, a subject that continues to agitate the Ohio legislature in the twenty-first century, and the rise and demise of special legislation. In the twentieth century, two significant developments curtailed the General Assembly’s latitude in the enactment of statutory law. First, with the increasing complexity of life in a growing urban and industrial society came the need for the statewide implementation of policy. Accordingly, the General Assembly found itself establishing more and more agencies with the power not just to carry out legislative directives but also to create law in the form of administrative regulations. Second, the federal government—Congress, the courts, and federal agencies—imposed new mandates and limitations on the states. In chapter 21, I explore these trends, using environmental law as an illustration of how they came together.

As the preceding paragraphs suggest, this history is divided into two major parts, one on Ohio’s first century and another on its second. That was not the original plan. The initial outline of the book called for four parts covering about fifty years each. As it turned out, though, chronological breaks that made sense from one perspective made no sense from another. For example, the adoption of a new constitution in 1851 and the nearly simultaneous breakup of the party system of Whigs and Democrats argue for a division at that point. But 1851 did not mark a new departure for legislative procedure, the electoral process, or other aspects of the General Assembly’s evolution. After considerable cogitation, I settled on two century-long sections, along with an introductory chapter on the territorial background of the General Assembly and an epilogue on its future. The period around the turn of the century, roughly 1896 to 1912, was a time of transition for the legislature. During those years, power shifted from the legislature to the governor with the adoption of the executive veto and the rise of administrative agencies. A new method of apportioning representatives, one with long-term political consequences, went into effect. The direct primary changed the ways in which candidates were nominated and campaigned. Republicans

embarked upon a long period of political dominance of the legislature. Manuals of legislative procedure for Ohio appeared for the first time. The General Assembly created the state's first legislative reference service. And although the constitution of 1851 remained in effect, it was heavily revised by the adoption of dozens of amendments.

Each of this book's two major divisions has both subject-matter and chronological elements. A strictly sequential account works only if the topics are limited, as for example in those histories of state legislatures that focus on public policy to the near exclusion of everything else. This book covers too much ground to adhere to an overall chronological narrative, but many distinct subjects are treated chronologically. The result will, I hope, give the reader both a feel for how the General Assembly looked, sounded, and functioned at different points in its history and a sense of its development over the course of two centuries.

A theme that runs throughout this work is the transformation of the General Assembly from a part-time body of citizen lawmakers into a full-time, professional legislature. There are different ways of measuring a legislature's professionalism. One set of indicia well-known to political scientists is the five S's: space, sessions, structure, staffing, and salaries. Does the legislature as a whole, and do committees and individual members, have adequate room and facilities to perform effectively? Does the legislature meet often enough and long enough to accomplish its objectives? Do the size and organization of the legislature and its committees allow for efficient functioning? Do the members have sufficient clerical, secretarial, and professional assistance to perform their jobs at a high level? Are legislative salaries and benefits high enough to attract capable candidates and to keep them independent? These benchmarks apply to the legislature as a body. Others apply to legislators as individuals. Does being a legislator take up all of a member's working hours? Do the members regard their legislative posts as their primary occupations? Do they expect to be career legislators and do they in fact stay on the job for many years?<sup>8</sup>

A movement in the 1960s and 1970s to reform state legislatures led to major changes in the General Assembly. Studies done in the latter decade concluded that Ohio's legislature had taken great strides in the direction of professionalism. Since the 1980s the General Assembly has been regarded as a "full-time, professional legislature." But while the transformation accelerated dramatically after 1965, it began long before then. In fact, as we will see, it had been going on almost from the start.<sup>9</sup>

## ACKNOWLEDGMENTS

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IN DEVELOPING this history of the General Assembly from its prestatehood days as a body of citizen-legislators to its twenty-first-century incarnation as a high-tech institution of full-time professionals, I incurred many debts. My thanks go first of all to Senator Jeff Jacobson and all those individuals and entities mentioned in his foreword for giving me the opportunity to write this book. The members of the editorial board read the manuscript at various stages in its progress and offered sage advice for its improvement. I also benefited from the wise counsel of Paul Finkelman, President William McKinley Distinguished Professor of Law and Public Policy at the Albany Law School and coeditor of the series of which this volume is a part. Dr. Susan A. Johnson, a graduate student at the Ohio State University when I started this project, was my research assistant. Her industry, creativity, and skill at hunting down and organizing information proved invaluable. Librarians at numerous institutions, most notably the Ohio Legislative Service Commission, *Columbus Dispatch*, Columbus Metropolitan Library, Ohio Historical Society, Ohio State University, State Library of Ohio, and Supreme Court of Ohio, all responded graciously to my requests for help.

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I regret that two of my former colleagues at the Legislative Service Commission, director Jim Burley and librarian Connie Yankus, did not live to see the completion of this work. Jim spent most of his professional career with the General Assembly and knew it well. He regarded the legislature not uncritically but with respect and affection. I shared bits and pieces of the book with him as it evolved and like to think that he would have approved of the finished product. Connie was an able researcher and an affable, obliging soul. Helping staff members with their personal projects was not part of her job, but she responded to my appeals for aid with unfailing good cheer.

If this book enhances the reader's understanding of the state legislature, one of the great institutions of American democracy, the credit is due largely to those persons, named and unnamed above, who generously shared with me their knowledge and insights.