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Special Legislation: Another Twilight Zone (Part 2)

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SPECIAL LEGISLATION: ANOTHER TWILIGHT ZONE

By FRANK E. HORACK* and MATTHEW E. WELSH**

(Continued from the December Journal)

III

The judicial treatment of classification as a problem of population-differences distorts the true relation existing between cities of the same and different populations. Likewise, it disguises the real stimulus for special legislation. Special acts are passed because special interests wish special privileges. They gain these special privileges by drafting bills which will not jeopardize the interests of other communities. The special act avoids all interference. Some special interests are, of course, meritorious. Where the needs of particular communities differ in character and amount there is reason for special treatment; the court recognized this when it said "in many cases local laws are necessary because general ones can not be properly and justly applicable." The question is "Is population a test of necessity?" Theorization on this question is not useful. The actual community differences must be studied in relation to population and the problem of service and protection, area and the problem of supervision, property valuation and the problem of taxable wealth, governmental receipts and the problem of fiscal administration. To date the court has assumed, apparently, that population differences adequately reflect differences in these other community characteristics and thus are adequate guides to the system of special treatment. The accuracy of this assumption is our present concern.

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** Matthew E. Welsh, Graduate Student at the University of Chicago.

Editor's Note: The name of Matthew E. Welsh, joint author, was erroneously omitted in the December Journal. Ed.

57 "The general rule of legislation (was) that 'any member could have what his own people wanted.'" Board, etc. v. Bringhom, supra n.
58 Gentile v. State, supra n. 9.
Population and Area

Two of the major factors in the cost of local government and the need for special services are population and area. Either factor expressed alone, however, is likely to be misleading. A county's population may be large, but expressed without reference to density may distort the community's needs in terms of welfare, sanitation, unemployment, police and fire protection, and education. Likewise, population unrelated to area conceals inequalities in the tax burden which arise from highway constructions, maintenance cost, and the fixed charges of highway indebtedness. Even area and population without other more precise factors may be misleading. The miles of hard-surfaced roads, the proportion of highways in urban and rural areas and the problems of topography influence sharply governmental expenditures. But even without these factors, a comparison of area and population illustrate the distortion.

Ten Indiana counties with rather similar populations illustrate the difficulty.

### AREA DIFFERENCES IN A SINGLE POPULATION GROUP

<table>
<thead>
<tr>
<th>County</th>
<th>Jefferson</th>
<th>Fayette</th>
<th>Rush</th>
<th>Adams</th>
<th>Putnam</th>
<th>DuBois</th>
<th>Jay</th>
<th>Dearborn</th>
<th>Johnson</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population (in %)</td>
<td>93</td>
<td>94</td>
<td>95</td>
<td>97</td>
<td>100</td>
<td>100</td>
<td>102</td>
<td>102</td>
<td>106</td>
</tr>
<tr>
<td>Area (in %)</td>
<td>75</td>
<td>44</td>
<td>94</td>
<td>69</td>
<td>100</td>
<td>84</td>
<td>77</td>
<td>64</td>
<td>66</td>
</tr>
</tbody>
</table>

*Putnam County used as 100%.

Inspection of the above chart will disclose that a relatively uniform population group becomes a diverse area group. The

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60 Great Britain has in granting financial aid to local communities considered by carefully developed formulas these additional factors. The precision of their operation suggests a state of development unknown in America. See, Webb, Grants in Aid, (London, Longmon Green, 1911); Horack, Federal-State Cooperation for Social Security; The Grant in Aid", 30 Ill. L. Rev. 292, at 300-304 (1935).

61 The materials used in the charts and graphs have been taken from the following sources: United States Census (1930), Statistical Report, State of Indiana (1934); State of Indiana, Report, Committee on Governmental Economy (1935).
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area factor alone can hardly be ignored in light of rural police protection, highway maintenance and like problems. Thus, to evaluate the need for special treatment by population alone frequently is unreasonable. The court has already said in other cases "there can be no real difference between a county having a population of 24,000 and one having 26,000," yet it is possible that the need of Fayette county with a population of 19,200 and an area of but 216 square miles might differ sharply from the needs of Rush county with a population of 19,400 and an area of 406 square miles. Nor are these the only factors—the discrepancy is noted only to indicate the unreliability of the population test. Any attempt to determine the need for special treatment by any arbitrary selection of factors is clearly hazardous.

Further inconsistencies likewise appear. Wide discrepancies in population do not necessarily reflect wide discrepancies in area. This, of course, is patent from even a superficial observation of the state. Three representative counties selected from four distinct population groups—rural counties, counties predominately rural, urban counties and counties predominately urban—indicate the distortion which population classification creates.

RELATIVE AREA UNIFORMITY IN DIVERSE POPULATION GROUPS

<table>
<thead>
<tr>
<th>County</th>
<th>Brown</th>
<th>Union</th>
<th>Scott</th>
<th>Fayette</th>
<th>Adams</th>
<th>Putnam</th>
<th>Henry</th>
<th>Lawrence</th>
<th>Monroe</th>
<th>Vanderburg</th>
<th>Allen</th>
<th>St. Joseph</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population (in %)*</td>
<td>23</td>
<td>23</td>
<td>32</td>
<td>94</td>
<td>97</td>
<td>100</td>
<td>172</td>
<td>174</td>
<td>175</td>
<td>553</td>
<td>715</td>
<td>784</td>
</tr>
<tr>
<td>Area (in %)*</td>
<td>67</td>
<td>33</td>
<td>38</td>
<td>44</td>
<td>69</td>
<td>100</td>
<td>83</td>
<td>94</td>
<td>86</td>
<td>48</td>
<td>132</td>
<td>95</td>
</tr>
</tbody>
</table>

*Putnam County used as 100%.

A comparison of Putnam and Vanderburg is perhaps most illustrative of the lack of correlation of population and density. Vanderburg with five and one-half times the population of Putnam has but one-half the area. St. Joseph with a similar area has nearly eight times the population. Counties with lesser population do not have proportionally smaller area. Indeed, there is in the disparity of population groups a relative uniformity in area. This is but an example of tradition,
convenience, custom, and vested interest which a generation of transportation developments has been unable to disturb.

Population and Valuation

So long as direct property taxation provides the major source of local governmental income, classification of cities and counties without reference to taxable wealth produces irrational effects upon tax burdens. And, as almost every local act effects the tax rate, the need for exact standards in the field of special legislation is apparent.

Taxation is the price of service and most special acts enlarge the ambit of governmental activity and thereby increase governmental costs. Thus, if cities and counties are classified in accordance with population alone, untoward consequences to taxable wealth may result. Likewise, valuation alone might be a discriminatory classification, for the concentration of population may impose community responsibilities in excess of proportionate property value. Neither standard is sufficient in and of itself. Nothing demonstrates this so clearly as a comparison of population and valuation in certain typical Indiana counties.*

In the rural, predominately rural, and the small urban counties property valuation apparently bears no relation to population and only slight relation to area. Thus, Brown and Union counties with almost identical populations have property valuations of two and a quarter and eleven million dollars respectively. Likewise, Jefferson and Rush each with approximately nineteen thousand population have property valuations of twelve and thirty million respectively. And this

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*See page 187.

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62 But taxation in terms of either population or valuation may be subject to misinterpretation: "the citizen, has, moreover, acquired numerous formulas. The most widely known of these is probably this: Good government varies inversely as the tax rate. . . . It is increasingly clear that such comparisons will not do. . . . It is not tax rates, bond issues, per capita cost or excessive services that at bottom trouble the citizen—it is the disturbing feeling . . . that the tax dollar is only sixty per cent efficient . . . it emphasizes that the public dollar must be made to do more, . . . it stimulates a search for the measuring stick that will tell conclusively when it is doing more." Sly, "Measuring Our Cities", supra n. 63.
although the difference in area is but forty-five square miles. Similar differences exist between Greene and Cass except that Greene with a smaller valuation has an area thirty per cent. greater than Cass. In sum, population is no index of the taxable wealth of these counties.

Likewise, the ratio of population-increase charts no course for the increase in taxable wealth. The population differences of the sparsely and moderately populated counties reflect no similar differences in property valuation. Apparently, however, once the concentration of population passes a particular point, population is a factor which influences valuation rather directly.*

Thus, while population as a guide to valuation is inaccurate in the sparsely populated counties it is fairly reliable in counties of great population density. But even this conclusion is largely of negative value. Classification of counties by the single standard of population is unsafe when the proposed legislation involves the expenditure of money or the alteration of the tax base or the debt burden.63

Population and Other Factors Effecting Classification

As has already been suggested not only do population, area, and valuation affect the form, manner, and cost of government but many other factors contribute, as well. An attempt to enumerate specifically varying governmental factors would too greatly prolong this study. Reference to governmental expenditures (as reflective of these other factors) must suffice. A comparison of expense to population and valuation, not only raises doubt concerning the frequent generalization that government in large areas costs less,64 but also casts doubt upon the advisability of uncritical special legislative treatment of local governmental problems.**

64 "Good government is not necessarily identified with large areas and uniform structures, but it is everywhere identified with the efficient allocation of services, the effective control of expenditures, the equitable treatment of the taxpayers, and a carefully guarded credit rating". “Local Government in New Jersey.” (Princeton Local Government Survey, Bull. No. 1, 1936.)

* See page 188
** See page 190.
### COMPARISON OF GOVERNMENTAL EXPENDITURES, PROPERTY VALUATIONS AND POPULATION IN TYPICAL COUNTIES

<table>
<thead>
<tr>
<th>County</th>
<th>Ratio of Exp. to Val. (in percent)</th>
<th>Population (in dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brown</td>
<td>4.09</td>
<td>5.0</td>
</tr>
<tr>
<td>Crawford</td>
<td>3.0</td>
<td>10.1</td>
</tr>
<tr>
<td>Martin</td>
<td>2.71</td>
<td>10.1</td>
</tr>
<tr>
<td>Harrison</td>
<td>2.63</td>
<td>17.2</td>
</tr>
<tr>
<td>Ohio</td>
<td>2.19</td>
<td>3.7</td>
</tr>
<tr>
<td>Clay</td>
<td>1.7</td>
<td>26.4</td>
</tr>
<tr>
<td>Jennings</td>
<td>1.6</td>
<td>11.3</td>
</tr>
<tr>
<td>Posey</td>
<td>1.6</td>
<td>17.8</td>
</tr>
<tr>
<td>Laporte</td>
<td>1.57</td>
<td>60.5</td>
</tr>
<tr>
<td>Jefferson</td>
<td>1.5</td>
<td>19.1</td>
</tr>
<tr>
<td>Lagrange</td>
<td>1.</td>
<td>13.1</td>
</tr>
<tr>
<td>Kosciusko</td>
<td>1.</td>
<td>27.4</td>
</tr>
<tr>
<td>Montgomery</td>
<td>1.</td>
<td>26.9</td>
</tr>
<tr>
<td>Adams</td>
<td>1.</td>
<td>19.9</td>
</tr>
<tr>
<td>Clark</td>
<td>1.</td>
<td>30.7</td>
</tr>
<tr>
<td>Porter</td>
<td>.89</td>
<td>22.8</td>
</tr>
<tr>
<td>Union</td>
<td>.86</td>
<td>5.3</td>
</tr>
<tr>
<td>Whitely</td>
<td>.83</td>
<td>15.3</td>
</tr>
<tr>
<td>Johnson</td>
<td>.8</td>
<td>21.0</td>
</tr>
<tr>
<td>Vanderburg</td>
<td>.8</td>
<td>113.3</td>
</tr>
</tbody>
</table>

Note that the ratio of expense to valuation cuts across all population groups, leaving considerable speculation concerning the uniformity of governmental costs, the efficiency of governmental service, and the justification of particular tax rates. A comparison of these two columns with the column on expenditure per person only serves to further remove the problem of local governmental expense from the field of generalization. Accurate and fair criticism of tax expenditures must be predicated upon the particularization of expenditure, the establishment of functionalized accounting, the comparison of varying community activities and responsibilities. And in this process it should not be overlooked that many of the discrepancies in community costs result from previous special legislation which has granted special benefit and likewise imposed special burdens.

Although population appears entirely inadequate as a single standard for the classification of cities and counties, in par-
ticular instances adequate and justifiable special legislation has been predicated upon population classifications. But this does not substantiate the merits of population classification.⁶⁵

The use of a population classification has been at best a subterfuge. Unfortunately, both the legislature and the judiciary have participated in the system. And it has become a vicious circle. Isolation of responsibility seems impossible for each has stimulated unjustified action on the part of the other. Classifications have been both sanctioned and destroyed by the courts. The legislature in turn has only become more circumspect in the methods of classification and when necessary has hurriedly enacted legalizing acts in order to protect administrative action taken under statutes of doubtful constitutionality.⁶⁶ The responsibility is clearly dual, and until both the court and the legislature consider substance rather than form, the absurdity of legislative hocus-pocus judicially sanctioned will continue unabated.

IV

Admitting the inadequacy of our present method, is there a better one? It is submitted that within our own constitutional history there is precedent for an improved legislative and judicial technique.

The Constitutional Convention of 1852

Dissatisfied with the operation of the state government, the convention was disturbed, particularly, by the ignominious record of the legislature. With approximately 90 per cent

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⁶⁵ Frequently, the most arbitrary classification, judged by population standards will be justified because of the coincidence of other equally important factors. It can scarcely be doubted that the need is determined first and the population factor added afterward in a belief that it is necessary for constitutionality.

⁶⁶ The constitutionality of only a few legalizing acts have been questioned. See, Kelly v. State, 92 Ind. 236 (1883); Johnson v. Wells Co., 107 Ind. 15, 8 N. E. 1 (1886); Woods v. McCay, 144 Ind. 316, 43 N. E. 269 (1895); Cf. Mitchell v. McCorkle, 69 Ind. 184 (1879).
of the legislative output special and local in character, it was not surprising that the convention determined "to prevent the legislature from spending its time upon little matters."

To accomplish this purpose it was suggested that local legislative matters be decided by local legislatures. Delegates from New England familiar with the town meeting system urged its adoption. Political faith, as well as experience, commended this view. "The further you remove the power of legislation from the individual," asserted Mr. Owen, "the more it is liable to abuse. The less you remove it the better." Likewise, Mr. Chapman urged that the convention "either confer the power upon the county boards to legislature for county purposes or else authorize the legislature to pass general laws to be applicable only when adopted by the constitutional authorities of the several counties."

For these men the evil of special legislation was not so much its pettiness but the deprivation of local autonomy.

Another group of delegates, however, would hear nothing of such a system. "To delegate legislative power to county boards," they said "will be to create ninety little legislatures. If one legislature has made so many odious local laws, how many more of such laws will be made by ninety such legislatures." They said "all that is needed is a board of commissioners to administer the laws as the legislature shall make them." Thoroughly antagonistic to the New Englanders viewpoint, this group nevertheless considered the necessity of limiting special legislation. And so, with little or no opposition, these provisions became a part of the Constitution.

67 2 Ind. Const. Debates, at 1766.
68 Ibid., at 1769.
69 Ibid., at 1421. Also at 1422 be observed "one thing is very certain, and it was that, in New England, where from time immemorial the power of local legislation had been conferred upon county boards, it had been found to work well... Laws passed by the legislature should be general and only touch upon great leading points; that they should work out boundaries within which these county boards should legislate."
70 Ibid., Mr. Pettit at 1767.
71 Ibid., at 1801.
The preceding pages have illustrated the mechanical and yet mystical numerology with which the court has applied these constitutional sanctions. A fuller consideration of the arguments advanced for the adoption of this provision seems to disclose a more substantial basis for judicial treatment. The predicate of the constitutional debates was the proper adjustment of the state-local government relation. Everyone agreed that an excess of local legislation whether adopted by the state or by local bodies should be prevented "so that wherever a man treads the soil of Indiana he shall have the same rights and privileges, and shall be governed by the same laws." In other words there might have been no objection to "corporate by-laws" which adjusted local governmental affairs so long as they did not effect government-individual relations. 

In this is the suggestion that it was not special legislation, as such, which was objected to, but special legislation which either (1) made the duties and responsibilities of the citizen dependent upon local determination, and (2) permitted local prejudice to nullify state policy. These concepts form the nucleus for a "due process" supervision of the inter-governmental relations between the state, its subdivisions, and its citizens. The use of such a substantive standard would prevent, it is believed, many of the conflicts which now plague judicial equanimity. And yet without departing from these present decisions this may be accomplished. Numerous cases, under the doctrine of classification, have discussed the effect if not the propriety of local as against state regulation. The same precedent, thus, exists for a substantive rather than a formal interpretation of the constitutional provisions.

The court thus might take the position that if a special act interfered with local autonomy, the presumption would be

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72 Ibid., at 1767.
73 Ibid., Mr. Kelso at p. 1770 "There are some very good local laws that ought to be continued in existence; and if the state generally is not willing to adopt them, those who have long tried them ought to have an opportunity of retaining them."
against its validity. This on the theory that those who expressed the New England viewpoint spoke for the convention.

On the other hand, the court might accept the uniformity theory and interpret the constitutional provision so as to stimulate state wide policy enunciation and discourage local variation. Thus they might interpret liberally all acts creating general or wide spread state control, and those special acts which did not impinge upon the generality of state policy, but interpret restrictively all acts which tended to interfere with the generality of state wide policies or to destroy uniform state administration. Precedent for this interpretation is found in a host of interstate commerce decisions.74

The difficulty, of course, is that in the conflict between the mores of state and local control there cannot be a single continuous policy in favor of the one rather than the other. The policy must vary with the cases. But this is inevitable. Each case requires an analysis of the legislation, the conditions of the community, and the policy of the state. In short, the questions which seem superficially to be questions of constitutional compliance, become almost immediately questions of legislative policy. If the court is going to insist upon judi-

74 Ibid., Mr. Pettit at 1801. "There will be no publication of the laws passed by these county boards, but they will remain in the order books of the county commissioners. They will remain silent as a tomb and become a dead letter. There will arise a conflict between the sovereign legislature and the legislatures of the counties." See also, "We cannot afford to let the inhabitants of Little Pedlington suffer the penalties of their own ignorance or their own parsimony, because the consequences fall, not on them alone, but also upon the neighboring districts, upon everyone who passes through their benighted area. . . . We see this clearly enough when it is a question of infectious disease. . . . If they are permitted to bring up their children in ignorance, to let them be enfeebled by neglected ailments, and to suffer them to be demoralized by evil courses, it is not the Little Pedlingtonites alone who will have to bear the inevitable cost of the destitution and criminality thus produced." Webb, supra note 64, at 23.

cial review, then, it seems only proper that it face directly the policy question and decide it as adequately as possible. Admittedly this comes close to the review of political questions, but so does every due process determination. In a sense this is only making a determination of fitness of inter-governmental relations. This practice is familiar enough in the federal system. That the question is quasi-political has not been particularly disturbing to the federal court.

The judicial adoption of a substantive test of compliance would have far-reaching consequences in the legislature. Immediately, a more precise and more orderly method for the consideration of special legislation would be necessary. Granted legislative conscientiousness, there still is opportunity for improvement in legislative techniques and procedure. The adoption of a special technique for the consideration of special legislation would transfer the presumption against special legislation from the courts to the legislature. It is here that the presumption belongs. And if the substantive test would produce a profound effect upon legislative procedure, the resultant legislature procedure would, in all probability, have equally important repercussions in the courts. As the legislative procedure becomes more scientific, judicial review should become less necessary.

Numerous states have experimented with particular procedures for the consideration of special legislation. The predicates of every special procedure have been scrutiny, cost and publicity. Scrutiny has been accomplished through limitations on the introduction of local or special acts so as to reduce the possibility of late introduction and last-minute adoption. The filing of the special act with the Clerk of the House in advance of the convening of the legislature not only assists the legislature but also puts the community on notice. Some

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states, with additional caution, require the publication and posting of the special act in the local community itself.\textsuperscript{77}

In England, a substantial filing fee is required.\textsuperscript{78} Its purpose is not only to defray expenses contingent upon the trial of the special act, but also as a means of discouraging trivial requests. Cost as a deterrent, however, can not be too unequivocally recommended, for if the request is locally important (though not necessarily worthy), it will be important enough so that special interests will expend the necessary sums. Thus, it is questionable whether the protections gained by cost, publicity, and notice are of great value, for as John Curran observed “It is the common fate of the indolent to see their rights become a prey to the active. The condition upon which God hath given liberty to man is eternal vigilance; which condition if he break, servitude is at once the consequence of his crime and the punishment of his guilt.”\textsuperscript{79}

A legislative procedure which would give thorough and impartial consideration to the merits of special legislation prior to enactment, would provide a more real protection against the abuses of special interests. Parliament has found such a procedure effective.\textsuperscript{80}

The introduction of a private bill into Parliament is always accomplished by petition with bill attached, offered by

\textsuperscript{77} See, Ark. Const., Art. V, sec. 26, Ga. Const. 3.7.16, La. Const., sec. 50; N. C. Const., Art II, sec. 12; Tex. Const. Art. III, sec. 57; Fla. Const., Art. III, sec. 21; Pa. Stat. (Purdon's edition, 1936), Title 46, sec. 181. No local or special bill shall be passed unless notice of the intention to apply therefor shall be published in the locality where the matter or thing to be affected may be situated, which notice shall state specifically the title and objects of the bill, and shall be published by not less than four insertions in at least two daily or weekly newspapers, one of which may be in a language other than English, once a week for four consecutive weeks, the first insertion to be at least thirty days prior to and within three months immediately preceding the introduction of such bill and be signed by at least one of the parties applying therefor.

\textsuperscript{78} See Landers' Private Bills, p. 6; Standing Orders Relative to Private Business of the House of Commons (1928).

\textsuperscript{79} Speech upon the Right of Election, 1790 (Speeches. Dublin, 1808).

\textsuperscript{80} Supra, n. 83. See also Private Bill Reports (Eyre and Spattiswoods, London, 1899).
a Parliamentary agent. The petition must be presented to
the House before the convening of Parliament. In addition,
the proposed bill must be advertised in the London Gazette
and at least twice during two consecutive weeks in the county
which the bill effects. These notices must contain all the
particulars and describe all of the provisions that are to be
entered in the final bill. Similar notices must be served on all
persons whose property is subject to acquisition or who have
an interest which will be adversely effected by the proposed
bill. Before the 30th of November, plans, maps, estimates,
statements, and the deposit of certain costs must be made.

Before the bill will be considered, it must be certified by
the Examiners (one appointed by each House). Certification
must indicate compliance with the Standing Orders affecting
the form and manner of presenting private bills. If objec-
tions are filed, the proponents of the bill must file a statement
of proofs which may be supported either by deposition or
oral testimony. If compliance is proven, the bill proceeds on
its legislative course.

Before the special committee on private bills the propon-
ents must next present briefs of argument or orally argue
their case. The procedure before committees is largely gov-
erned by the Standing Orders. Private persons are not en-
titled to appear before the committee except as called. All
evidence concerning the bill is taken before the committee and
is never taken to the House itself. In both Houses a special
committee of referees consider and pass upon the interest of
each person opposing a bill and determine his qualifications.

Actual committee hearings are essentially judicial in char-
acter. The allegations of need for special legislation set forth
in the preamble must be proved to be true in fact. If the
bill is opposed, one of the opponents must produce a certifi-
cate that he has entered an appearance upon the petition and
is entitled to be heard. The opponents of the bill may appear
only by Parliamentary agent, and proponents may appear
either personally or by counsel. The committee examines
witnesses according to the rules of evidence customary in judi-
cial tribunals. Indeed, there is some tendency to insist on even greater surveillance of testimony in the committee than in the courts. The committee on opposed bills proceeds first to a consideration of the truth of the allegations contained in the preamble of the act. Inasmuch as the House has already assumed the truth of the preamble when it acquiesces in the bill the opponent can not attack the preamble unless he specifically affirms his intentions in his petition. In striking contrast to American procedure at the conclusion of evidence the committee room is cleared of all persons, and the committee proceeds to consider the question, has the preamble been proved.

If the bill is unopposed, it is submitted to a committee on unopposed bills, and though the bill be unopposed, the committee nevertheless demands the presentation of full and complete evidence on the necessity and expedience of the proposed measure. Consequently, private measures do not, as is often the case in this country, become laws merely through lack of opposition. After consideration by the committee on unopposed bills, the bill, if favorably received, is submitted to the House, and there, save in special instances, the committee's determination is adopted.

This procedure might provide the basis for a similar but perhaps simpler special legislation procedure in Indiana. Vigilance, inspection, and distrust are the cardinal virtues of the system. Courageously administered, it should remove the remaining vestige of meretricious special legislation. A simplified English system is used in Massachusetts, and while it has not reduced the bulk of special legislation, 81 it has made for an orderly legislative procedure.

81 Indeed, it appears in Massachusetts the presumption is in favor of special acts and against general acts. "If, in their opinion (opinion of Counsel to the Senate and House), the necessity of enacting special bills in relation to any particular subject of legislation may, without detriment to the public interest, be avoided in whole or in part by the enactment of general legislation, they shall from time to time submit to the general court drafts of such changes in or additions to the General Laws as will accomplish said purpose." 1930 Mass. Acts c. 6. See also, Mass. Gen. Court Joint Rules of the two Branches, secs. 7-8.
Maryland has placed a condition subsequent upon the operation of its special legislation. There are no restrictions on adoption, and the practice permits the enactment of practically every special bill. But after adoption, the act may be attacked by referendum. The history of referendums in Maryland, however, suggests the inaccuracy of the theory that special legislation gives to a local community that which the local community wants. Almost all of the acts presented for referendum have been rejected by the voters of the local community. Perhaps the next step should be taken and subsequent to enactment but prior to enforcement require adoption by the local community.

A survey of the several legislative and judicial procedures suggest: (1) an inadequacy of legislative investigation and consideration of the need and effect of special acts (2) a willingness to determine that general laws are not applicable (3) an inconsistency in the policy of judicial review (4) the application of a wholly inadequate standard (population) for the determination of the generality of legislation. A special legislative procedure for local and private bills and, if judicial review is necessary, a substantive standard to determine constitutional compliance seem necessary if Indiana special legislation is to have either science or predictability.

Special and local bills should contain preambles or recitals

82 "... speaking, generally, the individual senator and the local delegation in the House is left remarkably free to take care of local measures. . . 'If Alleghany County wants it, let her have it.' is the prevailing feeling." Winslow, "State Legislative Committees" (Johns Hopkins Press, Baltimore, 1931), p. 117.

83 "Presumably Anne Arundel County gets by way of local legislation what Anne Arundel County wants. But . . . Out of twenty county measures referred by petition in four elections, eighteen were rejected, usually by overwhelming votes." Winslow, supra, n. 81 at 138.

84 The system of local option though not successful particularly in liquor control, might be found more effective in situations more definitely local in character. The theory of "home rule" charter does not differ essentially from "local option". "To grant special legislation in such cases may be advisable, but to grant a reasonable degree of home rule would not only accomplish the same results, but would relieve the general assembly of a large number of bills that regularly take up its time." 14 Am. Pol. Sci. Rev. 423.
setting forth the facts of need, the costs, and consequences of the proposed law. A special committee\textsuperscript{85} should hear in the manner of a tribunal the proof of these recitals. A procedure which would prevent bills from being enacted through lack of opposition should be adopted.\textsuperscript{86} The bill as finally adopted should contain findings of fact as reliable as judicial records. The presumption (if any should exist) against special legislation should thus be resolved legislatively.

Such a legislative procedure would put an end to much spurious and deceptive numerological identification of cities and counties. The validity of enactment would depend upon dependable determinations of fact. If there were need for judicial activity it would be in the broader, more significant field of substance. The entire special legislation conflict is but a manifestation of the larger struggle between the forces of centralized government and the forces of local autonomy and decentralization. Judicial treatment of this problem would be particularly helpful in adjusting the many difficulties that arise between special legislation, "home rule" amendments, the general municipal regulation.\textsuperscript{87} And though the

\textsuperscript{85} This practice has become rather widespread in the case of the committee on claims, a committee dealing with special private legislation. Indeed, in some states the committee eventually evolves into a "legislative court." See, Iowa, Joint Rules of Senate and House (Iowa Official Register, 1930), No. 18. "It shall be the duty of the committee on claims in each house to keep a book of record, in which shall be entered each claim for money against the state referred to them, whether presented in favor of private persons or municipal or other corporations, entering therein the name of the claimant, the amount of the claim, the grounds therefor, with note of the evidence offered in support of the same, and the final conclusion of the committee thereon. At the close of the session said book of record shall be deposited with the auditor of state, to be kept by him, and he shall provide an index showing the names of the claimants recorded therein. At any subsequent session the same shall be delivered, when desired, to the like committee having jurisdiction of such claims and shall always be open to the examination of the said committee of either house.

\textsuperscript{86} See, Landers, Private Bills, supra, n. 83.

\textsuperscript{87} "He has spent all his life in letting down empty buckets into empty wells; and he is frittering away his age in trying to draw them up again." Smith, 1 Lady Hollands Memories 259.
abandonment of a mechanical concept of the constitutional prohibition for a substantive regulatory concept would no doubt create new and difficult interpretative problems, it is nevertheless believed that such a standard, legislatively and judicially held, would aid fundamentally the adjustment of the state-local government relation.