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History of the Courts of Kentucky

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Chapter One

HISTORY OF THE COURTS OF KENTUCKY

Kurt X. Metzmeier

Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question. Hence all parties are obliged to borrow, in their daily controversies, the ideas, and even the language, peculiar to judicial proceedings.… The language of the law thus becomes, in some measure, a vulgar tongue; the spirit of the law, which is produced in the schools and courts of justice, gradually penetrates beyond their walls into the bosom of society, where it descends to the lowest classes, so that at last the whole people contract the habits and the tastes of the judicial magistrate.

Alexis DeTocqueville, Democracy in America, 1831. (Bk. I, Ch. 16).

Kentuckians have long spoken the vulgar tongue of law, involving themselves intimately in the business of the trial courts and tribunals of judicial review. Since the founding of the commonwealth, they have clambered onto the public benches to view the celebrated trials of great men and notorious criminals. They have haunted the saloons of Frankfort awaiting the news of a portentous decision of the Court of Appeals and consumed burgoo and roasted mutton while hanging on the words of a judicial candidate. Somewhat reluctantly, they traded the duel and the blood feud for the lawsuit and civil trial. Kentuckians give due respect to the judicial class; indeed the honorific "judge" will adhere for life to a person who only briefly takes the gavel in hand. But that respect comes with the familiarity that goes with an officer that must regularly go back to the electorate to renew his or her mandate.[1]

Courts Under the First Constitution - 1792-1799

The framers of Kentucky's first constitution drew on both the traditions they knew as Virginians[2] and on the modern ideas embodied in the recently ratified U.S. Constitution and the charters of surrounding states. For the structure of the commonwealth's governing bodies and its Bill of Rights, they borrowed liberally from Pennsylvania's 1790 constitution, but for its courts they retained the familiar forms of their birth mother Virginia.[3]

Kentucky's first constitution retained a traditional Anglo-American judicial institution for its lowest trial court, the justice of the peace's court, popularly known as the "squire's court."[4] Over 125 justices of the peace were created, and their informal courts had jurisdiction to hear civil cases with amounts in controversy up to five pounds currency or its 18th century in-kind equivalent, 1,000 lbs. of tobacco.[5] The judicial institution closest to the people, the justices adjudicated misdemeanors, mediated local disputes and presided over marriages. The "old squires" were drawn from the locality's leading men and remained important figures in rural society until well into the 20th century. Many were not lawyers, and, while occasionally consulting the justice of the peace manuals that were the state's first law books, they most often applied common sense to the cases coming before them, applying the precedents of Judge Solomon more often than those of Chancellor Kent.[6]

The constitution also created a Court of Appeals, consisting of three justices, with appellate jurisdiction over all judgments and decrees of the state's lower courts, as well as all judgments of the pre-statehood Supreme Court of the District of Kentucky and the Virginia Court of Appeals.[7] The court also had original trial jurisdiction over all cases concerning titles to land, an area that dominated legal activity in this era. [8]

Acting under its powers to create such inferior courts as it may deem necessary,[9] the legislature created Courts of Quarter-Sessions, which met in each county three times a year in six-day sessions, giving them jurisdiction over civil cases over five pounds currency, and non-capital criminal cases. The court was composed of three justices, with a quorum of two needed to hold court. The assembly also created County Courts, also composed of three justices, which met monthly except for the three months that the Courts of Quarter-Sessions met. In addition to its significant administrative and legislative duties (it served as the sole county governmental body), the county court had jurisdiction over civil matters not vested in the Courts of Quarter-Sessions, especially cases concerning wills, probate issues and guardianship. Courts of Quarter-Sessions had appellate jurisdiction over decisions of justices of the peace up to 50 shillings; after 1795 judgments by the justice's courts up to 25 shillings could be appealed to either the Court of Quarter-Sessions or the County Court.[10]

The legislature also recognized a need for a trial court of state-wide jurisdiction over serious crimes and created the Court of Oyez and Terminer, a court composed of three justices, with criminal jurisdiction of all criminal cases with a penalty over 40 shillings. Because of the sprawling nature of the state and its crude roads, in practice this court was little used.[11]

None of the judges of this era were popularly elected and instead were appointed by the governor. As frontier Kentucky was one of the more democratic states in the union, the judge's unelected status would be a factor underlying a number of legal disputes that roiled Kentucky in its first decades. The commonwealth's judiciary almost immediately foundered on the rocky shoals of Kentucky's tangled land titles. The background of the controversy went back to the beginning of Kentucky's story, back to when Virginia's colonial and republican governors widely dispensed land patents to veterans of first the French and Indian War and then the Revolutionary War. The patents did not convey land itself but only the right to enter, survey, and record claims to land. If any of these steps were faulty, the title was not perfected.[12] This, along with poor surveying and some chicanery by some land speculators, left the Kentucky territory's land titles in a mess of overlapping titles. Before statehood, Virginia had set up a land commission court to settle many claims, but in 1794 the Kentucky Court of Appeals appeared to undermine the good title of many a Kentucky farm when it ruled in the case *McConnell v. Kenton* that the Virginia commission had overstepped its authority. The Kentucky legislature was outraged, and using an obscure provision of the constitution that allowed the assembly to remove judges with a two-thirds vote (and the assent of the governor), some members tried to oust the two justices in *McConnell's* 2-1 majority. Although the vote failed and the Court of Appeals reversed itself in a later case, popular distrust of the judiciary lingered.[13]

The legislature also quickly became dissatisfied with the state's lower courts. Exercising its right to organize lower courts, a 1795 law was passed to create six geographically defined District Courts, to fill a perceived need for civil courts with a wider jurisdiction. They met once a year, with the exception of the Frankfort District, which met four times a year. The District Court had jurisdiction over all matters at common law and chancery where the amount in controversy exceeded 50 pounds, with the exception of assault, battery and slander suits. The legislature also abolished the little used Court of Oyez and Terminer and transferred its criminal jurisdiction to the District Courts. The legislature provided that the six District Court judges meet twice a year in Frankfort as a General Court with jurisdiction over claims against the public treasury.[14]

COUNTY COURT DAY -

The monthly meetings of the county court, traditionally held on Monday, were the center of the social, civic and economic calendar of nineteenth century Kentucky counties. The tradition dates back to colonial Virginia; as the gentry and yeomen farmers gathered each month to handle their legal affairs, others came to sell livestock, trade goods, race horses, drink and swap stories. Crowds of men teemed through muddy streets strewn with the fruits of the cattle brought to market. The free use of alcohol inevitably led to boasting, disagreements and fights. The impromptu scuffles gave way in time to athletic contests, with brawny champions defending their pride with meaty fists, while lanky farm boys tested their speed in foot races.

County Court Day Scene, Park Square, Bowling Green, 1906

The mercantile aspect of the occasion was quite serious, and in central Kentucky the Fayette County court day became the major market for livestock and the Bluegrass region's much admired horses. Fayette County also was notoriously the site of the major court-day slave auction, where Kentucky-born blacks were sold "down river" from the block on Cheapside Street along Lexington's courthouse square.

As the nineteenth century passed into the twentieth, court day lost its role in the economic life as the railroad, the general store and Louisville's stockyards changed the state's patterns of commerce. Nonetheless, the institution still lingered well into the radio age, as Kentuckians still felt a need to gather to socialize, swap knives and hear speeches from politicians. One only need to visit Mt. Sterling, Kentucky, the weekend before the third Monday of October to experience the echo of this tradition as the town celebrates its Court Days celebration. The crowds still teem, and pocket-knives are still sold; but the knives are made in China, and the court in session is the District Court.[15]

Courts Under the Second Constitution - 1799-1850

The judicial article was little changed in the second constitution of Kentucky, which had been altered primarily to correct the method of electing the governor and the senate.[16] Judges remained appointive and the legislature retained its latitude to organize the commonwealth's lower courts. When the legislature met in 1801 to implement the new constitution, the composition and jurisdiction of the Justice's Courts and County Courts were unchanged. However, the District Court was abolished by the legislature after most of its functions were turned over to the new Circuit Courts.[17]

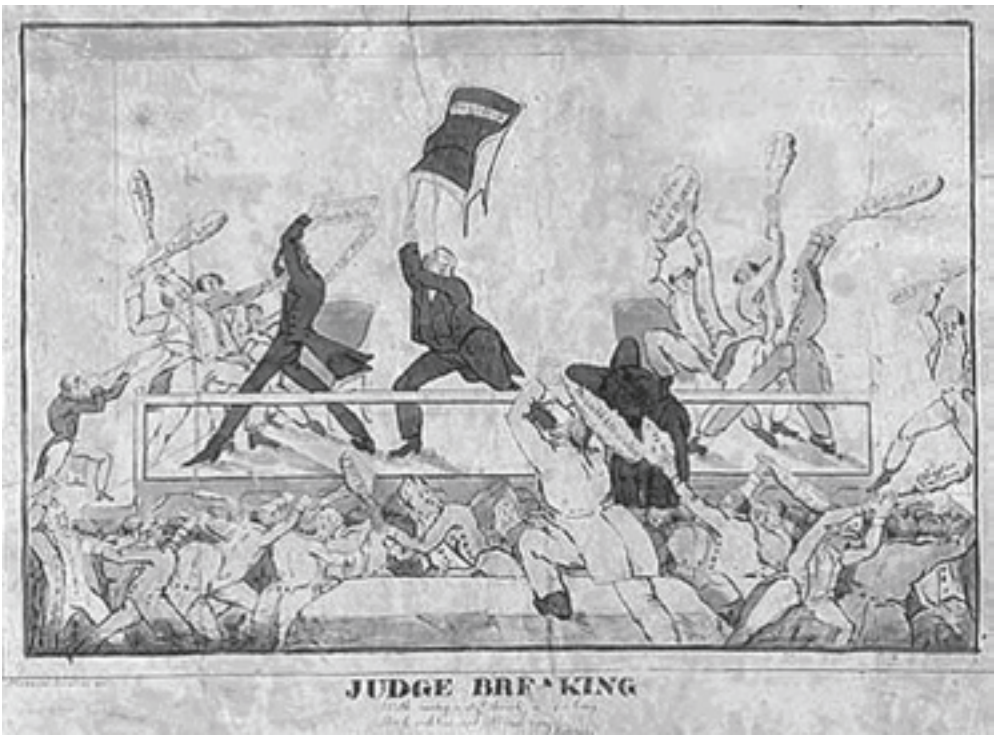
The Circuit Court was the focus of the legislature's reorganization of the court system after the ratification of the second constitution. Nine geographically defined Circuit Court districts were created. The courts sat with a three-judge panel, one at-large judge with two associate judges from the district. These peripatetic courts had general trial jurisdiction over all common law and equity actions with five pounds currency at stake, as well as general criminal jurisdiction. The Circuit Court also had jurisdiction over de novo appeals from the Justices' Courts of cases with judgments of at least five pounds.[18] In the counties in which a new Circuit Court sat, the Court of Quarter-Sessions was abolished. In all others, the Court of Quarter-Sessions retained the functions it had under the first constitution. General Court was abolished and then reconstituted as a twice-annual meeting of the nine at-large Circuit Court judges, with identical jurisdiction as the old General Court.[19]

The next half-century was really the era of the circuit judge. The major trials were heard by circuit judges. As there was yet no criminal appeal allowed by law,[20] except for an occasional habeas corpus petition, the criminal rulings of the circuit judge were final. The legal life of Kentucky quite literally revolved around him. As the circuit judge rode his circuit, law books and gavel in his saddle bag, the local attorneys of the bar followed in his wake, sharing the same dirt roads and corduroy turnpikes. They stayed at the same inns, ate at the same table, and, when accommodations were tight, slept in the same hotel bed. Young men, having read law and apprenticed with a reputable attorney, appeared before the circuit judge to be examined, and if they met his approval, the judge would sign the order that admitted them to the practice of law.

With the exception of being relieved of its original jurisdiction over land cases, the Court of Appeals was little changed by the new charter or the reorganization that followed its ratification. However, in a few years the court was to be caught up in the political fervor of the day and placed in the midst of one of the great political struggles in Kentucky history.[21] Primarily an agricultural state, Kentucky was vulnerable to changes in the money supply and availability of credit. It is then not surprising that

the national depression known as the Panic of 1819 was devastating to Kentuckians. As creditors began to foreclose on debtors, Kentucky banks failed, leading to a slump in agriculture and unemployment. Kentucky politicians were pressed by desperate constituents to stop the ruinous foreclosures, and in 1820 a Debt Relief Party was elected to both houses of the legislature. When the legislature convened, they abolished debt imprisonment and passed laws restricting the right of debtors to force foreclosure sales and to execute notes.

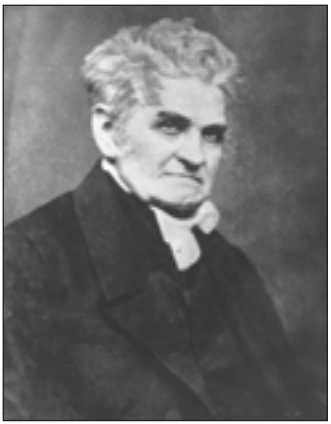
Creditors resorted to the courts, and in 1823 the Court of Appeals, ruled in two cases, *Blair v. Williams* and *Lapsley v. Brashear*,[22] that the Kentucky debt relief laws were unconstitutional under the contracts clause of both the U.S. and Kentucky constitutions. The legislature reacted with both outrage and action. After a long and heated debate, the assembly abolished the Court of Appeals, creating a new four-judge Court of Appeals with new judges to be appointed by the recently elected governor, General Joseph Desha. Desha, who had been elected with the support of the Debt Relief Party, named three relief supporters to the "New Court." However, the Old Court refused to give up its claim to be the rightful appellate court. Its papers were forcibly removed from the possession of the Old Court's clerk Achilles Sneed when the New Court's youthful clerk Francis P. Blair broke into Sneed's home office. (Blair would go on to become a key advisor to President Andrew Jackson).[23] For two years Kentucky



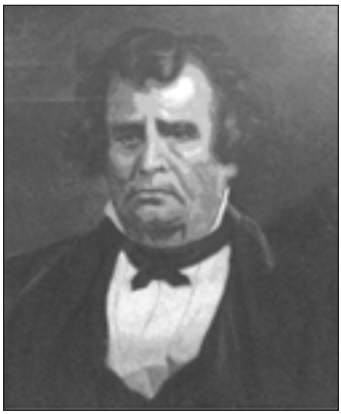
had two groups of judges claiming to be the Court of Appeals. New newspapers sprang up to carry on the rhetorical battle. The New Court-Old Court controversy was not resolved until 1826 when prosperity began to return, allowing the Old Court party to sweep both houses of the legislature. The new body passed a law declaring the court of appeals reorganizing act and the rulings of the New Court to be null and void. Volume 18 of Kentucky Reports (2 T. Monroe), which contains the decisions of the New Court, was later formally ruled not to be part of the common law of Kentucky in the case of *Smith v. Overstreet's Adm'r.*[24]

Despite this conflict, the antebellum period saw the legal profession in Kentucky flourish. The leading lights of the bar like Henry Clay and John J. Crittenden had great political careers on the national stage.[25] The Transylvania University Law Department gained a national reputation as a nursery of public men, and its nonresident graduates would include U.S. senators and congressmen from many states, as well as vice presidents and presidential candidates.[26] The commonwealth's law publishing community became increasingly sophisticated, developing high quality reporters, digests and statutory compilations that drew favorable comment throughout the nation. In doing so, the state's presses helped to create a uniquely Kentucky body of law.[27]

The commonwealth during this period also was blessed by a number of remarkable jurists. Two of the Court of Appeals first justices, Thomas Todd and Robert Trimble,[28] were later appointed to the United States Supreme Court where they served with quiet distinction on a court dominated by Chief Justice John Marshall. Another member of the state's high court, the scholarly George M. Bibb, was chosen twice to represent the state in the U.S. Senate and also was appointed Secretary of the Treasury under President Tyler.[29] He, however, remained a consummate lawyer and advocate, arguing many cases before the U.S. Supreme Court. George Robertson, who served twice as chief justice of the Court of Appeals, was known in his lifetime for the scholarly opinions he drafted and which attracted notice from courts around the country. A leading member of the law faculty of Lexington's Transylvania University, he helped turn that institution into a premier institution in antebellum America.[30]



George M. Bibb



George Robertson

Courts Under the Third Constitution - 1850-1892

Although the framers of Kentucky's 1850 constitution only tinkered with the basic forms of Kentucky's court system, the new charter was revolutionary in that all judicial offices were made elective. While the old appointive judiciary had hardly been isolated from politics, judges would now have to regularly join other candidates greeting voters and making speeches at the court day fairs and church picnics, all striving to get the approval of the commonwealth's electorate. This fact, along with the development of sophisticated party organizations, would put judges smack-dab in the colorful world of Kentucky electoral politics.

Under the third constitution, each county was divided into justices' districts, with two Justices of the Peace for each district.[31] Meeting after the charter was ratified, the legislature gave the Justices' Courts criminal jurisdiction over misdemeanors and civil jurisdiction of claims up to $16.00 in controversy, except for contract cases where the limit was $50.00. They were also given equity jurisdiction with the Circuit and Quarterly Courts to enforce judgments up to $50.00.[32] A County Court was established as a three-judge panel presided over by the County Judge. While its duties were still mainly administrative and legislative, the court had appellate jurisdiction of cases decided by the Justices' Courts with a value between $4.00 and $16.00.[33] The Quarterly Court replaced the old Courts of Quarter-Sessions, keeping its old thrice annual meeting schedule. It had jurisdiction concurrent with the Justices' Courts and Circuit Court in cases with less than $100.00 at stake, excepting land title cases.[34] All judges on these courts served four-year terms.[35]

The Circuit Court remained the primary trial court of general jurisdiction. The state was now divided into 12 circuit districts, each district a group of counties. Each county in the district established a Circuit Court, and the Circuit Judge made regular rounds of these courts. Circuit Courts had original trial jurisdiction in all matters, law and equity, and appellate jurisdiction over Justice, County and Quarterly Courts.[36] The old General Court was abolished, and its jurisdiction to hear suits and motions against the public monies of the Commonwealth of Kentucky was transferred to the Frankfort Circuit Court.[37] Circuit Judges were elected for six-year terms.[38]

The reconstituted four-judge Court of Appeals continued to be the commonwealth's high court with appellate jurisdiction over all civil judgments over $100.00. Justices were elected for eight-year terms.[39] The delegates to the constitutional convention were very troubled that the lack of a criminal appeal had led to the development of different legal rules in different circuits. They authorized the legislature to create a criminal appeal process, and during their debates they urged the drafting of a uniform criminal code.[40] When the legislature granted felons the right to appeal for the first

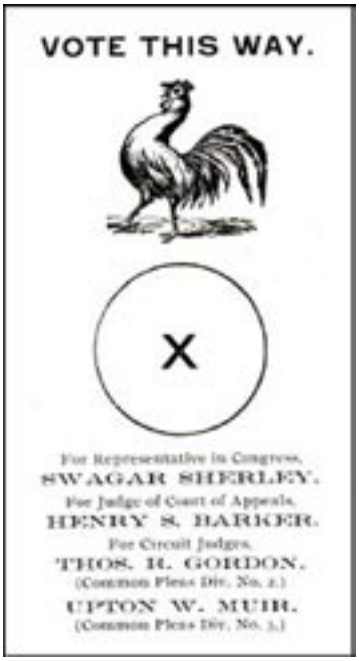
time in 1854 with its adoption of the new Criminal Code, the Court of Appeals was designated to hear these appeals.[41]

The creation of a right to appeal criminal convictions, along with a desire by the court to unify the diverse legal precedents that had developed in the state's circuits, gradually created a backlog at the Court of Appeals. To relieve the burden, the legislature, using what it saw was its power under the constitution to create "courts inferior" to the Court of Appeals, in 1882 formed an intermediate court of appeals. The three judges of the new Superior Court were given jurisdiction over all appeals except those involving felonies, the validity of statutes, the title to land, the right to a franchise, or judgments greater than $3,000. Its decisions could be appealed to the Court of Appeals, unless they involved less than $1,000 or were unanimous decisions upholding a circuit court ruling. Also, if the Superior Court determined that a case in these two excluded categories involved a novel question of law, they could certify it for the Court of Appeals.[42]

ELECTION POLITICS -

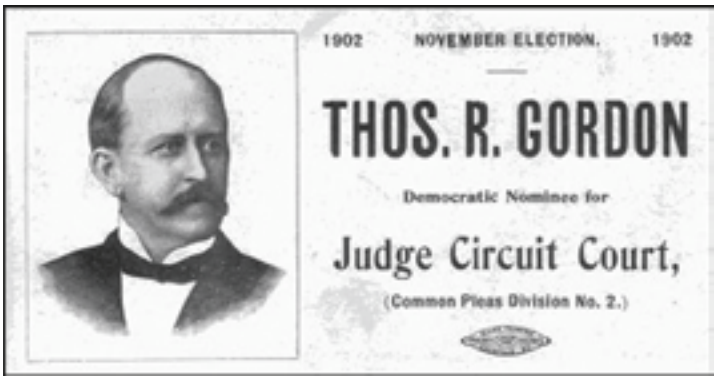
From 1851 until the first elections after the 1975 judicial article amendment took effect, Kentucky judges stood for election as partisan candidates. Until the adoption of primary elections in the early 20th century, this usually meant that judges had to collect support of party bosses to win support from a local or state party convention. The raucous nature of Kentucky politics is legendary. James H. Mulligan's poem *In Kentucky* (1902) captures this perhaps better than any work of prose:

> The thoroughbreds are the fleetest
> In Kentucky;
> Mountains tower proudest,
> Thunder peals the loudest,
> The landscape is the grandest—
> And politics—the damnedest
> In Kentucky.[43]



Campaign flyer from 1902 identifies 3 judges running on the Democratic ticket. The rooster is a symbol for the Democratic Party.

While judges rarely made explicit promises to take sides in pending legal controversies, they had no problem making speeches supporting their party's political platforms. It would not be at all unusual to hear a judicial candidate on Albert B. "Happy" Chandler's Democratic ticket making a vigorous speech supporting repeal of the sales tax, for example, or a Republican judge seeking re-election by attacking the corruption of Louisville's Democratic machine. However, when attacks focused on a judge's record, they were most often aimed at poor docket management by the incumbent or his high rate of reversal by the Court of Appeals. Nonetheless, there is plenty of anecdotal evidence of petty favoritism by judges to family and retainers of party supporters.[44]



Gordon was elected Jefferson Circuit Court Judge and served for many years. Prior to the election, he had practiced law with John C. Stopher in the firm of Strother & Gordon (1890-1902).

Courts Under the 1891 Constitution

Courts were not a priority for the delegates to the constitutional convention that convened in 1890. The men meeting from September 8, 1890, to September 28, 1891, in Frankfort were more concerned with reining in the legislature and in limiting the political power of corporations, especially the railroad industry.[45] They retained the limited jurisdiction trial courts from prior constitutions, leaving the Justice of the Peace Courts, the County Courts and Quarterly Courts basically unchanged (although the monetary limits for jurisdiction were adjusted upward). They did add a Police Court for cities and larger towns, with its power determined by the size of the municipality. Police Courts in smaller municipalities were given exclusive jurisdiction over violations of ordinances; larger cities, like Louisville, were also given concurrent civil jurisdiction with the justice's courts and some criminal jurisdiction.[46] The Circuit Court remained the trial court of general jurisdiction. In a departure from the 1850 constitution, which had limited the number of circuits based on a formula involving population

size, the convention delegates gave legislature the power to determine the number of districts.[47]

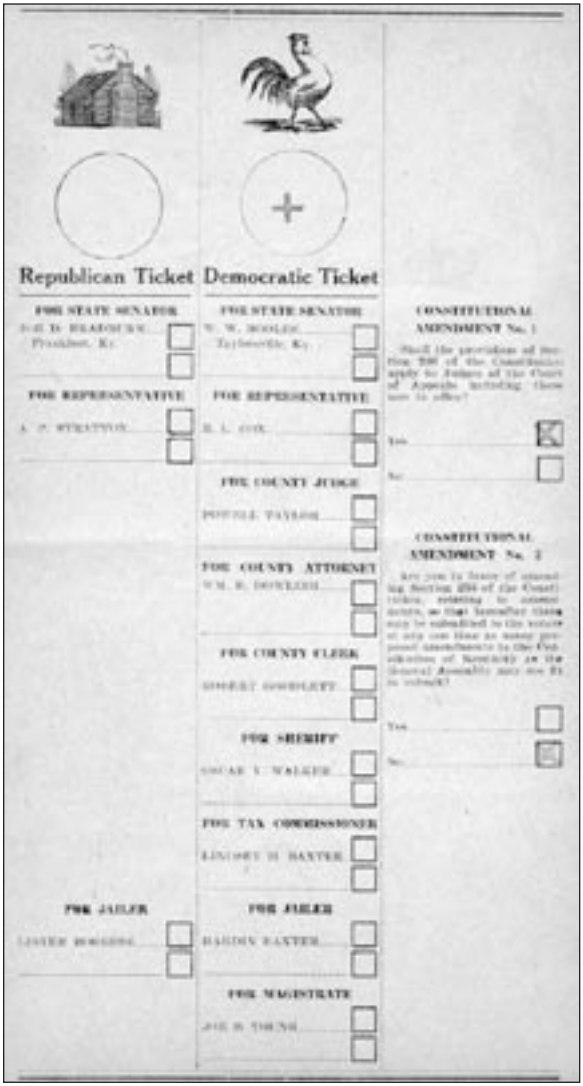
The assembled delegates registered their disapproval with the legislature's experiment with intermediate courts by abolishing the Superior Court and explicitly designating the Court of Appeals as the commonwealth's only appellate court. The 1891 charter authorized the legislature to expand the court's membership from four to seven delegates and gave the court the power to divide its activities into divisions. In 1895, the legislature did increase the number of Court of Appeals judges to the maximum number of seven, and the court exercised its right to divide by organizing itself into two divisions.[48] As the Court of Appeals's caseload grew, the legislature authorized the appointment of unelected commissioners to assist the court, with one added in 1906 and three in 1924.[49] The legislature also passed laws limiting the civil jurisdiction of the court by setting a monetary limit and by excluding certain categories of cases (like direct appeals from Police Courts) from the Court of Appeals docket.[50] Although these measures were not explicitly authorized by the constitution, they were also not explicitly prohibited. This kind of reasoning helped the legislature and courts cope with a constitution that was, on its own, poorly equipped for the changing times.

Campaign pin for Judge Crumlin when he ran for a seat on the Police Court.

The delegates kept all the state's judges on the same election schedule, with the lower trial court judges elected for four years, the circuit court judges for six-year terms and the court of appeals judges facing the electorate every eight years. The constitution required that candidates for the circuit and appeals courts be practicing attorneys for eight years prior to election; nonlawyers could still stand for election as county, quarterly or police court judges.[51] The constitution set the maximum yearly salary for all officials, including judges, at $5,000. This was later changed by constitutional amendment in 1949 to $12,000,[52] but as the annual incomes of private lawyers rose dramatically over the years, the constitutional cap inevitably kept better lawyers from standing for election.[53]

The key problem with the 1891 constitution was that its drafters sought "to legislate for all time."[54] The late Thomas D. Clark called the charter "not so much a fundamental rule of government as a piece of omnibus legislation." The framers "attempted to anticipate future needs of the government and," Clark noted, "provide for them in specific sections of the constitution."[55] Unfortunately, another historian has noted, the constitution "was out of date before it was ratified."[56] However, time did march

on and as the Great Depression, the New Deal, and modern technologies like the automobile and radio wrought great changes on both Kentucky and its legal system, the nineteenth century constitution began to look quite old.



As an example of how poorly the Constitution was equipped for the changing times it was necessary to amend it to raise judicial salaries. Pictured here is the actual ballot from 1925 with the proposed amendments.

Endnotes and Credits

Chapter One

[1] The interest of Kentuckians in trials is remarked on in L. F. Johnson, Famous Kentucky Tragedies and Trials (Louisville: Baldwin Law Book Co., 1916) and Mac Swinford, Kentucky Lawyer (Cincinnati: W. H. Anderson Co., 1963), two books that exploit that interest. See also Harry M. Caudill, Mountain, the Miner, and the Lord, and Other Tales From a Country Law Office (Lexington: University Press of Kentucky, 1980) and Slender Is the Thread: Tales From a Country Law Office (Lexington: University Press of Kentucky, 1987).
[2] A. G. Roeber, Faithful Magistrates and Republic Lawyers: Creators of Virginia's Legal Culture, 1680-1810 (Chapel Hill: University of North Carolina Press, 1981). See also Kurt X. Metzmeier, *Law in the Wilderness: An Annotated Bibliography of Legal Materials of Prestatehood Kentucky, 1774-1792* in Michael Chiorazzi and Marguerite Most, Prestatehood Legal Materials : A Fifty-State Research Guide, Including New York City and the District of Columbia (Binghamton, NY: Haworth Press, 2006)
[3] Robert M. Ireland, The Kentucky State Constitution : A Reference Guide (Westport, Conn.: Greenwood Press, 1999).
[4] Robert M. Ireland, *The Place of the Justice of the Peace in the Legislature and Party System of Kentucky, 1792-1850*, 13 Amer. J of Leg. Hist. 202 (1970); Robert M. Ireland, County Courts in Antebellum Kentucky (Lexington: University Press of Kentucky, 1972).
[5] Ky. Const. 1792, art. V., sec. 1; 1 Littell, ch. 23, sec. 2 (1792).
[6] Harry M. Caudill, *Courts of the Squires*, in Slender Is the Thread: Tales From a Country Law Office (Lexington: University Press of Kentucky, 1987).
[7] Ky. Const. 1792, art. V., sec. 1; 1 Littell, ch. 23, sec. 14-15, 17 (1792).
[8] Ky. Const. 1792, art. V., sec. 3.
[9] Ky. Const. 1792, art. V., sec. 1.
[10] 1 Littell, ch. 23 (1792).
[11] 1 Littell, ch. 23 (1792); Historical Development of Kentucky's Courts (Frankfort: Legislative Research Commission, 1958) 12.
[12] See discussion in Kurt X. Metzmeier, *Law in the Wilderness: An Annotated Bibliography of Legal Materials of Prestatehood Kentucky, 1774-1792* in Michael Chiorazzi and Marguerite Most, Prestatehood Legal Materials : A Fifty-State Research Guide, Including New York City and the District of Columbia (Binghamton, NY: Haworth Press, 2006) 455-56.
[13] Robert M. Ireland, The Kentucky State Constitution: A Reference Guide (Westport, Conn.: Greenwood Press, 1999) 4. McConnell case was not reported but the opinion can be found in the *Kentucky Gazette*, Feb. 28 and Mar. 7, 1795.
[14] 1 Littell, ch. 201 (1795).1795

[15] James Lane Allen, *County Court Day in Kentucky*, Harper's Weekly 383 (Aug. 1889); Robert M. Ireland, The County in Kentucky History (Lexington: University Press of Kentucky, 1976) 18-27. J. Winston Coleman, discusses slave auction on Cheapside in Slavery Times in Kentucky (Chapel Hill: University of North Carolina Press, 1940) 131-140; see also Thomas D. Clark, *The Slave Trade between Kentucky and the Cotton Kingdom*, 21 Miss. Valley. Hist. Rev. 331 (1934). For additional historical perspective on Court Day, see A. G. Roeber, *Authority, Law, and Custom: The Rituals of Court Day in Tidewater, Virginia, 1720-1750*, 37 William & Mary Q. 29 (1980) and Carl R. Lounsbury, The Courthouse of Early Virginia: An Architectural History (Charlottesville: University of Virginia, 2005) 3-8.
[16] Joan Wells Coward, Kentucky in the New Republic: The Process of Constitution Making (Lexington: University Press of Kentucky, 1979); Robert M. Ireland, The Kentucky State Constitution: A Reference Guide (Westport, Conn.: Greenwood Press, 1999) 5.
[17] 3 Littell, ch. 23 (1802).
[18] 3 Littell, ch. 23 (1802).
[19] 3 Littell, ch. 118 (1803).
[20] Robert M. Ireland, *Law and Disorder in Nineteenth-Century Kentucky*, 32 Vand.L. Rev. (1979): 281-304.
[21] Arndt M. Sticles, Critical Court Struggle in Kentucky, 1819-1829 (Bloomington, IN: Indiana University, 1929); W.H. Mackey, *The Old and New Court Struggle*, in H. Levin, Lawyers and Lawmakers of Kentucky (Easley, S.C.: Southern Historical Press, 1982 [1890]) 304-318.
[22] 14 Ky. (4 Litt.) 34 (1823).
[23] William Ernest Smith, 1 The Francis Preston Blair Family in Politics (New York: Macmillan, 1933) 24-28.
[24] 81 S.W.2d 571 (1935).
[25] Robert V. Remini, Henry Clay: Statesman for the Union (New York: W.W. Norton, 1991); Albert D. Kirwan, John J. Crittenden: The Struggle for the Union (Lexington: University of Kentucky Press, 1962).
[26] Charles Kerr, *Transylvania University's Law Department*, 31 Americana 7 (1937); See also Walter Wilson Jennings, Transylvania, Pioneer University of the West (New York: Pageant Press, 1955) and John D. Wright, Jr, Transylvania, Tutor to the West (Lexington, Ky.: University Press of Kentucky, 1980).
[27] Robert K. Cullen, *The History of Compilation of the Kentucky Statute Laws*, 28 Filson Club Hist. Q. 134 (1954); Richard P. Deitzman, *The Kentucky Law Reports and Reporters*, 16 Ky. Law.J. 16(1927); Kurt X. Metzmeier, *Blazing Trails in a New Kentucky Wilderness: Early Kentucky Case Law Digests*, 93 L. Library J. 93 (Winter 2001).

[28] Woodford L. Gardner, Jr., *Kentucky Justices on the U.S. Supreme Court*, 70 Reg. of the Ky. Hist. Soc. 121 (1972); Edward C. Rear, *Justice Thomas Todd*, 38 Reg. of the Ky. Hist. Soc. 112 (1940); Alan Neil Schneider, *Robert Trimble: A Kentucky Justice on the Supreme Court*, 12 Ky. State B. J. 21 (December 1947).
[29] John S. Goff, *The Last Leaf: George Mortimer Bibb*, 61 Reg. of the Ky. Hist. Soc. 331 (1959).
[30] George Robertson's Scrap Book on Law and Politics, Men and Times (Lexington, Ky.: A. W. Elder, Printer and Publisher, 1855) was praised by Abraham Lincoln. More recently, Peter Karsten's Heart and Head: Judge Made Law in Nineteenth Century America (Chapel Hill: University of North Carolina Press, 1997) singled Robertson out as an important figure in the history of American jurisprudence.
[31] Ky. Const. 1850, art. IV., sec. 34.
[32] 1852 Ky. Acts, ch. 22, art. 24-31.
[33] Ky. Const. 1850, art. IV., sec. 29-33; 1852 Ky. Acts, ch. 22, art. 20-23.
[34] 1852 Ky. Acts, ch. 22, art. 17-19.
[35] Ky. Const. 1850, art. IV., sec. 30.
[36] Ky. Const. 1850, art. IV., sec. 16-28; 1852 Ky. Acts, ch. 22, art. 12-14.
[37] 1852 Ky. Acts, ch. 22, art. 15-16.
[38] Ky. Const. 1850, art. IV., sec. 23.
[39] Ky. Const. 1850, art. IV., sec. 3.
[40] Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Kentucky (Frankfort, Ky.: A. G. Hodges, 1850).
[41] Code of Practice in Civil and Criminal Cases for the State of Kentucky: Prepared By M.C. Johnson, James Harlan, and J.W. Stevenson, and Adopted By The General Assembly (Frankfort : A.G. Hodges, 1854). See also Robert M. Ireland, *Law and Disorder in Nineteenth-Century Kentucky*, 32 Vand. L. Rev. (1979): 281-304.
[42] Historical Development of Kentucky's Courts (Frankfort: Legislative Research Commission, 1958) 18-19.
[43] Wade Hall, Kentucky Anthology : Two Hundred Years of Writing in the Bluegrass State (Lexington: University Press of Kentucky, 2005) 203.
[44] Robert M. Ireland, *The Politics of the Elected Judiciary during the Period of Kentucky's Third Constitution*, 93 Reg. of Ky. Hist. Soc. 387 (1995).
[45] Hambleton Tapp and James C. Klotter, Kentucky: Decades of Discord, 1865-1900 (Frankfort: Kentucky Historical Society, 1977) 258-68. Robert M. Ireland, Little Kingdoms: The Counties of Kentucky, 1850-1891 (Lexington: University Press of Kentucky, 1977) describes in detail the problems wrought by the 1850 charter.
[46] Ky. Const. 1891, sec. 143
[47] Ky. Const. 1891, sec. 126-128
[48] Historical Development of Kentucky's Courts (Frankfort: Legislative Research Commission, 1958) 25.

[49] Historical Development of Kentucky's Courts (Frankfort: Legislative Research Commission, 1958) 25.
[50] Amos H. Eblen, *An Intolerable Burden*, 40 Ky. L.J. 78 (1951).
[51] Ky. Const. 1891, sec. 109.
[52] Ky. Const., sec 246. In the so-called "rubber dollar case," *Matthews v. Allen*, 360 S.W.2d 135 (Ky. 1961), the Court of Appeals interpreted the dollar limit loosely, allowing the use of cost-of-living indexes to adjust the limit upward.
[53] Another bar was the partisan nature of judicial elections; many competent potential judges were barred from the bench because they belonged to the wrong party (or faction). Some of the appeals court's best commissioners were brilliant lawyers whose party affiliation didn't match the prevailing tendency of their home region.
[54] Hambleton Tapp and James C. Klotter, Kentucky: Decades of Discord, 1865-1900 (Frankfort: Kentucky Historical Society, 1977) 263 citing William E. Connelley and E. Merton Coulter, 2 History of Kentucky (Chicago, and New York: The American Historical Society, 1922) 1005.
[55] Thomas D. Clark, History of Kentucky (New York: Prentice-Hall, 1937) 603-04.
[56] Hambleton Tapp and James C. Klotter, Kentucky: Decades of Discord, 1865-1900 (Frankfort: Kentucky Historical Society, 1977) 265.

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