STATUTES OF LIMITATION—
—BACKGROUND

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Arthur St. Clair, newly appointed Governor of the Northwest Territory, arrived at Marietta July 9, 1788, having been preceded by two of the territorial judges.[1] These three were a majority of the officials and, as such, were directed by the Ordinance of 1787 to "adopt and publish . . . such laws of the original states, criminal and civil, as may be necessary, and best suited to the circumstances of the district. . . ."[2] Law making began on July 25;[3] and before the year was out ten laws had been published. They provided for a militia, established several inferior courts with their terms and officers, regulated marriages, prescribed punishments for seventeen crimes—and limited the times for commencing civil actions and criminal prosecutions.[4]

The first territorial statute of limitations may have been invalid from the start because not a law of an original state;[5] and it was disapproved by Congress in 1792.[6] But in 1795 St. Clair and the judges published another,[7] this time adopted from the laws of Pennsylvania,[8] which laws copied, almost word for word, the English statute of 1623.[9] The repeal

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[1] James M. Varnum and Samuel Holden Parsons. The third judge, John Cleves Symmes, the instigator of the Miami Purchase, arrived in time to sign a law dated August 13, which established a court of probate.
limitations of from two to ten years on specified civil actions and of from two to four years on prosecutions for crimes other than capital offenses.

[2] Ordinance of July 13, 1787, §5.

[3] Laws, N.W. Terr. c. 1 (1792).

[4] Laws, N.W. Terr. c. 10 (1792). This law, published Dec. 28, 1788, placed

[5] Whether the phrase "laws of the original states" in the ordinance was to be interpreted literally was the subject of a running dispute between St. Clair and the judges. See 1 MARSHALL, HISTORY OF THE COURTS AND LAWYERS OF OHIO 53-54 (1934).

[6] 1 STAT. 285 (1792). Section 5 of the Ordinance of 1787 provided that laws published by the governor and judges should be in force in the territory "unless disapproved of by Congress."

[7] Laws, N.W. Terr. (Maxwell's Code, 1796) 54, effective Oct. 1, 1795. Symmes and George Turner had replaced Parsons and Varnum, deceased.

[8] Act of March 27, 1713. PURDON, ABRIDGMENT OF THE LAWS OF PENNSYLVANIA 347-348 (1811).

[9] 21 JAC. I, c. 16, §§3-7 (1623). Both the English Act (§§1-2) and the Pennsylvania laws (Act of March 26, 1785; Purdon, *supra* n. 8 at 349) included limitations on actions for the recovery of land. These actions were excluded from the territorial limitations act of 1795, as well as from that of 1788, *supra* n. 4. See n. 12, *infra*.

of this act in 1799[10] was followed by the enactment in 1804 of the first statute of limitations of the state of Ohio.[11]

It is interesting that, in a pioneer community beset by difficulties usual on the frontier, statutes of limitations were included in the earliest legislation. There is no reason to suppose that St. Clair and the judges were motivated by circumstances peculiar to them or to the territory, or by anything other than a belief that the principle of limitations was sound.[12] Statutes of limitations are, and have been, considered basic in our legal system, as well as in others.[13] Occasional intimations that they are contrary to the spirit of the law and not to be favored[14] are refuted by the persistence of these statutes through more than three hundred years of Anglo-American law; and are overwhelmed by the weight of judicial declarations attesting to the soundness of their policy.[15]

As with many things generally conceded to represent sound policy, there is much relating to statutes of limitation which is merely assumed and much which is only vaguely expressed. Most, if not all, of the detailed questions of their application might be expected to depend for their solutions on the purpose, or purposes, which the statutes are designed to effect. But even if it is assumed that the effect of legislation, and of its application by courts, is known, the determination of the purpose of

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10 "Whereas in the opinion of the general assembly, the act entitled 'A law for the limitation of actions' [is] unconstitutional . . . the same [is] hereby repealed." Act of Dec. 19, 1799. Acts of First Session of General Assembly of the Territory, p. 240.

11 2 Ohio Laws 60. Subsequent changes in the Ohio statutes, prior to the adoption of the Code of Civil Procedure in 1853, may be traced through the following: 7 v. 107 (1809), 8 v. 62 (1810), 22 v. 325 (1824), 28 v. 33 (1830), 29 v. 214 (1831). See also, 44 v. 76, 47 v. 54. The statute of limitations as enacted in the Code of Civil Procedure, 51 v. 58, is the basis of our present OHIO REV. CODE §§2305.03 through 2305.22 (11218 through 11236). Citations to acts subsequent to 1853 are readily available in code compilations.

12 This is not to say that these gentlemen were unaware of their circumstances. Neither the act of 1788 nor that of 1795 included any limitation on actions to recover the possession of land, although both the English and the Pennsylvania laws did. See n. 9 *supra*. This limitation first appeared in the Ohio act of 1804, 2 v. 60. It was then set at twenty years, the English period (21 JAC. I, c. 16, §1). The shift to twenty-one years was made in 1810. 8 v. 62, §2.

13 "They are found and approved in all systems of enlightened jurisprudence." Lamkin v. Robinson, 10 Ohio N.P. (N.S.) 1, 106 N.E. 1065 (1910), quoting Wood v. Carpenter, 101 U.S. 135 (1879).

14 See Reed v. Clark, 3 McL. (U.S.) 480 (1844); Newsom's Adm'r. v. Rau, 18 Ohio 240 (1849); Sheets v. Baldwin's Adm'r., 12 Ohio 121 (1843); Wood v. Ward, 1 Ohio Dec. Repr. 589 (1853).

15 See Guaranty Trust Co. v. U.S., 304 U.S. 126, 136 (1937); Campbell v. Haverhill, 155 U.S. 610 (1895); McCluny v. Silliman, 28 U.S. 270 (1830); Bell v. Morrison, 26 U.S. 360 (1828); Lile v. Powers, 8 Ohio Supp. 135, 24 Ohio Op. 124 (1942); Lamkin v. Robinson, 10 Ohio N.P. (N.S.) 1, 106 N.E. 1065 (1910); Wolcott v. Holland, 5 Ohio Cir. Ct. (N.S.) 604 (1904). "Statutes of Limitations are vital for the welfare of society and are favored in the law." Lamkin v. Robinson, *supra*.

statutes of limitations is not easy. Although occasional hints are found in the statutes themselves, the frequency with which later legislatures have enacted the substance of the English statute of limitations of 1623[16] suggests either that these bodies have at once seen, and recognized as valid, the purpose of the English statute, or that they have accepted the principle with little or no independent examination.[17] Judicial declarations respecting the policy of statutes of limitations are numerous, but almost embarrassingly repetitive. Sometimes these declarations may serve the immediate purpose, but they are usually bare assertions offered without supporting analysis.

One might approach the question inductively, on the premise that the policy being forwarded may best be discovered by working backward from what the courts have done; but here he will encounter another not unusual difficulty—the courts have done different things in a given situation; and seemingly inconsistent things in different situations. It has been said, perhaps with some overstatement, that there is a conflict of judicial opinion on almost every question connected with the statute of limitations;[18] and that they "always have vexed the philosophical mind."[19]

It may be that things would be clarified somewhat if it were recognized, as it perhaps sometimes is not, that the policy of the statute of limitations is not the furthering of a single purpose which may be expressed adequately in a phrase or two. Of course, the statute itself is not a single piece of legislation dealing with a single thing. The range of its several sections is virtually as broad as that of activity which may cause litigation.[20] There is no reason to ascribe precisely the same motive to all of it. Further, such evidence as there is suggests that the statute, even as applied to a single question, reflects a fairly complex mixture of purposes,

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16 21 JAC. I, c. 16 (1623).

17 "So firmly have statutes of limitations become imbedded in our law in the course of centuries that legislature seldom reconsider them in the light of the various functions that they actually perform." *Developments—Statutes of Limitations*, 63 HARV. L. REV. 1177, 1185 (1950). For an exception, see the study of agreements extending the statute of limitations conducted by the New York Law Revision Commission. Report, 1947, pp. 133-160.

18 Ellicott v. Nicholls, 7 Gill (Md.) 85, 48 Am. Dec. 546 (1848). See Summers v. Connolly, 159 Ohio St. 396, 112 N.E. 2d 391 (1953). In general no attempt is made in this article to cite cases from other states. The judicial statements in the Ohio and federal cases are, however, typical. See cases cited in 34 AM. JUR., *Limitations of Actions* §§9-14; 53 C.J.S., *Limitations of Actions* §1.

19 Jackson, J., in Chase Securities Co. v. Donaldson, 325 U.S. 304, 313, (1944).

20 There are twenty sections in the Ohio Revised Code, Sections 2305.03 through 2305.22 (11218 through 11236), which may be regarded as the Ohio statute of limitations for civil actions. Section 1.18 limits prosecution for misdemeanors to three years after commission. Traditionally only those statutes which restrict the time within which an action may be brought, which right of action would exist in the absence of the statute, are regarded as "statutes of limitations." A statute which creates a right of action unknown to the common law and, at the same time, limits the time within which the action may be brought is regarded merely as

some of which overlap and some of which may be partly inconsistent with others. It is likely that if this multiplicity of purposes is recognized the "philosophical mind" still will be vexed; but it may see what is vexing it.

The following propositions have appeared so frequently in opinions that they must be taken to state at least a verbal consensus as to the policy of the statutes:[21]

1. They are designed to protect against stale claims after evidence has been lost, memories have faded and witnesses have disappeared.

2. They are statutes of repose and not of presumption.

Most of the philosophy of statutes of limitations lurks somewhere in these two assertions. They present not just two ideas, but several; and there is no indication of the weight accorded to each. An attempt will be made to consider separately some of the implications.

"- - - STALE CLAIMS."

Habitually this phrase is used in relation to statutes of limitations.[22] Unlike bread or beer, claims do not become literally stale. The adjective, then, either simply means "unenforceable," which of course is the issue, or it is an attempt to include in one word the specific purposes of the statute—an attempt which fails. So this gets us nowhere.

"- - - MEMORIES HAVE FADED."

The proposition that statutes of limitations are designed, at least in part, to protect against successful assertion of claims after evidence to refute them has been lost, from one cause or another, is fairly obvious;[23] and the validity of this general purpose hardly will be questioned. But, in accepting it, it should be noted that its scope is not as great as that of the statutes themselves. The concern is with preservation of a potential defendant's evidence, not a plaintiff's; and it is limited to the protection of defendants from "bad" claims—that is, claims which it is assumed he

affixing a condition to the right, rather than limiting it. 1 WOOD, LIMITATIONS §1 (4th ed. 1916). See *Developments-Statutes of Limitations*, 63 HARV. L. REV. 1177, 1179 (1950). This technical distinction appears to have little to do with the function of the time limit. Accordingly, such statutes can be added to the others for this discussion.

[21] These propositions are composites rather than direct quotes; but their substance appears, wholly or in part, in many opinions, including those cited below.

[22] See Chase Securities Co. v. Donaldson, 325 U.S. 304 (1944); Telegraphers v. Ry. Express Agency, 321 U.S. 342 (1943); Guaranty Trust Co. v. U.S., 304 U.S. 126, (1937); Bell v. Morrison, 26 U.S. 350 (1828); Summers v. Connolly, 159 Ohio St. 396, 112 N.E. 2d 391 (1953).

[23] "It is a wise and beneficial law, not designed merely to raise a presumption of payment of a just debt, from lapse of time, but to afford security against stale demands, after the true state of the transactions may have been forgotten or be incapable of explanation by reason of the death or removal of witnesses." Story, J. in Bell v. Morrison, 26 U.S. (1 Pet.) 350, 360 (1828).

"The difficulty of preserving evidence, the frailty of memory and the contingency of the death of witnesses. . . ." Minsall, J., Doyle v. West, 60 Ohio St. 438, 444, 54 N.E. 469 (1899).

could have resisted successfully had evidence been available. If it is assumed that a plaintiff's claim is "good," the defendant will be no worse off no matter how much time has elapsed; he couldn't have defended successfully in the beginning. Statutes of limitations probably are designed to bar "good" as well as "bad" claims;[24] but the purpose in barring the "good" is something other than protection against failure of evidence.

It has been remarked that the periods of limitation which differentiate types of actions are determined with reference to the preservation of evidence on which the actions depend.[25] To some extent this is suggested by the statutes themselves. In a broad sort of way shorter limitation periods are prescribed for actions in which essential evidence rests in the minds of witnesses, as in actions for slander; while longer periods apply to actions based mainly on documents. But there is no reason to suppose that the statutory periods bear any actual relation to the duration of memory, continued availability of witnesses, or time for which documents are, or can be, preserved. And some aspects of the statutes appear inconsistent with the hypothesis that those considerations have dictated the periods prescribed. Why should actions for slander and actions for libel be subject to the same period, as they are in Ohio?[26] Why should it be supposed that witnesses can remember the circumstances of an alleged oral contract for six years,[27] but those of an alleged false imprisonment only one;[28] or that witnesses will become unavailable more quickly in one case than in the other? It is apparent that something other than availability, or lack of availability, of evidence lies back of the several different limitation periods which may appear in the statutes of a single jurisdiction.[29]

"- - - STATUTES OF REPOSE."

A quite different, and much broader, purpose is suggested by the statement found in a very large number of opinions that statutes of limitations are statutes of "repose."[30] But this somewhat poetical word,

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[24] "The statute of limitations was not designed to protect persons from claims fictitious in nature but from ancient claims, whether well or ill founded, which may have been discharged but the evidence of discharge may be lost." Gray, J., in Shepherd v. Thompson, 122 U.S. 231, 236 (1886), quoting Clementson v. Williams, 8 U.S. (8 branch) 72 (1807).

[25] ". . . the periods of limitation are graduated mainly with regard to the nature of the evidence on which the actions rest or by which they can be defeated." Neilson v. Fry, 16 Ohio St. 552 (1866). See *Developments—Statutes of Limitations,* 63 HARV. L. REV. 1177, 1185 (1950).

[26] OHIO REV. CODE, §2305.11 (11225).

[27] OHIO REV. CODE, §2305.07 (11222).

[28] OHIO REV. CODE, §2305.11 (11225).

[29] Surveys of limitation periods prescribed by the statutes of American jurisdictions appear in Blume and George, *Limitations and the Federal Courts,* 49 MICH. L. REV. 937 (1951); Littell, *A Comparison of the Statutes of Limitations,* 21 IND. L.J. 23 (1945); and in Mix, *State Statutes of Limitation: Contrasted and Compared,* 3 ROCKY MT. L. REV. 106 (1930).

[30] Guaranty Trust Co. v. U.S., 304 U.S. 126 (1937); U.S. v. Oregon Lumber Co., 260 U.S. 290 (1922); Campbell v. Haverhill, 155 U.S. 610 (1895); Shepherd

taken alone, is not very helpful. Repose for whom? For the courts, for potential defendants, or for others?

The late Mr. Justice Jackson said that statutes of limitations are, among other things, "practical and pragmatic devices to spare the courts from litigation of stale claims."[31] This has been vigorously denied by Judge Hand:

> It cannot be that statutes of limitations are in any degree for the purpose of relieving courts of the trial of issues which have become hard to decide by loss of evidence. Courts are maintained to settle disputes no matter how parties may embroil themselves; it would be a strange doctrine which forbade people to deal with their affairs as they wish lest the judges should be unduly vexed.[32]

Strange doctrine or not, if sparing the courts is one of the purposes of the statutes it's at least a fair bet that it hasn't worked. No one can tell, of course, how much additional judicial effort would be required if there were no statutes of limitations; but it may well be that it would not exceed that expended in deciding legal questions engendered by the statutes themselves.

The repose of individual defendants is a more complex purpose and, perhaps, more debatable. Here the policy of repose overlaps partially, but only partially, that of protecting defendants against loss of combative evidence. If a claim is assumed to be "bad," the policy of protecting a defendant from a failure of evidence and the policy which favors his "repose" are very much the same. The thing most likely to keep him awake, or from ordering his life on the assumption that he will not be subjected to the claim, is lack of evidence to support the facts. If, on the other hand, it is assumed that the claim against him is "good," we have an entirely different question. Is it a purpose of statutes of limitations to enable a person who has breached a contract, or who has committed a tort or a lesser crime, to proceed, after a time, as though the incident had not occurred? There is nothing in the statutes, and little in judicial assertions,[33] to suggest a negative answer to this question; but it has provoked arguments on moral grounds which extend even to questions of the proper application of Christian principles.[34] Whatever the validity of these

v. Thompson, 122 U.S. 231 (1886); Bell v. Morrison, 26 U.S. 350 (1828); Lewis v. Marshall, 30 U.S. (5 Pet.) 470 (1831); Summers v. Connolly, 159 Ohio St. 396, 112 N.E. 2d 391 (1953); Doyle v. West, 60 Ohio St. 438, 54 N.E. 469 (1899); Kerper v. Wood, 48 Ohio St. 613, 29 N.E. 501 (1891); Neilson v. Fry, 16 Ohio St. 552 (1866); Lile v. Powers, 8 Ohio Supp. 135, 24 Ohio Op. 124 (1942); Commonwealth Loan Co. v. Firestone, 47 Ohio L. Abs. 523, 72 N.E. 2d 912 (1947).

[31] Chase Securities Co. v. Donaldson, 325 U.S. 304, 313 (1944).

[32] U.S. v. Curtiss, 147 F. 2d 639, (2d Cir. 1945).

[33] See note 14 *supra*.

[34] "Christianity forbids us to attempt enforcing the payment of a debt which time and misfortune have rendered the debtor unable to discharge." Best, C.J., in A' Court v. Cross, 3 Bing. 329, 333 (1825).

"In the writer's experience, not infrequently, if not generally, the plea of the

arguments, it can be conceded that one purpose of the statutes *may* be to assure the repose of an individual, even as against just claims. It certainly can be contended reasonably that a person is entitled to shape his affairs on the assumption that a claim against him, however just, will not be pressed after being allowed to lie dormant for a considerable time. It may even be contended that the word "repose" can be taken literally in this situation—that relief of individuals from worry over past events is a proper public purpose.

If the "repose" purpose is confined to solicitude for the welfare, either economic or emotional, of individuals, and we are trying so to confine it for the moment, it, like the other purposes considered so far, operates in a scope more narrow than that of the statutes themselves. There will be no interference with the repose of a potential defendant if he does not know that a cause of action is outstanding against him. It may be that in most situations he will know of the difficulty; but there are some in which he will not. And it probably is safe to say, generally, that the statutes run regardless of the knowledge of the potential defendant.[35]

Finally, it is suggested that the "repose" which statutes of limitations are designed to assure is that of persons other than judges or of defendants to particular actions. The word "society" may be used for identification.[36] Although society properly may be interested in the welfare of an individual, as such, it is clear that the interest referred to here is that of those persons who have dealings with others and, accordingly, are concerned in the stability of the positions of those with whom they deal. Without this stability there would be little repose for anyone.

The operation of the social purpose is especially evident in some instances, such as the transfer of property, but it is difficult to imagine one to which it does not apply. All business dealings of any consequence are apt to depend on the financial stability of the parties; and even relations which may be considered of small importance are posited upon the continued availability of the people involved.[37] Nearly all legal actions affect

statute has no merits and the attempt to enforce an old debt in no way infringes the principles of Christianity. The prudent man, an unpleasant fellow at best and certainly no Christian, would of course never have allowed the debt to become statute barred." 190 L.T. 303, 304 (1940).

[35] In some cases involving mistaken boundary lines the running of the statute has been made to depend upon the supposed state of mind of the defendant. But these cases are in the minority and have been said to be erroneous on principle. 3 AMERICAN LAW OF PROPERTY 785-791 (Casner ed. 1952).

[36] Judicial declarations which go beyond the mere assertion that statutes of limitations are statutes of "repose" usually specify that they are designed to secure the repose of "society" or of the "public." See Lewis v. Marshall, 30 U.S. (5 Pet.) 470 (1831); Summers v. Connolly, 159 Ohio St. 396, 112 N.E. 2d 391 (1953); Doyle v. West, 60 Ohio St. 438, 54 N.E. 469 (1899); Lile v. Powers 8 Ohio Supp. 135, 24 Ohio Op. 124 ((1942).

[37] If A, whom B has long recognized as dependable, has promised B that he will mow B's lawn on Saturday, B will be annoyed if, on the day appointed, A is picking peas at the workhouse.

either the economic status or the personal freedom of the defendant; and some affect both. Accordingly, the public has an interest in the speedy appearance of actions against him.

This social interest in the state of a given person's affairs, translated into a purpose of statutes of limitations, includes, necessarily, the purposes which relate solely to the position of the individual defendant. Stability for him is stability for those with whom he deals. At the same time its scope is wider than that of any of the individual purposes ascribed to the statutes. The social purpose is not limited, as are the others, by concern whether a particular claim against an individual defendant is assumed to be "good" or "bad"; the disruption is the same with either. And it makes no difference whether the person directly affected knew of the claim against him, except as his knowledge, or lack of it, possibly may be reflected in the "front" which attends his dealings with others. Accordingly, the protection of the social interest in individual stability[38] is the purpose which most nearly accords with the apparent scope of the statutes.

"- - - AND NOT OF PRESUMPTION."

To the assertion that statutes of limitations are statutes of "repose" there is frequently added, as though by antithesis, "and not of presumption."[39] The meaning is that, contrary to some early expressions,[40] the operation of the statute is not posited on the assumption that a claim or demand which has not been asserted over a relatively long period has, in fact, been discharged. The denial of a presumption may be asserted as relevant to questions of general theory, such as whether the statutes bar "good" claims as well as "bad,"[41] or to more narrow questions of application, such as whether the operation of the statutes must be pleaded.[42]

If the question were approached solely as a matter of guessing as to probability, it may well be that most guesses would favor the "presumption." But certainly failure to press a claim may be explained rationally otherwise than by discharge. That many people are easy-going, or very busy, or allergic to controversy, probably would not be seriously contested by most. If these matters are considered, perhaps most votes will be against the "presumption;" since, if the statutes reflect a presumption at all, it must be conclusive.

On the other hand, the statement that statutes of limitations create

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38 "Individual," here includes, of course, corporations, etc.

39 Shepherd v. Thompson, 122 U.S. 231 (1886); Bell v. Morrison, 26 U.S. 350 (1828); Summers v. Connolly, 159 Ohio St. 396, 112 N.E. 2d 391 (1953); Doyle v. West, 60 Ohio St. 438 54 N.E. 469 (1899).

40 See 1 WOOD, LIMITATIONS §5 (4th ed. 1916).

41 See Bell v. Morrison, 26 U.S. 350, 360 (1828), quoted *supra* n. 23.

42 "The practical effect of the theory of repose in connection with the statute of limitations is that the debtor has the option to assert the statute and defeat recovery; but if he chooses to assert the statute as a defense, the result is the same as though the presumption of payment and discharge were indulged." Middleton, J., in Summers v. Connolly, 159 Ohio St. 396, 401, 112 N.E. 2d 391 (1953).

a presumption of payment, or other satisfaction, after the lapse of the prescribed period may be simply a way of saying that no action can then be maintained[43]—a proposition which merely restates the statute. So regarded it is not objectionable on the merits.

Counter Purposes

The above deals with policies, or purposes, which may be furthered by placing limitations on the periods during which actions may be brought. Some may be more persuasive than others and some have a wider application than others; but all suggest limitation. If they stood alone they would dictate not only that actions be limited as to time but that they should be prohibited. Of course there is an obvious counter policy, that of justice to persons who have claims, which prevents that result and which operates constantly on all of the limitation questions. For various reasons we want to limit the time for bringing actions; but we do not want to do so at the expense of fairness to those entitled to bring them.[44] There are also other counter policies, such as the protection of society against crime. There are generally no limits on prosecutions for capital crimes; and this must be because, in this instance, it is supposed that society's need for protection outweighs its need for stability.

Accordingly there is a point, hard to locate but nevertheless present, beyond which the purposes to be effected by statutes of limitations must be abandoned.

Conclusion

Statutes of limitations are attempts to effect different purposes. Among them are (1) the protection of individuals against the enforcement of unjust or "fraudulent" claims against them which are based on transactions so far in the past that evidence to combat them has been lost; (2) encouragement of stability in the affairs of an individual, which stability is desirable for the welfare of the individual, as such; and (3) protection of the interest which all persons who deal with a given individual have in the stability of his economic and personal affairs.

Of these three purposes, the third clearly overlaps the other two and extends beyond them. Thus, although the other purposes may be conceded to be proper, the third is the most persuasive and should dominate as a starting point in analysis of questions relating to limitation of actions. This extends not only to specific applications of the statutes but also to the content of the statutes themselves. As to content, it follows that the length of the period, or periods, prescribed should be determined by reference to the dominate purpose of social stability, rather than on the basis of a supposed relation to the lesser purpose of protection against lost evidence—

[43] See U.S. v. Oregon Lumber Co., 260 U.S. 290 (1922); Lamkin v. Robinson, 10 Ohio N.P. (N.S.) 1, 106 N.E. 1065 (1910).

[44] From the beginning statutes of limitations, themselves, have included provisions relieving persons under certain disabilities from their application. Ohio Rev. Code, §2305.16 (11229) derives from the second section of the original English statute, 21 Jac. I, c. 16.

a relation which, as applied to the many periods found in present statutes, is highly questionable. So viewed, it appears that the time limits prescribed in the statutes generally should be shortened.[45] The purpose of social stability points in only one direction: the shorter the better. The only limit on this shortening process is the point at which the stability purpose is outweighed by counter purposes. Accordingly, at least in civil actions, the question of the limitation period to be prescribed becomes essentially a question of how long a claimant should require, in all fairness, to organize his forces and bring his action. On this basis it is doubtful whether it would be necessary to divide actions into as many classes as appear in present statutes, although some distinction likely will be necessary; and it is highly doubtful whether the answer in any case would be as long as twenty-one years.

The word "limitations" may be unfortunate. It suggests, probably accurately, that thinking about the matter has begun with the proposition that a person is entitled to bring an action any time he pleases; and that this privilege will be cut off only after his delay has become unbearable, for one reason or another. Perhaps this thinking is backwards.

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[45] The same suggestion is made in Littell, *A Comparison of the Statutes of Limitations*, 21 IND. L. J. 23, 38 (1945).