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The History of the West Virginia Code

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THE HISTORY OF THE WEST VIRGINIA CODE

*Robert W. Kerns, Jr.**

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ABSTRACT

What we know today as the West Virginia Code is a series of laws organized into 64 chapters, grouped together by topic, in such a way that it can be searched, analyzed, and utilized. The West Virginia Code is the statutory law of the State. It contains rules that address nearly every aspect of the State's functionality, from how one must pay taxes to the mechanisms involved in acquiring and disposing of property, to the identification of criminal acts and their punishment, and to a plethora of others in between. However, this body of law did not simply come into existence in its present form. Reaching its current construction took decades. Early revisers and publishers labored over the Code for many years. These revisers transformed the Code from a mere borrowing of Virginia law, to a confusing compilation of statutes, to the Code that practitioners can now readily locate and decipher. This article examines and analyzes the history of the West Virginia Code. It explores the development of the Code and studies how each early edition aided in forming the foundation of the Code. This article also studies how acts passed by the West Virginia Legislature altered the Code structure and impacted how practitioners use the West Virginia Code of Laws.

I. INTRODUCTION

The West Virginia Code has faced numerous obstacles and undergone various changes over the last 154 years. Although West Virginia derived its system of laws from Virginia,¹ it initially adopted a different Code codification scheme from its counterpart.² Subsequently, the arrangement of the West Virginia Code was viewed as defective by some primary revisers of the Code because it was viewed as a mere compilation of acts and not law itself.³ It also took a herculean effort to codify and publish early editions of the West Virginia Code. The job to codify the Code was often given to a local practitioner, judge, or member of the West Virginia Legislature. Because of the monumental task of compiling and codifying the Code, it would take multiple years after legislative sessions had adjourned to see a new version of the Code in print. In addition, early editions were not adequately annotated, and it was virtually impossible to know “what construction the courts had given to an[] [enacted] statute.”⁴ Moreover, revising the Code proved to be a delicate undertaking. Often, the Legislature would enact similar statutes addressing the same subject matter

¹ CODIFICATION COMM'N, OFFICIAL CODE OF WEST VIRGINIA: CONTAINING ALL STATUTES OF A GENERAL NATURE NOW IN EFFECT vii (1930) [hereinafter FINAL REPORT].

² John F. Kelly, *Preface to THE REVISED STATUTES OF WEST VIRGINIA*, v (1878).

³ *See id.*

⁴ Charles E. Hogg, *Preface to HOGG'S WEST VIRGINIA CODE ANNOTATED*, v (Charles E. Hogg ed. 1914).

during different legislative sessions, making it difficult for attorneys and judges to ascertain the general intent of the Legislature. Furthermore, early printed editions of the Code, sold at 5 to 15 dollars,⁵ were in limited supply. The first version of the Code had 3500 copies printed, many of which were bought and utilized by the attorneys, clerks, judges, and other governmental employees of the day.⁶ These early challenges continued for over 68 years until we began to publish the modern versions of the Code that exist today.

This Article is a historical account and analysis of the development of the West Virginia Code. Part II examines the beginnings of the Code, from years 1863 to 1870, and the revisers of the early editions. Part III studies the origins of the Virginia Code and how the West Virginia Code was derived. Part IV discusses the original codification system of the West Virginia Code and addresses changes made to that original structure. Part V explores early problematic issues revolving around the West Virginia Code structure and how many statutes needed to be read *in pari materia*. Part VI looks at the evolution of West Virginia annotations. Finally, Part VII analyzes early editions of the Code and studies how each edition enhanced or diminished the development of the West Virginia Code.

II. THE BEGINNINGS 1863–1870

At the very beginning of its statehood, West Virginia simply adopted most of Virginia’s laws. Section 8 of Article XI of the 1863 West Virginia Constitution declared that “parts of the common law and of the laws of the State of Virginia as [were] in force within the boundaries of the State of West Virginia when [the] Constitution goes into operation and not repugnant thereto, shall be . . . the law of [West Virginia] until altered or repealed by the Legislature.”⁷ Soon after the adoption of West Virginia’s Constitution on October 27, 1863, the Legislature passed a bill “to . . . revis[e], collat[e] and digest[] into a Code the laws now in force within [the] State.”⁸ And so ensued the mammoth task of collating and revising West Virginia’s own code, which would take several years and multiple revisions before the task would be complete.

The West Virginia Legislature initially appointed Daniel Lamb, Esq., of Wheeling, to prepare the first Code of West Virginia.⁹ Lamb was a member of

⁵ W.J. Gilbert, *Statute Making: Preface to THE REVISED STATUTES OF WEST VIRGINIA*, 5 (1878).

⁶ 1869 W. Va. Acts 18.

⁷ W. VA. CONST. of 1863, <http://www.wvculture.org/history/statehood/constitution.html> (last visited Oct. 16, 2017).

⁸ FINAL REPORT, *supra* note 1, at ix.

⁹ James H. Ferguson, *Preface to THE CODE OF WEST VIRGINIA COMPRISING LEGISLATION TO THE YEAR 1870*, iii–iv (1868).

the Constitutional Convention and the first West Virginia Legislature.¹⁰ Because of his efforts, the codification of West Virginia's first laws was known as the "Lamb Code."¹¹ Four years after his commission, Lamb had completed only 52 chapters of the Code, which he presented to the Legislature in January of 1867.¹² Fifty-two chapters represented approximately one-quarter of the entire first edition. Unable to surmount the monumental task before him, Lamb asked for and was granted a release from further performance of his obligation to complete the rest of the Code due to health and work-related issues.¹³

At this time, Governor Arthur I. Boreman, the first governor of West Virginia, was authorized to appoint one to three revisers to complete the balance of the Code not yet reported by Lamb.¹⁴ Governor Boreman appointed Judge R. L. Berkshire and Thayer Melvin, Esq., to finish the revision of the West Virginia Code.¹⁵ The very next year, Judge Berkshire and Mr. Melvin presented the remainder of the Code to the Legislature, but it was after the Legislature had already adjourned,¹⁶ so it was too late for the Legislature to adopt the Code. The Legislature, in turn, "adopted a resolution requesting the governor to convene them [an] extra session on the first Tuesday in June, 1868, for the [sole] purpose of [officially] adopting the Code"¹⁷

The Legislature remained in session for over a month, yet the Code was not formally adopted because "no part[s] of the [C]ode had passed through the hands of a revisory committee" established to examine and review it.¹⁸ Therefore, the revisory committee remained sitting during the recess session to examine, review, and revise the Code.¹⁹ The committee worked for nearly four months, from July 28, 1868 to November 10, 1868.²⁰ The Legislature again met pursuant to their adjournment and worked assiduously on the Code until December 29, 1868, but once more adjourned without providing for its publication.²¹

Finally, the succeeding legislature passed an act on February 18, 1869, entitled, "An ACT to provide for the publication and distribution of the Code of

¹⁰ Kenneth R. Bailey, *Daniel Lamb*, E-WV: W. VA. ENCYCLOPEDIA (last modified Dec. 7, 2015), <https://www.wvencyclopedia.org/articles/1290>.

¹¹ *Id.*

¹² Ferguson, *supra* note 9, at iii.

¹³ *Id.*

¹⁴ FINAL REPORT, *supra* note 1, at ix.

¹⁵ Ferguson, *supra* note 9, at iii.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

West Virginia.”²² In the Act, the Legislature appointed Judge James H. Ferguson of the 12th Judicial Circuit to prepare the Code for publication, which was thereafter known as the Code of 1868.²³ Ferguson then completed the magnanimous task of publishing the Code in December of 1870, stating,²⁴

I have devoted all the time I possibly could, consistently with my other duties, to the performance of the work assigned me by the legislature. In undertaking this work, I had no idea of the magnitude of the task I assumed, and in fact no one can form an idea of its magnitude who has not been engaged in a similar work. I have performed it, however, to the best of my ability, and in the shortest time reasonably possible, and now submit it to the public for their candid consideration and judgment.²⁵

The Act establishing the West Virginia Code read in part,

“An act establishing a [C]ode of laws for this state,” passed during the late extra session of the legislature, shall not be published with the other acts of said session, but shall be printed on good paper, in a separate volume, in such style as may be prescribed by the superintendent of the publication, well bound in law sheep, and lettered on the back “Code of West Virginia.” Beside the said act, the volume shall contain the declaration of independence; the [C]onstitution of the United States, and the amendments thereto; the declaration of the people of Virginia, adopted at Wheeling on the thirteenth day of June, eighteen hundred and sixty-one; the [C]onstitution of this state as amended, and a full and complete index The secretary of the state shall secure the copyright of the said volume for the benefit of the state. Of the first edition of the said volumes, there shall be printed, bound and lettered, as aforesaid, three thousand five hundred copies as soon as possible after the passage of this act. The price to be paid by the state for the said copies shall be fixed by the governor, and paid out of the state treasury upon the delivery thereof.²⁶

III. CODE OF VIRGINIA

To better understand the development of the West Virginia Code, it is necessary to briefly examine the Code of Virginia from which the West Virginia

²² 1869 W. Va. Acts 17.

²³ Hogg, *supra* note 4, at v.

²⁴ Ferguson, *supra* note 9, at iv.

²⁵ *Id.*

²⁶ 1869 W. Va. Acts 17.

Code was largely derived.²⁷ The Code of Virginia has a long and storied history dating back to its English roots and the founding of the Colony of Virginia. The Colony of Virginia adopted British statutes as law and revised these statutes multiple times before the revolution.²⁸ The colonists initiated these revisions because many of the statutes had become obsolete and unintelligible.²⁹ The first two pre-revolution revisions of the Virginia Code were made by the grand assembly at James City in 1631 and 1643.³⁰ Most of these early revisions addressed uniformity in the church, as mandated by the following:

IT *is ordered*, That there bee a uniformitie throughout this colony both in substance and circumstance to the cannons and constitution of the church of England as neere as may bee and that every person yeald readie obedience unto them uppon penaltie of the paynes and forfeitures in that case appoynted.³¹

After these initial revisions, the general assembly found it inefficient for the entire assembly to revise all the laws of the colony; therefore, the assembly passed a law to provide for the appointment of a commission consisting of six people, with the “power and authority to revise, alter, add to, diminish, repeal, amend” or revise all of the laws, and report the same at a future session of the Assembly.³² The members appointed to this commission were members of the Honorable Council and the House of Burgesses.³³ In 1776, post-revolution, the assembly passed another law providing for a five-member commission to revise the laws of Virginia.³⁴ This group of revisers consisted of Thomas Jefferson, George Wythe, George Mason, Edmund Pendleton, and Thomas Ludwell Lee.³⁵

The West Virginia Legislature followed suit by assigning the task of examining and amending the Code to a reviser or group of revisers.³⁶ The very first revisers in West Virginia were selected by the legislature.³⁷ However, over the next 30 years, West Virginia emulated Virginia and passed requirements for

²⁷ FINAL REPORT, *supra* note 1, at vii.

²⁸ *See id.*

²⁹ *See* 3 HENING’S STATUTES AT LARGE 181 (1699) [hereinafter 3 HENING’S STATUTES], <http://vagenweb.org/hening/vol03-11.htm> (last visited Oct. 15, 2017).

³⁰ FINAL REPORT, *supra* note 1, at vii.

³¹ 1 HENING’S STATUTES AT LARGE 155 (1632), <http://vagenweb.org/hening/vol01-07.htm#bottom> (last visited Oct. 15, 2017).

³² 3 HENING’S STATUTES, *supra* note 29.

³³ *Id.*

³⁴ 9 HENING’S STATUTES AT LARGE 175–77 (1776), <http://vagenweb.org/hening/vol09-09.htm> (last visited Oct. 15, 2017).

³⁵ *Id.*

³⁶ *See* Ferguson, *supra* note 9, at iii.

³⁷ *See id.*

selection of revisers that were virtually identical. On April 12, 1921, the West Virginia legislature passed a law that mirrored a Virginia law from 1914, which stated,

The governor shall, from a list of ten lawyers, citizens of West Virginia, who shall be nominated by the [S]upreme [C]ourt of [A]ppeals of West Virginia, appoint three commissioners to revise, codify and index, with suitable marginal citations and references, the general statute law of this state, whose duty it shall be to collate, revise, and codify all the general statutes, civil and criminal, of this state, which may be in force at the time of the completion of their work, and properly index the same.³⁸

In addition to adopting Virginia's provisions regarding selection of revisers, West Virginia adopted most of the other Virginia statutes as well. As many as 700 West Virginia statute sections were similar to or the same as their Virginia counterparts.³⁹ Remnants of these Virginia laws still exist in the West Virginia Code today. In fact, practitioners can view references to these Virginia laws in the credits field of certain West Virginia statutes. For example, in section 41-1-3 of the West Virginia Code, pertaining to Wills, the credits field references the former Virginia Code from 1849 and 1860.⁴⁰ A researcher can utilize this information to trace many West Virginia statutes back to their origins, which, in the context of legal research, can be helpful in the interpretation of law. Moreover, the language of many of these statutes has not changed for over 160 years. Thus, Virginia's influence on the West Virginia Code remains relevant and applicable today.

IV. CODE CODIFICATION & STRUCTURE

There are two recognized systems for codifying state Codes: alphabetical and analytical. In an alphabetical system of codification, a state arranges the code chapters alphabetically. In an analytical system of codification, a state "divid[es] [its] laws into the departmental terms . . . [within] the governmental system they apply."⁴¹ The parts of the statutes that organize the framework and "the anatomy of the State [into the political body] is the Political."⁴² "That part which regulates and directs the action of man with man

³⁸ 1921 W. Va. Acts 248.

³⁹ See ANNOTATIONS TO CODE OF WEST VIRGINIA: FROM DECISIONS OF THE COURTS OF LAST RESORT OF WEST VIRGINIA AND VIRGINIA i–ix (W. M. Justis, Jr., ed., 1905) [hereinafter ANNOTATIONS].

⁴⁰ W. VA. CODE ANN. § 41-1-3 (West 2017) ("Formerly Code Va. 1849, c. 122, § 4; Code Va. 1860, c. 122, § 4").

⁴¹ Kelly, *supra* note 2, at v.

⁴² *Id.*

within this organized body politic . . . and the legislation relating to persons and property[] is the Civil.”⁴³ The part that includes “everything connected with the civil procedure in all the courts” is the Remedial.⁴⁴ Lastly, the part that “embrace[s] the provisions relating to crimes, criminal procedure, jails, and the penitentiary” is the Penal.⁴⁵

Virginia employed an analytical system of codification. The Code of Virginia contains an arrangement grouping all kindred subjects under titles and chapters. West Virginia initially adopted a plan that would necessitate dividing the chapters alphabetically “so far as to preserve the integrity of the chapters,”⁴⁶ therefore, the Virginia model could not satisfactorily be used without dividing the chapters analytically, and to do so would require legislative authority.⁴⁷ Subsequently, it was self-evident to some early revisers that the West Virginia Code was defective in not grouping all kindred subjects analytically under titles.⁴⁸

Because of this early codification system, the West Virginia Code became “a mere compilation of statutes,” as opposed to a Code of State Laws.⁴⁹ A Code of State Laws, when adopted by a legislative body, has the same effect as one general act of the legislature containing all the provisions embraced in it.⁵⁰ “It is not merely evidence of the law, but the law itself.”⁵¹ However, a compilation of the statutes is the “collect[ion] into one volume of all the [A]cts of the legislature of a general nature for convenience [of] use, and the contents of such a volume, or [C]ode, are constructed and dealt with just as if they had never been published in a single volume.”⁵² West Virginia compiled legislative acts under chapters alphabetically from 1863–1930. There were initially over 160 chapters of the Code. In addition, there were disagreements among revisers of different editions of the Code on the proper placement of acts within it.⁵³ Consequently, the acts within the Code were jumbled and difficult to decipher. Thus, many practitioners of the day likely found early editions of the West Virginia Code to be very long and hard to navigate.

43 *Id.*

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.*

48 *Id.*

49 FINAL REPORT, *supra* note 1, at ix.

50 *Id.*

51 *Id.*

52 *Id.* (citing *Grant v. Baltimore & Ohio R.R. Co.*, 66 S.E. 709 (W. Va. 1909)).

53 See *Kelly*, *supra* note 2, at v.

However, in 1921, the West Virginia Legislature passed an act that changed its codification system and helped arrange the statutes in a systematic manner. The act states in part that

They shall arrange all the statutes under proper titles and chapters, and divide the whole [C]ode into sections, numbering them consecutively from one to the end or by chapters having regard to the divisions into titles and chapters; they shall make or cause to be made such foot-notes, marginal citations or references as they may deem proper or helpful to a clear understanding of the statutes and prefix to each chapter a table, stating briefly the subject thereof, and inserting or omitting such captions to sections as they may deem fit; they shall in all respects execute and complete the revision and codification as hereby directed in such [a] manner, as in their opinion, will harmonize the general statutes and make the [C]ode of statute law, as existing at the close of their work, as complete as possible. . . .⁵⁴

Members of the bar, Dean J. W. Madden of the West Virginia University College of Law, members of the West Virginia University Law faculty, and three commissioners appointed by the governor all performed tasks that materially aided in making the first true West Virginia Code in 1930.⁵⁵ This new version of the West Virginia Code systematically divided the chapters by subject matter, which reduced the number of chapters from over 160 to just 63.⁵⁶ It took 10 years for these revisers to “eliminat[e] [] redundancies and inconsistencies[] [and] discard[] outgrown statutes and bad laws passed to meet particular situations⁵⁷ A vast amount of work went into reducing many acts regarding the same subject matter into a single statute.⁵⁸ The revisers arduously compared laws, examined parts of statutes that were repealed by implication, and improved statutory language.⁵⁹ The revisers’ painstaking efforts produced what is now the modern version of the West Virginia Code.

V. IN PARI MATERIA

Prior to West Virginia adopting a new codification system in 1921, revisers of the Code were faced with the task of codifying the Code from previous legislative sessions. This process often took many years to complete.

⁵⁴ 1921 W. Va. Acts 248.

⁵⁵ FINAL REPORT, *supra* note 1, at ix.

⁵⁶ *Id.* at x.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

The legislative acts from previous sessions were “so numerous that no person, without much labor and research, [could] tell what the law [was], on any subject.”⁶⁰ Because the Legislature would enact similar statutes addressing the same subject matter during different legislative sessions, revisers would simply place all of the legislative acts into the Code, sometimes under different chapters and sections.

In some circumstances, this practice made it difficult for attorneys and judges to ascertain the general intent of legislation, and courts were left with the challenge of interpreting multiple, sometimes conflicting, statutes governing the same subject matter. This did not bode well for the Code, as it left the door open for administration of the wrong laws. For example, in *Norfolk & Western Railway Co. v. Pinnacle Coal Co.*,⁶¹ Circuit Court Judge Joseph M. Sanders of Mercer County was presented with a question applicable to two different Code provisions. At the time, the Code contained two statutes for classification and charges on all subjects capable of transportation, fixing a maximum rate per ton for transporting goods in West Virginia.⁶² One statute diminished the maximum charge if the goods were transported more than 50 miles, while another diminished the maximum charge if the goods were transported more than 10 miles.⁶³ The two statutes were clearly inconsistent with each other, and the circuit court judge applied the earlier of the two, setting a 50-mile mark, effectively applying the wrong law.⁶⁴ On appeal, the Supreme Court of Appeals of West Virginia noted that both statutes could not coexist and be executed without mistake.⁶⁵ In turn, the court found that the lower court’s application of the earlier statute was an error of law, holding that the later statute plainly repealed the earlier statute and took place of the Code provision regarding classification of freight charges.⁶⁶

There are also instances where statutes, enacted at different times and not conflicting in any essential matter, were allowed to stand as concurrent provisions. Because there were many courts facing these issues, the courts had to construct rules on how to read the statutes *in pari materia*, meaning that statutes “must be interpreted in light of each other since they have a common purpose for comparable events or items.”⁶⁷ In early West Virginia cases, the

⁶⁰ John A. Warth, *Preface to THE AMENDED CODE OF WEST VIRGINIA, CONTAINING ALL THE CHAPTERS OF THE CODE OF 1868 AS AMENDED BY SUBSEQUENT LEGISLATION TO AND INCLUDING THE ACTS OF 1883, 3 (1884)* [hereinafter Warth 1884].

⁶¹ 30 S.E. 196 (W. Va. 1898).

⁶² *Id.* at 199 (Brannon, J., dissenting).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 198.

⁶⁷ *In Pari Materia*, [FREECTIONARY.COM](http://legal-dictionary.thefreedictionary.com/in+pari+materia), <http://legal-dictionary.thefreedictionary.com/in+pari+materia> (last visited Oct. 15, 2017).

Supreme Court of Appeals of West Virginia had to read statutes *in pari materia* frequently. In *Bank of Bramwell v. County Court of Mercer County*,⁶⁸ the court stated,

Statutes must be interpreted according to the intent and meaning, and not always according to the letter The intention of the legislature may be found from the act itself, from other [A]cts *in pari materia*, and sometimes from the cause of necessity of the statute; and, whenever the intent can be discovered, it should be followed with reason and discretion, though such construction seem contrary to the letter of the statute. This is the rule where the words of the statute are obscure In the construction of a statute, every part of it must be viewed in connection with the whole, so as to make its parts harmonize, if practicable, and give a sensible and intelligent effect to each. It is not to be presumed that the legislature intended any part of a statute to be without meaning.⁶⁹

In the West Virginia court system, it was well settled

that a statute, general in its terms and without negative words, [was] not [] construed to repeal, by implication the particular provisions of a former one, which [were] special in their application to a particular case, or class of cases, unless the repugnancy be so glaring and irreconcilable as to indicate the legislative intention to repeal. The reason and philosophy of the rule are, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute, in general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all. So it is said, that inasmuch as two [A]cts seemingly repugnant must, if possible, be so construed that the latter may not operate as a repeal of the former by implication, a subsequent statute, which is general, does not abrogate a former statute which is particular and special in its application.⁷⁰

⁶⁸ 15 S.E. 78 (W. Va. 1892).

⁶⁹ *Id.* at 80.

⁷⁰ *Chesapeake & Ohio Ry. Co. v. Hoard*, 16 W. Va. 270, 279 (1880) (citations omitted).

VI. REFERENCES & ANNOTATIONS

References and annotations evolved quickly and took different forms in the early editions of the West Virginia Code. Because there were disagreements on where to place certain acts, and early editions of the Code were mere compilations of the acts, early revisers of the Code created marginal cross-references to assist Code users in locating the laws. The marginal references consisted of mentions to all acts on the same subject and applicable decisions from the highest courts of West Virginia, Virginia, and England. The following is an example of an act cross-reference from the 1878 version of the Code:

Acts 1872–3, ch. 164, providing for the restoration of title papers destroyed by fire, was placed under ch. 65, on the Authentication of Deeds, rather than under ch. 170, relating to the recording of such papers, because, although it could with equal propriety be placed under the latter, yet, the majority of the matters treated of in the act indicated the former. The same may be said of [A]ct 1877, ch. 112, placed under this chapter.⁷¹

Annotations played an important part in understanding the statutes West Virginia adopted from Virginia. “The construction placed upon a statute by the courts is practically a part of the statute itself, and it is unsafe for a practitioner to give any opinion as to the effect of a statute without knowing what the courts have said concerning it.”⁷² Early editions of the West Virginia Code made heavy references to Virginia adjudicative decisions. It was well settled that “when one state adopts a statute of another state, it [also] adopts . . . the judicial construction of the statute in the state from which it is taken up to the time of its adoption.”⁷³ Thus, the annotations for several early editions contained annotations to Virginia, West Virginia, and English decisions.

Case law annotations changed considerably over the first few editions of the West Virginia Code, and properly annotating the West Virginia Code took multiple years to accomplish.⁷⁴ References to West Virginia and Virginia decisions were placed in the margins of the text, and considerable fault was found within the annotations.⁷⁵ Virginia cases were rarely modified within the Virginia Code, and some cases simply did not appear in the Code.⁷⁶ Consequently, no reference would be made to these cases in subsequent editions of the Virginia

⁷¹ Kelly, *supra* note 2, at v.

⁷² ANNOTATIONS, *supra* note 39, at 3.

⁷³ Cummings v. Armstrong, 11 S.E. 742, 744 (W. Va. 1890).

⁷⁴ Uriah Barnes, *Preface to WEST VIRGINIA CODE CONTAINING ALL STATUTES OF GENERAL NATURE NOW IN FORCE: WITH FULL AND COMPLETE ANNOTATIONS FROM STATE AND FEDERAL DECISIONS*, iii (Uriah Barnes ed., 1923).

⁷⁵ See Kelly, *supra* note 2.

⁷⁶ *Id.*

Code.⁷⁷ Thus, the West Virginia Code annotations would fail to mention those missing Virginia cases solely based on the fact that they were not mentioned in the Virginia Code. In addition, early versions of the West Virginia Code would simply make “references to the volumes and pages of the Virginia and West Virginia Reports.”⁷⁸ Therefore, “it could not [] be known from the Code what construction the courts had given to any statute which had been enacted.”⁷⁹ “To obtain this information it was necessary to resort to decisions themselves as found in the reports. . . .”⁸⁰ “[I]n many cases this entailed careful examination and extended research because of the many cases bearing on the same law, but different phases of it.”⁸¹ To alleviate this problem, later editions of the Code began employing “brief statements of the principles announced by the courts of [West Virginia] and Virginia” and their construction of the statutes in the annotations.⁸²

VII. EARLY VERSIONS OF THE CODE

To better grasp how the West Virginia Code developed, it is necessary to examine the early versions of the Code. The differences among these Code books sometimes varied greatly, and the Code during this time was, simply, inconsistent. From 1878 to 1930, new legislative acts and new revisers made each new volume an individualized distinct product. Practitioners of the time were sometimes left sorting through different versions of the Code to try and grasp what the law was on a certain subject matter. Some early versions were considerably more helpful than others. Moreover, some revisers of Code made valiant attempts at annotating the Code while others admittedly did not.

A. Revised Statutes of West Virginia of 1878

John Kelly of Wheeling, West Virginia, was the reviser of the first annotated version of the West Virginia Code in 1878.⁸³ This revision of the Code was formally based on West Virginia’s first Code book of 1868.⁸⁴ This version had 166 chapters arranged alphabetically. Out of the 166 chapters, only 58 remained untouched by the legislation from 1868 to 1878.⁸⁵ In this version of the

⁷⁷ *Id.*

⁷⁸ Hogg, *supra* note 4, at v.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ See Kelly, *supra* note 2, at v–vi.

⁸⁴ See *id.* at vi.

⁸⁵ *Id.* at v.

Code, Kelly attempted to capture the differences between the present law and all past enactments of the law; however, he found it difficult to decide under which headings to place certain enactments by the Legislature. Therefore, Kelly's version of the Code "made ample cross-references, so that if any matter [was] apparently misplaced," it could be "found in all the places where it could possibly be placed."⁸⁶ Kelly admittedly found fault and knew there would be inconsistencies with this annotation system because it was completely subjective.⁸⁷ The annotations within the Code of 1878 also contained references to Virginia and West Virginia adjudications.⁸⁸ The references to Virginia decisions weighed heavily upon this version of the West Virginia Code because West Virginia courts simply adopted the judicial construction of a statute if that statute was taken from another state.⁸⁹ Kelly also gave brief explanations of the cases in this version of the Code and did not simply place a citation to the volume and page number of the case reporters. This proved to be extremely helpful to practitioners, and this technique was later adopted in all modern versions of the Code.

B. Amended Code of 1884

The second revision of the Code was made in 1884. The reviser of this version of the Code was John Warth of Charleston, West Virginia.⁹⁰ Warth went on to update this version of the Code three more times in the 2nd, 3rd, and 4th editions of his version of the Code. Exactly like Kelly's 1878 revised Code, the 1884 revised Code was formally based on the Code of 1868.⁹¹ Therefore, practitioners, judges, and people of the day were exposed to two separate revised Code books based on the same original Code of 1868.

Unlike Kelly's 1878 revised annotated Code, Warth's 1884 version did not attempt to annotate the Code. There were no references in the margins to cases or former laws.⁹² This version of the Code was simply a compilation of the acts and statutes in force at the time. Warth did add new legislative acts in the Code by numbering them with Roman numerals. This enabled the user to easily identify which statutes were original and which statutes were newly enacted.

⁸⁶ *Id.* at vi.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ See Warth 1884, *supra* note 60, at 3.

⁹¹ *Id.*

⁹² John A. Warth, *Preface to THE CODE OF WEST VIRGINIA*, i (John A. Warth ed., 2d ed. 1887) [hereinafter Warth 1887].

1. Effects of the Newly Adopted Constitution

“In the year 1872 a new [C]onstitution for [West Virginia] was adopted, which made many changes necessary in statutory laws, which were speedily enacted.”⁹³ “In 1879, the Legislature proposed amendments to the new [C]onstitution,” which were ratified by the people in 1880.⁹⁴ These changes were mostly enacted as amendments to the Code and were scattered through the acts of the different legislative sessions. The changes were so numerous that it made researching and knowing the law in any one area virtually impossible.⁹⁵ Warth’s major contribution in the Code of 1884 was compiling all of the amendments made to the Code of 1868 and inserting them under the proper headings within the Code.

2. Warth’s Code, 2nd, 3rd, and 4th Editions

From 1887 to 1899, Warth revised and published what is known as the Code of West Virginia 2nd, 3rd, and 4th editions. In these editions of the Code, Warth added references in the margins to Virginia and West Virginia cases.⁹⁶ In addition, he also made notes in the margins to former laws on the same subject matter. “Where no reference to former laws appears . . . it [was] understood that the section or chapter is re-printed from the first edition.”⁹⁷ The annotations in all of the editions were found to be somewhat inadequate because Warth annotated these Code editions by simply placing a citation to the volume and page number of the Virginia and West Virginia reports. This practice made it impossible for users of the Code to ascertain what construction the courts had given to any particular statute. Practitioners were forced to examine and research the Virginia and West Virginia Reports to find the answers to these questions.

C. *The Annotated Code of 1905*

1. Decisions of the West Virginia and Virginia Courts of Last Resort

To alleviate the problem of practitioners not being able to ascertain what construction the court had given to any given statute, W. M. Justis, a lawyer from Richmond, Virginia, published the Annotations to the Code of West Virginia

⁹³ Warth 1884, *supra* note 60, at 3.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ John A. Warth, *Preface to THE CODE OF WEST VIRGINIA*, iii (John A. Warth ed., 3d ed. 1891).

⁹⁷ Warth 1887, *supra* note 92, at i.

from decisions of the courts of last resort in West Virginia and Virginia.⁹⁸ “The object of this book [was] to state in concise and classified form what the courts of last resort of West Virginia and Virginia have said in regard to the various sections of the West Virginia Code.”⁹⁹ This was the first real attempt to reconcile conflicting decisions or to state what the law should be in a certain area. “In many instances it appear[ed] that cases [had] been overruled without being mentioned in the opinion overruling them.”¹⁰⁰ “In other instances cases [were] specifically overruled in decisions which manifestly likewise overruled other cases not specified.”¹⁰¹ Justis attempted to point out these instances in this book.

In this work, Justis identified which Virginia and West Virginia statutes were identical.¹⁰² In contrast, if the two statutes were dissimilar in essential particulars, Justis made an annotation so as to not mislead the user.¹⁰³ This work saved practitioners the labor of researching numerous decisions of both states on any given statute. Justis noted that under some West Virginia Code sections “as many as two hundred cases [were] digested, and to investigate any point arising under [that] section would, without the aid of [his] work . . . necessitate the examination of all [those] cases.”¹⁰⁴ Future Code revisers acknowledged Justis’ annotations as the premiere work of its time.¹⁰⁵ Thus, his “[a]nnotations [were] in the hands of nearly all the members of the West Virginia bar”¹⁰⁶

D. West Publishing 1906

West Publishing prepared and published the 1906 version of the Code. West compilers labeled this edition as the 4th edition. This confused practitioners of the day because Warth had also published a 4th edition of the Code in 1899. Because of this confusion, practitioners referred to West’s version of the Code as the Code of 1906.¹⁰⁷ The West revisers simply followed the arrangement of Warth’s Code of 1899, “inserting many additional chapters, distinguished by Roman [numerals].”¹⁰⁸ This practice “considerably increase[ed] the size of the volume but greatly add[ed] to its convenient use by a practical grouping of the

⁹⁸ W. M. Justis, Jr., *Preface to* ANNOTATIONS TO CODE OF WEST VIRGINIA: FROM DECISIONS OF THE COURTS OF LAST RESORT OF WEST VIRGINIA AND VIRGINIA, 3 (W. M. Justis, Jr., ed., 1905).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ W. Publ’g Co., *Preface to* THE CODE OF WEST VIRGINIA, v (1906).

¹⁰⁶ *Id.*

¹⁰⁷ *See* Hogg, *supra* note 4, at v.

¹⁰⁸ *Id.*

new chapters and [the] employment of consecutive numerical sections”¹⁰⁹ This was also the first version of the Code to omit statutes that had been amended or repealed; therefore, practitioners using this Code book simply found all the statutes in force during that time on a certain subject.

In addition, exactly like Warth’s Code, this version of the Code was not annotated, “save by mere references to the volumes and pages of the Virginia and West Virginia Reports.”¹¹⁰ The compilers of this Code book referenced W. M. Justis’ annotations book and admitted that in order to properly annotate their Code, it would have doubled the amount of work and cost to the lawyer.¹¹¹

E. Hogg’s West Virginia Code Annotated 1914 & 1918 Supplement

Charles E. Hogg, of Point Pleasant, West Virginia, revised and published the 1914 version of the West Virginia Code and the 1918 supplement.¹¹² Hogg simply followed West’s version of the 1906 Code. Hogg commended West for its version of the Code and adopted it as his own.¹¹³ “No radical innovations [were] attempted in the preparation” of either editions of Hogg’s Code.¹¹⁴ The 1918 version of Hogg’s Code was meant to supplement the 1914 version. “New provisions which amend[ed] or supersede[d] existing laws [were] given the same numbers in the [s]upplement that the old laws bore in the original [1914] edition.”¹¹⁵ “Entirely new provisions [were] given fractional, compound, or lettered numbers (e.g., 3412 ½, 4376—1, 3534a) and placed in the titles and chapters to which their subject matter relate[d].”¹¹⁶ In addition to these variations, Hogg’s Code witnessed the first references to cases from the “Southeastern Reporter,” “Federal Reporter,” and “Supreme Court Reporter.”¹¹⁷

F. The Codes of 1923 & 1930

Uriah Barnes, of Charlestown, West Virginia, was the reviser of the 1923 version of the West Virginia Code.¹¹⁸ Barnes began his work in 1919, prior to

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ W. Publ’g Co., *supra* note 105, at v.

¹¹² Charles E. Hogg, *Preface to HOGG’S WEST VIRGINIA CODE ANNOTATED: SUPPLEMENT 1918 (1918)* [hereinafter HOGG 1918].

¹¹³ *See* Hogg, *supra* note 4, at vi.

¹¹⁴ *Id.*

¹¹⁵ HOGG 1918, *supra* note 112, at iii.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *See* Uriah Barnes, *Preface to OFFICIAL CODE OF WEST VIRGINIA: CONTAINING ALL STATUTES OF A GENERAL NATURE NOW IN EFFECT*, iv (Uriah Barnes ed., 1923).

West Virginia enacting legislation changing its codification system in 1921.¹¹⁹ Barnes completed his work two years after this new legislation, and work had already begun on completely transforming the Code. This version of the Code followed the same exact format as its predecessors. The 1923 Code had 166 chapters, exactly like all of the previous versions of the Code. Much like earlier revisers of the Code, Barnes found it extremely difficult to compile and annotate the Code.¹²⁰ In fact, Barnes acknowledged the process as “tedious,” “inaccurate,” and “inefficient.”¹²¹

1. Structure Revisions

To alleviate the inefficiency of compiling the Code, in 1921, the Legislature passed an act that changed how West Virginia codified its laws.¹²² The governor of West Virginia appointed the West Virginia University College of Law’s Dean and Faculty to undertake a 10-year project of recodifying the Code.¹²³ The project was unlike anything that came before it. This version of the Code “eliminat[ed] obsolete matter” and assembled proper chapters and headings.¹²⁴ By arranging the entire Code systematically, it divided the chapters by subject matter, which reduced the number of chapters from 166 to 63. The law school’s faculty painstakingly compared laws, analyzed parts of statutes that were repealed by implication, and improved statutory language. The faculty also annotated the Code by adding reviser’s notes at the end of nearly all the sections. These notes assisted practitioners with understanding the laws and the statutory language of the laws. The faculty also included a disposition of statutes table at the end of the book to aid practitioners in locating statutes from previous versions of the Code.¹²⁵ Furthermore, they created an in-depth index that modern versions of the Code still use today.

G. Present-Day Code

After West Virginia recodified the Code in 1930, the state hired the Michie Company in 1932. The Michie Company amended and supplemented the newly codified 1930 Code.¹²⁶ Over the next 30 years, the Michie Company was

¹¹⁹ *Id.* at iii.

¹²⁰ Barnes, *supra* note 74, at iii.

¹²¹ *Id.*

¹²² H.J. Res. 4, Extraordinary Sess. (W. Va. 1929).

¹²³ FINAL REPORT, *supra* note 1, at ix.

¹²⁴ CODIFICATION COMM’N, OFFICIAL CODE OF WEST VIRGINIA: CONTAINING ALL STATUTES OF A GENERAL NATURE NOW IN EFFECT v (1930).

¹²⁵ *See id.*

¹²⁶ The Michie Co., *Preface to THE WEST VIRGINIA CODE OF 1961*, iii (1961).

the sole reviser and publisher of the West Virginia Code. The West Virginia Code became known as “Michie’s.” It was the sole official version of the Code. In addition, the Michie Company employed “the Frank Shepard Company for the use of their West Virginia [c]itations in tracing citations to the annotated reports.”¹²⁷ The Michie Company annotated the West Virginia Code with decisions from the West Virginia Reports, Southeastern Reporter, United States Supreme Court, and also included cases from the Virginia Reports,¹²⁸ therefore, Virginia annotations were still being used in modern versions of the West Virginia Code. The Michie’s version of the Code was the “official” version of the Code until 1982 when the West Publishing Company began to publish the West Virginia Reports. The West Publishing Company also started publishing its own version of the West Virginia Code. Thus, West Virginia currently has two modern versions of the Code. One version of the Code is still published by the Michie Company, and the other version is published by the West Publishing Company. Neither one of these versions is considered the “official” version of the West Virginia Code, and practitioners can cite to either.¹²⁹

VIII. CONCLUSION

The West Virginia Code has a unique and storied past. It began as another state’s Code, but over the years, it took on its own identity. Early revisers labored over the Code, and it took many years to codify a single Code book. Without the hard work of these early revisers, it is safe to say the Code would not be where it is today. In addition, the passage of legislation in 1921 to change the Code’s codification system was a monumental act. The work of the West Virginia University College of Law’s faculty transformed a Code that was simply a compilation of acts into an official version of Code. This recodification cannot be understated. It removed all doubt as to what the laws were on a certain subject. Practitioners were not simply looking at a compilation of all the acts passed on a subject, they were now looking at the law itself. This work made it much easier for people to understand the laws as they exist in present time. The Michie Company further enhanced the Code by adding helpful annotations and the Shepard citation system, which is still currently employed in digital form. Today, anyone can easily access a copy of the West Virginia Code and understand the laws of West Virginia. That is in no small part due to all of the painstaking work of all the former revisers of the Code.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 300 tbl.T.1.3 (Columbia Law Review Ass’n et al. eds., 20th ed. 2015).

