



## University of Baltimore Law Forum

Volume 8  
Number 2 February, 1978

Article 19

2-1978

# The Revision of the Maryland Annotated Code

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### Recommended Citation

Hayes, Walter R. Jr. (1978) "The Revision of the Maryland Annotated Code," *University of Baltimore Law Forum*: Vol. 8 : No. 2 , Article 19.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol8/iss2/19>

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Fifth, those who condemned the Charter of the International Military Tribunal claimed the doctrine of Superior Orders was a complete defense to individual criminal responsibility; since those charged with war crimes were only acting in obedience to the orders of their military superiors. By definition, the Superior Orders doctrine shielded individuals from personal liability when they acted under the compulsion of a command given by their superiors. It was insisted that a rejection of the Superior Orders doctrine would wage havoc between the relations of a soldier or government official to his State. Anarchy might result if the individual placed his duty to the world community ahead of obedience to his government and set himself up as the judge of his obligations superior to the judgment of his government.

This final contention was dismissed as anathema to universal standards of humanitarian behavior which transcended the duty of obedience to national laws. As St. Thomas Aquinas stated, "Man is bound to obey secular rulers to the extent that the order of justice requires. If such rulers . . . command things to be done which are unjust, their subjects are not obliged to obey them. . .". The argument against the Superior Orders doctrine was one dictated by reason. The Nazi leaders had followed orders which were so barbarous and patently unlawful that they must or should have realized that their actions violated all humanitarian concepts ever espoused in international treaties or developed through custom on the laws of warfare. Clearly, whenever the illegality of an individual's actions are so blatant to him, an order from a superior cannot exculpate his guilt. Additionally, there was a large realm of freedom of choice open to the Nazi assassins; they did not obey due to justifiable fears of severe punishment or brutal execution. On the contrary, the voluminous records kept by the Nazi butchers, stating with meticulous precision their various tortures and slaughters, resembled progress reports. These incriminating documents were ostensibly kept by the Nazi leaders to prove their loyalty to Hitler. Undoubtedly these detailed manuscripts were preserved in

order to insure future opportunities for political advancement once Germany won the war. To permit such calculated and well documented depravity to evade punishment because of the technical, outdated doctrine of Superior Orders was inherently unreasonable. An acknowledgment of the Superior Orders doctrine could only serve as an obstruction to world order and peace. As Holland, the prominent twentieth century author stated, "Individuals offending against the laws of war are liable to such punishment as is proscribed by the military code of the belligerent into whose hands they may fall, or, in default of such codes, then to such punishment as may be ordered in accordance with the laws and usages of war, by a military court." Accordingly, Article 8 of the Charter for the International Military Tribunal stated, "The fact that the defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires."

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Individual Nazi criminals were held responsible for their actions because, realistically, no good can result from the punishment of an entire State for its conduct during wartime. Such punishment of a State only sustains deep feelings of hostility, which later may be used by a ruthless leader to reunite the State in seeking revenge by waging aggressive war. This is precisely what occurred as a repercussion of the unsound reparation policies punishing Germany after World War I. In essence, the Germans felt the Treaty of Versailles was a cruel, humiliating peace and Hitler skillfully played upon this national grievance in appealing to the people's sympathies.

The psychological effect of such grisly mass extermination, impressed upon the world the need to firmly resolve the issue of aggressive warfare by setting a precedent cautioning future leaders that they would never again be able to transgress international law by such an unholy conquest. Retrospectively, the lack of strength of the League of Nations, ex-

hibited by its failure to enforce international responsibilities, and the timidity of individual States to oppose outright aggression, leads to the inescapable conclusion that the only viable means of deterrence is the specific designation of aggressive warfare as a criminal, punishable offense against international law.

## The Revision of The Maryland Annotated Code

by Walter R. Hayes, Jr.

After you safely wend your way to the sanctuary of clean air and free breathing on the west side of our library, your gaze will no doubt fall from time to time on the Md. Annotated Code. Next to these tomes, a new creature is breeding, shedding basic black for a brighter coat of maroon. No, this is not a case of reverse discrimination. What lies before you is the revised edition of the Annotated Code of Maryland.

Article III, section 17 of the Md. Constitution of 1851, required the legislature "to appoint 2 commissioners learned in the law, to revise and codify the laws of this state". From this decree was born the code of 1860.

In 1886 another bulk revision of the code was ordered by the legislature. This code was adopted by chapter 74, Acts of 1888 as the "Code of public laws and code of public local laws of this state, respectively, in lieu of and as substitute for all public general law and public local law of this state in force on the first Wednesday of January in the year 1888". It is this endeavor which is housed in the black volumes of the Annotated Code. It contains 101 articles, which are, according to the revisors' manual, "arranged alphabetically with little apparent effort



Photo courtesy of John Clark Mayden

to provide for topical organization or to utilize articles of equivalent scope and importance". It was partially updated in 1957.

On July 16, 1970, Governor Marvin Mandel initiated the Governor's Commission to Revise the Annotated Code, See, Ann Code Art. 40 § 53. The Governor felt this commission was necessary because "a great many statutes had been added, frequently with little or no reference to existing articles of the code or to logical relationship with existing statutes". This had caused the code to lose whatever "rational cohesiveness it once may have had" resulting in a code which is very cumbersome to use. Thus, with the first meeting of the Commission, on September 18, 1970, was begun the first bulk revision of the Md. Code in 82 years.

State Treasurer and former Senate President, William James is the chairman of the commission and has been with it since its inception. There are two vice-chairmen ex-officio, Senate President Steny Hoyer and Speaker of the House, John Hanson Briscoe. The current director is Geoffrey Cant. There are 34 commissioners including the immediate past director, Avery Aisenstark and our own Dean Rafalko. Legislative consultants, including State Senator John Carrol Byrnes, add their expertise to the work done by the revisers and supporting staff.

Mr. Cant is also the head Revisor of Statutes, overseeing a staff of 15, including 8 revisors. He has been at this job for 4 months having replaced Avery

Aisenstark, who had been director for 3 years. Mr. Aisenstark was an assistant legislative officer on the Governor's staff before taking the reins as director. He left reluctantly 4 months ago to continue private practise; but has stayed on as a commissioner.

The University of Baltimore is represented on the commission not only by Dean Rafalco, but also by two part time instructors; Paul Sandler, Esq. and Robert Thiebolt, Esq. All commissioners serve without recompense except for per diem expenses, attribution in the volumes starting with Transportation, and most importantly, a profound sense of accomplishment.

he 101 articles of the old code have been partially revised, and are being organized by area of law, instead of alphabetically, into 21 volumes, 8 of which have been completed. Agriculture, Natural Resources and Courts & Judicial Procedure became law in 1973 during a special session of the legislature and were quickly followed by Commercial Law, Corporations & Associations, Estates & Trusts, and Real Property. Transportation was introduced as Senate Bill #40 and House Bill #104, and was enacted as Chapters 14 and 15 of the 1977 Session Laws. Education is slated for final review in this coming session, while Health is coming down the home stretch toward completion in 1979.

It should be noted that Md. now has two codes. The old will not give way to the new until the revised code is com-

pleted. Then the legislature will vote to replace the old, gnarled limbs with the sproutings of the Governor's Commission. Of course, when conflicts arise between the two, courts will follow the new revised code. The process is such, that while one volume is being harvested, another is being pruned for next year while still a third is taking root.

The staff and revisers, under the supervision of the director, prepare a first draft of an article. That article is then referred to the proper committee which recommends changes to the commission as a whole.

Expertise is offered by various professionals in the fields pertaining to the code and by legislative consultants from the Senate and House. The committees look to professionals in the community for advice and their recommendations are included in the committee's report. For instance, the Education article was viewed by members of the Balto. Co. School Board. The legislative consultants make sure only technical changes occur, since substantive change is the prerogative of the legislature.

The commission's task is to change archaic terms into modern English, note unconstitutional sections, point out inconsistencies for legislative surgery and to flag obsolete portions for burial. One of the code's primary uses is as a research tool. By classifying the law under topics instead of having points of one issue spread all over the code, research will become quicker and more thorough.

The Revisor's Notes should facilitate the use of the code. They are extensive notes placed throughout the annotation that describe the changes from the old code text, cite the previous area in the code and explain why these changes took place. They also cite case law and give in depth explanations of the sections of the Annotated Code. They are not law, but they have a place similar to legislative history. Since most of the committee meetings of our legislature are not recorded, these notes may tend to be looked to in interpreting the code.

After various input is incorporated into the draft, the committee sends it to the full commission which is composed of lawyers, judges and law professors appointed by the Governor. They refine it as a group and then it is prepared in bill form and introduced into the legislature where a similar screening takes place before passage.

Articles yet to come are Business Regulations, Criminal Law, Elections, Family Law, General Provisions, Local Government, Occupations & Professions, Public Safety, Social Services, State Government and Taxation & Revenue.

The basic organizational format of the new code, which will now be uniform, is to divide the statute Law into: article, title, subtitle, and section—e.g. the Transportation Article, title 7, subtitle 1, Section 1, will read: Transportation 7-101.

Through a loophole in the rule against perpetuities, it has been decided that the Revisor of Statutes will be a permanent position, with responsibility of maintaining the revised code and screening new legislation as it becomes law. The commission itself will disband when the final Article passes muster. Deadline for completion was 1980, but this has been extended at least to 1984.

This article is of course only a minor survey of the enormous undertaking involved in the code's revision. General opinion seems to be that there is a real need for this endeavor and that it will make the law accessible, readable and consistent. The commission appears to be doing an extremely complete and competent job.

So take heart all of you who have contemplated taking a window for a door. At this very moment, there is a group of highly dedicated individuals out there actually making all our lives a little more reasonable!

*Thanks to Avery Aisenstark, Geoffrey Cant, Jack Kenner, Senator John Carrol Byrnes, Dean Walter Rafalko, William Wilburn, and Laurie Bortz for their help in the preparation of this article.*

## New Legislation Needed

by Mary Jean Lopardo

The purpose of this article is to illustrate the necessity for implementing new legislation in the area of Maryland's motor vehicle inspection laws. This article will discuss the inadequacies of Maryland's existing laws by explaining: 1) how they actually contribute toward higher accident rates caused by motor vehicle equipment failures and 2) how they do not comply with the 1966 Federal Highway Safety Act. This article will further propose an alternative mode of legislation, which if enacted, would remedy the evils inherent in Maryland's present motor vehicle inspection laws.

The Transportation Article of the Annotated Code of Maryland, Title 23, "Vehicle Laws—Inspection of Used Vehicles and Warnings for Defective Equipment" requires that when a used vehicle is sold, the owner must present it for inspection at a licensed inspection station. If the vehicle passes inspection, the owner will be issued a certificate. The new owner must then obtain the certificate before the vehicle can be re-registered in his name.

This existing Maryland law was revised in 1977, and is jointly administered by the Motor Vehicle Administration and the Auto Safety Enforcement Division (ASED) of the State Police. The Automotive Safety Enforcement Division is

authorized to approve as official inspection stations: auto dealers, garages and gas stations. All official inspection stations must have a qualified mechanic available during working hours who has attended a school of instruction and meets the following requirements: be at least eighteen years old, have a minimum of twelve months motor vehicle repair experience, have passed the written exam given by the State Police, be able to perform all required inspection procedures, have an operator's license, and be capable of road testing the vehicle.

Licensed facilities must also pass certain requirements. They must be open to the general public during regular business hours, and must meet space requirements, and have the necessary equipment to carry out the inspection. There are presently about 2,000 authorized inspection stations in Maryland.

The average time for inspection is approximately one hour and costs the owner about six dollars.

"The fee for inspections shall be based on the time for inspection at the normal hourly flat rate for similar mechanical work. The inspection time should generally average approximately one hour."

In addition to the actual cost of the inspection, the vehicle owner must pay two dollars at the time the title is transferred. This fee serves to finance the inspection program.

Maryland law also provides for on-the-road inspection of vehicles by any Maryland law officer. When a vehicle is observed that fails to meet minimum safety requirements, a Safety Equipment Repair Order is issued. The defective equipment must be repaired within ten days and returned to the inspection station for reinspection. A notice of suspension of the registration plates is issued if the owner fails to comply with the repair order.

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The basic problem with the existing Maryland law is that it has resulted in the inspection of only 15% of all registered vehicles. Under the existing law, a car is inspected only when sold. Therefore, if a