The Codes and Code Makers of Washington, 1889-1937

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THE CODES AND CODE MAKERS OF WASHINGTON, 1889-1937*

Under the provisions of the Organic Act of Washington Territory, Congress had agreed to provide for the publication of the territorial statutes; hence, so long as Congress was willing to assume the cost of the publication of these territorial laws under the guise of a codification of the statutes, but little attention toward the preparation of a compilation, in the form in which this term is generally understood, was likely.1 The agitation for statutory reform, which consumed no small part of the time of the various territorial legislative sessions, was not motivated by a hope for a code of the modern type, although that germ might almost be found in the legislative restrictions with which the Code of 1881 was surrounded. This perennial demand for a new territorial code was, on the contrary, the outburst of an enthusiasm which demanded something about which to talk. The simple territorial form of government required no complex system of laws; hence, it was not until code revision had become an obligation of the complicated machinery of statehood that statutory compilations were to acquire that permanence of form with which the bar of today is familiar.

I.

Although the uncompleted report prepared by the Code Commission of 1888 failed to accomplish the objective for which the framers of the act2 creating the commission had hoped, it did present, as the basis of the codification which was to follow, a plan and a form which had been borrowed both from the Code Commission Act of November 9, 18773 and from the Code of 1881. Through the medium of this plan the

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*This is the third and final article in a series by the author dealing with the history of the codes and statutes of Washington. The first, "Code Making in Early Oregon," appeared in the January, 1936 issue of The Pacific Northwest Quarterly (XXVII, 3-33); the January, 1937 issue included the second, "Compiling the Territorial Codes of Washington" (XXVIII, 3-54).

1 Revised Statutes of the United States . . . (second edition, Washington, 1878), section 1887.
groundwork was laid for the first code of laws to be published subsequent to statehood.

The time allotted to the Code Commission of 1888 for the preparation of a code of laws was insufficient even at the hands of four of the most capable lawyers of the territory, who, taken as a whole, were said to have been eminently satisfactory for the task. The first appointees to this commission were H. J. Snively, of Yakima, J. F. Parks, of Spokane, J. A. Wickersham, of Tacoma, and W. H. Doolittle, of Colfax. On March 23, 1888 the commission met at the Capitol and organized by selecting Mr. Snively as chairman. The work was begun and was carried forward until the death of Mr. Parks in June of the same year, when, upon the earnest solicitation of Messrs. J. B. Allen, T. J. Anders, T. H. Brents, and B. L. Sharpstein, of the Walla Walla bar, Governor Semple selected A. E. Isham, of that city, as his successor. Later (May 4), Mr. Wickersham withdrew, and, after having first offered the appointment to J. W. Robinson of Olympia, the Governor finally prevailed upon

4 Olympia Washington Standard, February 24, 1888.
5 Henry J. Snively was a prominent attorney of Yakima. Born in Taylor County, West Virginia, August, 1856, he came to Washington in 1885. At one time he was prosecuting attorney for the counties of Kittitas and Yakima. When Washington became a state he was a candidate for attorney general at the first state election, but was defeated. He served in the first state legislature, 1889-90. He died, November 27, 1930.

Alfred Isham was a prominent figure in Walla Walla local politics and an outstanding member of its bar. Born in Ohio in 1843, he was educated at Oberlin College. In later years he moved to Seattle and practiced law in that city. He died about 1898.

William H. Doolittle was born in Erie County, Pennsylvania, November, 1849. He was at one time a member of the state legislature of Nebraska, and served in the Civil War. In 1880 he moved to Colfax, Washington Territory, but in 1889 moved to Tacoma. Mr. Doolittle served two terms in Congress, from 1892 to 1896, when he was defeated by James Hamilton Lewis. His death occurred on February 26, 1914.

Thomas H. Cann was born at Belleville, Illinois, July 18, 1833. At the age of twenty he emigrated to California, and worked in the gold mines. Later (1860), he joined the gold rush to the Snake River; later still, he became a Wells-Fargo express carrier. In 1870 he was made land commissioner of Oregon, and, having studied law during the eight years in that office, was admitted to the bar at Salem in 1878. He moved to Seattle in 1880 and began the practice of law. He served as justice of the peace from 1898 to 1908. He died, October 25, 1915.

James F. Parks, a young attorney from Spokane Falls, committed suicide in Portland, Oregon, June 12, 1888. He was unmarried and about thirty years of age. Nothing else is known about him.

Joseph W. Robinson was a native of Ohio, born in 1855. He came to Washington in 1883 following his graduation from the University of Michigan Law School. In the years just before statehood he was prosecuting attorney for the third judicial district and later was appointed judge of the Superior Court of Thurston County. He moved to Seattle in 1909 and practiced law in that city until his death on November 3, 1937 (subsequent to the writing of this article).
T. H. Cann, of Seattle, to accept the position. The selection of Mr. Cann was unfortunate because of a lack of fitness for the task which was later confirmed by his failure to add anything of importance to the work. In fact, his selection destroyed whatever confidence many people may have had in the need for such a commission.

According to the Olympia *Washington Standard*, April 19, 1889, the selection of Mr. Robinson likewise failed to “suit the rank and file” of the citizens. This criticism by what was considered to be the leading newspaper of the capital, biased politically as it probably was, may have had much to do with Mr. Robinson’s refusal of the office. Mr. Robinson, however, has said that his law practice did not warrant the sacrifice in time required by the work, and that he had felt that he could exercise a more helpful part by sitting on the sidelines and assisting in composing the differences in the views of the commissioners.

When Mr. Doolittle later moved his residence from Colfax to Tacoma, the commission became evenly divided, with two members from the west side and two from the east side of the state. Under the act creating the commission, the Governor was required to divide its political complexion between the two major parties. This he did, unaware of the circumstances which later brought the Republican members to the west side and the Democratic members to the east side, thereby dividing the commission both politically and geographically. While the politics of the members probably did not seriously retard their deliberations, it is not improbable that the geographical division may have had much to do with the fact that the report of the commission was incomplete when the legislative session of 1889-1890 convened.

At one of the early meetings of the commission, according to the *Seattle Post-Intelligencer* of November 28, 1888, the codification of the civil and criminal acts was assigned to Messrs. Doolittle and Snively, except for that portion which related to attachments, which was referred to Mr. Isham; the probate court practice act, and the laws relating to marriage and divorce were given to Mr. Wickersham; the laws relating to mu-
nicipal corporations, and liens were assigned to Mr. Doolittle, while those pertaining to justice court, mining, corporations, physicians and surgeons, and bills and notes were passed to Mr. Isham. Mr. Snively completed the assignments by undertaking the codification of the statutes on chattel mortgages, and on the basis of these assignments the work of codification proceeded.

II.

In the summer of 1889 the report of the convention called to draft a constitution stimulated hopes that statehood was near. If statehood was to be obtained within a few months, that part of the work of codification completed by that time would be rendered relatively useless; hence, the common opinion was that the code ought to be so drafted as to take cognizance of such changes in political and governmental status as were certain to be made. Much work on the code had in fact been done when the Constitutional Convention adjourned, so that before the public the leading question was: Should not the commissioners now take statehood for granted and prepare a code along that line, notwithstanding the fact that Congress had not as yet passed an enabling act, and notwithstanding the lack of any assurance that the people finally would accept the constitution which had been prepared by the Constitutional Convention?

Faced by this dilemma, the commissioners counselled among themselves as to whether they should continue their work on the code. It has been said that they even went so far as to seek the advice of "all sorts of prominent people." Just who these prominent people were the correspondent of the Tacoma Ledger does not reveal, but after receiving such advice, he recites that they decided to continue in their efforts.

Although incomplete at the time the legislature convened in November, 1889, the report of the commission, consisting of

*Tacoma (Wash.) Ledger, December 2, 1889.
nine packages, was nevertheless submitted. In a communication to the legislature dated November 20, the commissioners, speaking through Mr. Doolittle, said:

We have endeavored to assist the legislature, as much as laid in our power, to shorten their arduous labors and their necessary long and tiresome sessions, and we confidently believe that the legislature can take up our work and complete it in much less time than would have been required if the work had been done by a commission under the state government. The Commission most respectfully suggests that a joint committee be appointed to examine the work and report to the legislature what action they may think best to take, feeling assured that upon investigation they will find that the remedial and penal codes are fully prepared and that a very large proportion of the work on the political and civil codes has been completed.

When the report of the code commission reached the House (November 20, 1889), the legislators were in a quandary as to what disposition should be made of it, and accordingly, for the time being, laid it on the table. Evidently the House was unsympathetic toward it, because on the next day a dispatch to the Ledger read as follows:

The general subject of existing laws is creating a good deal of outside dissension, . . . and there is considerable strength in the suggestion that only such laws, as they stand, be continued in force, and that an able commission of three be appointed to prepare an able code for this state. In this connection the two most prominent names mentioned for commissioners are W. L. Hill of King County and George Turner of Spokane County.

The use of the word "able" both in relation to the commission and to a code may not have been entirely accidental but

7 House Joint Resolution, no. 12, adopted by the House on December 17 and concurred in by the Senate on December 18, placed this manuscript in the hands of the Secretary of State. Recent search has failed to locate it. (See Washington House Journal, 1889-90, 185 and 194, respectively.) It is not unlikely that the report of the Code Commission was turned over to Mr. Hill, because in his offer to the legislature he stated that he would expect to be "allowed to make such use as seems desirable of the work reported by the late territorial code commission." The legislature, having accepted his offer, thereby impliedly sanctioned the use of the material by Mr. Hill. Parts of the tentative drafts by members of the commission are now in the University of Washington Law Library.
8 Tacoma Ledger, November 20, 1889.
10 Judge Turner had been a member of the Supreme Court from 1884 to 1887.
11 Tacoma Ledger, November 22, 1889.
may have reflected the sentiment of the members toward the work of the Code Commission of 1888.

Before any action had been taken with regard to the report of the code commission, Mr. John D. Geoghegan, on November 23, introduced a bill in the House providing for the appointment of a new code commission to prepare a code similar to the code of California and to make use, so far as possible, of the work of the Code Commission of 1888.

Two days later (November 25, 1889) the report of the code commission was taken from the table and read to the House. After considerable discussion the legislature approved a resolution whereby the report was to be referred to a joint committee which was "to examine said work generally, and to report to the legislature the best method of disposing of the same."\(^{12}\) This committee held hearings on the code and called the commissioners to appear and explain their work. Doubtless the commissioners believed that the legislature would grant an extension of time in which to complete their work. In defending their work, they were reported as having said at a hearing on November 30 that while only a part of the work had been submitted, they were ready to submit the remainder at any time. Mr. Doolittle explained that in the remedial code the form of the California code had been largely followed, and, in reply to the questions, he stated that the remedial code had been prepared by him after he had become satisfied that the constitution was to be adopted. Mr. Snively, he said, had prepared the penal code, Mr. Wickersham had been at work on the probate portion, and Mr. Isham had been at work on the civil and political portions. Mr. Isham had, in addition, prepared a justice practice act which they felt was so much better than the California form that they hoped it would be inserted.

Mr. Snively was then called upon to explain the methods of the work of the commission. He stated that they had chosen the analytical form, such as was originally used by Blackstone, and which was in use in the codes of several of the states, in preference to that of the alphabetical form of arrangement.

They had adhered as closely as possible to the existing laws of Washington Territory, consolidating the statutes, supplying the omissions where it was necessary to do so, and changing the positions of chapters only where a different arrangement was desirable. Except in a few cases, as he stated, they had not experimented in the making of new statutes.

Representative S. C. Herren then asked the commissioners if any estimate had been made as to the probable size of the code. Mr. Doolittle could not say, but Mr. Snively thought it would not be as large as the code then in use in Idaho. Mr. Isham expressed as his opinion that the completed volumes, including the enactments of the legislative session of 1889-1890, would be from eight to nine hundred pages in length.

The nine volumes of the report presented a formidable task. The commissioners were asked how much time would be required to go through them, and after some comparison of opinion it appeared that two weeks of steady work would enable the committee to read them once. This was not a "pleasant" prospect, but they faced it, and immediately started to examine the remedial code.

The committee had been instructed by the legislature to receive the report, but it was in doubt as to what "receiving the report" meant, and whether the instruction would involve further expense to the state. Mr. Snively, however, advised the committee that the commissioners had each received such compensation as had been appropriated for the purpose of paying them for their services, and that they had no further claims to submit, except for their attendance upon the present session of the legislature. It being thus understood that the commissioners had no claims upon the papers, and no further bill to submit, the reading began. Representative John D. Geoghegan bravely volunteered to read for half an hour. Before many minutes Representative S. C. Herren said this would never accomplish anything, and suggested that each man take home a volume and read it there and report his conclusion and criticism to a subsequent meeting. This the committee at last decided to do.
While the report was still in the hands of the joint committee, the Tacoma Ledger commented editorially that it is to be presumed that the commission has done a great deal of useful work which the legislature should make available in providing laws for the state. The question was, how shall it be done? Said the editor:

The natural course, would be to refer it to the judiciary committees of the two houses, which could then arrange a joint committee to review the work of the Commission and report to the legislature. But the work of revision and codification is one of so much importance, and it is so necessary that no time should be wasted in enacting the laws thus revised and codified, that we think it would be well for the legislature to adopt a joint resolution providing for a joint committee on the code to consist of three members for each house; and that this committee be authorized to invite the judges of the supreme court to appear as advisory counsel in preparing a code of laws.

At any rate we believe that the judges should take hold of the work at once under some arrangement with a committee of the legislature, which should make available the work of the Code Commission. The commissioners of course should appear before the committee and interpret their work. If the arrangement we suggest is promptly adopted, the work can all be done this month. At present, the judges have nothing to do and will have no official duties before the second day in January when the supreme court opens in Olympia.

Such a committee with the judges and the code commissioners could economize in time by subdividing and working separately on different subjects of the code, and at the conclusion of the revision and codification, the committee will have a good body of laws to report to the legislature.18

The joint legislative committee14 reported back to the legislature on December 11, 1889. Its report stated that several meetings had been held at which the members had compared notes (portions of the manuscript had been previously distributed to the various members for their examination and consideration), discussed the compilation, and had finally come to the unanimous conclusion "that the work of the said commission was not in shape to be presented to the legislature, to be acted

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18 Tacoma Ledger, December 2, 1889.
upon and adopted at this time, and that it would take several months of the time of that body to complete the work, if it could be done at all, in a satisfactory manner, in a body so large."

The bases upon which the committee arrived at its decision cannot now be determined. The report of the committee showed that the statutes had been arranged and compiled under the captions, "Civil," "Penal," "Remedial," and "Political," and in almost the same manner as the Code of 1881, and the code commission reports prior thereto. The time required to have completed it would unlikely have been longer than that which was required to complete the Code of 1881, which necessitated an extra as well as a regular session, nor longer than the time required later to adopt the Hill Code of 1891. While serious defects, perhaps present in the compilation, may properly have justified the committee's action, it is not improbable that it was political prejudice that prompted the committee to describe the uncompleted compilation as presenting an "embarrassing situation."

It is not difficult to see in the action of the joint committee the reflection of a positive and unequivocal bias, if not in fact a definite unfriendliness toward the Code Commission of 1888 and its work. The criticism of the commission and its work began sometime before the report of the joint committee was submitted. As early as November 29, 1889, the Washington Standard hinted at the disfavor which the work of the commission was receiving and pleaded for a fair deal. This comment was not explicit concerning the facts upon which the trouble rested but merely stated:

As there has been manifested in certain quarters a disposition to disparage the work of the Code Commission, without even a casual examination of its merits, we deem that some reference to the gentlemen composing the committee and their adaptation to the task may not be inappropriate at this time. Surely the careful work of such men is worthy of the calm and deliberate consideration of the legislature.

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15 Wash. House Journal, 1889-90, 149. It took the legislature fully as long to consider the Hill Code at the next session.

16 Ibid.

17 Then follows a statement of the biographical facts concerning the commissioners, omitting, however, references to Mr. Cann.
Within the week following the submission of the joint committee's report, the editor of the *Washington Standard* again commented caustically concerning this legislative attitude:

The legislature seems in a fair way to rid itself of the subject of much discontent, by ignoring entirely the work of the Code Commission and employing W. Lair Hill to make a new code to be submitted to the next legislature. This is a virtual acknowledgment that the combined wisdom of 106 Solons is inadequate to adopt a code of laws carefully prepared by three lawyers of acknowledged reputation. They propose, however, to place their successors under the necessity of passing upon the work of one man at a session of limited length.

What was the reason for this disparagement, indifference, prejudice, and discontent over the work of "three lawyers of acknowledged reputation"? The passage of a half century has almost consumed the answer; even to Judge Robinson, who has stated that he played an important but somewhat silent part in this interesting historical drama, the events were almost forgotten. When asked concerning these reasons, Judge Robinson characterized the problem as a complicated one growing out of many petty jealousies which he said continued to grow until they resulted in much personal bitterness. The proposed code was being prepared for a new state. Many people wanted provisions incorporated to suit their individual ideas, others feared the inclusion of such provisions, while none seemed to understand just what a code for a new state should include. The proposed code was thought to contemplate changes in the forms of the governmental agencies, which its reactionary critics did not want, and without doubt it did contain features which the legislature did not want.

To this internal squabble was added the embarrassment of newspaper ridicule. Such derision was not alone confined to the columns of the local press, but, as Judge Robinson has stated, it found its way into the newspapers of other states, which took advantage of the opportunity to banter and lampoon the legislators, to their personal chagrin. Much of this raillery was fair-

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18 Again the editor ignores Mr. Cann or does not wish to regard him as a lawyer of "acknowledged reputation."
ly attributable to Mr. Snively, who, as chairman of the commission, acted as its spokesman. Mr. Snively frequently visited in Portland, Oregon, where he talked with local politicians, and these visits regularly became the occasions for newspaper stories featuring the troubles of the Washington legislators. The entire squabble could not have been otherwise than very embarrassing to Mr. Snively, who, as a member of that first state legislature, was constantly called upon to defend his code and to justify the work of the commission upon which he had served.

Political interest centered so strongly around the Code Commission of 1888 that its work might easily have been an issue of the campaign for legislative seats in the first state legislature. Mr. Hill had many friends in the legislature, but he also had some enemies. While his supporters were determined to obtain the job for him, other members were equally determined to prevent him from getting it. There was some talk around the legislature about asking three judges to assist in disposing of the code issue. Other members discussed the qualifications of Mr. George Turner of Spokane, a former justice of the Territorial Supreme Court, in considering a possible substitute for Judge Hill. Those who opposed Mr. Hill were later able to increase their strength almost to the point of defeating his appointment. Those legislators who were friendly toward Mr. Hill were openly hostile toward the Code Commission of 1888. This was because they wanted to give Mr. Hill a job, and, as Judge Robinson has stated, they openly declared this to be a fact. In fairness to Mr. Hill, it should be said that he was not prompted entirely by financial motives in accepting the responsibility. He had been urged to come to Washington in order to perform this task, and, impliedly at least, had been given to believe that he would be appointed to the office of code commissioner. He felt that an opportunity existed for constructive service in a field that appealed to him. Perhaps a certain amount of self-esteem prompted his action, but his motives were entirely unselfish, and, in fact, his son, Judge E. Coke Hill, has said that his father lost money as a result of the venture.
After he had left the room following his first conference with the joint legislative committee on December 12, 1889, the reporter for the Tacoma Ledger wrote that the joint committee adjourned amid a general murmur of assent that W. Lair Hill had made the state a most advantageous offer, but that "he would never grow rich in his profession when he does so much for so little money."

III.

In language which might singularly be descriptive of the present New Deal, Lieutenant Governor Charles E. Laughton in his inaugural address before the first state legislative session said, in part:

"Your constituents await with anxious solicitude such wise and liberal enactments as may be necessary to develop, foster, encourage and protect the varied and marvelous national resources with which we are so abundantly blessed. They look for ample and thoughtful legislation in the formulating of a code of laws, such as will insure harmony between and encouragement to both labor and capital, and which will be applicable to the changing needs and conditions of our growing commerce, our diversified manufactures with their collateral interests, and the rapidly increasing population of this young and vigorous commonwealth."19

The task of code-making which the Governor had in mind was apparently something quite different from the codification upon which the code commissioners had been working, and very much unlike the code which finally resulted from the work of that first state legislative session. The idealism of code-making and statute revision is seldom found in those codes of practical character which are designed primarily for everyday use. In this respect the task of practical code-making differs greatly from those juristic and philosophical codifications typified by such codifiers as Tribonius, Bentham, Livingston, and Field.

The joint legislative committee could not have hoped to perfect the idealistic compilation which the Lieutenant Governor had suggested to be needed, but their letter to W. Lair

Hill, of Seattle, dated December 9, 1889, might be regarded as evidence of their desire to procure the services of a codifier whose work could be classed as a scientific approach to this ideal. That he failed in this respect is now the generally accepted opinion. In their report to the legislature, the joint committee characterized Mr. Hill as "an able lawyer of this state, the gentleman who compiled, arranged and annotated the laws of Oregon, and who has a wide experience in these matters. . . ." The committee sought the advice of Mr. Hill as to the time required to complete a code, the probable cost thereof; and whether he would consent to undertake the work, and, if so, his terms and price.

In reply to this inquiry, Mr. Hill wrote the committee on the same day (apparently he was close at hand) that he would be willing to undertake the work of compiling, arranging, annotating, and indexing the statutes, and of correcting omissions and defects therein, but that a year would be required to complete the work. His price would be $16,000, payable in a prescribed manner, which price was to include a certain number of copies of the printed code for the use of the state.

When the joint committee reconvened that same evening (December 9, 1889), there were present, in addition to the committee, Messrs. Snively, Isham, and Hill. Mr. Hill had gone somewhat hesitatingly and then only in response to an invitation from the entire committee. Senator John R. Kinnear, as

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20 William Lair Hill was born in Tennessee in 1838 within sight of what afterwards became the famous battlefield of Shiloh. When he was 15 years old, his parents emigrated to Oregon, where Mr. Hill studied at McMinnville College. At the same time he campaigned against and helped to defeat the slavery plank in the proposed constitution for Oregon. Later he studied law in the office of George H. Williams and was admitted to practice in 1861. In 1863 he was a partner with Addison C. Gibbs in the practice of law. The next year he became interested in the publication of the Daily Oregon Union, but it proved a failure. In 1865 he was appointed judge of Grant County, but he held this position for only two years, when he returned to his practice in Portland. From 1872 to 1877 he was editor of the Oregonian and continued his practice as well. When his health broke, he went to The Dalles for a rest. Here he met and prepared E. P. Mays for the bar, and when the lad was admitted in 1880, they formed a partnership which continued until 1886, when Mr. Hill removed to San Francisco to look after the publication of the first edition of his Oregon code. At this time he opened a law office in Oakland. When it became apparent that a codification of the laws of Washington was impending, he moved to Seattle and was at once made code commissioner. After completing this task he revised his code for Oregon (1892), and not long thereafter returned to Oakland, where he continued to reside until his death on February 24, 1924.

21 Wash. House Journal, 1889-90, 149.
chairman, called the meeting to order, and, at the suggestion of Senator George T. Thompson, Mr. Snively addressed the committee\textsuperscript{22} and urged a critical examination of the commission's remedial code, believing that after such an examination the committee would find it to be acceptable. On the motion of Representative Herren, the chairman then asked Mr. Hill to give some suggestions concerning the problem of codification, and to amplify the contents of his letter to the committee. This Mr. Hill was prepared to do and stated that since the territory had now become a state, it was known that the laws would require revision and very considerable additions. Lawyers had discussed the situation, he said, and he, among the rest, had given the matter considerable thought. He did not wish to be understood as suggesting that any part of the report of the code commissioners should be rejected, because he had not seen it; but, if a general revision was desired, the amount of work required to be done would be the same, since the work of the code commission could not be used and the project would have to be done over again. Continuing, he said:

All codes have had pretty much a common basis, namely, the New York Code. Some states have almost precisely the same code as New York, such as Dakota and California; the state farthest away from it is Indiana. Under our system of courts the remedial codes of those states which follow New York very closely will be just as easily adopted as that of California.

He felt that the problem was a simple one in Washington because the \textit{Code of 1881} could be used as a basis, without the necessity of going any farther back. In making this assertion, he obviously was unaware of the faults of the \textit{Code of 1881} or was indifferent toward them. The work, he said, could not be done in a year by three men, but he felt sure it could be done in that time by one man.\textsuperscript{23}

At the conclusion of this hearing the committee voted unanimously to recommend to the legislature the adoption of

\textsuperscript{22} Tacoma Ledger, December 11, 1889.

\textsuperscript{23} In reality he spent a year in making the code and employed two others to help him in addition to the work which Mr. W. S. Church of San Francisco, representing the Bancroft-Whitney Co., did upon it.
Mr. Hill's proposal which they had already drafted into bill form. The report of the committee stated that it had "carefully considered Mr. Hill's communication, and was favorably impressed therewith, and it is the unanimous judgment of the committee that the legislature should promptly accept his terms for providing a complete code."  

The bill submitted to both houses by their joint committee did not have an easy passage. In fact, at one time it seemed almost doomed to failure. Finally, after a month of debate the bill was passed (January 17, 1890). In order to understand the attitude of the legislators, both representatives and senators, some consideration should be given to the debates upon this bill.

In the Senate the debate was less dramatic than in the House, because that body seemed more concerned over the cost of the code than over any other factor. When the joint committee's report reached the floor of the Senate, it was referred to a special Senate committee. This special committee was promptly besieged by the promoters of another scheme, namely, to employ Mr. Hill or somebody else to edit the code and let the state do the printing, publishing, and book selling. This question was debated in the Senate during several hearings upon the code bill. While the Senate minority was not opposed so much to the bill, the manner of performing the work, nor the cost thereof, it was opposed to the plan to have the code published in San Francisco. This group, led by Senator N. H. Owings, wanted the code printed in the state by citizens of the state, instead of being printed by the Bancroft-Whitney Company of San Francisco. In fact, gossip made much of the "proposal of Judge Hill as being in the interests of Bancroft-Whitney."  

A few days later the correspondent for the Tacoma Ledger gave favorable attention to this plan to do the code-printing at home.

The local printing people here in Olympia who are doing the state printing under a temporary contract, and who have been at large expense
to fit up, and fitted up an excellent office to enable them to do this kind of work, . . . present a different set of figures. Their statement is that 1,000 copies will not be enough; that not less than 1,200 copies will be required to make the state distribution alone, and there will be not less than 4,000 copies of the code sold and used within three years; that the state should do the printing in connection with all the other public printing . . . particularly so when the printing can be done cheaper here.26

On the final vote the opponents to the code bill in the Senate were defeated, and the bill passed that body by a vote of nineteen to nine. Commenting later upon this vote, the editor of the Washington Standard wrote, "... The senate seemed to think the public interest was ... paramount with that of the State Publishing Company [of Olympia]."27

The debate in the House of Representatives, on the other hand, was far more heated than in the Senate.28 When the House took up House Bill 78, the code bill, as a special order of business on December 17, 1889, Mr. Gandy moved that it be referred to the committee of the whole, and the motion passed. In the committee of the whole, "Judge" Elwood Evans moved to amend the first section of the bill so as to strike out all provisions authorizing the use by the code commissioner of the Code of 1881. He desired to get rid entirely of this Code of 1881, and, as far as possible, to forget that it had ever existed. Judge Evans based his objection to the bill upon the feeling that it would make of the new code a "patchwork and shreds, a stumbling block to all courts that might be called upon to use it."

Mr. S. C. Herren favored the bill as drawn and made a lengthy speech in opposition to the amendment offered by Judge Evans. "The State," he said, "was now acting under the Code of 1881, and it certainly could do no harm to take and use all of the material and laws available and in force. If the legislature

26 Tacoma Ledger, December 18, 1889. Although a member of the House, where the fight against the code bill was made on a different ground, "Judge" Elwood Evans nevertheless had much influence in the Senate, and his views on this question were reflected in the opposition of the minority group. "Judge" Evans stood at all times for keeping public work at home. This was the second time in which he opposed having the public printing done outside of the state. For the first occasion, see the description of the controversy in "Compiling the Territorial Codes of Washington," by Arthur S. Beardsley, in The Pacific Northwest Quarterly, XXVIII (January, 1937), 33.

27 Olympia Washington Standard, February 14, 1890.

28 Tacoma Ledger, December 17 and 18, 1889; and January 10, 13, and 17, 1890.
were to try to pass a code," he asked, "how long would it be in
session, and how much would it cost?" It had already been in
session thirty-seven days and had only passed four little laws.
The legislative expense was $1,000 per day. At that rate of
progress, when would they complete the code and how much
would it cost? "The opposition to the bill," as he understood it,
"was based on the grounds that the work ought to be done with-
in this state."

Mr. A. K. Clark favored the amendment and declared
himself suspicious of the bill. "I can't see the nigger in the
woodpile," he said, "but I believe he is there, . . ." He was not
opposed, as he so stated, to amending every section, even to kill-
ing the whole bill.

In a second attack upon the bill, Judge Evans proposed to
delete all reference to the work of the territorial code comis-
ioners. This proposal evoked a great deal of argument. Mr.
E. R. Pickrell thought that Judge Hill would ask several thou-
sands of dollars additional if he were not given the use of that
report.

After being in session one hour, the committee of the
whole rose and made the following report to the House:

. . . The committee recommends that section 1 be amended to read:
"Section 1. William Lair Hill is hereby appointed a commissioner to com-
pile, rearrange and fully annotate the laws of Washington, passed at the
various sessions of the legislatures, including those to be passed at the
present session and the session of 1891. . . ."

J. E. Gandy, Chairman\(^{29}\)

On motion of Judge Evans, consideration of the report was
made a special order of business for January 9, 1890.

At this same session of the House (December 17, 1889),
Mr. J. A. Kuhn offered a resolution placing the manuscript of
the code commission in the hands of the secretary of state, "sub-
ject to the order of the legislature."\(^{30}\) Clearly his purpose was to
prevent the use of the manuscript by Judge Hill in the event
that House Bill 78 should become a law. "On motion of Mr.

\(^{29}\) Wash. House Journal, 1889-90, 184.
\(^{30}\) Ibid., 185.
Kuhn, the resolution was adopted,” the Senate concurring on December 18.\footnote{Wash. Senate Journal, 1889-90, 139.}

Some idea of the feelings of the public on the code question is to be found in the Tacoma \textit{Ledger} of December 18, 1889:

Much the larger part of the two sessions of the House today [December 17, 1889] was occupied in discussion of the bill to provide for the codification of the laws. The temperament of the House is opposed to the measure in its present form and it may seriously be doubted whether the bill can pass the popular branch of the legislature in any shape. As one of the members put it, the bill is evidently afflicted with paralysis, and as this member [probably referring to Mr. Evans] does not believe either in unnecessary punishment or punishment after death, he tried to put the thing out of its misery at once. While the effort did not succeed, it came near enough to make the friends of the measure decidedly nervous about its future career. Judge Evans advocated the policy of having the legislature make its own code, employing what expert assistance would be necessary for the purpose, and reporting through subservient committees from time to time to the House.

After the holiday recess the code question was again taken up (January 9, 1890), but was again postponed until January 16, when it was made a special order of business in the House of Representatives for that day. During the interim it was reported in the press that "The Code question is still the burning issue but it burns very slowly and has again been set back. Nothing of any great moment can or will be done in this legislature until it is settled. . . . Everyone seems afraid of it, and like the small boy on the river bank, dislikes to take the initial plunge."

The debate upon the bill in the committee of the whole on January 16, 1890, still centered around the provisions of the first section. Mr. J. E. Gandy moved to adopt Judge Evans' resolution eliminating all reference to the use of the \textit{Code of 1881} by the code commissioner. Mr. William R. Moultray declared that the proposition was impractical, to which Mr. Gandy replied that the work ought to be done by a commission of three instead of one, and ought to be printed within the state.
Furthermore, he objected to creating the office of "book agent" for six years in the state of Washington.

This reference to Mr. Hill as a "book agent" drew an objection from Mr. John D. Geoghegan, who protested against it. "In his compilation of the laws of Oregon," he asserted, "he has erected a monument to his name that will endure long after the name of any one who calls him a book agent has been blotted out forever."

When the vote on the resolution was taken, Mr. Gandy's motion was declared lost by a vote of twenty-four to thirty-four. The next day the committee of the whole rose and reported favorably on the bill and it was immediately passed by the House.

By its terms this act authorized the use of the work of the late territorial code commission, and directed Mr. Hill to base his codification upon the Code of 1881 and all laws enacted subsequent thereto, including those which would be enacted at the next legislative session (1891).

The reverberations over the fight on the code did not cease with the passage of the act of January 17, 1890. The bitterness and recrimination of the fight with the personal animosities which it had engendered continued for a long time. No later than February 17, the editor of the Tacoma Globe again referred to the controversy, saying:

Young Mr. Sanborn, the San Francisco colporteur, who so successfully engineered the measure . . . through both houses, figures up his expenses in Olympia since the 28th of November, at about $800. Of course no one doubts the correctness of Mr. Sanborn's statement . . . Bancroft-Whitney and Co. will make $200,000 through young Mr. Sanborn's finesse, and in the language of Nick Owings [Senator N. H. Owings], "Lair Hill will do all the work and get nothing but the soup."

Three days later this legislature was again electrified by the gossip of bribery. This time (and it is well to note that history records no basis in fact for the charge) it was in connection with the passage of the code bill. Probably this was "the nigger in the woodpile" which, during the debate on the code

**Laws of Washington, 1889-90, 236-238.**
bill, had worried Representative A. K. Clark of Spokane. Rising to a question of personal privilege on the afternoon of February 19, Senator Henry Drum of Tacoma read from the Tacoma Ledger of that date a report which credited him with having said that “a good portion of the nineteen senators who voted for the passage of the Hill Code Bill had substantial reasons for doing so, and that one senator and another high official are $5000 better off today than before the bill came up.” To this report, according to the Ledger and the Senate Journal of that date, Senator Drum was said to have added “that there would be occasion for another investigation at Olympia. This time it should be a boodle and not an anti-boodle investigation.”

The evening edition of the Tacoma Globe for that date carried a reply by Senator Drum to the above charge in which the Senator indignantly denied having made use of the statement published by the Ledger, asserted that he “branded the story as false,” and further said “that after the bill had passed, his fight on it had ended.”

IV.

Several methods of code-making are to be found in common use today, and among such is that which is evidenced by the form used in the “revised statutes.” The designation of statutes as “revised statutes” refers to the method of their preparation and usually is the work of a code commissioner, or commission, to whom previously has been given a legislative grant of authority to revise, arrange and compile the existing laws of the state. Frequently the authority granted includes the discretionary power to make such verbal changes as are necessary to bring the whole body of statute law into a single and homogeneous mass. The granting of the power to make discretionary verbal changes is not a misuse of legislative authority, because, after the revision has been completed, it must receive legislative sanction and approval. Such legislative approval creates the so-called “revised statutes” of the state. Mere designation of statutory compilations as “revised statutes” (cf. Remington’s Revised Statutes of Washington) without the preced-
ing legislative approval is insufficient to make them technically such, although the practice is a common one.

In the case of Hill's Code, the legislature had granted Mr. Hill authority to prepare a revision of the Washington statutes, and upon the completion of his work, gave to it legislative official sanction and approval. Thus Hill's Code, while not generally referred to as "revised statutes," was in fact such.

When the state legislature convened for its second regular session (January, 1891), Mr. Hill placed upon the desks of the members, in performance of his agreement to do so, copies of the proposed revision of the statutes of the state together with the bills necessary to repeal superfluous and obsolete laws and to amend or correct existing ones. In addition, he had prepared the usual bills for the adoption of the statutes which were to comprise the code. This draft was intended to be preliminary only, since it was assumed that many changes would be made by the legislature, and further, because Mr. Hill had agreed to incorporate into it the laws passed by the legislative session of 1891.

In his message to the second legislature, Acting Governor Laughton urged, in the interests of speed and the economy of time, that the legislature "accept, in its entirety, the code prepared by the commissioner." As support for his argument the Governor praised the ability of Mr. Hill, saying "that a wiser choice could not have been made," and that "no praise can be too high for the untiring energy and ability displayed by him in the performance of this arduous duty." He concluded his message by saying that the work required "an extensive and peculiar knowledge, and a combination of rare qualities and accomplishments." This plea of the Governor was severely criticized by the Seattle Telegraph as being "plainly improper, unless some sort of examination of that code be first made by the ju-

83 A copy of this proposed code in three volumes is to be found in the University of Washington Law Library.

84 The agreement with the legislature called for the submission of one single bill for the adoption of the code in its entirety. In the preface to the code, Mr. Hill explained that he had found this action to be unconstitutional in the light of Article II, Section 19 of the state Constitution. Accordingly, he submitted numerous bills covering the divisions of the code.

85 Wash. Senate Journal, 1891, Appendix A, 4-5.
dicial committees of the two houses, acting jointly, or by a special joint committee appointed for that purpose.” It conceded that “the code may be all right and probably is; but it ought not to be gulped down like a dose of medicine prescribed by a physician. It ought to be looked into before being acted upon.”

The legislature ignored the advice of the Governor and proceeded to consider the code in the usual manner by referring it to a joint committee, which, on January 29, reported that “the said codes . . . were carefully and ably annotated, compiled and arranged, and should be approved and adopted.”

In submitting his proposition to the legislature in 1889, Mr. Hill had specifically stated that his proposed revision would be based upon the Code of 1881 plus the laws enacted at subsequent legislative sessions. He had also reserved the right to make such use of the work of the Code Commission of 1888-1889 as he found desirable, a privilege which the legislature granted. So far as the general divisions of the Hill Code are concerned, it bears a striking resemblance to that of the Code of 1881, and to the proposed code of the Commission of 1888-1889, according to the meagre description of the latter as found in the House Journal of that session. It has been described by one who saw it under construction as a scissors and paste-pot compilation, meaning that the Code of 1881 had been cut and pasted on slips to form the basis of the new code. Most of the work was done by Mr. E. D. Benson and the late Judge Mitchell Gilliam, then associated with Mr. Hill in the practice of the law. An examination of the indexes of the two compilations will show index entries which are identical in the language used. The annotations were not difficult to procure since many of them were already contained in Hill’s Oregon code where the sections were similar or identical; others came from the California laws. So far as Washington citations were concerned, it must be remembered that at this time the Supreme Court Reports of Washington comprised only six volumes of decisions. Thus, whatever faults and defects at that time existent in the

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26 Seattle Telegraph, January 10, 1891.
27 Wash. House Journal, 1891, 139.
28 Wash. House Journal, 1889-90, 149.
Code of 1881 were embodied in Hill’s Code have, through the latter, survived in its several descendants.

Much of the fault which later was found with Hill’s Code is not fairly attributable to Mr. Hill. He endeavored to do his duty conscientiously and well. That he took some liberties with the laws and deliberately left out some statutes which should have been included, and that he later boasted about it, can not be denied. The greatest fault with his code came from the fact that a busy legislature found little time and little inclination to consider the numerous measures for amendment and repeal which he had submitted to it. In addition to the ordinary legislative business and the usual pet measures of the members, the legislature had to give consideration to the charges of the bribing one of its members,\(^89\) and to the impeachment and trial of a superior court judge.\(^40\) As one member\(^41\) of that legislature has recently said, that body simply would not give the code matter proper attention. They took the bills as a matter of course. There was no objection to them, but the non-lawyer members were indifferent, and whenever code bills were called up for consideration everybody groaned. When the day’s calendar was completed and the reading clerk began the reading of the code bills, the members would silently slip from the room until scarcely a quorum remained. At other times, the reading clerk would skip long portions of the bill in an effort to save time, but some member of the opposition would call attention to the skipped sections and the reading clerk would then have to begin over again. Consequently when the time came for legislative adjournment many of the bills which had been presented by Mr. Hill had not been acted upon, and apparently no effort was made to extend the legislative session long enough to take care of the bills which were necessary to complete the codification, as had been done in the extra session of 1881.

There can be no doubt but that Mr. Hill conscientiously regarded the duties of his office as embracing a sacred trust. In a

\(^89\) John L. Murphy of Stevens County made the charge and confessed taking the bribe. He was later expelled from the House.

\(^40\) Morris B. Sachs, judge of Jefferson, Clallam, and Kitsap counties.

\(^41\) Judge Charles E. Claypool of Seattle.
letter relating to the remedial code addressed to Acting Governor Laughton, dated January 7, 1891, Mr. Hill said:

The law under which I have been acting . . . [contemplates] as I read it, that I shall, as closely as possible, adhere to the laws as they existed—a requirement which seems to me eminently a wise one—I have endeavored to preserve the spirit and purpose, and even the details, of the code of 1881, and the laws subsequently passed, and have departed therefrom in no case requiring the introducing of any radical or important change in the proceedings of the courts. In a few instances, not to exceed ten, . . . an improvement would have been made by changing the system or by adding thereto certain provisions . . ., but I have not felt at liberty to introduce these changes.42

He stated further that personally he would have liked to omit some provisions of the statutes, “but have not felt at liberty to do so under the act appointing me.”

As finally adopted, the Hill Code was a patchwork which gave rise to much doubt and uncertainty in later years when matters relating to the origin and repeal of laws were being considered. Mr. Hill apologized for these embarrassing factors in the preface to the second volume of the bound edition of his code and explained that he had endeavored to do the best he could with what the legislature had given him. He wrote in this preface to the remedial code:

Statutes which appear clearly and certainly to have been superseded by subsequent enactments are omitted; but wherever there has seemed to be reasonable ground for doubt upon this subject, the statute has been incorporated in juxtaposition with that which may be supposed to have superseded it; and no statute passed by the state legislature has been omitted because of supposed conflict with the Constitution. In a number of cases the changes suggested by the commissioner were intended to remove uncertainties of this nature, and most, but not all of these, were passed by the legislature; so there will be found occasional provisions, the constitutionality of which may be questioned, and others which the courts may hold to have been abrogated by later acts.

The physical form of Hill’s Code was not unpleasant even to the most critical eye. What a pleasure it must have presented to the bar, when it was contrasted with that of the Code of 1881!

42 Wash. House Journal, 1891, 34.
It was bound in two volumes, each of which carried its own numbering of sections (that is, the code does not employ a consecutive numbering of all the sections), and after its section numbers appear the corresponding section numbers of the Code of 1881. Volume one is devoted to the general statutes, and volume two to the code of procedure and penal code. No parallel cross-reference tables from sections of the Code of 1881 to Hill's Code were included. To the code the author added the Constitution of the United States in annotated form, the Constitution of the State of Washington with such annotations from other state constitutions and from the Organic Act of the Territory of Washington as were applicable to its several provisions. Other important documents included were the Enabling Act for Washington Territory, the Treaty between the United States and Great Britain relative to the territory lying westward of the Rocky Mountains, concluded June 15, 1846, and the laws relating to the naturalization of aliens. While only a limited amount of legislative history was given for the various code sections, the annotations, on the other hand, were complete for the decisions of the Supreme Court of Washington Territory, and in addition were supplemented by analogous decisions from the courts of Oregon, California, and numerous eastern states wherein the statute law was similar or identical. The code had a modern touch and was closely patterned after the author's earlier compilation of laws for the state of Oregon.

V.

The life of the Hill Code was not long. Six years was the extent of its use, and during that time, it had competition from two compilations of the statutes prepared by other Seattle attorneys, and a compilation of real property statutes by a member of the Tacoma bar.

The second statutory compilation of Washington laws was Huntley's Code of Procedure and Penal Code. Limited as this code was in its scope and content, it could not have been expected to exercise other than a passing influence on the Washington laws. It is a compilation in a single volume of the pro-
cendural statutes, the penal statutes, and includes also the probate law, and the laws relating to mortgages and liens. Compiled in 1893 by Herbert B. Huntley, it included, in addition to those contained in Hill's Code, only the session laws of 1893, and not many of these statutes were of a procedural character. Hence the explanation for the preparation of Huntley's Code must be found in other facts. In the preparation of the work Mr. Huntley "thought best to follow the law as enacted," and "to retain many words used in the original acts although these terms had become improper and inoperative by the change from a territorial to a state government." Examples of such terms are "territory," "district court," "term," "vacation," "probate court," and the like. Such a strict adherence to the language of the original laws was employed that, notwithstanding the language of the act of December 13, 1889, providing that where the words, "territory" and "Territory of Washington," are used, the same shall be construed to mean "state" and "State of Washington," he did not feel warranted in "making a change in the text of the enacted law," although the captions to the various sections were made to contain the corrected language. He felt at liberty to change the paragraph captions because they were not actually parts of the statutes which he had codified.

The action of Mr. Huntley in this regard was one of conservatism. He did not desire to change the laws nor to take any liberties with them. In this respect his reluctance was unnecessary and in a measure unjustified, because the intent of the legislature and of the Constitution was clear that all changes should be made which were necessary to transfer the territory into the state. Hill's Code and all other subsequent codes except Huntley's took cognizance of the change in the form of government and corrected the wording of such statutes as required it.

43 Herbert B. Huntley was born, January 10, 1862 at Appleton, Wisconsin. He taught school in Wisconsin and Florida. In 1884 he worked for the New York Tribune. Five years later he graduated in law from Columbia College. The next year he came to Seattle and worked in the offices of Burke, Shepard and Woods until he opened his own office. He died, July 6, 1904.
Although basing his code upon the Code of 1881, Mr. Huntley avoided certain of the errors which John P. Judson, in compiling the Code of 1881 had committed. It will be recalled that the Code of 1881 consisted of 107 separate and distinct acts, each of which was separately enacted during the legislative sessions of 1881. The first four of these acts deal with procedural matters: civil procedure and practice, crimes and criminal procedure, probate procedure, and the act relating to justices of the peace. In such form each constitutes a complete code for that branch of procedure to which it relates, and when brought together and consecutively sectioned, they form the major portion of the entire Code of 1881. The first three of these acts contain provisions governing their construction, and for repealing or abrogating the former laws. In the enrolled law the word "act" is used in every instance, whereas in the printed Code of 1881 the word "code" was substituted for "act." Since Hill's Code follows almost literally the Code of 1881, these sections appear therein in the same form as given to them by Mr. Judson, while in Huntley's Code the compiler preserved the terms as originally used in the enrolled bill.

On February 14, 1893, the Washington Supreme Court decided the appeal of Baer v. Choir, which involved a construction of these sections of the Code of 1881. If the language of the Code of 1881 were to be followed literally, the use of the word "code" in place of "act" would have so changed the period of the Statute of Limitations in an action relating to the quieting of title to real property, and the like, as to dangerously affect vested property rights. The Supreme Court held, however, that the compiler had improperly changed the statute in substituting "code" for "act" and that the Code of 1881 should be construed accordingly. When he compiled his Code of Procedure, Mr. Huntley restored these words to the sections in which

45 Examples of this substitution are sections 763, 1296, and 1686, respectively, of the Code of 1881.
46 7 Wash. 631, 32 Pac. 776.
they belonged, and this construction has been followed (except where the statutes have been specifically repealed) by Frank Pierce in the numerous statutory compilations bearing his name.

A number of amendments to the Code of 1881 were omitted by Mr. Hill from his compilation, presumably because he felt that the defective titles to these acts had rendered these amendments void in the light of the holding in the decision of Harland v. Territory, which was to the effect that the titles of the amending acts did not contain sufficient reference to the subject matter of the acts to be amended. Acting on the theory that the later decision of Marston v. Humes had overruled the decision of Harland v. Territory, Mr. Huntley reincorporated these amendatory acts of the Code of 1881 into his Code of Procedure and this plan, except in so far as they were subsequently repealed, has been followed by Frank Pierce in his compilations, and in a few instances by Arthur Remington in the preparation of his codes.

The action of Mr. Pierce, and likewise of Mr. Remington, in restoring certain sections of the Code of 1881 to their respective codes on the theory that the overruling of Harland v. Territory by Marston v. Humes had revived these amendatory statutes, is not acceptable without some element of doubt. In the first place, the Supreme Court in Marston v. Humes did not specifically overrule Harland v. Territory, and it was only by the error of the reporter, who inserted a dictum of the court in the syllabus of that decision, that the later decision has been made to so do by implication. Secondly, the Supreme Court has never expressly held that these amendatory acts were or were not void, and if void, that they subsequently had been revived. It should be noted that in this regard the Pierce and Remington codes do not agree; that is, the Remington codes have not restored all of the sections of these amendatory acts which the Pierce codes have inserted. In putting these doubtful sections into his code, Mr. Huntley took risks as great as those which

47 3 Wash. Terr. 131, 13 Pac. 453; see also, Beardsley, "Territorial Codes of Washington," 41.
48 3 Wash. 269, 28 Pac. 520.
Mr. Judson took in omitting them, and later codifiers have been equally as reckless in continuing them in the absence of judicial constructions in their favor.

*Huntley's Code* also included a number of sections not to be found in *Hill's Code*, although such sections were in full force and effect when *Hill's Code* was compiled. Part of these sections are justified upon the theory discussed in the preceding paragraphs, but others were laws which Mr. Judson had inadvertently omitted. A few of these latter ones were inserted into the *Code of 1881* as footnotes by the certification of the Secretary of the Territory, but were valueless there in view of the fact that they were not indexed.

In the physical make-up of this code, striking similarities to *Hill's Code* will be found. While following the *Code of 1881*, Mr. Huntley nevertheless borrowed many of the features of *Hill's Code*. Especially is this noticeable in the structural outline. The titles or major divisions are almost identical, while the chapter divisions within these titles correspond in number and language with remarkable similarity. Within the chapter divisions, he has likewise divided the statutes into a corresponding number of sections. A similar plan of analysis to that used by Mr. Hill is carried out at the beginning of each title and chapter, which in all respects is not unlike the formal set-up of the present-day codes.

Annotations to the statutes following the sections thereof are confined to decisions of the Washington Supreme Court. The mode of citation of the annotations is exceedingly inconsistent and the content of them undeterminable. References to *Hill's Code* appear following the section numbers, while those pertaining to the *Code of 1881* appear at the end; the legislative history of the statutes also appears at the end of the paragraphs. Particularly significant is the use of the "parallel cross-reference table." It appears for the first time in the Washington codes in this compilation of 1893.

*Sections of Huntley's Code not found in Hill's Code:* 701, 708, 709, 1212, 1283 to 1295, 2242; and those included in the notes under sections 843, 1272, 1284, and 1966.
The entire work was compared with the enrolled laws which revealed many of the errors, other than obvious ones, which had been made by the compiler of the *Code of 1881*, and these errors were indicated by an errata table. In the preparation of his work the compiler had the benefit of the advice and criticism of such leaders of the Seattle bar as Judge Thomas Burke, Charles E. Shepard, and Andrew Woods, with whom he was associated in the practice of the law, and much of the excellence of his compilation was probably due to their aid and influence.

VI.

Statutory compilations upon special subjects of the law are not uncommon, and in some jurisdictions they have been of frequent occurrence. In Washington, this type of statutory compilation, at least in a comprehensive form, has been but twice prepared, and in both instances by the same writer. The compilations referred to are *Real Property Statutes of Washington Territory from 1843 to 1889*, and the *Comparative Probate Code* (volume three of his *Probate Law*), both of which were the work of Mr. T. O. Abbott. The former compilation was prepared in 1892 while he was a member of the Tacoma bar, and the latter work in 1904 after he had removed to Seattle.

Both works are of a very comprehensive character and indicate the peculiar type of mind which delights in comprehensive research in narrow and abstruse fields. Few subjects of the law are more complicated than real property, and none more difficult to outline; and when this subject of real property is confined to a study of the property statutes of three states (Iowa, Oregon, and Washington), some conception of the unique character of his *Real Property Statutes*, to say nothing of the difficulty of his task, is envisaged.

That which Mr. Abbott wrote in the preface to this work in 1892 as the reason for its preparation is even more applicable today. "The statutes of the territory," he said, "are not easily

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80 Twyman O. Abbott was born in Pittsfield, Illinois, February 7, 1863. His parents crossed the plains in 1865 and settled in Oregon, but in 1878 he moved to Tacoma, and in 1905 he came to Seattle. He was admitted to the bar in Salem, Oregon. Little else is known of him.
accessible, while complete sets are infrequently found except in the large law libraries. The original editions, besides having been very limited, have been seriously reduced, not only by ordinary loss and destruction, but also by the several disastrous fires which occurred in 1889." The Code of 1881, likewise, had proved to be a very unsatisfactory source for these territorial laws, because the dates of passage and the titles had been omitted, and also because of the changes therein which the compiler, John P. Judson, had inserted. The rapid growth of population and the rise of real estate values aided in creating a demand for these statutes and in rendering them scarce. While many of the individual laws had become obsolete and of no value, those which related to property grew in importance during the days when abstracts of title were in more common use, and the examination of abstracts an important part of an attorney's practice. With the perfection of title insurance contracts, the need for such statutory compilations waned and aside from its historical value, which should not be minimized, the importance of this compilation has diminished.

Its scope embraces all laws relating to real property enacted during the territorial period from July 5, 1843, when the Provisional Government of Oregon was organized, to November 11, 1889, when Mr. J. W. Robinson of Olympia, on behalf of the people of Washington State, received from President Harrison the Proclamation admitting Washington into the Union. It also includes such special laws upon the same subject passed by Congress during the same period, together with such treaties and Executive Orders and Proclamations as are specially applicable.

The code, printed by the state printer on his own responsibility at an enormous financial loss, had a wide distribution and an extensive use, notwithstanding its 1,232 pages and its intricate classification. There are four principal divisions called "parts." Each part is divided into "subjects"; subjects into "divisions"; divisions into "titles"; and titles into "chapters." Each act is numbered, and the total number of separate acts digested is 1,329.
The enumeration of the parts is as follows: Part I, "Government and Boundaries"; Part II, "Territory of Oregon"; Part III, "Territory of Washington"; Part IV, "Laws of Congress." The division into subjects could probably have been omitted without serious effect to the whole. The divisions could also have been omitted and the words "general" and "special" inserted under the part number. Obviously, the important divisions are the titles into which the subject matter has been classified and divided. Chapters would have been a more appropriate designation for titles, leaving the subdivisions thereafter to have been marked by superior figures or letters. In the manner in which the code was prepared, the chapter divisions are relatively unimportant, but this is unfortunate. Since the laws of Oregon were deeply affected by the laws of Iowa, certain titles are appropriately devoted to these Iowa statutes.

In looking over this volume, the reader will naturally wonder how many of the laws therein included have to do with real property; but all acts of incorporation for private corporations, divorces, adoptions, changing of names of citizens, Indian treaties, and the like, have some bearing upon this subject. In each instance the right to acquire, own, sell, will, inherit, devise and separate property is in some way involved. Many of the acts were passed by the Territorial Legislature of Oregon, a fact which illustrates how the legislative history of Washington begins not in December, 1854, but rather on July 5, 1843.

VII.

While the preparation of a treatise on probate law and practice is at all times a task of great magnitude, it becomes almost a herculean project, if to it be added a comparative code of the probate laws of nine states. Such was the work undertaken by Mr. T. O. Abbott in 1899. The work, which required five years to complete, is in three volumes, of which the third, separately paged, is devoted to the so-called "Abbott's Probate Code."

The scope of the code is not confined to Washington alone, but includes the full text of the statutes for all the Pacific Coast
states topically arranged and compared. The compiler believed the *Comparative Probate Code* would prove of great assistance in determining the value of precedents and in establishing an uniformity of rule and decision. In effect the code was a "probate code" for the nine states, and at the end is a table for each state showing where the sections of the various state statutes are located in the *Comparative Code*.

As in his *Real Property Statutes*, the *Comparative Probate Code* is based upon a highly technical classification. Two major divisions are called "parts," each of which comprises numerous "divisions." These in turn are divided into "titles," "chapters," and "sections." The chapters in this work constitute its main topical divisions.

VIII.

The belief of William Lair Hill that one man could prepare a code in a year although three men could not do so—a philosophy which he did not carry out—was contradicted by the compilers of the *Code of Washington, 1896*. This code is usually referred to by this, its binder's title, although that given on the title page is *Revised Statutes and Codes of the State of Washington*. Occasionally it is referred to as "McLaughlin's Code," while correctly speaking it is not a "revised code."

Consisting of a single volume with a limited number of annotations, and including at the end of the sections, cross-references to the *Code of 1881*, *Hill's Code* and *Abbott's Real Property Statutes*, it was the joint work of three attorneys of Seattle, E. D. McLaughlin, C. E. Remsberg, and John D. Atkinson.

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51 Edward D. McLaughlin was born in Cincinnati, Ohio, in 1843. He studied law in Louisiana, where he was admitted to practice on June 14, 1876. He came to Seattle in 1893 and was admitted to practice here in July 19 of that year. His death occurred, September 8, 1902.

Charles E. Remsberg was born in Warren County, Indiana, May 20, 1863. After his graduation from the State Normal School at Terre Haute, he taught school for two years. He graduated from the University of Indiana in 1889. He then came west to Seattle, where he opened a real estate office and read law on the side. He was admitted to the bar in 1893 and has been practicing law in Seattle now for over forty-five years. He was an officer of the Lake Washington Canal Association for twenty-five years, and from 1904 to 1917 he was president of one of the Seattle banks. Mr. Remsberg is a fine gentleman and is universally beloved.

John D. Atkinson was born near Pittsburg, Pennsylvania, July 14, 1867. He began to teach before he was sixteen years of age. He taught alternate years and continued his high school and college studies. Part of his college work was taken
Associated together in the practice of law, these gentlemen, as Mr. Atkinson has said, planned a codification of the statutes, partly for the detailed study and familiarity with the state laws which it would give to them, but also because they felt that they could work out a code in a single volume with an index better than any at that time in use. Most of the editorial work was done by Mr. McLaughlin, who had been taken into the law partnership for that purpose, because of the pressure of the business, which engaged the attention of the other two members of the firm. In referring to their objective, Mr. Remsberg wrote, “Our object was not only to print the laws but to make the arrangement of them as simple as it was possible to do, and to make an index better than any which ever before had been prepared.” Only a superficial comparison of the index to this code with that of the Hill or Huntley codes is necessary to show how well the compilers succeeded and how greatly superior the McLaughlin index is to either of the others, while a count of references under certain topics taken at random from the index shows over ten times as many references under these topics in the McLaughlin index as in the indexes of the others.

These objectives are quite in line with those written in the preface to their code forty years ago. There the compilers wrote:

In the spring of 1893, the compilers of this revision, were impressed by the complaints of lawyers of high standing, as well as by their own examination of the Codes of our State, with the necessity of another revision and codification of its statutes, and the collection of the same into a more compact form.

They therefore concluded to undertake the task of such revision... as would meet the demands of the lawyers, judges, and the general public,...

at Indiana University, but he graduated at Waynesburg, Pennsylvania. In 1889 he took his law degree from Union Law School in Chicago and was admitted to the bar of Illinois. The next year he arrived in Seattle and began his practice here. In 1899 he was elected state auditor and served one term, which was followed by his election to the office of attorney general, a position he likewise held for one term. Mr. Atkinson was regarded as a very able lawyer. Poor health forced him to give up the law for an outdoor activity in the mining field at Telma, Washington, where he now lives.

This was just following the publication of Huntley's Code.

The code was not a financial success, although it had a wide distribution. No better evidence will be found of the general approval with which the McLaughlin Code must have been received than the fact that all copies appearing on the secondhand book market bear the earmarks of heavy wear and usage. This is in contrast with the condition in which the copies of the Huntley Code are usually found.

Measured by other standards, viz., format and type, the McLaughlin Code is much less attractive. Its printed page is too closely set and bold section captions are lacking. While such non-aesthetic qualities do not affect the usefulness of the code, they may detract from the individual appearance. This "individual appearance" of McLaughlin's Code may have had some influence upon the treatment which it received at the hands of the legislative session of 1897 when an effort was made to give it official recognition by having the state purchase a number of copies. The resolution was lost, largely because the Bancroft-Whitney Company of San Francisco had placed upon the desks of the members of the legislature copies of the new Ballinger Code which they had just completed.

IX.

First in line of direct descendants of Hill's Code of 1891 was Ballinger's Annotated Codes and Statutes, a two-volume work based upon the work of Mr. Hill. It was compiled by Judge Richard A. Ballinger of Seattle in 1897, and embraced all of the statute law and codes of a general nature then existing.

Richard A. Ballinger was born July 9, 1858, in Boonesboro, Iowa. His education was obtained at Washburn College in Topeka, Kansas, and at Williams College in Williamstown, Massachusetts. He was admitted to the bar in 1886 and practiced law in Illinois and also in Alabama. In 1889 he went to Port Townsend, Washington, where he built up an extensive practice. He was chosen judge of Jefferson County and served from 1894 to 1897. At the expiration of the term he moved to Seattle and began work on his code, as a member of the law firm of Ballinger, Ronald, and Battle. From 1904 to 1906 he was mayor of Seattle; from 1907 to 1909 he was Commissioner of the General Land Office in Washington, D.C., and from this position he went to the cabinet of President Taft as Secretary of the Interior. He resigned in 1911 and returned to his practice in Seattle, where he joined the firm of Ballinger, Battle, Hulbert and Shorts. Besides his Washington code he was also the author of Ballinger on Community Property (1895). His death occurred on June 6, 1922.
The statutes were arranged under titles of broad generic significance with the purpose of establishing a logical and systematic order for this branch of the law, although substantially in the order of arrangement as found in Judge Hill's publication. The matter contained in the code of civil procedure, probate, justice's and criminal codes was not, according to Mr. Ballinger, difficult to arrange into a logical and harmonious compilation, and it was his belief that they presented a fairly well codified system. "The whole compilation," Mr. Ballinger wrote in his preface, "presented many perplexing problems touching conflicting, superseded, obsolete and repealed provisions; but where the validity of a statute or any part thereof was in doubt, the author deemed best to retain it, in order not to hazard the possible omission of laws in force, although the result may be ever so obnoxious in a general codification of the laws."

Following each section is a brief historical reference to the legislation, in chronological order, from the first territorial session of February 28, 1854, to the last biennial session of 1897; also comparative references to codes of other states possessing like provisions. These cross-references are particularly unique for this compilation and were prepared with much labor and care. Without doubt, they have met with grateful favor by those lawyers who have desired to trace our laws to their original sources; and today they remain the sole hope of the attorney who seeks to know the origins of the early statutes. It should be understood, however, that this antecedent background in so far as it relates to statutory sources in other jurisdictions and aside from the meagre legislative description, is not always available.

An effort was made by the compiler to bring all interdependent matter together by means of cross-references which he placed immediately preceding the annotations to the sections. Wherever Mr. Ballinger deemed them pertinent, without encumbering his work, he included among the Washington an-

85 Preface, Richard A. Ballinger, Ballinger's Annotated Codes and Statutes of Washington . . . (Seattle and San Francisco, 1897), I, iii.
notations, notes of decisions from other courts which had interpreted like statutory provisions in the other states, on the theory that where Washington had adopted the statute law of another jurisdiction it had likewise adopted the interpretation of such statute law.

The Constitution of Washington is exhaustively annotated and indexed, and comparative case references are given to the constitutions of other states of the Union in which the provisions are the same or similar. This is another unique and valuable feature of this code.

In addition to the general index to the code, a table of sectional references from Hill's Code to the sections of this work was appended.

In 1904 Judge Ballinger arranged to have his code revised and brought to date. The editorial work was done by John H. Mahan of the Seattle bar, and this volume, while supplementary to the original work, is numbered volume three of the set of statutes.

X.

Few code writers have enjoyed longer code-making service than Frank Pierce of Seattle. It is not unlikely that he has been engaged in code-making longer than any other living codifier. For thirty-six years his codes have been used by Washington lawyers, many of whom have regarded them with favor and preference. Training in the law and practice at the bar have been common qualities for all the code-makers of the state, but only Mr. Pierce can supplement this background with a prac-

56 John H. Mahan came to Seattle from Abilene, Kansas, and was admitted to practice in Washington, May 31, 1901. He had served as a judge in Kansas. After the completion of the supplement to Ballinger's Code, Judge Mahan moved to Eureka, California, and from there to Virginia. Little more is known of him.

57 Frank Pierce was born in Buffalo, Missouri, June 7, 1864. He studied law at the University of Michigan, from which he was graduated, March 7, 1890; was admitted to the bar in St. Louis, and after practicing there for one year he came to Seattle in November, 1891, where he opened a law office. In 1905 he gave up his practice in order to devote his attention to the publication of his Washington codes. In 1913 he served in the legislature of this state, and from time to time has been the counsellor of the legislature on matters pending before it. Besides his Washington codes, Mr. Pierce has also published Laws of Washington in five volumes (1897), and Pierce's Code of the United States (1910). Not only as a codifier is Mr. Pierce known; he has long been an outstanding citizen, and a genial, courteous gentleman, loved by all the lawyers of the state.
tical training in law-making. It was probably because of this knowledge of legislative problems and practices, that he wrote in his preface to the 1905 edition of his code:

It is compiled on the plan of retaining the acts of the Legislature intact as passed, giving both the original and amendatory titles. This plan has been strictly adhered to. I apprehended in the beginning that my work would be best appreciated if I did not meddle too much, but would exercise what ingenuity I might possess in presenting the record of what has been done by the Legislature in a form that would give, what I conceived it to be, the best possible method of finding the meaning of the law.

Unlike the compilations which preceded it, the Pierce codes have been based upon the original session laws from 1854 to date and upon the official compilation of the laws in 1881 in so far as these sources are not incompatible. This method of codification has avoided the errors and faults found in the Code of 1881, an interesting example of which is to be found in the decision of Pettigrew v. McCoy-Loggie Timber Company, in which the Pierce compilation takes one view of the interpretation of a section of the Code of 1881 and the Remington compilation a different interpretation. This decision was one involving the so-called "fire statute" of 1877 permitting an "action on the case" in certain types of cases where the damages sought resulted from negligent starting and control of fires, as distinguished from an ordinary action for trespass. A discussion of the facts and principles of the decision in question are here unimportant except in so far as they relate to the Code of 1881.

The "fire statute" of 1877 was reenacted by the legislature in the session of 1881, and section three thereof became section 1226 of the Code of 1881. As printed in the Code of 1881 the words "action on the case" were omitted from section three although these words appear later in section six of the same act (Code of 1881, 1229). Since the Remington compilations are direct descendants of the Hill Code, which, in turn, was based on the Code of 1881, this section appears in the Remington Revised Statutes as section 5647, without the words "ac-

138 Wash. 619, 245 Pac. 22.
Laws of Washington, 1877, 300-301.
tion on the case.” On the other hand, the Pierce compilations were based upon the original statute rolls which show that in the enrolled bill on file in the office of the secretary of state this section of the Statute of 1877 was reenacted in the legislative session of 1881 with the words in question contained in section three just as they also appear in section six; but due to an error of the compiler of the Code of 1881, these words were omitted from section 1226 of that code. Thus Mr. Pierce includes these words in his compilation (9131-41), while Mr. Remington omits them (5647).

When the construction of this Act of 1877 arose in the above mentioned case, one side relied upon Pierce’s Code and the other side upon the Remington Code, the result being that the construction of section 1226 of the Code of 1881 was brought squarely before the court. The court found that the words “action on the case” were in the original Act of 1881 and, although omitted through error from the Code of 1881, were nevertheless still in force and effect. Notwithstanding this holding, subsequently affirmed by the Supreme Court, the Remington compilations still adhere to their original wording.

The Pierce Code of 1905 followed a plan similar in some ways to that of the Revised Statutes of the United States. It was an unannotated code but to it was added a supplementary volume containing the notes and annotations. This plan proved unsatisfactory, and in the edition of 1912 it was abandoned. From that time, the Pierce compilations have carried the statutory annotations in their proper order within the respective volumes of the code. It should be said with reference to these notes that they are very concise and to the point. In this respect they differ drastically from the annotations to the sections of the Remington codes which consist largely of the verbose case-syllabi copied from the decisions of the Supreme Court.

The classifications of the Pierce compilations have not followed in any way those of their competitors. In other words Mr. Pierce has not obligated himself either to the Hill or Ballinger compilations, but has endeavored to draft a code of the cyclopedic type upon a plan unlike that of any other state code.
This cyclopedic feature is unique, but has not proved to be outstanding, because most people prefer to use a code through its topical arrangement.

In the 1912 edition, the compiler dropped the consecutive numbering of the sections and substituted a plan of the numbering of titles and the sections consecutively thereunder. This was a plan similar to that in use at the present time in the *United States Code* and other modern statutory compilations. Since this method of numbering was premature, it did not prove satisfactory and was later abandoned in favor of the system of individual section numbering as used in the prior code.

Another feature of the Pierce compilations—one which distinguishes them from other state codes—is the inclusion of the titles of the acts in their appropriate places. Attorneys are uniformly familiar with the significance of this feature. Many state constitutions provide that the subject matter of the act must be expressed in its title and in so far as the title is not broad enough to indicate the contents of the act, such portions of the act thus undescribed are unconstitutional. Not a few Washington state laws have been attacked successfully under this sanction, and it is for this reason that Mr. Pierce has included the titles of the acts. The attorney naturally desires to study the scope of an act when he studies its content and for this reason prefers to have the titles of the acts embodied in the code in some convenient form, so that he will not have to go to the session laws to find them. The Pierce compilations include the complete titles at the beginning of all acts, employing a method different from that used in the Remington codes, where the titles appear, if at all, only in historical notes appended to the sections. Often this restriction of the scope of laws to the extent of their titles is overlooked by those who use codes which do not feature this information, and oftentimes such an oversight has proved fatal before the attacks of an adversary. Certain criticism of this plan is sometimes heard to the effect that it tends to break up the unity and coherence of the arrangement of the statutes, especially in those cases where amendatory acts

60 See Constitution of the State of Washington, Article II, Section 19.
have to be inserted within a general statute. This objection is not without some justification and validity, but those who prefer the Pierce compilations feel that the advantages outweigh this disadvantage.

Those who would seek for faults in the Pierce compilations probably record an unsatisfactory form and a rough printing. This criticism has been common to all editions of his codes, but a fair critic will also admit that much improvement in this respect has been seen the latest editions. Another criticism of these compilations has centered around the policy of adding the current date to each biennial edition, which, instead of being a new edition, is merely the old edition with a cumulative supplement found at the back of the last volume (or, in the case of the one-volume editions, at the back of it). The edition of the code is the same as that of the latest revision, and ought to bear that date, and only the supplement should bear the current date. If the supplement is to be bound with the original compilation the dates of both the original and the supplementary parts should be clearly indicated. The policy referred to above leads the unadvised attorney to conclude that each succeeding printing of the Pierce codes is a new revision, whereas it may actually be merely a re-issue of an older edition. It is interesting to note that the 1937 printing has been changed to conform with this criticism, and instead of labeling this imprint as the "1937 Code," Mr. Pierce has caused the label to read "1933 Code with a 1937 Supplement."

XI.

Code-making like statute-making is dependent upon some theory of action, which may be referred to as the philosophy of its writer. Thus code-makers in the preparation of their compilations are wont to express their individual views and ideas in the manner of code-building, with the result that few codes show extensive similarities. It is not surprising, therefore, that the compilations of Judge Ballinger as continued by Arthur
Remington express a theory of code-making in contrast to that of Frank Pierce.

In referring to the fact that the titles to the acts had been omitted from the Remington codes, except as they had been inserted among the historical references, such insertion being the customary practice, the compiler has said,

It is one of the functions of the compiler to notice the titles of the acts, to place his matter accordingly, and call attention to any defects. This I have attempted to do in the customary manner. The title of an act, in the rare cases in which it is material, can be learned from the historical references given; and ordinarily has no more, oftentimes less, to do with the construction of the act than the legislative debates and records or other extraneous proceedings, which, of course, cannot be inserted in compiled laws.

While the tone of the above quotation is clearly defensive, Mr. Remington is quite right in his statement of the practice, and his justification of the plan used was probably intended to combat criticism from those lawyers who preferred the Pierce compilation. In so far as Mr. Remington has inserted the titles to acts in his notes, he has served the purpose required of them, and has obtained thereby more finely balanced pages for his text.

Like other codifiers who have attempted to dispel any fears that they have tampered with existing laws, Mr. Remington has explained his position with regard to doubtful statutes. "Statute law," he says, "always presents many perplexing problems touching conflicting, superseded, obsolete and repealed provisions, requiring the greatest care and some legal learning on the part of the compiler. Where the validity of a statute, or any part thereof is in doubt, it has been retained. When a law

61 Arthur Remington was born in Bariboo, Wisconsin, December 7, 1863. Being the son of a distinguished judge, he grew up in a legal atmosphere, and later was privileged to serve under Robert M. LaFollette in Madison. After graduation from the University of Wisconsin Law School, he was admitted to the bar in 1887, but in November, 1890 came to Washington. He was appointed Reporter for the Supreme Court, which position he held with distinction for thirty-four years. Besides his compilations of the statutes, Mr. Remington has published a volume of Notes on Washington Decisions, the Washington Digest in five volumes, and the Washington Desk Book. His home is in Tacoma, Washington. His many years in public life have endeared him to the Washington bar.

has been expressly repealed, or held by the Supreme Court to be impliedly repealed, it has been omitted. Many laws have been, in part, impliedly repealed; in which case such part has been dropped out, with explanatory footnotes appended. . . .”

Since the compiler has followed the arrangement of the laws as they were placed in the practice code by his predecessors, he has not found it necessary to change greatly the order, arrangement, and numbering of the first volume of the Remington and Ballinger edition, the Remington (1915) “pony edition,” or of the Remington Compiled Statutes, while in the Revised Statutes of 1933 this same numbering will be found to be still intact within the volumes devoted to the practice codes. In this respect they are practically the same. In the codification of the general statutes his primary aim was to arrange them systematically, keeping in mind that the careless policy of legislative action has produced a great mass of loosely connected legislation, which, properly digested, should fall under numerous topic heads.

While recognizing the necessity of topical divisions among these general statutes he has purposed to limit their use to as few simple and general ones as it is practical to employ. “Modern methods, and the vast increase in general legislation,” he says, “require an alphabetical arrangement for the general statutes. . . . Any alphabetical classification is more or less arbitrary, and should be familiarized by users of the book. Accordingly the heads used are as few and general as possible.”

In another place he has again stated his view in this regard,

In my judgment the greatest mistake a compiler can make is to employ many specific heads, little known or used, such as are, properly, chapters or subdivisions of related matters; for this only serves to scatter, to all the letters of the alphabet, under new unfamiliar heads, subject-matter which every lawyer recognizes as belonging to some well-known legal topic to which he should always be able to turn without disappointment.

Ibid.


Much of this prefatory defense is attributable to the influence of the Pierce compilations, which were cyclopedic in form, employing a large number of topic heads. Probably Mr. Remington's fears were exaggerated, because few lawyers make any unusual use of the topical arrangement, and probably this feature of the Pierce compilations has not materially increased their usefulness.

Annotating a compilation of the statutes is a task which cannot but displease some lawyers, because often they overlook the practical matters involved in such problems. In the first revision of Ballinger's Code, the compiler in 1910 reluctantly omitted those valuable citations to similar statutes and analogous decisions of foreign jurisdictions. In the light of the development of Washington law their inclusion was not justifiable. The compiler attempted, however, to preserve the note form of citation throughout that compilation, but in 1915 and in 1922, he reduced these case references to the bare citations only because he felt that the Code of 1915 and the Compiled Statutes would not safely carry the added load. With the expansion of his code into the Revised Statutes of 1933 in twelve volumes, sufficient space for the use of these syllabic notes was provided and their inclusion was accordingly restored.

If the Pierce and Remington compilations be compared with respect to the scope of their chronological tables, the verdict must be in favor of the Pierce codes, notwithstanding the lack of clarity of form which the latter possess. The Pierce compilations carry cross-references to the corresponding sections of the codes of their competitors, a thoughtful service not contained in the Remington compilations; they are broader in the scope of these tables and at the same time give, after the sections thereof, the equivalent and corresponding Remington code section references.

XII.

The experience which the people of the state had with code commissions prior to 1891 has lived on. While no plan for codification or code revision since that date has successfully run the
gauntlet of legislative approval, it does not follow that attempts in that direction have not been made. As early as 1895 and again in 1897, bills were introduced into the legislature having as their objective the appointment of a code commission to revise the laws. These bills were sponsored by Judge Richard Saxe Jones of King County, and were introduced at his request. Several factors contributed to their defeat at that time. In first place the demand for codification followed too closely after the work of Commissioner Hill, and was neither desired nor needed. Secondly, the bills made no provision for remuneration of the members of the commission. This was the more remarkable in view of the heavy costs of the work of the Code Commission of 1888 and the Hill Commission. Clearly no commission would spend its time on a project of such magnitude without just compensation for its labors. In the bill as introduced in 1897 the commissioners were to take their chances of remuneration with the succeeding legislature. This was a chance few persons would consent to take.

Seventeen years later, Judge Jones renewed his efforts for code reform by enlisting the support of the Washington State Bar Association for his proposed reform. The Bar Association, having approved his plan and endorsed the bill which he had proposed, carried on an active campaign for passage of the bill in the legislative sessions from 1909 through 1913, but without success. During that time a special committee on code revision was kept active in this movement, but from its annual reports and from the debates within the association meetings, it would appear that not all members of the bar were agreed upon the wisdom of such procedure.

In 1912, Governor Hay appointed a commission of eleven of the outstanding lawyers of the state as a Commission on Reform of Judicial Procedure and asked them to report to him the changes which they thought necessary to bring the statutes into a more modern form. The commission recommended changes in the appellate procedure, the civil code, and the probate code. When the commission requested an opinion from the bar on the merits of its recommendations, the association criti-
cized the findings severely and disapproved entirely the first portion of the report.66 Nothing resulted from this report at the time, but the influence of the commission’s action was felt in 1917, when the probate code finally was adopted.

Again in 1917 attempts were made to authorize code revision but without success. Some progress, however, was obtained in 1925 through the services of Mr. Charles Gleason of the Seattle bar, whom the legislature had commissioned to weed out the dead, obsolete, and impliedly repealed statutes and to prepare bills for their repeal. This disposed of considerable “dead wood” in the statute law, but unfortunately Mr. Gleason did not live to complete the task.

While no official codification of the statutes has been made in Washington since 1891, all editions of the Ballinger-Remington compilations on the one hand, and the Pierce compilations on the other, have been made “official” by special legislative enactment. The designation of these codes as official in reality means nothing, and carries no superior sanction. It is only because of the competitive rivalry of the two compilations that there has developed the practice of making these codes official by law, and without doubt this practice has done much to prevent official revision through the medium of special or permanent code commissions. Accordingly, code revision in Washington today is afar off, with little hope that a thorough revision and scientific codification will be accomplished for many years to come.

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*The descriptions have been purposely abridged for the use of the bar.
**One imprint shows this code divided into four volumes and numbered accordingly. Volume three of this imprint should not be confused with volume three edited by Mahan in 1903.
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