

HISTORY OF THE CODIFICATION OF THE LAWS OF GEORGIA

The development of the codification of the laws of Georgia has been divided by one commentator into three separate stages — compilation, digest, and code.

The compilation stage began with the provisions of the Constitution of 1798 that the body of laws of the state should be “revised, digested and arranged under proper heads.” Pursuant to this provision, a compilation of laws was published by Robert Watkins in 1801, followed the next year by a compilation prepared by Horatio Marbury and William H. Crawford. Both compilations covered much the same field, specifically, the years 1755 to 1800. Later, pursuant to an Act of 1809 providing for decennial compilations, three separate compilations were prepared. The first, covering the years 1800 to 1810, was prepared by Augustin Smith Clayton. The second, covering the years 1810 to 1819, was prepared by Lucius Q. C. Lamar. The third, covering the years 1819 to 1829, was prepared by William H. Dawson. These volumes encompassed all laws and resolutions passed during the periods in question, regardless of the public and general or private and local nature of the laws and resolutions included and regardless of whether they were in force.

The next stage of development, the digest period, began with an Act of 1819 directing the preparation of a digest of laws of the state. The digest was to embrace all Acts and resolutions passed prior to the 1819 Session as well as those Acts and resolutions passed during that session. The Act directing the preparation of the digest contemplated a condensed volume which would exclude repealed laws and laws of a private and local nature. Pursuant to this legislative authorization, Oliver H. Prince prepared a digest volume which was approved by the Governor in January 1822 and which was revised in 1837. The 1837 revision of Prince’s Digest contained an index of local laws. Pursuant to a resolution of the General Assembly passed December 23, 1843, William A. Hotchkiss prepared a digest of the statutory law of Georgia. This work was the subject of a state subscription upon its completion in 1845. In 1851, Thomas R. R. Cobb published another legislatively authorized digest which was based on the arrangement and plan developed by Prince. Both Prince’s Digest and Cobb’s Digest contained an alphabetical listing of titles and a chronological arrangement of legislative Acts and resolutions. Next, Howell Cobb prepared “A Compilation of the General and Public Statutes of the State of Georgia.” This work was subscribed to by the state in 1859.

The next and most innovative step in the evolution of Georgia codified law was the Georgia Code of 1863. In 1858, a bill was introduced in the General Assembly proposing the codification of Georgia law. The resulting enactment provided for the formation of a three-man commission to

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prepare for the people of Georgia a code "which should, as near as practicable, embrace, in a condensed form, the laws of Georgia, whether derived from the common law, the constitutions, the statutes of the state, the decisions of the supreme court, or the statutes of England in force in the State." This was to be the first code in the United States giving statutory effect to common law and equitable principles.

The commissioners, David Irwin, Thomas R. R. Cobb, and Richard H. Clark, took it upon themselves to add and delete laws in a manner consistent with the existing system of law, with an eye toward meeting existing needs and in anticipation of future needs. In doing so, the commissioners adopted and incorporated suggestions, alterations, modifications, enlargements, and restrictions in the laws of the state. However, the taking of such liberties was ratified when the Code was adopted by the General Assembly.

Because the commissioners omitted historical annotations, the sources of some of the laws contained in the Code of 1863, particularly the part dealing with "Political and Public Organization of the State," written by Clark, remain undisclosed. Other parts of the Code are clearly traceable to two prior sources, the Judiciary Act of 1799 and the Penal Code of 1833, which were carried almost wholly intact into Parts 3 and 4 of the Code.

Although a number of codes have followed the Code of 1863, few alterations in its form have been made. Some changes have been made for purposes of clarity, but the substance of the original Code has generally been preserved. The succeeding revisions have continued the process initiated by the Code of 1863 of codifying common law principles as they have developed.

Subsequent official Codes of Georgia were commissioned and adopted as follows:

Code of 1868: Committee appointed to examine revised Code, Ga. L. 1865-66, p. 315. Governor authorized to subscribe for copies for use by state, Ga. L. 1866, p. 223. Code ratified by Constitution of 1868, Art. XI, Sec. III.

Code of 1873: Governor authorized to subscribe for copies of revised Code upon favorable report by Attorney General, Ga. L. 1872, p. 524.

Code of 1882: Governor authorized to direct Attorney General to examine revised Code, Ga. L. 1880-81, p. 676. Publication of Code authorized by General Assembly, Ga. L. 1880-81, p. 140.

Code of 1895: Authorization given for appointment of Code commissioners, Ga. L. 1893, p. 119. Code adopted, Ga. L. 1895, p. 98.

Code of 1910: Code commission created, Ga. L. 1909, p. 111. Code adopted, Ga. L. 1910, p. 48.

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Code of 1933: Code commission created, Ga. L. 1929, p. 1487. Code adopted, Ga. L. 1933, p. 31; Ga. L. 1935, p. 84.