Statutory Compilations of Washington

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> The past is continually needed to explain the present, and the whole to explain the part.[1]
>
> Edward Burnett Tylor

This Article surveys the statutory compilations of Washington. Although Washington's laws have evolved through a gradual process, compilations of these laws have had a more sporadic development. This development culminated in the Revised Code of Washington (RCW), which has remained relatively uniform since its first publication in 1951. Still, familiarity with its antecedents remains important today.

One important function of any historical overview is to provide a framework upon which to lay the present. Tracing the development of the RCW can provide insight into the Code itself, and perhaps into the particular provisions of which it consists.

Another reason to study statutory history is that the applicable law in a given instance may predate the RCW. For example, in construing a will, it is generally said that the law that was in force when the will was executed is the law that determines the intention of the testator.[2] For wills written before 1951, then, attorneys may need to consult some of the pre-RCW codes.

Finally, a common problem in law today is that of determining the legislative intent of a statute. There is scant legislative history in Washington, especially for laws enacted in decades past. Some of the older codes supply contemporaneous sources for provisions that may shed light on what was originally intended by the wording in a particular statute.

In this Article, each code is briefly described to highlight its most prominent characteristics. The purpose of these descriptions is to inform the user of the completeness of the

1. *Reprinted in* D. BOORSTIN, THE DISCOVERERS 649 (1985).

2. 4 W. BOWE, PAGE ON THE LAW OF WILLS § 30.27 (New Revised Treatise 1961).

Code to which he or she is referring, as well as to suggest possible utility for the Code.

For background, a brief history of Washington and its governance precedes the discussion.

I. BEFORE CREATION OF WASHINGTON TERRITORY

Prior to 1848, the region of what is now the state of Washington had no formal government. Although the region was a part of Oregon Territory, that area was not a recognized "United States Territory" at the time. As a result, not only was there no formal government in the region, but the settlers swore allegiances to different countries. The situation was further complicated by the presence and governance of the native Indians, and their interrelationships with the settlers.

In truth, if not for the issue of dominion, there was probably little need for a government due to the paucity of settlers.[3] However, since both Great Britain and the United States had an interest in the region's resources, governance and its implications became an issue. The response was a treaty between the two countries, signed October 20, 1818, providing for joint occupation of Oregon Territory for ten years.[4] Some authors contend that this treaty was the result of ignorance on the part of the signatories.[5] Virtually all claims to the territory at the time were in favor of Great Britain (*e.g.*, discovery, length of settlement, number of settlers), as were alliances with the Indians through trade relations and marriage. But since the territory was so remote from the seats of both governments, it is possible that neither understood its true bargaining position. Ultimately, the ten years gave the United States an opportunity to establish better claims to the territory.

In spite of and shortly after the 1818 treaty, the British Parliament enacted legislation imposing the laws of upper Canada (already under British dominion) upon the Oregon Territory.[6] Enforcement of these laws was left to officials of the Hudson's Bay Company.

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3. REV. H.K. HINES, AN ILLUSTRATED HISTORY OF THE STATE OF WASHINGTON 121 (1893) [hereinafter HINES].

4. Convention with Great Britain, Oct. 20, 1818, 8 Stat. 248, 18 Stat.(2) 297.

5. L. SPENCER & L. POLLARD, A HISTORY OF THE STATE OF WASHINGTON 246 (1937).

6. Act of July 21, 1821, 1 & 2 Geo. IV, ch. 66. The act's purpose was to establish some mechanisms for bringing to justice persons committing both civil and criminal wrongs. It did recognize the 1818 treaty. *Id.* § 6.

In 1827, the treaty of joint occupancy between Great Britain and the United States was renewed for an indefinite number of years, with either government being free to withdraw upon one year's notice.[7]

II. PROVISIONAL GOVERNMENT: 1843

Diplomatically, little happened for the next twenty years; but during that interval, American settlers began to infiltrate Oregon Territory. Eventually these settlers petitioned the United States Congress to establish a territorial government.[8] In July of 1843, the settlers set up a provisional government during what is now known as the Champoeg Meeting. The "organic laws" they adopted were prefaced by the preamble: "We, the people of Oregon Territory, for the purpose of mutual protection and to secure peace and prosperity among ourselves, agree to adopt the following laws until such time as the United States of America extend their jurisdiction over us."[9] As can be seen, besides establishing a system of government, the instruments drawn up by the settlers at Champoeg also sent a message to the world regarding their allegiance. Still, there remained a substantial faction of British loyalists in the region, many of whom refused to recognize any authority in the provisional government. However, no confrontations occurred to challenge the provisional government and the actions of the government consisted almost entirely of revising its "organic laws" and petitioning the United States Congress to create a territorial government according to the usual forms of Congressional action.[10] No territorial government could be established, though, until the question of sovereignty over Oregon Territory was settled.

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7. Convention between United States and Great Britain, Sept. 29, 1827, 8 Stat. 362, 18 Stat.(2) 312.

8. A memorial was presented January 28, 1838, upon which no action was taken. Later that year another petition was sent. HINES, *supra* note 3, at 121-23.

9. *Id.* at 127. For full text, see THE ORGANIC AND OTHER GENERAL LAWS OF OREGON TOGETHER WITH THE NATIONAL CONSTITUTION AND OTHER PUBLIC ACTS AND STATUTES OF THE UNITED STATES 1843-1872 at 46-51 (E. Semple pub. 1874); *see also* M. DEADY & L. LANE, THE ORGANIC LAW OF THE PROVISIONAL GOVERNMENT OF OREGON, TOGETHER WITH THE NATIONAL CONSTITUTION AND OTHER PUBLIC ACTS AND STATUTES OF THE UNITED STATES 1845-1864 (1866). The "organic laws" were based on the laws of Iowa, which were on hand at the time (37 acts were taken verbatim out of the Iowa Code of 1839), and the Northwest Ordinance, Act of Aug. 7, 1789, ch. 7, 1 Stat. 51 (1787). *See* G. W. FULLER, A HISTORY OF THE PACIFIC NORTHWEST 198-99 (1931).

10. HINES, *supra* note 3, at 128-29.

III. OREGON TERRITORY: 1848

Finally, on June 15, 1846, Great Britain and the United States agreed upon the boundary between their possessions west of the Rocky Mountains.[11]

Because of the political controversies (dealing for the most part with the slavery issue in newly settled regions), it was not until August 14, 1848, that Congress established a territorial government in Oregon.[12] All acts of the territorial legislature had to be submitted to Congress and, if disapproved, became "null and void."[13]

It was another five years before, in 1853, Congress created Washington Territory.[14] At that time, the territory included all the area north of the Columbia River and extended east to the crest of the Rockies. Thus, it included parts of present day Idaho and Montana. Not until March 3, 1863, when Congress created Idaho Territory, were the boundaries of what is now the State of Washington established.[15]

IV. AFTER CREATION OF THE WASHINGTON TERRITORY: 1853

Washington's Organic Act maintained the existing laws of the Territory of Oregon until such time as those laws were repealed or amended by future legislation.[16] Such repealing legislation was, in fact, enacted in 1856.[17] At least one commentator, however, suggests that such legislation may have been null and void.[18] This is supported by section 1952 of the

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11. Act of June 15, 1846, 9 Stat. 869, 18 Stat. (2) 320.

12. Act of Aug. 14, 1848, ch. 177, 9 Stat. 323. This act recognized the existence and validity of the laws of the Northwest Ordinance and of the provisional government and gave them continuing effect in the territory until otherwise modified. *Id.* § 14, 9 Stat. 323, at 329.

13. *Id.* § 6. Such a process was standard for territorial governments of the United States.

14. Act of Mar. 2, 1853, ch. 90, 10 Stat. 172. But note: the original Organic Act was completely revised in U.S. REV. STAT. §§ 1896-1953 (1873). A construction clause of that revision (U.S. REV. STAT. § 5596 (1873)) has been held to have abrogated or repealed all prior statutes on the same subject as those revised. Dwight v. Merrit, 140 U.S. 213, 217 (1891).

15. Act of Mar. 3, 1863, ch. 116, 12 Stat. 808.

16. Act of Mar. 2, 1853, ch. 139, § 12, 10 Stat. 77.

17. Act of Jan. 31, 1856, 1855-56 Wash. Terr. Laws 7, states: "All laws heretofore in force in this Territory by virtue of any legislation of the Territory of Oregon, be, and the same are hereby, repealed."

18. T. ABBOTT, REAL PROPERTY STATUTES OF WASHINGTON TERRITORY xxviii (1892). Abbott says a blanket repeal provision was not the sort of "future legislation" contemplated by Congress in the Organic Act.

1873 Revised Statutes of the United States, which continued to recognize the force of the prior Oregon laws. Additionally, the repealing statute has not been included in any of the state codes. Consequently, the question of whether the laws of Oregon Territory remain authoritative in Washington is unsettled. Furthermore, by incorporating Oregon's territorial laws, Washington indirectly adopted the laws of Iowa Territory,[19] incorporated by Oregon in two different forms: first as the statute laws of Iowa Territory,[20] and later as the Revised Laws of Iowa of 1843.[21]

The first session of the territorial legislature convened in Olympia, Washington, on February 28, 1854. Three days later, legislators officially recognized the need for a compilation of existing laws by passing "an act to provide for the appointment of a board of commissioners to prepare a code of laws for the Territory of Washington."[22]

Session laws for 1854 were published in a volume entitled *Statutes of the Territory of Washington: Being the Code Passed by the Legislative Assembly, at their First Session begun and held at Olympia, February 28th, 1854.* This first statutory compilation of Washington included a copy of the Declaration of Independence; the United States Constitution; the 1846 Treaty with Great Britain concerning borders; the Organic Act; the Donation Act (giving acreage to white settlers designated by the Surgeon General) and amendments; an abstract of the laws of the United States in relation to the naturalization of aliens; the statutes of general application; and a section of private and local laws. Included in this compilation was a sixty-five page index. Compilation of the acts was in no particular order. Still, it was referred to as the Code of 1854.

According to the Organic Act, the legislative assembly was to meet annually. Each year, the legislature published the laws enacted during that session (session laws) without any attempt at topical arrangement. The volumes did include, however, an index for the laws of that session.

The laws of 1859-60 were the first to resemble a true code.

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19. Although the Territory of Iowa had incorporated the laws of Wisconsin in its Organic Act, it repealed this incorporation in 1840, prior to incorporation of its laws by Oregon. *See* Act of July 30, 1840, 1840 Iowa Acts 130.

20. Act of July 5, 1843, 1843-49 Or. Terr. Laws 98.

21. Act of Aug. 12, 1845, 1843-49 Or. Terr. Laws 103.

22. Act of Mar. 3, 1854, 1854 Wash. Laws 451.

This was due to the passage of lengthy acts that included a variety of items within a general subject (*e.g.*, the Civil Practice Act or the Criminal Practice Act). Periodically, the legislature revised these major portions of the Code of 1854, and the publication of its session laws for those years also resembled a code format. When the legislature revised these major acts, it reenacted them in their entirety with the subsequent amendments.[23] It is important to remember, however, that these volumes only included laws enacted or reenacted during the particular session.[24] This practice of statutory publication continued for approximately twenty years. Throughout this period there was a constant call for a revision, compilation, and printing of the entire territorial code.

V. THE CODE OF 1881

The legislature responded to the demand for a new compilation by publishing the Code of 1881.[25] For the first time since 1854 all the territorial laws of a permanent nature were published in one compilation.

The Code of 1881 is divided into five subdivisions entitled as follows: Civil Procedure, sections 1-763; Criminal Procedure, sections 764-1296; Probate Practice Act, sections 1297-1686; Justice Practice Act, sections 1689-1938; and Miscellaneous, sections 1939-3327. Pursuant to section 3323 of the Code, the enacting clauses and effective dates of the sections were omitted in the compilation.

Chapter CCLV (sections 3319-3325) of the Code of 1881 discusses the Code itself. By its own terms, the Code is to be construed as "repealing all prior laws pertaining to the same subject, but the provisions of the Code so far as they are the same as those of prior laws shall be construed as continuations of such laws and not as new enactments."[26] The Code goes on

23. The apparent explanation for this phenomenon is that the federal government had assumed the obligation to pay for the printing of the session laws pursuant to a proviso in § 11 of the Organic Act. The cost for printing a separate code compilation would have been borne by the territory itself. *See* A. Beardsley, *Compiling the Territorial Codes of Washington*, 28 PAC. NORTHWEST Q. 3, 12 n.21 (1937) [hereinafter *Territorial Codes*].

24. *See* 1859-60 Wash. Laws, 1863-64 Wash. Laws, 1869-70 Wash. Laws, 1871-72 Wash. Laws, and 1873-74 Wash. Laws. These compilations are often referred to as Codes (*e.g.*, Code of 1863).

25. Code of 1881.

26. *Id.* § 3319.

to say that any acts or portions of acts that were general in nature and in force prior to the enactment of the Code were continued unless repugnant to the Code.[27] The purpose of the saving clause was to preserve any laws that had been inadvertently omitted. In fact, some seventy-seven general laws had been omitted.[28] These laws were published shortly after the publication of the Code of 1881, in a volume entitled *Supplement to the Code of 1881*, which became known as Bagley's Supplement (after public printer C.B. Bagley). Bagley's Supplement relies upon the section 3320 saving clause for its authority rather than standing on its own.[29]

VI. STATEHOOD: 1889; *HILL'S CODE*: 1891

Even after the publication of the Code of 1881, the perennial cry for a new territorial code continued. As the granting of statehood became imminent, the legislature acknowledged the need for such a code and began negotiations for a new compilation of statutes.[30] After a great deal of local political infighting and scandal, William Lair Hill was appointed to compile a statutory revision.[31] In the meantime, on November 11, 1889, Washington entered the union as the forty-second state.[32]

The government envisioned by the new state constitution and that provided by the existing territorial government were very different. This difference compelled Hill to introduce a number of bills to the legislature for enactment.[33] These bills

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27. *Id.* § 3320.

28. *Territorial Codes*, *supra* note 23, at 49.

29. *See* prefatory note to Bagley's Supplement. There are, in fact, two editions of the Supplement; one edition has an 1881 imprint, the other has an 1884 imprint. The 1881 edition contains five sections not included in the 1884 edition (two sections repealed by 1883 legislation; one temporary section, which expired by its own terms in 1883; one repealed prior to 1881, but included by mistake; and one omitted from the 1884 supplement by inadvertence). Six laws are contained in the 1884 edition that are not contained in the 1881 edition. These laws, relating to county boundaries, were not passed until the legislative session of 1883. *Territorial Codes*, *supra* note 23, at 50-51.

30. *See* A. Beardsley, *The Codes and Code Makers of Washington, 1889-1937*, 30 PAC. NORTHWEST Q. 3, 13 (1939) [hereinafter Beardsley].

31. Act of Feb. 18, 1890, 1889-90 Wash. Laws 236. For a discussion of the politics pursuant to passage of the Act, see Beardsley, *supra* note 30, at 3-22.

32. The act to admit Washington to the union was approved by Congress on February 22, 1889. Act of Feb. 22, 1889, ch. 180, 25 Stat. 676. President Harrison's proclamation declaring Washington a state was delivered on November 11, 1889. Proclamations, 26 Stat. 10.

33. *See* 2 HILL'S CODE iii (1891). The differences in government structure were particularly acute in the judicial system.

allowed Hill to give continuity to the Code without substantially changing the language of the legislature. The end result of Hill's efforts was a two-volume work entitled *The General Statutes and Codes of the State of Washington*, known colloquially as Hill's Code. Based on the Code of 1881, Hill's Code was given approval by the legislature[34] and was distributed in 1891.

The first volume of Hill's Code contains statutes of a general nature; the second volume consists of the Code of Procedure, Penal Code, and Constitutions. Sections are numbered consecutively within each part of the Code (*e.g.*, sections are numbered from 1 to 1712 within the Code of Procedure, at which point the Penal Code begins with its section 1). This is in contrast to the Code of 1881, which employs consecutive numbering of all sections of the Code. Corresponding section numbers of the Code of 1881 are given in brackets in Hill's Code following Hill's section number. For laws enacted after 1881, the session law citation is given.

Hill's Code also includes annotations. These annotations refer to cases from Washington, Oregon, California, and numerous other states where the statutory law was similar or identical to Washington's. The current value of this feature should not be overlooked. These cases give indicia of legislative intent at a time proximate to the legislation; and they are not included in later annotated Washington codes. Thus, without using Hill's Code, such cases are unlikely to be discovered. Furthermore, some decisions of the Oregon Territorial Court, and possibly the courts of Iowa,[35] might be mandatory authority in the state of Washington.

The second volume of Hill's Code contains a twelve-page index to the United States and Washington Constitutions as well as a general index to the Code. The Code is supplemented with pages of citations that could be cut out and pasted in the margins of the appropriate sections.[36]

34. Act of Mar. 6, 1891, ch. 89 1891 Wash. Laws 173. The Act was passed as an amendment to that which appointed Hill.

35. *See supra* notes 20, 21.

36. The supplements were compiled by F.A. Cleveland of the New Whatcom Bar. No records could be found to indicate the frequency of supplementation.

VII. MISCELLANEOUS STATUTORY COMPILATIONS (HUNTLEY AND ABBOTT): 1890S

Shortly after the release of Hill's Code, other statutory compilations were published. The most noteworthy of these were Huntley's Code and two compilations published by T. O. Abbott.

Huntley's Code of Procedure and Penal Code (Huntley's Code), published in 1893, is a one-volume compilation of general procedural statutes, lien and mortgage laws, probate law and procedure, criminal procedure, and the penal code. It is compiled from the Code of 1881 and subsequent session laws.

Huntley's Code contains a number of acts amendatory to the Code of 1881, which Hill's Code omitted.[37] Hill's omissions presumably were based on the Territorial Supreme Court's interpretation, in *Harland v. Washington*,[38] of the following clause from the Organic Act: "every law shall embrace but one object, and that shall be expressed in the title."[39] The *Harland* court held that reference to a section in the title of an amendatory act, without more, is insufficient to satisfy the provision in the Organic Act and such laws were, therefore, declared void.[40]

William Lair Hill apparently determined that certain laws amendatory to the Code of 1881 had defective titles and, therefore, omitted them because of their infirmity. Huntley included the amendatory acts on the theory that a later case, *Marston v. Hughes*,[41] overruled *Harland* and, therefore, made the acts valid. Actually, *Marston* did not specifically overrule *Harland* and at least one commentator argues that both Hill's omission of acts not specifically invalidated, and Huntley's revival of sections not included in Hill's legislatively approved code, were inappropriate.[42] Although Huntley's revivals have

37. The following sections of Huntley's Code are not found in Hill's Code: 701, 708, 709, 1212, 1283-1295, 2242; and notes to 843, 1272, 1284, and 1966.

38. 3 Wash. Terr. 131, 13 P. 453 (1887).

39. U.S. REV. STAT. § 1924 (1878).

40. *Harland*, 3 Wash. Terr. at 151, 13 P. at 461.

41. 3 Wash. 267, 28 P. 520 (1891). The *Marston* court was actually considering slightly different language since that of the state constitution (which *Marston* interpreted) varied from that of the Organic Act which *Harland* interpreted. Section 19, article 2, of the constitution read: "No bill shall embrace more than one subject, and that shall be expressed in the title."

42. Beardsley, *supra* note 30, at 31. The general rule is that an act, the title of which is insufficient, may become valid by incorporation in a general revision of the laws. *See* 1A N. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 28.08 (4th ed.

been followed to varying degrees by later code compilers,[43] Washington courts have never expressly decided the validity or invalidity of these amendatory acts.

Other features of Huntley's Code include the following: cross-references to the Code of 1881 and to Hill's Code, annotations to Washington Supreme Court decisions and, in the back of the compilation, a "corresponding sections" table cross-referencing the Code of 1881 and Hill's Code with Huntley's Code. Supplemental notes were published in 1895.[44] They were printed in compact form and on one side of a page to allow them to be pasted in the margin.

Two other statutory compilations worthy of mention were published at approximately the same time as Huntley's Code. Both compilations were subject specific and both were compiled by T. O. Abbott. The first, *Real Property Statutes of Washington Territory from 1843 to 1889*, was published in 1892. It includes many statutes whose subjects are ancillary to, but nonetheless have some effect on, real property. In addition to the Washington statutes, property statutes of Oregon and Iowa are analyzed. Also included are relevant laws, treaties, executive orders, and proclamations of the federal government. This extremely comprehensive compilation has lost much of its value due to the passage of time and the advent of title insurance. However, its importance at the time it was published should not be underestimated.

Abbott's second compilation was the comparative probate code[45] (sometimes called Abbott's Probate Code). This three-volume work includes the full text of statutes from nine states,[46] topically arranged and compared. Certainly, the work done was monumental, even if the value of the work produced was not.

1985). Note: the rule is misstated in the text but stated correctly and supported with case law in the footnotes.

43. Pierce's Code followed Huntley's reincorporation; Ballinger's and Remington's Codes did so only selectively.

44. HUNTLEY, SUPPLEMENTAL NOTES TO THE CODE OF PROCEDURE AND PENAL CODE (1895).

45. T. ABBOTT, A TREATISE ON PROBATE LAW AND PRACTICE, EMBRACING THE LAW OF WILLS, AND . . . (1904).

46. Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

VIII. MCLAUGHLIN'S CODE: 1896

The next general statutory compilation to appear was the so-called Code of Washington, 1896.[47] This Code is also referred to as McLaughlin's Code, named after its main compiler, E.D. McLaughlin. The Code consists of 6,575 consecutively numbered sections. The United States and Washington Constitutions are included in the numeration of the Code. Following each section of McLaughlin's Code are cross-references to session laws and Hill's Code, and annotations to Washington Supreme Court decisions.

Probably the most significant feature of this code is its indexing. In the front of the volume, a "Special Index" gives citations to session laws by subject. In the back of the volume, the main index gives citations to the Code itself. This index is over 100 pages of small print and is far superior to that of all previous codes (both in references per topic as well as in specificity).

Were it not for the introduction of Ballinger's Code[48] in 1897, McLaughlin's Code might have received official recognition by the legislature.[49] Such recognition would allow courts to cite to and take judicial notice of the code's provisions. For this reason, state sanction is often important to a code publisher.

IX. BALLINGER'S CODE: 1897

Ballinger's Annotated Code and Statutes is a two-volume code based on Hill's Code. One unique feature of Ballinger's 1897 Code is that each section is followed not only with its own legislative history, but also with cross-references to codes of other states with similar provisions. These cross-references continue to be useful in tracing the origin of early state statutes. Ballinger's Code, like Hill's Code, also contains, in its annotations, some decisions from other states construing simi-

47. E. MCLAUGHLIN, C. REMSBERG, & J. ATKINSON, THE REVISED STATUTES AND CODES OF THE STATE OF WASHINGTON, COMPILED, ANNOTATED, AND PUBLISHED WITH CITATIONS ON STATUTORY CONSTRUCTION (1896).

48. BALLINGER'S ANNOTATED CODES AND STATUTES OF WASHINGTON (Bancroft-Whitney 1897).

49. H.R.J. Res. 2, 5th Leg. (1897), relating to purchase of the code of laws published by McLaughlin, *et al.* was tabled January 27, 1897. 1897 House Journal, 5th Leg., at 223. This resolution was preliminary to the Code of 1896 receiving any official recognition.

lar statutes. An index and table of references from Hill's Code are included in the second volume.

Additionally, Ballinger's Code is valuable because of its exhaustive annotation of the Constitution of Washington. Annotations include cross-references to other state constitutions and to other state court interpretations of like clauses. The United States Constitution is also extensively indexed in Ballinger's Code.

A third volume of Ballinger's Code was published in 1904. It is, in fact, supplemental to the original two-volume work.

X. PIERCE'S CODE: 1902

Before the publication of Ballinger's third volume, Pierce's Code of 1902[50] appeared. Unlike previous compilations, this Code was based both on the original session laws from 1854 and upon the official Code of 1881, insofar as the two were compatable. Because both were used, Pierce's Code avoided the errors of the Code of 1881 and its progeny—those compilations relying exclusively on the 1881 Code as the original source of statutory law.[51] Pierce's Code of 1902 was a single-volume unannotated code. A supplementary volume of notes and annotations was added in 1903. Dissatisfaction with this format caused its abandonment in the 1912 edition. Since 1912, annotations in Pierce's Code have immediately followed the appropriate sections in the compilation.

Pierce's Code annotations vary from those of other codes. They are terse and, generally, to the point. The other codes display a tendency to copy case syllabi, which at times were quite verbose. Pierce's Code also includes the titles of the acts at the beginning of appropriate sections. This was not the practice of other state codes. If titles appeared in the other codes, they appeared in the historical note at the end of the

50. F. PIERCE, PIERCE'S CODE: A COMPILATION OF ALL THE LAWS IN FORCE IN THE STATE OF WASHINGTON, INCLUDING THE REGULAR AND EXTRAORDINARY SESSIONS OF 1901 (1902).

51. At least once, the differences in language between Pierce's Code and Remington's Code (direct descendant of Ballinger's Code) became important. In Pettigrew v. McCoy-Loggie Timber Co., 138 Wash. 619, 245 P. 22 (1926), the court cursorily held that words included in an act passed by the legislature were operative even though they did not appear in the Code of 1881 as subsequently passed by the same legislature. Interestingly, even though the language in Pierce's Code was found to be the correct version, and though Arthur Remington was the Reporter for the supreme court at the time, Remington's compilations did not reflect a subsequent change in wording.

section. Additionally, the tables of Pierce's Code cross-referenced the codes of its competitors, Ballinger's and Remington's, a service that was not reciprocated by the competition.

The classification scheme of Pierce's Code resembled that of Hill's Code much more than that of the contemporaneous Ballinger's Code. Pierce's Code embodied a consecutively numbered cyclopedic approach (*i.e.*, an arrangement more alphabetical than topical).[52] Thus, while Hill's Code has 84 titles and Ballinger's has 39, Pierce's 1902 Code has 122 subjects under which the laws were compiled. These subjects were arranged alphabetically.

XI. CONCURRENT PUBLICATION OF BALLINGER/REMINGTON AND PIERCE CODES: 1902-45

Pierce's Code was republished periodically for over forty years.[53] Generally, a "new edition" was a republication of an

52. The 1912 edition of Pierce's Code substituted a consecutive numbering system based on titles and sections thereunder. However, this proved unsatisfactory and in the 1919 edition the cyclopedic format was reinstated.

53. The following is a list of the publications during the forty-year period:

1902 Pierce's Code (unannotated)

1903 Annotations to 1902 Pierce's Code

1905 Pierce's Code (unannotated). Amendments to this code were published in supplementary sheets which allowed the cites to be cut and pasted in the margins of the code. Reference is to chapter and laws.

1912 Pierce's Code Annotated

1913 Supplement to Pierce's Code, 1912

1919 Pierce's Code Annotated (2 vols. complete revision)

1921 Pierce's Code Annotated (3 vols. revised in part only)

1923 Cumulative Supplement to Pierce's Wash. Code, 1919

1923 Pierce's Code Annotated (2 vols.—same as 1919 Code with 1923 Cumulative Supplement included. Both volumes labeled 1923 on spine)

1926 Cumulative Supplement to Pierce's Wash. Code, 1919 (labeled 1926)

1926 Cumulative Supplement to Pierce's Wash. Code, 1919 (labeled 1927 on spine, but does not include laws of 1927)

1926 Pierce's Code Annotated (2 vols.—same as 1919 Code with Cumulative 1926 Supplement included. Both volumes labeled 1926 on spine)

1927 Supplement to Pierce's Wash. Code, 1926 (includes laws of 1927 only)

1929 Pierce's Code Annotated (3 vols. complete revision)

1931 Supplement to Pierce's Code, 1929

1933 Pierce's Code Annotated (2 vols. complete revision)

1934 Pierce's Code (unannotated)

1935 Supplement to Pierce's Wash. Code, 1933

1935 Pierce's Code Annotated (2 vols. bound as one)

1937 Cumulative Supplement to Pierce's Wash. Code, 1933

1937 Pierce's Code Annotated (2 vols. bound as one)

1939 Pierce's Code (2 vols.)

1943 Pierce's Code Annotated (preceding on title page; spine reads Pierce's

older edition with a cumulative supplement either in the last volume or in the back of the one-volume editions. A criticism of these codes is that the current date was added to every edition, implying that it was a completely new revision.[54]

During the propagation of Pierce's Code, Ballinger's Code continued to be published and supplemented.[55] Ballinger's Code evolved first into Remington and Ballinger's Annotated Codes and Statutes of Washington,[56] then into the Remington Compiled Statutes,[57] and finally into Remington's Revised Statutes.[58] All of these codes basically followed the same format and numeration originally introduced by Ballinger.

A major problem for lawyers at the time was determining how to cite to a statute. The two codes had substantially different numbering systems and citing to session laws was cumbersome when amendments to statutes were involved. The legislature's response to the issue of recognizing one code or

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Perpetual Code—sometimes appears as two separate volumes; sometimes two volumes bound as one)

1945 Supplement to Pierce's Perpetual Code.

54. This practice was remedied in 1937 when the imprint read "1933 Code with a 1937 Supplement" instead of "1937 Code" as it would have under the prior practice.

55. 1897 Ballinger's Annotated Codes and Statutes of Washington (2 vols.—a four-volume set of the same date also exists)

1899 Huntley Supplement to Ballinger's Code

1903 Mahan Supplement to Ballinger's Code (numbered as vol. 3).

56. 1910 Remington and Ballinger's Code (2 vols., each separately indexed)

1910 Krieder's Index to Remington and Ballinger's Code (consolidates the indices to vols. 1 and 2)

1913 Supplement to Remington and Ballinger's Code (numbered as vol. 3).

57. 1915 Remington's Code (2 vols. known as the "pony code")

1922 Remington's Compiled Statutes (3 vols.)

1923 Supplement to Compiled Statutes (often called vol. 4)

1927 Supplement to Compiled Statutes

58. 1932-33 Remington's Revised Statutes of Washington, Annotated (12 vols.). This set was updated with an annual pocket part until 1941. From 1941 to 1949, updating was done by issuance of biennial bound supplements.

1941 Supplement to Remington's Revised Statutes

1943 Supplement to Remington's Revised Statutes

1945 Supplement to Remington's Revised Statutes

1947 Supplement to Remington's Revised Statutes

1949 Supplement to Remington's Revised Statutes

It should be noted that these supplements (1941-49) were not cumulative. The indices, however, were cumulative. Thus, although the 1949 Supplement contained only those laws enacted and cases decided since the 1947 Supplement, the index contained references to all previous supplements.

the other was to declare both of them official.[59]

XII. FOUNDATIONS FOR A REVISED CODE OF WASHINGTON: 1941-51

In response to dissatisfaction with the two differently numbered codes, a bill was introduced to the twenty-seventh Washington Legislature "to make uniform and perpetual the citations of laws of this state for all compilations and codifications thereof."[60] Eventually, some disagreement arose between the two houses concerning the function of the proposed Code Committee. The senate favored the adoption of a uniform and perpetual system of numbering but opposed recompilation by the Committee.[61] The house favored a complete recompilation. The legislature ultimately voted in favor of a complete recompilation of the state laws along with the adoption of a uniform and perpetual system for numbering the sections.[62]

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59. This legislative response is indicated as follows:

Act of Mar. 13, 1899, ch. 67, Wash. Laws 109 (adoption of Ballinger's Code)

Act of Mar. 17, 1911, ch. 100, 1911 Wash. Laws 488 ch. 100 (adoption of Pierce's Code up to 1905)

Act of Feb. 1, 1911, ch. 7, 1911 Wash. Laws 8 (adoption of Remington & Ballinger's Code up to 1909)

Act of Mar. 17, 1913, ch. 95, 1913 Wash. Laws 275 (adoption of Pierce's Code up to 1911)

Act of Feb. 8, 1915, ch. 5, 1915 Wash. Laws 18 (adoption of both Remington & Ballinger's Code and Pierce's Code up to 1913)

Act of Feb. 14, 1921, ch. 10, 1920-21 Wash. Laws 75 (adoption of Pierce's Code up to 1919)

Act of Jan. 18, 1923, ch. 5, 1923 Wash. Laws 6 (adoption of Remington's Code up to 1921)

Act of Jan. 18, 1923, ch. 6, 1923 Wash. Laws 7 (adoption of Pierce's Code up to 1921)

Act of Mar. 19, 1927, ch. 236, 1927 Wash. Laws 363 (adoption of Remington supplements up to 1927)

Act of Mar. 19, 1927, ch. 237, 1927 Wash. Laws 364 (adoption of Pierce's Code up to 1927)

Act of Mar. 21, 1929, ch. 195, 1929 Wash. Laws 505 (adoption of Pierce's Code up to 1929)

Act of Feb. 13, 1945, ch. 6, 1945 Wash. Laws 22 (adoption of Pierce's Code).

The apparent explanation for this late recognition of Pierce's Code is that it was in response to his gift of 11 copies of his 1943 code to the legislature (one for the Speaker and the Press Table and one to each of the attorney members of the House, reported at 1945 House Journal, 29th Leg. 43). It is worthy of note that the bill introduced to the house recognized the code as "*the* official compilation," but was later amended to read "*an* official compilation" (emphases added).

60. 1941 House Journal, 27th Leg., at 128 (H.B. 205).

61. 1941 Senate Journal, 27th Leg., at 473.

62. Act of Mar. 21, 1941, ch. 149, § 2, 1941 Wash. Laws 418, at 419.

The Code Committee consisted of the State Law Librarian, the Law Librarian of the University of Washington, and the Executive Secretary of the Judicial Council.[63] The original grant of power authorized only recompilation, but the legislature, in 1943, found such power inadequate for its purpose and granted "full power of revision and codification."[64] In 1945, this grant of power was again modified to read "full power of codification," and a deadline was set, whereby the revised code would be submitted at least ninety days prior to the opening of the 1947 legislative session.[65] The Committee complied by delivering a two-volume compilation whose titles had been examined and revised to varying degrees. Upon submission, a Joint Report of the Judiciary Committees of the Senate and of the House of Representatives was issued.[66] The Judiciary Committee perceived a lack of definition as to what "revision" meant (*i.e.*, how much discretion did the Committee have to change words), and a lack of resources and time, but reported favorably on the work that had been done.[67] It recommended that the Code Committee be continued, be adequately funded, and that no specific time be fixed for completion.[68] The legislature responded by making the Committee a continuing Code Committee, defining the "power of revision" and appropriating moneys for the publication of the revised Code.[69]

The legislature next convened in 1949. Despite the fact that two of the Code Committee's three members opposed passage,[70] the legislature passed Substitute House Bill 681,[71] which

63. *Id.* § 1. The three positions were originally held by Mark H. Wight, Arthur S. Beardsley, and Alfred J. Schweppe. Marian G. Gallagher succeeded Beardsley in 1944 when Beardsley left the University of Washington Law Library to become a deputy prosecuting attorney.

64. Act of Mar. 22, 1943, ch. 252, 1943 Wash. Laws 782.

65. Act of Mar. 16, 1945, ch. 233, 1944-45 Wash. Laws 651.

66. 1947 House Journal, 30th Leg., at 437-44.

67. *Id.* at 438-39. A letter from the Code Committee to the House and Senate Judiciary Committees, which described the approach taken in code revision, is published as an appendix to the Joint Report, beginning on page 440. *See also Report to the State Bar Association of the State Committee for Recompilation of the Code*, 18 WASH. L. REV. 221-28 (1943), 19 WASH. L. REV. 225-31 (1944).

68. *Id.* at 440.

69. Act of Mar. 22, 1947, ch. 292, 1947 Wash. Laws 1273.

70. *See Proposed New Code Attacked by Majority of Code Committee*, 3 WASH. ST. B. NEWS 49 (Jan. 1949) [hereinafter *Proposed New Code Attacked*]. Mrs. Gallagher and Mr. Schweppe opposed passage because the Committee's staff had taken broad liberties in "revising" the code. They said that enactment of the proposed code would lead to confusion, litigation, and error, despite its status as prima facie evidence of the law.

adopted the existing code as a tentative code, created a new Code Committee, abolished the old Committee and provided allocation for the Code's completion and submission at the next session of the legislature. The Governor, however, vetoed the Bill claiming that "it would be a waste of time and money to continue the work as provided in this bill."[72]

The veto's effect was to leave the Statutory Code Committee intact but without any appropriation.[73] The Committee subsequently met and, pursuant to its conferred power to act in "collaboration with the publishers of existing codes,"[74] adopted a resolution authorizing the Bancroft-Whitney Company (publisher of Remington's code) to do the following: to prepare a recompilation of the state laws of a general and permanent nature; to use the numbering system adopted by the Code Committee; and to utilize any other material of the Committee that it deemed useful.[75] The State Bar Association supported this plan. The Bar Association passed a resolution recommending the abandoning of any attempt at further revision and requesting that the Legislative Council approve Bancroft-Whitney's plans for publication of the Code.[76] Bancroft-Whitney could thereupon proceed in publishing the new Code.

With Frank Pierce deceased, the only current code was Remington's Revised Statutes. It then consisted of a 1943 revision (supplemented with pocket parts), five supplemental volumes, and the session laws of 1949. Publication of a revision or recompilation was imperative. The Bar Association was concerned because the Governor's veto had suspended all work on the Code and Bancroft-Whitney was reluctant to work on a

71. The House passed HB 681 on March 3. 1949 House Journal, 31st Leg., at 705. Initially the Senate amended the Bill, calling for a $30,000 allocation rather than $70,000. 1949 Senate Journal, 31st Leg., at 614. The House, however, did not concur with the amendment, 1949 House Journal, 31st Leg., at 915, and eventually the Senate receded and passed a bill with a $75,000 allotment. 1949 Senate Journal, 31st Leg., at 662.

72. 1949 House Journal, 31st Leg., at 1093. The Washington State Bar Association's Code Committee also opposed passage and recommended veto. *Proposed New Code Attacked*, *supra* note 70, at 57.

73. Some appropriation was made by the Legislative Council for further work on the Code; however, the amount of appropriation was hardly adequate.

74. Act of Mar. 21, 1941, ch. 149, 1941 Wash. Laws 418.

75. *See Proposed New Code Attacked*, *supra* note 70, at 3.

76. *Id.* at 87 (1949). Author's note: the Legislative Council had been created by Act of June 11, 1947, ch. 36, 1947 Wash. Laws 60, to oversee, analyze, and evaluate the operations of the state government during session interims.

code that might be obsolete when published.[77]

XIII. ADOPTION OF THE REVISED CODE OF WASHINGTON: 1951

In 1950, the thirty-first Washington Legislature convened at an extraordinary session called by Governor Arthur B. Langlie.[78] Although the session was not called specifically for consideration of the Revised Code, the Code was made a subject of the agenda by recommendation from the Subcommittee of the Legislative Council. The legislature sat for only five days, during which time they enacted the "Revised Code of Washington" and recognized it as establishing prima facie evidence of the laws of the state.[79] The operative clause reads:

> The contents of said code shall establish prima facie the laws of this state of general and permanent nature in effect on January 1, 1949, but nothing herein shall be construed as changing the meaning of any such laws. In case of any omissions, or any inconsistency between any of the provisions of said code and the laws existing immediately preceding this enactment, the previously existing laws shall control.[80]

The code the legislature enacted was the same as that presented to the 1949 legislature. It physically consisted of two large paperbound volumes of mimeographed pages embodying ninety-one titles, and one volume of cross-reference tables and reviser's notes.

The problem of publication and distribution still remained, however, since no money was appropriated at the session for printing of the new "Revised Code of Washington."[81] The legislature attempted to remedy this problem the following year by creating a temporary Code Publication Committee to "do whatever necessary to secure the earliest practicable publication of an unannotated edition of the Revised Code of Washington . . . ."[82] The legislature also created a permanent Statute Law Committee whose primary responsibilities were to employ and supervise a code reviser, and to maintain legal and

77. *See Report of the Advisory Code Committee*, 3 WASH. ST. B. NEWS 75 (Jul. 1949) [hereinafter *Report*].

78. 1950 House Journal, 31st Leg., Ex. Sess., at 3-4.

79. Act of July 24, 1950, ch. 16, 1950 Wash. Laws, Ex. Sess. 33.

80. *Id.* § 2.

81. *Report*, *supra* note 77, at 75 (1949).

82. Act of Mar. 15, 1951, ch. 155, 1951 Wash. Laws 427.

clerical assistance for the code reviser.[83] Specific instructions limited the discretion of the code reviser to prevent substantive changes like those made unintentionally by the original Code Committee.

This session of the legislature adopted the uniform system of numbering, which required that each section end with the digit "0" and that the section numbers be treated as decimal figures.[84] The temporary Code Committee opted to publish the Code in looseleaf format since correction of errors and omissions, supplementation, and the addition of annotations could be done at minimal expense. Furthermore, the Committee informed the Bar that the cost of the looseleaf binders would be little more than that of case binding.[85] Finally, in November of 1951, distribution of the six-volume, looseleaf, Revised Code of Washington began.[86]

XIV. ANNOTATIONS TO THE REVISED CODE OF WASHINGTON: 1952

Two publishers printed annotations to the new Code.[87] In 1952, Bancroft-Whitney's annotations to the Revised Code of Washington[88] appeared in eight bound volumes and were kept current with pocket part supplementation. Annotations included the following: digests of Washington state and federal cases; cross-references to other sections of the RCW; references to earlier codes; and collateral references to American Law Reports, American Jurisprudence, Washington State Attorney General Opinions, the Washington Law Review, and to other practice and form manuals.[89] Each Code section listed its citation and short title followed by any annotations. Supplementation of the Bancroft-Whitney annotations ceased after the 1961 pocket parts because of the introduction of the Revised Code of Washington Annotated (RCWA).

Book Publishing Company (BPC) published its set of

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83. *Id.* at 435.

84. Act of Jan. 22, 1951, ch. 5, 1951 Wash. Laws 18.

85. Letter from Temporary Code Committee to members of the State Bar Association, 5 WASH. ST. B. NEWS 21 (Jun. 1951).

86. *New Code!*, 5 WASH. ST. B. NEWS 43 (Nov. 1951).

87. *R.C.W. Annotations*, 6 WASH. ST. B. NEWS 5 (Feb. 1952).

88. The spine reads "Annotations to Revised Wash. Code;" the cover reads "Annotations—Revised Wash. Code;" the title page reads "Revised Wash. Code Annotations."

89. Forward to WASH. REV. CODE ANNOTATIONS (Bancroft-Whitney 1952).

annotations in looseleaf format. This set was also introduced in 1952. At least some practitioners utilized the complimentary format to interfile BPC's annotations within the appropriate RCW looseleaf sections.[90] These annotations included cases, Washington State Attorney General Opinions, and references to ALRs and to the Washington Law Review. In 1977, following the lead of the RCW, Book Publishing Company changed the format of its annotations to paperbound volumes.

XV. RESTORATION/REENACTMENT OF THE RCW: 1953-65

Upon distribution of the RCW, the problems with revision that the original Code Committee had noticed became apparent to members of the Bar. In altering statutory wording pursuant to its revising powers, the Committee had unintentionally changed the substance of various provisions. The Report of the Bar Association's Advisory Committee on the Code declared:

> Based on information received and certain spot checking, it appears that the proposed "Revised Code", which is to be considered *prima facie* the law of the State of Washington as of January 1, 1949, contains such a number of "substantive" changes and modifications that no careful practitioner could rely upon the text of any particular section of the "Revised Code" until he had, in each and every case, checked the applicable Session Laws to see whether or not any substantive changes or revisions had been made.[91]

In fact, the Washington Supreme Court noted changes and omissions in the Code on several occasions when it was forced to base its decision on the pre-RCW codes and the session laws as well as the RCW.[92] Most of the titles, however, could be restored by means of minor changes. Yet, for a few titles, the session law background was in such a confused state as to require a complete study, review, redraft, and reenactment from a fresh starting point. During the years 1953-1959, the Statute Law Committee completed a comprehensive study of the variances. The Committee, by means of a series of admin-

90. *See* White, *New Edition of RCW to be Published*, 5 WASH. ST. B. NEWS 19 (Oct./Nov. 1973) [hereinafter White].

91. *Report of Advisory Committee on the Code*, 5 WASH. ST. B. NEWS 3 (Jan. 1951).

92. *See, e.g.*, Morton v. McDonald, 41 Wash. 2d 889, 890, 252 P.2d 577 (1953); Signal Oil Co. v. Stebick, 40 Wash. 2d 599, 602, 245 P.2d 217, 219 (1952); Muck v. Snohomish County P.U.D., 41 Wash. 2d 81, 86, 247 P.2d 233, 236 (1952).

istrative orders and reenactment bills, restored each title of the Code so as to truly reflect its session law parentage, retaining, however, the general codification scheme originally adopted.[93] By 1965, every title of the RCW had either been restored by the Statute Law Committee or reenacted by the legislature.[94] One title,[95] enacted just prior to adoption of the RCW, and titles enacted subsequent to the reenactment/restoration process,[96] appeared in the Code in their original session law language and, thus, did not need review and correction.

XVI. REVISED CODE OF WASHINGTON ANNOTATED: 1961

Meanwhile, in late 1960, Bancroft-Whitney entered into a joint venture with West Publishing Company to produce a hard-bound annotated code. In 1961, the first volumes of the Revised Code of Washington Annotated (RCWA) began to appear. During the life of this joint venture, the editorial work on the RCWA was performed by Bancroft-Whitney in San Francisco and the manufacturing of the books was completed by West Publishing in St. Paul. The publishers of the RCWA sought certification by the Statute Law Committee but this certification was denied in no uncertain language.[97]

West Publishing and Bancroft-Whitney continued printing the RCWA until 1979 when the joint venture was dissolved. West received the rights to the RCWA and continued publication. The RCWA continues to be supplemented with yearly pocket parts and the periodically published Interim Annotation Service.[98]

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93. Preface, WASH. REV. CODE at v (1974).

94. The preface to the 1964 RCWA states that only three titles remain to be restored or reenacted. The reenactments that completed the process were the Act of Mar. 5, 1965, ch.7, 1965 Wash. Laws 44 (codified at WASH. REV. CODE tit. 35), Act of Mar. 5, 1965, ch. 8, 1965 Wash. Laws 498 (codified at WASH. REV. CODE tit. 43), and Act of Mar. 5, 1965, ch.9, 1965 Wash. Laws 783 (codified at WASH. REV. CODE tit. 29).

95. Insurance enacted by Act of Mar. 7, 1947, ch. 79, 1947 Wash. Laws 189 (codified at WASH. REV. CODE tit. 48).

96. *E.g.*, The Washington Business Corporation Act, enacted by Act of Mar. 20, 1965, ch. 53, 1965 Wash. Laws 1053 (codified at WASH. REV. CODE tit. 23A); The Uniform Commercial Code, enacted by Act of Apr. 8, 1965, ch. 157, 1965 Wash. Laws Ex. Sess. 2333.

97. *See* letter to Washington State Bar Association Board of Governors from Ben C. Grosscup, Chairman, Statute Law Committee, *reprinted in* 15 WASH. ST. B. NEWS 14 (Mar./Apr./May 1961).

98. West also publishes WEST'S WASHINGTON LEGISLATIVE SERVICE, which prints the session laws during each legislative session.

XVII. ADVENT OF THE PAPERBOUND RCW: 1974

By the end of 1973, the supply of copies of the official RCW held by the Statute Law Committee had been so depleted that a new edition of the Code was necessary.[99] The Committee decided to abandon the looseleaf format in order to take advantage of technological changes. Also, the restoration/reenactment process had alleviated the need for a format that would allow for numerous or substantial changes. The Committee announced the upcoming publication of a permanently-bound edition of the RCW to be republished every two years and updated with a bound supplement in the intervening years.[100]

During transition, the 1973 supplement to the looseleaf RCW was published as a single soft-bound volume. Along with the supplement, the Statute Law Committee published and distributed a two-volume soft-bound index to the RCW (to replace the existing 1961 looseleaf index with its supplementary pamphlet) and a permanently-bound edition of the Washington Court Rules.[101] The new RCW index did not include entries to the State Constitution or to the Court Rules.[102]

In 1974, the bound RCW appeared. It was comprised of nine soft-bound volumes (numbered 0-8). Volume 0 contained the United States and Washington Constitutions, state organic and enabling acts, indexes to the state constitution and court rules, and codification and cross-referencing tables. Volumes 1-7 consisted of the Code itself and Volume 8 was a general index. This same format has been continued for all the reissuances of the RCW by the Statute Law Committee.

As promised, a supplement (numbered Volume 9) was published in the following year. It included the laws passed in 1975, arranged by RCW title, chapter, and section. The supplement had its own index and included tables. It also contained additions to the Washington Court Rules.

The RCW was republished in 1976 and supplemented in 1977. However, 1978 saw neither republication nor a supplement. The scheduled plan was resumed in 1979 and new editions have since been published in 1981, 1983, 1985, and 1987, with supplements being released in the intervening years.

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99. White, *supra* note 90, at 19.

100. *Id.*

101. *See* Explanatory Note, WASH. REV. CODE at ii (Supp. 1973).

102. *See* Cover, Washington Revised Code 1973 General Index (1973).

XVIII. CURRENT STATUTORY COMPILATIONS

Today, both the paperbound RCW and West's RCWA are published and kept current. Annotations continue to be available from Book Publishing Company as well as from the RCWA. In addition, the RCW is available "on-line" with both LEXIS and WESTLAW. WESTLAW's service also includes annotations from the RCWA. Availability of full-text searching capacities on these computer services greatly expands an attorney's ability to do statutory research. Recently, the RCW has become available on floppy disks from the Washington Digital Law Library Foundation. The Foundation has also announced future plans for a CD-ROM product of the RCW.

XIX. CONCLUSION

The history of Washington's statutory compilations not only helps explain the codes themselves, but also helps explain those laws that make up the codes. As a result, use of these past codes is not limited to merely providing historical background.

Much of law concerns interpretating words in a particular statute; original intent is not limited to constitutional analysis alone. Over ninety percent of the Code of 1881 exists in the current RCW either in its original sections or in some amended form.[103] Just as a word must be defined within context,[104] legislative context includes not only surrounding words, but also surrounding times and circumstances. With little documented legislative history to speak of, intent is found by looking at other laws passed near the time of enactment. That inspection need not be limited to Washington law, but can be extended to that of states with similar legislation. Of particular value for this research are codes like Hill's Code and Ballinger's Code with their references to contemporaneous statutes and cases of such jurisdictions. Because of the increased volume of case law and other authority, however, these potentially valuable references have been omitted from later code compilations.

Although the availability of old compilations is sometimes

103. Comparing the cross-reference tables in the 1966 RCWA (the most recent table of its sort), only 113 of the 3317 sections (less than 5%) of the Code of 1881 had been repealed. The great majority of those sections were contained in the commercial and probate codes. There is no reason to believe that the repeal rate has changed significantly in the past 20 to 25 years.

104. G. GREGE, DIE GRUNDLAGEN DER ARITHMETIK 73 (1884).

a problem, the extra effort to locate such documents can be worthwhile. It may be that, as Justice Holmes said, ". . . a page of history is worth a volume of logic."[105]

105. New York Trust Co. v. Eisner, 256 U.S. 345, 349 (1921).