THE SOURCES OF THE ALASKA AND OREGON CODES

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PART I. NEW YORK AND OREGON

I. INTRODUCTION

In 1967-68 the author discovered that no legislative history of the Alaska Codes of 1899-1900[2] was available in Anchorage or Fairbanks, where most of the state's people, including most of her lawyers and judges, reside. The earliest source found was the so-called Carter Code,[3] a private and apparently unauthoritative edition of the first Alaskan laws, which includes citations to cases from the states of Oregon, Montana, Ohio and Texas, from which the Alaskan provisions had presumably been borrowed. Many lawyers and judges considered these references of dubious value.[4] Yet such annotations would, if accurate, contain controlling precedents under the doctrine of *City of Fairbanks v. Schaible*[5] and similar Alaska state and territorial cases.[6] It was generally and vaguely

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[2] Act of March 3, 1899, 30 Stat. 1253-1343; Act of June 6, 1900, 31 Stat. 321-552.

[3] CARTER'S ANNOTATED CODES OF ALASKA (1900).

[4] Beckley v. State, 443 P.2d 51, 54-56 (Alaska, 1968); but *Cf.* Justice Rabinowitz' dissent, *Id.* at 60-61.

[5] A statute adopted from another jurisdiction, which has been construed by that jurisdiction's highest court, is presumed to be adopted with the construction thus placed upon it. 375 P.2d 201, 207-208 (Alsaka, 1962).

[6] Kohn v. McKinnon, 1 Alaska Fed. 553, 557-558, 90 Fed. 623 (D.C. Alaska, 1898) (applying the doctrine only on the basis of the 1884 act); Fish v. Hemple, 2 Alaska 175 (D.C., 3d Div. 1903); Ebling v. Hastings, 3 Alaska 125, 132 (D.C., 3d Div. 1906); Steil v. Dessmore, 3 Alaska 392 (D.C., 3d Div. 1907); Jennings v. Alaska Treadwell Gold Mining Co., 3 Alaska 350, 354, 170 F. 146, 149 (9th Cir. 1909); Love v. Pavlovich, 4 Alaska Fed. 293, 222 F. 842 (9th Cir. 1915); Mustard v. Elwood, 4 Alaska Fed. 307, 223 Fed. 225 (9th Cir. 1915); Blue v. Green, 7 Alaska 47 (D.C. Alaska, 1st Div. 1923); Loussac v. Jacobsen, 7 Alaska 560 (D.C. Alaska, 3d Div. 1927); U.S. v. Frodenburg, 8 Alaska 251 (D.C. Alaska, 3d Div. 1930); Jansen v. Pollastrine, 10 Alaska 316 (D.C. Alaska, 4th Div. 1942); Jones v. United States, 12 Alaska 405, 418-19, 175 F.2d 544, 550 (9th Cir. 1949), *see particularly* footnote 8; Starns v. Humphries, 13 Alaska 258, 262, 189 F.2d. 357 (9th Cir. 1951); Druxman v. Renhart, 15 Alaska 105, 122 F. Supp. 822 (D.C. Alaska, 1st Div. 1954); Hawkins v. Savage, 14 Alaska 253, 264-65, 110 F. Supp. 615 (D.C. Alaska, 3d Div. 1953); Christy v. U.S., 17 Alaska 107, 261 F.2d 357 (9th Cir. 1958), *cert. den.*, 360 U.S. 919, 3 L. Ed. 2d 1535, (1959), *reh. den.*, 361 U.S. 857, 4 L. Ed. 2d 96, (1959); Gray v. State, 463 P.2d 897 (Alaska, 1970).

known that Alaska's law derived in large part from the laws of Oregon,[7] but little further information was available.[8]

What began as an investigation of the legislative history of two acts of Congress grew into a complex project involving several years of research and writing, taking the author back through the lives and times of Senator Thomas H. Carter of Montana, Judge Matthew P. Deady of Oregon, and David Dudley Field of New York, to the origins of the law of colonial New York, as seen and noted by the great "Butler" New York Law Revision Commission of 1826-1828.[9] It was discovered that the laws of Oregon and Alaska derive from those of post-colonial New York. The narrative will show that after a flirtation with the statutes of Iowa, territorial Oregon settled upon a code copied in large measure from the Revised Statutes of New York, originally codified by the Butler commission. When Judge Deady and others reworked the Oregon law in 1862-1864, their major sources were the earlier territorial Statutes of 1854, and the draft codes prepared by the newer New York Law Revision Commission of 1848-1864, the most prominent member of which was David Dudley Field. Field's commission had also relied heavily upon the older Revised Statutes of New York (1829).

The basic structure of the Oregon statutes did not change much after the Deady Codes were adopted in 1862-1864, and the history of that state's law thereafter is well known to her historians and practicing attorneys, and is therefore not treated in this article.

Congress brought the laws of Oregon (with some changes) to Alaska in stuttering stages between 1884 and 1900, and this period will be extensively examined, for it is the least known and understood.

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[7] This was not realized by the note-writer of *Alaska, Hawaii and the State of Ames; a Comparison of Legal Prejudices*, 14 SYR. L. REV. 471 (1963). After an analysis of the cases of the two youngest states, he notes a "prejudice" of Alaska in favoring the case-law of Oregon, Washington, and California. At page 480 he concludes: "The reasons are not yet clear."

[8] *But cf.* GRUENING, THE STATE OF ALASKA 107-15 (1968).

[9] The journey was through space as well as time. This work could not have been prepared without the cooperation of many individuals. Special thanks are due: Professor Joseph H. Smith of the School of Law of Columbia University, as well as Dean Edwin G. Shuck and Samuel Cohen of its libraries; Anthony Grech, Esq., and the staff of the Library of the Association of the Bar of the City of New York; the staff of Dr. Roy Basler at the Manuscripts Division of the Library of Congress; Dr. Edith Guild Henderson, Curator of Rare Books and Manuscripts at the Harvard Law Library Treasure Room; Thomas Vaughan, Priscilla Knuth, as well as a Mr. Cheaver and a Mr. McClung, of the Oregon Historical Society and its Library; R. Wayne Stevens of Portland, Oregon; Dr. Richard E. White of Altadena, California, Rhidian Morgan, Esq., of Ridgefield, Washington, Catharine Chase of Everett, Massachusetts, and Andrew J. Kleinfeld of Fairbanks, who all well understand their contributions; Mariclaire Hale of Fairbanks, a helpful and critical copyreader; and Anita Mowery and Helen R. Brown of Fairbanks, who can read David D. Field's nearly illegible handwriting far better than can the author.

The narrative begins with the first generation of independent Americans in the new state of New York.

II. Early New York and the Revision of 1826-1828

The dusty, leatherbound statute-books of the early years of our first states would seem to be instruments of frustration to any modern lawyer. There are no orderly indices and no systematic compilations. Each of the first volumes[10] of the New York Laws is a chronologically-ordered reprint of the statutes of the state still in force at the time of printing. Succeeding volumes follow the same plan, and a fresh "revision" in 1813 started the process all over again.[11]

An attorney of that time had to synthesize his own statutory law in the same manner as he divined case-law, piecing together all those provisions that related to his client's problem. Large gaps had to be filled by case-law, so the lawyer of that period had to determine what cases had been "received" into New York through the 1777 reception provision:

> And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE that such parts of the common law of England, and of the statute law of England and Great-Britain, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony on the nineteenth day of April, in the year of our Lord, one thousand seven hundred and seventy-five, shall be and continue the law of this state; . . .[12]

The law defining crimes was a confusing mix of statutes and common law. The only statutory reference to manslaughter was found in the vague words (from the murder statute):

> . . . any felony other than such as herein above enumerated and directed to be otherwise punished, and above the degree of petit larceny.[13]

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[10] Laws of New York (Jones & Varrick Ed., 1789); Laws of New York (Greenleaf Ed., 1792); Laws of New York (1802).

[11] 1 Rev. Laws N.Y. (1813).

[12] Constitution of the State of New York, 1 Laws of New York 15 (1802). In 1788 the reception of English statutes was omitted, and was then reintroduced by the Constitution of 1823. See Brown, British Statutes in American Law (1964).

[13] Act of March 19, 1813, 1 Rev. Laws N.Y. 408-409 § 5 (1813). That these words were construed to include manslaughter is acknowledged by the New York Law Revisors in their 1828 report. 4 Report to the Legislature of New York by the Commission to Revise the Laws (1828), Note to accompany 2 Rev. Stat. 661 § 7 (1829). The report is hereinafter cited as Revisors' notes to the statutes: Revisors' note to 2 Rev. Stat. 661 § 7.

What is another felony that fits the description? The courts found the answer—manslaughter—from the common law of crimes.[14]

Inducing another to commit suicide was not a statutory crime until 1829. The Law Revisors of 1828 noted in their report to the legislature:

> By the existing law, this is murder: Dyson's case, Russell and Ryan's Crim. ca. 523. It is conceived, however, that the punishment above proposed, is more appropriate and more likely to be enforced.[15]

The defenses of justification in homicide prosecutions were defined as to private persons in 1 Rev. Laws N. Y. 67 §§4-6 (1813), 1 Laws N.Y. 60, 61-62 §§ 4-6 (1802) (Act of Feb. 14, 1787). Yet the poor defendant who raised justification as a defense on the grounds that he was a public officer in the performance of his duty (a sheriff, perhaps, who had shot an escaping prisoner), would find no such statute. Before 1828 his defense, say the Revisors, rested wholly in the common law of crimes.[16]

The systematic code drawn by the Law Revision Commission of 1826-1828 was among the first attempts to arrange the statutory law of American jurisdictions in the manner to which modern lawyers are accustomed,[17] but it might just as easily have been merely another chronological updating, like the 1813 code.

A new constitution had been drafted for New York and became effective on January 1, 1823. The Governor of New York, Robert Yates, had been a Judge of the Supreme Court of New York for fourteen years, and thus might well have felt the need for

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[14] REVISORS' NOTE TO 2 REV. STAT. 661 § 7.

[15] *Id.*

[16] REVISORS' NOTE TO 2 REV. STAT. N.Y. 660 § 2, *citing as authority for the defense* EAST'S CROWN LAW, ch. 5, §§ 63, 67, 90.

[17] There were other compilations, but the best among them would arrange general titles in alphabetical order, with acts within those subject-headings still arranged chronologically. Many of them were privately printed "digests." TOULMIN, DIG. LAWS ALA. (1823); LAMAR, COMPILATION LAWS GA. (1821); LITTLE & SWIGERT, DIG. STATUTORY LAWS KY. (1822); HAYWOOD, MANUAL OF LAWS OF N.C. (1819); PURDON'S ABRIDGEMENT OF THE LAWS OF PA. (1824); BREVARD'S DIG. OF PUBLIC STATUTE LAW OF S.C. (1814); REV. CODE VA. (1819); TATE, DIG. OF LAWS OF VA. (1823). *Cf.* CONN. STAT. (1821); LAWS OF MAINE (1821); REVISED CODE MISS. (1823); REV. LAWS MO. (1825); REV. LAWS N.H. (1815); PUB. LAWS R.I. (1822). Though these last were in arrangements similar to that of the Revised Statutes of New York (1829), none of them sought to incorporate and codify the existing common law to make the statutes more intelligible. The New Hampshire volume could hardly be called systematized: its order is confusing, and it contains no subtitles, chapters or section numbers. The one other revision that is thorough and quite historically significant was finished in Massachusetts seven years after the New York Revisors completed their work. REPORT OF THE COMMISSIONERS ON STATUTORY REVISION (1835), in CODIFICATION OF THE COMMON LAW 25 (Field ed. 1882) (pamphlet) [hereinafter STORY'S REPORT]; JOURNAL OF THE REVISORS (1835); REV. STAT. MASS. (1836).

a less turgid rendering of the state's statutory law. He prodded the legislature into passing an act appointing Chancellor James Kent,[18] Lieutenant-Governor Erastus Root, and Benjamin F. Butler,[19] to revise the statutes. However, nothing like the resulting Revised Statutes was really expected:

> This act contemplated a revision similar to those of 1813 and former years. It did not authorize anything beyond the compilation of the existing statutes in the manner pursued in the earlier revisions, much less a remodeling of the statutory law or the reduction to statutory form of the Common Law.[20]

Kent declined the appointment. Root did some "revision" in the old sense, but soon asked to be relieved of the appointment when he discovered that Butler and John Duer, who was appointed in Kent's place, proposed to do far more than a preparation of updated session laws:

> They advanced the proposition that the time had come when the whole written law might be comprised under appropriate titles, classified in natural order and arranged, as to each of its branches, in a clear and scientific method and, while conceding the novelty and difficulty of the project, declared their readiness to undertake it.[21]

After much debate the legislature adopted the proposal of the two younger lawyers, and appointed Henry Wheaton to replace Root on the Commission.[22] Wheaton participated in drafting the general plan of the compilation, and then resigned to assume a post as United States Charge' d'Affaires in Denmark. His position was in turn filled by John C. Spencer, a protegé of Gov. DeWitt Clinton. Spencer would have been bewildered, to say the least, had he then been told that his draft sections of the penal code of New York would regulate the affairs of men on the one-hundred-eightieth anniversary of his birth in a place he then knew (if at all) as Russian America, over three thousand miles northwest of his Albany home.

The Revised Statutes were drafted by Butler, Duer, and Spencer from 1825 to 1828. The extent of their scholarship is shown in the detailed notes to the Revised Statutes contained in their report to the legislature.[23] It appears that the trio of compilers researched the

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[18] The first to teach law at Columbia College in New York; author of COMMENTARIES ON AMERICAN LAW (1826).

[19] A junior law partner of Martin Van Buren.

[20] Butler, The Revision and the Revisors 6 (1889) (Address before the Association of the Bar of the City of New York) [hereinafter Butler].

[21] *Id.* at 10.

[22] Wheaton had served with John Duer as a delegate to the 1821 constitutional convention and at the time of his appointment to the Revisors was Reporter to the United States Supreme Court. *Id.* at 17-19.

[23] The original was published in 1828, and is now quite rare. It is reprinted in

common-law treatises of the time along with British cases and statutes, as well as the New York statutes and cases from colony and state. In a letter composed in the summer of 1827, Spencer tells Butler: "I am hard at work on the statutes of frauds, 13 and 27 Eliz., and 39 and 4W. and M. I shall *conquer* them."[24]

Even when dealing with existing statutes, the Revisors would search out the sources in the old English law. Their sections on justifiable and excusable homicides by private parties, 2 Rev. Stat. N.Y. 660-661, §§ 3, 4, are derived from an Act of February 14, 1787, 1 Rev. Laws N.Y. 67 (1813) §§ 4-6, 1 Laws N.Y. 60, 61-62 (1802), and yet they further explain that the provisions "are founded on the English statutes, 6 Ed. I, ch. 9; 24 Hen. 8 ch. 5 . . . ."

This commission did not just compile laws; it changed laws and added new ones. An example is available again in the defenses of justifiability and excusability in the homicide provisions. The old 1787 Act had required that these defenses be found by special verdict, but the requirement had often been ignored, as the Revisors knew from their own practices: so, it was abolished by the new Revised Statutes.

The Commission's resources ranged well beyond the statutes and cases of New York and England: 2 Rev. Stat. N.Y. 694 § 19 (1829) makes it a crime to post[25] another for not engaging in a duel, and the Revisors in their accompanying note advise that this statute was taken "from Mr. Livingston's code p. 134 [sic] and the laws of Pennsylvania."[26].

Yet even though the Revisors innovated, reworked, and compiled, did away with fictions, and codified many common-law rules, they assured the legislature that they were not doing anything as bold as the sort of codification of the common law espoused by Jeremy Bentham[27] and his disciples. Such plans were considered wildly radical. In a report to the legislature they declared that their work:

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volume 3 of the 1836 edition of the Revised Statutes. REPORT TO THE LEGISLATURE OF NEW YORK BY THE COMMISSION TO REVISE THE LAWS (1828); 3 REV. STAT. N.Y. (1836).

[24] Butler, *supra* note 20, at 30.

[25] To "post" someone was to publish his supposed wrongdoing by posting a sign concerning the matter in a public place.

[26] LIVINGSTON, PENAL CODE FOR THE UNITED STATES 123 (1828). The pagination on the volume used by the Revisors must have been different; or it may be a typographical error in the published Notes. Livingston also prepared a penal code for Louisiana, but it was not published until 1833. Livingston, SYSTEM OF PENAL LAW FOR LOUISIANA (1833). See also LANG, CODIFICATION IN THE BRITISH EMPIRE AND AMERICA 7 (1925) [hereinafter LANG].

[27] LANG, at 31-35.

> must be carefully distinguished from codification. . . . We have found it necessary in our reports to exclude this idea which has got abroad and exposed us to much prejudice with those who believe every project of that sort visionary and dangerous.[28]

Such statements may have been more careful politics than candid truth. It is ironic that, had the Commission members admitted and revealed the extent of their innovative codification, they might now occupy the place in American legal history usually reserved for David Dudley Field. While, for all of Field's pomp and publicity, a careful comparison of the work of the Field commissions with the Butler commission shows close parallels: the later revisors' real innovations were only the procedure codes. Field's group has particularly been credited with drafting a new penal code. Yet the report his commission presented to the New York Legislature in December, 1864, (drafted mostly by Curtis Noyes[29]) was only a reworking of the provisions in the Revised Statutes written by Mr. Spencer.

The work of the New York commission had a great impact throughout the nation. The modern lawyer is quite familiar with the shape of these codes: the current law of his own state probably derives from them.[30, 31]

III. The Field Codes

New York saw little change in the shape of its substantive statutory law from 1829 to 1848. The scheme of the Revisors seemed to suit the legislature and the lawyers, for the Revised Statutes were republished with the Revisors' notes in 1836 by authority from the legislature, and the statutes enacted during an entire generation following the Revision fit, though not snugly, into a single volume.[32]

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[28] Butler, *supra* note 20, at 22.

[29] H. M. Field, The Life of David Dudley Field 81 (1898) [hereinafter Life of Field].

[30] The author chose to discuss the statutes on manslaughter and defense to homicide in the text, *supra*, because those provisions in the Revised Statutes of New York (1829) are nearly word for word the same as the corresponding sections of the modern Alaska Statutes. These identities and similarities occur throughout the modern Alaskan provisions that find their origins in Oregon, and are not at all limited to the penal law.

[31] The Massachusetts revisors followed the New York plan of arrangement closely, but their substantive provisions are quite different. Rev. Stat. Mass. (1836); Journal of the Revisors (1835). Most modern American codes derive from the New York and Massachusetts revisions completed in the early nineteenth century, and from the Field commission's codes of procedure.

[32] Blatchford, N.Y. Stat. (1829-1851). The Revisions were updated to include minor amendments, but they remained substantially as the Revisors had drafted them. Rev. Stat. N.Y. (2d ed. 1836); Rev. Stat. N.Y. (3d ed. 1846-1848); Rev. Stat. N.Y. (4th ed. 1852).

Still, the voices of law reformers were raised, not so much as an attack upon the Butler revision, but as chastisement for what it had omitted: a comprehensive codification of the procedural rules used in the daily practice of the law and equity courts. The practice in England and in America was much the same, for common-law pleading ruled in American courts as ruthlessly as in English tribunals:

> There was the old distinction between law and equity with the corresponding division of the judiciary into a court administering the common law and a court of chancery. And it was not always a simple matter to decide in which court a particular case should be brought. The system of practice and pleadings was entirely different in both courts. The forms of action at law were antiquated and abounded in technicalities. Originally devised in the infancy of the English common law to expedite the administration of justice, they had long since become rusty with age, and their retention in the legal machine considerably hampered its easy working. The pleadings were couched in a language only comprehended by the lawyers themselves. Procedure in actions at law had the semblance of ancient ritual, the import of which was known only to the initiated.[33]

The technicalities of practice were thought by many to be so subtle that it would be impossible to ever reduce their substance to a body of statutes. A commission that favored extensive codification of many areas of the common law of Massachusetts warned against the difficulties of codifying pleading and procedure:

> The doctrines of pleading still applicable to declarations, to general demurrers, to the general issue, are of a very comprehensive nature, and abound with artificial and technical principles. And it would be a task of no small difficulty to say, in many cases, to what extent many of these principles reach, and how far they are governed by rules ordinarily applied to special pleas, technically socalled. For these reasons, the Commissioners are of opinion, that it is not advisable, at present, to codify this branch of our jurisprudence. It would rather seem desirable, if anything is to be done, to reduce it to a more simple form, and disembarass it of some of its cumbrous and inconvenient appendages.[34]

Shortly after 1840, articles began to appear in the New York Post under the name of David D. Field, advocating a convention to do away with the constitutional requirement of the law-equity division to allow a modernization of court procedure. These and

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[33] LANG, *supra* note 26, at 122-23.
[34] STORY'S REPORT, *supra* note 17, at 56-57.

other agitations brought about the New York Constitutional Convention of 1846, to consider law reform in general and a reform of the judiciary in particular. Campbell White—a Field ally from New York City and a delegate to the convention—pushed through the convention his provisions that would require the first post-adoption legislature to appoint two commissions to codify as much of the substantive law as possible, and "to revise, reform, simplify and abridge the rules and practice, pleadings, forms and proceedings of the courts of record of this state, ..."[35] The convention reforms also abolished the law-equity distinction.

David Dudley Field hoped to be appointed to one of the commissions. He was a follower of Jeremy Bentham, and he was to spend most of his life fighting for a codification of all of the common law.[36] At first the legislature thought him too radical, and appointed others.[37] However, one Nicholas Hill, Jr., soon resigned from the Commissioners on Practice and Pleadings ("rather than comply with the command of the statute," in Field's opinion[38]), and Field was appointed to fill the vacancy. He and his co-commissioners Arphaxed Loomis and David Graham proceeded to prepare a series of reports for the legislature. Their first, a streamlined code of civil practice, was enacted in 1848,[39] and the legislature accepted revisions the next year.[40] However, opposition to the law reformers mounted, and their further revisions of the Civil Procedure Code[41] and their draft Code of Criminal Procedure[42] were to be successfully opposed by conservative lawyers for nearly thirty years thereafter.

While the Field commission drafted the codes of procedure, the Commissioners of the Code (meaning substantive law) met with failure. The first six chapters of the Revised Statutes underwent a modest revision, but the draftsmen could not agree on the scope of their task, and were deadlocked by their own bickering. After a few feeble attempts to revive the venture, the commission was abolished by statute in 1850.[43]

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[35] LANG, *supra* note 26, at 118-119; FIELD, LAW REFORM IN THE UNITED STATES AND ITS INFLUENCE ABROAD 7-8 (1891) [*hereinafter* FIELD]; DEBATES AND PROCEEDINGS OF THE CONVENTION FOR REVISION OF THE CONSTITUTION OF NEW YORK 109, 117, 588, 838 (1846).

[36] LIFE OF FIELD, *supra* note 29, at 73-74.

[37] Ch. 58 § 8, N.Y. LAWS (1847).

[38] FIELD, *supra* note 35, at 8.

[39] FIRST REPORT OF THE COMMISSIONERS ON PRACTICE AND PLEADINGS (1848) ch. 379, N.Y. Laws (1848).

[40] SECOND REPORT OF THE COMMISSIONERS ON PRACTICE AND PLEADINGS (1849) ch. 438, N.Y. Laws (1849).

[41] THIRD REPORT OF THE COMMISSIONERS ON PRACTICE AND PLEADINGS (1849) [hereinafter FIELD'S CIVIL PROCEDURE CODE].

[42] FOURTH REPORT OF THE COMMISSIONERS ON PRACTICE AND PLEADINGS (1849) [hereinafter FIELD'S CRIMINAL PROCEDURE CODE].

[43] Ch. 281, N.Y. LAWS (1850).

Field lobbied through most of the 1850's and finally secured passage in 1857 of a new five-year commission to himself, Curtis Noyes, and Alexander W. Bradford, to act as a new code commission. After providing the legislature with a preliminary report outlining their plan,[44] they undertook the drafting of what they believed to be complete political, penal and civil codes for New York over a period requiring one extension of their commission.[45]

Field's Code of Criminal Procedure was finally enacted by the New York Legislature in 1881, and the Penal Code was passed in 1882, but the Political Code remained stillborn in that state, and the Civil Code, though frequently close to passage, was finally killed in 1885, largely because of the opposition of the Association of the Bar of the City of New York and its standard-bearer, James C. Carter.[46]

Although the so-called Field Codes[47] met with limited success in New York, it is common wisdom in the legal profession that they formed the basis for the procedural and penal codes in many of the states and that a few of them—principally California—have extensive Civil and Political Codes patterned on those drafted for New York in 1848-1865. A full discussion of this nationwide embrace of Field and the Codes is beyond the scope of this paper.[48]

The narrative must now bridge a continent. Concern now centers on Oregon, and on the legal confusion that preceded the drafting of the Deady Codes.

IV. The Oregon Codes

Oregon had no government and no laws in 1841. The Oregon Country then comprised what is now Oregon, Washington, British

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[44] First Report of the Commissioners of the Code (1858), note 39 *supra*.

[45] The final drafts of the Codes were: Political—Third Report of the Commissioners of the Code (1860); Penal—Eighth Report of the Commissioners of the Code: Draft of a Penal Code for the State of New York (1865) [hereinafter Field's Penal Code], Civil—Ninth Report of the Commissioners of the Code (1865) [hereinafter Field's Civil Code]. The dates involved will be of much importance in the discussion *infra* of the Oregon materials, and there is no little confusion concerning them. Lang (at 139) indicates that the Penal Code (the Eighth Report) was presented to the legislature in March, 1864, and his citation for the published volume is 1864. The volume used by the current author is dated 1865, although the Commissioners' introduction therein is dated December, 1864. Since the nearly identical sections of the Deady Codes were passed in Oregon on October 19, 1864, important questions arise concerning the relationship of Field to Deady, which are discussed *infra*.

[46] Lang, *supra* note 26, at 147-48; Carter, *The Ideal and the Actual in the Law*, 24 Am. L. Rev. 752; *Cf.* Gray, The Nature and Sources of the Law, 93 *et seq.*, 233 *et seq.*, 283-84 (1921).

[47] The Codes were not all written by Field, as has been noted briefly *supra*. Bradford drafted the portion of the Civil Code relating to decedents' estates, Noyes wrote the Penal Code, and Field compiled all of the Political Code and most of the Civil Code. Life of Field, *supra* note 29, at 81.

[48] *Cf.* Lang, *supra* note 26, at 131, 148-59; Field, *supra* note 35, at 12, 15.

Columbia, and parts of Idaho and Montana. Britain and the United States claimed it most actively, and Imperial Russia and Mexico also had arguable claims. But international posturing did not help the residents, for none of these nations attempted to provide a governmental structure.

The Hudson's Bay Company and church missions provided the only practical "government." Yet when Ewing Young, a wealthy settler, died without heirs in the Willamette Valley, there was no way of distributing his extensive holdings. He was neither an employee of Hudson's Bay Company nor an affiliate of the Methodist mission established in 1834, so he was not within the jurisdiction of either "government." This created really serious problems, because his properties had "served for the community as virtually a market, a store, a bank and a factory as well as the largest farm."[49] An assembly of settlers selected the Methodist missionary to act as "supreme judge" with probate powers, and attempted to direct the preparation of a code of laws. Young's estate was disposed of peacefully—though apparently without making full provision for all of Young's heirs[50]—but no code of laws was prepared for two years. Finally, on July 5, 1843, the first organic law of Oregon was passed at a public meeting for that purpose, establishing a provisional government and adopting as law

> . . . the Thirty-seven Acts taken verbatim from the laws of Iowa Territory enacted at the first session of its territorial legislature in 1839.[51]

The borrowed Iowa laws were bound in a volume sided with blue boards and so became known as the Little Blue Book. The provisional government in 1844 enacted the rest of the Iowa Code of 1839 that was "not of a local character, and not incompatible with the conditions and circumstances of this country."[52] The common law was received as well:

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[49] Young, *Ewing Young and His Estate*, 21 OREGON HIST. QUART. 183 (1920).

[50] *Cf.* Act of January 31, 1855, "An act for the relief of the heirs of Ewing Young, deceased," allowing the "heir or heirs" of Young to bring an action against the Oregon Territory "for the recovery of all sums of money paid into the treasury of the late prov. gov't. of Ore., by the administrator of the said Ewing Young, in pursuance of an act entitled 'An Act for the erection of a jail,' & c., passed by the said prov. gov't. on Dec. the 24th, 1844 . . . ."

[51] The OREGON ARCHIVES 28-32 (1853); Beardsley, *Code Making in Early Oregon* 6 (1936) (reprinted from 27 PACIFIC NORTHWEST QUARTERLY), 23 ORE. L. REV. 22 (1943), [hereinafter Beardsley and paginated to the separately published reprint]; *cf.* Iowa Laws (1839). The best work on the establishment of the provisional government appears to be Kaplan, *Courts, Counselors and Cases: The Judiciary of Oregon's Provisional Government* (reprinted from 62 OREGON HIST. QUART., No. 2) (1961). *See also* Harris, *History of the Oregon Code*, 1 ORE. L. REV. 129, 184 (1922) [hereinafter Harris].

[52] Laws of Oregon (1843-1849) 98-101, art. III § 1 (Salem, 1853). This was "An Act Regulating the Executive Power, the Judiciary, and for other purposes." *Cf.* Beardsley, *supra* note 51, at 7-8.

> . . . the common law of England and principles of equity, not modified by the statutes of Iowa or of this government, and not incompatible with its principles, shall constitute a part of the law of this land.[53]

The Oregon Organic Act passed by Congress in 1848 organized the territory and recognized the validity of the laws passed by the provisional government. Still, the first Territorial Legislature adopted Iowa statutes again, and began one of the most amusing controversies in American legal history. Certain chapters of the Revised Statutes of Iowa (1843)—the Big Blue Book—were declared the law of Oregon in a single act. This was viewed by some as a violation of the Organic Act, which required that each act of the Territorial Legislature embrace but one object, expressed in its title. Two of the justices of the Territorial Supreme Court thought the act void, and the remaining justice disagreed. The judicial argument went further: in the different districts where each held trial court, the law in force was necessarily the Blue Book favored by the particular trial justice. The War of the Blue Books became quite celebrated, indeed far out of proportion to the actual differences between the two codes. Judge Deady described the dispute to a group of Iowa reporters in 1885:

> From 1850-53 the politics and personalities of the country turned largely on this controversy. The judges were divided over it, editors wrangled about it, orators grew eloquent over it, until the condition of the Big-Bookers and Little-Bookers grew almost as fierce as between the Big Endians and the Little-Endians of Lilliput, over the momentuous [sic] question, at which end should an egg be broken.[54]

Before 1853, three volumes of statutes for Oregon were actually printed.[55] The details of these confused enactments are found in Harris and Beardsley, and are only of antiquarian interest, since few of these enactments were carried forward by the 1853-1854 "revision".

The Blue Book controversy is a famous one, which may well explain the notion existing in some quarters today that the present laws of Oregon derive from Iowa. This is demonstrably untrue. It can be shown that the modern laws of Oregon and Alaska are the descendants of the Statutes of Oregon (1854), most of which were

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53 *Id.* at 100. *Cf.* Smith v. Chapman, 220 ORE. 188, 202-204, 348 P.2d 441 (1960).

54 Beardsley, *supra* note 51, at 12.

55 Twenty Acts, Laws of Oregon (1849-1850) (1st Leg. Session); HAMILTON CODE, LAWS OF OREGON (1851) (2d Leg. Sess., December, 1850. This was a recompilation by Judge Deady of the Laws thought to be in force.); LAWS OF OREGON (1843-49). These last were laws not included in the Hamilton Code, and were published in 1853.

copied from the Revised Statutes of New York (1829, 1836, 1846-1848, 1852).[56] The 1854 laws were prepared on a commission from the Territorial Legislature, by James K. Kelly, Reuben Boise and Daniel B. Bigelow.[57] Comparison of this code with either Iowa volume demonstrates that the Iowa laws—and therefore most of the pre-1853 Oregon law—were not the major source drawn upon by the commission, although a few sections did survive. The commission nearly told the legislature as much in its report:

> In preparing this compilation, we were of opinion that the act creating the board of commissioners, did not simply authorize us to make a revision of the statutes now in force, but that it required us to prepare a full and complete code. The present report is designed to accomplish this end, and to substitute a uniform and connected system of statutory laws for the confused and uncertain one that now exists in the territory.[58]

Oddly, although the commission did refer to New York as a source while preparing the volume of statutes *after* enactment, this was not mentioned in the report to the legislature beforehand. The lawmakers were instead told simply that to

> point out all the alterations and additions which we have made, or to give the reasons therefor, would be quite impossible, unless at very great length. We have therefore concluded to submit the code which we have prepared without making any further remarks upon it, trusting that upon a close examination, it will be found such as the Legislative Assembly may approve and adopt.[59]

But the "Advertisement" at the beginning of the 1854 volume makes no secret of the matter:

> In the side notes in this volume, are added frequent references to the New York Reports. They will be often found necessary, and at all times useful, in explaining the Text.
>
> That part of the Oregon Statutes relating to the manner of commencing and prosecuting actions at law, are taken, word for word, from the New York Code. As the Code abolished the distinctions that formerly existed in civil actions, and modified the forms of practice in many essential respects, those who practised under the old system will often find difficulty in under-

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[56] The author has not determined with any certainty whether the commission worked with the 1852 edition. It may not have been available. However, it is clear that they had the 1846-1848 edition, because their Report includes a code of procedure identical to the Field code passed by the New York Legislature in 1848.

[57] LAWS OF OREGON 57-58 (1852-53).

[58] REPORT OF THE COMMISSIONERS ELECTED TO PREPARE A CODE OF LAWS FOR THE TERRITORY OF OREGON (1853).

[59] *Id.*

> standing the provisions herein enacted, and to no other Reports can they refer, in cases of doubt, unless to those of New York. We have also incorporated that part of the New York Statutes which refers to Executors and Administrators, and to Fraudulent Conveyances and Contracts.[60]

Commissioner J. K. Kelly again made it quite clear that the 1854 enactments were new law for Oregon, when he addressed the Oregon Bar Association in 1896:

> . . . We prepared the draft for an entirely new code of statutory laws, with the single exception of the law relating to wills. This had been enacted by the Legislative Assembly in 1849, at its first session, the main features of it being a transcript from the Missouri statutes on the same subject.[61]

The chapter on wills is indeed very similar to the Missouri law.[62] It also appears that the chapter on dower was taken from Michigan law.[63] However, even to an extent beyond that admitted by Kelly or the commission, the major portion of the Oregon Statutes (1854) is taken from New York, as can be demonstrated by a section-by-section comparison. The commission made no mention of a borrowing of penal law from New York, for example, but the Revisors of 1826-1829 indeed ruled the law of crimes in Oregon after 1854. In section II of this article, *supra*, the work of the Revisors on the defenses to homicide was discussed for the reason that the work affected Oregon and Alaska, as well as New York. The example which follows compares the section drafted by the Revisors of 1826-1828 that provided public officers with the defense of official necessity in homicide cases (a common-law defense before 1829)[64] with the corresponding section drafted by the 1853 Kelly Commission. The only difference is in punctuation:

Such homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either,	Such homicide is justifiable when committed by public officers, and those acting by their command in their aid and assistance, either:

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[60] ORE. STAT. PREFACE (1854); REV. STAT. ORE. PREFACE (1855). The 1854 volume is very rare, in that many copies of it were lost in shipment from the printers in New York, making a new edition necessary the following year. The second edition of 1855 was updated to incorporate new session laws passed by the 6th Territorial Legislature of 1854-55.

[61] Kelly, *Preparation and Adoption of the First Code*, 4 and 5 PROCEEDINGS ORE. BAR ASSOC. 66 (1896), 4 OREGON HIST. QUART. 185 (1903).

[62] *Cf.* STATUTES OF ORE. 354ff. (1854), REV. STAT. ORE. 383ff. (1855), with REV. STAT. MO. 566ff. (1845).

[63] *Cf.* STATS. ORE. 373ff. (1854), REV. STAT. ORE. 404ff. (1855), with GREEN, REV. STAT. MICH. 267ff. (1846); Riegar v. Harrington, 102 Ore. 603, 609, 203 P. 576, 578 (1922).

[64] *See* text accompanying note 16.

1. In obedience to any judgment of a competent court: or,	1. In obedience to any judgment of a competent court; or
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty: or,	2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued, or who have escaped: or,	3. When necessarily committed in retaking felons who have been rescued, or who have escaped; or,
4. When necessarily committed in arresting felons fleeing from justice.[65]	4. When necessarily committed in arresting felons fleeing from justice.[66]

It is no wonder that the commissioners spoke in glowing terms of the New York Reports in their preface to the statutes:

> To say anything in favor of the New York Reports would be superfluous; they are acknowledged to be superior in legal erudition, and are, for this reason, referred to more frequently by the legal writers of this country than those of any other State. Until we have a settled system of Jurisprudence of our own, we must rely on the experience of our neighbor. The Editor [probably Kelly], therefore, confidently hopes the references furnished to the following enactments will have the approval of the profession.[67]

The work of the Kelly commission was to be reviewed within a decade of its completion, however. Oregon had become a state in 1859, and the new state legislature saw in the transition from territorial to state government further need for "revision" and compilation of the laws. Amory Holbrook, J. K. Kelly, and Addison C. Gibbs were commissioned[68] to again revise the statutes of Oregon, and were given

> almost unlimited power to modify and change the existing laws of the state, and to write into the code such amendments, substitutions, and additions, as in their judgment or by the decisions of the Supreme Court may have seemed desirable.[69]

Holbrook declined the position. The other two selected Judge Matthew P. Deady (who had helped to prepare the Hamilton

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[65] 2 REV. STAT. N.Y. 660 § 2 (1829).
[66] STAT. ORE. 186 § 7 (1854), REV. STAT. ORE. 209 § 7 (1855).
[67] STAT. ORE. PREFACE (1854), REV. STAT. ORE. PREFACE (1855).
[68] JOINT RES., LAWS OF OREGON (1860).
[69] Beardsley, *supra* note 51, at 25.

Codes of 1850-1851) to assist them. Gibbs was elected Governor of the new state in the summer of 1862 and in September of that year reported the complete draft code of civil procedure, and general laws concerning corporations, partnerships, public roads, and marriages, to the legislature. He advised the lawmakers that "[t]he temporary absence and sickness of other members of the committee has caused most of the labor to fall on Judge Deady."[70] Deady was commissioned[71] to complete the code. He reported the Code of Criminal Procedure, the Penal Code, the Justice Code and several other acts to the Legislative Assembly that convened on September 12, 1864. Beardsley[72] notes, citing no authority, that these drafts were completed "just before" the legislature convened.

An examination of Deady's correspondence reveals the extent of his labors, and raises some questions about the sources for and authorship of the penal code enacted in 1864. Some samples:

> I think your friend Waterman ought to work it up for the Bulletin, but he is so busy with the criminal code, he may not find time.[73]

> I am hard at work at the code of criminal procedure [for the] . . . next assembly, and will attend that body for the purpose of explaining and so forth . . . .[74]

> Well the biennial Oregon Congress got through the calendar of Saturday the 23d . . . . Among [the acts passed] was the code of crim. procedure and the definition of crimes and punishments, and the procedure in justice's courts reported by the Code Commission, (your humble servant) I never done six weeks harder work in my life, ...[75]

Beardsley[76] insists that Deady "did the actual work of preparation, much of it without even the assistance of an amanuensis." Beardsley's authority for this is a life of Deady in 7 Lewis, *Great American Lawyers* 360, 375 (1907), which Beardsley contends was "probably copied from Bancroft."[77] From Deady's journals, it appears that the draft of the Bancroft biography was written partly by Deady and partly by a Dr. Sessions. Deady apparently wrote the first part of it in the first person (for the period to 1850) and then made extensive corrections in the balance, because he thought

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[70] HOUSE JOURNAL, APPENDIX, 40 (Oregon, 1862). *Cf.* Harris, *supra* note 51, at 202.

[71] LAWS OF OREGON 122 (1862).

[72] Beardsley, *supra* note 51, at 27.

[73] Deady to James Willis Nesmith, June 20, 1864.

[74] Deady to Nesmith, May 7, 1864.

[75] Deady to Nesmith, October 24, 1864.

[76] Beardsley, *supra* note 51, at 28.

[77] Beardsley, *supra* note 51, at 19, 28. *Cf.* 2 BANCROFT, CHRONICLES OF THE BUILDERS OF THE COMMONWEALTH 475 (1891-1892).

that Sessions, though a "bright, clever man", was "not qualified to write my life because he is not a lawyer and has little or no familiarity with the office and labors of a judge."[78] It would appear, then, that Deady himself is authority for contentions that he was sole "author" of the Deady Codes. Yet who was this "Waterman" who was a friend of Nesmith's and who was "so busy with the criminal code" in June, 1864? It would seem that Waterman, and perhaps others, aided Deady in what was not much more than a rewriting of the 1854 code, with insertions from the draft codes for New York prepared by the Field commission. Indeed, there is strong evidence that Deady had copies of at least portions of the "Field" penal code even before it was reported to the New York Legislature.

J. K. Kelly, one of the 1854 commissioners and one of the original 1860-1862 commissioners wrote in 1894 that the Oregon Code had "remained substantially the same as when prepared by the first code commissioners and adopted by the legislative assembly of 1853-1854."[79] This would indicate that much more than the civil procedure code was retained by the Deady commission. Indeed, a comparison of the 1854 statutes with the Deady Codes[80] demonstrates that most of the work of the Kelly commission was retained. Added to this were Field's Criminal Procedure Code, parts of the Field Penal Code, and the code of evidence drafted by the Field commission as an amendment to the Civil Procedure Code.[81] The existing provisions of the Oregon code of civil procedure (already derived from Field by the Kelly commission's adoption of the New York procedure in 1853-1854) were updated by Deady to include the improvements in the final draft of Field's commission.

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78 DEADY'S JOURNAL, final volume, (November 26, 1889 to November 4, 1892) 69-70.

79 Quoted in Harris, *supra* note 51, at 200.

80 DEADY, GENERAL LAWS OF OREGON (1866) [hereinafter DEADY CODES].

81 The evidence code had not been adopted by the New York Legislature. Burnett was the first to note that, although Deady cited only Greenleaf's treatise as a source, the Deady evidence code contained provisions identical to the post-1872 California statute, which had been copied from Field's final report. *Letter from Donald H. Burnett*, 43 ORE. L. REV. 86 (1963). The editors of Oregon Law Review confirmed his suspicion that "Deady's code of evidence is almost a verbatim copy of Field's proposed evidence code." *Id.* at p. 87. Yet had Burnett known that much of Field's evidence provisions had been the law of California since the early 1850's, COMPILED LAWS CALIF. 590ff. (1853), he might have wrongly concluded that Deady had copied the California law, for Burnett did not have Field's final draft Code of Civil Procedure. Comparisons with that volume demonstrate, however, that Deady's code includes much more of Field's than did the early California law. *Compare:* DEADY CODES OF CIVIL PROCEDURE, §§ 699ff.; FIELD'S CODE OF CIVIL PROCEDURE, §§ 1707ff.; COMPILED LAWS CALIF. 590ff. §§ 391ff. (1853). This earlier enactment of the Field procedure codes in California had been secured by Field's brother Stephen, who acknowledged that he did not copy the existing New York law but "took up the Code of Civil Procedure, *as reported* by the Commissioners . . ." [emphasis supplied] STEPHEN FIELD, PERSONAL REMINISCENCES OF EARLY DAYS IN CALIFORNIA 76 (1880) (Not published: "PRINTED FOR A FEW FRIENDS."). He acknowledged the source of the Code of Criminal Procedure in the same way. *Id.* at p. 76.

There is no difficulty in demonstrating that the codes of evidence and of criminal procedure added by Deady in 1862 derive from Field's final drafts: though not yet enacted in New York, the codes had been generally published in 1849-1850.[82] However, striking similarities between Deady's and Field's Penal Codes are easier to demonstrate[83] than to explain. Beardsley contends that the drafts that included the Deady Penal Code were complete "just before" the legislature convened on September 12, 1864.[84] The penal code was enacted on October 19, 1864,[85] earlier than the probable date of publication of Field's Penal Code; the New York Commissioners' signed introduction is dated December 1864, and the volume is dated 1865.[86]

One suspects that Deady had obtained advance drafts of some sections of the Field Penal Code, or that Waterman or another assisting Deady had. Yet the manner must have been somewhat indirect, for it is clear from the Deady-Field correspondence that the two men did not meet until Deady's trip to New York and Washington D.C. in 1881-1882. Field wrote to Deady in 1868:

> Though not having the pleasure of a personal acquaintance, I venture to write you, to congratulate you on the success, with which you have proposed the Oregon Codes. I only wish you had gone further & constructed a code of the *whole body* of the law, causes and statutes, after the successions of text, which are proposed for New York.[87] [Emphasis Field's]

Field went on in the letter to exhort in favor of a thoroughgoing codification of the common law.[88] It would appear from the letter

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[82] *See* text accompanying notes 39-43.

[83] The Deady provisions of a more general nature are identical with the corresponding Field sections. *Cf.* DEADY CODES, CRIM. §§ 690-707, with FIELD'S PENAL CODE §§ 26-30, 744-760 (relating to punishments, limitations on sentences, parties to crimes, etc.). Field himself noted that "no inconsiderable part" of his commission's Penal Code "has also been adopted in Oregon." FIELD, at 15. It may have been that only some portions of the Field Penal Code were available to Field, for the actual definitions of crimes in Deady derive from the 1853-1854 revision by the Kelly commission (which in turn was derived from the 1829 New York law). *Cf.* DEADY CODES, CRIM. §§ 508-527 with REV. STAT. ORE. 209-211 §§ 7-27 (1855) and ORE. STAT. 186-189 §§ 7-27 (1854); and with 2 REV. STAT. N.Y. 660-662, §§ 2-29, 694, § 19 (1829). There is no dearth of other examples.

[84] Beardsley, *supra* note 51, at 27.

[85] *See generally* Deady Codes (commercial sections).

[86] LANG, *supra* note 26, at 139, indicates that the final report on the penal code was sent to the New York legislature in March, 1864, and he cites the volume as dated 1864. Either he is in error or he is citing a preliminary report to the legislature that was never generally published: only the preliminary reports on the codes of civil and criminal procedure was generally published.

[87] David Dudley Field to Deady, May 19, 1868.

[88] Deady apparently did not agree with Field, and was no Benthamite. In his journal while recounting his visits with Field, he comments at page 75 of the 1881-1882 volume in disdain for Pomeroy's dislike of the common law: "Pomeroy is a capital writer but he is a little out of plumb on the subject of the common law—thinks it a relic of barbarism." Deady probably had been unable to avoid the subject of

and from the Deady journals that the two had no direct liaison in 1864. However, Field certainly knew that "no inconsiderable part"[89] of the Field Penal Code was part of Deady's 1864 penal law for Oregon. In the later years when the two men corresponded, Field requested samples of indictments used in Oregon, apparently because Oregon had a generation of experience with the codes before they were finally enacted in New York.[90]

The Field codes joined the 1853-1854 borrowings from New York in Deady's compilation, and the Oregonian retained most of the provisions on wills that the Kelly commission had borrowed from Missouri, and the chapter on dower and curtesy that the earlier Oregon revisors had taken from the laws of Michigan.[91]

The Deady Codes have provided the framework of Oregon's law since 1866.[92] The more modern developments in the statutory law of Oregon are quite familiar to practitioners in that state, and are beyond the scope of this article. The discussion now moves backward a few years to the purchase of Alaska and the opening decades of Alaska's history under the American flag.

(Editors' note: Part II of *The Sources of the Alaska and Oregon Codes* will appear in the next issue of the *U.C.L.A.—Alaska Law Review*.)

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purist codification while visiting with David Field in New York and Stephen Field in Washington at that time, but it would appear he was not in agreement with them. Deady had known Stephen longer than David in those later years, because Stephen as Circuit Justice was Deady's immediate superior while Deady sat on the Federal bench in Oregon. The two corresponded extensively, but the correspondence casts no light on the Oregon Codes. See the references to this exchange in Graham, *Justice Field and the Fourteenth Amendment*, 52 YALE L.J. 851-889 (1943).

89 FIELD, *supra* note 35, at 15.

90 D. D. Field to Deady, Feb. 1, 1884. The letter bears a notation in Deady's hand: "*Ans.* I think March 10 with 6 copies of indictments." Deady apparently sought the aid of Thomas McBride, then a district attorney in the fifth Oregon district (later a judge), in obtaining suitable samples for Field. See Harris, *supra* note 51, at 215.

91 These chapters remained relatively untouched by Oregon lawmakers from 1853 to 1892, and survived minor amendments in Alaska from the time of the Carter Code until 1963, when the entire chapter on dower was repealed. Ch. 38 § 30, [1963] Sess. Laws of Alas., *repealing* ALASKA STAT. §§ 13.35.010 through 13.35.210 (1962); *cf.* GREEN, REV. STAT. MICH. 267-272 (1846). The chapter on wills stood in Alaska (with some amendments) until the enactment of the UNIFORM PROBATE CODE, ch. 78, [1972] Sess. Laws of Alas. *Cf.* ALASKA STAT. 13.05.010-13.05.240 (1971); REV. STAT. MO. 556-571 (1845). The effective date of the Uniform Probate Code is January 1, 1973.

92 DEADY AND LANE, GEN. LAWS ORE. (1874); HILL, ANN. LAWS ORE. (2d ed. 1892); LORD, ORE. LAWS (1910); ORE. REV. STAT. (1972).