

**STATE OF NEW-YORK:
FIRST REPORT
OF THE COMMISSIONERS
OF THE CODE**

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State of New-York: First Report of the Commissioners of the Code by David Dudley Field & William Curtis Noyes & Alexander W. Bradford

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**DAVID DUDLEY FIELD & WILLIAM
CURTIS NOYES & ALEXANDER W. BRADFORD**

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OF THE CODE**

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State of New-York.

FIRST REPORT

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OF THE

CODE.



ALBANY:
WEED, PARSONS AND COMPANY,
PRINTERS TO THE STATE DEPARTMENTS,
1858.



ACT

For the appointment of Commissioners under the seventeenth section of the first article of the Constitution, to prepare a Civil Code.

PASSED April 6th, 1857, three-fifths being present.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

SECTION 1. David Dudley Field, William Curtis Noyes and Alexander W. Bradford, of the city of New-York, are hereby appointed commissioners, whose duty it shall be to reduce into a written and systematic code, the whole body of the law of this state, or so much and such parts thereof, as shall seem to them practicable and expedient, excepting always such portions of the law as have been already reported upon by the commissioners of practice and pleadings, or are embraced within the scope of their reports.

§ 2. The commissioners shall divide their work into three portions: one containing the political code, another the civil code, and a third the penal code. The political code must embrace the laws respecting the government of the state, its civil polity, the functions of its public officers, and the political rights and duties of its citizens; the civil code must embrace the laws of personal rights and relations, of property, and of obligations; the penal code must define all the crimes for which persons can be punished, and the punishment for the same. But no portion of either of said codes shall embrace the courts of justice, the functions or duties of judicial officers, nor any provisions concerning actions or special proceedings, civil or criminal, or the law of evidence.

§ 3. The commissioners shall hold their offices for five years, and any vacancies that may occur during that time, may be filled by the governor. They shall receive no compensation whatever.

§ 4. The commissioners shall report to the legislature at its next annual session, a general analysis of the codes projected by them, and the progress made by them therein, and at each succeeding annual session the progress made to that time.

§ 5. Whenever the commissioners shall have prepared the codes, or any portion of them, they shall enter into a contract with the printers for the state departments for the printing of the same, and cause the same to be distributed among the judges and other competent persons for examination; after which the commissioners shall re-examine their work, and consider such suggestions as may have been made to them. They shall then cause the codes, as finally agreed upon by them, to be reprinted under the contract as aforesaid, and distributed to all the judges of the court of appeals, supreme court, superior court and common pleas of the city of New-York, and to all the county judges, surrogates and county clerks, six months before being presented to the legislature, and the penal code to be distributed in like manner to the district attorneys of the several counties of this state.

§ 6. This act shall take effect immediately.

REPORT.

TO THE LEGISLATURE OF THE STATE OF NEW-YORK :

THE COMMISSIONERS OF THE CODE, appointed by the Act of April 6, 1857, beg leave to make this their first

REPORT :

Immediately upon their appointment, they entered upon the performance of the duties committed to them, impressed with the magnitude of the undertaking, the difficulty of its accomplishment, and the necessity of caution and deliberation in every step they should take, but with a determination to recoil from no obstacle, possible to be overcome by their efforts, and to submit to any amount of labor and sacrifice necessary for the preparation of a Code of the whole body of the law.

It is known to the Legislature, that the duty which the Commissioners are performing is one of the greatest, most difficult, and most responsible.

Nothing within the range of government can exceed in magnitude the task of collecting, condensing and arranging the jurisprudence of a people. The structure of government and society, and all their complex relations, are comprehended within it. Public order, sound morals, all advancement in the

arts of civilization, and all growth in true prosperity, are dependent, in a great degree, upon those rules of action, which the state prescribes for the conduct of its citizens.

The difficulty and responsibility, in this instance, are increased by two considerations; the present state of the law, and the necessity of some modification to make a harmonious system. The condition of our law at the present time, is not unlike that of the Roman law in the time of Justinian, or of the French law in the time of Napoleon. From the date of the Twelve Tables to the age of Justinian, the polity and institutions of the Romans had so largely changed, so many new and various laws had been added, and the numerous decisions consequent upon the extension of commerce, the enlargement of the Republic and Empire, the modifications of social relations, and the conflict of laws of different provinces and nations, had become so complicated, that a Code, which is a condensed and reformed Digest, was a matter of necessity. Something of the same kind is observable now.

Our law is the product of ten centuries, most of them filled with tumult and disorder; it is compounded of many incongruous elements, Saxon and Norman customs, Feudal and Roman law, provincial usages, and the decisions of various and disagreeing tribunals. We have Equity law, Admiralty law, Canon law, as the law of marriage and succession, and two kinds of Common law, one contradistinguished from Statute, and the other from Equity. Society has undergone an entire transformation. The feudal system has fallen to pieces; monarchical institutions have given place to republican; land from being almost inalienable has become an article of daily and hourly traffic; and commerce, once so narrow and timid, embraces the world. Personal rights, and personal property have assumed an importance never before known; the numberless questions arising from modern enterprise,

travel, emigration, and the expansion of industry and commerce, have developed new departments of jurisprudence; while the multiplication of courts required by the necessities of an increased population, and a traffic constantly augmenting, has produced a mass of adjudications, painful for the student to contemplate, and often difficult if not impossible to reconcile. Thus we have arrived at the period of which the Roman historian complained so justly, when "the infinite variety of laws and legal opinions had filled many thousand volumes, which no fortune could purchase, and no capacity could digest."

How far, in the preparation of a Code, changes should be recommended, is a question of much delicacy. They should, without doubt, be cautiously admitted. Law is the growth of time and circumstance. An original system of jurisprudence, founded upon mere theory, without reference to national characteristics, habits, traditions and usages, would be a failure. The science of government and law is progressive; new regulations spring from necessity, or are suggested by experience, and the application of the rules of justice to human affairs is constantly modified by the changing circumstances of society. The process is easily understood. In the earlier stages of civilization, when communities are small and isolated, local customs are more distinct, in conformity with local character; but as cultivation and intercourse gradually break down provincial peculiarities, and eradicate partial customs, the tendency to assimilation enables the legislator to disregard inconvenient rules, venerable only from age and habit, and gradually to introduce changes, which have the experience of other communities to recommend them, and which seem better adapted to an advanced civilization. We thus reach a stage, in which valuable improvements may be borrowed from other systems and engrafted into our own, without impairing the harmony of our laws, by the introduction of unsuitable elements.