

The Law Givers

Heroes of Virginia Statutory History

by Kent C. Olson



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The coming year will mark the four hundredth anniversary of Virginia's first publication of its laws—an eighty-nine-page collection of martial laws put into force in 1610–11 and published in London in 1612. Within a decade, the first elected legislature in the American colonies would meet in Jamestown. Virginia statutes have come a long way from these beginnings to the seventy-seven titles now published in more than two dozen volumes and available on the General Assembly's website.

This article pays tribute to some of the individuals who played key roles in the development of Virginia statutory publication. Each made other significant contributions to the commonwealth that in most instances eclipsed their statutory work. One became a United States senator, another a governor, and a third a federal judge. One was the most prolific legal author of his day but is best known for his collection of statutes.

Hening the Compiler

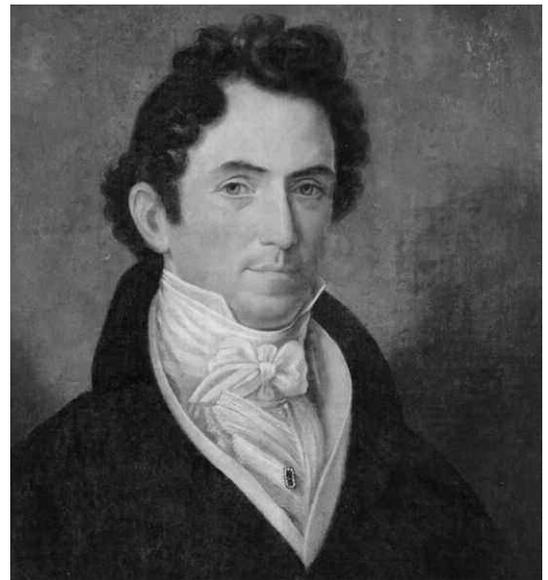
In a 1796 letter to George Wythe, Thomas Jefferson recognized the need to preserve the legislation of early Virginia and proposed that the laws be collected and printed. "Very early in the course of my researches into the laws of Virginia," he wrote, "I observed that many of them were already lost, and many more on the point of being lost, as existing only in single copies in the hands of careful or curious individuals, on whose death they would probably be used for waste paper." Jefferson had personally assembled an extensive collection of manuscripts, some of which were "so rotten, that in turning over a leaf it sometimes falls into powder."¹

Little came of Jefferson's proposal, however, until an acquaintance of his from the Charlottesville bar, William Waller Hening

(1767–1828), took up the cause a decade later. Like Jefferson, Hening had an extensive collection of printed and manuscript laws. From the two sets and further searches in clerks' and magistrates' offices, he assembled a nearly complete collection of Virginia laws enacted from 1619 to 1792.

Hening requested that the General Assembly certify the authority of the laws he was planning to publish, and an act was accordingly passed in February 1808.² The first four volumes of *The Statutes at Large; Being a Collection of All the Laws of Virginia from the First Session of the Legislature in the Year 1619* were published between 1809 and 1814, followed by nine more volumes between 1819 and 1823.

Hening was a painstaking editor. In comparing published Colonial revisions with original manuscripts, he noted "that not only entire sentences, but whole acts are omitted; besides innumerable typographical errors, which totally vary the sense." Once an error appeared in print, it was



Portrait of a man, believed to be William Waller Hening, artist unknown, from an oil painting in the Virginia Historical Society collection. The donor was Hening's great-great-grandson, the Honorable Edmund W. Hening Jr. (1914–2000), who obtained the portrait from another descendant whose mother believed it depicted William Waller Hening.

generally carried over into later revisions. His collection restored many of these laws to the versions that were originally enacted. On reviewing the first volume, Jefferson wrote that “the compilation appears to be correctly & judiciously made, and gives us exactly what I had so long considered as a desideratum for our country.”³

Hening was born in Culpeper County, read law in Fredericksburg, and was admitted to the Virginia bar in 1789. He moved to Charlottesville in 1793. His first major work, published in Richmond in 1795, was *The New Virginia Justice*, a handbook for justices of the peace. Before Hening’s work, the only Virginia legal texts were works by George Webb (1736) and Richard Starke (1774), both published in Williamsburg and titled *The Office and Authority of a Justice of the Peace*. Hening’s *New Virginia Justice* went through four editions and for over thirty years was the principal reference work for magistrates and lawyers.⁴

Hening was elected to the House of Delegates in 1804 and later became a privy councillor and clerk of the court of chancery. With William Munford (1775–1825), a fellow legislator and later clerk of the House of Delegates, he also published four volumes of reports of the Supreme Court of Appeals of Virginia covering 1806 to 1809. Hening and Munford published the court’s cases in a manner far more timely than earlier reporters; cases from the period from 1803 to 1806 were not even published until 1833.

In the preface to his first volume of the *Statutes at Large*, Hening noted: “Whether I shall render an acceptable service to my native state in furnishing the only authentic materials for its early history, . . . I am at a loss to conjecture.” Over a century later, a *Virginia Law Register* article noted that Hening’s volumes “are prized by the historian and worshiped by the genealogist,” even though “to the practical and unsentimental lawyer they are an encumbrance, a worthless antique.”⁵

Leigh the Codifier

A collection of laws in force in Virginia was published in 1794, with updated editions published in 1803 and 1814. In each of these collections, however, the acts were simply printed in chronological order by date of enactment rather than organized by topic. The *Revised Code of the Laws of Virginia*, published in 1819, was the first effort to classify the law in a coherent subject arrangement.

The editor responsible for the codification was Benjamin Watkins Leigh (1781–1849). He was born in Chesterfield County and studied under St. George Tucker at the College of William



Benjamin Watkins Leigh, from a watercolor painting (1835) by James Barton Longacre in the Virginia Historical Society collection.

and Mary. He began practicing law in Petersburg in 1802, but moved to Richmond after serving in the House of Delegates from 1811 to 1813. By the time of the 1819 code he was one of the most respected lawyers in the city.

In commissioning the Code of 1819, the General Assembly listed more than two hundred acts it wanted codified, designated Leigh as the superintendent of the work, and specified that it would be “his duty to prescribe the order, in which the several laws shall be published in the code, carefully classing them according to their subject matter, without reference to the time of their passage.”⁶

Leigh was aided in the classification project by two “very competent assistants” already mentioned in this article, William Waller Hening and William Munford. The code they produced had twenty-three subject titles and 262 chapters. Leigh sought in his preface to allay concerns about the “novel order of publication” that “rendered it impossible to designate the year of the Commonwealth, at the top of the page, as in all the other publications of our laws since the revolution,” by noting that the dates were indeed included in the side margins. The work did more than classify current law, with numerous footnotes providing historical surveys of Virginia law from 1619.

The codification interfered with Leigh’s legal practice, as he explained in a letter to the governor: “The work cost me five months’ continual application, three of which were the busiest judi-

cial and professional months in the year. I was withdrawn almost entirely from my profession, to my very great loss and incalculable inconvenience.”⁷ As he wrote in the code’s preface, however, “I thought myself hardly at liberty to decline this public service, however laborious and incompatible with my other avocations.”

In the 1820s and 1830s, Leigh became one of the leading conservatives in Virginia politics, defending property qualifications for voting and opposing proportional representation and moves towards popular democracy. In 1834 he was appointed to the U.S. Senate, but served for only two years before resigning after a conflict with the Jacksonian-controlled state legislature.

Leigh also served as reporter for the Supreme Court of Appeals from 1829 to 1841, compiling twelve volumes of reports. According to Conway Robinson (1805–1884), Leigh’s son-in-law and successor as reporter, the reports of Leigh’s predecessors “had not been of so high an order as was to be desired. It was an object of some importance to raise the standard of the Virginia reports. And the judges now sought the services of one in the first rank of the profession, who was deemed by them better fitted than any other to attain the object in view.”⁸ Robinson would himself become a major figure in Virginia statutory history, as co-editor of the Code of 1849.

Pollard the Annotator

In an 1887 recodification, the Code of Virginia adopted a single series of section numbers similar to the system used the previous decade in the



John Garland Pollard, from an illustration in *Men of Mark in Virginia* (1908).

Revised Statutes of the United States. The Code of 1887 included notations of relevant court decisions, but these were limited to citations in the margins such as “3 Rand., 291” with no explanatory text. Attorneys needed to include handwritten notes in their copies of the code if they wanted more information on relevant decisions. This practice would become obsolete, thanks to a young and ambitious Richmond attorney named John Garland Pollard.

Pollard (1871–1937) was born in King and Queen County, grew up in Richmond, and received his law degree from Columbian University (now George Washington University). He began practicing law in Richmond at the age of twenty-one. Two years later he published a volume of acts since 1887, including a collection of amendments designed to be pasted over relevant sections in the code volume. Five years later, he published a more comprehensive supplement to the 1887 code.

Pollard was one of the youngest delegates to the Virginia constitutional convention in 1901–02. He was a deeply religious Baptist and strongly believed in the separation of church and state. At the convention he argued unsuccessfully that the word “Christian” should be struck from a provision that “it is the mutual duty of all to practice Christian forbearance, love and charity towards each other,” because he felt the constitution should speak “to all people — non-Christian as well as Christian.”⁹

After the constitutional convention, Pollard turned his attention back to Virginia statutes and produced his two-volume *Code of Virginia as Amended to Adjournment of General Assembly 1904 ... Annotated*. His aim was not only to collect and classify the statutes in force but to “give the construction placed upon such statutes by the courts, and to refer to the comments in textbooks and legal periodicals concerning the same.” The annotations covered Virginia and federal courts, with references to the *Virginia Law Journal*, *Virginia Law Register*, and several major treatises, including Minor’s Institutes. In his preface, Pollard thanked several assistants and the Washington and Lee University Law Library, where he worked during his stay in Lexington in the summer of 1903.

For the first time, Virginia lawyers had a code with notes that summarized court interpretations of the statutory provisions. Pollard’s work was hailed as “the best edition of the code ever published in the history of the state.”¹⁰ One reviewer

noted that “[a]mple margins are afforded for future statute and case-annotation,”¹¹ but this proved unnecessary because the Pollard code was the first in Virginia history to be regularly updated. A new *Pollard’s Code Biennial* volume appeared after each General Assembly session for more than twenty years. Pollard’s publications were considered “well nigh indispensable . . . a necessity to every Virginia lawyer, and executed with such fidelity and care as to make it a luxury to use.”¹²

Pollard served as Virginia’s attorney general from 1913 until 1917. He ran for governor in 1915 but lost; taught at the College of William and Mary for several years, including six years as dean of the Marshall–Wythe School of Government and Citizenship; and in 1929 was elected governor to succeed Harry F. Byrd Sr. It was a difficult period of depression and drought, during which he maintained a balanced budget by cutting state expenses by \$7.5 million and approved the 1933 repeal of Prohibition. Pollard’s final position until his death was as chair of the U.S. Board of Veterans Appeals in Washington, D.C.

Michie the Modernizer

In the 1940s, Virginia was one of the last states to have an annotated code in just one volume, a massive 3,160-page tome published every six years by the Charlottesville-based Michie Company and based on the official Code of 1919. The General Assembly in 1946 empowered a Commission on Code Recodification, which initially thought the revised code would be four volumes—“one for the administrative code, a second for the civil code, a third for the criminal code and a fourth for the index.”¹³ The commission turned to the Michie Company to do the editorial work, which “was directed and for the most part actually done by A. Hewson Michie, Beirne Stedman, and Thomas J. Michie.”¹⁴

Two of these three men were career employees of the Michie Company. A. Hewson Michie (1897–1957), the younger son of one of the company’s founders, Thomas J. Michie III (1867–1938), was born in New York but moved with his family to Charlottesville in 1905. He fought in World War I in the St. Mihiel and Meuse-Argonne offensives and “was slightly gassed, but he was much too robust to succumb.”¹⁵ Hewson Michie joined the firm immediately after receiving his law degree from the University of Virginia in 1922. By 1930 he had editorial responsibility for the company’s Virginia



Thomas J. Michie, from the Russell “Rip” Payne Collection at the Albemarle Charlottesville Historical Society.

codes and its annotated codes for other states. Michie also succeeded his father as reporter of the Supreme Court of Appeals of Virginia, serving from 1937 until 1952.

Beirne Stedman (1889–1972), a native of Patrick County and a law graduate of Washington and Lee, worked for the Michie Company for sixty years. His first published work was a 1917 *Virginia Law Register* article, “Right of Husband to Chastise Wife.”¹⁶ Stedman was the final editor (1926–28) of the *Register*, compiler of the well-received *Stedman on Patents* (1939), and co-editor of numerous state codes.

Hewson Michie’s older brother, Thomas J. Michie (1896–1973), was “not regularly connected with The Michie Company, . . . but through special arrangement made by the Company he undertook to do a very considerable part of this work.”¹⁷ Michie graduated from the University of Virginia School of Law a year before his brother, in 1921, practiced law in Charlottesville, was a corporate lawyer in Pittsburgh, and served in the armed services during both world wars. After World War II, he was in general practice in Charlottesville when he joined the recodification effort.

In the 1950s Thomas Michie was a member of the Charlottesville City Council, and he became mayor in 1958 as the city was deliberating the fate of its segregated school systems. He said that the city council and school board might “be compelled to take action which will be distasteful” to them, but that officials would be guided by “a respect for our courts and their orders.” He

warned that “violence and mob action will not be tolerated here. Anyone who sets out to make trouble will get it for himself, without fear or favor and without regard to his color, his position or his social standing.”¹⁸

In 1961 President John F. Kennedy appointed Michie to the U.S. District Court for the Western District of Virginia. There he presided over several major school desegregation and civil rights cases. In 1962 he ordered the admission of the first African American students to public schools in Lynchburg, Winchester, and Roanoke, and in 1965 he ordered the reinstatement of African American teachers fired by the Giles County school system after the county consolidated its separate schools. Judge Michie had served just six years when a stroke forced his retirement.

The *Code of Virginia 1950* created by the Michie editors was a nine-volume set with pocket parts and volumes that could be replaced as necessary, and sixty-five titles that could be individually revised. And this, under the terms of Va. Code § 30–152, is the course that the Code Commission has followed for more than sixty years.¹⁹

Endnotes:

- 1 Thomas Jefferson to George Wythe, Jan. 16, 1796, 9 *The Writings of Thomas Jefferson* 319 (Abert Ellery Bergh ed., 1907).
- 2 Ch. 17, 1808 Va. Acts 24.
- 3 Thomas Jefferson to William W. Hening, Dec. 1, 1809, 2 *The Papers of Thomas Jefferson: Retirement Series* 50 (J. Jefferson Looney ed., 2005).
- 4 Wm. H. Martin, Hening and the Statutes at Large, 13 Va. L. Reg. n.s. 25, 25 (1927).
- 5 *Id.* at 29–30.

- 6 Act of March 12, 1819, ch. 35, 1819 Va. Acts 50, 63.
- 7 B. W. Leigh to the Governor, Oct. 29, 1819, 10 *Calendar of Virginia State Papers and Other Manuscripts* 489, 490 (H. W. Flournoy ed., 1892), cited in Bruce E. Steiner, *The Prelude to Conservatism, 1781–1822: An Account of the Early Life, First Ventures into Politics, and Legal Career of Benjamin Watkins Leigh* 155 (unpublished M.A. thesis, University of Virginia, 1959).
- 8 Preface, 40 Va. vii, viii (1843).
- 9 Christopher B. Garnett, John Garland Pollard, 48 Proc. Va. St. B. 246, 247 (1937).
- 10 John Garland Pollard, 4 *Men of Mark in Virginia* 330, 334 (Lyon G. Tyler ed., 1908).
- 11 George Bryan, Book Review, 10 Va. L. Reg. 757, 758 (1904).
- 12 R. T. W. Duke, Jr., Book Review, 16 Va. L. Reg. 719, 719 (1911).
- 13 Contract Signed for Recodification of All State Laws, *Wash. Post*, Aug. 30, 1946, at 7.
- 14 Report of the Committee on Code Recodification 5, House Doc. No. 18 (1948).
- 15 Bernard P. Chamberlain, Addinell Hewson Michie, 68 Proc. Va. St. B. 191, 192 (1958).
- 16 3 Va. L. Reg. n.s. 241 (1917).
- 17 Report of the Committee on Code Recodification, *supra* note 14, at 5.
- 18 Alan Bruns, Mayor’s Job No Longer Very Peaceful, *Charlottesville Daily Progress*, Sept. 3, 1960; *Charlottesville Mayor Urges Calmness on School Issue*, *Wash. Post*, Sept. 3, 1958, at A8.
- 19 Lengthier biographical sketches of Hening, Leigh, Pollard, and Thomas J. Michie can be found in two standard works edited by W. Hamilton Bryson. Hening and Leigh are covered in *The Virginia Law Reporters Before 1880* (1977), and Pollard and Michie in *Legal Education in Virginia, 1779–1979: A Biographical Approach* (1982).

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