

PREFACE

When a dependency severs its formal connection with the mother country — irrespective of the century in which such severance occurs — the act of independence can neither eradicate the past nor solve all problems of the future. In the late eighteenth and early nineteenth centuries, the United States of America discovered that independence from Great Britain in itself did not abolish the need for rules and regulations by which men could anticipate with some degree of certainty the consequences of particular actions. Wholesale adoption of such English* statutes as were suited to their condition offered a solution to the need for a body of laws. At the same time it avoided the need to draft and enact a comprehensive body of legislation at the moment the newly independent jurisdictional entities were faced with a wide assortment of internal and external problems.

As colonists, the citizens of these newly independent states had clamored for the untrammelled use of the English statutes and the common law and had made much of Great Britain's refusal to concede such use. After 1776 they were free to use, adapt, or reject the statutes and the common law which they had claimed as their birthright and heritage. This study is designed to show the extent to which British statutes without re-enactment were declared to be or were considered to be in force or not in force in the twenty-eight separate jurisdictions of the United States during the first sixty years of the nation's independence.

To keep the scope of the study within reasonable limits, no substantial effort was made to learn the extent to which English statutes were re-enacted as state or territorial statutes. That this re-enactment did occur in some jurisdictions is apparent upon an examination of the early state or territorial statutes, especially those dealing with subjects such as wills or uses or waste. That such re-enactment, together with the enactment of state or territorial acts geared to local needs, lessened the use of and emphasis upon English statutes is likewise apparent. It is not irrelevant to note that codification of a jurisdiction's laws was more frequently than not coupled with a repeal of all English statutes heretofore in force.

* The terms "English" and "British" are used interchangeably.

This study is divided into one minor and three major parts. Part I consists of two chapters dealing with the background and a summary of methods of handling the British statutes employed by the jurisdictions. Part II is a jurisdiction by jurisdiction discussion, the jurisdictions being divided primarily by geographical areas, to provide more details concerning the particular method or methods employed by each. Part III is a Table containing references to all English statutes referred to in the statutes and published reports of the individual jurisdictions as well as in the lists of English statutes considered to be in force which were authorized by several of the legislatures. Part IV contains two colonial statutes which sought to place in effect specified statutes of Great Britain but which were disallowed by Orders in Council.

The origin of this study lay in the collection and preparation of teaching materials for Professor William Wirt Blume's seminar in American Legal History, which between 1955 and 1962 dealt primarily with the territorial period of United States history. While seeking to determine what laws of Great Britain were in force without re-enactment in the territories of the United States from 1787 to 1912, it became obvious that no definitive answer was possible without examining all available statutory and decisional materials. To provide a more unified time period, and also to concentrate on the years during which the status of English statutes was a matter of prime concern for legislators and jurists, the sixty years immediately succeeding independence — 1776-1836 — were selected. Rather than limit the investigation to the territories, all jurisdictions of the United States in existence during these six decades were included. The examination of the materials, the determination of the format for the Table, and the preparation of the text, were all carried out in consultation with Professor Blume. At all times he provided patient and judicious counsel and drew upon his extensive and intensive knowledge of American territorial history and of procedural developments in the United States to suggest fruitful lines of inquiry. Student research assistants bore much of the drudgery of page turning and reference checking; their names and efforts are described in more detail in the Note preceding Part III. Alice Russell shepherded the completed study through the editorial process and rendered invaluable assistance at this stage in the project. In the end, of course, the shortcomings of this study are my responsibility.

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