

# United States Code: Historical Outline and Explanatory Notes

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## A. Background and History to the Codification of U.S. Laws and the United States Code

- 1) *Revised Statutes of 1873* first codification of U.S. law - 70 titles. Many errors corrected in act of Feb. 18, 1875 (ch. 80, 18 Stat. 316, pt. 3) and act of Feb. 27, 1877 (ch. 69, 19 Stat. 240).
- 2) *Revised Statutes of 1878* - new corrected and updated edition of Revised Statutes, legal (but not conclusive) evidence of law, also said to be prima facie evidence (act of Mar. 2, 1877, ch. 82, 19 Stat. 268 as amended by act of Mar. 9, 1878, ch. 26, 20 Stat. 27; s.a.7 Cong. Rec. 1137, 1376-77).
- 3) Supplements to Revised Statutes by Judge Richardson (Res. of Jun. 7, 1880; 21 Stat. 308 and act of Apr. 9, 1890, ch. 73, 26 Stat. 50). Other supplements authorized.
- 4) Commission established to revise and codify criminal and judicial laws of U.S. (act of June 4, 1897, ch. 2, 30 Stat. 58 and act of Mar. 3, 1899, ch. 424, 30 Stat. 1116). From this process a **Criminal Code** (act of Mar. 4, 1909, ch. 321, 35 Stat. 1088-1159) and a **Judicial Code** (act of Mar. 3, 1911, ch. 231, 36 Stat. 1087-1169) were eventually enacted, repealing related prior law.
- 5) As time went on **commercial publishers** tried to fill gap in providing an up to date codification - *U.S. Compiled Statues Annotated* by West Publishing Co., *Federal Statutes Annotated* by Edward Thompson Co., *Barnes Federal Code* by Uriah Barnes via Virginia Law Book/Bobbs-Merrill Co's. These works were useful in the preparation of the *U.S. Code* (60 Cong. Rec. 4735, Dec. 20, 1920).
- 6) In 1919, **Col. E. C. Little**, Chairman of the House Committee on the Revision of Laws began the work to codify U.S. law, appointing Prof. William Burdick of Kansas as Reviser. Others aided.
- 7) The completed work was introduced as H.R. 9389 (60 titles) in the 66<sup>th</sup> Congress and passed the House on Dec. 20, 1920 (60 Cong. Rec. 571-574). **Bill died in Senate.** (s.a. H. Rept. 781, 2 pts.).
- 8) Bill reintroduced with corrections in the 67<sup>th</sup> Congress as H.R. 12 and it passed the House unanimously on May 16, 1921 (61 Cong. Rec. 1479), but **again it died** in the Senate after being debated in the House and Senate (64 Cong. Rec. 2084, 2090, 2846, 3137, 5019, 5087-5102; H. Rep. 68).
- 9) The bill, with an updated supplement, was reintroduced in the 68<sup>th</sup> Congress as H.R. 12 and unanimously passed the House on January 7, 1924 (65 Cong. Rec. 643, H. Rept. 2). It was referred to the Senate Committee on the Revision of the Laws where it was reported unfavorably on the grounds that it contained some **600 errors, omissions, and inaccuracies**. Instead the Committee reported S.J. Res. 141 (S. Rept. 722), to establish a commission to revise laws. It passed the Senate (66 Cong. Rec. 3800) and was reported from House Committee (H. Rept. 1573) w amdts.
- 10) The two revision committees then **employed staff members at West Publishing Co.** and Edward Thompson Co. to do the work of codification using Little's work (60 titles) as a basis and checking with experts in law and government departments (see 67 Cong. Rec. 7787; H. Rept. 69-900).
- 11) In the 69<sup>th</sup> Congress, the new Code (laws in force as of Dec. 7, 1925) introduced as H.R. 10000 (50 titles), reported by the Committee (H. Rept. 900), debated and passed the House on Apr. 19, 1926 (67 Cong. Rec. 7787-7793) to be prima facie law until July 1, 1927. The Senate Committee reported it (S. Rept. 832). It was debated, amended and passed by the Senate (67 Cong. Rec. 9737, 10403, 10478, 10480, 11799, 11963, 11971) as **prima facie evidence only**. House concurred (67 Cong. Rec. 12076) and was signed by President on June 30, 1926 (44 Stat. pt. 1, Public No. 440).
- 12) The Code enacted no new law (not really), **repealed no prior law** and in cases of inconsistency the statutes were to prevail. However, like the *Revised Statutes*, which was enacted into positive law, the Code is to **encompass the general and permanent laws authored by Congress** (not private and local matters, nor annual appropriations). Some 537 errors were later found; 88 of them errors of substance. See H. Rept. 70-1706 to accompany H.R. 13622, a bill to provide Supplement I volume to Code (act of May 29, 1928, ch. 911, 45 Stat. 1008).
- 13) In the 70<sup>th</sup> Congress, the act of May 29, 1928 (ch. 910, 45 Stat. 1007), amended by act of Mar. 2, 1929 (ch. 586, 45 Stat.1540), provided that **cumulative supplements** to the Code, under the

supervision of the House Committee on Revision of the Laws, be compiled and published at the end of each congressional session and that a **new edition** of the Code be prepared and published not oftener than once every five years (practice became **every six years**). There have now been 13 new editions (1934, 1940, 1946, 1952, 1958, 1964, 1970, 1976, 1982, 1988, 1994, 2000 & 2006).

- 14) In **1939 the Internal Revenue Code was enacted** (53 Stat. 1) and was recodified by the Internal Revenue Code of 1954 (63A Stat. 3) and renamed as the Internal Revenue Code of 1986 by Tax Reform Act of 1986. As Title 26 USC exactly mirrors the IRC, Title 26 is in essence positive law.
- 15) The impulse to enact the Code into positive law did not bear fruit until **1947** in the 80<sup>th</sup> Congress when **six titles** of the *U.S. Code* (titles 1, 3, 4, 6, 9, & 17) were prepared, codified and **enacted into positive law**. This was followed in 1948 with the enactment of titles 18 and 28. Bills to codify titles 1, 4, 6 and 9 had passed the House as early as 1942 and 1944 in the 77<sup>th</sup> and 78<sup>th</sup> Congresses (88 Cong. Rec. 5223-39, 90 Cong. Rec. 2752-58), but did not receive attention in the Senate. The preparation was lead by the House Committee on the Revision of Laws, which, after the Reorganization Act of 1946, was made a subcommittee of the House Judiciary Committee. Assistance also came from West Publishing Co. & Edward Thompson Co. (88 Cong. Rec. 5224).
- 16) As expertise became available from various executive departments, **other titles were enacted** including titles 14 (1949), 35 (1952), 13 (1954), 10 & 32 (1956), 23 (1958), 38 (1958), 39 (1960 & 1970), 37 (1962), 5 (1966), 44 (1968), 17 (1976 rev.), 11 (1978), 49 Subtitle IV (1978), 31 (1982), 49 Subtitle I (1983), 46 (1983 in part, also 1986 & 1988), and 49 Subtitles II, III, V-X (1994). See a related document placed in LLSDC's Legislative Source Book - *United States Code: A List of Positive Law Titles with Enacting Cites and Location to Revision Notes*.
- 17) In **1975 Office of Law Revision Counsel was established as an independent office** under the Speaker of the House (see H. Res. 988, P.L. 93-554, 88 Stat. 1777, 2 USC 285-285g). Before that time, Law Revision Counsel had been officer in the House Judiciary Committee. Currently about 18 attorneys in the Office are responsible for preparing supplements and new editions to the *U.S. Code*, for assigning Code cites to new statutes, and for preparing and revising other unenacted titles of the Code for introduction, with reviser's notes. Edward F. Willet, Jr. held the title of Law Revision Counsel from 1975-1996, John R. Miller from 1997-2004, Peter Lefevre 2004-2011, Ralph V. Seep 2011 to Present.

## **B. Prima Facie Evidence and Positive Law Evidence of the Law - How the Courts Interpret**

- 1) Titles of the *U.S. Code* that have not been enacted are only prima facie or **rebuttable evidence** of the law and if construction is necessary, recourse must be had to the original statutes. See *Kessler v. Mercur Corp.* (1936, 83 F2d 178, cert denied 299 US 576); *Stephan v. U.S.* (1943, 319 U.S. 423); *Murrel v. Western Union Tel. Co.* (1947, 160 F2d 787); *U.S. v. Welden* (1964, 377 U.S. 95); *Preston v. Heckler* (1984, 734 F2d 1359); *U.S. v. Zuger* (1984, 602 F. Supp 889); and *U.S. National Bank or Oregon v. Independent Insurance Agents of America* (1993, 508 US 439). Statutes prevail also over *U.S. Code* errors of inclusion, exclusion, and word substitutions like "chapter" for "Act". See *Olson v. Mellon* (1933, 4 F Supp 947); *Ruff v. Gay* (1933, 3 F Supp 264); *American Bank & Trust v. Dallas County* (1983, 463 US 855). See notes to 1 USCS/USCA 204.
- 2) Titles of the *U.S. Code* that have been enacted as **positive law**, the **court may neither permit nor require proof of underlying original statutes**. However, it will not be inferred that Congress, in revising and consolidating laws, intended to change their effect unless such intention is clearly expressed (in the reviser notes). See *U.S. v. Neifert-White Co.* (1968, 390 US 228); *U.S. v. Zuger* (1984, 602 F. Supp 889); *Goldstein v. Cox* (1970, 396 US 471). See notes to 1 USCS/USCA 204. Statutory provisions that have been **omitted** as unnecessary, but not repealed, are still valid law. See *Gaddis v U.S.* (381 F3d 444), *U.S. v Boettcher* (780 F2d 435), *Chandler* (398 US 74), et. al.
- 3) Only recent positive law titles of the *U.S. Code* were enacted with the phrase "without substantive change" in the enacting clause, to make clear that titles enacted into positive law are not intended to substantially change the law. However, those positive law titles without this clause still have

**reviser notes to support or not support a change in the law.** Notes should clearly express such changes. See *Goldstein v. Cox* (1970, 396 US 471). As an example of a reviser's note making substantive change in U.S. patent law (following the courts and past practice) see 35 USC §102.

### C. Code Hierarchy, Citing, and Assignments Of New Laws to Code Sections

- 1) *U.S. Code* Hierarchy - Titles, Subtitles, Chapters, Subchapters, Parts, Sections. Some titles have fewer levels with no subtitles, subchapters or parts. Subsection hierarchy sample “b) 3) A) II) iii)”. Subsections, instead of paragraphs, gradually became more widely used during/after the 1930’s.
- 2) Cites are generally to sections - as in Robinson-Patman Act, 15 U.S.C. §§ 13-13b, 21a (2000) or the Voting Rights Act, Pub. L. No. 89-110, 79 Stat. 445 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (2000)). See *The Blue Book*.
- 3) In **assigning new Code cites**, the Law Revision Counsel tries to insert the law into appropriate related titles and subject matter by perhaps making a **new section** 2a, 301r-1 or 77kkk or sometimes a whole **new chapter** or subchapter, which normally follows the last one assigned so that the most recent chapters are at the end of a title. Sometimes a provision closely related to an existing section is inserted as a **note** to that section, but it is **still just as valid as law**. What is important is the validity of the underlying statute not where it is placed in the Code. The Office will generally begin its U.S. Code assignments during the enrollment process. A slip law can not be published until all Code assignments for a law have been assigned. Careful attention is paid as to whether a provision in an **appropriation measure** is to be considered general and permanent.

### D. Notes to U.S. Code Sections

- 1) A parenthetical note directly follows each section of the *U.S. Code* and contains the source citations to each section’s **statutory derivation** including the original statute and any subsequent amendatory statutes. The original statute to a section of a Code title that has been enacted into positive law is usually the enactment making the title positive law, not prior laws to it. A statute citation before 1957 will not have its public law number, but it will have the date of enactment, the statute’s congressional session chapter number, pertinent statutory section, and the Statutes At Large volume and page number. **Citations to statutes after 1956 will include its public law number**, pertinent statutory section and Statutes At Large volume and page number.
- 2) Historical and **reviser notes** follow the parenthetical note for most all titles that have been enacted into positive law (except early enacted titles 1, 3, 4 & 9) explaining which statute parts and which sections from the old non-positive law Code the revised section came from and how it may have been clarified or harmonized by added and replaced words and phrases or deletions.
- 3) **Amendment notes** explaining how each amendatory statute changed a section or when certain subsections were added to it or subtracted from it. The notes are organized by year in reverse chronological order. The explanations will not be present for statutes **before 1926** (when the Code was enacted) or for **prior statutes** to sections of a title of the Code that has been enacted as positive law. Base statute for those sections is usually the enactment making the title positive law.
- 4) Other notes may explain **references in the text** to statute titles and sections that are assigned to different chapters & sections in Code. For instance, they may have been repealed.
- 5) **Section referred to in other sections notes** are no longer being applied after the 2000 edition. See instead cross reference search template at <http://uscode.house.gov/search/criteria.shtml>.
- 6) There are notes to **effective dates**, notes on **short titles** given to statutes, and notes on **required studies/reports** to congress or reports that have been sunsetted. But, after PL 108-203 (2004), one time statutorily mandated studies are no longer being placed in the notes area of sections.
- 7) There are even **notes of permanent and general law** that may affect a section, especially a section that has been enacted into positive law, but the statute in the note has not been. These notes are still as valid as those assigned to sections.

- 8) Finally most **executive orders** are placed in the notes area of related sections. Table IV of the *U.S. Code* (Table 3 in the USCA) lists and tells you where each executive order can be found in related sectional notes of the U.S. Code and/or whether it has been revised or repealed.
- 9) The *United States Code Annotated (U.S.C.A.)* by Thomson West and the *United States Code Service (U.S.C.S.)* by LexisNexis provide many **additional notes** such as cross references to sections in the Code of Federal Regulations and related library references to American Law Reports (LexisNexis) and law journal articles or encyclopedia sections. However, the U.S.C.A. and U.S.C.S. editions of the Code are most noted for their copious notes (with USCA usually having a little more) on **court decisions** that have interpreted the related section or one of its parts.

#### E. Indexes and Tables to the United States Code

- 1) Voluminous **subject index** - sometimes too much info, sometimes still unable to locate a specific section. Same index for USCA and USCS – not online.
- 2) **Popular name table** for acts of Congress – great resource. U.S.C.A. & U.S.C.S. have added other popular names that may not be in the USC. Includes original statute citation and corresponding sections in the *U.S. Code*. U.S.C.A. and U.S.C.S. have more detailed corresponding cites to the *U.S. Code*. They also have added cites to all amendatory acts with corresponding Code cites. Remember, most laws, especially early laws, do not have short titles, but they frequently amend laws that do or are often referred to by a popular name. Various online versions are available – Westlaw, Lexis, Cornell (not up to date), Findlaw (not up to date). In the Law Revision Counsel edition – search Code as in “Jones Act” AND “Popular Names”.
- 4) **Table of revised titles** of the *U.S. Code* (Table I) for those titles that have been enacted (including Title 26). This table is not included in the U.S.C.A., but you can find them at the beginning of each title that has been enacted into positive law in the U.S.C.A., the U.S.C.S. and the U.S.C.
- 5) Table showing where sections of the **Revised Statutes of 1878** can be found in the *U.S. Code*.
- 6) **Table of Statutes At Large**, organized chronologically, shows **where** sections of each statute can be found **in the Code** or whether those sections have been repealed or eliminated. Excellent resource for finding a section in the Code when all you have is the section of the statute.
- 7) **Table of executive orders** is arranged chronologically with references to section notes in the *U.S. Code* where it can be found or whether it has been revised or repealed. The USC table has been scanned into PDF and made available on LLSDC’s Legislative Sourcebook.
- 8) A brief **Table of Presidential Proclamations** (selected) and a **Table of Reorganization Plans** showing which section notes they can be found in is also set out.
- 9) **Sample search** - Find and cite section 221 of the Social Security Act. First look up the Act in the Popular Name Index. The original Act is given as Aug. 14, 1935, ch. 531, 49 Stat. 46. With this info use the Statutes table to find that section 221 has been assigned as 42 USC 421. Cite as Social Security Act § 221, 42 U.S.C. § 421 (2000). Don't really need "as added by act of Sept. 1, 1954."

#### G. Comparing the *U.S. Code*, the *U.S. Code Annotated*, and the *U.S. Code Service*

- 1) Unlike the U.S.C. and the U.S.C.A., the *U.S. Code Service* **does not replace statutory terminology for that used in the Code** or for terminology that has been replaced en bloc by another statute. For instance, certain statutory reference terms in non-positive law titles like "this Act", "this title" or "this section" may be changed in the USC and USCA with the chapters or sections reflected in the Code. The USCS does not change the statutory words given but may put these other references in brackets beside the term. If another statute has changed the name of an agency the USC and USCA will make that change throughout the Code, but the USCS will retain the old name and put the new name in parentheses. Thus USC and USCA notes explaining "references in text" or "change of name" will also read differently in the USCS.

- 2) The headings and arrangement of the **notes in the U.S. Code differ** from that used in the USCA and the USCS. In a positive law title in the **U.S. Code** the first note after the parenthetical source statutes to a section is normally its "**Historical and Revision Notes**" which come from the committee report accompanying the legislation to revise, codify and enact a title. This is usually followed by "**References in Text**", "**Amendments**", "**Effective Dates**" and other notes. Titles that have not been enacted as positive may start out with "References in Text" or "Amendments."
- 3) The **U.S.CA.** places all the USC notes for both positive and non-positive law titles under a heading called "**Historical and Statutory Notes**" that will generally lead off with a subheading termed "**Revision Notes and Legislative Reports**". This will include the historical and revision notes of positive law material found in the USC, but it will also include information on related legislative reports found in West's U.S. Code Congressional and Administrative News (which sometimes has nothing to say about the related section but only relates to the larger law the section was in). Unlike the USC, "Historical and Revision Notes as well as the subheading "Revision Notes and Legislative Reports" follow most every section, even in those titles not enacted into positive law. Other USCA general headings not included in the USC include "**American Law Reports**" cites, "**Library References**" (related cites to the C.F.R. (some), West key numbers and Corpus Juris Secundum encyclopedia), "Westlaw Electronic Research" and "**Notes of Decisions**" (usually fairly exhaustive annotations of section treatment in court decisions).
- 4) The **U.S.C.S. notes**, after the parenthetical cite to statutory sources, begins its notes under the heading "**History; Ancillary Laws and Directives**" with the first subheading being "**Prior Law and Revision**" which would contain the USC information on historical and revision notes for sections of titles that have been enacted into positive law. Other notes from the USC are also placed in this general heading with the whole section being indented. Non-USC notes, which are not indented, follow under such general headings of "**Code of Federal Regulations**" (fairly exhaustive), "Cross References", "**Research Guide**" (Am Jur, Forms, ALR cites, etc.) and "**Interpretive Notes and Decisions**" (extensive treatment of section in court cases; usually not as many annotations as USCA, but sometimes has more annotations).
- 5) The U.S.C.A. and the U.S.C.S. have placed certain **parts of the full text of the Code of Federal Regulations** after certain note sections. These parts include **12 C.F.R. Part 263** - Rules of Practice for Hearings before the Board of Governors of the Federal Reserve System (note after 12 USCA 248); **12 C.F.R. Part 226** - Reg. Z, Truth in Lending regulations of the Federal Reserve Board (note after 15 USCA 1693r); and **12 C.F.R. Parts 202, 213, and 226** - Consumer Credit Protection regulations of the Federal Reserve Board (after 15 USCS 1693r).
- 6) The **U.S.C.S.**, at the end of its series, **provides numerous extra texts and annotations** including Rules of Procedures for various U.S. courts. These rules of court and procedure are included as appendices to various titles of the U.S.C. and U.S.C.A. The U.S.C.S. also provides **Administrative Rules of Procedure for various U.S. departments and agencies**. The U.S.C.S. provides the Index and Finding Aids to the Code of Federal Regulations. The U.S.C.S. provides **annotations to repealed sections of the 70 titles of the Revised Statutes** and annotations to statutes concerning **American Indians**. The U.S.C.S. has annotations to Indian **Treaties** and Treaties with Specific Countries. The U.S.C.S. has annotations to Proclamations of the President and to Resolutions of the Congress. Finally the U.S.C.S. provides the **text and index to some 21 International Agreements** and Conventions.
- 7) Both the U.S.C.A. and U.S.C.S. provide soft copy **supplements of newly enacted laws during the year** and cumulative supplements that place these newly enacted laws in the U.S. Code.
- 8) **Accuracy v. Currency in the U.S.C., U.S.C.A. and U.S.C.S.** The U.S.C. is published by GPO from the documents prepared by the Office of Law Revision Counsel, which is the official body charged with preparing it. Thomson West and LexisNexis prepare supplements and updates to the USCA/USCS before the U.S. Code is published and before the Office of Law Revision Counsel

completes its work. Sometimes discrepancies ensue, especially in regard to references, such as Westlaw and West's USCA not noting until the Spring 2004 (after the author informed West) that some 250 required reports to Congress (out of about 500) had been sunsetted effective May 15, 2000, pursuant to the Federal Reports Elimination and Sunset Act of 1995. However, these two commercial publishers are generally very responsive when errors are pointed out. **Some even argue that the U.S.C.S. is, at times, more accurate than the U.S.C.** as it does not change terminology or omit disputed sections without guidance. For instance, the USC and the USCA, but not the USCS, had omitted 12 USC §92 for decades (came from the act of Sept. 7, 1916). Congress even amended the section in 1982. In 1993 the Supreme Court clarified that despite the faulty placement of a quotation mark in the original act, the section was still valid law (see *U.S. National Bank of Oregon v. Independent Insurance Agents of America*, 508 U.S. 439).

#### F. Electronic Sources for the U.S. Code

- 1) **GPO Acces** (<http://www.gpoaccess.gov/>) has 2006, 2000, 1994 editions
- 2) **Law Revision Counsel** (<http://uscode.house.gov/>) has downloadable chapters (2001 to near cur.) USC Tables, Classification Tables (public law section to USC section; 1995 to current)
- 3) **Cornell's Legal Information Institute** (<http://assembler.law.cornell.edu/uscode/>) has U.S. Code as of Jan. 6, 2003 (Titles 1-25) or as of Jan. 22, 2002 (Titles 26-50) (regardless of release date). Also has direct linking and a table of popular names to laws as of Jan. 2, 2001 with links to THOMAS.
- 4) **Findlaw** (<http://www.findlaw.com/casecode/uscodes/>) has U.S. Code as of Jan. 6, 2003 (Titles 1-21 or as of Jan. 22, 2002 (Titles 22-50). Also has direct linking and a limited popular name table with somewhat dated information with selected links to U.S. Code sections and notes.
- 5) **Westlaw** has an "updated" USCA and back years from 1990 (see files USCA90, USCA94, etc. and a new effective date sevice). Also has a popular name index (file USCA-POP) from 1789 with breakdown links to USCA cites and public law number of recent laws. Updates take a few weeks.
- 6) **LexisNexis** has an "updated" USCS and back years from 1992 (US1992, US1994, etc.). Also has a popular name table (file GENFED;USNAME) from 1789 with cites to amendments and links to Code cites those amendments concern. Updates may take a few weeks.
- 7) Current U.S. Code also available on **LoisLaw.com**, **TheLaw.net**, and **VersusLaw.com**.

#### H. Bibliography and Source Material on the United States Code and U.S. Statutes

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