

NATHANIEL PENDLETON AND THE ATTEMPT TO PUBLISH THE FIRST DIGEST OF GEORGIA LAWS

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When the British army finally evacuated Savannah and Georgia in the summer of 1782, they left behind a province in turmoil. All of Georgia had suffered devastation in the American Revolution and at the end of the war the new state was plagued by the violent acts of highwaymen, pirates, Indians, and vigilantes. The state government was reduced to offering land bounties to citizens who agreed to stay in Georgia until the end of the war while not aiding the British, Indians, and bandits. This government was weak, having to resort to barter to meet expenses; the legislature could only muster a quorum for 11 of its 20 scheduled sessions between 1782-1789.¹

To restore peace, Georgia's state government had to do more than exist on paper. Justice and civil authority had to be re-established on the local level through a legal court system, not left to whoever had the most firepower or popular support. One such victory in this struggle was won when State Attorney General Nathaniel Pendleton persuaded a lynch mob, led by Revolutionary War hero General Elijah Clarke, not to hang a man just acquitted of horse-stealing.² However, law and order advocates and state officials did not always win such confrontations. The courts were severely handicapped in administering justice in Georgia because no printed compilation of the state's laws was available to courts and local officials. Most laws were published after each session of the legislature, but no one had a complete set of even the annually printed laws.³ As Robert Watkins would lament in 1798:

Many of the laws have never been published, some are entirely lost or destroyed, others in a tattered and mutilated condition, and the mass. . .almost as much out of reach as the laws of Caligula.⁴

The meeting of Georgia's unicameral assembly in 1786, one of the best organized of the period,⁵ attempted to deal with this problem. On January 30, 1786, it approved an ordinance to appoint someone to compile for publication the colonial and state laws of Georgia. After sending the measure to the Governor and Council for comment, Nathaniel Pendleton, a member of the Assembly, was appointed to compile the laws for the approval of the Governor and

Council. Pendleton was to receive 300 pounds for this work.⁶ Historians have argued that Pendleton probably did not compile his digest and certainly never published it.⁷ He did in fact compile a digest of Georgia laws, and the first published digest of Georgia's laws may have been his work. Pendleton's digest, however, was lost in the confusion and scandals of Georgia in the 1780s and 1790s, and he never received credit for his accomplishment.

Nathaniel Pendleton was a good choice for a compiler of Georgia's laws. He had studied law in Long Island, New York and later in South Carolina under General Charles Cotesworth Pinckney, before being licensed to practice law in Georgia by an Act of February 22, 1785. While the legislature was passing the bill to compile the digest of Georgia laws, Pendleton was appointed to his first term as Georgia's attorney general. He also had strong political credentials. During the American Revolution, Pendleton had been a captain and aide-de-camp under General Nathaniel Greene in Greene's successful campaign to drive the British from the South. For service at the Battle of Eutaw Springs, South Carolina, Pendleton had received the thanks of Congress. After becoming a Chatham County resident in 1785 and marrying Susannah Bard of Savannah, he was elected to the 1786 Georgia Assembly from both Glynn and Camden counties (he chose to represent Camden). He became Georgia's chief justice in 1787, served in the state constitutional convention of 1788, and missed being a Georgia delegate to the 1787 Philadelphia Convention because of his judicial duties.⁸

Pendleton wrote to Governor Edward Telfair on April 27, 1786 that work on compiling the Georgia digest had begun. The following January he presented a committee of the legislature with several laws of 1777 that had been passed but never embossed.⁹ The following year, another committee of the legislature reported that the digest was basically finished and that 150 pounds should be paid to Pendleton for proofreading the original and printing 200 copies. Although the money was paid,¹⁰ on April 24, 1788 the Governor and Council asked when they would be allowed to see the digest. Pendleton responded on June 15 that he lacked proper transportation to deliver the manuscript. He did not feel safe in sending the compilation by water.¹¹

On August 5, 1788, the digest and a cover letter from Pendleton were before the Governor and Council. However, they took no action to have the manuscript published.¹² On November 15, 1791, the State Senate asked to see the digest. That day both the document and its author appeared. Two days later, the Senate ordered that the digest be reviewed by a joint committee of the

House, Senate, Attorney General, and Solicitor General. On December 8, the committee reported that Pendleton had compiled a two volume digest of Georgia laws, arranged chronologically, but that the Governor and Council, contrary to the law, had never reviewed the work. It was not practical, the committee claimed, for it to review the work. Rather the digest was referred to three commissioners who were to have 300 copies printed. John Houstoun, William Stephens, and Joseph Clay were appointed commissioners by senate resolution, while Pendlton agreed to bring his manuscript up to date.¹³ The resolution was sent to the House, where no further action was taken. The minutes for that session of the House have not survived.

Appointed Georgia's first federal judge on September 26, 1789, Pendleton made no further efforts to publish his digest. He certainly had the opportunity to push this matter, for in 1795 he was active in bribing Georgia legislators to pass the infamous Yazoo Act, the selling of the state's unsettled western lands for a few cents per acre. He resigned his federal judgeship in 1796 and left Georgia in disgrace to move to New York State. He later earned notoriety as a second to Alexander Hamilton in his duel with Aaron Burr. Nathaniel Pendleton died at his New York residence on October 20, 1821.¹⁴

The Yazoo Fraud also played a part in the publication of Pendleton's digest. Although no action was taken on printing the manuscript in 1791, the need for a digest of laws was still great. A Wilkes County grand jury in 1792 pronounced the failure to publish this digest "leaves us almost in a state of nature."¹⁵ Frenchman Duc de la Rochefoucauld-Liancourt, visiting Georgia at that time, found only two or three lawyers with copies of the administrative laws of Georgia then in force. After searching for a week in Savannah, he was unable to find a copy of the state constitution and when he did finally borrow General James Jackson's personal copy, it did not have the amendments.¹⁶ The governors of Georgia constantly received requests from other states for compilations of Georgia's laws.

Robert Watkins set out, perhaps as early as 1794 to answer this need. He was a delegate to the Convention that drafted the state constitution of 1798, the text of which called for a published digest of Georgia's laws. Watkins apparently wrote that clause in the new constitution. The Georgia legislature further authorized Watkins and his brother George to publish the digest, which was already at the printers. The "Watkins and Watkins" digest appeared in 1800 and was a chronological arrangement of the Georgia laws, exactly like the Pendleton manuscript.¹⁷ The two Watkins brothers never mentioned

or acknowledged Pendleton's manuscript even though they were to receive \$1500 for the digest. Although no evidence can prove that the first digest of Georgia laws was an updated draft of Pendleton's work, it is probable that the Watkins used Pendleton's manuscript in their compilation.

Whoever was the original author of the first published digest of Georgia laws, the work never became the official digest of Georgia laws. Robert Watkins had been the only member of the 1795 legislature to vote for the Yazoo Act without a bribe, although, as his critics acidly pointed out, the bill was a great financial benefit to members of his immediate family.¹⁸ He unsuccessfully fought Governor James Jackson's anti-Yazoo clauses in the Constitution of 1798, on technical grounds. Jackson had built one of Georgia's first political parties upon opposition to the Yazoo Act and the persons connected to it. Jackson refused to give the Watkins the \$1500 appropriation for the digest on constitutional grounds. The final published digest implied that repealing the Yazoo Act might be legally questionable. Jackson successfully prevented the digest from being accepted by the legislature as the official digest of Georgia laws to insure the repeal of the Yazoo Act remained firm.

A new, anonymous, edition of the digest, without the Yazoo Act and the other offending passages, was published in 1801, probably without the Watkins' consent. In 1802, Robert Watkins and James Jackson settled their differences, and their various public attempts to kill one another, in a duel that almost killed Jackson.¹⁹ Secretary of State Horatio Marbury, Jackson follower William H. Crawford, and George Watkins were then appointed to prepare and publish a new official digest of Georgia laws. Watkins refused to serve on the committee. The official digest published in 1802, arranged by subject, was less complete and regarded as inferior to the Watkins and Watkins (Pendleton?) digest.²⁰

A single, complete, digest of Georgia laws was essential in the years after the American Revolution to reopen the courts and establish civil and criminal law on the local level. However, indifference and inadequacy of state government in that period and the Yazoo Act scandal of that time obstructed the publication of a digest when it could have done some good at solving the post war problems. Only as these problems were ending and stability a reality, did such a digest finally appear in print.

NOTES

¹Kenneth Coleman, *The American Revolution in Georgia, 1763-1789* (Athens: The University of Georgia Press, 1958), pp. 190, 201-8.

²Warren Grice, "Nathaniel Pendleton: Georgia's First United States Judge," *Report of the Fortieth Annual Session of the Georgia Bar Association* (Macon, 1923), p. 127.

³Erwin C. Surrency, "Publication of the Colonial Laws of Georgia," *Georgia Historical Quarterly* 69 (1985): 365-72.

⁴Robert and George Watkins, *Digest of the Laws of the State of Georgia. . . to 1798* (Philadelphia, 1800), p. iv.

⁵Coleman, *The American Revolution*, pp. 192, 199, 202-3. This same session of the Assembly obtained the first complete report of the state's finances and authorized the removal of the state capitol to Louisville.

⁶Minutes of the Assembly (1784-1786), pp. 321, 324, 361, 379 and Minutes of the Executive Council (1786-1788), p. 12. All minutes except where otherwise noted are typescripts at the Georgia Department of Archives and History.

⁷Coleman, *The American Revolution*, p. 196; Surrency, "Publication of the Colonial Laws," p. 367.

⁸Grice, "Nathaniel Pendleton," pp. 123-6.

⁹Pendleton to Telfair, 27 April 1786, File II Pre-1800, Georgia Department of Archives and History; Minutes of the General Assembly (1787-1788), pp. 92, 100-1.

¹⁰Minutes of the General Assembly (1787-1788), p. 431; Minutes of the Executive Council (1788-1789), p. 53.

¹¹Minutes of the Executive council (1788-1789), p. 180; Pendleton to Governor George Handley, 15 June 1788, File II Pre-1800.

¹²Minutes of the Executive Council (1788-1789), p. 261.

¹³Original Minutes of the Georgia Senate (1790-1791), pp. 129, 131-32, 209-11, on microfilm reel 203-43 at the Georgia Department of Archives and History. The Georgia Archives has two volumes of transcripts of early Georgia laws, 1778-1786 and 1786-1789, which possibly is the Pendleton's manuscript.

¹⁴Grice, "Nathaniel Pendleton," pp. 132-36.

¹⁵Willis C. Lindsey, "History of Washington, Wilkes County," (n.p., n.d.), p. 51, microfilm reel 45-22, Georgia Department of Archives and History.

¹⁶Azalea Clizbee, *Catalogue of the Wymberly Jones DeRenne Georgia Library* (3 vols., Wormsloe, 1931) 1: 298.

¹⁷Josephine Hart Brandon, "A History of the Official Records of the Colony and State of Georgia," (Ph.D. diss., Emory University, 1974), pp. 180-81; Clizbee, *Catalogue* 1: 294-300, 306-8.

¹⁸Robert Watkins, "Name File," Georgia Department of Archives and History; *Augusta Chronicle*, 31 January 1795, p. 3 c. 1.

¹⁹William Omer Foster, *James Jackson: Duelist and Military Statesman 1751-1806* (Athens, 1964), pp. 127-31; Clizbee, *Catalogue* 1: 302-3.

²⁰*Ibid.*, 1: 299, 306-8; Surrency, "Publication of the Colonial Laws," pp. 368-69; Laws and Digests, File II Subjects, Georgia Department of Archives and History.