

Maurer School of Law: Indiana University

Digital Repository @ Maurer Law

Articles by Maurer Faculty

Faculty Scholarship

1985

Book Review. Louisiana's Legal Heritage, Edward F. Haas, editor

Morris S. Arnold

Indiana University School of Law - Bloomington

Follow this and additional works at: <https://www.repository.law.indiana.edu/facpub>



Part of the [Legal Commons](#), [Legal History Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Arnold, Morris S., "Book Review. Louisiana's Legal Heritage, Edward F. Haas, editor" (1985). *Articles by Maurer Faculty*. 1035.

<https://www.repository.law.indiana.edu/facpub/1035>

This Book Review is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



LAW LIBRARY
INDIANA UNIVERSITY
Maurer School of Law
Bloomington

BOOK REVIEWS

LOUISIANA'S LEGAL HERITAGE. Edward F. Haas, editor. Pensacola, Fla.: The Perdido Bay Press. 1983. P. xiii, 212. \$12.50.

*Reviewed by Morris S. Arnold**

This volume, which contains nine articles and is the product of a symposium on Louisiana legal history held recently in New Orleans, marks an important phase in the development of the historiography of Louisiana law. Until the publication ten years ago of George Dargo's *Jefferson's Louisiana: Politics and the Clash of Legal Traditions*, almost everything that had been published about the development of Louisiana legal institutions was either rank antiquarianism or what has come to be derisively called "law-office history" or "lawyers' legal history"—much of it from the pen of Henry Plauche Dart. There is much interesting and important matter in this earlier writing, and the modern investigator ignores it at his peril. But it is mostly descriptive and only very rarely even mildly analytical; interpretation is entirely missing. It is entirely of the "what happened" variety, tends toward the arid, and a great deal of it deals with whether the Digest of 1808 was intended to codify French or Spanish law. This is a question which Louisiana lawyers have pressed with vigor and, sometime, vituperation for well over 150 years without, astonishingly, having come to any persuasive conclusion. Professor Yiannopolous's contribution to this collection of essays provides an extremely useful description of and guide to this controversy and others closely related to it. But a principal reason to be glad about the appearance of this volume is that it deals with so much more than the altercations that have graced the pages of recent *Louisiana* and *Tulane Law Reviews* about the sources of the 1808 digest. The question is an interesting one, but it is not by any means truly central and can no longer be allowed to crowd out all other questions.

The essays deal with a rather large period of time, from the introduction of the *Coutume de Paris* in 1712, to the landmark case of *Plessy v. Ferguson* decided in 1896. Far from being a reason for criticism, the length of time that separates the topics of these essays serves to illuminate the richness of the possible subjects for investigation. The styles and manner of approach employed by the various essayists are also disparate. The short explication of the laws governing married women in French Louisiana by Vaughan Baker Simpson, Amos E. Simpson, and Mathe Allain is mostly descriptive, as is Richard H.

* Foksett Professor of Law and Dean of Indiana University School of Law, Bloomington. B.S.E.E. 1965, LL.B. 1968, University of Arkansas; LL.M. 1969, S.J.D. 1971, Harvard University.

Kilbourne's contribution on the work of the territorial court between 1804 and 1808. George Dargo's article on the tort liability of steamboat operators, on the other hand, is in the most modern interpretive tradition. In between these historiographical modes lie most of the other contributions. An excellent article on the law of slavery in Spanish Louisiana by Hans W. Baade, a law professor who is fast establishing himself as the most eminent of Louisiana's legal historians, combines thorough archival work with the sophisticated techniques of a comparative lawyer trained in both the civilian and common-law traditions. Jack D.L. Holmes's essay on Spanish laws concerning sex and marriage is, characteristically, a blend of good humor and solid research. Ronald M. Labbe and Otto H. Olsen provide interesting insights into the *Slaughterhouse Cases* and *Plessy v. Ferguson* respectively.

The volume closes with a provocative contribution from Warren M. Billings about the needs, opportunities, and possible future approaches to Louisiana legal history. In it he identifies two main groups of persons at work in the legal records of Louisiana. Quibbling with his characterizations or positing other groups or sub-groups would be relatively easy. But generally it is correct to say that one group of investigators view the law as an isolated intellectual phenomenon, divorced from social contexts, self-contained and autonomous. This group of investigators is most interested in technical and doctrinal matters, and many exhibit the insider's skepticism about the ability of non-lawyers to understand or draw anything useful from legal sources. Another group, to simplify, wants to use legal records for the purpose of writing social history. At one end of the spectrum represented by this latter group lie those who, as Billings engagingly puts it, "seek to devise diverting narratives about gamblers, highwaymen, or trollops." Still, one must recognize that there are those that defy classification or combine the best qualities of both groups. Hans Baade of the University of Texas is the most obvious of these; yet, curiously, Billings does not refer to him.

As George Dargo points out in this volume, Louisiana has for too long been ignored as a funny little corner of the country with some curious differences from the rest of the United States. American legal history, indeed American history in general, has for too long been written by people who are influenced by little more than what happens in New York, Boston, and the intermediate stops of the New Haven railroad. With this volume, Louisiana legal history graduates from embryo to infant.

What may be next? The prospects are exciting and promising. The eighteenth-century judicial archives in New Orleans are well arranged and accessible. Indeed, most are calendared and many of the calendars are in print. The St. Louis judicial archives are housed at the Missouri Historical Society and have hardly been touched. Substantial archival materials are also available at St. Genevieve, New Madrid, Chester, and elsewhere. One possibility brought to mind, therefore, is the production

of a legal history of the whole of eighteenth-century Louisiana—a history that would include comparing what was at least two different sets of realities existing in Upper and Lower Louisiana, a colony which the French themselves called “two Louisianas.” This is just one scheme of the grander variety that is suggested by currently available archival sources, sources that, in comparison with the mass of matter that assaults the student of medieval English legal history, are manageable and rich enough that they could be mined economically. It is more than a little curious that they have heretofore been so little employed, but is hoped that scholars will avail themselves of these resources to a far greater extent in the future.