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Forum Juridicum

THOUGHTS ON THE LEGISLATIVE PROCESS IN LOUISIANA*

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The Constitution of the United States guarantees to every state a republican form of government.¹ One of the distinguishing features of that form of government is the right of the people to make their own laws through representative bodies vested with legislative power, and whose legitimate acts may be said to be those of the people themselves.²

The right to prescribe the qualifications of those to be entrusted with this power of legislation rests with the sovereign people, and by their several constitutions they have fixed the requirements for membership in the legislative department of government. In the exercise of this prerogative the people have displayed less sagacity than they manifest in ordinary business affairs. Thus, one carefully selects the administrator, broker, factor or manager to be engaged for some particular transaction or operation, and, generally, the agent is selected because of some previous training or experience in similar matters, or because of some familiarity, at least, with the business at hand. None of these is demanded of those who would undertake to formulate binding rules of conduct touching fundamental social relations, or affecting important property rights, and extending unto disposition of liberty and life.

Since the incipency of our state government, the people, with strange and astonishing indifference in a matter of so great importance, have never exacted any particular fitness for aspiration to legislative service. At times they imposed conditions and created disqualifications, but none of them bore any relation to

* The substance of this article was presented as an address before the general session of the Louisiana Conference of Social Welfare, Jung Hotel, New Orleans.

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1. U.S. Const. Art. IV, § 4.

2. *Duncan v. McCall*, 139 U.S. 449, 11 S.Ct. 573, 35 L.Ed. 219 (1890).

ability. All of the changes in the state's succeeding constitutions affecting candidates for the legislature appertain to the field of social evolution more than to that of scientific improvement in the art of law-making. Thus, from 1812 to 1845 only owners of landed property listed on the tax rolls were eligible to serve in the legislature.³ From 1812 to 1868 only a free white male could be a representative.⁴ From 1812 to 1852 a clergyman, priest or teacher of any religious persuasion, society or sect, had to abandon the exercise of his religious functions if he would be a member of the general assembly.⁵ This obnoxious discrimination reappeared for the last time in the Constitution of 1864.⁶ Perhaps from 1845, certainly from 1852 until 1864, no soldier, seaman or marine in the Army or Navy of the United States was eligible to vote or to hold a seat in the legislature.⁷

Under all the state constitutions beginning with that of 1868 and those following, every elector is eligible to a seat in the House, and every elector who has reached the age of 25 years is eligible to the Senate.⁸

The Fifteenth Amendment to the Constitution of the United States, adopted in 1870, effectively removed from all state constitutions every disqualification based on race, color or previous condition of servitude;⁹ and the Nineteenth Amendment, adopted in 1920, accomplished the same result with respect to denials because of sex.¹⁰

Under the prevailing constitution of the state, the only persons unable to qualify for legislative service are those who have been convicted of a crime punishable by imprisonment in the penitentiary and not pardoned with express restoration of franchise; inmates of charitable institutions other than the Soldier's Home; those actually in prison; all persons interdicted or notori-

3. La. Const. (1812) Art. II, §§ 4, 12.

4. La. Const. (1812) Art. II, § 4; La. Const. (1845) Art. VI; La. Const. (1852) Arts. VI, X; La. Const. (1861) Arts. VI, X; La. Const. (1864) Arts. VIII, XIV.

5. La. Const. (1812) Art. II, § 22; La. Const. (1845) Art. 29.

6. La. Const. (1864) Art. XXXVI.

7. La. Const. (1845) Art. XII; La. Const. (1852) Arts. VI, XII; La. Const. (1861) Arts. VI, XII.

8. La. Const. (1868) Art. XVIII; La. Const. (1879) Art. XXII; La. Const. (1898) Art. XXIV; La. Const. (1913) Art. XXIV; La. Const. of 1921, Art. III, § 9.

9. *Neal v. Delaware*, 103 U.S. 370, 26 L.Ed. 567 (1880); *Ex parte Yarbrough*, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274 (1883); *Guinn v. United States*, 238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340 (1914); *Myers v. Anderson*, 238 U.S. 368, 35 S.Ct. 932, 59 L.Ed. 1349 (1914).

10. *Lesser v. Garnett*, 258 U.S. 130, 42 S.Ct. 217, 66 L.Ed. 505 (1921); *Graves v. Eubank*, 205 Ala. 174, 87 So. 587 (1921).

ously insane or idiotic.¹¹ An elector does not have to know how to read or write to be eligible to a seat in the legislature, if he be a person of good character and reputation, attached to the principles of the Constitution of the United States and that of the State of Louisiana with ability to understand and give a reasonable interpretation of any section of either, and be well disposed to the good order and happiness of the state and the United States and understands the duties and obligations of citizenship under a republican form of government.¹²

Such liberality on the part of the people may exhibit a laudable tenacity to democratic ideals, but it fails to suggest any purpose to progress scientifically in the development of written statutes.

In none of its provisions, save one, does the constitution provide for any of the essentials of thoughtful legislation. The legislature is required to meet biennially in regular session for a period of sixty days,¹³ but there is no requirement or machinery for previous preparation, for discussion, or for study of bills which might be introduced and eventuate into law. No legal system is authorized for consultation or conference among legislators during the intervals between the sessions.

It is not astonishing that under such a system the intervention of the judicial department is so frequently required to consider the constitutionality of statutes, to reconcile inconsistencies, and to determine poorly expressed legislative intent. Nor is it strange that, on occasions, the courts find it necessary to correct or ignore obvious inadvertences, to insert or substitute or reject words and clauses in order to make a particular statute intelligible and operative.¹⁴

The representatives of the people assembled in the Constitutional Convention of 1921 recognized deficiencies in the legislative branch of the government. They provided a feeble attempt at improvement, the first in more than a century of statehood, by prohibiting the introduction in either House or Senate of new matter intended to have the effect of law, after the expiration of

11. La. Const. of 1921, Art. VIII, § 6.

12. *Id.* at Art. III, § 9, Art. VIII, § 1(d).

13. *Id.* at Art. III, § 8.

14. *Shreveport v. Southwestern Gas & Electric Co.*, 140 La. 1078, 74 So. 559 (1917); *State v. Rogers*, 148 La. 653, 87 So. 504 (1921); *State v. Dudley*, 159 La. 872, 106 So. 364 (1925); *Black v. Louisiana Cen. Lbr. Co.*, 161 La. 889, 109 So. 533 (1926); *State v. Caldwell*, 170 La. 851, 129 So. 368 (1930); *Shreveport v. Gregory*, 186 La. 407, 172 So. 435 (1936); *Scurto v. LeBlanc*, 191 La. 136, 184 So. 567 (1938).

the first thirty days of the session, except in case of emergency and then only by a yea and nay vote of a majority of the elected members.¹⁵

The legislature itself realized the inadequacy of this remedy. In 1932 it proposed, and the people adopted, an amendment to the Constitution reducing the period of thirty days for the normal introduction of bills to twenty-one days, and requiring a yea and nay vote of two-thirds of the elected membership for introduction thereafter.¹⁶

This plan to limit the introduction of bills to the first three weeks of the session contemplated that the remaining five weeks could be devoted to study of the proposed enactments, but the product of recent legislatures has been so voluminous that conscientious legislators have avowed the impossibility of acquiring even so much as a superficial knowledge of the measures upon which they acted. Bewildered by the mass of subjects and matter suddenly presented to them for consideration in a limited time, these members of the legislature have had to accept the representations made by others as to the merits of many of the proposals. Sometimes the proponents have been in good faith and impelled by a sincere purpose to promote the general welfare; in other instances the bills originated from hidden selfish sources seeking advantage for a special class.

It was obvious that under such conditions the statutory law could not be expected to keep abreast with cultural progress.

Legislators, judges, practising lawyers, teachers in law schools, and all others interested in the clarification and simplification of the statutory law, agreed that some plan should be devised by which law reform and revision could receive that thorough study and consideration required by the rapid development of social, economic and political thought.

To meet this definite need the State University announced, in April of 1938, the establishment in connection with its law school of a research organization designed to provide machinery, through the combined efforts of the legal scholar, the practitioner, the judge and the legislator, for the consideration and recommendation of improvements in the statutory law. The president of the university expressed the hope that the legislature might accord

15. La. Const. of 1921, Art. III, § 8.

16. La. Act 145 of 1932.

recognition to the body, with leave to it to submit advisory reports.¹⁷

The legislature accepted the suggestion with intelligent avidity, and, by the enactment of Act 166 of 1938, it designated the Louisiana State Law Institute, domiciled at the Louisiana State University Law School, as an official advisory law revision commission and legal research agency for the state. It fixed the membership of the governing body of the institute; defined its duties, powers and privileges; and directed and authorized it to submit advisory reports, with recommendations, at each biennial session of the legislature, with leave to attach proposed bills for the carrying out of the recommendations.

The creation of the institute as an official adjunct of the state legislature exemplifies social action in the fullest sense. The very purpose of the institute is declared in its legislative charter to be "to promote and encourage the clarification and simplification of the law of Louisiana and its better adaptation to present social needs; to secure the better administration of justice and to carry on scholarly legal research and scientific legal work."¹⁸

The field of social action embraces all movements designed to furnish to every element in the community those opportunities which are essential for the equal pursuit of happiness under conditions consonant with the dignity of man in the civilization in which he lives.

The legislature concerns itself with the general welfare, and sometimes there results marked inequity to the struggling minority. But the legislator cannot provide for particular cases. The institute, however, is charged with the duty of synchronizing the law, as much as possible, with the social needs of the day. This implies that laws favorable to the majority but that press too heavily on the minority, should be revised so as to distribute the burden more evenly.

Is the Law Institute competent to conduct a program of social action?

The institute embraces in its membership representatives of the people from all three departments of government. Under the statute of its creation its governing body is composed of the Governor's Executive Counsel, the chairman of each of the

17. Tucker, *The Louisiana State Law Institute (1938)* 1 *LOUISIANA LAW REVIEW* 139.

18. La. Act 166 of 1938, § 4 [*Dart's Stats. (1939)* § 9284.12].

judicial committees of the Senate and House of Representatives, the Attorney General of the State, one of the seven Justices of the Supreme Court of Louisiana, one of the nine Judges serving on the Courts of Appeal, one district court Judge, one Federal Judge from the district courts in the State, the President of the Louisiana State Bar Association, the dean and three faculty members from each of the law schools of Tulane, Louisiana State and Loyola Universities, eleven practising attorneys, the officers of the Institute, and any Louisiana members on the Council of the American Law Institute.¹⁹

The institute is empowered to adopt a membership plan to encourage and invite the cooperation in its work of all members of the legal profession.²⁰ The support received from the bench, the bar, the deans and faculty members of the law schools, and from the members of the legislature, indicates a permanency of existence which should be gratifying to all interested in social betterment and in scientific progress in law-writing.

The institute is no longer a novice in the social field. It has demonstrated its ability to undertake and accomplish social reforms. Under special mandate from the legislature of 1940 it was instructed to prepare the draft of a codification of the substantive criminal law of the state for presentation to the legislature of 1942.²¹ The task was accomplished within the allotted time. It was produced by the combined efforts of experts in the field of criminal law from the bar, the bench and law school faculties. The code, as finally drafted by the institute, may not have included all of the suggestions of leading criminologists and writers on social problems, but it presented for legislative consideration a homogenous statute containing in one hundred and forty-two numbered sections the entire body of the law dealing with crimes and punishment, which theretofore was to be found in a multitude of statutes many of which presented duplications or inconsistencies. The legislature appeared to be well pleased with the work of the institute. By enacting it into law²² it gave to the state the nation's most modern and scientific criminal code, though there are some who assert that room remains for much more improvement.

19. La. Act 166 of 1938 [Dart's Stats. (1939) § 9284.19]; La. Act 195 of 1942 [Dart's Stats. (Supp. 1942) §§ 9284.18-9284.22].

20. La. Act 166 of 1938 [Dart's Stats. (1939) §§ 9284.18-9284.22]; La. Act 17 of 1940 [Dart's Stats. (Supp. 1942) § 9284.22].

21. La. Act 7 of 1940 [Dart's Stats. (Supp. 1942) § 9284.23].

22. La. Act 43 of 1942.

Despite ravages in its ranks by the exigencies of war, the institute has not been idle. Those who because of age or other conditions were denied the privilege of service in the armed forces have maintained the traditions of the institute and have continued its work of formulating matter for legislative consideration. The report and recommendations of the institute, together with suggested bills for enactment into law, reflect the conclusion of experienced judges and lawyers, aided and assisted by technical scholars from the law faculties, and by the practical knowledge of professionals. As with all of the other work of the institute the completed task is the fruit of the combination of profound research, of long hours of discussion, and of much drafting and redrafting, all conducted under the supervision and direction of scholars and experts in the invaded field.

There is no limitation imposed by statute on the work that the institute is at liberty to undertake for the accomplishment of social reforms. Its membership includes persons in constant touch with every activity in the life of the community. The poor and the rich, the laborer and the capitalist, the infirm and the strong, the intelligent and the feeble-minded, the child and the parent, the husband and the wife, the master and the servant, the sane and the insane, are all familiar characters to judges and lawyers. The wealth of history and the philosophy of the ages are no strangers to the Bench and Bar. The pangs of aching hearts, the ire of passion, the despair of the despondent, the insolence of office and the humility of the oppressed, are familiar in court rooms and lawyers' chambers. No organization would seem to be better qualified to deal intelligently and effectively with social problems and legal reforms than the Louisiana State Law Institute with its component membership of judges, lawyers and law-teachers, acting in unison with members of the legislature, and combining in its personnel representatives from the three departments of government.

By designating the Louisiana State Law Institute as its official advisory law revision commission and legal research agency, the legislature of the state has launched a program for social action of boundless magnitude. It has made a contribution to the scientific development of statutory law so fruitful in its possibilities that only time can properly estimate its real value to the people of the state.