

Louisiana Law Review

Volume 1 | Number 1
November 1938

The Louisiana State Law Institute

John H. Tucker Jr.

Repository Citation

John H. Tucker Jr., *The Louisiana State Law Institute*, 1 La. L. Rev. (1938)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol1/iss1/18>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

The Louisiana State Law Institute

JOHN H. TUCKER, JR.*

Whatever the system, laws respond slowly to changes in social, economic and political thought. The tempo of the development and expansion of law is not altogether synchronized to the progress of culture and civilization. Inadequacies and inequalities of the law inevitably develop with time, and some effective process is necessary to make law accurately responsive to the progress of civilized society. In that respect, there is no difference between the civil and the common law. The reproach of inflexibility cannot be directed solely to civil law institutions; and the common law has been no more readily responsive to social and political change than the civil law.

The search for a process capable of meeting the need is not new to Louisiana. This necessity for continuous revision of the Civil Code was recognized by the Commissioners who prepared the *projets* of the Civil Code and Code of Practice of 1825. In a Preliminary Report, made to the Legislature of Louisiana on February 13, 1823, they proposed that in all cases not covered by the Code, the Courts should decide as "amicable compounders" according to the dictates of natural equity, but that such decisions should not have the force of precedent unless sanctioned by the Legislature.¹ To give direction to this process of revision they suggested the following procedure:

"And in order to produce the expression of this will, and progressively to perfect the system, the Judges are directed to lay at stated times, before the General Assembly, a circumstantial account of every case for the decision of which they have thought themselves obliged to recur to the use of the discretion thus given; while regular reports of the ordinary cases of construction, to be made by a commissioned officer, will enable the Legislative body to explain ambiguities, supply deficiencies and to correct errors that may be discovered in the Laws by the test of experience in their operation.

"By these means our Code, although imperfect at first, will

* Acting President of the Louisiana State Law Institute, Member of the Shreveport Bar.

1. Preliminary Report of the Code Commissioners (Feb. 13, 1823), reprinted in 1 Louisiana Legal Archives LXXXV, at XCII.

be progressing towards perfection; it will be so formed that every future amendment may be inserted under its proper head, so as not to spoil the integrity of the whole; every judicial decision will throw light on its excellencies or defects. Those decisions will be the means of improving legislation, but will not be laws themselves; the departments of government will be kept within their proper spheres of action. The Legislature will not judge, nor the Judiciary make laws. The whole body of our jurisprudence being brought under the inspection of the General Assembly, they will be enabled by a comprehensive view of the whole ground of legislation, to avoid those inroads on the unity of its design which have been made by statutes hastily passed for local or temporary purposes; and at no very remote period, we may hope to have the rare and inestimable blessing of written Codes, containing intelligible and certain rules to govern the ordinary relations and occurrences of life, the operations of commerce and the pursuit of remedies by action."²

This process of constant revision through judicial reports and recommendations failed because of the demands made upon the judiciary by the press of litigation.

Law revision and law reform are the results of careful preparation, thorough study and adequate discussion. For many years that has not been possible in Louisiana, due to the lack of time and a proper forum where judge, lawyer and legislator could meet for scholarly discussion of legal problems and proposed legislation. The problem in Louisiana has been further complicated by its legislative organization which, exclusive of extraordinary sessions, only meets biennially and then in regular sessions of only 60 days duration.

Moreover the civil law in other countries has been expanded and developed to a great extent by the doctrinal writings of professors and jurists so that it has aptly been termed "university law."³ In that sense we have no body of Louisiana doctrine, except for law review articles of rather recent appearance, and the doctrinal writings of other countries are not generally available to the Bench and Bar because they have not been translated.

In recognition of this great need, Louisiana State University initiated a movement in 1933 to organize an institute dedicated

2. *Id.* at XCII-XCIII.

3. Cf. Pound, *The Influence of the Civil Law in America* (1938) 1 *La. L. Rev.* 1, at 15.

to law revision, law reform and legal research. Due to economic conditions, the consummation of the project was postponed until April 7, 1938, when President James Monroe Smith, at the dedication of the new law school building, Leche Hall, made this announcement:

"I am happy to announce that the Board of Supervisors has approved the establishment, in connection with the Law School, of a research organization to be known as the Louisiana State Law Institute. This action of the Board amounts to a revival of a similar project which was considered and approved in 1933, but which was delayed for lack of proper facilities to carry on the work.

"The creation of such an institute, we believe, is in response to a definite need. The organization is designed for the purpose of providing some tangible machinery as a permanent agency which can combine, utilize and make effective the work of the legal scholar, the practitioner, the judge and the legislator. Such an organization may consider and propose needed improvements in both adjective and substantive law. We believe that this is an endeavor which merits united support of the best in the legal profession and in our educational institutions. An advisory council, including judges, law teachers and practicing attorneys, will be set up to plan and direct the program of the Institute. It is hoped that legislative recognition may be accorded to the body so that it may submit advisory reports as to needed improvements in the law."

The legislative recognition hoped for by Dr. Smith was granted in full measure by Act 166 of the Legislature of Louisiana of 1938. According to this Act, the Louisiana State Law Institute, "domiciled at the Law School of the Louisiana State University, is hereby chartered, created and organized as an official advisory law revision commission, law reform agency and legal research agency of the State of Louisiana." Its purposes by Section 4 of the Act are declared 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. To that end it shall be the duty of the Louisiana State Law Institute:

1. To consider needed improvements in both substantive

and adjective law and to make recommendations concerning the same to the Legislature.

2. To examine and study the Civil Law of Louisiana and the Louisiana jurisprudence and statutes of the State with a view of discovering defects and inequities and of recommending needed reforms.
3. To cooperate with the American Law Institute, the Commissioners for the Promotion of Uniformity of Legislation in the United States, bar associations and other learned societies and bodies by receiving, considering and making reports on proposed changes in the law recommended by any such body.
4. To receive and consider suggestions from judges, justices, public officials, lawyers and the public generally as to defects and anachronisms in the law.
5. To recommend from time to time such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of the State of Louisiana, both civil and criminal, into harmony with modern conditions.
6. To render biennial reports to the Legislature of Louisiana, and if it deems advisable to accompany its reports with proposed bills to carry out any of its recommendations.
7. To make available translations of Civil Law materials and commentaries and to provide by studies and other doctrinal writings, materials for the better understanding of the Civil Law of Louisiana and the philosophy upon which it is based.
8. To recommend the repeal of obsolete articles in the Civil Code and Code of Practice and to suggest needed amendments, additions and repeals.
9. To organize and conduct an annual meeting within the State of Louisiana for scholarly discussions of current problems in Louisiana law, bringing together representatives of the Legislature, practicing attorneys, members of the bench and bar and representatives of the law teaching profession."

The governing body of the Institute is the Council consisting of ex-officio and elected members. The Act makes adequate provision that the Council shall be representative of all branches of

the State government, of the entire legal profession in the State and of all its law schools.

The executive branch of the State is represented by the Attorney General and the Executive Counsel to the Governor.

The Legislature is to furnish the chairman of each of the judiciary committees of the Senate and House of Representatives as ex-officio members of the Council.

The judiciary is represented by one Justice of the Supreme Court, one Judge of the Courts of Appeal, one District Judge and one Federal Judge for Louisiana, who are elected members.

Organizations are represented by the President of the Board of Governors of the State Bar of Louisiana, the President of the Louisiana State Bar Association, and any Louisiana members on the Council of the American Law Institute, who are ex-officio members.

The Bar is represented by eleven practicing attorneys, who are elected members, those serving on the first Council being appointed by the President of Louisiana State University.

The law schools are represented by the Deans of the Tulane University College of Law, Loyola University School of Law and Louisiana State University Law School, who are ex-officio members, and three members from each of the three law faculties, appointed by the Presidents of their respective institutions.

The Director of the Louisiana State Law Institute is, ex-officio, a member of the Council.

Ex-officio members of the Council will hold their positions during their respective terms of office. The terms of the first elected members of the Council will be determined by lot so as to expire in groups of six each year, beginning December 31, 1939. The terms of their successors will be four years and they will be elected by the Council, which is also authorized to fill all other vacancies.

The rules for the organization, government and operation of the Institute will be fixed by the Council, which is also vested with power to determine and elect officers of the Institute. The Council is also empowered to "adopt a plan or plans of membership so designed as to encourage and unite the cooperation of all members of the legal profession in the work of the Institute."

In submitting its report to the Legislature, the Institute will act only in an advisory capacity. The studies, reports and recom-

mendations of the Institute shall, with the approval of the Governor and consent of the State Printing Board, be printed at the expense of that Board and distributed through the Secretary of State in the same manner as Acts of the Legislature.

The Council, as this is written, is in process of organization. But the Institute has already been given a definite task to accomplish by the Legislature of 1938. Act 165 of 1938 provides for the compilation, printing and distribution of a comparative Civil Code, giving the present text of the Revised Civil Code of 1870, (also showing the amendments since 1870), the text of corresponding articles of the Codes of 1825 and 1808, and of the Code Napoleon. That work is now in process of accomplishment, about 500 articles of the Code having already been prepared. In addition to the requirements of the Act, the compilation being prepared will contain cross references to other articles of the Revised Civil Code, references to the *Projet* of the Civil Code of 1825, and in some instances to the *Projet* of the Code Napoleon. The articles of the Codes of 1825 and 1808, and of the Code Napoleon and its *projet* will be shown both in English and French.

Another proposal of immediate interest and with a possibility of early realization is the project to prepare a translation of an elementary French treatise on the civil law, such, for example, as Planiol's *Traité Élémentaire de Droit Civil* in three volumes. The value of such a work in English, not only to the law schools but also to the profession, will be incalculable. This translation might easily be accomplished under the immediate supervision of the faculties of the three law schools of the State coordinated by an appropriate committee of the Institute.

For the first year, the work of the Institute, aside from the two projects above mentioned, will principally be confined to organization and to the study and preparation of a comprehensive plan of work. The completion of an adequate commentary on the Louisiana Civil Code will be the work of years. But, before it is undertaken, the work must be carefully planned and a definite program and method of procedure adopted.

The statutes of Louisiana have not been revised since 1870. The symmetry of the Revised Statutes of that year was long ago destroyed by the accretion of thousands of legislative enactments, and, in effect, it no longer exists as a Louisiana legal institution. In the course of its work, the Institute will be able to inform the Legislature of that which is obsolete and conflicting, and in time

present to it the *projet* of a statutory revision, designed with enough elasticity of framework to permit of indefinite expansion.

The Code of Practice no longer contains all the rules of civil procedure. A revision of this important code can be accomplished in a great measure by integration of extra-codal statutes. There should be a place in the program of the Institute for this important work. The study of criminal law and procedure will not be neglected, and no doubt the work of the Institute will contemplate early attention to these important branches of the law. The preparation of an adequate history of Louisiana law should be recognized as a necessity, and given proper and careful consideration. The work of preparing Louisiana Annotations to the Restatements of the American Law Institute may properly be assigned to the Institute.

Louisiana has its individual problems, but experience may demonstrate that the plan of work followed by the American Law Institute might furnish a splendid guide for the formulation of the method to be adopted by the Louisiana State Law Institute. It is fortunate that Louisiana has two of its outstanding lawyers on the Council of the American Law Institute, and they are, therefore, *ex-officio* members of the Council of the Louisiana State Law Institute.

The Louisiana State Law Institute can point to no record of achievement because it has just been created. Nevertheless, as an earnest of its intentions and in token of its dedication to the service of the State, it is performing a valuable work in the compilation of the Codes, even as it is being organized. This should presage a useful and interesting future, which must challenge the attention of the entire legal profession of the State. If the program and method of work be carried out in the spirit of their contemplation, the cooperative efforts of the bench, bar and law faculties will be alone sufficient justification for the creation of the Institute.

Louisiana is one of the first states to combine in one organization many of the functions that are performed by judicial councils, law revision committees and legislative reference bureaus.⁴ The announcement of its creation has awakened interest beyond

4. Cf. Cardozo, *A Ministry of Justice* (1921) 35 Harv. L. Rev. 113; McDonald and Rosenzweig, *The Law Revision Commission of the State of New York: its Organization, Procedure, Program and Development* (1935) 20 Corn. L. Q. 415.

the State. Hon. Arthur T. Vanderbilt, lately President of the American Bar Association, when told of its organization and purposes, expressed the thought that this was one of the most forward looking steps that had ever been contemplated and that a noteworthy example was being set to other states.

There is a great vista of opportunity for service before the Louisiana State Law Institute. It is sponsored by the Legislature in terms which characterize the importance of the work it is called on to perform. May its accomplishments be equal to its opportunities and obligations.