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Xavier Blanc-Jouvan

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REPORT

THE FIRST ANNUAL CIVIL LAW COLLOQUIUM NEW ORLEANS, MAY 17-18, 1963

The first annual Civil Law Colloquium, organized under the auspices of the Louisiana State Law Institute and held at New Orleans on May 17-18, 1963, was dedicated to the theme "Civil Law in the Modern World."

The goal of this colloquium was clearly defined by President John H. Tucker, jr., in his inaugural address, "Objectives of the Civil Law Program of the Louisiana State Law Institute." This goal is of paramount importance on both theoretical and practical levels, since the ultimate objective is to aid the presently projected revision of the Louisiana Civil Code. Without doubt, the present Code of 1808, notwithstanding revisions in 1825 and in 1870, is no longer able to cope with the exigencies of the present day. Change has been so rapid since the last century that legislation passed at that time no longer can satisfy the requirements of our epoch. As in France and in other countries where codes adopted more than a century ago are still in effect, so in Louisiana is the need felt for a general revision — not only a "bringing up to date" accompanied by the modification of some details, but a real redrafting of the present Code.

The necessity of this task has been evident both to the legal community and to the legislature of this state, the latter having charged the Louisiana State Law Institute with a mandate to proceed with the Code revision. In order better to accomplish this mission, the Institute organized recently a Civil Law Section, specifically charged with carrying out the preliminary research for such revision.

This work is presently in progress and, as President Tucker recalled, part of the program has already been successfully fulfilled. It is a basic policy of the Institute to promote the development of civilian doctrine in Louisiana in order to aid the legislature and those who eventually will be called upon to interpret and apply the new texts. That presupposes the completion of comprehensive treatises and commentaries on the present Louisiana Civil Code. In addition, it requires the pub-

lication of translations of French legal textbooks — and important steps have already been taken in the translation of Planiol's several volumes of the *Treatise on Civil Law* by Aubry and Rau, and Géný's *Méthode d'interprétation et sources en droit privé positif*. Finally, it is essential that comparative studies be undertaken on the most recent developments in civil law in a certain number of foreign countries. The Louisiana State Law Institute thought that an excellent means of accomplishing this task was to organize an annual meeting devoted to the presentation and discussion of civil law studies. It was, in effect, the first of such meetings which was held this year in New Orleans.

The organizers of this colloquium realized that, before attempting a truly penetrating study of a particular institution or branch of civil law, it would be useful to obtain a general view of the present state of this law in the modern world. That was precisely the theme chosen for this first session.

Although no geographical limitation was imposed upon the comparative research carried out by the Institute, it was understood that a particular emphasis should be given to the legal systems of the two countries whose codes served in the past as models: France and Germany. That is the reason why two official representatives were present at the colloquium: an official representative of the Republic of France, Professor Roger Houin, of the University of Paris, Secretary General of the Civil Code Reform Commission in France, and an official representative of the Federal Republic of Germany, Professor Wolfram Müller-Freienfels, of the University of Frankfurt, at the time of the colloquium Visiting Professor of Law at the University of Michigan.

The work of the colloquium was concerned with some problems of technique and methodology in codification as well as with some substantive aspects of civil law.

Concerning the former, a general picture was given by Professor Stojan Albert Bayitch, of the University of Miami, on "Codification in the Modern World." Professor Bayitch traced a general theory of codification, putting the accent upon the principal imperatives to which such a task is subject today. No one will dispute that a codification must be both comprehensive and up to date. Moreover, it appears indispensable that the

work of the legislator be carried out in a most impartial political climate — a result not always easy to realize.

In addition to the problems which are present in any codification, particular difficulties appear in the revision of a pre-existing code. A discussion of these issues as well as a report on the most recent French experience was presented by Professor Houin, whose functions give him a particular competence to speak about revision of the French Civil Code. Professor Houin described the recent efforts of the French Civil Code Reform Commission, and he did not fail to emphasize the difficulties that were presented to this Commission. His talk was very valuable both for the information it contained and for the transposition which might be made from France to Louisiana or to any country facing a similar problem of code revision.

As a matter of fact, the situation in Louisiana is still more complicated by the coexistence in a single state of two systems of law — civil and common. It was thus imperative that the colloquium be informed of the particular difficulties in maintaining civil law in mixed jurisdictions. This information was given by Professor T. B. Smith, Professor of Civil Law at the University of Edinburgh, Scotland, and at the time of the colloquium Professor of Law at Harvard University. Professor Smith gave the participants in the colloquium the benefit of his personal experience. He demonstrated the problems which are presented in all countries where, despite the existence of a mixed legal system, there is a concern for preserving the civil law background. Notably he stressed the importance of the linguistic problems and the utility for Louisiana jurists of a working knowledge of French, in order to be able to follow the evolution of French law in the original texts. The language question evidently raises very delicate problems as to which the Louisiana State Law Institute attaches particular importance.

But the objective of the colloquium was not only to deal with these questions of technique and methodology in codification; it was also to furnish the participants with as clear a picture as possible of the evolution and recent developments of the substantive law in civil law countries.

A very interesting talk in that respect was given by Professor Max Rheinstein, Max Pam Professor of Comparative Law at the University of Chicago, who spoke on "The Law of Family and Successions." Professor Rheinstein showed that the present

trends in the fields of Family and Decedents Estates are not restricted or peculiar to civil law countries, but are the result of an evolution common to all countries where the phenomena of industrialization, urbanization and female emancipation have profoundly modified the family life and provoked the disintegration of traditional family structures. The results of these changes have often been the same in the United States, England, France or Germany, and even in the Soviet Union, although the stage of evolution in these countries may vary.

A very precise and complete view of the law of agency was given by Professor Müller-Freienfels, who presented a profound study of German and French law and emphasized the clear distinction which is made in the two countries between the internal and external aspects of agency.

Professor Hessel E. Yntema, of the University of Michigan, gave on his part a broad and extensive survey of various trends in the fields of contracts and torts. He made special mention of the development in our day of rules relating to tort liability.

The evolution of the law of real security was treated by Professor Stefan Albrecht Riesenfeld, of the University of California. Professor Riesenfeld dealt with the various kinds of real security on movables and immovables in French and German law.

Professor Rodolfo Batiza, Associate Director of the Institute of Comparative Law at Tulane University, presented a lecture on "Trust Law in Latin America." Professor Batiza gave a general picture of the recent efforts which have been made to utilize the trust, a typical institution of the common law, in Latin American countries, where the background is that of the civil law. He emphasized the recent Mexican legislation in this area and he showed how the experience thus acquired in constructing a bridge between the civil and common law systems could be useful to the Louisiana legislature.

This brief review of the papers presented at New Orleans cannot give the reader a full notion of the incontestable success obtained by the first Civil Law Colloquium. Its organizers, notably Professor Athanassios Yiannopoulos, of the Louisiana State University, are to be thanked for the efficiency of their preparatory work. And one should also be grateful to the Lou-

isiana State Law Institute, and in particular to its President, Col. John H. Tucker, jr., for having made possible this confrontation between jurists of different lands and legal systems all animated by a common ideal.

Finally, it is to be hoped that this first colloquium will be followed by many others, which might deal with several institutions or particular branches of civil law and which would permit still greater depth of analysis. The task to be accomplished is difficult, but its utility and urgency are unquestionable. The legal scholars of Louisiana have the will; what is then necessary is that they be given the means to achieve a result. The successes already obtained by the Section on Civil Law of the Louisiana State Law Institute in the first two years of its existence offer promise and faith for the future.

*Xavier Blanc-Jouvan**

*Professor of Law, University of Aix-Marseille, France.