Louisiana Federation of Women's Clubs

Paul M. Hebert

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Madam Chairman and delegates of the Louisiana Federation of Women's Clubs:

It is a pleasure to be with you this evening. Mrs. Levy was kind enough to give me wide latitude in the choice of a subject for this part of your program. She also flattered your speaker by observing that this should be an educational program. So I shall experiment in the combination of two of the greatest social forces of our modern civilization - law and education. In both of these fields women have successfully striven for and obtained equality - equality in the field of education and equality before the law. We find it hard to project ourselves back into that dark era described by Daniel Defoe in his essay on "The Education of Women." Defoe said:

"I have often thought of it as one of the most barbarous customs in the world, considering us as a civilized and a Christian country, that we deny the advantages of learning to women. We reproach the sex every day with folly and impertinence; while I am confident, had they the advantage of education equal to us, they would be guilty of less than ourselves.

"One would wonder, indeed, how it should happen that women are conversable at all; since they are only beholden to natural parts, for all their knowledge. Their youth is spent to teach them to stitch and sew or make baubles. They are taught to read, indeed, and perhaps to write their names, or so; and that is the height of a woman's education. And I would but ask any who slight the sex for their understanding, what is a man (a gentleman, I mean) good for that is taught no more? I need not give instances, or examine the character of a gentleman, with a good estate, or a good family, and with tolerable parts; and examine what figure he makes for want of education."
We need no longer deplore the lack of education in women. From the ranks of the gentler sex are many of our most distinguished leaders. On the faculty of the Law School, which I represent, for some twenty years we have been the beneficiary of the penetrating and brilliant mind of a distinguished woman law teacher - Dr. Harriet Spiller Daggett. Yes, we could hardly get along without the ladies.

I also know that women are a force for constructive thinking and effective leadership in public affairs and an influence for all movements of a worthwhile character. For this reason, I am availing myself of this opportunity of discussing a subject which is not far removed from your sphere of interests. It is a subject which very much concerns the intelligent layman or the intelligent laywoman. We are a government of laws and the broader basis that can be laid for the understanding and appreciation of the laws upon which our society is based, the stronger will be our political and legal institutions. We much these days of the strengthening and preservation of democracy - if the processes of representative government as exercised by legislatures in a system of state government are improved, then democracy is made stronger. For this reason, I wish to discuss with you this evening an important legislative adjunct - Louisiana's Law Institute - Louisiana's Unique Agency of Law Reform. The subject is more than of passing interest at the moment because of the project for preparation of a draft of a proposed revision of the Louisiana Constitution, a task intrusted to the Institute by the Louisiana Legislature in 1946 and which may be very much discussed by the public during the latter part of 1950 should the people of
Louisiana decide to call a Constitutional Convention for revision of the State's fundamental law.

As my title suggests, Louisiana's Law Institute is truly a unique organisation. It is the only one of its kind in the United States. It was created upon the initiative of the Board of Supervisors of Louisiana State University in 1938 when recognition was given to the necessity for establishing in Louisiana of an auxiliary aid to the legislative process, an organisation that could work impartially and effectively in the areas of legal research, law reform and law revision; a research agency that could "...combine, utilize and make effective the work of the legal scholar, the practitioner, the judge and the legislator." Following the action of the Board of Supervisors, legislative recognition was accorded to the Law Institute and it was chartered, created and organised as an official law revision commission, law reform and legal research agency of the State of Louisiana. The Institute's general purpose as set forth in Act 166 of 1938 is:

"...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
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 carry 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.

Since its organization in 1938, the Law Institute has had a sense of major responsibilities related to these general objectives. The Institute is solely an advisory body. Its recommendations have no force or effect unless enacted into law by appropriate legislative authority. The Institute conducts studies designed for law improvement as a public responsibility. The Governing body of the Institute is a Council composed of representatives of the State government, members of the bench and bar, representatives from law organizations, representatives of the faculties of the State's three law schools and representatives from the
legislature. The general membership is composed of active, associate and honorary members, some 150 in number. All members of the legislature who are lawyers are ex-officio members of the Institute.

I have referred to the Institute as a unique agency of law reform—the nearest pattern is that of the American Law Institute which has not worked principally in the field of legislation, but whose method of work in its efforts to restate certain branches of the law has been followed by the Institute. On each project undertaken, it has been the general pattern to designate specialists, usually from the faculties of the law schools, and to provide them with research assistants necessary for the performance of the actual study and draftmanship. The result is reviewed by the Council of the Institute in great detail. Usually following action by the Council, there is general discussion by the membership. Thereafter the definitive project is submitted to the legislature when the Institute makes its report to that body.

Although the Louisiana Law Institute has been in existence for only eleven years, it has already made significant contributions to law reform and necessary law revision. Of the major accomplishments of the Institute, I will mention three in the area of law reform. They are matters of great interest to the intelligent law public, who do not often think about our laws and their relation to the administration of justice.

First, in 1942, the Legislature on the recommendation of the Law Institute adopted a code of substantive criminal law for the State. This was a significant accomplishment for the State. Experts in the field consider the Louisiana Criminal Code to be one of the best in the nation. You ladies know that Louisiana is a state of codified law. In this respect, the bulk of Louisiana law differs from that of the other 47 states. However, Edward Livingston, the great draftsman of the Louisiana Civil Code, which, as you know, is taken largely from the Code Napoleon and makes Louisiana's law truly unique, also prepared a proposed criminal code in 1925. This criminal code was not adopted by
the Louisiana legislature. Parts of it were adopted in some of the Latin American countries and its influence has been far reaching upon the thinking in that field - but even Livingston, the codifier, failed to achieve objective of codifying Louisiana law.

The result was that Louisiana's criminal law, unlike the other branches of the law, developed under an old statute going back to 1805, known as the Crimes Act which purported to define the major crimes after the pattern of the common law. To this statute was added a veritable "hodge-podge" growth in the form of separate uncoordinated, and disconnected special criminal statutes, defining and re-defining special crimes. In the law so developed there were many fine distinctions based upon doctrines derived from the English common law of crimes. I remember one case involving the crime of arson. The defendant was indicted for burning a merry-go-round. After conviction by the jury and there was no doubt of his guilt, he was released by the appellate court because the statute defining arson enumerated everything that might be the subject of arson. If a house was burned, a barn was burned, a buggy was burned, etc., it was arson, but no one had thought of enumerating a merry-go-round. So no crime had been committed. Now this does not make sense to the intelligent layman.

Then, there was the crime of stealing. You and I - or any layman - would know what "theft" or "stealing" is. It consists in taking something with intentions of appropriating it when it is not your own. But all manner of fine distinctions could be relied upon by the astute lawyer as technicalities in the defense of a person charged with something as simple as stealing. For example, distinctions existed between "larceny" and "embezzlement". In both cases the defendant stole something he did not own. But if he had been intrusted with the possession or custody of the thing it was "embezzlement" and not larceny. It was not uncommon for a defendant to be brought to trial on a charge of larceny and the jury would acquit him on the theory that he could not be guilty of the index crime
of larceny because he had been interested with possession of the goods or thing stolen and should have been charged with embezzlement instead of larceny.

The same man might then be charged with embezzlement and another jury would acquit him on the theory that he was not in charge of the goods stolen and that his crime should have been "larceny", if anything. Both juries could agree that he had stolen something, but in each instance, there was an acquittal based solely on the technical distinctions existing between two stealing crimes. I am sure that this audience will agree that such legal technicalities should not be permitted to obscure or obstruct the orderly administration of justice. Such a situation only creates contempt for law and for all legal processes in our society. Laymen as well as lawyers have interests to be protected in this matter. The new Louisiana Criminal Code, the work of the Institute accepted by our Legislature, swept such technicalities aside. It did the common sense thing - which you ladies would understand. It combined all of the stealing crimes into one crime which was called simply "Theft" - a crime which covers any case in which a person intentionally takes property belonging to someone else.

This is merely illustrative of the kind of reforms made in the law. They are sensible, a simplification and an improvement in keeping with modern needs.

A general advantage of the Institute's Criminal Code is the fact that all crimes are defined in simple direct language rather than by enumeration. For example, the Crime of Arson to which I have referred prior to the Criminal Code, was covered in six different legislative statutes, each statute covering the burning only of certain enumerated types of property, such as straw stacks, barns, etc. But even this voluminous enumerating was insufficient and in our merry-go-round case, the defendant went scott free. What I am here suggesting is that many
people drafting legislation – I am sure you have met it many times in your organisation, feel that the safe thing is to have a detailed enumeration of the acts or subjects covered. Often this defeats the purpose – because the court interpreting the legislation feels bound by the enumeration when it would not have been bound by more general terminology. In the new Criminal Code, the crime of arson is covered by two simply stated articles – simple arson is the burning of any property belonging to another and is graded according to the amount of damage done. Aggravated arson is the burning of property such as a theater or a home where human lives are endangered. In these two simply phrased articles, Louisiana now has a much broader and more accurate coverage of this crime. The law will not need amendment if new types of merry-go-rounds are invented.

The same situation existed in the lesser crime of Assault and Battery. Previously there were all sorts of special crimes describing the manner in which these crimes might be committed. You might charge a defendant with the special crime of cutting off ears, or the special crime of throwing acid on some one. The new Criminal Code recognizes two types of assault and battery. The aggravated form of the crime is determined by the use of a dangerous weapon, which may cover any number of forms not specifically enumerated in the Code. The Crime of Gambling takes myriad of ingenious forms. It is now simply defined in a single article which covers all gambling, and the mere fact that the particular form of gamble takes a new form will not mean that it is not within the coverage of the Criminal law.

Louisiana’s unique law reform agency – through the Criminal Code has so simplified the main body of the Criminal law, as to reduce it to 150 articles. If any of you picked up that Code and read it – I think you would understand it without the benefit of a legal education.

A second major activity in the area of law reform which I should like to mention is the comprehensive revision of Louisiana’s general statutes which were directed by the legislature in 1942. This work is nearing completion and the
announced
Governor some time ago/publicly that he will call a special session of the
Legislature early in 1950 for the purpose of considering the Institute's proposed
revision of the statutes. The work of preparing a comprehensive revision of the
Louisiana statutes will be a monumental accomplishment when enacted into law. Many
states have constitutional provisions directing periodica revision of the general
statutes. Louisiana's general statutes have been accumulating without too much
rhyme or reason since 1870, the year of the last general revision. In that
period of some 79 years, legislative act has followed upon legislative act -
creating confusion, duplication, obsolescences and incongruity. You can get
some idea of the problem by considering that in 1948 alone - the Legislature passed
510 acts, exclusive of constitutional amendments. These acts covered 1410 pages.
It is true that many are not of general application and appropriation legislation
is included - but this, nevertheless, gives some idea of the volume of the
statutory material - and this process has been going on without any integration
since 1870. The Legislature wisely directed a comprehensive revision and
the Institute has been working since 1942 on that revision. Research staffs at
the three law schools have labored to bring order out of the chaotic statutory
pattern. Without cost to the State, a leading law-book publishing house has assisted
by making available the basic materials upon which the research has been based.
Under the legislative mandate substantive changes were not to be made and this
has been followed. - But duplication has been eliminated - and a complete
face-lifting job has been done. Our statutes will even have a new look.

But the Institute has not sought to function as a super-legislature in
carrying out the project. It have been careful to stay within the mandate. Obviously,
there could be no policy consideration of substantial matters in a field as broad
as the whole statutory law of the State. But the Institute, has done more than
merely compile the laws, it has deleted obsolete provisions, has gathered
the related provisions together and organised them according to logical pattern.
Cumbersome phraseology has been replaced and simple expression of the rules
embodied in the law has been achieved. Sometimes many statutes on the same
subject matter have been found.

I might give an simple illustration. Take the matter of official
State holidays. Between 1932 and 1942 there had been 7 statutes setting out
different holidays; in 1938, three statutes were adopted on this same sub-
ject. There were already eleven separate statutes on the same subject matter.
These 21 statutes were consolidated into one section listing the official
state holidays.

The Institute found on the statute books many laws that
had never been enforced or followed; there were statutes creating offices
never filled, providing for boards never appointed. There are many statutes
declared unconstitutional by the Louisiana Supreme Court but still on the
statute books. There are statutes referring to the WPA and other presently
non-existing agencies. In the preparation of the revision of the statutes,
the Institute has been able to prune away such obsolete and useless material -
it has been able to substitute clarity for conflicts and confusion and to
propose a symmetrical whole.

The revision of the statutes as recommended by the Institute - will
reduce the volume of existing statutory material by 50% by eliminating
obsolete and overlapping provisions; it will arrange the statutes according to
logical pattern, the law related to the same subject will be placed together
in such a way that it can be easily found and understood; simple language
has been substituted for cumbersome phraseology. The net result is that
the average layman after the revision should be able to understand many laws
which formerly presented merely a mystifying labyrinth of legal terminology. The
process of drafting future legislation will be made easier.
A plan of continuous statutory revision is being proposed so that the statutes can be kept up to date as they are amended or as their subject matter dealt with by successive legislatures. Such a plan would eliminate a repetition of the situation which made the present revision imperative.

Should the legislature see fit to act on the recommendations of the Institute in the adoption of the statutory revision - such action will constitute a milestone in the pathway of obtaining clarity for Louisiana law.
The last major project of the Institute to which I shall refer is the one which will be of the greatest public interest. In 1946, the Legislature directed the Law Institute to prepare a project or draft of a proposed new Constitution for Louisiana with accompanying studies, this material to be deposited in the archives of the State for the future use of any Constitutional Convention that may be called.

The need for a new Constitution in Louisiana is admitted by all informed persons. Our Constitution is the longest of any State, it has been amended more often than that of any State, 288 amendments have been proposed since 1921, only 37 failing of adoption at the polls. Our Constitution reflects great distrust of the legislature and is replete with numerous constitutional limitations and incorporations by reference so as seriously to hamper the processes of government. Actually, the constitutional system of Louisiana has become so complicated that it is virtually impossible to approach any major problem of governmental reform or organization without adopting a constitutional amendment. Essentially we have gravitated into a system of constitutional legislation by referendum. The people have become a third house of the Legislature. Legal prolixity is an apt characterization of our present constitution. A constitution that may have been adequate for a State Government operating on a budget of 11 million dollars is not adequate for the problems of a State government operating on a budget of more than 170 million dollars and in a State which is rapidly becoming a combined industrial and agricultural area.

Obviously, any revision of a State Constitution, to be effective, must be preceded by adequate studies of the problems of government, analysis of the specific needs, and collection of data based on the best available experience and views of authorities who have considered the structure of government with which a constitution deals. The Convention of 1921 had no
preparatory work done for it and the result was a picture of confusion, loss of time and much that might have been accomplished at that time was sacrificed.

For example, a newspaper comment in March of 1921 reported:

"'Unless a miracle happens the new constitution will be longer and more cumbersome than the antiquated instrument the convention was called to revise..." After four weeks three hundred and sixty-four ordinances and resolutions are in the hopper. Delegates in the beginning wanted a short constitution. Now none of them will admit it is possible to have one. Hope expressed that after reflection and study they will dispense with the majority of these ordinances which are good, bad, indifferent, and some even foolish."

The confusion and lack of information that obtained in 1921 should be avoided in 1950 if a convention is called. The delegates will have material as a starting point, and the Law Institute's draft to be used as a point of departure. There will be accompanying studies available in bound volumes in which there will be placed before the delegates an analysis of the problems presented by the present constitutional provisions, the experience of other states with similar problems, together with the proposed provision as adopted by the Institute.

In the assembly of such information to be made available to the Convention, if called - the Louisiana State Law Institute has labored long in an exhaustive consideration of the subject-matter of the Constitution. A general Committee, geographically representative of the State, headed up the work of 7 sub-committees for each of the following subjects: (1) Bill of Rights, Suffrage and Elections, (2) the Legislature, (3) the Executive, (4) the Judiciary, (5) Finance, Revenue and Taxation, (6) Local government units, (7) Schedule and Miscellaneous. Each sub-committee was assisted by the central research staff of the Institute in the compilation of the necessary information; each sub-committee proposed drafts and suggestions, these were reviewed by the general committee and there was further detailed discussion and review before the Council of the Institute.
It is expected that the definitive draft and other work will be completed by late spring and that the Institute will then have complied with the mandate given to it by the Legislature. In this connection, I should like to stress that the Institute as an agency of law reform never assumes the position of advocate or lobbyist for its proposals. The Institute in a non-partisan non-political manner conducts its studies and investigations and arrives at its conclusions embodied in its proposals and reports. The Institute has always drawn a sharp distinction between its research and draftsmanship and the work of advocating enactment. The latter is apt to sound judgment of those who have the responsibility.

In any matter as controversial as constitutional revision, the Institute necessarily recognizes that its decisions will not be final on the matters of policy involved. The draft will be purely a proposal and every detail of that proposal must necessarily be subject to open discussion, amendment, counterproposal or rejection depending upon the judgment of the delegates to any constitutional convention that may be called. In fact, it may be said that the chief value of the Constitution Project as envisioned by the Institute, lies not so much in the text of the form of draft Constitution the Institute may produce, as it does in the research studies which will provide the information needed by delegates to any constitutional convention, to permit their intelligent consideration of the issues and alternatives. On the extremely controversial issues and on many proposals, the Institute will also point out possible alternatives that have been considered with their pros and cons. No effort is being spared to achieve a fair presentation of possible
differing viewpoints on these matters. Here, again, it may be said that Louisiana's Law Institute's work has been unique — no other state has approached the preparation of materials for constitutional revision in precisely this fashion but all recent constitutional conventions have had their work aided by some preparatory work. In Missouri, New Jersey and New York, three states most recently having constitutional conventions, preparatory work was done by university personnel, by a Committee on Preparatory Research, or by a Special Staff assembled for such purpose but no definitive draft or project has been prepared. It is believed that the material which will be made available through the Louisiana studies surpasses that made available to any previous constitutional convention in any State of the United States because we have been able to profit by and borrow from such experiences elsewhere. If a convention should be called in Louisiana, the delegates will begin their deliberations with essential aids that no previous Louisiana convention has had. Preparatory work is valuable — but is only a part of the task. If Louisiana is to have a good Constitution, it will be because the need is recognized and because of the sustained interest and enthusiasm of intelligent leaders of Louisiana. I include in that group the club women of the State who have always been in the vanguard of progress. There will be much for you to consider when the matter of a new constitution for Louisiana reaches the further stages of public discussions in 1950. You and all civil minded groups like you must make your interests known in the public consideration of all these matters. It would not be proper for me at this time to attempt any discussion of substantive proposals because, as I have indicated, the work of the Institute on the Constitution is not complete. However I hope, however, that I have
been able to give you some insight into the basic need for a new constitution and the procedures which have been developed in making an approach to the problem through the Institute's work.

I have also tried to give you some insight into Louisiana's Law Institute - I assure you that it is not to make lawyers of you - but to make you aware of the fact that there is much work of this nature that greatly affects the public interest. The Institute has been directed to revise the Civil Code and the Code of Practice of Louisiana - here are basic provisions affecting persons, family, contracts and the property, and the rights protected by a system of law. Louisiana has an obligation to erect a legal system that will be the servitor of justice and the guarantor of the values we hold dear. In that sense, Louisiana's unique law reform agency for the State is attempting to serve to the fullest extent possible.