

1951

## Louisiana State Law Institute Speeches

Paul M. Hebert

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Members of the Louisiana State Law Institute, and distinguished guests:

At this initial meeting of the Louisiana State Law Institute, the executive committee considered it to be proper that a brief statement be made concerning its purposes, duties and organization, by way of prologue to the programs to follow.

This organization originated in a movement, initiated here at L. S. U. in 1933, to establish an institute dedicated to law revision, law reform and legal research. Due to economic reasons that project was postponed until April, 1938, when the Board of Supervisors authorized its revival, under its present name. The Legislature, later in the year, chartered, created and organized it as "an official, advisory law reform commission, law reform agency and legal research agency of the State of Louisiana."

The purposes of the institute are declared by the Legislature 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."

This is the first time in the history of this State that Legislative recognition has been given to a long recognized need and an adequate organization established to meet it.

The great jurists who drafted our Civil Code of 1825 appreciated the imperfections of their own work, and realized that time would demonstrate its errors and inadequacies. Accordingly they recommended in a preliminary report to the general assembly that where the Code was silent, the judge should decide as an amicable compounder, the decision to be reported to the Legislature, and then to stand as a precedent only if adopted by the Legislature. They also proposed that reports of ordinary cases of

construction be reported to the Legislature by a commissioned officer, to enable it to explain the ambiguities, supply deficiencies and correct errors discovered by the test of experience in operation. By these means they believed that

"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 the inroads on the unity of its design which have been made by statutes hastily passed for local or temporary purposes"...

This process of constant revision, through judicial reports and recommendations, failed because no suitable organization was adopted to give it direction, and with respect to the Civil Code that unity of design so earnestly sought by its drafters has been seriously affected by hastily passed legislation without proper preparation.

Law reform and law revision should be the result of careful preparation, based on adequate research, thorough study and impartial discussion. The great civil law institutions have followed the same general pattern in their confection. Familiar examples are the reduction of the Customs of France, the preparation and adoption of the Code Napoleon, and the drafting and enactment of our own Civil Code.

That process has not been possible in Louisiana for many years, due to a lack of time, and a proper forum where projects of laws may be examined and discussed by lawyers, scholars, judges and legislators in the light of their knowledge and experience. Furthermore the Legislature is not adequately, constitutionally organized for that purpose, since it meets only biennially, exclusive of extraordinary sessions, and then for only 60 days.

This Institute is designed then as an adjunct to the Legislature, but solely in an advisory capacity. Its duties in that connection are specified in the act of its creation. It is explicitly required to consider needed improvements in the law and to make recommendations concerning them; to study the civil law with a view to discovering defects and inequities and recommending needed reforms; to receive, consider and make recommendations concerning law reforms proposed by associations in learned societies such as the American Law Institute and the Bar Associations; 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. It is required to make biennial reports to the Legislature and if it deems advisable, to accompany its reports with bills to carry out its recommendations.

In its relationship to the Legislature, then, this Institute acts solely and only in an advisory capacity.

Its statutory duty is to recommend, when its own research, or the study of the proposals of other kindred organizations, indicate such action.

In addition, it is purposed to so develop the organization of the Institute that it may conduct special research for the Legislature and its individual members, at their request, on matters of legislative interest. In that respect, there is a great opportunity to render valuable service. In the past, commissions have been appointed to draft Codes on special subjects, such as the Criminal Code and the Mineral Code, neither of which was adopted. It may be that hereafter the Legislature will intrust the preparation of the projects of such Codes to the Institute. Its organization is designed for that purpose. The respect of the Legislature for the work of the Institute must be earned, however, through the fidelity with which it discharges the

duties imposed upon it by statute, and its recommendations must always result from thorough study and research, and full, free and non-partisan discussion.

The Institute is likewise required to study the jurisprudence, along with the statutes, with a view to recommending needed reforms. Much legislation heretofore has resulted from attempts to correct defects or imperfections brought to light in contested cases. This organization should be able to approach the solution of such problems with method and precision and weigh them in the light of the experience and knowledge of its members.

In time it may come to perform the functions of a judicial council, and be of material assistance to the Courts by the preparation of scientific and orderly studies of procedure and the work of the courts,

The Act likewise makes it a duty of the institute to make available translations of civil law materials and commentaries and to provide by studies and doctrinal writings, materials for the better understanding of the Civil Law of Louisiana and the philosophy upon which it is based.

Of all of the Civil Law institutes, the Civil Code of Louisiana is the only one which has not been largely developed and expanded by the writings of eminent legal scholars and jurists, generally referred to as "doctrine." An eminent French professor has said that doctrine plays the same role in law that public opinion does in politics. Here in Louisiana, we have no doctrine except for that to be found in the Tulane Law Review started several years ago, and the Louisiana State Law Review, now in its second year.

In France, the modern commentaries on the Code Napoleon, such as Baudry, Lacocantinerie and Planiol and Ripert, are not individual products, but are the results of the organized efforts of several co-authors. The

filed is too large to be tilled by one man. Therefore, this institute will seek to organize the work of the law faculties and of the bench and bar to the end that we shall some day have our own Louisiana doctrine, contained in commentaries comparable to those of France.

Some of the materials with which we must work are contained in our own books, some of which are so rare as to be generally inaccessible. Many, of course, are in other languages of which no translations are available. Already much work has been done to remedy some of these difficulties. Special reports will be made later today concerning these projects.

The organization of the Institute is planned to facilitate the performance of its duties, and the accomplishment of its purposes, in the spirit of its planning.

The governing body is the council consisting of ex-officio members and elected members. It is representative of all branches of the state government, and of the entire legal profession. The executive is represented by the attorney General and the executive counsel to the Governor, and

The Legislature is represented by the chairman of each judiciary committee of both the House and the Senate, who serve ex-officio;

The Judiciary is represented by one Justice of the Supreme Court, one judge from the Courts of Appeal, one district judge, and one Federal Judge residing in Louisiana, all of whom are elected members.

Organizations are represented by the Presidents of the Louisiana State Bar Association and the State Bar of Louisiana, and any Louisiana members in the Council of the American Law Institute, who are ex-officio members.

The law schools are represented by their deans, who are ex-officio members, and three members from each faculty, who are elected members.

The Bar is represented by eleven practicing members, who are elected members.

The Council has the authority under the Act, to provide rules for the organization, government and operation of the Institute, and to determine and elect officers. That, it has done, by the adoption of by-laws. It has adopted a plan of membership which in the terms of the Act, it believes to be "so designed as to encourage and unite the co-operation of all members of the legal profession in the work of the Institute."

The By-laws provide for 150 members, in addition to the Council, nominated by the Membership Committee, and elected by the Council. All Judges of the District Courts and Courts of Appeal, all Federal Judges in Louisiana, and all Justices of the Supreme Court are associate members, as are all members of the Legislature who are lawyers.

The Council met for the first time less than a year ago. The work which the Institute has performed since that time will be reported to you in detail as part of the program of this meeting.

The preparation of the completed edition of the Civil Codes was confided to the Institute by the Editorial Committee, as provided by Act 165 of 1938, and funds for that purpose, as well as for the work of the Institute, were provided by the Board of Liquidation.

It must be pointed out that the Institute, to be fully successful, must have the services of a full time, highly trained director, and a continuation of adequate financial support by the Legislature is vitally necessary.

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It is frankly submitted that the work of the Institute thus far accomplished, under some handicap, justifies that support.

The past year has not been without its difficulties. I must acknowledge that they have been largely overcome and that the work achieved has been accomplished only because of the unselfish, whole hearted and thoughtful co-operation of all concerned with the organization and work of the Institute.

The Louisiana State Law Institute is one of the very first organizations of its kind in this country. It is conceived in a spirit of co-operation, and is dedicated to public service. It is chartered by the Legislature, in terms which must challenge the interest of the entire legal profession of the State. May its achievements be equal to its opportunities and its obligations.

"THE PREPARATION OF A PROJET OF A NEW CONSTITUTION  
FOR LOUISIANA"

It is an honor to have this opportunity to report to the general membership of the Institute, for the first time, on the progress that has been made in carrying out the mandate to prepare a Projet of New Constitution for Louisiana. As President Tucker has stated, any idea that the Institute would be given such a task as this was far from the minds of all of us at the last annual meeting. The suggestion that the organization and processes of the Institute might be used for this work did not in any sense originate within the Institute and it was, therefore, a matter of considerable surprise when two bills were introduced at the 1946 session of the Legislature having for their purpose, a direction to the Institute to prepare a draft of a new constitution with accompanying studies. The fact that such proposals were introduced without any well crystallized public movement for constitutional revision is also significant in that it is indicative of widespread recognition of the fact that Louisiana needs a new fundamental law so designed as to make the processes of government at all levels more responsive to present day needs. The intensity of this feeling is further reflected in the fact that a bill introduced by Senator Hendricks which would have called for a constitutional convention to meet in March of 1947 actually passed the Senate only to die in the House of

Representatives. The ~~Charranger~~ bill, finally passed as Act 52 of 1946, is set forth in full in the explanatory pamphlet on the Constitution Project, which pamphlet has been distributed to you. The general policy reflected in the act is to insure comprehensive studies of the problems of government in Louisiana prior to the adoption of a new constitution. In this regard, a considerable gain is being made because the fundamental questions of policy which must come before a constitution can be revised require the utmost in deliberation and serious study. The more progressive states that have recently given consideration to the problems of constitutional revision have recognized the necessity of a preliminary collection of information. The mandate to the Louisiana State Law Institute is very extensive in that it contemplates the compilation of information in the form of accompanying studies, but it also specifically directs the preparation of a draft constitution. In this direction there is great opportunity of service by the Institute to the people of Louisiana.

In this juncton one may naturally inquire what is behind this movement for constitutional revision. Of course, the most frequently cited criticism of our present state constitution is its undue length. It is actually the longest in any of the 48 states. It has ceased to be a true state constitution

if we conceive of a state constitution as a document setting only the broad outlines of the government. It will be recalled that Chief Justice Marshall in McCulloch v. Maryland criticized detailed and lengthy constitutions in these terms: "A constitution, to contain an accurate detail of all the subdivisions of which its great powers admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated and the minor ingredients which compose those objects be deduced from the nature of the objects themselves." Today one may well inquire whether the Louisiana Constitution does not truly exemplify that legal prolixity of which the learned Chief Justice wrote. In truth, our constitution is a lengthy legislative code reflecting great distrust of the Legislature and replete with numerous minute details designed to protect a wide variety of interests, many of which might probably be left to legislative determination with great improvement in the processes of our state government.

From the fact that our constitution even when framed in 1921 was a lengthy document, there has arisen another major criticism. By its very length

and by the wealth of detail with which it deals, it has become necessary frequently to amend the Louisiana Constitution. A survey reveals that 247 amendments have been proposed since 1921 with only 22 failing of adoption at the polls. The Bureau of Governmental Research of New Orleans has pointed out that the accepted adage of "let the people decide" through constitutional amendment is largely a myth. After a study of the Louisiana amending processes, the Bureau concludes:

1. Amendments are being adopted by as few as 5 of each 100 potential white voters.
2. Nine-tenths of all amendments proposed by Legislature are subsequently adopted.
3. Louisiana has amended its Constitution 16 times as much as the average American state.
4. Official publication of amendments in present form is virtually meaningless.
5. Propositions on ballot fail to inform voter concerning amendment.
6. Form of paper ballot is confusing."

In our amending processes we have gravitated into a system of legislation through referendum. We have, in the process, included in the constitution such matters of detail as a highway map setting forth where the paved roads are required to be under the Constitution, and even the names of persons comprising an Advisory Commission on highway financing matters, even to the point of two blank spaces for persons not named. Parenthetically, it might be said that

there is even a possibility that some of our highways are unconstitutional in that the map indicates a location different from the actual physical location of several of our important paved arteries of transportation. The entire matter of constitutionality has become so complicated that it is not possible for the electorate properly to analyze or to intelligently pass upon the questions submitted to them through the process of these constitutional referenda.

From all of this, it follows that our state constitution has become so involved that it is now practically impossible to deal with any problem of government, whether at the state or local government level, without the necessity of some kind of constitutional amendment. Consequently, we frequently find important governmental units and bodies constantly handicapped in the proper performance of their functions by the necessity of obtaining a revision of the fundamental law as a prerequisite to necessary action. This is particularly true in many matters relating to the support of government and the incurring of debt by local political sub-divisions. The existing situation has some of the aspects of a snowball rolling down hill; for the lengthier the constitution becomes, the greater there is the necessity for other constitutional amendments, as it is always a safe guess that a mere

legislative act probably impinges upon some express or implied constitutional limitation. We find limitations in our state constitution in the form of spelling out ~~power~~ mandatory provisions which, if not carried out, are judicially unenforceable provisions of the state constitution, so that from the point of view of obtaining desired action they are entirely ineffective if the Legislature does not act. However, their presence in the constitution in the form of a grant of authority raises implication of a limitation of authority on a related matter not included in the express grant.

Further evidence of widespread dissatisfaction with the structure of the state government is indicated in the movement that culminated in the administrative reorganization of 1940 and the legal aftermath of that movement. Necessity for the revamping of important aspects of the state government reflected in the state constitution is also found in the fact that the Legislature has deemed it necessary from time to time to create special study commissions to deal with specific problems. Several important bodies of that character are actively functioning at the present time. The Revenue Code Commission is concerned with the problems of the state's tax structure and how our system of taxation as it presently exists may hinder or help essential industrial development if we are to utilize fully the abundance

of natural resources with which Louisiana is blessed. The Legislature has found it necessary to create a special commission to deal with the problems of education. There is also a special investigating committee working on the whole problem of how the processes of the Legislature might be improved through revision of the rules of procedure in the Legislature.

But over and beyond these evidences of a criticism of the existing situation, there is the growing realization that Louisiana fundamentally needs a new basic law which will be responsive to the desires of her people, and will be so conceived and prepared as to erect a governmental structure that will encourage and promote the progressive development which appears to be in store for the South. Vast changes have occurred since the constitution of 1921 was framed and <sup>?</sup> has been greatly accelerated in recent years. Consider the matter of state budget, for example. In 1922 the state budget was about 11 millions of dollars. In 1941 it had grown to 91 million. For the fiscal year ending on June 30, 1946, the state budget was 107,000,000. The surplus revenues in the general fund and recent appropriations made therefrom will reflect further increases in total state expenditures for the current fiscal year. Consider the matter of population--in 1920 Louisiana's population was 1,789,509. In the census of 1940 our population had grown to

2,363,880. The Louisiana of 1946 is no longer entirely an agricultural state; it is rapidly emerging as an important industrial center with great potentialities for future economic development by virtue of our abundant resources which can be conserved and directed toward that end. The Louisiana of 1946 is no longer largely a rural population. Its character has been changing rapidly in the direction of marked urban centers, many of which have common problems of government which could be greatly facilitated by a more adequate consideration of the problems of government in the light of these changed conditions.

This mandate to redraft a document as fundamental as our state constitution engenders implications that are as broad as the processes of government itself, for the constitution will determine the ultimate framework upon which all governmental action within the political unit ultimately depends. Authorities in political science have pointed out that the most marked trend of state governments in this century has been the expansion of public service. The state government is no longer engaged solely in limited regulatory activities. It is a vital agency for the promotion of the public welfare. It is concerned with protection and improvement of health, the improvement of education, the improvement of living and working conditions and few indeed are the social and

economic problems considered beyond the purview of permissible action.

If our state government can be so revised in the state constitution as to strengthen the sum total of the government structure, a considerable gain will have been made. If we can in Louisiana strengthen and improve administrative organization and procedures, or if we can make our legislature more effective by adopting devices to aid the Legislature in discharging its duties or by eliminating some of the constitutional<sup>al</sup> restrictions which hamper the Legislature in its work, we will have made contributions to the strengthening of democratic processes. More effective functioning of state legislatures is a part of the answer to the problem of an increasing tendency on the part of the national government to increase the wide range of its permissible action. If we can in the process of constitutional revision think through the problems of our cities, our parishes, and our other units of local government, and provide a broad and elastic framework in the state constitution which will make for more effective discharge of all aspects of their functions, the possibilities for enriched community living in many of our rapidly developing urban centers will be immeasurably enhanced. Here we should recall that the efficiency and effectiveness of our local units of government, those units which are most intimately in contact with the largest number of our citizens, determine in considerable measure our conception of government in action and this in turn

has an intimate relationship to the general strength of democratic institutions as such. If we can, through the process of constitutional revision, devise improvements in our judicial system and embody in the state constitution some of the thought and experience of those who have been dealing with the problems of judicial organization and administration, greater respect for law and the judicial process will make our state government stronger as a democratic institution. If we can lay an elastic framework for further enriching the economic life of the state through industrial planning and by encouragement to industry in the development of our resources, an increased standard of living and resulting benefits to all social institutions will follow. These seem to be broad opportunities inherent in the mandate which the Institute has received from the Legislature in Act 52 of 1946.

Before proceeding to carry out this task of constitutional revision, consideration was given to the experience of a number of other states which have recently attacked similar problems. The experiences in Missouri, Georgia, New Jersey, and New York were considered. Based upon a study of these experiences, and with the advice of competent authorities in the field of government, the Council of the Institute decided that it could best perform its functions under the mandate by organizing a general committee to be composed of members of the Institute, and that this general committee should be

charged with the responsibility for supervision of the work of preparing the proposed draft. The general committee is composed of the fifteen gentlemen who are listed on page 18 of the Exposé De Motifs, plus the officers of the Institute.

Recognizing that there must be further division of the work, seven sub-committees have been organized with at least two members on each of the sub-committees from the general committee. You will note the personnel of these committees set forth on pages 18, 19 and 20 of the pamphlet. The respective sub-committees are: Bill of Rights, Suffrage and Elections; Revenue, Finance and Taxation; Legislative; Executive Department; Judiciary; Local Government; Schedule, Miscellaneous and Civil Service. An organization meeting of the sub-committees was held in New Orleans on Saturday, Feb. \_\_\_\_, following which the sub-committees have actively undertaken their detailed work. We have been greatly gratified at the high degree of interest which is being maintained by all committee members on the Constitution Project. The subject matter of the present constitution and the amendments thereto have been divided, in some cases, rather arbitrarily among the seven committees and each committee has prepared its own agenda and has adopted its own method of procedure in consideration of the problems falling within its respective sphere of responsibility.

Each of the sub-committees will be assisted by a research staff of the size and character to make possible the types of studies and investigations which may be deemed necessary by the sub-committee in order properly to carry out its portion of the work. A central research staff has been assembled under the supervision of Dr. Kimbrough Owen, who is serving as the Director of Research. In response to specific requests for information from the sub-committees, the central research staff has already completed 28 mimeographed bulletins collecting desired information reflecting the experience of other states on a wide variety of the problems that have been raised in the sub-committee deliberations. There is an extensive literature on the subject of constitutional revision and much of the desired information reflecting the experiences in other states is already compiled so that it can be easily made available for the work of the sub-committees through the central library which has been established and with the assistance of the members of the research staff who compiled the necessary data following requests from the sub-committees. In addition to the 29 reports already prepared, the research staff is now engaged in preparing reports on the following projects:

1. The Legislative Council.
2. Judicial review and the amendment of the Louisiana constitution.
3. Dedicated revenues.
4. Judicial interpretation of the Bill of Rights

5. Constitutional limitations on local government indebtedness.
6. Constitutional limitations on local government taxation.
7. Statutory provisions for home rule.
8. Homestead exemption.
9. History of amending process in Louisiana.
10. Powers of the Legislature under the constitution of 1921.
11. Special districts in Louisiana - a statistical study.

It should be stressed at this time that the work of the Institute has not yet arrived at the point at which policy issues have been definitively decided. The plan of organization contemplates that each sub-committee will be given the widest latitude in regard to its work and in the preparation of tentative drafts. These drafts, together with the committees, studies, and alternative proposals, will be reviewed by the general committee, which committee will coordinate the policy issues and will prepare the composite draft for presentation to the Council of the Institute.

While there is general recognition of the desirability of returning to the sound principle of a greatly shortened constitution, merely setting forth the framework of the government, it is recognized that there will be numerous policy decisions involved in determining which limitations, if any, are entitled to the dignity of constitutional protection. There is one major

policy issue which will have to receive early attention from the general committee and the sub-committees. This is frank recognition of the fact that any shortening of the constitution necessarily means great increase in the powers of the Legislature. There are critics of state legislatures, including our own, who would oppose increasing the power of the legislature, but this is a pivotal problem which will determine the amount of accomplishments which we are able to reflect in the new constitution. If we are to succeed in achieving a briefer constitution, it would appear to be a necessary corollary that devices be adopted to strengthen the legislative process. Here consideration might be given to providing an intervening period between the inauguration of the governor and the first legislative session to permit time for the formulation of a legislative policy by the incoming administration. Consideration might also be given to devices designed to eliminate the numerous local matters calling for attention in a crowded calendar during a 60-day session. The Legislative Council as a device for continuous consideration of matters of state-wide policy as an adjunct to the legislature might also be considered as a useful device to strengthen the effectiveness of the Legislature.

The Model State Constitution, prepared by the National Municipal League and now in its Fourth Edition, should prove of considerable assistance

in all committee deliberations. This constitution represents the best views of political scientists as to what a model state constitution should contain, but it was not drafted with a view to having it adopted in toto in its present form in any state. It contemplates the necessity of local modifications to reflect local policies. In broad survey, the Model State Constitution proposes a unicameral legislature as a means of fixing greater responsibility. It proposes higher salaries for legislators; it proposes a continuous session of the legislature and has special provisions adopted with a view to increasing the effectiveness of standing legislative committees. The Model State Constitution also contemplates a strong administrative organization with the short ballot and broader appointive powers vested in the governor. With regard to the judiciary, the Model State Constitution provides for a unified court structure but leaves numerous details relating to the organization of the courts to the legislature. It authorizes the rule-making power and the matter of court procedure subject, however, to legislative veto. With regard to selection of judges, the Model State Constitution proposes a modified appointive system with a check by the electorate. Under the Model State Constitution, an elected chief justice appoints judges from a panel recommended by the judicial council. Judges so elected after a trial of service are

required to go before the electorate not as a candidate against an opponent but with the electorate answering the question of "Shall Judge \_\_\_\_\_ be retained as a member of the judiciary?" With regard to finance, the Model State Constitution concentrates in a strong Finance Department the functions of budgeting, accounting, purchasing and treasury functions. With regard to local government, the Model State Constitution embodies broad home rule provisions both as to structure and as to functions of local governmental units.

From the foregoing enumeration, it can readily be seen that there is a considerable problem in the work of each sub-committee in selecting those areas for improvement in which the greater progress may seem to lie and in keeping with the mores of our people. It should be stressed that the decisions of the Institute on any of these questions will in no sense be final decisions. The legislative mandate is that the draft and accompanying studies shall be deposited in the state's archives to be available for any future constitutional convention that may be legally called and authorized.

The general committee has quite properly recognized that the preparation of even a draft is not the exclusive concern of those of the legal profession. Consequently, it is planned to adopt procedures whereby any interested citizen can present his views for the consideration of the respective sub-committees

and the general committee.

The Institute has also wisely provided for the establishment of a committee on public information, composed of leading representatives of the Louisiana press. The purpose of this committee is to keep the people of the state currently informed concerning questions which will be considered.

When the work of the general committee shall have progressed far enough in the collection of data and in policy determinations, the committee on public information can serve a very useful purpose in bringing all sides of the problems involved intelligently to the attention of the people of the state. This will be most conducive to bringing about a well informed and considered public opinion about each subject that has been treated.

Louisiana—the state which has had more constitutional conventions than any other state in the Union, with very few exceptions—is now embarked upon a comprehensive program for the compilation of essential studies about our constitution. With the aid of these studies and with the work represented by the high quality of the personnel serving on committees on the Constitution Project, it is believed that Louisiana will move constructively forward in its quest for a more workable state constitution.

THE LOUISIANA STATE LAW INSTITUTE

Commentary by

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\*  
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the Law School, Louisiana State University.

The history of the organization of the Louisiana State Law Institute and the interesting story of its accomplishments in the fields of legal research and publications, in law reform and in legislation has been often related during the thirteen years of the Institute's existence. This resumé, necessarily therefore, will borrow generously from the available source materials bearing upon the work of the Institute. The purpose is to present only in summary form a picture of the background and organization of the Institute with indication of some of its major accomplishments.

The basic idea for the formation of the Louisiana State Law Institute originated with members of the law faculty of Louisiana State University who sensed a need for a more organized attack upon the problems of legislation and codification related to Louisiana law. Professor James Barclay Smith, while a member of that law faculty in 1932, advanced a plan, modeled in part on the American Law Institute, for the establishment of a legal research foundation to be devoted primarily to the improvement and preservation of Louisiana's unique legal heritage - the civil law and the system of codified law. The idea gained momentum in discussions with members of the law faculties in Louisiana and enthusiastic interest and assistance from the profession early manifested itself. After numerous conferences with individual members of the bench and bar, with the working counsel of such leaders as the late Henry P. Dart, Sr., John H. Tucker, jr., who later became the President of the Institute, Cecil C. Bird, Charles E. Dunbar, Jr., and the late Horace M. White, a preliminary plan of organization was developed which was to have been carried out by perfecting the organization as early as 1933. The economic depression, however, claimed these plans as among its casualties, but not before the basic ideals and purposes of the Institute had been well formulated.

In fact, invitations setting forth the objectives and details of a preliminary plan were actually advanced to the point of preparation of letters to members of the bar who were to participate in the formation of the Institute. It was decided, however, in May of 1933, that it would be advisable to postpone these plans to a later date. The letter of invitation referred to, summarizes the ideas giving rise to the Institute as follows:

"The University proposes to establish a research foundation, to be known as The Louisiana State Law Institute, to promote the clarification and simplification of the law of Louisiana and its better adaptation to social needs, to secure the better administration of justice, and to carry on scholarly and scientific legal work. The Board of Supervisors has approved and adopted for The Louisiana State Law Institute the organization and purposes expressed herein.

"We realize the magnitude and seriousness of such an undertaking. We realize that such a work must not be hurried and superficial. It involves the task of collecting, compiling, editing, and publishing materials dealing with the origin and progress of the Civil Law of Louisiana, both substantive and procedural. It involves a study of the procedural rules by which rights are enforced as well as a study of the rules of law by which rights are determined. Completeness, accuracy, and scholarship are paramount.

"The Civil Code of Louisiana has undergone little material change for more than a century. Derived directly from several distinct sources it represents in itself what might be termed a system of comparative law. This emphasizes the importance of the project contemplated in The Louisiana State Law Institute.

"The American Law Institute was established in 1923 to restate the common law as developed by judicial interpretation in the several states from the English system. The achievement of that purpose will benefit this State. While we desire to cooperate with The American Law Institute in its eplendid work, we recognize a more definite service to be rendered to Louisiana. The Restatement of the Common law by The American Law Institute is not intended for adoption by legislatures as a code. The intention of The American Law Institute is to preserve the common law system of developing law through the judicial determination

of cases. Its purpose is not codification or even a step to codification. The major portion of the Civil Code of Louisiana is derived from the Civil Law as distinguished from the English Common Law. The American Law Institute is devoted to an orderly statement of common law principles without reference to any particular jurisdiction or body of statutes. Our labors contemplate the improvement of an existing statutory codification of law in a single jurisdiction, namely, the State of Louisiana. The leadership of Louisiana in juridical science and the comparative law origin and function of our system make our task no less difficult and no less important than is theirs.

"The aims and purposes of The Louisiana State Law Institute can be accomplished only through unselfish devotion and legal scholarship of the highest type. Active participation and constructive criticism by all legal scholars of Louisiana are essential to its proper development. To this end the University dedicates its law faculty and facilities and invites the co-operation of all concerned. The Louisiana State University being maintained by the State is a common meeting ground and will constitute the permanent headquarters of The Louisiana State Law Institute.

"The constructive scientific work to be carried on by The Louisiana State Law Institute necessitates an organization which will be representative not only of the legal profession as a whole but also of the existing organizations within it. It is the desire of the University to make membership in The Louisiana State Law Institute fully representative in the sense that any person elected thereto shall be a leader of the profession of law either by reason of official position or of well established professional standing before the Louisiana Bar. Other persons may be selected for honorary membership because of their knowledge and high professional standing and their recognized interest in constructive work for the improvement of the law." ✓

There follows in this original prospectus a rather detailed outline of the proposed organization including the plan for a Council of the Institute, the membership, officers and the method of organization to be utilized for legal research.

These ambitious plans remained dormant until 1938. At the dedication of the new law school building at Louisiana State University on April 7, 1938, it was announced that the Board of Supervisors had approved the revival

of the project and the establishment of the Institute was to be made a reality.

The announcement stated:

"...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 referred to in this announcement was forthcoming with the adoption by the Legislature of Act 166 of 1938 which chartered and created the Louisiana State Law Institute as "an official advisory law revision commission, law reform agency and legal research agency of the State of Louisiana." The legislation was prepared by a committee composed of Honorable John H. Tucker, jr., of the Shreveport bar, and the writer who was, at that time, Dean of the Law School of Louisiana State University. It was the initiative, vision and drive of Mr. Tucker which made possible the reopening of the project and his sustained leadership has constituted the veritable life-blood of the Institute. His unselfish devotion of a large part of his time to this work, augmented by his superior attainments as an outstanding scholar of the civil law, have provided the essential links between the law schools and the profession

required to make the Institute an effective organization. The Honorable Gaston L. Porterie, now Judge of the United States District Court for the Western District of Louisiana and then the Attorney General of the State of Louisiana, was active in his support of the project and in securing passage of the necessary legislation.

The purposes of the Institute, as set forth in Section 4 of the original Act (now R.S. Title 24, Sec. 204) were based upon the purposes and functions of the American Law Institute. In addition, specific portions of the statute, authorizing the formation of the Law Reform Commission of the State of New York, were used as a pattern with special additional provisions adapted to the peculiar local needs of Louisiana in relation to its system of codified law. Analysis of those functions, as set forth in the statute, discloses that the work of the Institute falls into several fields and, in its accomplishments to date, the Institute has sought to maintain a judicious balance among these varied functions.

First, in the field of legislation the Institute is charged with advisory responsibility for the continuous consideration of needed improvements in the substantive law and in procedure. To these ends it is to serve as a research agency for the study of the Codes, the jurisprudence and the statutes with a view to discovering defects and recommending needed reforms. It has likewise delegated to it a broad duty of cooperation with other groups and associations working in needed areas of law reform, such, for example, as the American Law Institute, the Commissioners for the Promotion of Uniformity of Legislation in the United States, bar associations, and other similar bodies. It is an agency to combine the ideas of and consider suggestions for legislation from judges, public officials, lawyers, and the public generally. It is clear, however, that the Institute functions only in an advisory capacity, but the

procedure for translating its advice into action is provided in the authority and duty to make biennial reports to the Legislature with accompanying bills to carry out its recommendations. These biennial reports of the Institute to the Legislature constitute an interesting record of the achievements in this field.

Second, the Institute is charged with supplying a recognized deficiency in the lack of availability of writings, materials and publications essential to the better understanding of Louisiana Civil Law and the philosophy upon which it is based. The legal profession in Louisiana is familiar with the fact that until the revival of the Tulane Law Review in 1929 the cause of legal scholarship in Louisiana suffered greatly from lack of doctrinal writings in the civil law and this, in turn, resulted in an infiltration of common law ideas attributable, in large part, to the greater availability of common law literature. The Tulane Law Review first and later the law reviews at the other schools <sup>have</sup> made notable contributions in supplying a needed literature of Louisiana law, but in many areas of publication, translation, and compilation of legal materials, the Institute must supplement such activities. This duty is recognized by the Institute's organic act.

Third, the Institute is charged with becoming the medium through which scholarly forums and discussions of problems of Louisiana law are to be conducted periodically "bringing together representatives of the Legislature, practicing attorneys, members of the bench and bar and representatives of the law teaching profession."

Following enactment of the basic statute, the organization meeting of the Institute was held on January 28, 1939, at the L.S.U. Law School, Baton Rouge, Louisiana. By-laws perfecting the organization in accordance with the legislative act were adopted at that meeting, officers were elected,

7. ✓

and a committee was named to prepare the first budget and to select a Director for the Institute. The Committee, with the approval of the Council of the Institute, selected Dr. J. Denson Smith of the Louisiana State University Law Faculty as Director. With the exception of the period of his absence for military service during World War II, during which period, Dr. Harriet S. Daggett served as Acting Director, Dr. Smith has served continuously in that capacity. His intelligent executive leadership has piloted the Institute successfully to its present stage of prestige and accomplishment. The responsibilities of the Presidency of the Institute were placed upon Mr. John H. Tucker, jr., a responsibility he has ~~brilliantly carried except during~~ *discharged since that time except for the period of* his military service from about 1942 to 1944. In this latter period the late esteemed Daniel Debaillon of the Lafayette bar served as the President. ✓

In terms of organization, as appears from R.S. 24:202, the governing body of the Law Institute is a Council of fifty composed of ex-officio and elected members. Ex-officio members include: representatives from the State Government, i.e. the Attorney General of the State, the Executive Counsel to the Governor, the chairmen of the various judiciary committees of the two Houses of the Legislature; representatives from organizations of the legal profession, i.e. the President of the Louisiana State Bar Association and any Louisiana members on the Council of the American Law Institute; the deans of Loyola University School of Law, Tulane University College of Law, and Louisiana State University Law School; and, the officers of the Institute. Elected members include a Supreme Court judge, a Court of Appeal judge, a Federal judge, a District judge, three members from each of the faculties of the State's three law schools and fifteen practicing attorneys. The Council of the Institute has elected two members emeriti of the Council, Dean Robert Lee Tullis, and Honorable B.B. Taylor, Sr. of the Baton Rouge bar. The elected

members serve for overlapping terms of four years each under a plan of rotation set forth in the statute.

General membership of the Institute is, under the statute, formulated by the Council. As last amended in July of 1950, there are five classes of members: active, inactive, ex-officio, junior and honorary. Active members are elected by the Council from among members of the bar who have practiced at least ten years and who have the requisite standing in the profession. The total active membership cannot exceed one hundred and seventy-five (175) members. Members of the Institute who retire from the active practice of law are continued as inactive members of the Institute. Ex-officio members of the Institute include all members of the State and Federal judiciary in Louisiana, all members of the law faculties of Tulane, Louisiana State and Loyola Universities and all lawyers who are members of the Legislature. Junior members, not exceeding fifty in number, are elected by the Council from among members of the profession in Louisiana who have practiced less than ten years. Eminent legal scholars of any state or country may be elected honorary members of the Institute in recognition of their achievements in the profession.

The work of the Institute on its numerous projects undertaken to date has, in large part, been patterned after the method of work found successful in the projects of the American Law Institute. It has usually been the pattern to designate specialists or research directors from the faculties of the law schools and to provide them with the research assistance needed for the performance of the actual study or draftsmanship. The funds for legal research have been provided by direct appropriations from the Legislature made to the Law Institute in varying amounts depending upon the

projects under way at any given time. Financial assistance for publications of the Institute has been provided with State funds on major projects either through special appropriations or through the statutory mandate of R.S. 24:205 which provides: "...Its reports, studies and recommended publications shall be printed and shall be distributed through the Secretary of State in the same manner as acts of the legislature."

Following the completion of the work of an Institute reporter or other draftsman, the result of the work is reviewed in great detail by the Council and there is further discussion, exposition and consideration by the general membership of the Institute at annual and special meetings. For greater working efficiency and to broaden the practical consideration given to special problems, where the nature of a particular project lends itself to such treatment, advisory committees from the membership are designated to work with and review the work in progress, even prior to its being cast in definitive form for submission to the Council. If the specific project is a proposal for legislation, recommendations are submitted to the Legislature only after the complete deliberative processes of the Institute have been pursued to a conclusion.

No account or description of the Louisiana State Law Institute would be complete without a summary reference to some of the major completed projects of the Institute. The breadth of the Institute's responsibilities are such as to make a complete enumeration impracticable in these pages, but the following are mentioned:

(1) Compiled Edition of the Louisiana Civil Codes (1940).

Pursuant to the legislative mandate of Act 165 of 1938, the Editorial Committee appointed by the Governor under Act 286 of 1936, composed of Honorable Gaston L. Porterie, the late Judge William H. Byrnes, the late Secretary of State,

Eugene A. Conway, and Honorable John H. Tucker, jr., requested the Institute to undertake as its first major project, the preparation and publication of a Compiled Edition of the Louisiana Civil Codes. The Editorial Committee referred to had already been instrumental in founding the series known as Louisiana Legal Archives. Volume One of this series mentioned constituted the re-publication of the Projet of the Civil Code of 1825 prepared and submitted to the General Assembly in 1823 by Edward Livingston, Moreau Lislet, and Pierre Derbigny. Volume Two constituted the re-publication of the Projet of the Code of Practice of 1825.

The Legislature had directed in 1938 that the foregoing work be supplemented by publication of a Compiled Edition of the Louisiana Civil Codes containing, in addition to the text of the Revised Civil Code of 1870, the corresponding provisions of the Civil Code of 1825, and the Civil Code of 1808 in both French and English, together with the corresponding source articles or provisions of the Code Napoleon. The preparation of this material required four years of work by a research staff of the Institute under the direction of Professor Joseph Dainow, of the Louisiana State University Law School. The first half of the work was published in 1940 and the remainder in 1942 as Volume 3, Louisiana Legal Archives. The Compiled Edition achieved the task of making available to the profession the essential basic codal provisions required to trace the legislative history of particular articles of the Civil Code. It is considered that this re-publication of out-of-print and unavailable source materials of the substantive private law of Louisiana furnished the basic materials needed in any revival of civilian method or for further legal research in the civil law. The whole work met long-felt needs of the judge, the lawyer, the law student, and the legal scientist. Particularly helpful and

thorough were the extensive cross-references, concordances and indices. Equally important were such by-products as the systematic collection of the material errors of translation found in the Revised Civil Code of 1870 and the eventual preparation by the chief reporter of a compact one volume edition of the Civil Code for use by practitioners and law students. The former will be invaluable to further legislation designed to clarify and correct errors in the civil code and the latter has an important bearing upon civilian method in the legal profession in Louisiana.

(2) Louisiana Statutes Related to the Civil Code (1942).

In 1929, the Council directed that a compilation be made of all of the statutes dealing with matters now covered by the Civil Code but not actually integrated in the Code. Dr. Harriet S. Daggett was designated as reporter for this project. Her thorough knowledge of the substantive provisions of the Code and the related statutory material within the scope of the compilation resulted in the collection into one volume of the basic statutory materials bearing directly upon the subject matter of the Civil Code. This work when completed and published in 1942 supplemented the Compiled Edition of the Civil Codes. Its availability served to facilitate greatly the study of the basic law of Louisiana. The usefulness of this work was apparent in that the Revised Statutes of 1950 in Title 9 - Civil Code Ancillaries continues the plan of collecting in one source the statutes which must be considered together for integration in any approach to a future revision of the Louisiana Civil Code.

(3) An English translation of Planiol's Traité Élémentaire de Droit Civil in three volumes has been undertaken by the Institute. Volume one has been substantially completed and should be available for publication

in a matter of months from this writing. The initial work undertaken by the late Judge Pierre Crabites is being continued by Judge Robert L. Henry, formerly a member of the Mixed Courts of Egypt. Translation rights have been obtained from the French publishers and the carrying out of this project will provide in English one of the essential works needed in Louisiana to link our law with pertinent commentaries bearing upon the corresponding provisions of the French Civil Code.

(4) As its first major undertaking in the field of legislation the Institute, at the request of the Legislature, undertook and successfully carried out the preparation of a modern codification of the substantive law of crimes. The Louisiana Criminal Code was adopted as Act 45 of 1942, following two years of intensive work during which the major efforts and processes of the Institute were concentrated on its preparation. The initial draftsmanship was largely that of the three Reporters, Professors Dale E. Bennett of Louisiana State University Law School, Clarence J. Morrow of Tulane College of Law, and Leon Sarpy of Loyola University School of Law. The Code, prior to its adoption by the Institute as a recommendation to the Legislature, was subjected to the thorough scrutiny of the bar. The enactment of the Louisiana Criminal Code marked the adoption of the principle of codification in an area of the substantive law in which the work of Edward Livingston, the Louisiana codifier, failed to achieve such an objective. It will be recalled that Livingston had prepared a criminal code which did not gain legislative adoption, though its influence in the field of Criminal Law has been far-reaching. Competent experts in the field of criminal law consider the Louisiana Criminal Code of 1942 to be one of the better codes in the nation. The framers of the new Wisconsin Criminal Code have publicly acknowledged their indebtedness

to Louisiana for her leadership in this area of the law. ✓ Dr. J. Denson Smith, the Director of the Law Institute, has elsewhere set forth the significance of Louisiana's major accomplishment in the adoption of Louisiana's Criminal Code and has related the importance of this accomplishment to the entire task of improving Louisiana law. To that discussion and to other material on the same subject the reader is referred. ✓

(5) The Revision of the Statutes. The most comprehensive major project yet undertaken and accomplished by the Institute has been the revision of the general statutes of Louisiana. This work was directed by the Legislature by Act 42 of 1942. Louisiana has had no constitutional mandate such as exists in a number of states for the periodic recompilation and revision of the general statutes. The result was that, since the last revision of 1870, a period of eighty years, the general statutes of successive legislative sessions had not only made the Revised Statutes of 1870 obsolete in many of the provisions but also by the process of piling legislative act upon legislative act there was inevitably confusion, duplication, obsolescence, incongruity, and great uncertainty in the law. The legislative process itself was hampered and the difficulties of draftsmanship of legislation were necessarily multiplied. The need for the complete revision of the statutes was apparent.

The work was begun immediately after the 1942 session of the Legislature but the intervening war years necessarily prevented intensive work prior to 1945. From the end of the war until the adoption of the Revised Statutes of 1950 this project claimed the major attention of the Institute. Details of this project and the organization by which it was achieved are set forth in the report accompanying the "Project of Louisiana Revised Statutes of 1950" printed in Volume 1, of this edition of the

Revised Statutes, and need not be here repeated. ✓

The adoption of the Revised Statutes of 1950 at a Special Session of the Legislature in March of 1950 largely "on faith" was an expression of merited confidence in the work of the Institute, as was the action of Governor Long in calling the special session for that specific and limited purpose. ✓ In a project of such magnitude some degree of error was anticipated. It is significant, however, that the number of corrections that have been necessitated have been relatively few and the gain in clarity of the voluminous statutory law of the State has been great. The Revision of the Statutes was accomplished with the almost unanimous support of the legal profession and it is no understatement to say that the Revision is a major milestone in the development of a desired symmetry in Louisiana's statutory law of general application. ✓

As Director Smith has pointed out, the action of the Legislature in ~~mandating~~ <sup>direct</sup> the Institute to keep the Revised Statutes constantly revised, i.e. the provision for continuous revision of Chapter 5 of Title 24 is of significance equal to the revision itself. It is expected that the major part of the amendments to the Revised Statutes will now be drafted in a form so as simply to amend the appropriate section or sections of the Revision. The Revision in its influence upon the form of legislation will thus be self-integrating to a large degree. ✓ But new matter, not amendatory of specific provisions found in the revision requires integration under appropriate title and section numbers. ✓ It is in this sense that R.S. 24:251 provides that the Law Institute "shall direct and supervise the continuous revision, clarification and coordination of the Louisiana Revised Statutes," without altering the sense, meaning or effect of any act. ✓ In his last annual report

to the members of the Institute, the Director commented upon this phase of the Institute's responsibility:

"It is provided(R.S. 24:256) that the supplements prepared by the Institute shall be prima facie evidence of the laws contained therein. It is, of course, clear that if there should be any conflict between the Institute's revisions of such laws and the statutes themselves as enacted by the Legislature, the latter will prevail. This would follow from the fact that since the revisions will not have been adopted by the Legislature they will not supplant the legislative enactments. The provisions making them prima facie evidence is to provide for their usefulness in court proceedings. The same thing was done with respect to the Dart Statutes. There is, then, no basis for believing that the Institute, under the authority conferred, can change the law in any respect.

"In an effort to assure that future legislation may follow a correct and uniform style in both amending present sections and in adding new sections, a set of forms has been prepared for the use of all interested. These forms are being printed and they will be distributed by the Secretary of State. It is gratifying to report that a very live demand for them has already developed." HJ

In performing the direction to prepare the revision of the statutes the Institute adhered rigidly to the policy that it was no "super-legislature" charged with the responsibility of reexamining the policies underlying the statutes to be incorporated in the revision. Substantive changes, even where change might seem to be indicated, was considered beyond the Institute's mandate. This meant that <sup>in</sup> the work of preparing the revision many changes requiring legislative consideration should be noted but without the opportunity for immediate change in the revision. These necessary changes were included as "caveats" reported to the Legislature. HJ

A special legislative committee considered these matters and a total of some thirty-four bills were introduced in the 1950 Regular Session of the Legislature to achieve these needed improvements. The Revised Statutes in their entirety became effective May 1 of 1950. It is believed that this

work, coupled with the plan for continuous revision, will be lasting in its benefits and will permanently affect the form and clarity of legislation in Louisiana. ✓

(6) The Project of a New Constitution for Louisiana. During the five-year period from 1946 to 1951, concurrently with its monumental work on the revision of the Statutes, the Institute was engaged in the performance of another legislative mandate of great public interest - the preparation of a draft of a proposed new Constitution. This was a work going far beyond the field of the law into the science of government and public affairs. ✓ For its performance the Institute utilized a competent staff of political scientists under the capable direction of Dr. J. Kimbrough Owen of the Department of Government, Louisiana State University. ✓ This work is preliminary to solving one of Louisiana's major problems. ✓

Act 52 of 1946 directed the Institute to prepare a project or draft constitution with accompanying notes and studies, to be deposited in the archives of the State for the future use of any constitutional convention that may be called. Such a convention call was passed by the Legislature in 1950 but was repealed at a special session of the Legislature called for that purpose. The significance of the work of the Institute on this project did not lie in any expectation that the constitution so prepared would be adopted in its entirety. Rather its value consisted of the fact that the fundamental problems of State government involved in framing a constitution were systematically and thoroughly studied. ✓ Out of this study came a vast collection of useful material which should be of great benefit to any future constitutional convention. There was also developed the useful draft which can serve as a point of departure or a starting point for any future convention. ✓

The legislative direction to the Institute concerning this work was based upon a recognition that, to be effective, any revision of a State Constitution must be first preceded by adequate research into the problems of the particular government for which it is devised. Thorough analysis of the specific local needs based on the best available experience of the several states, as well as the views of authorities who have considered the structure of government with which a constitution deals, can be invaluable to the work of a convention.

Louisiana's present Constitution of 1921 has endured for thirty years. It is the longest of any State in the Union and partakes of the "prolixity of a legal code." No constitutional convention ever held in Louisiana has had adequate pre-convention studies designed to assist it in its work. Even if conditions should result in there being no convention to revise our constitution for many years, the analysis of the problems involved in constitution making for a sovereign state as reflected in the numerous research bulletins compiled in the course of this work would have made the work on this project worthwhile.

In its work on this project, the Institute was assisted by seven sub-committees under a coordinating general committee. The sub-committees dealt respectively with: (1) Bill of Rights, Suffrage and Elections; (2) The Legislature; (3) The Executive; (4) The Judiciary; (5) Finance, Revenue and Taxation; (6) Local Government; (7) Schedule and Miscellaneous.

A central research staff assisted the sub-committees in the compilation of necessary information and studies. Each sub-committee proposed drafts which were first received by the general committee and later by the Council of the Institute.

Throughout the work the Institute recognized that its conclusions and recommendations would, in no sense, be final as a determination of issues of policy that were involved. It was fully understood that in any matter as controversial as a constitutional revision affecting such a variety of interests, definitive decisions could not be made by a research group. The aim, therefore, was to provide the studies and information needed by the delegates to any convention to permit their intelligent consideration of the issues and the alternatives.

Further detailed consideration of the substantive issues involved is beyond the scope of this summary of the project. The project or final draft was completed in 1960. The supporting material reflected in the studies ranging over the entire field of the political scientist probably surpasses in extent and quality that made available for purposes of pre-convention study in other States. The Institute's work in this regard should be preserved by early publication of all of the studies and the efforts of the Institute are being directed to that end. It is believed that funds will be made available by the State for this purpose.

(7) Miscellaneous Statutory Developments. The emphasis that has been placed in the foregoing paragraphs upon certain major projects should not detract from numerous special legislative projects of a more limited character attributable to the Institute. The Institute has sponsored special legislation in varied fields for consideration by the Legislature. For example, a model non-profit corporation law was prepared and gained adoption as Act 455 of 1948 (now R.S. 12:101). Other significant enactments, particularly in the field of criminal law and procedure were likewise drafted by the Institute. Such statutes included: selection of

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 alternates jurors; defining the crime of false claims against the State; 35  
 conspiracies to defraud the State; the manner of charging certain crimes; 37  
 and dual office holding. Additional instances of this character might be multiplied in a number of areas.

The completion of the Institute's work on its last two major undertakings now makes it possible for the Institute to turn its undivided attention toward the performance of a new direction from the Legislature - that of preparing a proposed revision of the Louisiana Civil Code and a revision of the Louisiana Code of Practice. 38  
 The former is viewed as a long-range project. Any revision of the Civil Code must be preceded by the most thorough study and planning. 39  
 One of Louisiana's most competent scholars of the civil law has observed that "The prospective revision of the Louisiana Civil Code potentially will produce the most important document in the history of American private law." 40  
 The Institute, at the present writing, in discussions among the Council is exploring the means and organization to be established to carry out the tremendous responsibility entailed in the task of Code revision. This task will, no doubt, constitute the major work of the Institute for the next ten or fifteen years.

Preliminary work on the revision of the Code of Practice is now well under way with Dean Henry G. McMahon of the L.S.U. Law School and Professors Leon Hubert and Leon Sarpy of Tulane and Loyola Law Schools, respectively, serving as reporters. Louisiana's Code of Practice, when adopted in 1825, contained advanced ideas in the field of procedure some of which served as a model for the Code Pleading movement. The influence of carefully selected features from the new Federal Rules of Civil Procedure and certain procedural adaptations from the newer procedural codes of civilian and other jurisdictions, if assimilated into the Louisiana procedural code, should make

our system of pleading and practice an ideal system of adjective law. The work of the Institute in this interesting field has only begun. Its further progress will constitute one of the interesting chapters in the history of the Law Institute.

Of more than passing interest to the members of the legal profession is the undertaking by the Law Institute, at the request of the Louisiana State Bar Association, of a thorough review of the mineral law looking toward needed improvements. This branch of the law has been developed by judicial interpretation through a process of reasoning by analogy from a property system not designed to encompass the complexities in legal relations arising out of the oil and gas industry. Under the sponsorship of the Institute, a significant monograph dealing with the basic mineral law of the State has already appeared and further efforts for the clarification or codification of the mineral law, viewed as a long-range undertaking, may be expected from these efforts.

No evaluative report of the Institute and its work would be complete without specific mention of the splendid esprit de corps which has characterized each undertaking. The Institute has provided a practical outlet for the legal scholars in the law schools through which they can see the results of their work translated into legislative action. The bench and bar have come to have a better understanding of the law schools and the mutual efforts of all branches of the legal profession for the improvement of the law have merited for the Institute and its work a place of prestige and high esteem with the profession and with the law making bodies. To the membership of the Institute and to all of the officers who have participated in these

efforts the profession of the law in Louisiana and the public as well owe a debt of gratitude. The Institute has filled and is filling an important place in fostering and preserving the cultural influence of Louisiana's civil law heritage. The Institute is thirteen years young and looks forward to new vistas of accomplishment in the service of the law. Conceived originally as a local project, its influence now reaches in its noteworthy example into other states as well. At its founding, the President expressed the hope that "its accomplishments be equal to its opportunities and obligations." That same challenge remains. If the Institute meets that challenge as well in the next decade as it has in the first dozen years of its work, the cause of law reform in Louisiana will have been well served.

## FOOTNOTES

1. Tucker, The Louisiana State Law Institute, 1 La. L. Rev. 139 (1938); editorials in 1 La. L.Rev. 575(1939), 2 La. L. Rev. 156 (1939), 14 Tulane L. Rev. 89 (1939); 13 Tulane L. Rev. 120 (1938); Hebert, Louisiana State Law Institute - An Ideal Project, 25 J. Am. Jud. Soc'y 155(1942); Smith, Louisiana's Unique Adjunct to Law School Training, 1 J. Legal Educ. 600(1949); Daggett, The Louisiana State Law Institute, 22 Texas L. Rev. 29 (1943); Cleveland, Book Review, 17 Tulane L. Rev. 507 (1943). See also Proceedings of the First and Second Annual Meetings, Louisiana State Law Institute(Handbook 1941).
2. The progress of the Louisiana State Law Institute may be followed in detail and much pertinent data may be found by consulting the biennial reports of the Institute(1940, 1942, 1944, 1946, 1948, and 1950) and Handbook of the Louisiana State Law Institute(1941 and 1946).
3. For background in problems of Louisiana law and codification, see Morrow, Louisiana Blueprint: Civilian Codification and Legal Method for State and Nation, 17 Tulane L. Rev. 351, 537 (1943); Morrison, The Need for a Revision of the Louisiana Civil Code, 11 Tulane L. Rev. 213 (1937); Ireland, Louisiana's Legal System Reappraised, 11 Tulane L. Rev. 585 (1937); Comment, Stare Decisis in Louisiana, 7 Tulane L.Rev. 100 (1932); Symposium, (Daggett, Dainow, Hebert, McMahon): A Reappraisal Appraised: A Brief for the Civil Law of Louisiana, 12 Tulane L. Rev. 12 (1937); Morrow, The Proposed Louisiana Criminal Code - An Opportunity and a Challenge, 15 Tulane L. Rev. 415(1941); Morrow, The Louisiana Criminal Code of 1942 - Opportunities Lost and Challenges Yet Unanswered, 17 Tulane L. Rev. 1 (1942); Morrow, The 1942 Louisiana Criminal Code in 1945: A Small Voice From the Past, 19 Tulane L. Rev. 483A (1945); Rivet, Thoughts on the Legislative Process in Louisiana, 6 La. L. Rev. 63(1944).

For an extensive bibliography of materials on history and early development of Louisiana law, see Dainow, Civil Code of Louisiana (1947) at pp. XXXI-XXXVI; see also Groner, Louisiana Law, Its Development in the First Quarter Century of American Rule, 8 La. L. Rev. 350 (1948); Oppenheim, Louisiana's Civil Law Heritage, 42 L. Lib. J. 249 (1949).

4. Quoted from the draft of letter dated May 12, 1933, prepared by the President of Louisiana State University to be addressed to invited leaders of the Law Institute.

5. Quoted from the announcement by the President of the University at the dedication of the new law building, Louisiana State University, April 7, 1938.

6. See Franklin, The Historic Function of the American Law Institute; Restatement as Transitional to Codification, 47 Harv. L. Rev. 1367(1934).

7. For a description of New York's experience, see Mac Donald and Rosensweig, The Law Revision Commission of the State of New York: Its Organization, Procedure, Program and Accomplishment, 20 Cornell L. Q. 415 (1935).

8. Present officers are John H. Tucker, jr., Shreveport, President; Monte M. Lemann, New Orleans, Vice-President; C.C. Bird, Jr., Baton Rouge, Vice-President; LeDoux/<sup>R.</sup>Provosty, Alexandria, Vice-President; J. Denson Smith, Baton Rouge, Director; Paul M. Hebert, Baton Rouge, Secretary; Eugene A. Conway, Jr., Baton Rouge, Assistant Secretary; Charles F. Fletchinger, New Orleans, Treasurer.

9. 1 Louisiana Legal Archives, A Republication of the Project of the Civil Code of Louisiana of 1825 (1937).

10. 2 Louisiana Legal Archives, A Republication of the Project of the Code of Practice of Louisiana of 1825(1937).

11. 3 Louisiana Legal Archives, Compiled Edition of the Civil Codes of Louisiana, Part I (1940) and 3 Louisiana Legal Archives, Compiled Edition of the Civil Codes of Louisiana, Part II (1942).

11a. Dainow, Civil Code of Louisiana(1947).

12. Louisiana State Law Institute, Louisiana Statutes Related to the Civil Code (1942).

13. La. Act 7 of 1940.

14. See editorials by two of these authors contemporary with adoption of the Louisiana Criminal Code: Bennett, The Louisiana Criminal Code, A Comparison with Prior Louisiana Criminal Law, 5 La. L. Rev. 6 (1942) and Morrow, The Louisiana Criminal Code of 1942 - Opportunities Lost and Challenges Yet Unanswered, 17 Tulane L. Rev. 1 (1942). For a later comment, Morrow, The 1942 Louisiana Criminal Code in 1945: A Small Voice from the Past, 19 Tulane L.Rev. 463(1945).

15. The Wisconsin Legislative Council, in introducing in the legislature of that state a bill codifying its criminal law, wrote in an introduction and general comment to the bill: "The criminal statutes of other states were examined for new ideas in organization as well as substance. As far as the American states are concerned, this venture with one exception proved to be generally unprofitable. The exception is Louisiana. That state had a thorough going revision of its criminal statutes in 1942, and we are indebted to the Louisiana code for many of ideas on form, organization, and

substance." (Wisconsin Legislative Council, 1950 Report, Vol. VII, Judiciary - Part III Criminal Code, page ii).

16. Saith, How Louisiana Prepared and Adopted a Criminal Code, 41 J. of Crim. L. & Criminology 125 (1950).

17. Projet of the Louisiana Revised Statutes of 1950, 5 vols. (West Pub. Co., St. Paul, Minn., 1949).

18. The revision was adopted at a special session of the Legislature called by Governor Earl K. Long, and held between March 5 and March 15, 1950.

19. For an exposition of the significance and a substantive summary of the Revised Statutes, see Bennett, Louisiana Revised Statutes of 1950, 11 La. L. Rev. 4 (1950).

20. For further discussion of the effect of the revision of the drafting of legislation, see Bennett, Louisiana Revised Statutes of 1950, 11 La. L. Rev. 4, 18, 19 (1950).

21. For comparable developments elsewhere see Brossard, The Wisconsin Plan of Permanent Statute Revision, 9 Mo. B. J. 37 (1938); Corrick, The Establishment and Operation of the Office of Revisor of Statutes in Kansas, 9 Mo. B.J. 64 (1938); Cullen, The Advantages of A System of Continuous Statutory Revision, La. State Law Institute, The Revision of the Louisiana General Statutes, Exposé de Motifs (1946), p. 32.

22. The Institute successfully achieved the integration of the 1950 Legislation passed at the Regular Session, the work being under the supervision of the Council of the Institute and being performed by Carlos E. Lazarus whose contributions to the work of the revision as Reporter and as Assistant Coordinator/~~Contributor~~ added greatly to the quality of the revision.

23. Address by Director J. Denson Smith to the Louisiana State Law Institute Tenth Annual Meeting, Monroe, Louisiana, May 4, 1950.

24. See "Caveats for Future Legislative Consideration," collected in 5 Projet of the Louisiana Revised Statutes of 1950, pp. 967-983.

25. Space does not permit a personal acknowledgment of all who lent their professional skill and attainments to the achievement of the revision. For an account of the organization, the participants, the problems and policies, including an account of the assistance of the publishers of this annotated edition through the statutory plan ~~and~~ statute analysis furnished by them, see The Revision of the Louisiana General Statutes, Exposé de Motifs, published by the Louisiana State Law Institute in 1946, 1947, 1948, 1949, and 1950, being a collection of materials showing the development of the plan for the revision of the Louisiana General Statutes in accordance with Act 42 of 1942 and including the report to the Governor and the Legislature of 1950.

26. For a more complete account of the policies, personnel and the scope of research, see Louisiana State Law Institute, The Projet of a Constitution for the State of Louisiana, Exposé de Motifs (1949).

27. For a more detailed account of the Institute work on the draft constitution, see Tucker, *The Constitution Projet*, published in Louisiana State Law Institute, *The Projet of a Constitution for the State of Louisiana, Exposé de Motifs*, 7-11 (1942).

28. For a scholarly analysis of the inadequacy of Louisiana's present constitution, see Owen, *The Need for Constitutional Revision in Louisiana*, 8 *La. L. Rev.* 1 (1947).

29. See Owen, *Recent Constitutional Changes in State Government*, published in Louisiana State Law Institute, *The Projet of a Constitution for the State of Louisiana, Exposé de Motifs*, 23-26(1948).

30. Louisiana State Law Institute, *The Projet of a Constitution for the State of Louisiana* (1950).

31. For an account of the accomplishments of earlier conventions see Powell, *Louisiana's Early Constitutions*, published in Louisiana State Law Institute, *The Projet of a Constitution for the State of Louisiana, Exposé de Motifs*, 27-34 (1948).

32. *Op. cit.*, supra note 30.

33. For a listing of materials prepared by the research staff and for the titles of the research bulletings see Louisiana State Law Institute, *The Projet of<sup>A</sup> Constitution for the State of Louisiana, Exposé de Motifs*, 13-25 (1949).

34. La. Act 6 of 1940.

35. La. Act 15 of 1940.

36. La. Act 16 of 1940.

37. La. Act 57 of 1940.

38. La. Act 259 of 1940.

38a. La. Act 335 of 1948 directs the Law Institute to prepare projects of proposed revisions of both the Civil Code and the Code of Practice.

38b. For problems in code revision in France, see de la Morandière, *The Reform of the French Civil Code*, 97 U. of Pa. L. Rev. 1 (1948); Pascal, *A Report on the French Civil Code Revision Project*, 11 La. L. Rev. 261(1951), also 25 Tulane L. Rev. 205(1951).

39. Morrow, *An Approach to the Revision of the Louisiana Civil Code*, 10 La. L. Rev. 59 (1949); also, 23 Tulane L. Rev. 478(1949).

40. "Thus far, the courts have done an excellent job of fitting the pieces of the new picture into the old frame, but for every piece that is worked into the pattern, there are ten pieces yet to be found and arranged." Richardson, *Book Review: Louisiana Mineral Rights, rev. ed.(1949) by Harriet Spiller Daggett*, 11 La. L. Rev. 132(1950).