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The Louisiana Criminal Code

(ITS BACKGROUND AND GENERAL PLAN)

J. DENSON SMITH*

The Louisiana State Law Institute might well have viewed, with the dubious eyes of futility, the legislative mandate addressed to it in 1940 instructing it to prepare a draft or projet of the substantive criminal law of Louisiana.¹ Burdened with the memory of over a century and a quarter of fruitless attempts to reduce Louisiana's criminal laws to codified form, in fitting consummation of her devotion to codification so clearly perpetuated in the Louisiana Civil Code of 1825, it might well have felt that ultimate acceptance by the legislature of its projet would be a consummation too glorious to be wished. But the turn of events would have proved any such feeling unfounded. The ready adoption by the legislature of the Institute's Projet of a Criminal Code may fairly be taken as a reaffirmation by the legislature of its faith in the Institute as a method of effectuating improvement in the law. The germ of Livingston's idea to guide improvement through the submission of regular reports thus gives promise of fruition.²

Not only did Louisiana's adherence to the civilian principle of codification make its failure to adopt a criminal code anomalous,

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2. In the Preliminary Report submitted by Edw. Livingston, Moreau Lislet, and P. Derbigny of February 13, 1823, to the Legislature of Louisiana concerning a projet of the Louisiana Civil Code and the Code of Practice, the commissioners suggested that "progressively to perfect the system, the Judges are directed to lay at stated times, before the General Assembly, a circumstantial account of every case for the decision of which they have thought themselves obliged to recur to the use of the discretion thus given; while regular reports of the ordinary cases of construction, to be made by a commissioned officer, will enable the Legislative body to explain ambiguities, supply deficiencies and to correct errors that may be discovered in the Laws by the test of experience in their operation.

"By these means our Code, although imperfect at first, will be progressing towards perfection; it will be so formed that every future amendment may be inserted under its proper head, so as not to spoil the integrity of the whole; every judicial decision will throw light on its excellencies or defects. . . ." See 1 La. Legal Archives, p. XCII.

but the characteristic haphazard development of its criminal law structure tended to make codification inevitable. The wonder of it is that such a situation was allowed to continue so long.

Louisiana began with a makeshift penal system in 1805 when James Workman, under appointment by the first Territorial Legislature, presented to the legislature a general criminal statute which came to be known as the Crimes Act of 1805. That it was hurried, stop-gap legislation is clearly indicated by the fact that it provided a system of criminal law for Louisiana simply by denouncing as crimes a number of offenses and then saying that such crimes should be taken, intended and construed according to and in conformity with the common law of England. That is, for the definition of such offenses recourse was to be had to the English common law, about which at that time the people of Louisiana knew and could know practically nothing. It is significant that this method of law enactment was condemned by a constitutional provision which has survived since 1812.³

From 1805 through 1940 each successive session of the legislature has, by specific enactments, added to the growing body of criminal statutes. To use but one example of a common condition, through the 1940 acts of the legislature there were over fifty separate statutes covering larceny, fraud and false dealing alone. Many of these, and countless others, were drawn on the theory that every conceivable situation must be specifically mentioned. Contrary to the fundamentals of codification embodied in the Civil Code, these statutes contained lengthy enumerations of kinds of property and shades and degrees of conduct thus inviting omissions, discrepancies and contradictions. From the beginning, as the confusion increased, so did the need and desire for correction.

Attempts were made, more or less regularly, from soon after the adoption of the 1805 act until 1940 to remedy the situation by the adoption of a true criminal code. The closest approach to success was perhaps in 1825 when Edward Livingston's penal code failed of adoption by the legislature. Various subsequent attempts were made, the latter ones supported by a constitutional recognition of the need since 1898, but without result. The success of the Institute's draft may be attributed largely to the fact that the plan and procedure of the Institute were designed to enable it to produce proposed legislation that had been subjected to the scru-

3. See La. Const. of 1921, § 18.

tiny of many minds trained and conditioned by years of experience gained on the bench, at the bar and in the chair of the professor.

Because of the character of the particular project, the Institute appointed three reporters to be charged with preparation of the draft. One was selected from each of the three accredited Louisiana law schools.⁴ To assist the reporters by regular review of their work as it progressed, an advisory committee of ten members was created.⁵ This committee was made up of judges and practicing lawyers selected to provide a broadness of view particularly with respect to the practicalities of the administration of criminal justice. A special adviser was secured to further round out the plans for affording full review,⁶ and capable research assistants were provided.⁷

The work of the reporters began with a comprehensive survey of the criminal statutes and provisions of Louisiana and of the criminal law systems in force in a great many other jurisdictions both here and abroad. Advice was solicited from a large number of judges, practitioners and professors concerning plans and methods. Then followed the preparation of a detailed outline of the project. The actual work of drafting was accompanied by regular and frequent meetings of the reporters and their research assistants where the work of each would be thoroughly reviewed by the group. As portions of the draft reached preliminary form, meetings with the advisory committee and with the special adviser were held for further review and directive assistance. Finally, the draft being completed in preliminary form, it was submitted to the Council of the Institute. Over a period of several months every provision of the projet was exposed to lengthy debate before the membership of the Council. All lawyer members

4. The Reporters were Dale E. Bennett, Professor of Law, Louisiana State University Law School; Clarence J. Morrow, Professor of Law, Tulane University College of Law; and Leon Sarpy, Professor of Law, Loyola University School of Law.

5. The members were Judge Lester L. Bordelon, Bentley G. Byrnes, Judge Ben C. Dawkins, Warren Doyle, Frank W. Hawthorne, Judge Charles A. Holcombe, Leon D. Hubert, Jr., George M. Leppert, Judge John R. Pleasant, and Hon. Grove Stafford.

6. Newman F. Baker, late Professor of Law, Northwestern University School of Law, consented to act in this capacity and made two trips to Louisiana for the purpose of completing his review of the draft with the Reporters.

7. The research assistants were Albert S. Lutz, Jr., Beverly Hess, Max Zelden, and Herbert W. Waguespack, Jr. Special acknowledgment should be made of the outstanding service rendered by Albert S. Lutz, Jr., in his work with the legislature after the introduction of the draft.

of the legislature were invited to participate in these sessions. A continuous process of redrafting was followed by reconsideration by the Council.

After the draft had been approved by the Council it was then submitted to the general membership of the Institute. A tribute to the thoroughness of the work which preceded this submission was the fact that only a few minor changes were made at this general meeting, after which the draft was approved unanimously.

Distribution of the completed projet to the Governor, the Attorney General, and the members of the legislature was made well in advance of the 1942 session. At the same time copies were sent to all judges and district attorneys in the state and to lawyers interested in the practice of criminal law.

Following the introduction of the Code as a legislative bill in both houses of the legislature, public hearings were conducted by committees of both the Senate and the House acting jointly. The hearings resulted in the adoption of several amendments, none of which was significant as far as the general plan of the Code was concerned. Subsequently it was adopted by both branches and was approved by the Governor.

The Institute was mandated to prepare a codification of the substantive criminal law. In view of Louisiana's civil law background this could only mean that the projet was to constitute a true code and not a compilation of separate and independent statutes. The reporters followed faithfully this direction. Their consistent effort throughout was to avoid detail as much as the character of the subject would permit and by the choice of words and form of expression to achieve an internal homogeneity that would tend to assure uniformity of application. The ultimate essential was provided in prescribing principles of interpretation calculated to preserve the vitality of the Code as a complete expression of the basic criminal law.

The Louisiana State Law Institute is well aware that, notwithstanding the care that has attended the preparation of the Louisiana Criminal Code by the Institute and its consideration by the legislature, imperfections will surely be found to exist. The true significance of its adoption, however, lies perhaps in the fact that it provides a framework of criminal legislation modeled in obedience to principles of codification that have received the

test of centuries. As the need for change arises, the way is open to improvement freed from the danger of confusion through duplication, overlapping and inconsistency. Perhaps the Institute can participate in such improvement by rendering advisory assistance when future amendments are proposed. Its duty to do so is acknowledged.