

Louisiana Law Review

Volume 45 | Number 5
May 1985

Forum Domesticum: The Louisiana State Law Institute - History and Progress

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Repository Citation

William E. Crawford, *Forum Domesticum: The Louisiana State Law Institute - History and Progress*, 45 La. L. Rev. (1985)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol45/iss5/12>

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Forum Domesticum

THE LOUISIANA STATE LAW INSTITUTE— HISTORY AND PROGRESS

*William E. Crawford**

HISTORY

At the dedication of the new law building at Louisiana State University on April 7, 1938, the President of the University made the following announcement:

. . . 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.¹

The late Dean Paul M. Hebert, longtime Secretary of the Institute, gave the earlier details of the origin of the Institute as follows: The legislative recognition referred to in this announcement was forthcoming with the adoption by the Legislature of Act No. 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

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1. 17 La. R.S. 38-39 (West 1951).

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 Attorney General of the State of Louisiana, was active in his support of the project and in securing passage of the necessary legislation.

Thus, the Louisiana State Law Institute came into being by virtue of legislative action now designated as Louisiana Revised Statutes Title 24:204, *et seq.* The general purposes for which the Institute was chartered are "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."

ORGANIZATION AND STRUCTURE

The governing body of the Institute is its Council, composed of both ex-officio members and elected members. Ex-officio members are from the Supreme Court of Louisiana, the Louisiana Courts of Appeal, the Louisiana District Courts, the federal judiciary, the Attorney General of the State of Louisiana, the Executive Counsel to the Governor, and members from both the Senate and the House of Representatives of the State of Louisiana; the President of the Louisiana State Bar Association, and the Chairman of the Young Lawyers Section thereof; the Deans of the four Louisiana law schools, the officers of the Institute, and Louisiana lawyers serving on the Council of the American Law Institute, on the Board of Governors of the American Bar Association, and in the House of Delegate of the American Bar Association.

The elected membership is made up of three faculty members from each of the four law schools, and nineteen practicing attorneys of the State of Louisiana.

The general membership of the Institute consists of 150-175 lawyers licensed to practice in the State of Louisiana and who have practiced at least 10 years, elected by the Council. There are also inactive, ex-officio, junior, and honorary members of the general membership.

An Executive Committee consisting of the officers of the Institute and the chairmen of the standing committees oversee the business of the Institute when the Council is not in session.

THE LAW INSTITUTE PROCESS

Most of the Law Institute revision proposals have originated in a request from the Legislature, as was the case with the Code of Procedure and the Civil Code. The idea may come from any source, however, so

long as the Council thinks it a good idea worthy of the Institute investment and suitable in nature for our type of work.

First a reporter is secured, whether from the faculty or from the practicing Bar, so long as he is expert in the subject. An advisory committee of from 10 to 15 members of the practicing bar, the legislature, and the judiciary is formed to serve with the reporter. A research assistant from the Institute staff is assigned to work with the reporter to the conclusion of the project.

The reporter will ordinarily formulate his own ideas of the substantive content of the project. This is discussed and clarified with the advisory committee and the results of their combined consideration is submitted to the Council in a "principle and policy question" session to determine the general direction of the project, so that the committee will not work out in detail a final draft of a particular scheme, only to find out that the Council in its wisdom thinks it better to work the problem out in a completely different way.

The substantive work itself then proceeds in much the same fashion, with the reporter formulating basic draft proposals for the committee's consideration which, after such committee meetings as are necessary are held to consider and approve the proposals, are then heard by the Council.

After the Council has debated and approved the proposal, the Semantics Committee and the Coordinating Committee (if it is a Civil Code matter) review the work and make such semantical and other coordinating corrections as are necessary. If the Coordinating Committee finds that there is serious conflict within the work itself or between the work and other existing portions of the Civil Code, it may be necessary to go back to the Council to settle the conflict.

Once the proposal has been completely reviewed, and approved by the Council it is put in the form of a legislative bill and tendered to the House Civil Law and Procedure Committee. Any one, or any number, of legislators may sign the bill as sponsors and introduce it into the legislative process as though it were a bill drawn entirely at their instance. Traditionally, the bill has the identifying caption "on Recommendation of the Louisiana State Law Institute."

When the bill is scheduled for committee hearing, the reporter appears to explain the bill, as to why it is necessary, why it is a good proposal substantively, and must present and defend the specific provisions of the proposal. It is this presentation and defense by the reporter that constitutes the entire effort of the Institute to have its proposals adopted. There is no lobbying in the traditional sense of addressing specific legislators and enlisting their specific aid in support of the bill.

The same process would be followed whether it was an entirely new proposed substantive work of law, or whether it was the correction or amendment of an existing body of law, such as the amendment of the Mineral Code to accommodate provisions for the mining of lignite.

THE WORK OF THE INSTITUTE

Act 165 of the legislature of 1938 provided for publication by the state of a compiled addition of the Civil Codes of Louisiana, containing the texts of the Civil Code of 1870, Civil Code of 1825, the Civil Code of 1808, and corresponding articles of the code Napoleon to be designated as part of the Louisiana Legal Archives. The project was completed under the direction of Professor Joseph Dainow of the L.S.U. Law School, with the assistance of Professor Eugene A. Nabors of the Tulane University School of Law, Professor Leon Sarpy of the Loyola University School of Law, Judge Sam E. LeBlanc, and Messers. E.E. Dubuisson and Sidney L. Herold as advisors.

In 1942 the Institute completed the compilation of statutes related to the Civil Code, prepared by Professor Harriet S. Daggett of the L.S.U. Law School, assisted by Judge Rene A. Viasca and Messers. C.C. Bird, Jr., Wilburn V. Lunn and Sumter D. Marks as advisors. This compilation was of fundamental use in the preparation of Title 9 of the Louisiana Revised Statutes of 1950.

By special mandate of the Legislature, Act No. 7 of 1940, the Institute undertook and completed the "Projet of A Criminal Code for the State of Louisiana" which was adopted by the legislature by Act 43 of 1942. The projet was prepared by Professor Dale E. Bennett of the L.S.U. Law School, Professor Clarence J. Morrow of the Tulane University School of Law, and Professor Leon Sarpy of the Loyola University School of Law, assisted by an advisory committee of outstanding legal figures in the state of Louisiana.

There followed in 1948 the adoption by the legislature, as Act 455 of 1948, a model non-profit corporation statute, prepared by the Institute and eventually included in the Revised Statutes of 1950 as Chapter 2 of Title 12. This work was entrusted to Mr. John Wisdom of the New Orleans Bar, now Judge of the United States Fifth Circuit Court of Appeals.

A work of major proportions, revising the general statutes of the state, was assigned to the Institute by Act 42 of 1942. This project was culminated by the adoption of the Louisiana Revised Statutes by Act 2 of the first extra session of 1950. It was significant that a procedure was legislatively enacted for keeping the revision of the statutes up-to-date. In an effort to assure that laws amending the revised statutes would be prepared in the form of amendments to the sections of the revision, it was required that all subsequent legislation be keyed to the revision by appropriate section numbers. The supervising of the integration of new legislation with the revised statutes has been entrusted to the Institute under the provisions of La. R.S. 24:251, *et seq.*

As directed by Act 52 of 1946 the Institute prepared a draft or projet of a new constitution for Louisiana and submitted it to the Governor, the Attorney General, and the legislature. There followed a continuous and episodic effort in the State of Louisiana to revise its

constitution, with the heavy involvement of the Institute at every step. When the constitution of 1974 was produced by the constitutional convention, the Institute performed the task of putting into statutory form a large number of provisions deleted from the former constitution.

The 1964 session of the legislature, by Act No. 338, adopted the trust code prepared by the Institute with Professor Leonard Oppenheim of the Tulane University Law School as Reporter.

In 1956 the legislature, by Act 87, instructed the Institute to undertake the preparation of a projet for the Code of Criminal Procedure. The project was begun in 1958 and the completed work was adopted by the 1966 session of the legislature as Act No. 310.

The legislature in 1948, by Act No. 335 gave the Law Institute two of its most significant endeavors in charging the Institute to prepare projets of proposed revisions of both the Louisiana Civil Code and of the Louisiana Code of Practice. Under the joint efforts of Professor Henry G. McMahan of the L.S.U. Law School as Reporter and Co-ordinator, and Messers. Leon D. Hubert, Jr. and Leon Sarpy of the New Orleans Bar, as Reporters, the projet of the Louisiana Code of Civil Procedure was presented to the legislature and adopted by Act No. 15 of 1960.

Act 50 of 1974 adopted into law a comprehensive Mineral Code which had been in the course of preparation for a number of years. The project was initiated, with the concurrence of the Mineral Law Section of the Louisiana State Bar Association, by Professor Eugene Nabors of Tulane, and was completed by Professor George W. Hardy, III, then of the L.S.U. Law Faculty.

During the 1975-76 legislature, funds were appropriated to the Institute to initiate the long awaited revision of the Civil Code. Some preliminary work had already begun, in that Professor A.N. Yiannopoulos in 1962 was appointed Reporter for a revision of Civil Code Book II, relating to property. but it was only after the 1975 appropriation of sufficient funds to approach the revision on an organized basis that significant work was begun in a fashion calculated to complete the revision within a reasonable time. Thus far, the following substantial segments of revision have been completed within the Civil Code:

- Acts 1976 No. 103 Personal Servitudes
- Acts 1977 No. 169 Boundaries
- Acts 1977 No. 170 Building Restrictions
- Acts 1977 No. 514 Predial Servitudes
- Acts 1979 No. 709 & 710 Matrimonial Regimes
- Acts 1980 No. 150 Partnership
- Acts 1982 No. 187 Acquisitive Prescription and Possession
- Acts 1983 No. 173 Liberative Prescription
- Acts 1984 No. 331 Obligations

While the work of the Institute was going forward with the adoption of the foregoing major portions of the Civil Code revision, numerous items of legislation were prepared both as special projects and as part

of the continuous revision procedure for the various codes that the Institute has prepared, such as a complete revision of the provisions for jury trials in the Louisiana Code of Civil Procedure, adopted by the legislature as Act No. 534 of 1983; and a substantial revision of the Private Works Act, adopted by the legislature as Acts 1981, No. 724.

THE OVERALL PROCESS OF CODE REVISION BY THE INSTITUTE

When the Institute in 1976 tendered to the legislature for its consideration the proposed revision of the Civil Code title covering usufruct, use and habitation, it reflected the thinking that so long as completed segments of the revision were severable from the balance of the code the revision should be presented to the legislature for adoption in order that the citizens of the State of Louisiana should as early as possible have the benefit of the revised and improved law.

This general approach has been used for the subsequent segments of the revision as they have been completed. It was a particularly difficult decision to continue with this approach as the massive work of revising the provisions relating to Obligations came to completion. It was decided that the assimilation and integration of the new law of Obligations would be more difficult if only portions of it were enacted and hence the entire revision project was tendered to the legislature as a single proposal. The legislature in its wisdom in viewing the massiveness of the proposal held it over for a year in order that the legislature, the bar, the public, and all interested groups, might have an opportunity to review the work and report to the legislature in committee hearings their feelings and reactions to the revision. The legislature in the immediate following session adopted the entire revision.

Viewing the desire of the legislature to study intimately the provisions of the Obligations revision, together with the subsequent successful and virtually unanimous adoption of the revision, the judgment of the Institute in going forward with each segment of code revision as it is completed is fully vindicated.

Professor Yiannopoulos, one of the scholars in the revision effort, has described the Institute Civil Code revision as follows:

In 1908, the Louisiana Legislature appointed a commission of three prominent attorneys and charged them with the task of preparing a revision of the Civil Code. A Code proposed by this commission, however, was rejected by the legislature at the insistence of the Bar Association. In 1948, the Louisiana State Law Institute, an official law reform agency for the state, was specifically instructed by the legislature to prepare a projet for the revision of the Civil Code. In due course, the Institute implemented the legislative mandate by the creation of a Civil Law Section and by the appointment of Reporters and Advisory Committees.

Faced with the responsibility of Code revision, the Louisiana State Law Institute considered two possible approaches. One possibility would be an effort at bringing the text of the Code up to date in the light of judicial precedents and special legislation bearing on civil law matters. Modifications in language and style could be worked out but no major changes in organization and policies. This would be a relatively easy task to accomplish, and perhaps, better than nothing. The alternative was substantial revision of the Civil Code with regard to structure, determination of policies, and drafting of new provisions. Redrafting of the Louisiana Civil Code as a whole, however, appeared to be a task of such magnitude that might well await a new generation of Louisiana lawyers. Attention was thus focused on the possibility of partial revision, namely, revision of the law governing certain institutions that might qualify for independent consideration. Although a civil code is an integrated piece of legislation and, in principle, does not lend itself to piecemeal adoption or revision, there are examples in history which tend to confirm the effectiveness of partial revision. Moreover, concentration on specific areas of interest has often resulted in the drafting of comprehensive legislation designed to replace obsolete rules. In the light of these considerations, the Louisiana State Law Institute decided to proceed to the revision of individual titles and chapters of the Civil Code.

The entire Book II of the Civil Code, "Things and the Different Modifications of Ownership", consisting of Titles I (Things), II (Ownership), III (Personal Servitudes), IV (Predial Servitudes), V (Building Restrictions), and VI (Boundaries), was revised by a series of legislative acts between 1976 and 1979. Title VII, Chapter 2 (Of Legitimate Children), of Book I of the Civil Code was revised in 1976. The Preliminary Title (General Dispositions) and Title I (Of Successions), Chapters 1, 2, and 3, of Book III of the Civil Code were revised in 1981; Titles III (Obligations in General) and IV (Conventional Obligations or Contracts) of Book III were revised in 1984; Title VI (Matrimonial Regimes) was revised in 1979; Title XI (Partnership) was revised in 1980; Title XXIII (Occupancy and Possession) was revised in 1982; and Title XXIV (Prescription) was revised partly in 1982 and partly in 1983.

Partial revision does not necessarily commit itself to the preservation of the present organization of the Louisiana Civil Code. For example, a revised law of property may well fit in any scheme that might be adopted later. The main advantage of this approach is that it enables the Institute to proceed to revision immediately, without fruitless deliberations on the abstract question of the form of the Civil Code. By the time a limited project is completed, it will be for the Institute to decide whether recommendation should be made to the legislature for immediate

adoption or whether recommendation should be delayed until completion of other interrelated projects. It may be expected that the whole work will be the product of evolution; it will rest on tested values and will retain the accumulated wisdom of the past within the scheme of a modern, scientific, comprehensive and comprehensible organization of the subject matter.²

There remains now to be assigned as major projects the section on Offenses and Quasi-Offenses, and other smaller, specific sections. The completion of the Civil Code Revision project will proceed as quickly as funds and expert reporters are found for these unassigned sections.

2. La. Civ. Code 1985 Ed., West p. XIII, XXVI-XXVII.