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Two Critical Years in the Life of the Louisiana Civil Code: 1870 and 1913*

A.N. Yiannopoulos**

INTRODUCTION

The Tucker Lecture presents the lecturer with a unique opportunity to abandon the daily preoccupation with narrow legal questions within his chosen field and to embark upon the exploration of a topic without definite boundaries in the legal realm. The typical leading article, commentary, monograph, or treatise may thus give way to an *essay*, that is, a composition of an historical, analytical, or interpretative kind, dealing with the subject in an informal way and from an intimate and personal point of view.¹ In this essay, the pages of Louisiana legal history will be turned back and focused first on the adoption of the Louisiana Civil Code of 1870—the Civil Code still in force as amended and partially revised—and then on the ill-fated attempt at revision of that Code in 1913. Coincidentally, these dates are significant in world history as well as Louisiana history due to profound social, economic, and political developments. The year 1870 is the threshold to the modern world,² while the year 1913 signals the approach of World War I and the end of American isolationism.

This essay will reexamine the conditions prevailing in these two years—brief moments in the vastness of the time scale—and selectively trace the evolution of social, economic, political, and legal institutions from 1870 to 1913. The question of whether the Civil Code was affected by social change or whether the Civil Code brought about social change is unavoidable. However, this question will be dealt with interstitially

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** Eason-Weinmann Professor of Comparative Law, Tulane University. The author wishes to express thanks to Ms. Camille Bienvenu Poché and Ms. Deborah Pearce-Reggio for their dedication and assistance in historical research and in the preparation of the manuscript.

1. See the Oxford Book of Essays, Introduction xix (John Gross ed., 1991); Webster's New World Dictionary of the American Language 647 (2d College ed. 1980). An essay has also been described as "a loose sally of the mind." Oxford Book of Essays, *supra*, at xix.

2. See Maurice Bruce, *The Shaping of the Modern World 1870-1914* 1-25 (1958).

only, because the main thrust of the essay is a narrative of historical events. The occasional comments and explanations that accompany the narrative have not been meant to propound a thesis.

THE LOUISIANA CIVIL CODES

The current edition of the Louisiana Civil Code contains a Foreword by John H. Tucker, jr., in which the Louisiana juriconsult³ tells his "brethren of the legal profession in Louisiana":

Here is the latest edition of the most important book in your library, the "Civil Code of Louisiana." It is your most important book because it ushers you into society as a member of your parents' family and regulates your life until you reach maturity. It then prescribes the rules for the establishment of your own family by marriage and having children, and for the disposition of your estate when you die, either by law or by testament subject to law.

It tells how you can acquire, own, use and dispose of property onerously or gratuitously.

It provides the rules for most of the special contracts necessary for the conduct of nearly all of your relations with your fellowman: sales, loans (with or without security), leases, usufructs, and servitudes; and, finally, all of relations with your neighbor and fellowman generally.⁴

The Louisiana Civil Code of which the noted jurist speaks was enacted into law on March 14, 1870,⁵ and is frequently referred to as the "Revised Civil Code" or the "Louisiana Civil Code of 1870." It replaced the Louisiana Civil Code of 1825,⁶ which in turn had replaced the "Digest of the Civil Laws Now in Force in the Territory of Orleans, with Alterations and Amendments Adapted to its Present Form of Government,"⁷ also

3. See A.N. Yiannopoulos, John H. Tucker, Jr., *The Juriconsult*, 45 La. L. Rev. 1011 (1985).

4. La. Civ. Code, xix (A.N. Yiannopoulos ed., West 1992).

5. See 1870 La. Acts No. 97.

6. On the Louisiana Civil Code of 1825, see generally Rodolfo Batiza, *The Actual Sources of the Louisiana *Projet* of 1823: A General Analytical Survey*, 47 Tul. L. Rev. 1 (1972); Samuel B. Groner, *Louisiana Law: Its Development in the First Quarter-Century of American Rule*, 8 La. L. Rev. 350, 375 (1948); A.N. Yiannopoulos, *The Civil Codes of Louisiana*, in La. Civ. Code xxiii, xxx (A.N. Yiannopoulos ed., West 1992).

7. On the 1808 Digest, see generally, Rodolfo Batiza, *The Louisiana Civil Code of 1808: Its Actual Sources and Present Relevance*, 46 Tul. L. Rev. 4 (1971); Rodolfo Batiza, *Sources of the Civil Code of 1808, Facts and Speculation: A Rejoinder*, 46 Tul. L. Rev. 628 (1972); Louis Baudouin, *The Influence of the Code Napoleon*, 33 Tul. L. Rev. 21 (1958); George Dargo, *Jefferson's Louisiana: Politics and the Clash of Legal Traditions*

known as the "Louisiana Civil Code of 1808."⁸ The circumstances under which the Louisiana Civil Code was adopted in 1808 and revised in 1825, and the matters of the nature, sources, and impact of the two codes have given rise to a rich literature in Louisiana, the United States, and abroad.⁹ However, relatively little has been written about the 1868-1869 revision and the adoption of the Louisiana Civil Code of 1870. Apparently, there has been an unwillingness to dwell upon the painful memories surrounding the adoption of the Civil Code that certain contemporary Louisianians had branded as the "Carpetbagger Code." The few scholars who researched the events surrounding the adoption of the 1870 Code minimized the impact of the revision. In fact, one author concluded that:

The Code of 1870 is substantially the Code of 1825 with these changes: (1) Elimination of all articles relating to slavery; (2) incorporation of all Acts, amendatory of the Code, passed since 1825; (3) the integration of Acts passed since 1825, dealing with matters regulated by the Code, but not specifically amending it.¹⁰

THE 1868-1869 REVISION

Soon after the adoption of the 1868 Louisiana Constitution, the legislature passed an Act providing for the appointment of a joint legislative committee charged with the duty to select

105-174 (1975); Henry P. Dart, *The Sources of the Civil Code of Louisiana*, 13 Rep. L.B.A. 21 (1911); Henry P. Dart, *The Influence of the Ancient Laws of Spain on the Jurisprudence of Louisiana*, 6 Tul. L. Rev. 83 (1931); Joseph Dainow, *Moreau-Lislet's Notes on Sources of the Louisiana Civil Code of 1808*, 19 La. L. Rev. 43 (1958); Mitchell Franklin, *Some Observations on the Influence of French Law on the Early Civil Codes of Louisiana*, in *Livre-Souvenir des Jounées du Droit Civil Francais* 833 (1936); Mitchell Franklin, *The Place of Thomas Jefferson in the Expulsion of Spanish Medieval Law from Louisiana*, 16 Tul. L. Rev. 319 (1942); E.T. Merrick, *The Laws of Louisiana and Their Sources*, 3 Alb. L.J. 268 (1871); Robert A. Pascal, *Sources of the Digest of 1808: A Reply to Professor Batiza*, 46 Tul. L. Rev. 603 (1972); F.F. Stone, *The Reception of Law in Louisiana* 141-147, in *Legal Thought in the United States of America* (John N. Hazard & Wenceslas J. Wagner eds., 1970); Joseph M. Sweeney, *Tournament of Scholars over the Sources of the Civil Code of 1808*, 46 Tul. L. Rev. 585 (1972); Albert Tate, *The Splendid Mystery of the Civil Code of Louisiana*, La. Rev. (Revue de Louisiana) Winter 1974, at 1.

8. See A.N. Yiannopoulos, *Louisiana Civil Law System*, Part I 31 (1977).

9. See *supra* note 6.

10. John H. Tucker, jr., *Source Books of Louisiana Law*, 6 Tul. L. Rev. 280, 295 (1932). See also Charles E. Fenner, *The Genesis and Descent of the System of Civil Law Prevailing in Louisiana*, Introduction to Kimball A. Cross, *Successions* vii, xxv (1891): "The Code of 1825 was again revised under legislative authority in 1870, but that revision consisted merely in the embodiment of amendments and laws previously passed, and was a simple work of clerical compilation."

some suitable person or persons, whose duty it shall be, under the supervision and direction of said committee, to revise the statutes of the State of a general character, to simplify their language, to correct their incongruities, to supply their deficiencies, to arrange them in order, and to reduce them to one connected text, with the view to their adoption as the Revised Statutes of the State.¹¹

State Senator John Ray, a member of the Monroe Bar, was entrusted with the work of the revision of the statutes. Subsequently, by a joint resolution dated October 21, 1868, the legislature instructed the joint legislative committee "to select one or more commissioners to revise the Civil Code and the Code of Practice at the same time and to report to the General Assembly at its next regular session."¹²

Again, John Ray was entrusted with the revision of the Louisiana Civil Code and the Code of Practice. However, he employed "one of the ablest and most experienced lawyers in the State,"¹³ Isaiah Garrett, to take charge of the revision of the Civil Code. After the plan of the revision was adopted, this gentleman proceeded to make the revision with the assistance of Franklin Garrett, "a ripe scholar and experienced lawyer,"¹⁴ and Colonel F.A. Hall, "who attended to the correction of the Proof Sheets."¹⁵ In order to bring the revision of the statutes and codes before the General Assembly in a shape in which it could be "conveniently examined,"¹⁶ the legislature authorized the printing of the draft statutes and codes. Each projet was printed at the office of the *Louisiana Intelligencer*, a Monroe newspaper originally owned by John Ray.¹⁷ The projet of the Civil Code was submitted to the General Assembly with John Ray's brief report, dated December 27, 1869.¹⁸

11. 1868 La. Acts No. 31. The act was received in the governor's office on August 17, 1868. However, the governor did not return the act to the House in which it had originated within the time prescribed by the Constitution and it acquired the force of law without the governor's approval. *Id.* at 40. Note by the Secretary of State.

12. 1868 La. Acts No. 182.

13. John Ray, Report to the Joint Committee on the Revision of the Civil Code, dated December 27, 1869, in the Civil Code of the State of Louisiana viii (1869).

14. *Id.*

15. *Id.*

16. 1869 La. Acts No. 131, approved April 28, 1869.

17. See E. Russ Williams, John Ray: Forgotten Scalawag, 13 La. Stud. 241, 249 (1974).

18. See Ray, *supra* note 13, at vii. The title page of this publication reads: "The Civil Code of the State of Louisiana, Revised, Arranged, and Amended by the Hon. John Ray, Reviser of the Statutes and Codes, Under the Supervision of the Joint Committee of Revision: Hon. C. W. Lowell, Chairman, Hon. Hugh J. Campbell, Hon. W. F. Blackman, Hon. Frank Morrey, Hon. C.B. Pratt, in Accordance with the Acts, Nos. 31 and 182 of 1868, and No. 131 of 1869, for the Use of the Members of the General

After the revisions were "made and accepted," the legislature provided for John Ray's compensation—\$25,000 for the Revised Statutes, \$15,000 for the Civil Code, and \$10,000 for the Code of Practice—and also made provisions for the printing of the new legislation under his supervision.¹⁹

John Ray's report to the Joint Committee on the Revision of the Statutes and Codes (consisting of a mere two pages) tells little of the process of revision. John Ray states that "it was found impossible to preserve the numbers of the Articles of the Code,"²⁰ that "[i]t became necessary also to correct the translation of many articles derived from the Code Napoleon,"²¹ and that "[m]any new articles had been introduced, drawn from the legislative enactments since the adoption of the Code of 1825."²² His brief report concludes with credits for the work carried out by Isaiah Garrett and his assistants.²³

It appears that the changes contained in the 1869 projet were routinely adopted by the legislature.²⁴ No record has been found of any debate or proposed amendments. There is evidence, however, that the provisions of the 1869 projet are not identical to those of the Louisiana Civil Code of 1870.²⁵

On March 14, 1870, the legislature approved Act No. 97, which adopted the Code of 1870.²⁶ The new Code was not bound with the

Assembly. Monroe, La. Printed at the Office of the 'Louisiana Intelligencer,' 1869."

The typography of the projet was of poor quality and received critical comments from newspaper editors. The Ouachita Telegraph commented that the printing was "so obscure as to defy the natural sense aided and assisted by clear light and strong glasses." The Ouachita Telegraph, May 14, 1870, quoted in Williams, *supra* note 17, at 249.

The New Orleans Times editorialized: the revised statutes projet "is printed in the backwoods by a brother of Ray's, on a broken down country press, in a style . . . to be called 'the unprinted law of Louisiana,' and very common law at that." Ouachita Telegraph's reprint of the Times editorial, quoted in Williams, *supra* note 17, at 249.

19. 1870 La. Acts No. 95, approved March 16, 1870.

20. Ray, *supra* note 13, at vii.

21. *Id.*

22. *Id.*

23. *Id.* at viii.

24. See Annotations by Joseph Dainow in the Compiled Edition of the Louisiana Civil Codes, 3 Louisiana Legal Archives (1940). A search for variations between the suggested changes in the 1869 projet and the corresponding provisions of the Louisiana Civil Code of 1870 did not disclose any. Unfortunately, Professor Dainow did not include the provisions of the 1869 projet in his concordance tables.

25. See, e.g., La. Civ. Code art. 138 (1870), additional paragraph enacted by 1870 La. Acts No. 76.

26. 1870 La. Acts No. 97, Note by Secretary of State; La. Civ. Code, iii, 428 (1870), approved March 14, 1870. On the same day Act No. 96, which adopted the Revised Statutes, and Act No. 98, which adopted the Code of Practice, were approved.

John Ray compiled a digest of the statutes of Louisiana in two volumes. See Digest

laws of that year but instead was printed separately²⁷ at the office of *The Republican* in New Orleans in the same form as other legislative acts²⁸ in a 503-page volume.²⁹ The title page of the official edition of the Civil Code reads: "The Revised Civil Code of the State of Louisiana."³⁰ It was promulgated in the English language only in conformity with the 1868 Constitution.³¹

POLITICAL SETTING OF THE REVISION

The 1868-1869 revision of the Louisiana Civil Code was carried out in the midst of the Reconstruction.³² Louisiana was occupied by federal troops and "army commanders directed and controlled Louisiana's entire political and economic life, and to a certain degree, the cultural and social life of her people."³³ Yet, it was not the federal authority but the Louisiana Legislature, dominated by radical Republican elements, that ordered the revision and adopted Act No. 97 of 1870. That Act was signed by Mortimer Carr, Speaker of the House of Representatives, Oscar Dunn, Lieutenant Governor and President of the Senate, and Henry Clay Warmoth, Governor. Who were these men? Who was John

of the Statutes of the State of Louisiana in Two Volumes (Ray 1870). (By Authority, New Orleans: Printed at the Republican Office, 19 Camp Street, 1870.) John Ray's Report to the Senate and the House of Representatives is dated January 2, 1871. *Id.* at ix.

27. 1870 La. Acts No. 95, Note by the Secretary of State.

28. The Code was printed "By Authority" at the office of *The Republican*, 91 Camp Street, New Orleans, under the heading "The Revised Civil Code of the State of Louisiana." The preamble to Act 97 states: "An Act to amend and re-enact the Civil Code of the State of Louisiana, including, besides all other matters embraced in said Civil Code, the several objects set forth in the Table of Contents here annexed and made part of this title, to wit:". 1870 La. Acts No. 97, printed separately as La. Civ. Code (1870). After the Table of Contents, it is stated: "*Be it enacted by the Senate and the House of Representatives of the State of Louisiana, in General Assembly Convened*, That the Civil Code of the State of Louisiana is amended and re-enacted so as to read as follows, to wit: [Articles 1 through 3556]." *Id.* at xii.

29. See La. Civ. Code (1870), I-XII (Preamble), pp. 1-428 (Articles 1 through 3556), pp. 431-503 (Index).

30. See *supra* note 28.

31. See La. Const. of 1868, art. 109. See also La. Const. of 1864, art. 103. Earlier Louisiana constitutions required promulgation of laws in both French and English. See La. Const. of 1852, art. 129.

32. The Reconstruction is generally thought to be the period from June, 1865, that is, from the surrender of General Edmund Kirby Smith, until April, 1877 when the United States Army left Louisiana. See Edwin A. Davis, *Louisiana, A Narrative History* 266 (1961). Cf. Joseph G. Dawson III, *Army Generals and Reconstruction* 3 (1982) ("In Louisiana, Reconstruction began in 1862 and ended in 1877."); Joe G. Taylor, *Louisiana Reconstructed, 1863-1877* (1974) (dating Reconstruction from 1863 to 1877); Ted Tunnell, *Crucible of Reconstruction* 2 (1984) (stating that Reconstruction began in 1862).

33. Davis, *supra* note 32, at 266.

Ray? Why did the Louisiana Legislature choose to revise the Civil Code of 1825 rather than repeal it entirely?

Contrary to the popular belief that the Louisiana Civil Code of 1825 made scant reference to slaves and slavery, the Code was replete with provisions governing the status of slaves and the rights of slave owners, as well as provisions excluding application of specific articles to slaves. Slavery permeated the Civil Code and negated the pretensions for liberty, fraternity, and equality. In this light, comparisons between the Napoleonic Code and the Louisiana Civil Code of 1825 ring hollow like a cruel joke. By 1868, the Louisiana Civil Code was in disarray as a result of amendments, repeals, and conflicts with constitutional provisions, and the references to slaves and slavery in the Civil Code were constant reminders of the past.

In 1868, approximately thirty percent of the members of the State House of Representatives were black, either former slaves or freemen, and of the thirty-eight members of the State Senate, seven were black.³⁴ The great majority of both chambers of the legislature consisted of radical Republican elements who, one would assume, had little sympathy for the pre-war social, economic, political, or legal order. Under the circumstances, abolishing the Civil Code of 1825 and adopting the common law that prevailed in northern states would appear to be the simplest solution for the legitimation, preservation, and expansion of the radical ideals. However, no such proposal seems to have been made, formally or informally. On the contrary, the 1868 Legislature provided the legal framework for, and promptly proceeded to, the completion of Code revision. The explanation for this development may be sought in inertia, the fear of the unknown, the timidity of members of the legislature, a social conservatism of the otherwise radical elements, and in several other considerations. I suspect, however, that the moving force must be sought, and will be found, in the role of the lawyers who were members of the 1868 Legislature. These "Legal *Honoratiros*"—to use Max Weber's terminology³⁵—were the men who opted for Civil Code revision, and prominent among them were Henry Clay Warmoth and John Ray.

The *Dictionary of Louisiana Biography* identifies Henry Clay Warmoth (1842-1931) as an Illinois-born, Missouri-educated "carpetbag-

34. Id. at 270; Taylor, *supra* note 32, at 174; Charles Vincent, *Black Legislators in Louisiana During Reconstruction* 71 (1976). On the rise of African-Americans to positions of political importance in Louisiana during Reconstruction, see also Davis, *supra* note 32, at 267-68.

35. See Max Weber, *On Law in Economy and Society* 52, n.25 (Max Rheinstein ed., Max Rheinstein & Edward Shils trans., 1954).

ger."³⁶ Warmoth came to Louisiana with the Union Army. He was dishonorably discharged by General Grant but was later reinstated by President Lincoln. In 1865, Warmoth opened a law office in New Orleans and entered the political arena. He soon took the lead in organizing the Louisiana Grand Army of the Republic and was chosen its first Grand Commander in 1868. In the same year, he was elected State Governor and served until December 9, 1872.³⁷ On that date, the legislature impeached him and suspended him from office. P.B.S. Pinchback, a native of Georgia who had been elected President of the State Senate after the death of Lieutenant Governor Dunn on November 22, 1871, became Warmoth's successor and Louisiana's first and only black governor. Denying the legality of the impeachment proceedings, Warmoth refused to appear to answer the charges against him and did not surrender the keys to the safe in his office. Pinchback did not succeed in opening the safe which contained the records of the governor's office, and matters remained at a standstill until the gubernatorial inauguration of Vermont-born William Pitt Kellog on January 14, 1873.³⁸

It has been said that the worst evils of the entire Reconstruction period began with the Warmoth administration.³⁹ "Factional politics plagued the state and each faction stole as much money as possible."⁴⁰ In an interview, Warmoth is supposed to have said: "I do not pretend to be honest. . . . I only pretend to be as honest as anyone in politics. . . . [E]verybody is demoralized down here. Corruption is the fashion."⁴¹ Warmoth became "practically a dictator through his control of the Legislature and his extraordinary police powers."⁴² In addition, Warmoth became a very rich man. In 1873, a federal investigating committee reported about Warmoth: "He has been governor for four years, at an annual salary of \$8,000, and he has testified that he made far more than \$100,000 the first year, and he is now estimated to be worth from \$500,000 to \$1,000,000."⁴³

Oscar James Dunn (1821-1871) was born in New Orleans, "the son of a free woman of color."⁴⁴ He had been an apprentice in the plasterer's

36. 2 A Dictionary of Louisiana Biography 825-26 (Glenn R. Conrad ed., 1988) [hereinafter Dictionary]. It is interesting to note that Warmoth makes no mention of the revision of the Civil Code in his autobiography. See, in general, Henry C. Warmoth, *War, Politics and Reconstruction* (1930).

37. Dictionary, *supra* note 36, at 826.

38. Davis, *supra* note 32, at 270-71.

39. *Id.* at 270. See also Taylor, *supra* note 32, at 196-202 (discussing the corruption rampant in Louisiana during the Warmoth administration).

40. Davis, *supra* note 32, at 270.

41. *Id.*

42. *Id.* On Warmoth's use of the Metropolitan Police as "a state militia under the Governor's control," see Taylor, *supra* note 32, at 177-78.

43. Davis, *supra* note 32, at 273.

44. Dictionary, *supra* note 36, at 268.

trade and a music instructor prior to his involvement with politics in 1865. He associated himself with the "customhouse" faction of the Republican Party, which supported civil rights, and was elected Lieutenant Governor in 1868. He died of natural causes while in office on November 22, 1871.⁴⁵

Missouri-born John Ray (1816-1888) studied at Transylvania University, clerked for Judge L.F. Lamy in Ouachita Parish in 1835, and was admitted to the Louisiana Bar in 1839.⁴⁶ He was elected to the State House of Representatives under the banner of the "Know-Nothing" Party and served from 1844 until 1850. In that year, Ray won a seat in the State Senate and kept it until 1854. His main occupation until 1864 was that of a plantation owner. It was only when his slaves left him in 1864 as a result of the Emancipation Proclamation that Ray became a full-time politician. In 1865, he ran for and was elected to the United States House of Representatives by an electorate that thought him to be a Union man, but Congress refused to seat him. In 1867, he became a member of the Executive Committee of the National Reconstruction Party of Louisiana, the radical wing of the Republican Party. This earned him the scalawag qualification.⁴⁷

At the time, Ray "was distrusted by the Conservatives and was not fully accepted by the Republicans."⁴⁸ In 1868, however, he won a seat in the State Senate and became "a driving force in that first radical government."⁴⁹ Ray went to the Senate as a Warmoth supporter, served on several key legislative committees, and authored legislative acts which made Warmoth a virtual dictator and were later given the name of "Quinumvirate Laws."⁵⁰ It was during his tenure as State Senator that Ray was elected to revise the statutes and codes of Louisiana. Subsequently, however, he abandoned the Warmoth bandwagon and associated himself with the forces of William Pitt Kellog. When Kellog became Governor in 1873, John Ray was recompensed with an appointment to the United States Senate to serve the unexpired term of Kellog. For the second time, however, he was denied his seat in the United States Congress.⁵¹

John Ray cannot be regarded as a great Louisiana jurist. His claim to fame is the publication of the *Digest of the Laws of Louisiana*—

45. *Id.* at 268-69.

46. See Williams, *supra* note 17. See also Dictionary, *supra* note 36, at 673; 5 Appleton's *Cyclopedia of American Biography* 192 (James G. Wilson & John Fiske eds., 1891); *New Orleans Daily Picayune*, March 5, 1888.

47. See Williams, *supra* note 17.

48. *Id.* at 244.

49. *Id.* at 247.

50. *Id.*

51. *Id.* at 258.

not an original work. As an attorney, he became known for his representation of Myra Clarck Gaines in her celebrated litigation against the United States. In fact, a Louisiana judge once referred to John Ray as "that eminent lawyer."⁵² *The New Orleans Times*, however, viewed him more as a "mere up country swamp lawyer."⁵³ John Ray has been credited with the revision of the 1870 Civil Code, but in truth, he only revised, with the assistance of his brother, Robert, the revised statutes. Ray died inauspiciously in 1888. His biographer concludes: "His adopted parish and its citizenry chose not to remember him at all, as did the state in general His political life seems to have been more negative than positive."⁵⁴

THE STRUCTURE, STYLE, AND SUBSTANCE OF THE 1870 CODE

After the 1868-1869 revision, the Louisiana Civil Code emerged as the primary depository of private law in the state and as a charter for justice, equality, and liberty in the private relations of all persons.

The Civil Code resembled the Code Napoleon in its structure, style, and substance, but it had its own unique identity as a product of the Louisiana legal and cultural history. The Louisiana Civil Code of 1870 contained 1,275 more articles than the Code Napoleon.⁵⁵ The provisions that had no equivalent in the Napoleonic Code had been drawn from the Justinian legislation, Spanish sources, French doctrinal works, and Louisiana statutes enacted since 1808. Some of these statutes had introduced into the fabric of the civil law ingenious solutions, such as the usufruct of the surviving spouse in community.⁵⁶ Quite apart from these textual variations, however, the Louisiana Civil Code differed from the Napoleonic Code in its approach to the fundamental matter of

52. T.C.W. Ellis, *The Louisiana Bar, 1813-1913*, in *Centenary of the Supreme Court of Louisiana*, 133 La. Ann. lxvi, lxxiii (1913).

53. Williams, *supra* note 17, at 253. The editors of the *New Orleans Times* were particularly critical of John Ray's juridical craftsmanship because it appeared that Act No. 96 of 1870, which enacted the Revised Statutes into law, repealed the 1855 criminal laws without providing for the effective date of the legislation that was intended to replace the old laws. In their view, there was fear that Louisiana had "no statutes to punish criminals, and that it ha[d] become a paradise of criminals and cutthroats and murderers, with none to make them afraid." *Id.* at 249. Indeed, a New Orleans district attorney released some notorious offenders. The Louisiana Supreme Court, however, quieted all fears by holding that the repeal of the 1855 laws occurred the moment the new legislation acquired the force of law. *Id.* at 249-50.

54. Williams, *supra* note 17, at 262.

55. The Louisiana Civil Code of 1870 contained 3556 articles, while the Code Napoleon contained only 2281 articles. Most of the articles that had no equivalent in the Napoleonic Code were added to the Louisiana Civil Code in the 1825 revision. See generally Batiza, *supra* note 6.

56. See 1844 La. Acts No. 152; La. Civ. Code art. 916 (1870).

sources of law. The extreme legal positivism of the Code Napoleon that has elevated legislation to the status of the single source of law may be contrasted with the genius of the Louisiana Civil Code that has always recognized custom as an authoritative source of law⁵⁷ and equity as a source for the resolution of disputes in the absence of a positive law or custom.⁵⁸

Having been purged of the evils of slavery, the Louisiana Civil Code of 1870 could, and did, exert a profound cultural influence in the United States and abroad. Being, perhaps, the most Romanist civil code ever enacted anywhere,⁵⁹ it was a natural model for the drafting, style, and substance of civil codes in Latin America, including the Argentine Civil Code which itself became a model for other civil codes.⁶⁰ More than one hundred articles of the Louisiana Civil Code of 1870 became part of the Puerto Rico Civil Code.⁶¹ In the Caribbean Basin, the Civil Code of Santa Lucia was influenced by the Louisiana Code,⁶² and the influence of the Preliminary Title of the Louisiana Civil Code on the Civil Code of Spain is apparent.⁶³

The cultural influence of the Louisiana Civil Code of 1870 on the common law of sister states and on federal law has not been syste-

57. See La. Civ. Code art. 3 (1870); cf. La. Civ. Code art. 3, as revised by 1987 La. Acts No. 124.

58. See La. Civ. Code art. 21 (1870); cf. La. Civ. Code art. 4, as revised by 1987 La. Acts No. 124.

59. See, e.g., La. Civ. Code arts. 448-461 (1870) (distinctions of things); id. arts. 2779-2792 (emphyteusis); id. arts. 3176-3181 (antichresis); id. arts. 3412-3425 (occupancy); id. arts. 3426-3456 (possession). See also Peter Stein, Judge and Jurist in the Civil Law: A Historical Essay, 46 La. L. Rev. 241, 255 (1985), quoting Maine's description of the Louisiana Civil Code of 1825 as "of all republications of Roman law, the one which appears to us as the clearest, the fullest, the most philosophical and the best adapted to the exigencies of modern society."

60. By a twist of fate, the Argentine Civil Code in turn deeply influenced the revision of the Louisiana Civil Code in the field of Conventional Obligations. See La. Civ. Code arts. 1756-2057, as revised by 1984 La. Acts No. 331.

61. See M. Rodriguez Ramos, Interaction of Civil Law and Anglo-American Law in the Legal Method in Puerto Rico, 23 Tul. L. Rev. 1, 20 (1948), quoting from the unpublished notes of Dr. Luis Munoz Morales on the history of Puerto Rican Law: "Many changes were introduced in the text of the Spanish Code, especially in the First Book, and the greater part of those changes was aimed at incorporating in our civil law many provisions of the Civil Code of Louisiana, which incidentally, were taken from the revised edition of 1870, older than the Spanish Code . . ."

62. See N.J.O. Liverpool, The History and Development of the Saint Lucia Civil Code, in Essays on the Civil Codes of Quebec and St. Lucia 303 (Raymond A. Landry & Ernest Caparros eds., 1984). For the influence of Louisiana law on the law of Quebec, see generally E. Fabre-Surveyor, The Civil Law in Quebec and Louisiana, 1 La. L. Rev. 649 (1939).

63. Compare Spanish Civil Code arts. 1-7, as revised in 1973 and Louisiana Civil Code arts. 1-23 (1870).

matically studied, but scattered information suggests that the influence is real and significant. Mitchell Franklin wrote in 1932:

The Civil Code of Louisiana is the most important contribution of Louisiana to an American culture. It possibly is the most important accomplishment in the history of American law in the sense of the relation it bears to the future direction of American law . . . It is a rather grim commentary on our historians that the significance of the Louisiana Civil Code has been completely overlooked . . . As a cultural document, the Civil Code has its own merit. It is beautifully written, so carries the best tradition of civilian aesthetics.⁶⁴

On several occasions, Colonel Tucker pointed out that the decision of the United States Supreme Court in *Bender v. Pfaff*,⁶⁵ grounded on Louisiana community property law, led the federal government to the adoption of the joint return as the mode for the income taxation of spouses.⁶⁶ As late as 1990, a spouse argued before the United States Tax Court that New Mexico had adopted as part of its law the Louisiana law of usufruct, and, therefore, a surviving spouse is entitled to the QTIP marital deduction.⁶⁷ The court denied the claim, but remedial state legislation may be forthcoming to secure the QTIP advantage for citizens of New Mexico.

SOCIETY IN 1870 AND THE CIVIL CODE

In order to gauge social change, it is necessary to identify the important characteristics of the structure of Louisiana society and econ-

64. Mitchell Franklin, Book Review, 7 Tul. L. Rev. 632, 633 (1933) (reviewing Benjamin W. Dart, *Civil Code of the State of Louisiana* (1932)). See also Roscoe Pound, *The Influence of the Civil Law in America*, 1 La. L. Rev. 1, 16 (1938).

As a product of this era, the Louisiana Civil Code has been justly considered to be an achievement of juridical craftsmanship and has been hailed as:

The most precious heritage which we have received from our ancestors . . . , the filtered residuum, strained and expressed from the accumulated wisdom and experience of large bodies of human race, stretching over vast tracts of time, amongst peoples of various stocks and living under differing conditions and environments, illuminated by the genius of Paul, Ulpian and Papinian, of Grotius Bynkershoek and Puffendorff, of Dumoulin, Domat and Pothier, purged from all impurities of caste, privilege and monopoly, and permeated and saturated throughout by divine spirit of Justice, Liberty, and Equality.

C.P. Fenner, *The Civil Code of Louisiana as a Democratic Institution*, Proc. of the La. B. Ass'n 7 (1904).

65. 282 U.S. 127, 51 S. Ct. 64 (1930). The court held that marital income in Louisiana could not be taxed wholly to the husband but should be divided equally between the spouses and taxed accordingly.

66. See John H. Tucker, jr., *The Code and the Common Law in Louisiana*, 29 Tul. L. Rev. 739, 762-63 (1955).

67. See *Estate of Doherty v. Comm'r of Internal Revenue*, 95 T.C. 446, 464 (1990).

omy before the change. Let us then turn the pages of history back to 1870, the "watershed" year.⁶⁸

The adoption of the Louisiana Civil Code on March 14, 1870, not only failed to make the front pages of the dailies, but it seems to have been altogether ignored as a non-event. In New Orleans, the citizenry was preoccupied with shows, crime, balls, and spicy political events. The *New Orleans Daily Picayune* reported on March 14, 1870, that two young men of the city were involved in a duel with small swords. One of them received a severe wound in the right arm whereupon the second intervened and the encounter ended. Gentlemen were urged to secure their ladies' invitations for the mask and fancy ball on Saturday night, and readers were encouraged to buy a whole ticket in the next drawing of the Louisiana lottery. Great plans were announced for the celebration of St. Patrick's Day, and readers were informed that a writ of attachment had been issued against Alfred Marchand, ex-auditor of the state who had absconded with \$58,534.25 of the state's money.⁶⁹

Nineteenth-century America was a nation of small farms, and the family was the most important unit of production in the countryside. In developing towns and cities, the most important unit of production was the family shop or the family firm.⁷⁰ Usually the entire family contributed labor to the enterprise and parents as well as children looked to the farm, the shop, or the firm for their livelihood. The ownership of the farm or other enterprise secured a claim to economic freedom and advancement as well as avoidance of the hardships of manual labor in another person's farm, shop, firm, or household.

There was little formal education, and most skills were transmitted within the family unit. Only a few crafts and professions required schooling, apprenticeship, or both. In 1870, only two percent of the population graduated from high school in the United States, and institutions of higher education "conferred a total of 9,372 degrees, of which 9,371 were bachelor's degrees and exactly one was a doctorate."⁷¹

At that time, the United States had a population of 38,000,000 living predominately in rural areas. On the national scene, by 1870 a railroad network spanning the sub-continent had been completed, the trend toward urbanization had gained momentum, and the United States was beginning to enter the era of rapid industrialization. Oil was discovered in 1859; by 1865 millions of barrels had been exported; and in 1870 Rockefeller's Standard Oil Company was founded. In 1876 Al-

68. See Bruce, *supra* note 2.

69. See generally *New Orleans Daily Picayune*, March 14, 15, and 16, 1870.

70. See generally John H. Langbein, *The Twentieth-Century Revolution in Family Wealth Transmission and the Future of the Probate Bar*, 14 *Prob. Law* 1 (1988).

71. *Id.* at 13.

exander Graham Bell invented the telephone, in 1879 Thomas Edison invented the incandescent bulb, and by 1882 the first electric power plant was operating in New York.⁷²

In Europe, Germany's and the continent's destiny was being shaped by Bismarck. On July 19, 1870, France was misled into declaring war against Prussia. Within one month, Emperor Napoleon III was taken prisoner with 80,000 men of his army, France collapsed, and Bismarck triumphed. After the fall of Paris in 1871, a treaty of peace was signed at Versailles that humiliated the vanquished and confirmed France's loss of Alsace and Lorraine. On that occasion, the King of Prussia was crowned German Emperor in the Grand Hall of Mirrors at Versailles. It was in 1870 that Italy was unified and Rome became capital of the state. Britain was well into the Victorian era, and Disraeli's star was shining. In the world at large, however, ominous clouds were gathering with the rise of nationalism and socialism. Japan inaugurated conscription in 1872, France in the same year, and Russia in 1874.

The legal institutions of the Louisiana Civil Code of 1870 mirrored social attitudes and provided the legal framework for the realization of legitimate aspirations in the private sphere. A brief description of the coverage of the Civil Code, book-by-book, is illustrative.

Book I of the Civil Code, "Of Persons," dealt first with the distinctions of persons, such as male and female, minors and adults, legitimate and illegitimate children, and competents and incompetents. Then the law governing domicile, absentees, marriage and divorce, separation from bed and board, parents and children, minority and emancipation, curatorship, masters and servants, and corporations was expounded in an orderly fashion according to the civilian tradition. The legal rules corresponded with the patriarchal structure of society prior to the Industrial Revolution. Divorce rates were low; women were an insignificant part of the labor force away from the family economic unit; the female-headed, one-parent family was a rarity; and informal cohabitation went by the name of concubinage.⁷³ Nevertheless, certain provisions in the Code were already at odds with the family structure and the dignity of women, especially married women. For example, family meetings were already a memory only, and Article 25 of the Civil Code continued to disqualify women from public office or the performance of public functions in the absence of a legal provision specifically conferring competence upon them.⁷⁴

72. See Bruce, *supra* note 2, at 699-712.

73. See La. Civ. Code art. 1481 (1870), repealed by 1987 La. Acts No. 469.

74. See La. Civ. Code art. 25 (1870). This article was amended by 1921 La. Acts No. 33 to read: "Men and women are capable of all kinds of engagements and functions, except where the law declares to the contrary, and unless disqualified by reasons and causes applying to particular individuals." This provision was repealed by 1987 La. Acts No. 125.

Book II of the Louisiana Civil Code of 1870, titled "Of Things, and of the Different Modifications of Ownership," included the fundamental precepts of the Louisiana property law and regulated selectively a number of institutions.⁷⁵ This Book dealt with the law of things, ownership, usufruct, habitation, rights of use, and predial servitudes. Possession was relegated to Book III along with acquisitive prescription and prescription of nonuse, which are, respectively, methods of acquisition and loss of real rights. Likewise, rents of lands, and rights of real security, in spite of their unambiguous characterizations as real rights, were dealt with in Book III. The Code was occupied predominately with immovable property which, at the time of its promulgation, was clearly the foundation of wealth. Movables were dealt with scantily and certain sources of riches, like intellectual property, were not regulated at all.⁷⁶

Book III, "Of Different Modes of Acquiring the Ownership of Things," contained the law governing successions and donations, obligations (conventional and delictual), matrimonial regimes, certain special contracts, real security, occupancy, possession, and prescription. These legal institutions were shaped decisively by scholars in European universities since the end of the Middle Ages and, in the absence of drastic social change, they were still fit for the ordering of the life of citizens.⁷⁷ Indicatively, the law of torts was grounded in the principle of liability for fault and was contained in ten short articles that exhausted the subject matter. The need for liability without negligence had not been felt, liability insurance did not exist, and worker's compensation laws had not been enacted anywhere.⁷⁸

Succession to property occurred typically upon the death of a parent and most frequently upon the husband's death. In Louisiana, the widow was protected by the community property regime, the usufruct of the

75. See A.N. Yiannopoulos, *Civil Law Property* § 6 (3d ed. 1991).

76. Cf. Charles Reich, *The New Property*, 73 *Yale L.J.* 733 (1964).

77. See R.E. Milling, *The Plan of the Code Revision*, Rep. of the La. B. Ass'n 111, 112 (1909):

Yet, when we consider the rules for governing human conduct laid down in the Code Napoleon and find that those same rules are largely copied *verbatim* in our Civil Code, and consider the conditions existing at the time of the adoption of the Code Napoleon, and think that more than a century has elapsed since that time, the wonder is that so few changes are necessary.

Id.

See also Franklin, *supra* note 64, at 638-39: "Undoubtedly the Code is not as obsolete as a system based on English law of the XVII century because Roman law as developed at the draughting of the Louisiana Civil Code anticipated many present day American problems, due to the complexity of Roman and continental European society."

78. Cf. Vernon V. Palmer, *In Quest of a Strict Liability Standard Under the Code*, 56 *Tul. L. Rev.* 1317 (1982); Ferdinand F. Stone, *Tort Doctrine* § 59 (1977).

surviving spouse, the privilege of the necessitous widow, and the necessitous widow's marital portion. Intestate succession was the rule, but even in the rare case of a testamentary succession, the widow's interest was normally a usufruct that assured the continuity of the enterprise by the children and prevented a confusion of property and family lines. Widowhood was less common than today because the wife was less likely to survive the husband, and when she did, it was not for very long because longevity was not what it is today.⁷⁹ Since the death of parents usually occurred earlier, the successors were often minor children or young adults rather than middle-aged men and women. There was no great need for parents to accumulate savings for their old age, there was little need for children to provide for their parents' mature old age, and there were no private pension funds. Wealth was not converted into annuities that terminate upon the death of the annuitant and leave nothing for his successors. Inheritance and estate taxes did not exist, estate planning had not yet been invented, and trust and trust estates were not tolerated within the framework of Louisiana civil law.⁸⁰

LAW AND SOCIAL CHANGE

The question of whether written law merely mirrors society or is an instrument for social change has been a recurring one at least since the days of Plato and Aristotle. The answer to this question depends, of course, on philosophical orientation, personal predilections, and the accepted meaning of the word *law*, the object of legal philosophy. Law has been defined as a series of official acts,⁸¹ rules of conduct prescribed by the supreme power in the state,⁸² rules laid down by the courts,⁸³ prediction of what courts will do,⁸⁴ an instrument of social

79. See Langbein, *supra* note 70, at 7.

80. See Leonard Oppenheim & Sidney P. Ingram, *Trusts* § 24 (1977).

81. See Karl N. Llewellyn, *The Bramble Bush* 12 (1st ed. 1930) (emphasis deleted)

This doing of something about disputes, this doing of it reasonably, is the business of law. And the people who have the doing in charge, whether they be judges or sheriffs or clerks or jailers or lawyers, are officials of the law.

What these officials do about disputes is, to my mind, the law itself.

82. See 1 Sir William Blackstone, *Commentaries on the Law of England* 44 (1865), defining law as "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong."

83. See John C. Gray, *The Nature and Sources of the Law* 84 (2d ed. 1931): "The Law of the State or of any organized body of men is composed of the rules which the courts, that is, the judicial organs of that body, lay down for the determination of legal rights and duties."

84. See Benjamin N. Cardozo, *The Growth of the Law* 52 (1924): "A principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged, is, then, for the purpose of our study, a principle or rule of law."

control,⁸⁵ or as a coercive force,⁸⁶ to mention only some of the better known definitions.⁸⁷

According to some of these theories of law, social change, though inevitable, is not a prime concern of the legal system. The purpose of the law is to reflect the existing social order and to guarantee its preservation.⁸⁸ However, according to other theories that acquired prominence in the first part of the twentieth century, law is itself a powerful instrument for social change.⁸⁹ Leaving extreme positions aside, we should accept as true the proposition that written law, and particularly a civil code, reflects the existing legal order. As a justice-oriented instrument of order, it guides social conduct and leads in an orderly fashion toward social change.⁹⁰ By the process of doctrinal and judicial interpretation,

85. See Roscoe Pound, *An Introduction to the Philosophy of Law* (1954): Should attention be focused on what law is supposed to accomplish, law might be described as a social institution to satisfy social wants—the claims and demands involved in the existence of civilized society—by giving effect to as much as we may with the least sacrifice, so far as such wants may be satisfied or such claims given effect by an ordering of human conduct through politically organized society [I]n legal history [there is] the record of a continually wider recognizing and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence—in short a continually more efficacious social engineering.

Id. at 47.

86. See Hans Kelsen, *General Theory of Law and State* 19, 123 (1945). A predisposition to see law as force, and to keep it free from moral elements, may result in statements that “law is a coercive order” and that “it regulates human behavior by providing an act of coercion as sanction.” *Id.*

87. These descriptive approaches to law contain elements of truth, but they do not satisfactorily resolve the question concerning the essence of law. Kant has stated that law is a proposition containing categorical imperative. See Immanuel Kant, *The Metaphysics of Ethics* 190 (Semple trans., 1936). Bentham said that the essence of law is simply the words used by the lawmakers. See Jeremy Bentham, *The Limits of Jurisprudence Defined* 88 (Everett ed., 1945). Austin stressed the law as the command of a sovereign will. See John Austin, *Lectures on Jurisprudence, or, the Philosophy of Positive Law* 3 (1874). St. Thomas Aquinas located the essence of law in an act of the lawmaker’s intellect. See St. Thomas Aquinas, 2-1 *Sum. Theol.* 90, 4.

88. This was the driving force for the enactment of the Code Napoleon. See Yiannopoulos, *supra* note 8, at 22; A.N. Yiannopoulos, *A Tale of Two Codes: The Code Napoleon and the Louisiana Civil Code*, in *Napoleon in America* 195, 198 (Holtman ed., 1988).

89. See *supra* notes 5-6.

90. Last year’s Tucker Lecturer observed:

If, in fact, a legal system controls a wide network of human relations, it inevitably interacts with the broader culture, sometimes shaping it, sometimes shaped by it. The flows of influence vary over time; and, although they are not likely ever to be perfectly symmetrical, to the extent a legal system is

and exceptionally, by legislative amendment, civil codes continue to mirror and promote social change.⁹¹

FADING OF THE FRENCH LANGUAGE AND CULTURE

The Louisiana Civil Code of 1808 was originally drafted in French, translated into English, and published in both French and English.⁹² Likewise, the 1825 Code was published in both French and English.⁹³ Both versions were official. The enabling statute of the 1808 Code had provided that in the event of "obscurity or ambiguity, fault, or omission, both the English and the French texts shall be consulted, and shall mutually serve to the interpretation of one and the other."⁹⁴ The enabling statute of the 1825 Code, however, merely required printing of the Civil Code in French and English on facing pages and made no provision for the resolution of conflicts between the two texts.⁹⁵ Under the circumstances, courts taking cognizance of the fact that the French text was the original version, and being aware of the poor quality of the English translation, developed the view that the French text was controlling. This almost dictated that the Louisiana legal profession be familiar with French legislation, jurisprudence, and doctrine.⁹⁶ As a result, the French legal culture enriched the Louisiana civilian tradition, especially in the half century after the 1825 revision.

In conformity with the 1868 Constitution, the Louisiana Civil Code of 1870 was published in the English language only.⁹⁷ By that time, the

effective, it will also infuse its norms into the values of the larger culture in which law is embedded.

Walter F. Murphy, *Civil Law, Common Law, and Constitutional Democracy*, 52 *La. L. Rev.* 91, 93 (1991).

91. There are variables which, as John Stuart Mill said, are so "inextricably interwoven with one another" that disentangling the effects each has on the others or isolating the impact a variable has on the resolution of the issue may be an impossible undertaking. See John Stuart Mill, *A System of Logic Ratiocinative and Indicative* VII, Chapter 10 in *Collected Works of John Stuart Mill* (J. Robson ed., 1973).

92. See *La. Civ. Code* (1808).

93. See *La. Civ. Code* (1825).

94. 1808 *La. Acts* No. 29.

95. See "[A][N] A[CT] T]o provide for the printing and the promulgation of the amendments made to the civil code of the state of Louisiana," approved April 12, 1824. 1824 *La. Acts* No. 172.

96. See Sidney L. Herold, *The French Language and the Louisiana Lawyer*, 5 *Tul. L. Rev.* 169 (1931); Note, *Civil Codes—Control of the French Text of the Code of 1825*, 3 *La. L. Rev.* 452 (1941).

97. See *supra* note 31. Since the 1870 Code was published in English only, argument could be made that the question concerning the resolution of conflicts between the French and English versions is moot. The prevailing view in Louisiana jurisprudence and doctrine is that the 1870 Code is merely a re-enactment of the 1825 Code with relatively few

use of the English language had become almost universal in Louisiana political, legal, and governmental circles, and the judicial reliance on legal materials deriving from French or Spanish sources was diminished. The development of Louisiana law took a new turn, common law influence was expanded, and by the turn of the century, the Louisiana Civil Code came to be regarded as just another statute suitable for literal application only.⁹⁸

In his Preface to the 1909 edition of the Louisiana Civil Code, E.D. Saunders wrote:

The Supreme Court of Louisiana has constantly disregarded the French and Roman sources of Louisiana law, although referring to them in terms of unmeaning praise The course of legal development in this State has been such that its connection with the law of France has been constantly diminishing, and is to-day, almost non-existent, and will cease completely in a few years unless a higher standard of legal education is required by the Legislature, or by the Supreme Court The citations of even French authorities to-day are extremely rare, and are made with an uncertainty which indicates plainly enough the little importance which the Supreme Court attaches to the legal literature of France. This is much to be regretted. There is probably no legal literature in the world so rich and instructive as that of modern France.⁹⁹

By that time, an otherwise unknown Professor Shands at Tulane Law School expressed the same sentiments that much maligned Professor Gordon Ireland of Louisiana State University Law School voiced thirty years later,¹⁰⁰ namely, he gave "public expression to the wish that the Roman civil law, which is the foundation of the jurisprudence of Louisiana, should be abandoned and the common law substituted in its place."¹⁰¹

amendments based on John Ray's projet of 1869. Accordingly, the law contained in untouched articles remained the same, and in case of conflict between the English version and the earlier French version, the latter should control. See *Phelps v. Reinach*, 38 La. Ann. 547 (1886); *Straus v. City of New Orleans*, 166 La. 1035, 118 So. 125 (1928); See Yiannopoulos, *supra* note 6, at xxxiv.

98. See E.D. Saunders, *The Law of Louisiana*, in La. Civ. Code xxxv-xxxvi (1909):

The Supreme Court has always, as a matter of fact, taken the position that the Civil Code of Louisiana is a statute to be construed and interpreted by the rules which generally govern in the construction of statutes, and these rules of interpretation have been sought in the common law.

99. *Id.* at xxv, xxxvii.

100. Gordon Ireland, *Louisiana's Legal System Reappraised*, 11 Tul. L. Rev. 585, 598 (1937). For the ensuing storm in the legal literature of the state, see A.N. Yiannopoulos, *Louisiana Civil Law: A Lost Cause?*, 54 Tul. L. Rev. 830 (1980).

101. Hon. Carleton Hunt, Rep. of the La. B. Ass'n 5 (1908).

A REVISION THAT FIZZLED

By the first years of the twentieth century, social change had out-paced the Civil Code, and in many areas there was little correspondence between social institutions and provisions of the Civil Code. In 1908, the Louisiana Civil Code was one hundred years old, and the Legislature passed an act that charged the governor with the duty to appoint a commission composed of three Louisiana lawyers with instructions to prepare drafts for the revision of the Civil Code.¹⁰²

The governor promptly appointed R.E. Milling, W.O. Hart, and W.N. Potts as commissioners, and in the 1909 annual meeting of the Louisiana Bar, Milling presented the Plan of the Code Revision and stressed social and economic change:

We know that there have been rapid strides made in every branch of industry; that there have been phenomenal developments in science and art, and we recognize that, with this development, changes have been wrought that call for new rules governing the relations that exist between citizens

When the Code Napoleon was promulgated, science and discovery were in their infancy. Little practical use was derived from the power of steam: electricity had not been harnessed and forced to do man's bidding. Great highways of commerce which now encircle the earth were never dreamed of by the framers of the Code Napoleon, and, we might add, by the compilers of our own. These great material developments have created complex relations between employer and employee, and the rights of each with relation to the other are daily being discussed and adjudicated upon in almost every court of this vast republic of ours. It is universally conceded that the provisions of our own Code are inadequate rules to govern these complex relations of employer and employee¹⁰³

In addition to social and economic change, important changes in Louisiana legislation and legal culture in general had impacted the Civil Code. The 1868 Constitution, by making English the only official language in the state, hampered the development of civilian culture. Amending legislation had been enacted that affected the scheme of the Civil Code, especially in the field of matrimonial property; married women had been relieved from disabilities; courts had been given authority to

102. See 1908 La. Acts No. 160. The act also provided for certain proceedings of revision, the printing of the projet, the compensation of the members of the commission, commencement of the work of revision on or before November 1, 1908, and for submission of the drafts to the General Assembly in the regular or a special session in 1910. *Id.*

103. Milling, *supra* note 77, at 112, 114.

act in matters of tutorship without the assistance of the family meeting; and trust estates of perpetual duration for educational, charitable, or religious purposes were authorized.¹⁰⁴ Commerce had greatly expanded, and in the commercial law field, Louisiana had wisely opted since at least 1825 to be governed by the same law as the other states of the Union.¹⁰⁵

Most of the changes in Louisiana law, however, had been brought about by the jurisprudence. Louisiana courts, instead of seeking solutions in the Civil Code, routinely resorted to common law precedents. A Louisiana civilian, C.P. Fenner, former Chief Judge of the Louisiana Supreme Court and Professor of Civil Law at Tulane, lamented that "both our judges and lawyers too frequently 'sin the sin' of resorting to common law authorities when the true rules for decision might be found in the Code [W]e have fully adopted the common law rule of *stare decisis*."¹⁰⁶ In the field of the law of torts, E.D. Saunders asserted that it is "substantially true to say that the tort law of Louisiana is a body of common law rules and principles having practically no connection with Roman, French, or Spanish laws."¹⁰⁷ He also asserted that in the application of Article 21 of the Civil Code, "the Courts have taken over a very large part of the equity jurisprudence of England and of the common law states This development of the law, under Article 21 of the Code, has made a knowledge of English Equity indispensable for the Louisiana lawyer."¹⁰⁸

It was against this background that the commissioners completed the work of revision and submitted their projet to the legislature a few

104. See Benjamin W. Dart, *La. Civ. Code v* (1932).

105. Saunders, *supra* note 98, at xix, xxxviii: "In the department of commercial law then, the law in Louisiana is, in its large features and principles, the same as the commercial law in the other States of the Union, and is construed and developed solely with the aid of common-law legal literature The unifying tendencies of commercial intercourse and the constant use of common-law literature have brought the Code law into close agreement with the common law on all points."

106. See also Milling, *supra* note 77, at 114: "[P]rinciples enunciated by the common-law courts governing same have been engrafted on to our jurisprudence."

107. Saunders, *supra* note 98, at xvi:

Almost the entire body of tort law, in Louisiana, has been developed under the inspiration and guidance of common-law legal literature and principles. In this branch of the law scarcely any use has been made in Louisiana of the principles of either French or Spanish or Roman law. In the argument and decision of tort cases cited in Louisiana courts are almost invariably common law authorities In deference to the common law, and in disregard of our special and exceptional system, the Supreme Court has, however, read Article 232 out of the Civil Code.

Id. at xv.

108. *Id.* at xvii.

days before the commencement of the 1910 regular session.¹⁰⁹ Consideration of the projet was, however, postponed until the next regular or special session of the legislature for cogent reasons.¹¹⁰ The proper consideration of the projet being paramount, the people of the state would be deprived of "a fair opportunity for a full and exhaustive discussion of all changes embraced in the fundamental laws,"¹¹¹ since the projet was printed and distributed just a few days before the convening of the General Assembly. Moreover, neither the Bench nor the Bar had adequate time to discuss the drafts and "an immediate consideration thereof would deprive the State of the benefit of their wisdom and advice."¹¹²

According to the wish of the legislature, the Louisiana Bar Association authorized its President in the 1910 annual meeting to appoint a committee of seven members with instructions to "go over and criticize and review"¹¹³ and report to the Association its opinion concerning the revision. The plan of revision had already been reported to the Association at the 1909 annual meeting.¹¹⁴ In the 1911 annual meeting, the committee reported progress in the analysis and criticisms of the drafts, but also reported its inability to complete the report by the date of that meeting "on account of the amount of labor and time required for the proper performance of the duty imposed upon it."¹¹⁵ Accordingly, the committee asked for leave to report to the President of the Association on a date prior to the 1912 annual meeting and the leave was granted.¹¹⁶

In the 1913 meeting of the Louisiana Bar Association, the committee reported to the Association and recommended that the Association should request the legislature not to enact into law the projet of the Commission on the Revision of the Civil Code.¹¹⁷ The report was adopted by the Louisiana Bar Association,¹¹⁸ and the legislature wisely did not adopt the projet.

109. See *The Revised Civil Code of the State of Louisiana 1910*, as revised by the Commission composed of R.E. Milling, W.O. Hart, and W.N. Potts (Baton Rouge, The New Advocate, Official Journal 1910).

110. 1910 La. Acts 102 No. 59.

111. *Id.*

112. *Id.*

113. See 12 Rep. of the La. B. Ass'n 150 (1910).

114. See Milling, *supra* note 77, at 111.

115. 13 Rep. of the La. B. Ass'n 204 (1911).

116. See *id.*

117. See 14 Rep. of the La. B. Ass'n 345, 349 (1913). The Committee's Report was received in 1912, however, the Louisiana Bar Association adopted the Committee's Report at the 1913 meeting of the Association. Both the Committee's Report and the Bar Association's decision to adopt the Report are found in volume 14 of the Bar Association Proceedings. *Id.* at 81. See also James J. Morrison, *The Need for a Revision of the Louisiana Civil Code*, 11 Tul. L. Rev. 213, 228-29 (1932).

118. 14 Rep. of the La. B. Ass'n 81 (1913). The Committee had "requested from the

The report of the special committee of the Louisiana Bar Association was a well-considered and almost compelling document containing a scathing criticism of the projet. In the opinion of the committee, "concurrently with the revision of the Civil Code there should be a revision of the Code of Practice so that the two great bodies of our law may be complete and consistent."¹¹⁹ Since this was not done, the revision was "marked by omissions and inconsistencies which inject difficulties in the administration of law upon matters of no intrinsic importance yet ultimately determinative of the most valuable rights."¹²⁰

The projet had proposed to change, unnecessarily and unadvisedly, the phraseology of numerous articles of the Civil Code which had received a settled interpretation by the Supreme Court of Louisiana. Articles that should have been left intact received unwelcome substantive changes, and articles that were antiquated and should have been reformed to suit modern conditions had been left untouched. Generally, the work was "inadequate."¹²¹ In the opinion of the committee, the revision could not be properly undertaken by three members of the Bar, however able or industrious, and it should not have been attempted in a period of two years. The committee's recommendation was for the appointment by the governor of a commission of nine to fifteen members from names submitted to him by the Bar Association. The committee's report concluded with a suggestion for adoption of the comparative law method. The State of Louisiana, in the revision of the Civil Code, should "receive the benefit of the learning and the experience of the great European juriconsults" in light of the fact that "the civil codes of Germany, Holland, Italy, Belgium, and other European States under the regime of the Civil Law represents [sic] the highest point of development of that system of law."¹²²

A small sample of proposed amendments suffices to justify the criticism of the Bar Association committee. The epigram of Article 1 of the Louisiana Civil Code of 1870—"Law is a solemn expression of legislative will"¹²³—was proposed to read: "A law is a rule of conduct prescribed by the law-making power of a State for the government of persons within its borders, in the relations among each other and with the State."¹²⁴ The definition of custom in Article 3 of the Code was

members of the bar of the State an expression of opinion as to the advisability of the enactment of the projet by the Legislature. The result of this 'referendum' was adverse to the approval of the projet as it stands to-day." *Id.* at 348.

119. *Id.* at 346.

120. *Id.*

121. *Id.* at 347.

122. *Id.* at 347-48.

123. La. Civ. Code art. 1 (1870). Cf. La. Civ. Code art. 2, as revised by 1987 La. Acts No. 124.

124. 1910 Projet art. 1.

altered to provide that custom may acquire the force of law only "in the absence of any law, or contract" and that custom "can never prevail against positive law or contract."¹²⁵ Article 483 of the Code, which declared that "[t]hings susceptible of ownership, are all those held by individuals, and which may be alienated by sale, exchange, donation, prescription or otherwise,"¹²⁶ was renumbered and amended by a reference to "partnerships or corporations" and by the addition of a second paragraph reading: "Dogs are property provided they are given in for assessment, and their value shall not exceed the sum at which they are returned by the owner for assessment."¹²⁷

EPILOGUE

From 1870 to 1913, Louisiana social, economic, political, and legal institutions underwent substantial changes that were neither uniform nor coordinated. By 1908 the need for a revision of the Civil Code was pressing and was, indeed, needed to re-establish concordance between the civilian tradition and the "living law."¹²⁸ In his 1909 edition of the Civil Code, E.D. Saunders stated with conviction:

The bulk of the practical law now in force in Louisiana is derived from common-law sources, or from Louisiana statutes. That is, in very much the greater number of cases that come before the Courts for trial, the law involved is common law only, and the only legal literature cited is the legal literature of common-law States, or of England.¹²⁹

Yet the Louisiana legal profession and the legislature rejected the 1910 projet for revision, opting for an obsolescent Civil Code rather than its conversion into a current common law digest. The decision proved wise. The Civil Code of Louisiana, though "in contact but remotely and tenuously with the life, the *moeurs* and the demands of civilization"¹³⁰ at that time of its course in history, had preserved its identity, its integrity and its affinity with the civilian tradition.

125. Id. art. 3.

126. See La. Civ. Code art. 483 (1870).

127. 1910 Projet art. 496.

128. Cf. Llewellyn, *supra* note 81.

129. Saunders, *supra* note 98, at xxxvii; id. at xxxviii: "[T]he Code . . . is discussed and developed almost exclusively by the aid of common-law authorities. In questions of contract, for example, the only authorities cited in nineteen cases out of twenty are decision[s] of common-law courts or common-law writers - Pollock, Leake, Parsons, Anson, etc.; so in the cases of pledge, sale, partnership, agency, etc."

130. Morrison, *supra* note 117, at 218-19. For social change and the need of revision of the Louisiana Civil Code of 1870, see also Ernest T. Florence, *Revision of the Laws of Louisiana*, Proc. of the La. B. Ass'n 27 (1904).

Half a century later, a new era arrived, and Louisiana jurists were heralding a civilian renaissance.¹³¹ Under the leadership of John H. Tucker, jr., the Louisiana State Law Institute proceeded to a revision of the Louisiana Civil Code with sensitivity toward the civilian tradition and with the view toward modernization of the law with the comparative method envisioned by the Louisiana Bar Association committee in 1912. But this is the subject of another essay.¹³²

APPENDIX

EDITIONS OF THE LOUISIANA CIVIL CODE OF 1870

In addition to the 1870 official edition,¹³³ the Louisiana Civil Code has been published in a number of private editions. The first such edition was made by Albert Voorhies in 1875 under the heading "The Revised Civil Code of the State of Louisiana, with reference to the Acts of the Legislature."¹³⁴ This was an annotated edition of a volume containing 702 pages, with an index, prepared by a former Associate Justice of the Louisiana Supreme Court. The volume included references to statutes enacted up to the 1874 session of the legislature, citations to decisions of the Louisiana Supreme Court up to and including volume 25 of the Annual Reports (1873), and cross-references to the Louisiana Civil Code of 1825 and the Code Napoleon. The citations to decisions indicated the volume and page of the Annual Reports of the Louisiana Supreme Court rather than the names of the parties.

The next edition of the Louisiana Civil Code was undertaken by Edmond Augustus Peyroux in 1883.¹³⁵ The first volume of a projected

131. See Mack A. Barham, *A Renaissance of the Civilian Tradition in Louisiana*, 33 La. L. Rev. 357 (1973).

132. See Yiannopoulos, *supra* note 6, at xxiii, xxxv.

133. The title page of this publication reads: "The Revised Civil Code of the State of Louisiana. By Authority. New Orleans: Printed at the Office of the Republican, 94 Camp Street. 1870." For official and private editions of the Louisiana Civil Codes of 1808 and 1825, see Tucker, *supra* note 10, at 280, 285, 292-94.

134. The title page of this publication reads: "The Revised Civil Code of the State of Louisiana, with References to the Acts of the Legislature up to and including the Session of 1874, and to the Decisions of the Supreme Court, up to and Including Volume XXV Annual Reports, with an Exhaustive Index. Compiled and Edited by Hon. Albert Voorhies, Ex-Associate Justice of the Supreme Court of the State of Louisiana. Author of the Criminal Jurisprudence of Louisiana. B. Bloomfield & Co., Publishers, New Orleans, La. 1875."

135. The title page of this publication reads: "The Revised Civil Code of the State of Louisiana, to Which are Added Useful and Abundant References to the Decisions of the Supreme Court up to and including Volume XXXIV of the Annual Reports, and also References to the Acts of the Legislature up to and Including the Session of 1882; Together with Annotations from the French and Spanish Authorities upon the Civil Law. Compiled and Edited by Edmond Augustus Peyroux, of New Orleans. Geo. Miiller, Printer, 48 Bienville Street. New Orleans, La. 1883."

multi-volume edition contained Articles 1 through 447 of the Civil Code, that is, the Preliminary Title and Book I—"Of Persons." Under each provision, references were made to decisions of the Louisiana Supreme Court up to volume 34 of the Annual Reports (1907), to acts of the legislature up to the 1882 session, and to French and Spanish authorities, with emphasis on quotations from French commentators. This was the first commentary on the Louisiana Civil Code ever to be published. It is unfortunate that the ambition of the author to cover the entire code was never realized.¹³⁶

The 1875 Voorhies edition of the Louisiana Civil Code was updated in 1888 by E.D. Saunders, a member of the New Orleans Bar.¹³⁷ An appendix consisting of 248 pages contained references to the decisions of the Louisiana Supreme Court found in volumes 26 through 40 of the Annual Reports (1874 to 1888). These were true annotations under articles of the Civil Code to which they referred, stating the effect of the decisions and citing cases by the names of the parties, volume and page reports. This edition also included the text of the Louisiana Constitution of 1879 with annotations.

The next three editions of the Louisiana Civil Code were by Edwin T. Merrick. The first Merrick edition appeared in 1890,¹³⁸ the second in 1913,¹³⁹ and the third in 1925.¹⁴⁰ In the preface to the first edition, the author acknowledges that the earlier references were the work of his father, Edwin Thomas Merrick, and that he also used the references and authorities of the Voorhies' and Saunders' editions of the Civil Code. This is an improved version of the earlier editions with solid annotations, copious cross-references, references to the Code Napoleon

136. Cf. Tucker, *supra* note 10, at 296: "It is unfortunate that this splendid work was never completed; for the articles covered, it is probably the best edition of the Code of 1870 yet published."

137. The title page of this publication reads: "Revised Civil Code of Louisiana with Annotations of Hon. A. Voorhies to Volume Twenty-Five Annual Reports, and An Appendix with Annotations to Volume Forty, Annual Reports, and References to All Amendatory Statutes since 1870, with Decisions Thereunder, by E.D. Saunders of the New Orleans Bar, New Orleans: F.F. Hansell & Bro., Ltd. 1888."

138. The title page of this publication reads: "The Revised Civil Code of the State of Louisiana—With References to the Acts of the Legislature up to and Including the Session of 1898—With the Notes of the late Edwin Thomas Merrick, LL.D., also Annotated with References to the Decisions of the Supreme Court to the 50th Annual Inclusive. By Edwin T. Merrick, of the New Orleans Bar—New Orleans: F.F. Hansell & Bro., Ltd. 1900." The Preface was dated October 17, 1899. The volume contained 1081 pages.

139. See La. Civ. Code (Edwin T. Merrick ed., 2d ed. 1913). The volume contains 1288 pages, with references to Louisiana Acts of 1912, and annotations up to 130 Louisiana Reports.

140. See La. Civ. Code (Edwin T. Merrick ed., 3d ed. 1925). The volume contains 1122 pages, references to Louisiana Acts of 1924, and annotations to decisions in 156 Louisiana Reports.

and the Louisiana Civil Code of 1825, and excellent indices. For the first time, article headings were used in an edition of the Louisiana Civil Code for the convenience of the reader.

In 1909, E.D. Saunders published on India paper a small and compact edition of the Civil Code,¹⁴¹ a "most convenient edition . . . for ready reference."¹⁴² This edition contained amendments up to 1908, showed corresponding provisions of the Code Napoleon and of the 1825 Code, and included a lengthy preface titled "The Law of Louisiana" (iii-xxx). A second edition of this work was edited by R.H. Marr of the New Orleans Bar in 1920.¹⁴³

A students' edition of the Louisiana Civil Code was published by Louisiana State University in 1907.¹⁴⁴ This was a loose leaf edition, primarily intended for the use of students in making systematic notes.¹⁴⁵ It contained the 1870 texts, unamended, and showed the corresponding articles of the 1825 Code. It was printed on a part of every other page, leaving the remainder for notes.

A new edition of the Civil Code, edited and annotated by Benjamin Wall Dart of the New Orleans Bar, was published in 1932. The editor was assisted by the editorial staff of the publisher, Bobbs Merrill Company.¹⁴⁶ This edition contained black letter headings prepared by the editor and figures in brackets immediately following the article number referring to the corresponding provisions of the 1825 Code. Further, numbers in parentheses, preceded by the letter "N" were references to corresponding provisions in the Code Napoleon.

In 1938, the legislature authorized and ordered the publication of the Compiled Edition of the Civil Codes of Louisiana.¹⁴⁷ The statute

141. The title page of this publication reads: "Revised Civil Code of Louisiana with Amendments, Including the Session of the Legislature of 1908—Edited by E.D. Saunders of the New Orleans Bar—Published by F.F. Hansell & Brother, Ltd. New Orleans."

142. Tucker, *supra* note 10, at 297.

143. The title page of this publication reads: "Revised Civil Code of Louisiana with Amendments, Including the Session of the Legislature of 1920—Edited by E.D. Saunders—Second Edition Edited by R.H. Marr—Published by Hansell & Brother, Ltd. New Orleans."

144. The title page of this publication reads: "(Students Edition) Civil Code of Louisiana Published at Louisiana State University Under the Direction of the Dean of the Law School Baton Rouge: The Daily State Publishing Co., State Printers and Printers to the University. 1907."

145. A note on the cover states: "NOTE—This loose leaf edition is primarily intended for the use of students in making systematic lecture notes on the Code. Members of the bar will find it an orderly and convenient repository for their complete trial briefs on particular topics."

146. The title page of this publication reads: "Civil Code of the State of Louisiana Revision of 1870 Edited and Annotated by Benjamin Wall Dart of the New Orleans Bar Assisted by the Publishers' Editorial Staff. Indianapolis. The Bobbs-Merrill Company Publishers." The preface is dated January, 1932.

147. 1938 La. Acts No. 165.

prescribed that the edition should contain the texts of the Revised Civil Code of 1870, the Civil Code of 1825, the Civil Code of 1808, and corresponding provisions of the Code Napoleon. Further, the statute provided that the Compiled Edition should be designated as volume 3 of the Louisiana Legal Archives series, the first two volumes of which were reprints of the *Projet* of the Louisiana Civil Code of 1825 and of the *projet* of the Louisiana Code of Practice of 1825.¹⁴⁸ The edition was prepared by the Louisiana State Law Institute under the editorial responsibility of Professor Joseph Dainow of the Louisiana State University law faculty.¹⁴⁹ This monumental edition made available to the legal profession the texts of the Louisiana Civil Codes of 1808 and 1825 in both French and English and enabled a researcher "to see at a glance the complete textual history of the articles of the Civil Code, without the necessity of consulting a large number of books,"¹⁵⁰ many of which were largely inaccessible. In addition, the Compiled Edition contained certain much needed research tools, such as copious cross-references under each article to other articles of the Civil Code, the Revised Statutes of 1870, the Code of Practice, and the Louisiana Constitution of 1921; an excellent translation into English of the provisions of the Napoleonic Code in terms familiar to Louisiana lawyers; and an indication of errors in translation from the French text of the Louisiana Civil Code into English. In 1972, Professor Joseph Dainow updated the Compiled Edition and added a series of concordance tables and a thorough and most useful index.¹⁵¹

In 1947, Professor Joseph Dainow published a new unannotated edition of the Civil Code.¹⁵² In a purist civilian fashion, the articles of the Civil Code were reproduced without editorial headings. Professor Dainow added under each article of the Civil Code cross-references to other provisions of the same Code, to the Code of Practice, and the

148. 1936 La. Acts No. 286 provided for the republication by the state of the *projet* of the Louisiana Civil Code of 1825 and the *projet* of the Louisiana Code of Practice of 1825. See 1 La. Legal Archives, *Projet* of the Civil Code of 1825 (1937); 2 La. Legal Archives, *Projet* of the Code of Practice of 1825 (1937).

149. See 3 La. Legal Archives, *Compiled Edition of the Civil Codes of Louisiana*, Part 1 (1940); *id.* Part 2 (1942).

150. *Id.* Foreword by the Editorial Committee.

151. See La. Civ. Code Comp. Ed., in 16-17 La. Civ. Code Ann. (Joseph Dainow ed., West 1972) [hereinafter Dainow]. This edition contains all amendments to the provisions of the Civil Code up to 1972. Cross-references under each article were also brought up to date. Further, references to the Code of Practice were translated into references to the 1960 Code of Civil Procedure, and references to the Revised Statutes of 1870 were translated into references to the Revised Statutes of 1950.

152. The title page of this publication reads: "Civil Code of Louisiana. Revision of 1870 with Amendments to 1947. Edited by Joseph Dainow. St. Paul Minn. West Publishing Co."

Revised Statutes. This edition filled "a long felt need of both students and practitioners of Louisiana law"¹⁵³ since the only comparable earlier edition of E.D. Saunders had long been out of print. A second edition of what came to be known as the "Dainow Code" was published in 1961¹⁵⁴ and was updated annually by pocket parts until 1979. Since 1980, the West Publishing Company publishes annually an updated pamphlet edition of the Louisiana Civil Code under the editorial responsibility of Professor A.N. Yiannopoulos.¹⁵⁵

Professor Ralph Slovenko has published four editions of the Louisiana Civil Code since 1961.¹⁵⁶ The first edition contained the texts of the articles of the Louisiana Civil Code of 1870, as amended up to 1961, statutes ancillary to the Civil Code, that is, Title 9 of the Louisiana Revised Statutes, the texts of the articles of the Louisiana Code of Civil Procedure, a selective bibliography, tables, and index. This combined edition of the Civil Code and the Code of Civil Procedure was compact, in small size and print, in the format employed in editions of civil codes in Europe. The last three editions were in large print and size. They contained the texts of the articles of the Louisiana Civil Code as amended or revised, ancillaries to the Civil Code, bibliography, tables and index. The titles of the Civil Code that were revised were printed with *Expose des Motifs* and comments by the redactors.

A fifteen-volume annotated edition of the Louisiana Civil Code was published by West Publishing Company in 1952.¹⁵⁷ Volumes 16 and 17, the Compiled Edition of the Civil Codes of Louisiana, were added in 1972.¹⁵⁸ This ambitious editorial undertaking, updated annually by pocket parts or pamphlets, has achieved the status of an indispensable tool for Louisiana legal research. It contains the provisions of the Louisiana Civil Code in force, the history and texts of the 1808 and 1825 Civil Codes, the corresponding texts of the Code Napoleon, indication of errors in translation from French into English, cross-references under each article, references to, or quotations from, judicial decisions and legal literature, and editorial comments. The edition also includes thorough, accurate, and comprehensive tables and indices.

153. Foreword by Dean Paul M. Hebert, in *La. Civ. Code* (Joseph Dainow ed., 1947).

154. See *La. Civ. Code* (Joseph Dainow ed., 2d ed., West 1960).

155. See *La. Civ. Code* (A.N. Yiannopoulos ed., West 1980), and every year thereafter. Since 1982, this edition contains an Appendix consisting of Title 9 of the Louisiana Revised Statutes (Civil Code—Ancillaries).

156. See *La. Civ. Code and Ancillaries* (Ralph Slovenko ed. Claitor's 1st ed. 1961, 2d ed. 1981, 3d ed. 1985, 4th ed. 1986).

157. See 1-15 *La. Civ. Code Ann.* (West 1952).

158. See Dainow, *supra* note 151.

