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Commentary on Senate Bill No. 1379—An Introduction

*Martha Quinn Thomas**

The past fifteen years have seen major changes in the Civil Code articles on successions and donations, some as part of the comprehensive revision entrusted to the Louisiana State Law Institute, and others in response to legislative initiatives to restrict forced heirship.¹ The pace of change promises to continue, as an extensive revision of other areas of successions law is expected to be introduced in the 1997 Regular Session of the Louisiana Legislature.

Senate Bill No. 1379, the third major product of the Law Institute's ongoing revision work in this field, was introduced in the 1995 Regular Session. The bill contained revisions of Civil Code articles on seizin, commorientes, incapacity and unworthiness, acceptance and renunciation, the payment of debts, collation, forms of testaments, testamentary dispositions, probate of testaments, revocation of testaments and the interpretation of legacies. Senate Bill 1379 was not enacted into law, although some of its provisions pertaining to forced heirship, collation and the usufruct of the surviving spouse were contained in Act No. 1180 of the 1995 Regular Session and in Act No. 77 of the 1996 First Extraordinary Session, discussed elsewhere in this issue. The remaining changes contained in Senate Bill No. 1379 are expected to be reintroduced in the 1997 Regular Session.

The preview of those extensive revisions in 1995 and the interval before their anticipated reconsideration in 1997 offer a unique opportunity to reflect upon the changes in advance of, and apart from, the hectic pace of the legislative session. An outstanding group of teaching and practicing attorneys contributes to this symposium by commenting upon the proposed revisions. Professor Dian Arruebarrena reviews the impact of the revisions on the concepts of seizin and possession, focusing on changes to Articles 934-939 on the opening of the succession. Lawrence L. Lewis, III and Harry J. Phillips, Jr. survey the changes in forms of testaments, competence of witnesses, designation of succession representatives, trustees and attorneys, probate of testaments, revocation of testaments and legacies, and the Code of Civil Procedure, with particular emphasis on the practitioner's perspective. H. Alston Johnson examines the substantial changes in the classification of testamentary dispositions, including articles changing the liability of heirs and the effects of commonly-used testamentary language.

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1. In 1981 the Louisiana Legislature enacted a revision of the Preliminary Title and of Chapters 1-3 of Title I of Book III of the Civil Code, on recommendation of the Law Institute. 1981 La. Acts No. 919. The Successions and Donations Committee continued to work on the comprehensive revision, although its efforts undoubtedly were interrupted by a directive from the Legislature to write legislation to implement changes in forced heirship, 1989 La. Acts No. 788, § 3, and by the need to rewrite such legislation, Introductory Note, 1996 La. Acts No. 77 (First Extraordinary Session). 1991 saw the adoption of the revision of Chapter 2 of Title II of Book III, on recommendation of the Law Institute. 1991 La. Acts No. 363.

The breadth of the revision is such that several areas beg commentary in some other forum. Significant changes are proposed to articles dealing with incapacity, unworthiness, acceptance and renunciation. The proposed chapter on the payment of debts contains a new and complex scheme regulating the obligations of heirs, the rights of creditors, and the administration of estates. Those sections contain some desirable changes, as well as some lacking in clarity and internal consistency. As a whole, the proposed revision represents a significant move away from civilian concepts and terms, a move needful of perhaps even more discussion than it receives in the articles in this symposium.

The civil law of Louisiana is distinguished by its hold on the passions of those who shape and practice it and by their zeal to preserve its excellence. That is a cause worthy of the attentions of all, yet belonging to no one. The purpose of this symposium is not to detract from the work of those who have labored over this revision, but to add to it: to laud those changes that offer clarity and consistency; to point out ambiguities, inconsistencies and problems in their application; to examine their fidelity to the policies undergirding them; and to suggest further legislative refinement. Analysis and criticism of Civil Code revisions by legal scholars are usually postscripts, available too late to assist the lawmakers; the dissemination of the 1997 successions revision before its introduction affords a valuable opportunity for collaboration among the profession, the Law Institute and the Legislature to produce a body of law that will serve the people as well as its predecessor has. The following commentaries are offered in service to that common cause.