

Louisiana Law Review

Volume 63
Number 4 *Louisiana Bicentenary: A Fusion of
Legal Cultures, 1803-2003*
Summer 2003

Article 2

8-1-2003

Avant Propos (Introduction)

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Repository Citation

Alain A. Levasseur and Jackie McCreary, *Avant Propos (Introduction)*, 63 La. L. Rev. (2003)
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Avant Propos (Introduction)

*Alain A. Levasseur**
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2003! A landmark event in the history of the state of Louisiana, one that the Louisiana Chapter of the Association Henri Capitant and the Louisiana State University Law Center could not allow to be lost in fading memories without taking advantage of a bicentennial anniversary—to pause for a moment and reflect over the ‘Fusion of Legal Cultures’ that took place in the last two hundred years of the unique and rich history of the State of Louisiana.

Louisiana was officially declared a French territory by René Robert Cavelier, Sieur de la Salle in 1682. The French crown transferred the administration of the territory to Antoine Crozat in 1712 and to John Law in 1717 with full control to be taken back in 1731. The legal system in place consisted of the Custom of Paris, the ‘ordonnances du royaume,’ and the rules of procedure in use at the Châtelet in Paris. In 1762, France ceded the Louisiana territory to Spain which, after some difficult and troubled times caused by the French inhabitants, assumed military control of its newly acquired colony. The then Spanish general in charge, O’Reilly, undertook major reforms including the substitution of the Spanish law of the time to the French law of the same time. Whether Spanish law did actually replace French law ‘in the hearts and minds’ of a population mostly French and francophone is still a matter of controversy among legal historians which contributes to the uniqueness of the legal system of the State. This controversy is fed by another historical event which witnessed Spain transferring Louisiana back to France in 1800 by the ‘secret’ treaty of San Ildefonso. There began a very rich and crucial three year period in the history of this huge tract of land, a third of the whole territory of the continent, that spread from the Gulf of Mexico to the shores of the Great Lakes and all along the Mississippi river. Control over the port of New Orleans, at the mouth of the Mississippi, had become essential, in the mind of Thomas Jefferson, third President of the U.S., to an efficient economic and commercial policy for all the Americans who had settled along the Mississippi and Ohio rivers. Thomas Jefferson thus sent Robert Livingston and James Monroe to Paris to negotiate with Napoléon the

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purchase of New Orleans (and the Florida parishes) for a price of 20 million francs or \$4 million dollars. On the French side, François Barbe-Marbois and Denis Decres had been instructed by Napoléon to sell the whole territory of Louisiana for 100 million francs. After some negotiating, the U.S. agreed to pay 60 million francs for the whole province and another 20 million francs as compensation for a variety of claims. The Treaty transferring Louisiana to the U.S. was signed in April 1803 in Paris to take effect on December 20, 1803 in New Orleans. In 1812, the territory of Louisiana became the 18th State of the U.S.

This short, too short, historical account of the past 200 years of the history of Louisiana suffices to explain the reasons why we decided to pause for a moment, for two days of reflection, for an examination of conscience and a sharing of experiences. Because the same Louisiana was controlled at one time or another by any one of three different sovereign powers, France, Spain and now the USA, we felt compelled by the richness of 'our culture' to call upon scholars of these three countries to share with us their educated views on legal issues of great concern to us. These issues arise very vividly from our 'History.' Who are we? Can we identify 'squarely' with any known legal system of today? Can we consider ourselves as a 'legal laboratory' where legal experiments were conducted regardless of the feelings, aspirations, and expectations of 'the subjects'? The reader will find many elements of an answer, or answers, in the 'Papers' reproduced here on the concepts of 'globalisation, mondialisation, mixity...' in which the authors present their thoughts on whether we are going through a 'general legal acculturation' or 'a vertical and/or horizontal convergence' of the prevailing two major legal systems of today. It is against this background that Louisiana legal scholars, in 'Louisiana: a retrospective,' present their views of where Louisiana stands now, 200 hundred years after it became a part of the U.S. Many of the legal issues discussed in the context of the 'Louisiana legal lab' in the set of papers first delivered could be related to greater and more general legal issues that actually rise to the level of 'Principles of law' which are of concern to all legal systems; they are the principles of continuity, security, predictability in the law and their fate as a result of the transfer of one and the same territory from the sovereignty of one Nation to the sovereignty of another and, still, another Nation. The papers included here that address the intrinsic value of these principles will give the reader the perspectives of the three sovereign powers that contributed to the shaping of the state of Louisiana.

The legal and linguistic heritage of this State is the reason why the reader will find papers in any one of the three languages that were spoken at one time in Louisiana or are still spoken today. Our

political history (somewhat common with Quebec) and the confrontation we experienced between the civil law and the common law (like Quebec) in the making of our legal system are the reasons why we called on the support and wisdom of our sister province of Quebec and invited its reporters to share with us the fruits of their own 'Retrospective.'

Many thanks to the President of the Association Henri Capitant, Professor Michel Grimaldi, for his encouragements; many thanks to the members of the Louisiana Chapter of the AHC for their support; many thanks to all the reporters and speakers for so willingly accepting to contribute to the important intellectual component part of the conference; grateful thanks to Chancellor John Costonis and the LSU Law Center for their financial and material assistance; many thanks to the Louisiana Law Review, the 2003 members of the Board and, particularly, Jackie McCreary and the 2004 members of the Board and, particularly, Glynn Erin Walker.

