

On the Bicentenary of the Louisiana Supreme Court: Chronicle of the Creation of a Unique and Beautiful Legal Tradition

A. N. Yiannopoulos

Repository Citation

A. N. Yiannopoulos, *On the Bicentenary of the Louisiana Supreme Court: Chronicle of the Creation of a Unique and Beautiful Legal Tradition*, 74 La. L. Rev. (2014)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol74/iss3/5>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kayla.reed@law.lsu.edu.

On the Bicentenary of the Louisiana Supreme Court: Chronicle of the Creation of a Unique and Beautiful Legal Tradition

A. N. Yiannopoulos*

Editor's Note: The Board of Editors of Volume 74 is thrilled to welcome Professor A. N. Yiannopoulos back to the pages of the *Louisiana Law Review* with his bicentenary remarks in the Chamber of the Louisiana Supreme Court. His publicist, Professor Paul R. Baier, joined the LSU Law Faculty a generation ago. He grew up as a legal scholar in the shadow of his great Greek friend A. N. Yiannopoulos. As Secretary of the Supreme Court of Louisiana

Copyright 2014, by A. N. YIANNOPOULOS.

* Emeritus (2006) Eason-Weinmann Professor of Law and Chair, Eason Weinmann Center for International and Comparative Law, Tulane University Law School. Emeritus (1979) Professor of Law, Paul M. Hebert Law Center, Louisiana State University. Diploma in Law, 1950, LL.D 1955, University of Thessaloniki (Greece); MCL, University of Chicago; LL.M, 1955, JSD, 1956, University of California at Berkeley; Dr. Jur., 1960, University of Cologne (Germany); LL.D, 1995 (Dr. *Honoris Causa*), University of Thessaloniki. Distinguished Professor, Louisiana Bar Foundation, 2001. Professor Yiannopoulos is a world renowned scholar of civil law, comparative law, and maritime law; he is a member of the Council of the Louisiana State Law Institute and reporter for Civil Code revision. His revision of the Preliminary Title of the Louisiana Civil Code became law in 1988; the revision of several Titles of Book I—Of Persons, including Title I—Natural and Juridical persons, Title II—Domicile, and Title III—Absent Persons, became law in 1988–2009. His revision of the entire Book II—Property became law in 1977–1980, and his revision of several Titles of Book III—Modes of Acquiring Ownership of Things, including Title V—Obligations Arising Without Agreement, Title VI—Matrimonial Regimes, Title X—Annuities, Title XII—Loan, Title XIII—Deposit and Sequestration, Title XV—Representation and Mandate, Title XXII—Occupancy and Possession, Title XIV—Prescription, became law in 1996–2013.

Professor Yiannopoulos has authored three volumes of the Louisiana Civil Law Treatise, PROPERTY, *in* 2 LOUISIANA CIVIL LAW TREATISE (3d ed. 1991) (“Homage To Albert Tate, Jr. And Those Who Will Guard Thermopylae”); PROPERTY, *in* 2 LOUISIANA CIVIL LAW TREATISE (4th ed. 2001) (“In gratitude to those who bestowed the gift of *eu ζεν* [Greek, “good life”] Albert A. Ehrenzweig, Gerhart Kegel, Max Reinstein, Stefan Riesenfeld”); PERSONAL SERVITUDES, *in* 3 LOUISIANA CIVIL LAW TREATISE (5th ed. 2011) (“For the Women and Men of the Law who Cherish the Beauty of the Civil Law of Louisiana”); PREDIAL SERVITUDES, *in* 4 LOUISIANA CIVIL LAW TREATISE (4th ed. 2013). He has edited the Compiled Edition of the Louisiana Civil Code (West 2008) and, annually, softback editions of Louisiana’s Civil Code (West 1980–2014). Dr. Yiannopoulos is a member of the International Academy of Comparative Law (The Hague), the International Association of Civil Procedure, and the American Law Institute. He continues to teach one course each year at Tulane Law School, *pro bono publico*, in his area of expertise, especially the acclaimed Civil Law Seminar.

Historical Society, he introduced Professor Yiannopoulos to the overflow crowd that attended the Historical Society's annual meeting celebrating the bicentennial of the Louisiana Supreme Court, 1813–2013. His remarks are published here as a permanent record of their camaraderie, both civil and common, for more than 40 years. The “mystery justice” mentioned in Professor Yiannopoulos's address is the Honorable James L. Dennis, distinguished LSU Law School alumnus, Louisiana Supreme Court Justice, 1975–1995, and Judge, U.S. Court of Appeals for the Fifth Circuit, since 1995. Judge Dennis's portrait, a gift to the Court from his family, was unveiled following Professor Yiannopoulos's bicentenary chronicle.

INTRODUCTION BY PAUL R. BAIER **

On the Occasion of the Supreme Court of Louisiana
Historical Society's Annual Membership Meeting,
Oct. 21, 2013,
Celebrating the Bicentennial of the
Louisiana Supreme Court, 1813–2013,
In the Chamber of the Louisiana Supreme Court,
400 Royal Street, New Orleans

LADIES AND GENTLEMEN—According to Greek mythology, the Goddess Athena sprang fully limbed from the forehead of Zeus.

According to world opinion, A. N. Yiannopoulos is Zeus.

Have a look at his profile posted on the Internet.¹ His visage is beautiful. He is Tulane Law School's Greek god.

I knew him a generation ago at LSU Law School.² Today, we love each other. Why is that? To quote Thanassi's explanation to me precisely: “GREAT BAIER, THANK GOD WE ARE BIOPHILES.”

** George M. Armstrong, Jr., Professor of Law, Judge Henry A. Politz Professor of Law, Paul M. Hebert Law Center, Louisiana State University. J.D. Harvard Law School, 1969; Secretary, Louisiana Supreme Court Historical Society since 2007.

1. *A. N. Yiannopoulos*, TULANE U. L. SCH., <http://www.law.tulane.edu/tls/faculty/profiles.aspx?id=480> [<http://perma.cc/8FFZ-K823>] (archived Feb. 14, 2014).

2. New to Louisiana and a mere common law lawyer, I joined students in Professor Yiannopoulos's Louisiana Civil Law System course to learn something about the civil law. His classes were galvanic. We were sitting at the feet of a civil law giant. He nursed us on his Louisiana Civil Law Coursebook, including its Appendix of Cases and Materials for Class Discussion. The book's preface is pure A. N. Yiannopoulos:

The study of the civil law is an international undertaking which, necessarily leads to the fraternization of civilians across national boundaries. It guides to systemization of law and to its improvement as to both substance and form. Experience of thousands of years becomes

The bas-relief announcing the Yiannopoulos Professorship at LSU Law Center carries one of Professor Yiannopoulos's favorite legal locutions:

“THE CIVIL LAW IS BEAUTIFUL.”

And so for our Society's Bicentennial Celebration, would you please join me in welcoming Professor A. N. Yiannopoulos, “*Mégas Yiannopoulos*,” who will sketch the creation of a unique and beautiful legal tradition, the living legacy of 200 years of the Louisiana Supreme Court.

Professor Yiannopoulos.

I. INTRODUCTION

Chief Justice Johnson, Chief Justice Calogero, Justices of the Louisiana Supreme Court, Judge Dennis, Members of the Louisiana Supreme Court Historical Society, Distinguished Guests:

I wish to thank my great friend Paul Baier for the invitation to participate in the annual meeting of the Louisiana Supreme Court Historical Society in the Bicentenary of that august institution.

II. THE SUPREME COURT, THE CIVIL CODE, AND THE CONSTITUTION

The contributions of the Louisiana Supreme Court to the legal culture of the State, the United States, and, indeed, the world, are an epic worthy of a Homeric ode or a heroic Nordic saga narrating the creative labor of several generations of jurists who transformed an amorphous mass of sources from two distinct legal traditions to an organic whole. This—the Louisiana civilian tradition.

The accomplished synergy and fusion of the Greco-Roman civilian tradition with the Anglo-Saxon common law, both of which emigrated from the European continent to the New World, and the transformation of ancient diverse institutions into living law fit for a contemporary vibrant society are works of art.

In marked contrast with supreme courts in European countries that have limited judicial powers, the Louisiana Supreme Court, like the supreme courts of the United States and sister states, has been vested since its creation with broad judicial powers and functions.

meaningful for the scholar and useful for the legislator, the judge, and the practitioner.

A. N. YIANNPOULOS, *LOUISIANA CIVIL LAW SYSTEM COURSEBOOK*, at *iii* (1977).

Much has been written and will continue to be written about the work of the Louisiana Supreme Court in various fields.³ However, this brief account is focused exclusively on a theme that is close to my heart—the historical interaction of the Louisiana Supreme Court with the Louisiana Civil Code and the development of the distinct Louisiana civilian tradition.

The backbone of that tradition is the Louisiana Civil Code. Its flesh and bones are Louisiana jurisprudence and doctrine. Its foundation is 3,000 years of Western culture and civilization.

The Louisiana Civil Code is a unique charter and a social compact of fundamental significance for civilized life that was enacted in the territorial days but is inextricably interwoven with the Louisiana Constitution from the date Louisiana became a state.

The Louisiana Constitution of 1812, though an all-American document, contained a conspicuous singularity still found in the Constitution of 1974, Louisiana's latest Code of Public Law, as article III, section 15(B), forbidding adoption of a system or code of laws. The prohibition has obviously been intended to preserve the integrity of the Civil Code and the civilian tradition. As a result, from the start, the attitude of the Louisiana Supreme Court toward the Civil Code had constitutional implications for the Code's integrity and preservation.

Concerning the significance of the Louisiana Civil Code, I am tempted to quote from the Foreword in the current edition of the Code by Colonel John H. Tucker, Jr., that is addressed to his brethren of the legal profession in Louisiana:

[This] 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 You should be well-grounded in the civil law if you engage in the general practice of law in Louisiana.⁴

3. My precious friend and self-proclaimed publicist Paul Baier has explored the origins of judicial review in Louisiana, a bicentenary essay of his own, in his beloved field of public law. Paul R. Baier & Georgia D. Chadwick, *Judicial Review in Louisiana: A Bicentennial Exegesis*, 5 J. CIV. L. STUD. 7 (2012).

4. John H. Tucker, Jr., *Foreword* to A. N. YIANNPOULOS, LOUISIANA CIVIL CODE, at XXXIX–XL (2014).

It is a historical twist of fate that the Louisiana Civil Code of 1808, which derived from the Spanish and French civilian traditions, was destined from the beginning to be interpreted and applied by common law judges rather than civilian jurists. All the justices of the Superior Court of the Territory of Orleans were trained in the common law tradition. Only François Xavier Martin, though a non-civilian, was impressed with civilian thought and translated into English and printed Pothier's great treatise on obligations in his own shop. When the Louisiana Supreme Court was established by the 1812 Constitution, none of the first justices, George Matthews, Jr., Dominick A. Hall, and Pierre Derbigny, was a civilian. The entire Louisiana judicial system was modeled on the system prevailing in sister states and had nothing in common with the organization and administration of justice in European countries.

A tension between the ideological and educational orientation of the Louisiana judiciary and the legislative and cultural foundation of the Louisiana Civil Codes of 1808, 1825, and 1870, which shared the formal qualities and organization of the Code Napoléon, was expectable. Those codes were conceived as a self-contained and complete legislative statement of principles, rather than rules, intended to limit and control the judicial authority and law making.

A civil code, however, is not a self-executing document. Its words and phrases, regardless of the clarity of expression, must be given meaning for application to particular disputes and individualized situations. This labor of interpretation and application of the governing Civil Code provisions is a judicial function performed in civil law countries with the assistance of doctrine, namely the accumulated wisdom of generations of legal scholars. This is a natural consequence of the origin of *civil law* systems, all of which owe their creation to centuries of learned elaboration in universities. In those legal systems, civil codes are not merely words and phrases but depositaries of a legal order founded on ideals of justice and rational thinking.

Apart from doctrine, judicial creativity is everywhere indispensable for the shaping of legal traditions. In common law systems, prevailing theories of precedents assert the lawmaking function of the courts. In civil law systems, officially, the sources of law are only legislation and custom, and so declares authoritatively article 1 of the Louisiana Civil Code.⁵ The judicial decisions simply form a gloss on legislative texts for their interpretation and application. Isolated decisions are not "law," but a series of judicial decisions may be binding as *customary law* or *jurisprudence constante*.

5. LA. CIV. CODE art. 1 (2014).

For a realistic understanding of the role of judicial decisions in civil law jurisdictions, let us remember the words of the judicious Portalis, the preeminent redactor of the *Code Civil*:

[B]ut there must be a body of case law. In the host of subjects that make civil matters, the judgments of which, in most cases, require less an application of a precise provision than a combination of several provisions leading to the decision rather than containing it, one cannot dispense with case law any more than he can dispense with legislation It is for experience gradually to fill the gaps we leave. The Codes of nations *are the fruit of the passage of time, but properly speaking, we do not make them.*⁶

The Society's Secretary Paul Baier, to his credit, is the first legal scholar in the United States to explicitly recognize the relevance of Portalis's insight to American Constitutional Law.⁷ I wish I could say I taught him well. But he sees the analogy for himself and, wisely, broadcasts it worldwide. I love him dearly. As he said, we are both biophiles.

III. CREATIVE JURISPRUDENCE

In accord with Portalis, for two centuries, the Louisiana Supreme Court has been infusing life into inert words and phrases of the Civil Code. In doing so, the Louisiana Supreme Court drew inspiration from a variety of sources, civilian and non-civilian, and resorted to several methods of interpretation, starting with *exegesis* and proceeding to *free scientific research* and the *functional method*.

The Louisiana Supreme Court assumed leadership in giving form and substance to an indigenous legal tradition that had taken hold in Louisiana for many decades preceding statehood. Up to the end of the 1950s, the Louisiana Civil Code was essentially the Code of 1870 that, with minor modifications, had reproduced the text of the Civil Code of 1825. Amendments to and repeals of articles were extremely rare. The reverence of the Louisiana Legislature for the integrity of the Code was such that it was harder to amend the Code in the Legislature than to pass a resolution contemplating an amendment to the State Constitution.

6. PRELIMINARY DISCOURSE ON THE PROJET OF THE CIVIL CODE (1800) (M. Shael Herman trans.) reprinted in Alain Levasseur, *Code Napoleon or Code Portalis?*, 43 TUL. L. REV. 762, 772–73 (1969).

7. Paul R. Baier, *Mr. Justice Blackmun: Reflections from the Cours Mirabeau*, 43 AM. U. L. REV. 707, 707–09 (1994).

The pressing need for new legislation governing important property rights led the Louisiana Supreme Court, in the presence of an inactive Legislature, to fill severe legislative gaps by a creative jurisprudence. The whole field of mineral law, starting with the *Frost Johnson* decision, was a judicial creation based on analogy to Civil Code provisions governing servitudes.⁸

Further, the legislative gap concerning subdivision planning led the Louisiana Supreme Court to the development of a body of law that became known as “building restrictions.”⁹ In that field, the Louisiana Supreme Court, starting with Justice Provosty’s opinion in *Queensborough Land Co. v. Cazeaux*, creatively converted the common law feudal institution of covenants “running with the land” into a modern and most important tool for land development.¹⁰ It was only in 1977 that the jurisprudence governing building restrictions was codified as articles 775–783 of the Louisiana Civil Code.

When pressing social and economic needs called for new legislation in civil law fields, special statutes were enacted that repealed the contrary provisions of the Civil Code tacitly rather than expressly. In those circumstances, the Louisiana Supreme Court assumed an important role that is not found in other legal systems, that is, to perform an *educational mission*.

IV. EDUCATIONAL MISSION OF THE SUPREME COURT

Systematic Louisiana legal treatises and law reviews were missing. The first law school in the state, that of Tulane University, was established in 1847, and the *Tulane Law Review* was established in 1916 as the *Southern Law Quarterly*. Louisiana’s three other law schools and their law reviews were established in the 20th century. The first volume of West’s Louisiana Civil Law Treatise series, titled *Civil Law Property*, was published in 1966. The series now contains 19 scholarly volumes.

For more than a century, Louisiana doctrine was found only in monumental decisions of the Louisiana Supreme Court. One may cite several opinions of Justice Provosty that are in reality doctoral dissertations. Such is his multipage separate opinion in *Louisiana & Arkansas Railway Co. v. Winn Parish Lumber Co.*—a diatribe on

8. *Frost Johnson Lumber Co. v. Salling’s Heirs*, 91 So. 207 (La. 1920).

9. A. N. YIANNOPOULOS, PROPERTY § 229, in 2 LOUISIANA CIVIL LAW TREATISE 450 n.3 (4th ed. 2001).

10. *Queensborough Land Co. v. Cazeaux*, 67 So. 641 (La. 1915).

the notion and function of real rights based on an exhaustive analysis of the historical sources of the Louisiana Civil Code.¹¹

One may also cite and quote from a contemporary source an opinion of a mystery justice, learned civilian, and the current *panhypersebastos*¹² of the Louisiana Bartolus Society, whose portrait will be unveiled shortly. In *Ardoin v. Hartford Accident & Indemnity Co.*, he undertook to instruct lower courts concerning the use of correct methodology.¹³ In his stentorian voice:

[T]he lower courts did not follow the process of referring first to the code and other legislative sources but treated language from a judicial opinion as the primary source of law [T]he notion of [s]tare decisis, derived as it is from the common law, should not be thought controlling in this state. The case law is invaluable as previous interpretation . . . but it is nevertheless secondary information [T]he appeals court measured the enactment solely against language contained in a judicial opinion. The basic error in this method of interpretation is that it not only ignores the first principles of our law but it also assumes that jurisprudence is equivalent to legislation instead of treating it as judicial interpretation which may or may not adequately reflect the meaning of the laws for contemporary purposes.¹⁴

Another landmark decision is *Lovell v. Lovell*.¹⁵ Mrs. Lovell sought alimony after a divorce from her former husband under Louisiana Civil Code article 160.¹⁶ Mr. Lovell claimed that article 160 constituted a denial of equal protection of the law as guaranteed by the Fourteenth Amendment of the federal constitution.¹⁷

The trial judge concluded that article 160 was unconstitutional under the state and federal constitutions in view of the decision of the U.S. Supreme Court in *Orr v. Orr* in which it was held that the Alabama statutes imposing alimony obligations only on husbands

11. *La. & A. Ry. Co. v. Winn Parish Lumber Co.*, 59 So. 403 (La. 1911).

12. "*Panhypersebastos*" (Greek: πανυπερσεβαστος) means "venerable above all." The venerable John H. Tucker, Jr., of Shreveport, was known among his friends in the Bartolus Society by the same title of *Panhypersebastos* (universally most respected one). See A. N. Yiannopoulos, *John H. Tucker, Jr., The Jurisconsult*, 45 LA. L. REV. 1011 (1985). "To law professors summoned to Shreveport for consultations and planning, he was the Pope, and to most people he was simply the Colonel." *Id.* at 1011.

13. *Ardoin v. Hartford Accident & Indem. Co.*, 360 So. 2d 1331 (La. 1978).

14. *Id.* at 1335.

15. *Lovell v. Lovell*, 378 So. 2d 418 (La. 1979).

16. *Id.* at 419.

17. *Id.*

after divorce and not on wives violated the Equal Protection Clause of the Fourteenth Amendment.¹⁸

On certiorari, the Louisiana Supreme Court held that article 160, by placing alimony obligations on husbands after divorce but not on wives, was unconstitutional.¹⁹ This was before the 1979 amendment to article 160 making it a gender-neutral classification.²⁰ But the Court declared that this decision shall not be retroactive, and all judgments awarding alimony prior to the effective date of the amendment (June 29, 1979) remain unaffected by this decision.²¹

In a concurring opinion that may rightly be termed “*didactic*,” our mystery justice showed the civilian path to the same result:

Article 160 of the Louisiana Civil Code is not unconstitutional, because it is silent as to alimony for husbands after divorce and cannot be presumed to manifest a legislative intention to practice gender-based discrimination. By proceeding and deciding according to equity, see La.C.C. art. 21, civilian tradition, and state constitutional law, this Court should hold that a husband must be awarded alimony under the same circumstances in which it can be claimed by the wife.²²

V. A LOUISIANA SYNTHESIS

A study of the methods of interpretation of the Louisiana Supreme Court demonstrates the frequent use of exegesis and free scientific research but also a Louisiana *original*, a method of interpretation that comprises elements of both exegesis and free scientific research. Reliance on a particular method of interpretation frequently depends on the subject matter, the relative age of a legislative text, and on whether there is a directly applicable text. In civil law matters, legislative texts continue to be applied with a certain degree of rigidity, but when no rule for a particular situation can be derived from legislation or custom—the “unprovided for” case—the rules of decision are exceptionally derived from equity, as

18. *Orr v. Orr*, 440 U.S. 268 (1979).

19. *Lovell*, 378 So. 2d at 420–21.

20. *See* LA. CIV. CODE art. 112 (2014) (using the word “spouse” instead of “wife”).

21. *Lovell*, 378 So. 2d. at 422.

22. *Id.*

defined in article 4 of the Civil Code,²³ or through free scientific research.²⁴

Toward the end of the 19th century, the excesses of conceptual jurisprudence generated severe criticism and adverse reaction on the European continent and in the United States. A frontal attack took place against geometrical legal thinking and *a priori* ideas in the interpretation and application of laws. A series of treatises elaborated on the purpose of law and demonstrated how considerations of social utility could replace dry logic in the judicial process. A jurisprudence of interests and a teleological method of interpretation thus began to take hold in continental countries. The movement was bolstered in the 20th century by the development of new theories of law and reliance on legal sociology and psychology.

In the United States, influential and articulate judges such as Gray, Holmes, and Cardozo undertook a profound examination of the judicial process and contributed to the dissipation of unrealistic ideas, fictions, and half-truths. Von Ihering's ideas were espoused by American scholars, and considerations of social utility and purpose led to the idea that law is a means to the end of social engineering. In the 1930s, a realistic movement flourished in the United States. It contributed to a better understanding of the judicial process by testing conclusions against the background of actualities and gave expression to the *functional* method of interpretation.

Since the middle of last century, decisions of the Louisiana Supreme Court demonstrate the use of that new, essentially American creation—the functional method of interpretation. According to this method of interpretation, the application of a legislative text to a conflict of interests must be determined in light of the text's social purpose. This calls for consideration of the general policy that prompted the enactment of legislation, that is, the general purpose behind the regulation of the type of conflict of interests in question and the practical reasons for that purpose. The particular conflict of interests before the court is to be resolved in accordance with the general policy considerations that prompted legislative action, rather than by reliance on logical deductions from the language of the text. This process is avoidable when the formal wording of a text provides a rule that resolves the dispute satisfactorily or compels literal application.

23. LA. CIV. CODE art. 4 (as revised in 1987); LA. CIV. CODE art. 21 (1870); LA. CIV. CODE art. 21 (1825); LA. CIV. CODE art. 21 (1808).

24. *See generally* FRANÇOIS GÉNY, METHOD OF INTERPRETATION AND SOURCES OF PRIVATE POSITIVE LAW (La. State Law Inst. trans., 2d ed. 1963).

The functional method of interpretation continues to be prevalent in Louisiana jurisprudence. This is natural because contemporary judges and academics, as well as practicing lawyers, have been trained under the influence of American neo-realism. The exegetical method never reigned in the jurisprudence of Louisiana Supreme Court, but in civil law matters, judicial decisions reached under the influence of French commentators often reflect the results of that method.

Looking to the future, one may assert that there is a place in Louisiana jurisprudence for both the exegetical and functional methods of interpretation. Techniques of the exegetical method may still be utilized when a provision of law may be regarded as reasonably intended to apply to the conflict of interests before the court. The functional method may be relied upon to ensure that a legislative text is applied in accordance with underlying social purposes. Exegesis may still be useful for determining the original purpose of a text. With that purpose in mind, the judge may decide whether social and economic conditions still accord with the traditional meaning of the text or compel reinterpretation to suit new demands.

Decisions of Justice Albert Tate, Jr. are brilliant examples of the proper application of various methods of interpretation. Take the case of *Sanders v. Hisaw*.²⁵ On the morning of May 3, 1953, two automobiles were traveling in the same direction on a divided, four-lane highway near Baton Rouge.²⁶ Hisaw drove one of the automobiles on the inside lane.²⁷ Miss Marshall drove the other automobile on the outside lane.²⁸ Hisaw was about to overtake the Marshall vehicle when Marshall suddenly turned left across the path of the Hisaw vehicle.²⁹ Hisaw could not avoid colliding with her.³⁰

The trial court dismissed the suit against Hisaw.³¹ On appeal, it was argued that Hisaw failed to sound his horn as he was overtaking Marshall, that there was a violation of a statutory duty to sound the horn, and therefore that Hisaw was liable.³² Justice Tate's holding reflects application of the functional method of interpretation in the United States and accords with the teleological interpretation in most civil law countries and Gény's free scientific research in France. Justice Tate's realism shone:

25. *Sanders v. Hisaw*, 94 So. 2d 486 (La. Ct. App. 1957).

26. *Id.* at 487.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

We do not believe this statutory provision to be applicable to the present situation. The accident occurred on a four-lane highway; two lanes were reserved for each direction's traffic. If applicable to multiple-laned highways, motor vehicles would be required to sound the horn when passing any vehicle going in the same direction whether to their right or left and no matter how many lanes distant they might be. On our crowded eight-lane and four-lane highways designed to facilitate the passage of congested traffic there would be a never-ending cacophony of constantly blowing horns, an intolerable burden both on the ears of the public and on the batteries of the vehicles involved in the crowded traffic. We do not believe the legislature intended the statute to apply in such circumstances or that the legislative provision contemplated application thereof to multiple-lane highways.³³

By 1950, the great debate—whether Louisiana is a civil law jurisdiction or just another common law state—had subsided, but its echoes continued to reverberate. Gradually, realism led to the ideas that Louisiana was not a civil law jurisdiction like France or Germany, that Louisiana's law has a civil law component as well as a common law component, and that Louisiana is a “mixed jurisdiction.”

The Louisiana Supreme Court assumed leadership in giving form and substance to the legal tradition that had been taking hold for more than a century. Curricula in the law schools of Louisiana were constantly enriched with the addition of civil law courses, but all civil law subjects were taught by the case method with materials emulating common law casebooks. Doctrinal works in the form of treatises and monographs were sparse and mostly obsolete; however, the *Tulane Law Review*, the *Louisiana Law Review*, and the *Loyola Law Review* were repositories of impressive civilian scholarship in the form of articles, comprehensive student comments, and student notes.

VI. EPILOGUE

Mitchell Franklin wrote in 1932 that:

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. . . . As a cultural document

33. *Id.*

the Civil Code has its own merit. It is beautifully written, and so carries on the best traditions of civilian aesthetics.³⁴

Thanks to the leadership of the Louisiana Supreme Court, the Louisiana Civil Code continues to enjoy an excellent state of health and vigor. It is true that the Civil Code of Louisiana does not have the cohesion and inner consistency of style and substance that it had in 1870 and as late as 1950. The Preliminary Title of the Civil Code, the entire Book I—Of Persons, the entire Book II—Things and the Different Modifications of Ownership, and 21 Titles of Book III—Of the Different Modes of Acquiring the Ownership of Things have been revised, and several committees can hardly enhance uniformity of style, regulation, and policy. Nevertheless, the revision produced legislation that reflects the contemporary life and the aspirations of Louisiana's citizens. In our times, the Louisiana Civil Code in the hands of Louisiana judges is a vibrant legislative text ordering the most important relations of citizens from birth to death. It carries with it the wisdom, the erudition, and the legal faith of Louisiana's great justices over two centuries, past and present.

This is an everlasting legacy that, combined with the evolving texts of the Civil Code, constitutes an integrated whole, *The Louisiana Civilian Tradition*. The celebrated opinions, concurrences, and even dissents of justices such as Barham, Dixon, Martin, Provosty, Sanders, and Tate, to name but a few who are no longer with us, have not lost any of their brilliance and substance despite the passage of time and the evolution of legal texts.

The judicial opinions of justices of the Louisiana Supreme Court over two centuries of dispensation of civil justice are monuments of juridical craftsmanship. The Court has spoken authoritatively and convincingly in all fields of civil law. Its methodology and style, widely accepted by the legal profession and the citizens of Louisiana, have deeply influenced lower Louisiana courts. Many of the great contributions of Louisiana Supreme Court jurisprudence are in areas of civil law that our High Court sought to modernize.

VII. A FINAL BICENTENARY PLEA

In France, Henri Capitant, François Terré, and Yves Lequette have authored two volumes, now in their 12th edition, entitled *Les Grands Arrêts de la Jurisprudence Civile*.³⁵ More than a quarter century ago, Justice Tate suggested a collaboration of Louisiana

34. Mitchel Franklin, *Book Review*, 7 TUL. L. REV. 632, 632–33 (1933) (reviewing BENJAMIN W. DART, CIVIL CODE OF THE STATE OF LOUISIANA (1932)).

35. HENRI CAPITANT, FRANÇOIS TERRÉ & YVES LEQUETTE, LES GRANDS ARRÊTS DE LA JURISPRUDENCE CIVILE (Daloz ed., 12th ed. 2007).

judges and legal scholars for the collection and publication in a commemorative volume entitled *The Great Decisions of Louisiana Civil Law Jurisprudence*.

Death put an abrupt end to Justice Tate's aspiration. Still the idea remains alive, and it may be fulfilled. Historical decisions of the Louisiana Supreme Court demonstrating innovative approaches to Civil Code interpretation and application should be made available, and become known, to sister states and other parts of the world for study by judges and scholars interested in the history, present and future, of the civilian tradition. Such a collection would show the way in which jurisprudence and legislation may fruitfully interact and be constantly updated as living law in our complex, multicultural, industrialized society the world over.

It is here that the leadership of the Historical Society of the Louisiana Supreme Court is in demand.