1941

On the Louisiana State Law Institute

Paul M. Hebert

Follow this and additional works at: https://digitalcommons.law.lsu.edu/hebert_speeches

Date: 1941-12-03

Repository Citation
On the Louisiana Law Institute, December 3, 1941. Paul M. Hebert Speech Files, Archival Collection LLA0002, Paul M. Hebert Law Center Collection, Paul M. Hebert Law Center Library, Baton Rouge, La.

This Article is brought to you for free and open access by the Archives and Law Center History at LSU Law Digital Commons. It has been accepted for inclusion in Paul M. Hebert Speeches by an authorized administrator of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.
Mr. Toastmaster, distinguished and honored guests, ladies and gentlemen:

At the request of a Special Committee of the Council of the Louisiana State Law Institute, I have the privilege, at this moment, of performing a pleasant duty which involves a dear friend and a distinguished servant of our profession of the law. It is an unscheduled event. This is a surprise package. You find no mention of it in the printed program. It pertains to an individual concerning whose accomplishments it would be easy indeed for me to become intoxicated with the true exuberance of verbosity (if indeed any such unusual form of intoxication were called for) in pointing out the many reasons why we do him special honor on this, the occasion of the Fiftieth Annual Dinner Meeting of the Institute. I shall resist that temptation, however, and make this "Exposé des Motifs" brief.

Throughout its organizational life, the Louisiana State Law Institute, in its varied projects devoted to many important areas of law improvement and legal research, has been able to reflect success because of two primary factors. The first is the support and active work of many able lawyers and legal scholars who so unselfishly devote themselves to the tasks of the moment. But even more important has been the quality of leadership reflected in the planning and execution of each project under the guiding energetic hand of its able President.

Unknown to the President, and behind his back with typical non-conforming insubordination, Vice-President Cecil Bird appointed a special committee under the chairmanship of Judge John R. Pleasant and composed of Messrs. Alex Smith, Charles E. Dunbar, Jr., Moreland Meadors and Oliver Stockwell charged with the
responsibility of meeting the spontaneous demand of the Council Members that an appropriate testimonial be prepared to be made to our President at this Fifteenth Annual Dinner Meeting.

The Committee has arranged for the preparation of a magnificent silver plaque which will express in lasting and tangible fashion, perhaps for some unknown future archaeologist in a distant future century, the sentiments of gratitude and esteem of the individual members of the Council for our most distinguished President. Unavoidable delays, including the details of the silver work, and the expert craftsmanship demanded, have made it impossible for the silver plaque to be completed in time for this Annual dinner. Thus, we see all things the Council may fabricate require time - whether it be a Criminal Code, a Code of Practice, a Constitutional Project, a Statutory Revision, a revision of the Civil Code - or even a silver plaque for its President. We can be assured, however, that as in the realm of ideas with which the law must treat, time and attention to detail will improve the final product - so, also, the time required for the execution of the silver plaque will guarantee that, in its artistic confection, it may measure up in some small measure to the legal workmanship of the subject for whom it is intended. Our presentation then is necessarily symbolic on this occasion.

May I ask Mr. John H. Tucker, jr. to please come forward -

President Tucker, on behalf of your working associates on the Council, we salute you. I have the honor of presenting to you the silversmith's working drawing from which the Council's presentation to you will be fabricated. In the not too distant future - assuming no strikes or
lockout among the Nation's most competent silversmiths - you will receive the true sterling of unusual design to match indeed your own unique mold as a legal scholar. The Plaque will bear the Official Seal of the Great State of Louisiana. It will bear the following inscription:

The Council of the Louisiana State Law Institute
To: John H. Tucker, jr.

Colonel Tucker was a founder of the Louisiana State Law Institute. He has been its President throughout its existence except during his absence in the Army of the United States. With tireless industry and profound legal scholarship he has been largely responsible for anything the Institute has accomplished and for which it gives promise of accomplishment in improving the Constitutional and statutory law of this state.

As a token of appreciation of his invaluable services and attributes, and as a lasting memorial thereof, the individual members of the Council of the Louisiana State Law Institute have caused this tablet to be inscribed.

Presented to Colonel Tucker at the Fifteenth Annual Meeting, May second, nineteen hundred and fifty-five.

With the affection and esteem of all our hearts.

[Remarks of Paul M. Nabert, Dean of the LSU Law School, May 2, 1955, in presenting the drawing of the silver plaque to President John H. Tucker, jr.]
During almost one hundred and thirty years of American statehood, Louisiana has occupied a unique position as a civil law island surrounded by the common law. Modern commercial and industrial development has made itself felt through statutory enactments and judicial decisions in subject-matter areas in which similarity with the law of the other forty-seven states is desirable, but the basic substantive private law of Louisiana is still predominantly civilian in character; its repository is the Louisiana Civil Code drafted by Edward Livingston and modelled after the Code Napoleon. The principle of codification also obtains in matters of procedure and it has even been stated that the Louisiana Code of Practice, another of Livingston’s works, influenced David Dudley Field and thereby had a profound effect on the nation-wide movement for procedural reform in the middle of the last century.

Adherence to the civil law ideal of codification has not been an unmixed blessing. The signal character of Louisiana’s legal system poses problems that are in many respects quite different from those of other states, particularly with reference to the initiation of measures designed to improve the administration of justice by means of changes in substantive law, in procedure or in the field of judicial organization and administration. Significant movements for law reform, in the past, have often encountered serious difficulty due to inadequate means for adaptation and assimilation into the Louisiana system. In addition to the traditional conservatism of the legal profession which is always an obstacle to law reform, the preservation of the civil law in Louisiana has perhaps contributed toward the building up of a defensive and even at times an antagonistic attitude toward change.

* Dean, Louisiana State University Law School; Secretary, Louisiana State Law Institute.
one can sense constantly in the background a lurking fear that anything new may in some inexplicable manner interfere with cherished legal institutions, whether of
adjective or substantive law. And the danger is not entirely unreal because it can
be attested by instances in which changes were inaugurated without adequate con-
sideration and resulted only in marring the symmetry of Louisiana’s legal structure.

Livingston and the commissioners responsible for drafting the Louisiana
codes foresaw the necessity for constant change and improvement in law and legal
administration. It was contemplated that the judges should submit periodic reports
to the legislature to be used as a basis for revision of substantive and procedural
law. There is no record of the exercise of this function by the judiciary and
Livingston’s recommendation in this respect failed for lack of machinery to carry
it out. Consequently, improvement in the substantive and procedural law has been
treated as a legislative responsibility, aided by sporadic suggestions from bar
associations or other similar bodies. Constitutional revision occasionally makes
its contribution to the reform process, but there has been a need for some type of
organization devoted exclusively to the improvement of law and its administration.
Obviously, a legislature meeting biennially for a sixty-day session is not able to
cope with the problem. Furthermore, other matters of more immediate public interest
claim almost exclusive attention of the legislators.

The foregoing considerations led to the adoption in 1936 of a compre-
hensive statute creating the Louisiana State Law Institute “to promote and encourage
the clarification and simplification of the law of Louisiana and its better adapt-
ation to present social needs; to secure the better administration of justice and to
carry on scholarly legal research and scientific legal work.” Under its legis-
lative charter the Institute combines the functions of a permanent law revision
commission, a judicial council and an agency for legal research and publication of
materials bearing upon the Louisiana civil law. Some of its specific powers and duties are: to consider needed improvements in substantive and adjective law and to make recommendations concerning them; to study the civil law, jurisprudence and statutes of the state with a view to discovering defects and inequities and recommending needed reforms; to cooperate with the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations and other similar bodies by making reports to the Legislature on changes proposed by such organizations; to recommend from time to time such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of the State of Louisiana, both civil and criminal, into harmony with modern conditions; to render biennial reports to the Legislature of Louisiana, and to accompany its reports with proposed bills to carry out any of its recommendations. In addition to these functions as an advisory law revision commission it is the duty of the Institute to foster research in the civil law and "to make available translations of civil law materials and commentaries and to provide by studies and other doctrinal writings, materials for the better understanding of the Civil Law of Louisiana and the philosophy upon which it is based."

The governing body of the Institute is a Council of thirty-four members combining representatives of the bench and bar, the law schools and the Legislature. Ex-officio members of the Council include the Attorney-General, the Executive Counsel to the Governor, the chairman of the judiciary committees of the Legislature, the president of the Louisiana State Bar Association, the Deans of each of the three law schools, the director of the Institute and any Louisiana members on the Council of the American Law Institute. The elected members of the Council serve for four years with overlapping terms and include eleven practising attorneys, a Supreme Court Justice designated by the Court, an appellate court judge designated by the nine judges of the intermediate Courts of Appeal, a district court judge appointed by
the Governor, a federal court judge designated by the judges of the Eastern and Western Districts of Louisiana and three members from the Faculty of each of the three Louisiana Law Schools. All vacancies in the membership on the Council are filled by the Council.

The officers provided for in the Institute's by-laws are a President, a Vice-President, a Secretary, an Assistant Secretary, a Treasurer and the Director. The active management of the Institute is intrusted to the Director, who at present is a member of the Law Faculty of Louisiana State University devoting part time to the work of the Institute.

Financed by a legislative appropriation of $15,000 per year during the biennium 1940-1942, the Institute has been able to inaugurate a number of projects in furtherance of its objectives. A major portion of the burden of work falls on the Faculties of the three law schools, Tulane University, Loyola University and Louisiana State University, but the availability of funds for research assistance has aided materially in making a larger measure of accomplishment possible.

Membership in the Institute is limited to 150 active members elected by the Council from practicing lawyers, in addition to whom all judges and all of the members of the law Faculties are classified as associate members while all lawyers who are members of the Legislature are made ex-officio members of the Institute. The profession as a whole has manifested a keen interest in the work of the Institute. Despite the necessity of feeling its way very carefully on account of the variety and breadth of its responsibilities, the Institute has undertaken the following research and publication projects:

The work has occupied more than three years and will be completed this spring with the publication of the second volume. As a by-product of this work, it is expected that material errors in translation enacted into the Code may be corrected by legislative action. The compilation will include a complete concordance table covering the Louisiana codes and the French Civil Code and will provide essential source material for recommendations to improve the substantive private law.

(2) A compilation of statutes affecting the subject matter of the Civil Code in order to bring into convenient compass, in readily available form, all legislative action that has modified or affected codal provisions without specific amendment of the Code.

(3) An English translation of the three volume Traité Élémentaire de Droit Civil by Marcel Planiol. This is a long range undertaking designed to make available in English, one of the basic commentaries on the French civil law.

In the improvement of law through legislation the following projects have been undertaken:

(1) On the recommendation of the Institute, the Legislature in 1940 adopted five suggested statutes designed to improve the State's structure of criminal law. The statutes adopted included: (a) the selection of alternate jurors in criminal cases; (b) the making of false claims against the State; (c) conspiracies to defraud the State; (d) the manner of charging certain crimes; and (e) dual office holding.

(2) The Institute, at the request of the Legislature, has undertaken the preparation of a Code of Criminal Law codifying the substantive law of crimes in Louisiana. The work has been in progress for two years and is now in tentative draft form. It will be submitted to the Legislature in 1942 and it is hoped that this will mark the beginning of a concerted effort for improvement in the administration of criminal law.
(3) The Institute is engaged in the preparation of a model Non-profit Corporation Act which is now in its second tentative draft. It will probably be submitted to the Legislature in 1942.

(4) The Institute has taken up for consideration the reports of the seven committees of the Judicial Administration Section of the American Bar Association and plans to make recommendations to the Legislature at a later date. The Section on Procedural Law has recommended the adoption in Louisiana of the Uniform Judicial Notice of Foreign Law Act, the Uniform Business Records as Evidence Act, the Uniform Expert Testimony Act. A statute has been drafted which will make uniform the delays for applying for new trials and rehearings in the state courts. The drafting of an appropriate statute for the adoption of a discovery procedure for Louisiana is in process, and also the preparation of a Declaratory Judgments Act.

In addition to all of the foregoing, the Institute has undertaken the responsibility for cooperation with the American Law Institute in the preparation of Louisiana annotations to the Restatement. It is sponsoring the completion of work in this field already undertaken by members of the Law Faculties. The Institute is also cooperating in the work of the Louisiana Commissioners on Uniformity in State Legislation.

It is believed that the Institute can perform effectively the functions of a Judicial Council and special efforts are being made toward this end. The Louisiana State Law Institute represents one of the first broad attempts to unite in one organization such comprehensive functions of legal research, law revision and legal reform. The breadth of its statutory mandate is necessitated by the peculiar legal heritage that is Louisiana's but the type of organization may perhaps offer suggestions to other states where effort is being made to improve the law.
and its administration. The Louisiana State Law Institute should grow in usefulness and effectiveness. The support that it is receiving from the legal profession in Louisiana ensures well for future achievements equal to its obligations and opportunities.

Louisiana State University Law School,

December 3, 1941.


La. Act 6 of 1940.

La. Act 13 of 1940.

La. Act 16 of 1940.

La. Act 57 of 1940.
FOOTNOTES—2

10. La. Act 259 of 1940.


12. For additional discussion of the Institute and its objectives see:
   Tucker, The Louisiana State Law Institute (1938) 1 Louisiana L. Rev. 139; Editorials in 1 Louisiana L. Rev. 575 (1939); 2 Louisiana L. Rev. 156 (1939); 14 Tulane L. Rev. 89 (1939); 13 Tulane L. Rev. 120 (1938). See also Proceedings of the First and Second Annual Meetings, Louisiana State Law Institute (Handbook 1941).
The position in which I find myself this evening calls to mind an historical anecdote which, if you have all heard, you are nevertheless powerless to stop the repetition of. I have deliberately, you see, ended that sentence with a preposition because we lawyers are individualistic and after all who are English professors, that we should not end sentences in the manner of prepositions with. Well the story relates to Benjamin Franklin and Thomas Jefferson. Franklin as Ambassador to the Court of France in the struggling days of our Nation became a legendary figure. He had all the social graces. His ability and intellect were equalled only by the brilliance of his social entourage. Franklin was a bon vivant (though not a lawyer) he was the toast of Paris and the idol of the brilliant Court of France. His advocacy was no less effective for social prestige so high that the Royal Court felt considerably less decorum when the ungraciously roughDiamond of a personage called Thomas Jefferson was called upon to assume the responsibilities as Ambassador formerly so ably and brilliantly discharged by Benjamin Franklin. The King of France when Thomas Jefferson called on present his
Credit, credentials were quite unimpressed. He
rummaged through the papers and
in 

geographical fashion remarked to
Jefferson:

"So you have come to replace
Benjamin Franklin."

The meaning did not escape
Jefferson, but he quickly
replied in what has since become a

classic

"No Sire. I cannot replace
Benjamin Franklin, I can
only succeed him."

...that distinction
...it goes

without saying, I cannot

replace the distinguished Vice
President of the Louisiana State Law Institute who was to have presided at this Banquet. By draft of Colonel Tucker — I have succeeded to his responsibility and feel the loss of Mr. Demarest's not being here is one which we all recognize. I am happy to be able to say that the medical reports are encouraging and we believe he is fortunately on the road to recovery.

A message has been sent to him reading as follows:

"Quote Message"

As a substitute, I have not had time even to polish up the shaggy dog stories of musty vintage which repose in my undelivered cellar. So I will immediately proceed — establishing a new precedent of no toasts at this dinner to the immediate intellectual pleasure of the evening."
It is a special honor for anyone in the teaching profession to be able to present the distinguished speaker whom we are to have the pleasure of hearing this evening because he exemplifies in every way the quintessence of all that is good and noble among professors of law. If a man is no older than his ideas, our speaker might be said to exemplify隽永的 youth because he has been a pioneering thinker bringing new approaches to each problem of the law to which he has worked. A native of Ohio, he studied at Harvard and spent particular law in Minnesota. He became attracted to teaching in 1912 and on the faculty at the University of Minnesota and Yale Law School. In 1925 Harvard managed to steal him away and for the next twenty years he established an enviable record as a member of the Faculty of the Harvard Law School where he held the Royal Professorship. Harvard drafted him for the acting deanship but he was too wise a man to become a permanent dean. Upon his retirement from Harvard in 1950, Ray Forrester, then the Dean at Vanderbilt, prevailed upon him to continue to give law students in the South the benefits of his great learning and teaching talent. His second career of law teaching since retirement is already seven years old and he so
going strong as the Frank C. Rand Professor of Law at Vanderbilt University.

He has so many books to his credit and so many professional achievements.

His contributions to legal scholarship have been so profound and his professional achievements so varied and sustained that I could not begin to list them.

He has served in many capacities in important areas of law reform. He is the Reporter on the Code of Evidence of the American Law Institute and served on the United States Supreme Court's Advisory Committee on the Rules of Civil Procedure. He is the author of Cases in Evidence, which is a standard teaching title in this difficult and important subject. It is most fittingly appropriate that one who has contributed so much to the law should be the principal speaker at this dinner and the Law Institute is especially honored to have Professor Edmund Morris Morgan and Mrs. Morgan as special guests on this occasion. As so leaders and gentlemen, to discuss "That Glorious Mystery - The Law of Evidence", I give you Professor Eddie Morgan.