THE NAME AND THE CIVIL LAW OF THE PERSON

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Le Code civil de la Louisiane, à l'instar de celui du Québec, ne comporte pas de disposition spécifique en rapport avec le nom de la personne. L'inexistence de telle disposition a été interprétée par les tribunaux de la Louisiane comme excluant du droit civil la détermination des droits extra-patrimoniaux de cet ordre.

L'auteur, avocat formé au Québec et professeur d'une Faculté de droit de Louisiane, conteste cette interprétation; il est d'avis que le droit en vigueur au début du XVIIIe siècle dans la colonie française de Louisiane comportait certaines règles mal connues de droit français pré-révolutionnaire se rapportant au nom qui seraient demeurées en vigueur au cours de l'histoire de la Louisiane, que ce soit à l'époque de la colonisation espagnole, de sa cession aux États-Unis ou depuis son accession au statut d'État des États-Unis d'Amérique.

En terminant, l'auteur formule des propositions en vue de réformer le droit civil dans ce domaine, propositions qui tentent de répondre aux besoins nouveaux de la société tout en conservant les avantages de l'approche civiliste traditionnelle.

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PLAN

INTRODUCTION

The Louisiana courts have failed to apply that portion of the civil law which is concerned with the name of the natural person. Although a three-judge panel of the United States District Court for the Eastern District of Louisiana has found civil law to regulate the name of the person,[1] Louisiana appellate courts have not seriously considered this branch of the civil law of the person.

Cases have come to the State courts regarding the name of a married or of a divorced woman. The Supreme Court ruled in a 1963 case that, "... there is no definite law... in Louisiana as to what is the legal name of a married woman."[2] It then looked to *Corpus Juris Secundum* to find this nonexistent law.[3] More recently, the Louisiana Court of Appeal rejected the civil law of the name (as stated in a French academic work of 1939[4]),[5] and found customary usages of the local community to be the only source of law in this field.[6]

An examination of Louisiana and Federal legislation, in the first part of the script, will show the extent to which express texts of law govern the name[7] of the person[8] in Louisiana law. It will be seen that statutory provisions offer only fragmentary regulation of the name of the person.

Next, examination of the law in force in the Territory of Louisiana at the time of its cession by France will disclose a comprehensive body of law, regulating the acquisition and use of names. It will be argued that Spanish laws in point were not

1. *Boothe v. Papale*, No. 74-1939 (E.D. La., filed 12 February 1975), at 3. The panel was comprised entirely of Louisiana-trained lawyers: Ainsworth, Cir. J., Cassibry and Comiskey, JJ.
2. *Wilty v. Jefferson Parish Democratic Committee*, 245 La. 145, 157 So. 2d 718, 721 (1963).
3. *Ibid.*, 723-24.
4. Planiol, *Traité élémentaire de droit civil*, 12ème éd. (tr. Louisiana State Law Institute, 1959), No. 390, 392, 395.
5. *Welcker v. Welcker;* 342 So. 2d 251, 253 (La. App. 4 Cir., 1977).
6. *Ibid.*, 253-54. Opinions of the Attorney-General of Louisiana regarding the names of married and divorced women have been inconsistent; *Re Grace*, [1932-34] Opp's Att'y-Gen. La. 616; *Re McCahan*, [1934-36] Opp's Att'y-Gen. La. 809; *Re Culpepper*, [1956-58] Opp's Att'y-Gen. La. 551.
7. The word *name* is used herein to indicate a person's given names and surname.
8. This script is concerned only with the name of the natural person; the term *person* is used in this restricted sense only.

introduced during the four decades of Spanish rule. After assessment of the presently-applicable uncodified civil law, a proposal will be advanced for the modernisation and systematisation of the civil law in this field.

I- LEGISLATIVE PROVISIONS

State

Unlike the French Civil Code,[9] and the codes of most other civilian jurisdictions,[10] the Louisiana Civil Code makes no mention at all of the mode of acquisition of names.[11] There never has been a State statute of general application in this field; indeed, the scattered statutory provisions offer few substantive rules governing the names of persons.

The Vital Statistics Law provides for compulsory registration of births,[12] on a form providing a place for the notation of the "Full name of child".[13] This form, referred to in the statute as both a birth certificate and a certificate of birth, is not filed by the parents of the child, but by a medical doctor, midwife, "or other legally authorized person in attendance at the birth".[14] The statute is silent as to who is to choose the child's given names. It does, however, infer that every child must be named, although this need not be done before the filing of the certificate.[15]

It is suggested by one section of the Vital Statistics Law that a legitimate child's name includes the surname of his father as his own surname, while the natural child's name includes the surname of his mother as his own surname. Section 40:45 reads, in part,

> "If any child is legitimated by [the] subsequent marriage of its [sic] parents, the state registrar... shall prepare a new certificate of birth in the new name of the legitimated child."

The Law provides that the certificate of birth filed under its requirements, "... is *prima facie* evidence of the facts therein

9. Art. 57, 334-1 to 334-7.

10. *E.g.* Quebec Civil Code, art. 54-56a.

11. No provisions were inserted in the recent revision of the Title "Of Father and Child", art. 178-245, effected by 1976 La. Acts, No. 430, §1.

12. La. Rev. Stat. Ann., §40:42 (West, 1977).

13. *Ibid.*, §40:34 (1) (a).

14. *Ibid.*, §40:44 ¶1.

15. *Ibid.*, §40:34 (1) (a).

stated."[16] If this provision is read literally, it is open to a person to challenge the accuracy of his name, as noted on his birth certificate. He might, for example, present evidence that the doctor or midwife misunderstood the wishes of the person naming him, perhaps by recording a misspelling or the wrong name, or by failing to record his full name.

Section 40:57 provides authority for administrative rectification of a birth certificate, upon presentation of such "proofs" as may be required by regulation. This provision was changed substantially in 1976.[17] The previous text had required "sufficient documentary or sworn evidence" to be presented in order to alter a birth certificate[18]; it was quite strictly construed by the courts.[19]

A State official, the State Registrar of Vital Records, is charged with the preservation of "all vital certificates and records" in Louisiana.[20] Local Registrars, whom he appoints, are charged to determine that "vital records" documents[21] received by them, within their respective parishes,[22] are "properly prepared", and then to forward these documents to the State Registrar.[23] It is doubtful if a Local Registrar's duty to insure that the "vital records" documents in his area are "properly prepared" gives him authority to inquire into the accuracy of statements that are legibly inscribed on appropriate forms.[24]

The general purport of the Vital Statistics Law suggests that some act, other than the filing of a birth certificate, invests a person

16. *Ibid.*, §40:40 ¶1.

17. 1976 La. Acts, No. 352, §1.

18. La. Rev. Stat. Ann., §40:266 (West, 1951).

19. *Thomas v. Stewart*, 337 So. 2d 645, 646-47 (La. App. 4 Cir., 1976).

20. La. Rev. Stat. Ann., §40:45 (West, 1977). The Registrar of Vital Records has not replied to a request for specimens of the Louisiana vital records forms, to be examined for purposes of the present research: letter of 18 July 1979.

21. The term *vital records* is not defined; however, §40:32 (6) defines *vital statistics:*

> "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, stillbirths, morbidity, marital status, and data incidental thereto [sic].

22. The civil districts known as counties elsewhere in the United States are called parishes in Louisiana.

23. *Op. cit.*, §40:36.

24. The Law is quite detailed as to how information is to be placed on forms — even prescribing the use of "jet black ink": *ibid.*, §40:34 (West, 1979).

with his name. Certainly, some source of law other than this statute must be sought if one is to discover the answers to questions including who can name a child, what given names a child may be given, and what surname a legitimate child (or a natural child) may bear.

While there is no statutory prohibition against the informal change of a person's name, what authority exists holds that one must proceed under the statutory scheme in changing one's name.[25] Louisiana's statute, which is similar to those of many common law States, allows any person of the age of majority to petition a Court to grant a judgment changing his name to one he desires.[26] The parish district attorney is charged with representation of the interests of the State.[27] The Court only may, "... render *such judgment* as the nature of the relief and *the law* and the evidence *shall justify.*"[28] The statute does not specify what this might be. A judgment must be registered with "the miscellaneous records of the parish" before it changes "the true and lawful name of the party".[29] The Registrar of Vital Statistics is not charged with changing birth certificates to reflect change-of-name judgments.

Changes of the names of minors require parental consent; indeed, the statute does not even require that the minor concur in the proposed change.[30] Both parents must concur, unless one parent, who has been deprived of custody, also has failed to support the child.[31]

There is questionable judicial authority for the proposition that the statutory change of name provisions do not apply to new-born children.[32] The State Court of Appeal found itself to have inherent

25. *Inquiry of Kerby*, [1942-1944] Opp's Att'y-Gen. La. 963, 964-65 (opinion of 2 June 1942). There are no judicial decisions in point.

26. La. Rev. Stat. Ann., §13:4751 (West, 1979), §13:4754 (West, 1968).

27. *Ibid.*, §13:4752 (West, 1968). The district attorneys of three of the State's most heavely populated parishes were asked what they understood their rôles to be in change of name proceedings: letters of 24 July 1979 to the District Attorneys of East Baton Rouge, Jefferson and Orleans Parishes. None of the three replied.

28. *Ibid.*, §13:4753; emphasis added.

29. *Ibid.*, §13:4754.

30. La. Rev. Stats Ann., §13:4751, as amended by 1978 La. Acts, No. 455 and No. 781. *See* §13:4751 (B) (1).

31. *Ibid.*, §13:4751 (B) (2).

32. *Webber v. Parker*, 167 So. 2d 519, 522 (La. App. 4 Cir., 1964). No authority is cited in the opinion.

authority to order a change in the name of a child born during a separation suit, if the name given could be proven "detrimental to the present or future welfare of the child".[33]

Adoption decrees made under Louisiana law may include provisions changing "the full name" of the child; but if any change of name is so ordered, then the child's surname must be changed to "that of the adoptive parent".[34] The Court must report this change of name to the State Registrar of Vital Statistics,[35] who then shall file a new birth certificate for the child (if he was born in Louisiana).[36] The new certificate bears a notation reading "adopted"; the original certificate and the Registrar's record of the adoption decree then are filed in a sealed package.[37] The Registrar is to act similarly in the case of foreign-born adopted children; he also stamps "not proof of United States citizenship" on their birth certificates.[38] A new birth record also may be recorded, reflecting name changes ordered in out-of-state (but not foreign) adoptions of persons born in Louisiana.[39]

A 1968 amendment to the Vital Statistics Law allows the courts to order the change of the sex and the name recorded on birth certificates of persons who have, "sustained sex reassignment or corrective surgery".[40] The provision only can be invoked by persons born in Louisiana.[41] It is made explicitly applicable to those not residents of Louisiana,[42] and, apparently, can be invoked by non-domiciliaries.

Except in cases of a registered and judicially-ordered change of name, Louisiana's enacted statutes appear not to establish any procedure for the bestowal of a name upon the person. As noted already, the Vital Statistics Law only allows for the registration of a name a child already bears; hence the public record created under its

33. *Ibid.* In this case, the petitioner failed to provide such proof: *ibid.*, 522-23.

34. La. Rev. Stat. Ann., §9:435 (West, 1965).

35. *Ibid.*, §9:436 and §40:81 (A) (West, 1979).

36. *Ibid.*, §40:81 (A).

37. *Ibid.*

38. *Ibid.*, §40:81 (C).

39. *Ibid.*, §40:78 (West, 1977).

40. 1968 La. Acts, No. 611, §1, as amended; now La. Rev. Stat. Ann., §40:61 (West, 1977, 1979).

41. *Ibid.*, §40:61 (A).

42. *Ibid.*, §40:61 (B).

provisions only is *prima facie* evidence of one's name.[43] Yet other State statutes presume that a person must bear a name, and that he only bears one name. One is left to conclude that a law antecedent to the Louisiana statutes may continue to regulate the name of the person.

A person has a difficult time in the American community without a driver's license. It serves many of the same functions as the French *carte d'identité*. Without a driver's license one frequently will encounter difficulty in making purchases in shops by cheque. Young persons are asked to show a driver's license, not a birth certificate, to establish proof of majority at such places as bars, cinemas showing X-rated films, and pari-mutuel betting facilities. Production of a driver's license is the key to procuring certain other identity documents, such as a passport.[44]

Louisiana statutes do not state the name a person may use in applying for a driver's license. Still, they presume every person to have a name, under some generally applicable principles of the civil law, for the statutes provide as follows:

> "It shall be unlawfull for any person:
>
> ...
>
> To use a false or fictitious name in any application for an operator's or chauffeur's license...".[45]

The uncodified civil law again may be presumed to continue to define a person's name.

Public education authorities usually are quite careful to maintain student records in the students' correct names. Louisiana's General School Law requires each child's "official birth record" to be presented when he is enrolled in any public (or private) school in the State.[46] It does not actually require however that records be maintained in the name on that record. Indeed, as a Louisiana birth certificate is only *prima facie* evidence of the facts it asserts,[47] a writ of *mandamus* might lie to compel school authorities to maintain student records in a child's correct name, if that be different from the name on his birth certificate. Again, the general and uncodified civil

43. *See supra*, pp. 572-573.

44. *See infra*, p. 579 et note 60.

45. La. Rev. Stat. Ann., §32:414.1 (5) (West, 1979).

46. *Ibid.*, §17:222 (West, 1979).

47. *Ibid.*, §40:40, ¶1 (West, 1977); see above.

law of the person thus may be determinative of the name in which a student's school records are to be kept.

No statute regulates the names in which Louisiana universities are to keep student records, or in which they may issue students' diplomas upon graduation. Yet the universities also are anxious to reflect a student's lawful name in his records, and to inscribe his name properly on his diploma. For example, the practice of the Loyola University Law School has been to maintain records and to issue degrees in the name that appears on a student's undergraduate transcript.[48] The name on an undergraduate transcript probably reflects the name on a student's school records.

The School of Law will allow a record to be maintained in the Anglicised version of a foreign name which a student has adopted informally; however, it will require proof of a judicial order before making any other change in the names of its students in University records. As the School of Law feels bound by the regulation respecting names of married and divorced women in the Louisiana Election Code,[49] which the School's official responsible for these matters understood to be indicative of general rules of the civil law, it allows married women to use either their fathers' surnames or their husbands' surnames. For the same reason, and upon the same authority, it has allowed divorcées to receive the degree of *juris doctor* in either their fathers' surnames or their last husbands' surnames.[50]

It is worthy of note that Loyola University's School of Law, in maintaining its student records, looks to the Legislature to have created a text of law governing the name of the person. But the Legislature has not modified the uncodified pre-1808 Louisiana civil law: the Louisiana Election Code only deals with the names a married woman may use for a specific purpose. The Election Code most certainly is not offering a general rule of civil law about married women's names.[51]

The Louisiana Election Code allows any man or spinster to register to vote in the name he offers, providing "sufficient identifying documents" show him to be, "the identical person whom

48. Interviews with Miss Katherine M. Schwab, Assistant Dean, 18 July and 14 August 1979.

49. La. Rev. Stat. Ann., §18:111 (B) (West, 1979).

50. Interviews with Miss Schwab, n. 48, *supra.*

51. *Boothe v. Papale,* n. 1, *supra.* The Court here was interpreting §18:270.209 (West, 1969).

he represents himself to be."[52] A Louisiana driver's license is the preferred source of identification, according to the Election Code.[53] We have seen already that the Statutes do not define one's name, for purposes of obtaining a Louisiana driver's license.[54]

A final text from the *Louisiana Statutes Annotated* (as published by the West Publishing Company) sometimes is cited by Louisiana lawyers as determinative of a married woman's name. Form 208C, in the compilation's series of forms for civil actions, relates how a married woman is to be described when a party-plaintiff.[55]

> "The petition of Mrs. Emily C. Batt, wife of Arnold C. Phillips,[55a] domiciled in this parish, respectfully represents..."

While the proposed formulation may be apt in modern French law — indeed, it cites as authority the same English-language translation of Planiol already encountered — it is not of statutory authority, and the Form does not reflect the law of Louisiana.[56]

Two conclusions are to be drawn from examination of Louisiana statutes: (*a*) the legislation, even when viewed as a whole, fails to regulate systematically the name of the person; rather, (*b*) it seems as if the State's statutes presume some unwritten law to regulate the matter.

Federal

Certain Federal enactments establish rules respecting persons' names, for specific purposes within the legislative competence of the central government. These rules are not consistent among themselves. As the common law States may have no general laws respecting persons' names, some rules may be needed for purposes of Federal functions. It will be seen that these rules ought to be made more consistent. Thought ought to be given, too, to giving paramountcy over such Federal rules to the general law respecting

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52. La. Rev. Stat. Ann., §18:105, ¶ 1 (West, 1979).

53. *Ibid.*

54. See p. 576, *supra.*

55. McMahon and Rubin, *Pleading and Judicial Forms Annotated,* 100-01 (1963).

55a. "Under the civil law, a woman does not lose her patronymic name through marriage; and her legal name never varies with a change of her marital status. Socially, a wife is known by the name of her husband, but under the civil law she never acquires his name."

56. *Ibid., loc. cit.* and pp. v-vii.

names of the State with which a person is most substantially connected — when that State has such a body of law.

Only one obscure provision in the United States Code relates to the acquisition of a name by a person. Under its constitutional authority concerning matters of naturalization,[57] Congress has enacted a provision allowing a Federal or State court hearing such a matter, "... to make a decree changing the name of said person...". The granting of this ancillary decree is at the court's discretion. If granted, it is to be incorporated in the petitioner's certificate of naturalization.[58] No reported decisions interpret the scope of this statutory provision. It is possible however that the powers of Congress under the naturalization clause are not sufficiently broad to authorize this provision; but judicial decisions in the area are scant.[59]

Various provisions of Federal law deal with the names a person may use for specific purposes. Unfortunately, these statutes are not consistent with one another. More disturbingly, Congress has not seen fit to respect the law regarding names of each person's State of domicile.

Thus the Department of State is obliged to issue a passport to a person in any name, when the person can, "... explain any material discrepancies between the names to be placed in the passport and the names recited in the evidence of citizenship and identity[60] submitted."[61] A judicial change of name order or decree always will be respected.[62] Moreover, the Passport Office will accept as the appropriate name to place in one's passport — regardless of the law of one's State of domicile — any name, "... publicly and exclusively used... over a long period of time."[63]

The certificate of naturalization given a foreign-born citizen is a document of civil status comparable to a passport: both establish one's American nationality, in the United States or abroad. Yet the

57. U.S. Const., art. I, §8, cl. 4.

58. 8 U.S.C.A., §1447 (f) (West, 1970).

59. *See generally* Morris D. Forkosch, *Constitutional Law*, 2nd ed. (Mineola, N.Y.: Foundation Press, 1969), n. 10 at p. 273.

60. Usually a birth certificate and a document such as a driver's license: *see* 22 C.F.R. §51.43 and 51.28, respectively.

61. 22 C.F.R. §51.23 (1978). *Quaere* what discrepancies might be merely 'immaterial'?

62. *Ibid.*, §51.24.

63. *Ibid.*

only changes of name recognized for entry on a certificate of naturalization — unlike a passport — are those achieved "... by an order of a court of competent jurisdiction, or by marriage."[64]

By statute and regulation, Social Security accounts are maintained by the Department of Health, Education and Welfare; and cards naming the person and showing his account number are issued, in the "true identity" of each person.[65] An applicant may choose to submit as "corroborative evidence of [his] identity" any one of the following: "... a driver's license, a voter registration card, a birth certificate, a passport, or other similar document identifying the individual."[66] Apparently, *no* evidence need be submitted by a person applying to change the name under which his account is kept, and to receive a new Social Security card in that new name.[67]

It might be claimed that the purpose of Social Security records and account-number cards is to provide for accurate assessment of one's entitlement to certain social welfare benefits, and also that the Congress did not intend the Social Security card to be an identity document. Nonetheless, these account-number cards are relied upon in the community as identity documents; for instance, employment records often will be maintained only in the name appearing on these cards. For this reason alone, Social Security cards ought to show only one's lawful name. Unless Congress is prepared to enact uniform law-of-the-person provisions for purposes of Federal social welfare law,[68] Congress also ought to abide by State laws in point, out of respect for needs of legal symmetry.

No doubt arguments of administrative convenience can be advanced for each Federal statute and regulation that prescribes yet another set of rules for the use of names. Such arguments fail to recognize the chaos bound to result from such a plethora of particularised rules. It remains to the several States to regulate generally the law of the person. While the Federal Congress may have the power to do otherwise, it would be well advised to recognize

64. 8 U.S.C.A. §1454 (d) (1970).

65. 42 U.S.C.A. §405 (c) (2) (B) (ii) (1974); 20 C.F.R. §422.103 (c) (1978).

66. 20 C.F.R. §422.107 (b) (1978).

67. 20 C.F.R. §422.110 (1978).

68. Neither Congress nor the Federal courts have shown any enthusiasm for creating uniform federal definitions of familial matters: *Yarborough v. United States*, 341 F. 2d 621 (Ct. Cl. 1965); *Holland America Insurance Co.* v. *Rogers*, 313 F. Supp. 314 (N.D. Cal. 1970); *cf. Beebe v. Moormack Gulf Lines*, 59 F. 2d 319 (5 Cir. 1932).

persons by the names ascribed to them by the laws of their respective States[69] of habitual residence.[70]

II- THE UNCODIFIED CIVIL LAW

Source of the law

It is a truism that in a jurisdiction such as Louisiana, the two primary sources of private law are legislation and custom. All other sources of law are not authoritative, but merely persuasive. Jurisprudence, meaning case law, is in the latter category, unless the courts create a *jurisprudence constante,* that is, a substantial body of consistent decisions, themselves creating a legal custom. Custom in this sense, as one of the primary sources of law, is quite different from the practices of the community, sometimes called usages. A usage is an inferior source of law, and thus cannot create law at variance with a legislated text.[71]

As noted above,[72] no text of law of the State of Louisiana offers general rules of civil law concerning persons' names. However it is suggested that one may look profitably to a body of law predating statehood, and also predating Louisiana's acquisition by the United States. This body of law is equivalent in authority to legislation.

Each Louisiana Constitution has had a provision perpetuating the law in force under the previous State Constitution. Such a provision has been included in the present document.[73] The first

69. One linked to a foreign country would, accordingly, be recognized as bearing the name ascribed to him by the law of that country: *De Renzes v. His Wife,* 115 La. 675, 39 So. 805 (1905).

70. Including the conflict of laws principles of that law. This is essential, for a great many jurisdictions will look to the law of the person applicable in the place of one's birth, to determine his name. Despite the disfavour in which *renvoi* may now be held by certain scholars, its use seems essential to the reasonable operation of conflicts principles in this field: *see* Paris, 1er juill. 1970, Revue critique de droit international privé. 1970. 718.
Little has been written about conflict of laws problems concerning names, especially in the English language. Some useful references include Ibrahim Fadallah, *La famille légitime en droit international privé* (Paris: Dalloz, 1977), No. 377, pp. 338-39; Albert A. Ehrenzweig, *Treatise on the Conflict of Laws* (St. Paul, Minn.: West, 1962), 374; Schätzel, *Le nom des personnes en droit international,* 95 III Recueil des Cours de l'Académie de Droit International de la Haye 183 (1958).

71. A.N. Yiannopoulos, *Jurisprudence and Doctrine as Sources of Law in Louisiana and in France,* in Dainow, ed., *Role of Judicial Decisions and Doctrine in Civil Law and Mixed Jurisdictions* (Baton Rouge: L.S.U. Press, 1974), 69-79.

72. P. 578.

73. La. Const. of 1974, art. 14, §18 (West, 1977).

Constitution of the State of Louisiana was drafted under authority of an Enabling Act of the Federal Congress,[74] and was before Congress when it passed the Act of Admission of Louisiana to the Union.[75] A provision in this first Louisiana Constitution of 1812 stipulated that, "All laws now in force in this territory, not inconsistent with this Constitution, shall continue and remain in full effect until repealed by the legislature."[76]

A State statute of 1828 has been said to have, "... abrogated all the civil laws (French, Roman, Spanish) which were in force prior to the 1825 [Louisiana Civil] Code;..."[77] In fact, this statute, No. 40 of the Louisiana Statutes of 1828, merely repealed provisions of the Digest of 1808 which were "not reprinted" in the State's Civil Code[78]: all other law remained in full effect.

The State of Louisiana, as admitted to the Union under the Constitution of 1812,[79] was conterminous with the former Territory of Orleans. The Territory of Orleans had been governed under authority of a Congressional statute of 3 March 1805. A provision of that organic law similarly saved preëxisting law.[80]

Laws in force prior to 3 March 1805 were those sanctioned by the temporary organic act for the Territories of Orleans and Louisiana, which was passed by Congress on 26 March 1804. The Act of 1804 contained a clause which is the same, verbatim, as that quoted above from the organic law of 1805.[81]

The Federal Government took possession of Louisiana on 20 December 1803. Presidential authority to administer the area derived from a statute of 31 October 1803. It charged President Jefferson with "maintaining and protecting" the "liberty, property

74. Act of 20 February 1811, §4.

75. Act of 8 April 1812.

76. La. Const. of 1812, Schedule, §4.

77. F.F. Stone, *The Reception of Law in Louisiana*, in Hazard and Wagner, eds., *Legal Thought in the United States Under Contemporary Pressures* (Brussels: Établissements Bruylant, 1970), 127, 146 and n. 102.

78. *Loc. cit.* The French and English versions of the statute both are to this effect.

79. Its limits subsequently were expanded: Act of 14 April 1812.

80. Act of 3 March 1805, §4:
And be it further enacted, that the laws in force in the said territory at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force until altered, modified, or repealed by the legislature.

81. Act of 26 March 1804, §11.

and religion" of its inhabitants. Hence, it would follow that private law in force on 20 December 1803 was thereby continued by this statute.

During the eight months between the conclusion of the Franco-American treaty of cession on 30 April 1803, and the American acquisition of possession on 20 December 1803, preëxisting laws of Louisiana remained in full effect. Both high contracting parties were bound to maintain and protect the inhabitants, "... in the free enjoyment of their liberty, property, and the Religion which they profess."[82]

In March 1801, the First Consul of the French Republic and His Catholic Majesty the King of Spain bound themselves to ratify the provisions of the Treaty of Ilevar (San Ildefonso), whereby Louisiana was ceded to France by Spain.[83] Two provisions in the latter Preliminary and Secret Treaty[84] pertained to Louisiana. In Article 3, His Catholic Majesty undertook to transfer to the French Republic, "... the colony or province of Louisiana, being the same area as is now in the hands of Spain, and as when possessed by France, ..."[85] In Article 4, this obligation of Spain was suspended until France succeeded in having returned to Spain certain lands recently annexed by the Duchy of Parma. While no clause in either treaty specifies that laws existing in Louisiana were to remain in force, that occurred anyway: it followed from universally recognized rules of the international law of the period.[86]

The transference of sovereignty over Louisiana from France to Spain was effected by treaty in 1762, as "living proof" of the grief felt by his Most Christian Majesty, the King of France, for the loss of Florida to Britain by His Catholic Majesty, the King of Spain. The document reads, in its operative paragraph, as follows:

> "To this end, that Most Christian King has authorised the Duke of Choiseul, his Minister, to serve upon the Marquis of Grimaldi, Ambassador Extraordinary of that Catholic King, in the most authentic form, a [this] document, whereby this Most Christian

82. Treaty for the Cession of Louisiana, Paris, 30 April 1803, France-United States, 57 Consolidated Treaty Series [C.T.S.] 27, art. 4 at p. 32.

83. Treaty of 21 March 1801, Aranjuez, Spain-France, 56 C.T.S. 44. This provision is in art. 6 of the French text, and in art. 5 of the Spanish-language text.

84. Treaty of 1 October 1800, San Ildefonso, Spain-France, 55 C.T.S. 375.

85. Author's translation.

86. *Campbell v. Hall*, Lofft 655, 98 Eng. Rep. 848 (K.B. 1774), and authorities cited in the arguments of counsel therein.

> Majesty cedes in full ownership, purely, simply and without reservation, to His Catholic Majesty and to his successors in perpetuity, all of the lands known under the name of *la Louisiane,* as well as *la Nouvelle Orléans* and the island upon which that city is situated."[87]

Once again, though this treaty does not expressly continue French laws in force until amended by the new sovereign, no express words to this effect were required by eighteenth-century international law. Louisiana was a settled territory; it was being acquired by cession and not by conquest. The words quoted are to be read as showing the desire of France to convey its fullest sovereignty, not as a cession of Louisiana as if it were *terra nullius:* the latter would have been thought a juristic impossibility.[88]

France acquired Louisiana originally by discovery and settlement; French sovereignty was certain by 1699. As no other European state seriously contested this acquisition, a search for the civil law regulating the names of persons in Louisiana can begin in that era. By 1712 — at which time the total population of the territory was 380 souls — the ordinances and edicts of France, and such of the customs of Paris as were then in force, were transmitted to Louisiana. Powers of adjudication were granted to entrepreneurial "developers", first Crozat and then Law; but powers of legislation were retained by the French Crown.[89] The same substantive laws continued in force from the reversion of Louisiana to the status of a Crown Colony in 1731, at least until the treaty of 1762. These laws were, in fact, both known and followed in Louisiana.[90]

These sources of law, the customs and usages of France's preëminent region, as modified by the Royal legislation of France prior to 1712 (and possibly those Edicts and Ordinances promulgated as late as 1762), thus were made the law of Louisiana, *by competent legislation.* Unless repealed under Spanish sovereignty, it has been established that they remained in effect, and were the

87. Treaty of 3 November 1762, Fountainbleau, France-Spain, 42 C.T.S. 241, ¶ 3. Author's translation.

88. *See* n. 86, *supra.*

89. F.F. Stone, *The Reception of Law in Louisiana,* in Hazard and Wagner, eds., *Legal Thought in the United States of America Under Contemporary Pressure* (Brussels: Établissements Bruylant, 1970) 127, 127-29; Marcel Giraud, 1 *Histoire de la Louisiane française* (Paris: Presses Universitaires de France, 1953) 280.

90. F.F. Stone, *op. cit.,* n. 9 at 128, and 131; Henry Planché Dart, *Place of the Civil Law in Louisiana,* 4 Tulane L. Rev. 163, 165 (1930).

legal legacy bequeathed to the State of Louisiana. These laws are still in effect in areas where they have not been explicitly or implicitly repealed by Louisiana legislation. As discussed in Part I, the portion of the civil law of the person which is concerned with one's name is just such an area of the law.

What then was the law concerning a person's name in the mid-eighteenth century, in the areas of metropolitan France in which the customary law of Paris was applied?

Applicable rules

Contemporary and modern writers are in broad agreement regarding French law, of customary origin, governing the names of persons in the century preceding the French Revolution. One can be certain that at least the following general principles were applied, as rules of law[91]:

a) The French law of names applied only to persons domiciled in France, not to foreigners.[92]

b) Each person had at least one given name. One might have several given names.

c) During this period one might be given only those names which were to be found in the calendar of Christian saints, or were found in the Torah, or were in common usage in European antiquity.[93]

d) It seems probable that it was strictly a paternal right to select the given names of a legitimate child.[94]

e) One had no other given names than those so selected shortly after one's birth.

f) The surname of a legitimate child was that of its father; unrecognized bastards could bear only there respective mother's surnames.

g) Certain rights to use of titles of nobility and seigneurial names were governed by special rules. They were an accessory, and not a true part of one's name.

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91. Merlin, 11 *Répertoire de jurisprudence*, 5ème éd. (Paris: 1827), 505-09; Marcel Garaud et Romuald Szramkiewicz, *La Révolution française et la famille* (Paris: Presses Universitaires de France, 1978), 9-13.

92. *See today* art. 3 (3) of the French Civil Code [C.C. Fr.], which substitutes nationality for the linking factor of domicile.

93. *See today* loi du 11 germinal an XI, art. 1; Grenoble, 15 déc. 1965, J.C.P. 1966.II. 14626; ministerial instruction of 12 April 1966, *Journal Officiel*, 3 mai 1966.

94. *See today* art. 56 C.C. Fr.

h) One might be charged in a will or a marriage contract with the obligation of taking the surname of the donor of a legacy or dowry.

i) In certain cases, an eldest son might incorporate with his surname the name of the principal estate he inherits.

j) By this time, it clearly was required that upon marriage a woman sever the legal connection with her father indicated by her possession of her father's surname. Thus, after marriage she was known only by her husband's surname.

k) A Royal Ordinance of 1553 had varied earlier law; Royal letters-patent now were required for all changes of name, other than those already noted.

l) Such letters-patent usually would issue in cases where one wished to change a ridiculous name or a name that had become infamous, or one wished to select a new surname in cases where one's surname was of too frequent occurrence in one's locality.

m) It was not possible for a married woman to transmit her father's surname to her husband or her issue, as she ceased to bear it upon marriage.

n) A person's legal right to his name extended to the right to prevent another from usurping it, as by purporting to enjoy the surname of a family of note in the community.

This body of customary law was certain and in general application at the time of the reception in Louisiana of the laws in effect in the region of the Ile de France. However, as it had no direct bearing upon patrimonial rights, it followed that it was not compiled in the published *Coutume.* Still, there are inferrential proofs in Ferrière's commentary.[95] His discussion of Article 44, concerning titles, infers that the law did establish one's name.[96] More to the point, from his commentary on Article 291, it is clear that a body of law outside the codified *Coutume de Paris* concerned itself with the substance of the acts — including baptisms — which the Catholic clergy were charged to register, in their capacity as civil officers.[97]

Too much of eighteenth century French law lay outside the scope of the codified regional *coutumes.* Even if the words of the reception of law clause in Crozat's commission could be read narrowly, so as to encompass only the codified law, such a

95. Claude de Ferrière, *Nouveau commentaire sur la Coutume de la prévoté et vicomté de Paris,* nouvelle édition (Paris: 1762).

96. *Ibid.*, tome 1, pp. 112-14.

97. *Ibid.*, tome 2, pp. 263-64.

construction would not accord with international law of the era. Reference to the published *Coutume de Paris* was not meant to exclude other, supplemental law; rather, it was meant to specify the regional codification of law which would serve in Louisiana to regulate matters within the scope of such regional codifications.[98]

Spanish era

As noted already, Spain gained sovereignty of Louisiana by cession from another European power in 1762; Spain did not gain sovereignty by discovery and settlement, nor by conquest. Hence French laws in force in Louisiana remained in effect until modified by the new sovereign. Though the Spanish administration had clear authority under international law to do so, it would seem that Spain never rescinded the French law of the person in regard to names.

While it has been argued that the Spanish authorities intended to replace the entirety of French law by Spanish law, the arguments are not persuasive. The words of the Ordinance of 26 November 1769 are not clearly to that effect: they can be understood more readily to introduce only that portion of Spanish law recited therein.[99] Thomas Jefferson, writing in 1810, had no doubt, "... that this proclamation made specific only, and not general alterations, [as] a brief examination of its tenor will evince."[100] His argument remains far more convincing than the contrary proposition, advanced from time to time in the Louisiana legal journals. "But the very act of making specific changes," wrote Jefferson, "is a manifestation that a general one was not intended."[101] Except as specifically amended, French law thus was considered to apply in Louisiana during and after the Spanish régime.[102] This logical argument remains telling.

98. Modern French law is, of course, quite different from that discussed herein. Perhaps the best survey is in Pierre Raynaud, *Droit civil: Les personnes*, 3ème éd. (Paris: Sirey, 1976), No. 718-734, pp. 804-27.

99. The main proponent of the total introduction of Spanish law has been Professor Batiza; *see* his *Influence of Spanish Law in Louisiana*, 33 Tulane L. Rev. 29, 30-31 (1958). See also John H. Tucker, Jr., *Code and the Common Law in Louisiana*, in Bernard Schwartz, ed., *Code Napoleon and the Common Law World* (N.Y.U. Press, 1956), 346, 349-50.

100. Thomas Jefferson, *The Batture at New Orleans*, in Lipscomb *et al.*, eds., 18 *Writings of Thomas Jefferson* (Washington, D.C.: 1904), 31.

101. *Ibid.*, 33.

102. *Ibid.*, 37, n. 1 at 36 and n. 1 at 37. *See also* Jefferson's letter to the Secretary of State (James Madison), 19 May 1808, 12 *Writings of Thomas Jefferson* 58-59.

Neither the Digest of 1808,[103] nor the Lislet and Carleton work of 1820,[104] make any reference to a revision of this part of the Louisiana law of the person during the Spanish régime. Just as importantly, the social situation in the Spanish colony of Louisiana made it inopportune to replace the French law in this field.

Most of the immigrants to Louisiana after Spain finally took possession of the colony in 1766 remained of French stock. The Spanish régime in Louisiana actively assisted Acadian immigration in 1767 and 1768. By decision of the Spanish Crown in 1774, the settlement in Louisiana of Germans, Acadians, French and Irish was sought. The white population in 1777 was only 8,381, and the Ministry of the Indes desired to attract loyal foreign settlers to Louisiana, to bolster the ability of the colony to resist English attack.[105] Hence it would not have been wise to offend the fundamental social mores of the community, as by introducing in Louisiana the alien, Spanish law of the person in respect of names.

Moreover, Spanish settlement in the colony remained minimal; it certainly was never sufficient to make any impact upon the character of the colony. "Instead of the colony becoming hispanicized, the Spaniards become gallicized."[106] Few if any colonists might be offended by failure to repeal French law in Louisiana.

It seems to this author that another factor most strongly suggests that the French law of names never was superseded under the Spanish régime. Spain desperately wanted Spanish settlement in Louisiana. The greatest number of those few who could be persuaded to settle in the colony were *Isleños,* or Canary Islanders.[107] It would not have been acceptable to the Crown to introduce portions of this remote community's law of the person in a Crown colony; yet it would not have helped to attract these people to decree the use of Castillian or Aragonese customs in Louisiana.

The most probable conclusion is that French customary law of names, which was given the status in Louisiana of legislation by the reception provision in Crozat's Commission, remained in effect at

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103. *Digest of the Civil Laws Now in Force in the Territory of Orleans* (New Orleans: 1808), de la Vergne copy, with MS. notations.

104. Lislet and Carleton, *Laws of Las Siete Partidas Which are Still in Force in the State of Louisiana* (New Orleans: 1820).

105. Gilbert C. Din, *Spanish Immigration to a French Land,* 5 Revue Louisiane/Louisiana Review 63, 63-66 (1976).

106. *Ibid.,* 76.

107. *Ibid.,* 67.

the time the Colony was returned to French sovereignty by the Treaty of Madrid.

III- THE NAME IN LOUISIANA LAW TODAY

It was seen in Part I that many State and Federal statutes, and many public and private institutions, seek to identify persons by their correct names. It has been held, in a case involving the supposed right of a married woman to continue using her father's surname, that the United States Constitution permits the States to regulate persons' names.[108] Part II identified the body of law which applies in Louisiana, both defining what a person's name is, and prescribing his rights in that name.

No legislative enactment in Louisiana has served to set aside the rule of French law that a father has the extrapatrimonial right to select the given names of his legitimate child, and that a mother has a similar right in respect of a child for whom only maternal filiation is established. Hence it is incumbent upon the medical practitioner or midwife completing a birth certificate to record the given names offered by the father, in the case of a legitimate child.[109]

The provisions of Book I, Chapter 5, of the Louisiana Civil Code, "Of Parental Authority", do not show an unambiguous intention of the Legislative to share parental authority equally between father and mother, an intention sufficient implicitly to abridge this paternal prerogative. While many rights which appertained to the father alone in 1762 now are shared by father and mother, the Code still gives the father alone rights of administration of the child's

108. *Forbush v. Wallace*, 341 F. Supp. 217 (M.D. Ala. 1971, 3-judge bench); *aff'd* 405 U.S. 970, 92 S. Ct. 1197, 31 L. Ed. 246 (1972). But *cf. Jech v. Burch*, 466 F. Supp. 714 (D. Hawaii 1979): A mother and father reported to the Hawaiian registrar that the name of their legitimate son included a surname composed of phonemes from the father's surname and from the surname of the mother's father. Hawaiian law (Haw. Rev. Stat. §574-2), as liberally interpreted by the Hawaiian Attorney-General, limited parents to the attribution to their legitimate children of the father's surname, or a hyphenated combination (in either order) of both the father's surname and the surname of the mother's father. In a creative opinion, King, C.J., found, first, that at common law parents could give their children any surname they might wish to bestow (*sed quaere*!), and, second, that this supposed right warranted Fourteenth Amendment protection from "arbitrary state action" (466 F. Supp. 714, 719). King, C.J., concluded that the State of Hawaii could show no sufficient interest in restricting the surnames that might be given to children at birth, for Hawaiian law granted parents an unrestricted right to change their child's surname later on (466 F. Supp. 714, 720).

109. See above at nn. 13-15 and accompanying text.

estate during his minority. A specific legislative enactment would be required to grant this right — or the right to name the child — to both the father and mother, jointly.

As noted above, Louisiana law only places *prima facie* evidentiary value in a birth record.[110] Hence the informal act of the child's father[111] is determinative of the child's given names. An action thus will lie for a declaration that one's name, or one's child's name, is other than that which the *accoucheur* wrote on the form filed with the Registrar of Vital Statistics. Alternatively, *mandamus* might be sought, in an appropriate case.

Unlike the other major United States civilian jurisdiction Puerto Rico, a legitimate child in Louisiana law only may bear his father's surname.[112] He can be given no other. It is probable that, for the reasons to be discussed below,[113] the mother's father's surname cannot be given to the child as a penultimate given name.

The change of name statute in Louisiana limits one to the adoption of such a name as the general rules of civil law may allow.[114] It emerged in the examination in Part II, that the law transmitted to French Louisiana only allows changes of name when one bears a ridiculous name, or a name that has become infamous, or where one's surname is too frequent in occurrence to serve adequately in distinguishing the person. Only in such cases would it seem that judges may render relief under the present statute. The consequence is that the courts can change the given name of Vidkun Quisling Smith to such non-infamous given name as Mr. Smith may wish to adopt. Elephant Cartwheel Jones may, by court order, change his given names to those less ridiculous. But John Peter Brown cannot have his given names changed to those more to his fancy — although he may sometimes be entitled to adopt a more distinctive surname. (While the Legislature might otherwise effect changes of name by private bills unfettered by this limitation, the 1974 State Constitution denies it the power to pass any such private bills.[115])

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110. See above at nn. 17-19 and accompanying text.

111. Or his mother, if illegitimate at birth.

112. P.R. Laws Ann., tit. 31, §466 (1968):
Legitimate children have the right:
1. To bear the family name of the father and the mother.
...

113. P. 591, *infra*.

114. See above at nn. 26-29 and accompanying text.

115. La. Const., art. 3, §12 (A) (West, 1977).

Honourific titles may be used in conjunction with a name, but they form no part of it. Their use may be governed by special laws, or merely by community usages. (Examples of honourific titles include titles of nobility,[116] professional titles, ecclesiastical titles, and military ranks). The two statements apply to such suffixes as junior and III, academic degrees, and orders of honour.

As Louisiana has not retained the pre-Revolutionary French rules of primogeniture, an eldest male child probably cannot incorporate the name of family lands into his surname. However, there seems no reason why one may not grant a legacy upon the condition that the donee accept the testator's surname. It does not seem immoral, prohibited by law nor impossible.[117] Similarly, no enactment in Louisiana has abrogated the rule whereby a fiancée's father's onerous donation[118] to the intending spouse's community of property, contained in their antenuptial contract,[119] obliges the fiancé to adopt the donor's surname. No statute of Louisiana prohibits such a change of name, effected without court order, but in a manner known to the civil law.

Although the law of France has been to the contrary since the Revolution,[120] Louisiana civil law requires that a woman lose her father's surname upon marriage and gain that of her husband. Louisiana law does not allow her to adopt informally her father's surname as a penultimate given name. She and her father cannot cause her husband to take her father's surname by the fiction of a trivial onerous donation — even if her husband is willing.[121]

State and Federal statutes noted in Part I, which call upon one simply to state one's name, should be interpreted as requiring persons born in Louisiana, or who have acquired a new name under Louisiana law, to state the name as established under the civil law of Louisiana. Thus, a married woman commits an offence by applying for a Louisiana driver's licence in her father's surname.[122] Her right to use that surname in registering to vote arises independently of,

116. But note U.S. Const., art. I, §10, ¶ 1.

117. C.C. La. art. 1519, 2030-2033.

118. C.C. La. art. 1524.

119. C.C. La. art. 2336.

120. Alex Weill et François Terré, *Droit Civil: Les personnes, la famille, les incapacités*, 4ème éd. (Paris: Dalloz, 1978), No. 45, p. 50.

121. C.C. La. art. 1524.

122. See above, n. 45 and accompanying text.

and by way of special legislative derogation from, the usual civil law of the person. A body such as a private university ought not admit anyone habitually resident in Louisiana[123] to an academic degree in a name other than that which he bears in Louisiana civil law. The standard Louisiana legal formulary is in error in styling married women: it should have looked to the law of France in 1762, not to modern French law.[124]

While the legal situation described above may be displeasing to many — including this author — it remains the law applicable in Louisiana today. The Louisiana Law Institute, aided by the civil law scholars, faces the immediate challenge of guiding the Legislature towards a modern law of the names of persons, based upon sound civilian principles.

IV- A PROPOSAL FOR REFORM

A division of Louisiana's new civil code must detail the rules of civil law concerning the name of the person.[125] Once, this area of law may have been sufficiently certain and beyond controversy to be left uncodified; but such an era now is long past. If the civil law is to preserve its unique character, and if it is to regain its meaning as the common property of the entire Louisiana population, then such an important question as the attribution of one's name, and one's rights in respect of one's name, must be included in the new Code. Indeed, the legal community ought to debate seriously the entire realm of extrapatrimonial rights, thus enabling the public and the legislators to understand better the legal consequences of the policy choices which will have to be made during the codification of this emotion-ladened realm of the civil law.

In the following pages an attempt is made to reconcile some of the competing social claims made today in this field. In essence, the policy assumptions put forward below as a starting-point for discussion try to mediate between claims of personal liberty in

123. See n. 69, *supra*, concerning the conflict of laws problem.

124. See above, n. 55 and accompanying text. The formulary's authors also looked to the English-language translation of the 1939 edition of Planiol's treatise on French Civil law.

125. *Compare* Book I, Title Two, Chapter III of the 1977 Québec Draft Civil Code (Quebec Civil Code Revision Office, 1 *Report on the Québec Civil Code*, 10-14, art. 32-58 (1978) [hereinafter referred to as Québec C.C.R.O. Draft]). An example of a modern statute in an uncodified mixed jurisdiction is Israel's *Names Act, 5716-1956*, 10 Laws of the State of Israel 95.

selection of a name, and the needs of the community for certainty in persons' names. If these or some other set of assumptions meet with sufficient acceptance, then a series of articles for the new Civil Code can be drafted.[126]

Policy Assumptions

a) Every person ought to receive a name at the time of his birth. As the law ought not to discriminate against children born out of wedlock, all children ought to receive surnames under the same general rule. In this culture, persons ordinarily are known by their fathers' surnames. Persons' names ought to be accurately recorded by the state.

The author does not find workable the suggestion that parents be left to decide upon their child's surname, and that in default of agreement daughters ought to bear the mother's antenuptial surname.[127] The resulting confusion in the community would be too great. This is not an acceptable way to remedy an inequality. Indeed, one asks if this really is, "... one of the most grave and most fundamental inequalities remaining of women, that of not being able to transmit their names; ..."[128]

Another solution is offered in suggestion (j), below,[129] that might be preferable.

b) Maternal filiation may be more meaningful than paternal filiation to some persons born out of wedlock. When they reach an age at which they can make a mature judgment, these persons should be able to renounce their fathers' surnames, and to acquire those of their mothers.

Specific provision for such a change of name will have to be included in the new Code, if Louisiana is to reject the common law practice of allowing changes of name at the will of an applicant.

c) One whose paternity is unknown should bear his mother's surname. If even his maternal filiation cannot be established, the state ought to assign him a surname, and given names.

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126. There is little serious North American legal literature in point. The most useful articles include Mireille D. Castelli, *Rapport de l'O.R.C.C. sur le nom et l'identité de la personne humaine*, 17 Cahiers de Droit 373 (1976); Ellen Jean Dannin, *Proposal for a Model Name Act*, 10 U. Mich J.L. Ref. 153 (1976); and Julia C. Lamber, *Married Women's Surname: Is Custom Law?* [1973] Wash. U.L.Q. 779.

127. Dannin, *ibid.*, 173-74.

128. Castelli, *ibid.* 374.

129. P. 596.

This follows from present Louisiana law and practice. An ancillary statute, or subordinate regulations, ought to regularise the procedure for naming waifs, and offer guidance as to the selection of suitable names.[130]

> d) A child ought not to continue to bear the surname of a man who has succeeded in disproving his paternity, as under art. 187 *et seq.* of the present Civil Code.[131]
>
> e) A child's parents should share equally the right to decide how many given names he is to bear and what these names are to be. But as there is a public concern that all children be assigned a name, a court may be approached where the parents cannot reach agreement between themselves.

It is anachronistic to allow the father of a legitimate child the sole right to name him. A common proposal is that in all cases of disagreement, each parent give the child one name.[132] However, such a solution sometimes may be inappropriate, as where one parent's choice would cause the child social disadvantage. While it often may be a good compromise solution, it should not be enacted as the solution to every dispute.

The author disagrees with the conclusion of the Quebec Civil Code Revision Office, which feels that North American usages require all persons to receive at least two given names, and which also feels that the ascription of only one given name unduly hinders recordkeeping.[133]

> f) No person ought to be assigned a given name that is likely to cause him to suffer ridicule in this community. Thus, one should not be assigned a given name typical of persons of another sex than his own, a name that is infamous, nor a name that offers offence to persons in the community.

Limitations upon parental choice in selection of names, as are found in the pre-Revolutionary French law received by Louisiana, no doubt are out of keeping with modern practices in the community. Still, unfettered parental freedom of choice may cause harm to the child. This text is offered by way of compromise.

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130. See art. 58 (2) C.C. Fr.; Weill et Terré, *op. cit.*, No. 46, pp. 54-55.

131. Quebec C.C.R.O. Draft, art. 35.

132. *Ibid.*, art. 40 (2); Dannin, 174; Israeli *Names Law, op. cit.*, §4.

133. 2 *Report on the Quebec Civil Code, Commentaries*, p. 29.

Ancillary legislation should give the Registrar of Civil Status[134] authority (subject to judicial review) to refuse to register a parental choice of name that violates any requirement of law. It is presumed too that the general matter of acts of civil status will be codified in the forthcoming Louisiana Civil Code.

> g) Upon adoption, a person assumes the surname of the person adopting him. A person of sufficient maturity may elect to retain his pre-adoption surname. In an adoption proceeding, one's given names may also be changed.

This provision is intended to make Louisiana law of names accord with the notion that an adopted child ought to be put on the same footing as a legitimate child born of his new parents.[135] Accession to the adopting parent's name is a most important part of a child's new status. It accords with the recommendations of the Quebec Draft Code.[136]

> h) It is expected in this community that a husband and wife will bear the same surname. Hence the wife surrenders her father's surname upon marriage and acquires that of her husband; she reacquires her father's surname and loses that of her husband upon divorce.

Again, it is felt that the ensuing confusion would be too great if husband and wife often bear different surnames. Admittedly, some married women today are known professionally, and, rarely, socially, by their father's surnames. As this practice is not widespread, the ensuing confusion is minimal.

As divorce is intended to place the parties in the same social position they were in before marriage, so far as is practicable, it is suggested that the new Code give further credence to that idea by regularising the surname of the divorcée. Equally, a divorcé would have to resume use of his father's surname, should he and his former wife have been known by her father's surname during their marriage (*per* paragraph [j] below).

This proposal differs from other recommendations in the existing legal literature.[137] A decision on this point is likely to give

134. A title more in keeping with Louisiana's legal tradition than *Registrar of Vital Statistics*.

135. *Cf.* La. Rev. Stat. Ann., §9:435.

136. Art. 41.

137. C.C.R.O. Draft, art. 45; Dannin, 175-76; Mary Ann Glendon, *State, Law and Family* (Amsterdam: North-Holland Pub. Co., 1977), 134.

rise to great debate. The recommendation above must be read in conjunction with paragraphs (i) and (j).

> i) A woman should be able to state in a public document that she wishes, upon marriage, to include her father's surname as one of her given names. Therefore, she ought to be able to change her name in this manner by insertion of an appropriate clause in an antenuptial contract with her fiancé. [138]

This practice, preferred by some women today, ought to be regularised. Inclusion of the change of name in the antenuptial contract is not meant as a means of providing a veto for the fiancé; still, his refusal to accept such a clause ought to put the couple on their guard for further discord.

> j) The community would find it unduly confusing for husbands and wives to bear different surnames. But it ought to be sufficiently flexible to allow intending spouses to agree that both will be known upon marriage by any reasonable surname to which they may agree. Such agreement should be irrevocable and it should be recited in a solemn document, such as a registered antenuptial contract.

This paragraph attempts to strike a compromise among several competing claims. While adhering to the basic principles that all members of the legitimate family are to bear the same surname, and that this ordinarily will be the surname of the husband's father, some flexibility is permitted. Prior to marriage, a couple may designate a different surname — be it that of the fiancée's father or a name of their own invention — by which they wish their nascent family to be known in the community. In keeping with the general civilian principle of the immutability of surnames, this agreement must be reached before marriage.

The proposal would supplant the rule of pre-Revolutionary French law, now in force, under which the couple need to be "bribed" to adopt the wife's father's surname, by payment of a larged antenuptial settlement.

> k) A person ought to be entitled to correct his sexual identity through medical and surgical procedures, and to change his given names when such procedures have proven successful.

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138. The notion most similar to this proposal is contained in §6 of the Israeli *Names Law, 5716-1956:*

> A woman receives on marriage the surname of her husband, but she may, at any time, add her maiden-name or previous surname to the surname of her husband, and she may also bear her maiden name or previous surname alone. Official translation.

This restates an existing Louisiana statutory enactment.[139] The rule presently is found in a statute regulating recordkeeping procedures; it will have to be rephrased, if cast in the context of a new Louisiana Civil Code.

> l) While one ought not to be allowed to change one's name for frivilous reasons, it should be possible to do so, at minimal cost and with little delay, for good cause. Such good cause ought to include a desire to integrate into the community upon immigration from another country; to drop a name which subjects one to ridicule or contempt, and to acquire another in its place; or to change a name that has become infamous. Persons living together in a stable social relationship outside of marriage also should be able to adopt a common surname. Except for these and similar situations, the community has a superior interest in assuring certainty and constancy in the name by which a person is identified.

This paragraph enshrines the traditional view of the civil law that the community is interested in the certainty of matters of civil status, including matters relating to persons' names. No general right to assume a new name exists at civil law.

The major grounds for change of name in modern French law are cited in this paragraph, for guidance as to reasons weighty enough to warrant a change of name. An additional basis is added, in recognition of the status of *l'union libre* in modern pluralistic society.[140]

Ancillary legislation might be considered, to allow the Registrar of Civil Status[141] to pass in the first instance upon applications for changes of name, subject to a right of appeal to the courts.

> m) Louisiana civil law regulates changes of name by persons habitually resident in Louisiana. Louisiana's rules of procedure govern the registration of the names of children born in Louisiana. Louisiana's substantive law of the name of the person governs the acquisition of a name by a child born of a woman habitually resident in Louisiana, regardless of the child's place of birth.[142]

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139. La. Rev. Stat. Ann., §40:61; see above, text accompanying nn. 40-42. Similar provisions are in the Quebec C.C.R.O. Draft, art. 51-53; *cf.* Cass. Civ., 16 déc. 1975, J.C.P. 1976.IV.50; Dannin, *op. cit.*, 177.

140. See Fine, *L'Union Libre and the Civil Law of the Person*, 5 Southern U.L. Rev. — (1980).

141. See above, n. 134.

142. See n. 69 above.

A provision to this effect might be placed either in a division of the new Code pertaining to the name, or in the division concerning conflict of laws generally.

> n) Every person is entitled to respectful treatment of his name; and he also suffers a civil wrong where its usurpation by another cause him material or moral harm.[143]

This restates existing civil law.

CONCLUSION

The civil law of Louisiana does indeed offer generally applicable rules governing the name of the person. Although neglected and perhaps forgotten for over two centuries, they remain law nonetheless.

As the law in point is archaic and out of keeping with the needs of the community, it is proposed that Louisiana civil law in this area be amended and codified. As this field is likely to give rise to some passionate public debate (albeit, occasionally, to ill-informed debate), the legal community might well prepare to consider the technical problems of reform in this field of the law. In that spirit, the final division of the script has attempted to state possible rules of compromise, melding contemporary social expectations with the Louisiana civilian tradition.

Come what may, one hopes that the ultimate codification of a Louisiana law of the name will not merely put American common law principles into the form of a civil law code. The heritage of civilian extrapatrimonial private-law rights is too rich to let slip away.

143. Quebec C.C.R.O. Draft, art. 57-59.