

# Recodification of Civil Law in Puerto Rico: A Quixotic Pursuit of the Civil Code for the New Millennium

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## I. INTRODUCTION

The word *quixotic* evokes idealism, optimism, fulfillment of dreams. . . . I mean them all in the title of this paper, in order to neutralize the skepticism of those who thought it was impossible to get to the state where the process of recodification of Puerto Rican private law is today. This is just another example of what a good dose of *quixotism* can attain. No doubt the word *quixotic* in this context also epitomizes the Spanish heritage of the Puerto Rico Civil Code and allows me to join the recent celebration of the four hundredth anniversary of Cervantes' *obra maestra*.

Puerto Rico's *mixité* is connected to the transfer of its sovereignty to a common law country, thus becoming an unincorporated territory of the United States in 1898.<sup>1</sup> At the time of the invasion, Puerto Rico had a legal system inherited from Spain, the former sovereign, and, accordingly, founded on the civil law tradition of continental Europe. Political change meant an intense transformation of very important aspects of the legal system. Nevertheless, the Civil Code that Spain had extended to Puerto Rico only a few years earlier was not replaced, although it was questionably amended by a Commission appointed to "harmonize" Puerto Rican law with the new political regime.<sup>2</sup>

A long road still lies ahead in Puerto Rico's recodification effort, but at a stage where draft proposals for a revised Civil Code have been opened to public discussion, there is already a wide spectrum of issues to debate. This paper addresses crucial questions from the perspective of an academician who has participated in this process since its very beginning. The discussion includes preliminary inquiries related to the virtues of recodification itself, and to the institutional framework, conceptualization and methodology of the process. It then examines some emblematic difficulties of recodification in mixed legal systems and analyzes some lessons Puerto Rico can learn from Louisiana's Civil Code revision experience.

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1. For a detailed discussion, see Ennio Colón et al., *Puerto Rico Report*, in VERNON VALENTINE PALMER, *MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY* 364-424 (CUP 2001).

2. The Civil Code of Puerto Rico came into effect on January 1, 1890, by virtue of a Spanish Royal Decree of July 31, 1889. Other Spanish Codes were extended to Puerto Rico as well. For a detailed analysis, see Rodríguez Ramos, *Interaction of Civil Law and Anglo-American Law in the Legal Method of Puerto Rico*, 23 TUL. L. REV. 1, 20 (1948) (discussing, *inter alia*, the incorporation of some provisions of the 1870 Louisiana Civil Code in the text of Puerto Rico's code).

## II. TO RECODIFY OR NOT TO RECODIFY? THAT WAS THE FIRST QUESTION

The governmental branches answered the call for reform of the Civil Code of Puerto Rico by chartering the Permanent Joint Commission for the Revision and Reform of the Civil Code of Puerto Rico (Commission) as the official Civil Code reform office.<sup>3</sup> Since 1998, the Commission has undertaken a comprehensive, structured, and unprecedented reform of the most important body of Puerto Rican private law.

Like most nineteenth-century codifications, Puerto Rico's Civil Code has experienced the intense effects of a changing socioeconomic context. It has not been modernized correspondingly with the realities of present times. It has also been a victim of the unsatisfactory political relation with the United States, since some federal laws have a great impact on matters otherwise regulated in the Civil Code. Moreover, it has suffered the consequences of partial amendments, some of them unavoidable, but with the corresponding effect of altering the characteristic harmony and synchronization of a civilian Code. Beyond partial legislative initiatives, the Civil Code has not been truly revised or reformed integrally. A technical revision took place in 1930. The most important set of partial amendments is referred to as "the 1976 reform", but it was limited to changing the legal capacity of married woman and other rights and obligations of spouses.

Two other important elements prove that the Puerto Rico Civil Code has not escaped the ordeals of decodification.<sup>4</sup> First, the proliferation of special legislation in matters connected to the Code has been used too often as an isolated answer to the need for reform, thereby compromising the Code's self-sufficiency and primacy. Second, there has been the impact of jurisprudential and doctrinal developments, including those that followed the constitutional challenge of codified norms after the adoption of the Constitution of Puerto Rico in 1952. Furthermore, we must add the continuous battle between two juridical traditions that Puerto Rican law has been experiencing since the turn of the twentieth century, a battle in which our Civil Code has definitely been the most injured victim.<sup>5</sup>

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3. See Law No. 85 of August 16, 1997, 2 L.P.R.A. § 141 *et seq.*

4. See Díez-Picazo, *Codificación, descodificación y recodificación*, XLV ANUARIO DE DERECHO CIVIL 473 (abril-junio 1992); GUZMÁN BRITO ET AL., *DE LA CODIFICACIÓN A LA DESCODIFICACIÓN* (Ediciones Universidad Diego Portales 1999).

5. See TRÍAS MONGE, *EL CHOQUE DE DOS CULTURAS JURÍDICAS EN PUERTO RICO* (1991); see also Fiol Matta, *Civil Law and Common Law in the Legal Method of Puerto Rico*, 50 AM. J.

Much has been said and written about the development of the nineteenth century codification phenomenon, and there is no need to repeat it.<sup>6</sup> Instead, I will advance directly that the vast codification movement experienced in most juridical systems confirms the adequacy of that method for the expression of private law. Moreover, it has been asserted, “If European private law is ever to become positive law within the European Union, it seems inevitable that it will do so in legislative, and therefore in codal form; and this whether it coexists with or supplants national and regional laws”.<sup>7</sup> We are convinced as well that the soundness of codification requires the renewal of existing codes to conform them to the new social, cultural, political, economic and technological circumstances.

Thus, the process of recodification of the Civil Code of Puerto Rico is a testimonial in support of codification.<sup>8</sup> It is a negative answer to the enticing—and easier—option that posits the obsolescence of traditional codes to justify the obligatory transition to an era of so-called special legislation. Acquiescence to legislative inflation, instability and opacity of norms is a threat to juridical certainty, one of the most appreciated values of law, which in turn depends on the stability, uniformity, and coherence of norms.<sup>9</sup> Historical and political circumstances in which second generation codes are being re-codified are quite different from those surrounding the original codification, but some principles and goals of the latter underlie the former.<sup>10</sup> This argument does not neglect that recodification faces challenges of its own. For example, globalization is an enormous challenge that the original codification did not face, inasmuch as it demands harmonization of laws to the greatest

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COMP. L. 783 (1992); Fiol Matta, *Civil Law and Common Law in the Legal Method of Puerto Rico: Anomalies and Contradictions in Legal Discourse*, 24 CAP. U.L. REV. 153 (1995); Fiol Matta, *El Control del Texto: Método Jurídico y Transculturación*, 68 REV. JUR. U.P.R. 803 (1999).

6. See Reinhard Zimmermann, *Codification: History and Present Significance of an Idea*, 3 EUR. REV. PRIV. L. 95 (1995); cf. Pierre Legrand, *Strange Power of Words: Codification Situated*, 9 TUL. EUR. & CIV. L.F. 1 (1994); GUZMAN BRITO, *LA CODIFICACIÓN CIVIL EN IBEROAMÉRICA* (Editorial Jurídica de Chile 1999); Symposium, *Codification in the Twenty-First Century*, 31 U.C. DAVIS L. REV. 655 (1998).

7. See REGIONAL PRIVATE LAWS CODIFICATION IN EUROPE 16 (Hector L. MacQueen, Antoni Vaquer & Santiago Espiau Espiau eds., 2003).

8. For a description of some Latin-American countries' recent recodification initiatives, see Murillo, *The Evolution of Codification in the Civil Law Legal Systems: Towards Decodification and Recodification*, 11 J. TRANSNAT'L L. & POL'Y 163 (2001).

9. A. Pau Pedrón, *La Segunda Codificación*, in *SEGURIDAD JURÍDICA Y CODIFICACIÓN* 75, 88 (Madrid 1999) (author's translation).

10. Palmer, Vernon, *Celebrating the Quebec Codification Achievement*, in *THE LOUISIANA CIVILIAN EXPERIENCE* 180 (2005).

extent, thus rendering unification critically important in many fields of private law.

One final imperative validates the need for recodification of private law in the contemporary mixed jurisdiction of Puerto Rico: the legitimate and enduring need to preserve its civil law tradition and culture. This is one of very few issues on which consensus can be reached among the Puerto Rican legal community. Thus, no one would seriously suggest nor accept the official resignation to decodification of civil law in Puerto Rico, for recodification has an important figurative value, both in cultural and linguistic contexts.

Before proceeding any further, it is necessary to clarify the meaning ascribed to the term re-codification in this paper. That concept, as well as its companion terms revision and reform, could lead to various interpretations, partly because recodification has not yet acquired a stable meaning and is thus unrefined, as the following passage reflects:

As an institution of civil law legislative process, [Recodification] . . . is confused with revision. Yet, howsoever complete and exemplary, it is unlikely that episodic revision merits the name of recodification. Revision relies on the old legal order and is derivative. Recodification, on the other hand, is the implementation of a modern legal order tempered to the pitch of contemporary realities. . . . Recodification is something more than codal reformulation. It is an invitation to re-establish the modern civil law on correct principles.<sup>11</sup>

I submit that Puerto Rico demands a comprehensive and systematic recodification process that would preserve its civilian tradition and method. Thus, the aspiration in this process that I generically label as recodification, is to revise and reform Puerto Rico's Civil Code and not simply to restate existing law. Finally, technically speaking, this is the first time our country has the opportunity to draft a truly Puerto Rican Civil Code. The existing one was imposed, first by the Spanish monarchy and then by the military power of the United States. Therefore, ongoing recodification of Puerto Rican civil law is a precious opportunity to accomplish what has long been an unaccomplished assignment.

### III. METHODOLOGY

The Commission initiated the development of different components of the process simultaneously, from administrative logistics of

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11. Michael McAuley, *Proposal for a Theory and a Method of Recodification*, 49 LOY. L. REV. 261, 262-63 (2003).

establishing the office to the elaboration of the work plan for the revision. One of the first and most important objectives was, and still is, to convince legislators that this is not a traditional legislative initiative, and that it should not be addressed as if it were so, thus requiring their understanding and acceptance of the magnitude and depth of the venture and their willingness to deviate from ordinary legislative practice.

Another important aspect requiring legislative understanding was that an overall and thoughtful reform of the Civil Code will take years and that this endeavor must proceed deliberately and carefully. This is particularly difficult since the concerns of the legislature are usually urgent and centered on political, governmental or budgetary aspects.

A brief description of the different phases of the recodification process follows.<sup>12</sup>

#### A. *Conceptualization of the Process*

The re-codification process began with the theorization about its nature, scope, structure and methodology. At this early stage, public hearings were conducted to receive the opinion of law professors, lawyers, and other interested persons and institutions on how the revision process should unfold. Two main aspects dominated what was officially named as the conceptualization stage.

##### 1. Study of the Revision Experience Abroad

From its inception, the Commission recognized the importance of the comparative perspective and was interested in contacting recognized scholars and jurists who were knowledgeable of the revision process of their respective countries or jurisdictions. For obvious reasons, we began by meticulously studying the revision experience of two mixed jurisdictions: Louisiana and Quebec.<sup>13</sup> Later on the study focused on the revision experience, either partial or comprehensive, of Spain, France,

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12. For a detailed analysis of the complete revision effort and for the description of ancillary activities developed by the Commission, such as the creation of a library of electronic links and a comprehensive comparative table of civil codes, see Annual Reports, <http://www.codigocivilpr.net/> (last visited Sept. 29, 2007).

13. Some prominent jurists made valuable recommendations on a then prospective recodification process, drawing on the revision experience of the Civil Codes of Québec, Louisiana, and some continental Europe countries. See Hein Kötz, *Civil Code Revision in Continental Europe: The Experience in the Fields of Contract and Tort*, 52 REV. JUR. U.P.R. 235 (1983); Jean-Louis Baudouin, *The Reform of the Civil Code of Quebec: Objectives, Methodology and Implementation*, 52 REV. JUR. U.P.R. 149 (1983); Christopher Osakwe, *Cogitations on the Civil Law Tradition in Louisiana: Civil Code Revision and Beyond*, 52 REV. JUR. U.P.R. 179 (1983).

Germany, Portugal, Netherlands, Italy, Argentina, Brazil, Peru, and Mexico, *inter alia*.

Comprehensive analysis of the revision experience in other countries has been very valuable and has brought Puerto Rico into the recodification debate. In fact, the Commission co-founded a group of Revision Commissions, which signed the Arequipa Agreement for the collaboration and exchange of information to further doctrinal writings on the revised codes and its proposals.<sup>14</sup> The following passage reminds us that respect for the comparative method has been a constant feature of the civil law tradition:

[B]efore any project was prepared for the XII Tables, a mission was sent to Greece to study the laws of Solon. Justinian's *Corpus Juris Civilis* was the result of a process of selection from the products of the classical period in Roman Law, which itself had been greatly influenced by Greek philosophy. The *Siete Partidas* of Spain was the fusion of early customary law with the pre-Justinian Roman Law Code of the Barbarians, into which had been integrated a large contribution from Justinian's Digest, particularly in *Partidas* III, V, and VI.<sup>15</sup>

## 2. Guiding Criteria for the Reform

The conceptualization stage ended with the unanimous adoption of the guiding criteria or principles for the reform by the members of the Commission. That document plays the role of a *Ley de Bases* (basic framework law) and establishes general as well as specific criteria, with the purpose of giving homogeneity to the work of the different working groups. Due to the limits of this paper, I must refer the reader to the full text of the document, which includes specific criteria for all matters regulated in the Code<sup>16</sup>

The criteria document explicitly states that the catalog is not *numerus clausus* and recognizes the authority of the Commission to identify other aspects that should be addressed. Upon approval of the guiding criteria, the revision process was divided into the following four phases.

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14. For the full text of the Arequipa Act, see M. Figueroa Torres, *Crónica de una Ruta Iniciada: El Proceso de Revisión del Código Civil de Puerto Rico*, 35 REV. JUR. U.I.P.R. 491 (2001).

15. John Tucker, Jr., *Tradition and Technique of Codification in the Modern World: The Louisiana Experience*, 25 LA. L. REV. 698, 710-11 (1965). A more recent example is the influence of Louisiana's code experience in Estonia. See Paul Varul & Heiki Pisuke, *Louisiana's Contribution to the Estonian Civil Code*, 73 TUL. L. REV. 1027, 1029 (1999).

16. See *Criterios Orientadores que Guiarán el Proceso de Revisión del Código Civil de Puerto Rico*, 1998 ANNUAL REPORT, <http://www.codigocivilpr.net> (last visited Sept. 29, 2007).

*B. Four Phases for a Proyecto*

## 1. First Phase: Preparatory Studies

At the outset of the project, Preparatory Studies were made to approach the existing Code diagnostically. They contain initial recommendations on whether the norms should be repealed, modified minimally or substantially changed; they identify those matters that should be codified and those that should be kept in special legislation but harmonized with the Civil Code; and address the effects of the recommendations on other parts of the Code or on special legislation.<sup>17</sup>

## 2. Second Phase: Research and Analysis

In this second phase, the members of the working groups had the task of preparing individual reports on the topics of their expertise, examining the origin and historical evolution of the juridical institutions, its current state in Puerto Rican law, the solutions given in other jurisdictions, and the legislative, doctrinal, and jurisprudential trends in the subject matter. At this stage the reports included specific recommendations but the consultants were not required to draft proposals.

## 3. Third Phase: Preliminary Drafting and Public Discussion

A reduced number of redactors developed this phase, in order to minimize the inherent difficulties of this stage. It was a complex and meticulous process that used the work done in the two previous phases as its platform. As has been the case in most countries, in this preliminary drafting stage the work of redaction was confided mostly to academic jurists who are experts in their fields, with the corresponding support of staff researchers. In this phase we recaptured the discussion on the structural aspects of the revised code and decided to recommend the inclusion of a general part. For multiple reasons, the drafting phase of the different books could not be finished as scheduled.

Following a legislative procedure with no precedent in Puerto Rico, at this juncture the Commission accepted our proposition to begin public discussion of the drafts of the different books without approving them. The decision was risky but successful, since the discussion of preliminary proposals provided an opportunity to receive input from the wider legal community and to fine-tune the scientific theory of the academy with the functionalities of legal practice.

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17. See Preparatory Studies, <http://www.codigocivilpr.net> (last visited Sept. 29, 2007).

The principal law-related government officials also made important contributions in the public discussion process as well as the different representatives of civil society. Discussion of draft proposals provided the legislators the opportunity to postpone final policy decisions on substantive controversial issues, thereby permitting public discussion of the proposals as drafted by the redactors. This will contribute to a truly democratic revised Civil Code that better reflects the realities of the Puerto Rican society.<sup>18</sup>

Another analogy in this context makes clear the importance of comprehensive discussion in the preliminary drafting stage:

When the *decemvirs* posted the Ten Tables on the walls of the forum for all to read and discuss, and subsequently, as a result, added two additional tables, they gave the earliest and perhaps the most democratic example of the vital need for thorough discussion in the preparatory stage of code redaction.<sup>19</sup>

#### 4. Fourth Phase: Articulation and Final Drafting

The Puerto Rico Revised Civil Code (*Proyecto*) will have approximately 2,000 articles, grouped in a preliminary title, seven books and a final title on transitory and derogatory provisions. Thus, it is a monumental project, both in terms of its scope and its complexity. As is well known, other countries that have ventured to reform their codes have dedicated several decades to that undertaking.<sup>20</sup>

At the end of public discussion of the drafts, the Commission will be ready to begin the articulation and final drafting phase of the *Proyecto*. The first complete draft will mark the beginning of a stage in which all efforts and resources will be dedicated to the assessment of the project as a whole, to guarantee that the revised Code retains the coherence, integrity and harmony of a civil law code. We are aware, of course, that even with the coordination efforts made by all jurists who participated in the drafting phase, it is perfectly normal in an enterprise like this to find contradictions, linguistic and technical inaccuracies, and

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18. The Commission has an interactive Web page where citizens can access all documents and express their views and suggestions, which are in turn directed to the corresponding working groups. This scheme has been referred to by a renowned Spanish jurist as “a good example of transparent participatory legislative procedure for the revision and reform of a Civil Code”. See Delgado Echevarría, *Una propuesta de política del Derecho en materia de sucesiones por causa de muerte*, in *DERECHO DE SUCESIONES: PRESENTE Y FUTURO: XII JORNADAS DE LA ASOCIACIÓN DE PROFESORES DE DERECHO CIVIL* (University of Murcia, Spain, eds., (2006).

19. Tucker, *supra* note 15, at 714-15.

20. See McAuley, *supra* note 11, at 283.

even structural or substantive defects. It is necessary to assure a consistent style and terminology in the project in order to produce an interconnected and unified Civil Code. In sum, this articulation and final drafting phase will afford the opportunity to submit to the Legislature a complete *avant-projet* which reflects that it was conceived, drafted and, eventually, enacted, as a comprehensive and coordinated whole. Therefore, this phase is the most difficult and crucial one, considered from the perspective of any mixed jurisdiction's effort to reform its civil code.

I am the first to recognize that it is not possible to write a proposal that satisfies everybody. I earlier confessed to being an idealist, but not completely. Criticism has already emerged, and it is welcomed even from those who were invited to participate but opted to sit and wait in order to attack the work with dubious arguments. It is also welcomed from those who accepted the challenge to participate in the recodification effort but later abandoned it either because they were intimidated by the enormity of the task or because they were unable to continue the work without imposing their own ideas. This is by no means new; since criticizing has always been easier than doing; as it is aptly affirmed in the Latin quote *Facile est inventis addere* (it is easy to add to things already invented).

Considerable constructive critique by prestigious colleagues who have done it in their best spirit of collaboration has also been received.<sup>21</sup>

#### IV. COMPARATIVE PERSPECTIVE

The Puerto Rican recodification process confronts important challenges that are here examined through the lens of Louisiana's Civil Code revision experience. The reasons that justify the decision to look ourselves in the Louisiana mirror are varied, but a fundamental one is the different outcome that was reached in the struggle to reaffirm civilian origins in the midst of intensive and pervasive influence of common law.

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21. A significant example is the enthusiastic support which the Draft Book on Successions has received from recognized Spanish jurists who underline the relevance of the Puerto Rico reform process because it is, in fact, the reform of the Spanish Civil Code's text. They have praised the successions reform for its thoroughness, as a significant advancement in that discipline, and as extremely loyal to the Romanist tradition. See Rams Albesa, *Las deudas de la herencia: una vieja cuestión pendiente*, in DERECHO DE SUCESIONES: PRESENTE Y FUTURO, *supra* note 18, at 463; Vattier Fuenzalida, *El derecho de representación*, in DERECHO DE SUCESIONES: PRESENTE Y FUTURO, *supra* note 18, at 543. This appraisal contrasts sharply with Louisiana's revision of the law of successions, which has been characterized as "an uncatalogued creation," neither common nor civil. A.N. Yiannopoulos, *Requiem for a Civil Code—A Commemorative Essay*, 78 TUL. L. REV. 379, 407 (2003).

Nevertheless, before comparing some aspects of the revision effort, I must underline the existence of some important historical, political and social differences between Puerto Rico and Louisiana.

First, I must refer to the significance of the linguistic factor in mixed jurisdictions, highlighted as follows:<sup>22</sup>

The mixed jurisdiction is virtually synonymous with multiethnic society speaking a multiplicity of languages. These languages may have different roles and statuses ranging from those officially recognized, to those widely-spoken and serving as *lingua franca* between the language groups, to those whose social relevance is purely historical. For purposes of understanding the mixed jurisdiction, however, perhaps the critical distinction lies between the *living* languages (official and unofficial languages spoken by sizable segments of the population) and the *source* languages of the common- and civil-law system.

In Louisiana, where the use of French has disappeared, language and civil law have been long divorced.<sup>23</sup> As an English-speaking jurisdiction, Louisiana's civil law reflects an incapacity to understand the source language of its Civil Code and the negative impact this has had on its development. Moreover, it has been said that the revision developed in the last three decades has severed its ties to original versions drafted in French.<sup>24</sup>

On the contrary, Puerto Rico did not lose its Civil Code's mother language nor did it break with the cultural ties of its sources.<sup>25</sup> This circumstance has been decisive in shaping the perspective of Puerto Rican lawyers towards the civilian tradition, as well as in allowing access to original legislative and doctrinal sources without dependence on translations. Moreover, preserving the *Spanish connection* has always permitted Puerto Rican lawyers to pursue graduate law studies in Spain, and, in the last few decades it has allowed as well the development of intense academic collaboration in the form of doctoral and joint degrees programs between Puerto Rican and Spanish law schools. The

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22. Vernon Valentine Palmer, *Introduction*, LOUISIANA: MICROCOSM OF A MIXED JURISDICTION 18 (Vernon Valentine Palmer ed., Carolina Acad. Press 1999). For an analysis of the importance of the linguistic factor in other countries with mixed legal systems, see the articles submitted by Max Loubser, Celia Wasserstein Fassberg, and William Tetley in the *First Worldwide Congress of Mixed Jurisdictions*, 78 TUL. L. REV. 1 (2003).

23. See Roger Ward, *The Death of the French language in Louisiana Law*, in Palmer (ed.), LOUISIANA: MICROCOSM OF A MIXED JURISDICTION, *supra* note 22, at 59.

24. Vernon Valentine Palmer, *The Linguistic Factor: The Demands of Dualism*, in PALMER, *supra* note 1, at 43.

25. For an interdisciplinary approach to the language issue in the Puerto Rican context, see Delgado Cintrón, *Historia de las Luchas por el Idioma Español en Puerto Rico*, 54 REV. COL. ABOG. P.R. 7 (1993).

significance of the linguistic factor, referred to by Professor Palmer as Louisiana's "forgotten issue",<sup>26</sup> could hardly be exaggerated in a mixed legal system.

The second distinguishing factor is the political status of Louisiana as a federated state of the United States, for it has exposed Louisiana civil law to a harsher intrusion of common law institutions and methodology than that experienced in Puerto Rico. This is not to say that Puerto Rico has been immune to the impact of common law, but I submit that political and cultural resistance in general has had the effect of keeping the legal community of Puerto Rico conscious of the need to preserve the civilian heritage, disregarding individual ideological preferences. Thus, colonial status has had at least one advantage.<sup>27</sup>

The role of Puerto Rico law schools and their dedicated civilian academics has also been crucial in the development of Puerto Rico civil law, training future members of the legal profession with an elevated and strong sense of pride for the civil law tradition.<sup>28</sup> Finally, the corrective work of an activist Supreme Court of Puerto Rico at some points in history has also been crucial in this respect.<sup>29</sup> This is particularly ironic since the Supreme Court of Puerto Rico had been precisely the principal vehicle of transculturation of the legal system in the period that followed the initiation of American rule in Puerto Rico.<sup>30</sup> In fact, this prompted the intervention of the United States Supreme Court (Holmes, J.) to reproach lower courts for the lack of deference to the civil law tradition of the Puerto Rican legal system.<sup>31</sup>

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26. Vernon Valentine Palmer, *Two Worlds in One: The Genesis of Louisiana's Mixed Legal System, 1803-1812*, in *LOUISIANA: MICROCOSM OF A MIXED JURISDICTION*, *supra* note 22, at 37.

27. See TRÍAS MONGE, *PUERTO RICO: THE TRIALS OF THE OLDEST COLONY IN THE WORLD* (1997). For an analysis of the historical development of the United States-Puerto Rico relationship through the lens of social legal theory, see RIVERA RAMOS, *THE LEGAL CONSTRUCTION OF IDENTITY: THE JUDICIAL AND SOCIAL LEGACY OF AMERICAN COLONIALISM IN PUERTO RICO* (2001).

28. For the opinion of a distinguished Louisiana law professor, see Joseph Dainow, *The Method of Legal Development Through Judicial Interpretation in Louisiana and Puerto Rico*, 22 *REV. JUR. U.P.R.* 108, 135 (1953).

29. For a detailed analysis, see sources cited *supra* note 5.

30. See TRÍAS MONGE, *supra* note 5, at 101. For a detailed appraisal of the history of the Supreme Court of Puerto Rico, see LUIS RAFAEL RIVERA, *LA JUSTICIA EN SUS MANOS: HISTORIA DEL TRIBUNAL SUPREMO DE PUERTO RICO* (Santillana ed., 2007).

31. See TRÍAS MONGE, *supra* note 5, at 117 (citing the following well-known passage of Justice Oliver Wendell Holmes: "This court has stated many times the deference due to the understanding of the local courts upon matters of purely local concern. . . . This is especially true in dealing with the decisions of a court inheriting and brought up in a different system from that which prevails here. When we contemplate such a system from the outside, it seems like a wall of stone, every part even with all the others, except so far as our own local education may lead us to

Conceding the divergences mentioned above, I now discuss some important points of comparison between the recodification experiences of Louisiana and Puerto Rico. Obviously, the depth of the topic is incompatible with the limits of this article. Consequently I will confine myself to identifying how the Commission is addressing some of the aspects of the Louisiana process that have been the object of criticism.<sup>32</sup>

A. *Enactment Method: Comprehensive Reform vis-à-vis Partial Revision*

The Louisiana civil law system has been the focus of lively academic discussion. First, the so called “great debate” of the 1930’s on the pureness of the civilian tradition of Louisiana’s legal system.<sup>33</sup> Then, the *Pascal-Batiza* debate on the sources of the Louisiana Civil Code that unfolded in the 1970’s.<sup>34</sup> Twenty years later a provocative article ignited a vigorous disagreement on the results of the then half-complete Civil Code revision process by advancing what have come to be known as the “digest thesis”.<sup>35</sup> Puerto Rico has benefited extremely from this last “great debate” as well as from the abundant scholarly discussion on many other aspects of the now almost complete Louisiana revision

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see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have got from the books. . . . Our appellate jurisdiction is not given for the purpose of remodeling the Spanish-American law according to common-law conceptions except so far as that law has to bend to the expressed will of the United States.”)

32. See generally A.N. Yiannopoulos, *Louisiana Civil Law: A Lost Cause?*, 54 TUL. L. REV. 830 (1980); Yiannopoulos, *supra* note 21.

33. This was prompted by LSU professor Gordon Ireland’s conclusion that Louisiana is a common law state, see 11 TUL. L. REV. 585, 598 (1937).

34. See Robert Pascal, *A Recent Discovery: A Copy of the “Digest of the Civil Laws” of 1808 with Marginal Source References in Moreau Lislet’s Hand*, 26 LA. L. REV. 25 (1965); Rodolfo Batiza, *The Louisiana Civil Code of 1808: Its Actual Sources and Present Relevance*, 46 TUL. L. REV. 4 (1971); Robert A. Pascal, *Sources of the Digest of 1808: A Reply to Professor Batiza*, 46 TUL. L. REV. 603 (1972); Rodolfo Batiza, *Sources of the Civil Code of 1808, Facts and Speculation: A Rejoinder*, 46 TUL. L. REV. 628 (1972); Joseph M. Sweeney, *Tournament of Scholars over the Sources of the Civil Code of 1808*, 46 TUL. L. REV. 585 (1972).

35. Vernon V. Palmer, *The Death of a Code—The Birth of a Digest*, 63 TUL. L. REV. 221, 224 (1988) [hereinafter Palmer, *The Death of a Code*]; cf. Julio C. Cueto-Rúa, *The Civil Code of Louisiana Is Alive and Well*, 64 TUL. L. REV. 147 (1989); Vernon V. Palmer, *Revision of the Code or Regression to a Digest? A Rejoinder to Professor Cueto-Rúa*, 64 TUL. L. REV. 177 (1989); see also James Dennis, Julio Cueto-Rúa, David Gruning, Shael Herman, Vernon Palmer, Cynthia Samuel & A.N. Yiannopoulos, *The Great Debate over the Louisiana Civil Code’s Revision*, 5 TUL. EUR. & CIV. L.F. 49 (1990). For an in-depth analysis of what an author calls the “Palmerian perspective,” see John A. Lovett, *Another Great Debate: The Ambiguous Relationship Between the Revised Civil Code and Pre-Revision Jurisprudence as Seen Through the Prytania Park Controversy*, 48 LOY. L. REV. 615 (2002).

process. Put succinctly, Professor Palmer's thesis posits that the Louisiana process is "predominantly a revision without repeal" which has resulted in Louisiana having two Civil Codes governing concurrently.<sup>36</sup> The second part of his thesis advances that the new Code has the architecture and the methodology of a digest inasmuch as its structure incorporates the jurisprudence of the old Code, sometimes explicitly but in some other instances, by attaching it as a "rider".<sup>37</sup>

Instead of advancing an outsider's personal appraisal on the state of the Louisiana Code, I draw upon Professor Yiannopoulos's portrayal when saying:

The comprehensive statute titled "Louisiana Civil Code" is, indeed, a Digest published in sixteen volumes of an annotated edition and in two volumes of a pamphlet edition that contains thousands of pages of texts, revision comments, editor's notes, and several tables and appendices. It is a conglomeration of mini-codes arranged in four Books. . . . There is not much resemblance to the traditional codes, whether ancient or contemporary. For better or for worse, the Louisiana Civil Code reflects a fusion of the civilian and the common law traditions in a truly mixed jurisdiction.<sup>38</sup>

He further depicts poetically the development of the Code as "the legend of a nebula of laws that was consolidated into a Digest which was reorganized as the Louisiana Civil Code. Centuries later that Code disintegrated and became a Digest again".<sup>39</sup> On this issue, I must begin by saying that I have the impression that our friends from Louisiana are difficult to please, for when they officially had a "digest" they used to say it was a "code", and now that they officially have a "code", some consider it a "digest".

Nevertheless, beyond all the arguments that have been elicited either in support or in defiance of the digest thesis, I submit that the partial revision method is much to blame for the degradation of Louisiana's Civil Code. One must not lose sight of the fact that piecemeal revision was not what scholars envisaged at the early stage of the *renaissance* of Louisiana civil law that impelled claims for reform, but a comprehensive revision of the Code as a whole.<sup>40</sup> In fact, early in

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36. Palmer, *The Death of a Code*, *supra* note 35, at 224.

37. *Id.*; cf. Yiannopoulos, *supra* note 21, at 408 (affirming that Palmer was wrong in his diagnosis of the cause of the death of the Code and advancing that the Code died for other reasons).

38. Yiannopoulos, *supra* note 21, at 408-09.

39. *Id.* at 410.

40. See James J. Morrison, *The Need for a Revision of the Louisiana Civil Code*, 11 TUL. L. REV. 213 (1937); Clarence J. Morrow, *An Approach to the Revision of the Louisiana Civil*

the period in which the revision effort was revamped by the creation of the civil law section of the Louisiana State Law Institute, President Tucker accepted that piecemeal revision was not the optimal plan:<sup>41</sup>

[C]onsideration must be given to the adoption of a policy of incremental legislative enactment as the work is completed. Cohesion and symmetry will be lessened; but the incongruities which would result from keeping the part first finished in limbo until the entire work is completed, in order to adopt the reformed code as a legislative whole, would be formidable indeed.

....

It is believed in Louisiana, but not yet formally decided, that the policy of incremental adoption is the lesser of the evils, and that they may be minimized by the policy of continuous revision adopted for the Code of Civil Procedure. Following completion of the reformation of the entire Code on that basis, the problems of cohesion and symmetry could be solved in a very short time.

The Puerto Rican recodification plan is aimed as a comprehensive effort that will try to avoid partial reform, since it would be suicidal to accept block-by-block revision when we have the advantage of knowing the fate of Louisiana's Civil Code. This does not mean that we are unaware of the forceful business, economic or other interest group pressures for hasty enactment of updated legislation. Nevertheless, Louisiana's revision experience is the best argument to insist on the value of deliberate comprehensive recodification of our Civil Code, particularly when we have the advantage of having a Commission created exclusively to undertake the recodification effort, an institutional framework much acclaimed in Louisiana.<sup>42</sup>

Therefore, we have recommended the completion of the entire recodification project before its adoption as a unified whole. Indeed, anything less than that would not comply with the legislative mandate embodied in the chartering act of the Commission, for it would work against the kind of reconciliation of all parts of the Civil Code that could produce a coordinated and harmonious text. Such result is definitely of the utmost importance in mixed jurisdictions like Louisiana and Puerto Rico where their civilian tradition's degradation is epitomized precisely

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*Code*, 10 LA. L. REV. 59 (1949) and 23 TUL. L. REV. 478 (1949); Clarence J. Morrow, *Current Prospects for Revision of the Louisiana Civil Code*, 33 TUL. L. REV. 143, 146 (1958); Fred Zengel, *Civil Code Revision in Louisiana*, 53 TUL. L. REV. 942, 946 (1980); David Gruning, *Bayou State Bijuralism: Common Law and Civil Law in Louisiana*, 81 U. DET. MERCY L. REV. 437, 448 (2004).

41. Tucker, *supra* note 15, at 718.

42. See Yiannopoulos, *supra* note 21, at 402.

by the very object of the recodification effort: the Civil Code. I am thus advancing that piecemeal revision might be more suitable, or less threatening, in countries where civil codes are not constantly harassed by common law methodological and substantive intervention, to which block-by-block revisions gives ample room. The Louisiana revision experience has demonstrated the incapacity of the piecemeal approach to devise and sustain an articulate vision of the objectives of recodification. This was indicated in the early years of the revision process by a Louisiana jurist who warned of “the lack of enthusiasm within the Institute for the time-consuming job of abstract code planning, and an impatience to get on with the job of writing code articles”.<sup>43</sup> We should have enough patience to avoid that, but even it were to be the final inevitable fate of the Civil Code in any mixed jurisdiction, it would be less disgraceful than surrendering to it at the first instance.

Another related aspect that has drawn our attention is the criticism regarding the publication of comments, which lend themselves to be interpreted as if they were part of the law. In Louisiana all editions of the Civil Code include explanatory revision comments under each revised article and it has been said that Louisiana courts give them undue weight.<sup>44</sup> All draft books of the Puerto Rican *Proyecto* have been published with a corresponding *Memorial Explicativo* or explanatory report, but they will not be enacted into law. The *memoriales* are intended to facilitate the discussion of draft proposals and not necessarily have legislative assent.

The comments are not a problem in themselves and properly used they can be very valuable to explain the scope of norms, to reveal the precedence of the new and the original articles, to explain if a new article adopts or overrules jurisprudential norms and to help generally in the interpretation of the recodified text. What should be avoided by all means is the displacement of the codal text’s protagonist role by these encompassing preparatory works since that will entail abandoning the Code’s characteristic vocation for generality and self-sufficiency. We also disfavor what has been labeled as “repeal by comment”<sup>45</sup> as well as the use of comments as the basis of any norms which are not established in the Code’s text, as these techniques are improperly uncivilian. This is not to deny that the *Proyecto* codifies norms of jurisprudential origin in the appropriate circumstances, but only after the proper abstraction of those principles that are worthy of codification.

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43. Zengel, *supra* note 40, at 947.

44. Yiannopoulos, *supra* note 21, at 406.

45. See Palmer, *The Death of a Code*, *supra* note 35, at 360.

### B. Code Structure

The general structure of the Proyecto is as follows: Preliminary Title on the Law, its Efficacy and its Application; First Book on Juridical Relations (Persons, Things and Juridical Acts); Second Book on Family Institutions; Third Book on Real Rights; Fourth Book on Obligation; Fifth Book on Contracts and other Sources of Obligations; Sixth Book on Successions; Seventh Book on Private International Law; and Final Title on Transitory and Derogatory Provisions.

As can be noted at first sight, the Puerto Rico recodification effort has brought about significant structural and organizational modifications. The most important can be summarized as follows: (1) The addition of three books and a final title; (2) The incorporation of a general part; (3) The creation of an autonomous book on successions; (4) The creation of a book on the general theory on obligations separately from a book on contracts and other sources of obligations; (5) The adoption of a new book on private international law; (6) The adoption of a final title on transitory and derogatory provisions

These and other more specific structural and organizational modifications have been motivated by various reasons, some of them associated with technical particularities of the different subject matters governed by the code. However, there is a more general reason, since we have valued ease of consultation and application of norms as an aim of recodification which original codification did not encompass.<sup>46</sup> As everyone knows, a civil code is not an ordinary law, it is much more than that, since it governs citizens from birth to death, and beyond. It imposes the directives that will govern their private juridical relations as soon as they become persons according to the law. Then, it is not excessive to demand that those whom it rules can reasonably understand the changes that recodification is about to bring. Even those subject matters that are not substantially modified by recodification can be highly improved by purging them of obscurities and ambivalences, as well as by a structural rearrangement that will result in a more logical and understandable Civil Code.

We are well aware of the admonitions against any pedagogical vocation of a Civil Code, but twenty-first century recodification must definitely overcome that restraint, not only substantively but also structurally. Moreover, mixed jurisdictions are in much more need to promote general understanding of their civil codes in order to convince

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46. See McAuley, *supra* note 11, at 276; see also Michael McAuley, *The Pedagogical Code*, 63 LA. L. REV. 1293 (2003).

both lawyers and ordinary citizens of the importance of preserving a body of law that serves them well. What is the value of having a traditionally structured civil code if most people cannot even understand its relevance? Even a jurist from an uncodified mixed jurisdiction like Scotland values the importance of a more logical presentation in the initial draft of the Scottish civil code project: “Ideally it should have a lot of hidden learning in it but should be presented in a popular way. The two aims of conceptual clarity and clear presentation are not, in my view, incompatible.”<sup>47</sup>

Finally, the departure from the French structure is an aspect that mixed jurisdictions can reasonably negotiate. Altering the structure of the Code is not as uncivilian as keeping the traditional structure filled with common law additions. Indeed, the need to improve the structural deficiencies of the Louisiana civil code was resolutely asserted long ago by a Louisiana academic who affirmed as follows:

Maintenance of the tripartite structure, though based on reasons of convenience, seems to contravene two of the four principles of the traditional French approach to codification articulated by Professor Tunc. According to Tunc, a code should be complete in its field, generally applicable, logically arranged, and grounded in experience. Perhaps the piecemeal, ad hoc numbering process is not grounded in experience. Certainly, it sacrifices logic of presentation. Assuming with Professor Tunc that logic brings clarity and justice, one finds it hard to accept a limitation of institutions within arbitrary boundaries. To the claim that inner consistency is a badge of French Civil Code, one may counter that the Code’s plan “was neither seriously examined nor absolutely willed.” As Maleville wrote, “every division on these grand subjects is necessarily a bit arbitrary.” The inner consistency found by French and Louisiana lawyers may be due more to force of habit than to the current organization of the documents themselves.<sup>48</sup>

Moreover, the existence of important critics of the tripartite division of the French civil Code is not new. Planiol has been quoted as saying “there is nothing scientific about the plan of the French Civil Code. In drafting modern codes, an effort has been made to bring about a more rational grouping of legal provisions. But it is well to avoid exaggerating

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47. See Eric Clive, *The Scottish Civil Code Project*, in REGIONAL PRIVATE LAWS CODIFICATION IN EUROPE, *supra* note 7, at 83, 92. The Scottish codification effort is an unofficial initiative based in the University of Edinburgh.

48. See Shael Herman & David Hoskins, *Perspectives on Code Structure: Historical Experience, Modern Formats, and Policy Considerations*, 54 TUL. L. REV. 987, 1032 (1980).

what the scientific nature of a plan may play in the real value of a code”.<sup>49</sup>

The Civil Code of Puerto Rico inherited the four-book format of the Spanish code and it still suffers most of the deficiencies associated with the so-called *plan francés*. Therefore, rectification of structural and organizational deficiencies is an important objective of the recodification effort. In so doing we have closely studied the experience of Quebec, as a mixed jurisdiction that recodified its private law in ten books, as well as the revised codes of Peru, Germany, the Netherlands, Italy, Mexico, D.F.; and Brazil. Indeed, the Scottish initial draft, which is not predisposed to a particular model for political or historical reasons, is laid out in fourteen parts.<sup>50</sup>

Attention must be drawn particularly to the inclusion on the Puerto Rican *Proyecto* of a general part, officially titled as the book on *Juridical Relations*. Its creation no doubt evokes pedagogical foundations, but the decision is not limited to that. The creation of a general part is also a more logical presentation of the norms of the Code, since all subsequent norms through the code derive from juridical relations related either to persons, things, or to juridical acts. The new First Book on juridical relations thus presents norms in that same order, thereby overcoming the deficiency of the existing Code which, for instance, deals with basic provisions on things in its Second Book (real rights) although the First Book (family law) already has norms which draw on related provisions regarding things. Similarly, this new general part adopts certain norms housed in the existing Code as contractual norms and extends them to all juridical acts.

In sum, the incorporation of a general part avoids redundancy and disharmony and promotes abstraction. This specific aspect was asserted by distinguished Louisiana professor Clarence J. Morrow back in 1949, shortly after the Louisiana legislature mandated the revision of the Civil Code to the Louisiana State Law Institute. He then put forward that “the revisers should seriously consider abandoning the format of the 1870 Code in favor of the German model with its General and Special Parts, and at the same time avoid excessive particularity in the drafting of substantive rules”.<sup>51</sup> More recently, another Louisiana law professor

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49. *Id.* at 1033; see also Alain Levasseur, *Civilian Methodology: On the Structure of a Civil Code*, 44 TUL. L. REV. 693, 695 (1970).

50. See Clive, *supra* note 47, at 86.

51. See Herman & Hoskins, *supra* note 48, at 5. In fact, there are many other recommendations made by Professor Morrow that have been followed in the Puerto Rican recodification process.

criticized Louisiana Law Institute's disregard of the proposition to reconsider the traditional format of the revised code, which has only been altered by the inclusion of a new book on private international law.<sup>52</sup>

Another structural modification worthy of emphasis in the draft reformed Civil Code of Puerto Rico is that the law of persons has not only been given the autonomy it long claimed from family law, but has been considerably expanded, thereby positioning persons as the axis around which law should rotate. This contrasts with the Louisiana revised Civil Code, which has been characterized as one that is still "conceptually dominated" by book two on property and by book three on the modes of acquiring the ownership of things, even though the amount of articles of the latter has been reduced. It has been said that it continues to be "a code about exchange".<sup>53</sup> Another example of how the Puerto Rican *Proyecto* has abandoned nineteenth century notions or ideas is the reconceptualization of "the family law book" as "the book on familial institutions", thus recognizing the need to regulate more than one type of family. It has been said, on the other hand, that the contribution of Louisiana's revised Code in the field of the law of persons and family "is less, both absolutely and relatively" in contrast with the development of patrimonial and contractual law.<sup>54</sup>

We have also implemented doctrinal suggestions which have been long advocated, like the transfer of the provisions on matrimonial regimes to the book on familial institutions, the adoption of separate books on obligations and on contracts respectively, the transfer of rules on delictual and quasi-delictual liability from the book on contractual obligations to a title on other sources of obligations; and the addition of autonomous books on private international law and on successions law, *inter alia*.

In summary, neither the structure nor the number of books of a Civil Code are carved in stone, but certainly once incremental revision of the Code unfolds it is much more difficult to reconsider its structural design *in abstractu*. Again, Louisiana's revision experience has been very informative, particularly in making us conscious that partial revision makes it unlikely that the reformed code could take advantage of the organizational and structural improvements of twentieth century codes, because it does not entail the kind of preliminary studies and

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52. Gruning, *supra* note 40, at 450.

53. David Gruning, *Mapping Society Through Law: Louisiana Civil Law Recodification*, 19 TUL. EUR. CIV. L.F. 1, 19 (2004).

54. *Id.* at 20.

comprehensive conceptualization which could direct and integrate the entire revision project.<sup>55</sup>

*C. Democratization of Law Reform*

Underestimation of public participation in recodification is not exclusive of mixed jurisdictions. Attitudes of citizens who will be regulated by reformed civil codes have changed as compared to those prevailing in previous centuries. Social and political circumstances demand that lawmakers be informed by ordinary people and we should take advantage of the fact that our times make it possible more than ever before. Modernizing our Civil Codes does not suffice: recodification entails going farther to publicize and distribute the proposals on a large-scale basis.<sup>56</sup>

We have learned the lesson from criticism made of the Louisiana revision process in not advancing publication and distribution of proposals for public comment.<sup>57</sup> Indeed, we have made a great effort to inform non-specialists and public at large of the importance of the public discussion phase using different means that include live television and radio broadcasting of public hearings. Public participation in the law making process of any country could turn innovative, and in Puerto Rico it has even taken on the Caribbean flavor. Of course, no other draft book brought forth more interest than the Second Book on family institutions. A six-month period of public hearings on that part of the *Proyecto* elicited strong reactions either supporting or condemning significant changes, but primarily those related to the inclusion of a title on “civil unions” which will be extended to same sex-partners. Very creative public demonstrations were constantly held in front of the capitol building. The leading newspaper published a seven-day series specifically explaining in simple language the most important changes that the *Proyecto* will bring about to the ordinary life of citizens.

The draft books have been reprinted and distributed in thousands of paper copies to government agencies, universities, courts, religious groups, banking institutions, news agencies, unions, women’s associations, political groups, private citizens, professional organizations, theologians, social workers, economists, educators and foreign civil and comparative

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55. See Zengel, *supra* note 40, at 947.

56. McAuley, *supra* note 11, at 278. This author advances a somewhat dramatic stance arguing that “Recodification must be an *oeuvre de vulgarisation*. As such, recodification of the modern era subsumes a method by which technical and scientific knowledge is adapted to secure ease of access and understanding by the non-specialist.” *Id.* at 280.

57. See Robert Anthony Pascal, *Of the Civil Code and Us*, 59 LA. L. REV. 30, 323 (1998).

law experts, *inter alia*. All documents produced by the Commission are also available in electronic format and all draft books have been discussed in public hearings.

Recognizing that recodification can take advantage of the use of electronic and high-tech media to reinvigorate lay people's concern for the law, we have initiated a venture for the development of an interactive version of the *Proyecto*.<sup>58</sup> I certainly agree with McAuley's affirmation that E-recodification "will come to pass because it is sensible".<sup>59</sup>

#### D. Substance

Thomas Jefferson has been cited as saying: "For however I admit the superiority of Civil Law over the Common Law code . . . yet an incorporation of the two would be like Nebuchadnezzar's image of metal and clay, a thing without cohesion of parts".<sup>60</sup> Mixed jurisdictions jurists are permanently threatened by this caveat and face the challenge to prove it wrong. But, at the same time, we all must be realistic and accept that recodification in mixed jurisdictions is definitely a preservationist effort. In terms of substantive issues, this challenge becomes much more difficult. A Louisiana professor commands it in remorseless terms: "there can be no apologies for preserving your own heritage".<sup>61</sup>

Even the most compressed summary of substantive changes proposed in the *Proyecto* is absolutely beyond the scope of this paper.<sup>62</sup> Nevertheless, I must point out some important changes that are of special interest to mixed jurisdiction, but which by no means exhaust the subject: (1) Sources of law are for the first time codified and the role of jurisprudence is recognized as complementary (2) The revised Preliminary Title has a provision, parallel to the "Louisiana 1806 manifesto", establishing that the Code should be interpreted in

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58. McAuley, *supra* note 11, at 285 ("New civil codes, e-codes, should be electronically available not only in a stable, read-only format but also in an interactive format that endorses the dialogic character of law, that promotes discourse, and that cultivates involvement with 'Law's empire' and with 'Law's cosmos.'" (footnotes omitted)); see also David Howes, *E-Legislation: Law-Making in the Digital Age*, 47 MCGILL L.J. 39, 41 (2001).

59. McAuley, *supra* note 11, at 285.

60. Quoted in Vernon Palmer, *Two Worlds in One: The Genesis of Louisiana's Mixed Legal System 1803-1812*, in LOUISIANA: MICROCOSM OF A MIXED JURISDICTION, *supra* note 22, at 23.

61. Shael Herman, *Epistle to Catalonia: Romance and Rentabilidad in an Anglophone Mixed Jurisdiction*, in REGIONAL PRIVATE LAWS CODIFICATION IN EUROPE, *supra* note 7, at 221, 246.

62. Comments or recommendations are welcomed, since the in-depth comparative study of mixed jurisdiction jurists is immeasurably valuable for the Puerto Rican recodification effort. The *Proyecto* can be accessed at <http://www.codigocivilpr.net/> (last visited Sept. 29, 2007).

accordance with civil law techniques and methodology (3) The book on successions maintains forced heirship in favor of descendants but reduces it to fifty percent of the estate (4) Regulation of trusts is moved from Book Three of the existing Code to special legislation (5) A book on private international law will replace the fragmented provisions housed in the preliminary title and in other parts of the existing code, thus producing a codification that is more civilian than Louisiana's book four on conflicts of laws, according to distinguished civilian Symeon Symeonides's opinion, who was the *rapporteur* for both.

## V. CONCLUSION

It is necessary to rethink legal norms in light of changes inherent to life itself and to have the will to improve them, thereby accepting that there are no eternal solutions to the ever shifting paradigms of human relations. The creation of the Commission for the Revision and Reform of the Civil Code of Puerto Rico is our country's answer to that claim, in an alliance between the legislature and academy.

The development of the Puerto Rican recodification process testifies to the need and usefulness of a permanent entity dedicated to the thorough and careful study of the Civil Code to make sure that it reflects the reality of the people it serves. The challenge is crucial, since this revision process will determine the destiny and the direction of Puerto Rican private law in this new century.

Mirroring ourselves in Louisiana's civil code revision experience, I believe that the prognosis is better for Puerto Rico if, as events unfold, disciplined recodification of the Civil Code of Puerto Rico provides the optimum defense from deterioration of its civilian tradition. Neither the threat of decodification nor its intricacies are exclusive of mixed jurisdictions, but they are undoubtedly more serious for them. As such, they pose particular problems that require tailored solutions. This demands a comprehensive and structured re-codification which could adjust the Civil Code to present social, political and economic reality, but would also recognize the need to protect the characteristics that reaffirm its civilian heritage, thus guaranteeing that it remains a structured, coherent, systematic, unitary and harmonious whole. For us, what is at stake is not only the effects of de-codification, but the very existence of the most emblematic symbol of civilian heritage of the Puerto Rico mixed legal system. Recodification is thus decisive in the development of Puerto Rico private law.

At the beginning of the Louisiana Civil Code revision process, a prominent Louisiana jurist made a statement that is still compelling:<sup>63</sup>

Fears have been expressed in Louisiana and in France that the times are not propitious for code reform, that the adoption of a new code would render useless a great part of the juridical works which have preceded it, and that it is dangerous to tamper with an ancient and honorable legal institution. I do not share these views. I believe that the foundations of the civil law are indestructible because its precepts are moral and equitable. . . .

. . . The jurists of today are no less learned, no less honest in purpose, and no less strong in character than those who have gone before. I am not afraid. (Footnotes omitted)

Today, I must say that we are not afraid either. I have declared myself elsewhere an unabashed devotee of codification<sup>64</sup> and I now renew my allegiance to that method by supporting re-codification as the means to advance and sustain Puerto Rican civil law. As *Don Quixote* bravely tackled the windmills he saw as invincible giants, we must fearlessly confront the colossal difficulties that recodification of private law entails in a mixed-jurisdiction context. Certainly, when I used the word *quixotic* in the title of this article, I even meant its antonym: down to earth.

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63. Tucker, *supra* note 15, at 719.

64. M. Figueroa Torres, *Crónica de una Ruta Adelantada: Los Borradores del Código Civil de Puerto Rico*, 40 REV. JUR. U.I.P.R. 419 (2006).