



The Supreme Court of Louisiana at 200



This 1901 photograph of the Louisiana Supreme Court's courtroom at the Cabildo, where the Court sat from 1853-1910, reveals the first known look at the Court's portrait collection of justices, jurists and other distinguished members of bench and bar. When the Court moved to the 400 Royal Street location, the portraits followed, and are now displayed along the building's hallways. *Image courtesy of the Collections of the Louisiana State Museum.*

By Dr. Warren M. Billings

Founded in 1813, the Supreme Court of Louisiana has fashioned and ornamented state law ever since. Its 200th anniversary bids revisiting how it hammered out a regime quite distinct from those in other states and yet very much a part of the federal system that is the American legal order. This essay is such a recollection.



In its original guise, the Court barely resembled the one familiar to us. Conceived as part of an American-style judiciary, it got written into the Constitution of 1812 as a political necessity that assured Louisiana's admission to the Union. None of its architects quite grasped its purposes or its possibilities. Some perceived it as a threat to their legal ways, which sprang from the laws of Spain and France, whereas others saw it as a likely device for melding those traditions with American law into a serviceable system for the new state. This lack of common understanding resulted in the sparsest of frameworks for the high court in the new Constitution.¹ Up to five judges composed that court. As gubernatorial appointees, they kept their seats for life but could be impeached. Their jurisdiction extended to civil disputes that exceeded \$300, and they rode circuit throughout two statewide appellate districts.

The Judiciary Act of 1813 added flesh to these bones, but only just. It set the size of the bench at three judges, any two of whom made a quorum. It specified being "learned in the law" as the sole criterion for office and assigned the judges precedence according to the dates of their commissions. Finally, it invested the Court with rulemaking authority and power over the lower courts and the bar. So long as the judges did not stray beyond these limits, they were free to conduct themselves as they saw fit.²

With little fanfare, the Court sat for the first time on March 1, 1813, at Government House³ in New Orleans. Two of its newly minted judges, Dominick Augustin Hall and George Mathews, showed up. After a public reading of their commissions from Gov. William C.C. Claiborne and swearing the oath of office, they adjourned. The third judge, Pierre Augustin Bourguignon Derbigny,⁴ joined them a week later.⁵ Hall, by virtue of being commissioned first, became presiding judge. He resigned before the year was out, whereupon Mathews became president and stayed until he died in 1836. Derbigny left in 1820 for an unsuccessful bid for governor, by which time François-Xavier Martin had joined the Court. Martin remained for 31 years and took the center seat after Mathews's death.

The Court went about adjudicating a swelling volume of business that grew after 1813, and, as it did, it formed the founda-

tions of Louisiana's legal system. Initially, the Court designed rules for bar admissions, which qualified newcomers as well as lawyers who practiced before Louisiana was a state.⁶ Its subsequent regulations established standards of legal education that lasted until the 1920s.⁷ Early on, the judges also narrowed their jurisdiction by deciding they lacked constitutional warrants to receive cases from the defunct territorial Superior Court or to hear criminal appeals.⁸ Similar questions of jurisdiction touched the greater matter of mixing American and civilian legal precepts into a steady, reliable legal order. Mathews and Martin, both trained American lawyers, likened civil and common law to complementary facets of the same legal gemstone instead of rivals. For that reason, they acknowledged civilian tenets as the pith of private law in Louisiana but looked to other sources as well.

Moreover, both prided an independent judiciary, so they resisted being exclusively bound by the Civil Code of 1825. They went so far as to ignore post-1825 repealing statutes that invalidated all foreign law in force at the time of the Purchase, the *Digest* of 1808, and every territorial or state act that had been revised by the Civil Code, which clouded an already muddled situation. Martin finally clarified the muddle in 1839 when, in the case of *Reynolds v. Swain*,⁹ he asserted the Court's right to say what was law in Louisiana, and who ultimately declared it. His deci-

sion, the Louisiana equivalent of *Marbury v. Madison*, strengthened the Court with an Anglo-American tincture, and it guaranteed that the blending of American, British, French, Roman and Spanish law would continue. That Mathews and Martin wielded such sway says as much about their longevity as their outlook. Younger colleagues — most notably Alexander Porter, Henry Adams

Bullard, George Strawbridge and George Eustis — held similar views, but their time on the high bench was far shorter and therefore less influential than it otherwise might have been.

Poor health dogged Mathews, Martin went blind, and both stubbornly resisted efforts to improve the Court's efficiency. By the 1840s, a combination of a mountainous backlog of unresolved appeals, pressure to take criminal appeals, and a scandal involving Judge Rice Garland contributed mightily to a statewide outcry that spawned the Constitution of 1845 and a reformed Supreme Court. Gone was the old one, re-

placed by a chief justice and three associate justices who served eight-year terms. These justices still rode circuit and retained supervisory powers, but their jurisdiction extended to both civil and criminal appeals. George Eustis returned to the Court as its first chief justice. He oversaw the clearing of the caseload and instituted a thorough reorganization of procedures. The Constitution of 1852 included no substantive jurisdictional



Architectural Model of the Government House of the French Colony of Louisiana
Thompson & Foster, c. 1933

The Government House of the French Colony of Louisiana, home of the French Superior Council, was built in 1761 at Toulouse and Decatur Streets in the French Quarter, about 200 feet from the Mississippi River. After statehood, the Government House was occupied by the Louisiana Legislature and then became the Louisiana State Capitol until it burned in 1828. This model was built by Thompson and Foster in the Louisiana State Museum studio in 1933 and aids in preserving the history of the French Superior Council, the first governing body of Louisiana. The first sitting of the Louisiana Supreme Court was at Government House on March 1, 1813.

Image courtesy of the Collections of the Louisiana State Museum.



changes; however, it reduced unlimited oral arguments to a total of four hours, it erected an elective judiciary, it raised the number of justices from four to five, and it lengthened their terms from eight years to 10.¹⁰

Civil war and its aftermath wrought a Supreme Court of a different sort. After New Orleans fell to Union troops in April 1862, Chief Justice Edwin T. Merrick decamped for Opelousas and then to Shreveport, but the Confederate court did little business that we know of. It lost its archives to federal soldiers who carted them off to Washington, D.C., where they remained in the custody of the War Department until the 1880s.¹¹ The return of white home rule, the coming of Jim Crow, and more structural modifications characterized the Supreme Court of the post-Reconstruction years. Constitutional revisions in 1864 and 1868 abolished slavery and promised civil rights for black Louisianans. The Court, led by its first native-born Chief Justice John T. Ludeling, re-bounded its jurisprudence accordingly. Not everyone greeted its alterations kindly, most certainly not white attorneys who fiercely abominated Ludeling's rulings on "racial and public questions," even though the Court's opinions encouraged rising racial animosities.¹² After 1877, the Court usually sided with white supremacists in the Legislature, most notably when it validated the doctrine of "separate but equal" treatment of black Louisianans, a rule that became the law of the land after 1896 when it received the imprimatur of the Supreme Court of the United States in *Plessy v. Ferguson*.¹³

A new Constitution, promulgated in 1879, recreated an appointive court, with the governor naming the chief and picking all five justices from four judicial districts. (Two seats went to Orleans and its surrounding parishes.) Then, too, the Constitution eased the Court's caseload by adding two intermediate benches to hear civil appeals involving less than \$2,000. Provisions in the Constitution of 1898 retained the appointive judiciary but dictated that the office of chief justice would henceforth be based on seniority of service. (A 1904 constitutional amendment also restored the right of electing the Court to the voters.) Two other modifications relieved the justices from riding circuit and designated New Orleans as the Court's sole seat. The latter stipulation

galvanized a lengthy campaign to build the Court a permanent home that culminated in 1910 with the opening of the massive Beaux Arts-style courthouse at 400 Royal Street in the heart of the French Quarter.¹⁴

Three years later, the Court celebrated its centennial. Speakers — some brief, some not — treated an enthusiastic audience to addresses that touched upon aspects of the Court's first 100 years. In response, Chief Justice Joseph A. Breaux exclaimed that, in Louisiana, "two systems of law, civil and common, were blended." As a result, he continued, "the labors of the bench and bar of that period are still felt. Although a century has passed, during all these years, these united systems of laws, civil and common, have come down to us with the impress placed upon them in the early years of the century."¹⁵

After 1913, Breaux's successors faced the challenge of fitting his "united system of laws" to suit the consequences of tumultuous changes in the economy, politics and the social fabric that epitomized 20th-century Louisiana. Three chief justices — Charles A. O'Niell, John B. Fournet and Pascal F. Calogero, Jr. — stand out because their combined tenure amounted to two-thirds of a century of service. Incumbent for 27 years, O'Niell arguably presided over the most partisan Court before or since. He earned plaudits for the incisive beauty of his opinions but had little taste for court reform, calls for which had grown louder by the 1920s. His hostility kept a top-to-bottom reorganization of the entire judiciary out of the Constitution of 1921, though he did agree to increasing the size of the Court to seven in the expectation that more justices equated with greater efficiency, which proved a vain hope. Later

efforts at modernization met with his studied resistance, especially after he presided at the impeachment trial of Gov. Huey P. Long in 1929. O'Niell devoutly loathed everything about the Kingfish, so he regarded modernization as little more than a lightly veiled attack upon him. He was not wholly wrong given that modernization's most persistent advocate was fellow Justice John B. Fournet,

a ferocious Long partisan who went to the Court after his highly controversial election in 1934.¹⁶

Fournet made little headway so long as O'Niell stayed, but he did persuade the Legislature in 1938 to fund the hiring of law clerks as a means of speeding up the production of opinions, and that was a first for the Court. Behind the scenes, Fournet actively worked with Gov. Earl K. Long to pass a statute requiring judges to retire at

age 75, allowing him to succeed O'Niell in 1949.¹⁷ As chief, he relied upon the justices' rulemaking power and deft political maneuvering to revolutionize the Court's relationship to the judiciary as a whole. In the 1950s, he invented the Judicial Council and created a judicial administrator whose staff supplied him with detailed data on the courts that he used when he lobbied the Legislature to streamline the appellate system and to add more judgeships in the lower courts. Tidying up the Supreme Court docket, he also secured appropriations for a new courthouse that sat at 301 Loyola Ave. in New Orleans. Consequently, when he left in 1970, "the Court" signified more than justices who ruled on cases. By his hand, the bench turned into a potent entity and collection of related agencies that supervised every phase of the entire judicial branch and made the chief justice the system's premier



The Cabildo, where the Court sat from 1853-1910. Provided by Russell Desmond, Arcadian Books & Prints.



The Louisiana Supreme Court at 400 Royal St., where the Court sat from 1910-1958 and 2004 to present day. Provided by Law Library of Louisiana.



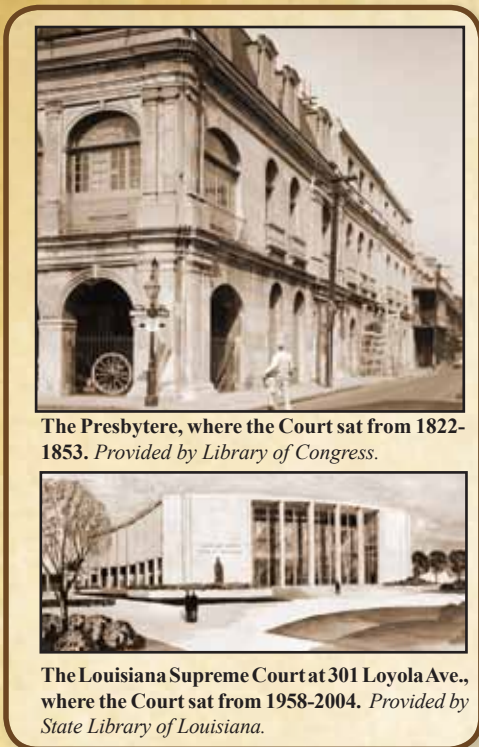
administrative traffic cop. Put another way, Fournet convinced lawyers, legislators and voters that better administration at every level resulted in the speedier, more honest and equitable dispensation of justice, while infusing the Court with a marked willingness to experiment with new ways of improving its expanded responsibilities.

That penchant for experimentation gained national recognition for the Court, and innovation was commonplace throughout the 1970s and 1980s. No one among the justices thought it should be otherwise because as one noted, “[Our] system of justice is never finished. It must be conditioned and improved.” Chief Justice Calogero clearly shared this view.¹⁸

Calogero, who came to the Court in 1973, moved to the center chair 17 years later and gave it up in 2008. A committed reformer, as chief he oversaw creation of the Louisiana Indigent Defender Board, regular strategic planning across the judiciary, reforms to the juvenile court system, and a community relations department, among other improvements. His most visible accomplishment was bringing off the renovation of the Royal Street courthouse that allowed the Court and its departments to return to their former home in 2004. There were dramatic changes in the composition of the Court on his watch as well.

In 1992, the Court got its first female member after voters elected Catherine D. Kimball to a seat. The next year, as a result of a federal consent decree, the late Revius O. Ortique, Jr. became the first African-American justice, and, upon his retirement, Justice Bernette Joshua Johnson became the first African-American woman to be elected. Justice Jeannette Theriot Knoll

joined the Court in 1997, so the bench then consisted of three women and four men. When Justice Kimball succeeded Calogero in 2009, she became the first female chief justice of Louisiana; she retired in January 2013. Justice Bernette Joshua Johnson was sworn in as the new chief justice on Feb. 1, 2013, becoming the Court’s first African-American chief justice.



The Presbytere, where the Court sat from 1822-1853. Provided by Library of Congress.

The Louisiana Supreme Court at 301 Loyola Ave., where the Court sat from 1958-2004. Provided by State Library of Louisiana.

In 1813, no one knew what the future of the Supreme Court held. For certain, no one could have imagined how, from that day to this, its jurists would stamp deep impressions upon the law and make the Court into the linchpin of the judicial branch. At most, they likely expected an institution they did not understand completely to forge a workable legal system. By twists and turns, hope translated into reality over

the course of two centuries.

In the words of Chief Justice Kimball, “[The] work of the Court to make our vision of an efficient, fair, and timely judiciary a reality” continues.¹⁹

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FOOTNOTES

1. *In Search of Fundamental Law: Louisiana’s Constitutions, 1814-1974*, at 6-21 and 155-58 (Warren M. Billings and Edward F. Hass, eds., 1993).
 2. 1812 La. Acts 2nd session 18.

3. Located at Toulouse and Levee Streets, Government House was the first state capitol building. It housed the Office of the Governor, the Legislature and the Supreme Court but was abandoned in 1827 for more commodious accommodations.

4. Because the state Senate and Gov. Claiborne were at odds over Derbigny’s nomination, the senators held up his confirmation until March 8.

5. Sybil A. Boudreaux, ed., *The First Minute Book of the Supreme Court of the State of Louisiana, 1813 to May 1818: An Annotated Edition*, 13-15 and 20-21. (1983) (unpublished M.A. thesis, University of New Orleans) (on file with the Law Library of Louisiana).

6. *The Historic Rules of the Supreme Court of Louisiana, 1813-1879*, at 1-2 (Warren M. Billings, ed., 1985).

7. Warren M. Billings and Mark F. Fernandez, *A Law Unto Itself?: Essays in the New Louisiana Legal History*, 25-40 (2001); Warren M. Billings, *Magistrates and Pioneers: Essays in the History of American Law*, 301-303 (2011).

8. *Bermudez v. Ibanez*, 3 Mart. (o.s.) 2 (1813); *Laverty v. Duplessis*, 3 Mart. (o.s.) 52 (1813).

9. *Reynolds v. Swain*, 13 La. 193 (1839).

10. Mark F. Fernandez, *From Chaos to Continuity: The Evolutions of Louisiana’s Judicial System, 1712-1862*, at 89-109 (2001).

11. All the captured records bear a War Department identification mark stamped in blue ink. Edward Douglass White, who served on the Court from 1879-80, secured their return.

12. Henry Plauché Dart, “The History of the Supreme Court of Louisiana,” 133 La. l.iii (1913).

13. *Ex Parte Plessy*, 45 La. Ann. 80 (1892); *Plessy v. Ferguson*, 163 U.S. 537 (1896).

14. Carol D. Billings and Janice K. Shull, *The Louisiana Supreme Court: An Historical Guide*, 10-12 (2004).

15. The text of Breaux’s remarks forms part of the entire record of the ceremonies that appears in Volume 133 of the Louisiana Reports.

16. Billings *supra* note 7, at 371-99. As I learned when I interviewed him in the 1970s, the advance of years did absolutely nothing to change his mind.

17. John B. Fournet, “The Reorganization of the Louisiana Judicial System,” 17 Sw. L.J. at 78-85 (1963).

18. Joe B. Sanders *quoted in* Billings and Shull, *supra* note 14, at 78.

19. C.J. Catherine D. Kimball, “Message from the Chief Justice,” Ann. Rep. Jud. Council Sup. Ct. La. 1 (2011).

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