

The French Revision of Prescription: A Model for Louisiana?

François-Xavier Licari, Professor at the University of Metz, and Benjamin West Janke, of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, have posted “The French Revision of Prescription: a Model for Louisiana?” on SSRN. The paper has also been published at the Tulane Law Review, vol. 85, p. 1 (2010).

Here is the abstract

Though the draftsmanship of the French and Louisiana Civil Codes is generally celebrated, prescription in both Codes is notoriously defective. Located at the end of both Codes as almost an afterthought, the titles of prescription do not share the same general, relative style contained elsewhere. Part of the cause of the prescription title’s shortcoming is attributable to the content.

The provisions that ring loudest are spelled out in numbers rather than letters. Numbers are blind, arbitrary, cold, and inanimate – ace of society accelerates, prescription becomes anachronistic. It is worth questioning whether the very nature of prescription eludes the capacity for codification.

Prescription’s inherent difficulties have created turmoil for both the French and Louisiana civilian systems. Both have struggled with the arbitrariness of any one particular prescriptive period, attempting to balance objectivism against subjectivism, relativity against certainty, and generality against particularity. Though both France and Louisiana began with what might be considered excessively long general periods of prescription, the French and Louisiana legislatures either whittled down the general period or chiseled out particular actions from it. Over time, these piecemeal amendments eviscerated the core components of the doctrine, causing a desperate need for substantial revision.

In 2008, the French legislature took the necessary step and drastically reformed prescription. The general period is now shorter and unified (five years); there are new grounds for suspension (including codified *contra non valentem*); and a long-stop period is introduced. Louisiana has yet to make any substantial reform to

prescription, and revision is long overdue.

This essay will outline the faults in Louisiana and France's original prescriptive regimes and identify the main innovative trends in the French revision. It then will offer a critical appraisal of the French revision, endorse it as a basis for a Louisiana revision, and discuss how Louisiana jurisprudence is uniquely positioned to integrate the revision in French law. We offer the following as a true dialogue from both the French and Louisiana perspectives about the continuing influence of the French Civil Code in Louisiana, the nature of prescription and its placement in a Civil Code, and the unique opportunity for the Louisiana experience to influence the interpretation of the French revision.