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BOOK REVIEW

GEORGE DARGO, JEFFERSON'S LOUISIANA: POLITICS AND THE
CLASH OF LEGAL TRADITIONS

(Rev. ed., The Lawbook Exchange, Ltd., Clark, New Jersey, 2009)

Reviewed by Agustín Parise*

This work by George Dargo is unique in explaining the political, legal, and above all, socio-historical events that took place in Louisiana during the early nineteenth century. The events Dargo brilliantly describes and analyzes help us better understand the current legal system in Louisiana. Further, this revised edition by The Lawbook Exchange shows that the celebrations of the enactment of the Digest of 1808¹ did not end in the year of the bicentennial. The new edition of this work originally published in 1975 by Harvard University Press, continues providing a useful tool for a new generation of scholars on Louisiana legal history.

The book is divided into three parts. From the very beginning, Dargo is able to reveal that the main debate in Louisiana was between the adoption of legal traditions and not between which Continental European or civil law system should be adopted. Part One consists of one chapter, which makes readers look into the diverse geography and demography of lower Louisiana during the early 1800s. By doing so, readers are provided with a background that is necessary for the understanding of the remaining chapters. Dargo is able to highlight the “singular attractions”² that the region provided to American immigrants after the Purchase and how those attractions resulted in a melting pot of cultures and interests. That melting pot reflected a bipolar product formed by ‘ancient inhabitants’ and Anglo-Americans. As expected, that melting pot also reflected a bipolar attitude in the

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1. Complete English title: *A Digest of the Civil Laws Now in Force in the Territory of Orleans*; See the French and English texts of the Digest of 1808 at: www.law.lsu.edu/digest (Last visited November 3, 2011).

2. GEORGE DARGO, JEFFERSON'S LOUISIANA: POLITICS AND THE CLASH OF LEGAL TRADITIONS 9 (Rev. ed. 2009).

inclinations towards the adoption of the civil or common law systems. The author illustrates with examples how the substance of the legal systems offered different solutions to legal matters, assisting readers to quickly identify how the adoption of one system could affect the ‘ancient inhabitants’ or the Anglo-Americans. Here, the clash of legal traditions to which Dargo refers throughout his book starts to be visible: a clash that “encompassed the interests, the value system, and the very identity of a diverse people who now, for the first time in their history, had to unite in defense of the common elements of their heritage.”³

Part Two, on the problems of colonial rule, starts in chapter two, which is dedicated to the vicissitudes of William C. C. Claiborne as governor of lower Louisiana, who due to the importance of the region and his duties was “one of the most important public officials in all of the United States.”⁴ At that time, Claiborne had been appointed by Thomas Jefferson to deal with the vulnerability of New Orleans, a problem that the President found acute and persistent during his presidencies. Jefferson felt the ‘ancient inhabitants’ had an unclear allegiance to the Union. Working with primary sources, and reflecting his skills as both a historian and a jurist, the author then brilliantly highlights that Claiborne had a position that was “great in theory but modest in fact.”⁵ Also in the second chapter, the initial isolation of the governor and his gradual blending with the inhabitants is explained by depicting his tension when facing federal and local requests and by summarizing the different public controversies to which he was associated (*v.gr.*, opposition to early statehood, appointments of officials, conflicts with local press, veto of bills). Among the most relevant controversies of that time, is the one that developed around the ‘reign of terror’ and successive events that surrounded the conspiracy by Aaron Burr, which Dargo approaches clearly in chapter three of the book.⁶ The attitude of the governor in this

3. *Id.* at 34.

4. *Id.* at 43.

5. *Id.* at 44.

6. Dargo explains the activities and motivations of Burr in the following words:

Historians have never finally established the meaning of Burr’s movements in the southwest. His defenders have argued that he intended nothing more than to revolutionize the

aspect reflected that he had slightly inclined towards the interests of locals. Another public controversy, which Dargo develops extensively in chapter four of the book, mainly by looking again to newspapers and epistolary records, is the one that took place with the New Orleans Batture.⁷ To the understanding of the reviewer, that is the most important controversy and a key element to understand the clash, because it formally ignited the debate on which legal system would be applied in the region. The Batture represented significant immovable property interests for Edward Livingston, in opposition to the interest of the city of New Orleans, and generated decades of litigation before courts in Louisiana and in the East coast. In words of the author: “the questions raised by the Batture stimulated a social awareness of the importance of legal issues in general and a hostility to common law in particular. The Batture controversy was crudely perceived as a conflict

Spanish colonies in West Florida and Mexico—ends which most Jeffersonian Republicans would have applauded. Burr’s critics have asserted that he purposed treason and subversion, that he hoped to detach all of the southwest and Louisiana from the Union and then establish an empire with Mexico and West Florida as tributary states. Burr himself probably never had a fix design. He had many brands in the flames and hoped that at least one would catch fire.

Id. at 89-90.

7. One of the earliest works on the Batture, which also provides one of the best and most elegant explanations, reads:

New Orleans is situated on an alluvial plain, evidently formed, like the surrounding country for a great distance, by the transporting and creating power of the Mississippi in the course of centuries. This plain, which constitutes a portion of the Delta of the Mississippi, contains a soil of incomparable fertility, through which the current of the majestic river winds its way with resistless impetuosity, sweeping along in large, graceful and singularly regular curves, which mould its channel, and make the shores, which limit and restrain its water, conform to their meanderings. Hence the shores of the Mississippi present every where *bends* or *points*, of which, the bends, or curves, being exposed to the more immediate and direct action of the current, are constantly excavated or abraded, while the points, under the influence of the countercurrent generally increase in extent by the alluvial accretions formed around them. These alluvial deposits, which are often of great extent and value, are called *battures*.

Gustavus Schmidt, *The Batture Question*, 1:2 LA. L.J. 84, 87-88 (1841).

between two diverse legal traditions.”⁸ This controversy would pave the way for the awareness of a need to preserve the civil law system, at least in the area of private law. The controversy included not only the U.S. President and local officials, but also those who would contemporarily or shortly after codified the laws (*i.e.*, Livingston, Moreau-Lislet, Derbigny). The Batture also ignited early debate on the laws applicable in the region: were they Spanish? Were they French? Dargo correctly sees the Batture as a ground-leveler for the future adoption of the Digest of 1808.

Part Three of the book continues examining the clash of legal traditions that took place at that time in the region. It focuses, however, on the Digest of 1808 and the events that preceded its adoption: perhaps the best exponents and most visible results of that clash during the territorial period. Chapter five of the book addresses a visible clash. Jefferson advocated for a Union with “people speaking the same language, governed in similar forms, and by **similar laws**,”⁹ and thought he could find in Claiborne the suitable person to help him achieve that objective. The chapter relates specifically to the operation of the courts in the region and the need to decide which system of law they would follow. The author correctly indicates that the operation of courts in Louisiana could not wait until matters on substantive law would be decided. A solution to and facing of daily matters was paramount in order to smoothly administrate the new territory. Procedure would have to advance, while substance could be kept on hold. In addition, Dargo reflects on the accounts he provides that it was clear that in the area of criminal law the Spanish system was not well received by local inhabitants. The latter found the Spanish system corrupt and brutal.¹⁰ Therefore, Claiborne faced again a debate: adoption of the civil or the common law institutions and procedures. Who to please? From this chapter, and from the reading of references by Dargo to plays, pamphlets, memorials, newspapers, and essays, it is made clear that the debate was not free of tension. In addition, the ultimate adoption of common law institutions and procedures

8. DARGO, *supra* note 2, at 144.

9. *Id.* at 188 (emphasis added).

10. *Id.* at 192.

seemed to indicate that the next expected step would have been the adoption of substantive common law principles.

Chapter six proves the contrary. The advocates of the civil law system found a threat in the recent events. Hence, in May 1806, the legislature adopted a bill, also referred to as the Project of 1806, by which the pre-existing Spanish and Roman laws would govern in the territory. Claiborne did not approve this initiative and vetoed the bill, generating in the legislative body an immediate claim for dissolution. Further, the local newspaper *Le Telegraphe* published a manifesto, signed by members of the legislative body, in which the latter explained the reasons why they preferred the civil law system. In that same chapter Dargo clearly explains the repercussions of the manifesto and the repealing movements that arose from the defenders of the common law system. But that aborted bill would not be the last stand of the advocates of the civil law system: they would later appoint two counselors to draft a civil code for the territory. This appointment would culminate in the Digest of 1808, the main star of chapter seven and where the clash of traditions is visible at its best. This chapter raises and answers many questions that relate to the study of the Digest of 1808: Firstly, was it a digest or a code? With our current understanding, a digest would simply provide a recompilation of existing and applicable Spanish laws, and solutions would be available outside of the text, if answers were not provided therein. A code would definitively produce a cut with previous Spanish legislation, would be exhaustive, and all solutions would have to be looked for within its articulation. Secondly, a wide array of questions related to sources: which were the materials the drafters used when completing the Digest of 1808? Were these materials of Spanish, French, or Roman origin? What is the value of the edition of the Digest of 1808 with manuscript notes entitled *de la Vergne* volume? What is the Batiza-Pascal debate on sources of the Digest of 1808 that has been ongoing in Louisiana since the 1970s? While answering this set of questions, Dargo correctly states that the debate in Louisiana did not limit to which civil law system would be adopted (*i.e.*, French or Spanish), but that it went further and related to which legal tradition would prevail (*i.e.*, Continental European or Common Law). Accordingly, in that same chapter the

author informs the readers of the “gradual erosion”¹¹ that he sensed in the civil law of Louisiana back in the 1970s, which is still a valid feeling during the publication of this revised edition. Corollary to this chapter, and to the book as a whole, Dargo sees the Digest of 1808 as the *political compromise* by which the settled ‘ancient inhabitants’ accepted the dictates of the Union.¹²

This revised edition includes several positive additions. Firstly, the book includes illustrations, making them another useful way of sharing information. The use of maps, reproductions of book covers, and pamphlets help in the building of knowledge on time and place. Secondly, the original endnotes have been converted into footnotes, making access more user-friendly. Some footnotes have been revised to attain a better pinpointing, while few were updated with references to works published after the publication in 1975. The best companions to this new edition of the work of Dargo would be the studies by Richard Kilbourne¹³ and Alain Levasseur.¹⁴ Both books, also recently republished, help in understanding the events that relate to the clash of legal traditions. The work by Kilbourne is precise in explaining the legal history of the adoption of the Louisiana Civil Code of 1825, successor of the Digest of 1808. It picks up the developments of the clash of legal traditions contemporaneously to the adoption of the Digest of 1808, and continues exploring that phenomenon in Louisiana, bridging both legal bodies. The work by Levasseur provides a better understanding of the life and work of Louis Moreau-Lislet, the main drafter of both the Digest of 1808 and the Civil Code of 1825, and an important player in the clash of legal traditions.

The main addition to the revised edition of the work by Dargo is the new introduction provided by the author. The introduction excels in showing what Dargo summarizes by stating that: “the history of Louisiana and its law is no longer a subject of interest only to local legal scholars; it has broadened out to become

11. *Id.* at 300.

12. *Id.*

13. RICHARD H. KILBOURNE JR., *A HISTORY OF THE LOUISIANA CIVIL CODE* (1987, reprint 2008).

14. ALAIN LEVASSEUR (with the assistance of Vicenç Feliú), *MOREAU LISLET: THE MAN BEHIND THE DIGEST OF 1808* (2008) (Rev. ed. of Alain Levasseur, *Louis Casimir Elisabeth Moreau-Lislet: Foster Father of Louisiana Civil Law* (1996)).

a subject with profound implications toward an understanding of American history and of America's place in the world today."¹⁵ This expression of the author is supported by the compilation and in-deep analysis that he makes of the main writings that were published since the printing of the first edition in 1975. An insider's look is given to readers on the developments of the modern historiography of Louisiana. The introduction also provides a fresh and updated look into the debate on the sources of the Digest of 1808. Above all, the author reflects that the debates and studies on Louisiana law exceed the geographical boundaries of the state and are studied by scholars from different corners of the world who are interested in civil law or mixed jurisdictions. The work of Dargo is able to position Louisiana as a treasure-trove region for scholars interested in the steadily developing area of comparative legal history.

Post Scriptum

George Dargo passed away on January 5, 2012. The Editor-in-Chief of this Journal had the privilege of attending a lunch organized in his honor by Ms. Georgia Chadwick, Director of the Law Library of Louisiana, and Mr. Greg Talbot, The Law Book Exchange, on the occasion of the publication of the revised edition of *Jefferson's Louisiana*. This was at Antoine's, in New Orleans, in January 2010. The reviewer could not attend but had met George Dargo on a previous occasion.

The new edition of this book was indeed a great event in Louisiana, where George Dargo will be missed by friends and colleagues. He leaves us a major contribution to the history of our state, covering events that had a large significance for the United States and other parts of the world.

O.M. and A.P.

15. DARGO, *supra* note 2, at xxvii.