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Avant-Propos

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AVANT-PROPOS

In 2012, the state of Louisiana commemorates the Bicentennial of Louisiana's statehood: on April 30, 1812, Louisiana was admitted as the 18th state in the Union. This event happens to coincide with the Tercentennial of the enactment of French law as the law applicable to *La Louisiane*, marking a starting point of the law of Louisiana.[1] A Letter Patent signed on September 14, 1712 by King Louis XIV of France granted to *Sieur* Crozat, the king's Secretary, exclusive trade rights in all lands possessed by the king "under the government of Louisiana," whilst providing in article VII that all laws applicable in Paris and its province, including Edicts, Ordinances and Customs, were applicable to Louisiana. This is the first document to make reference to the law to be applied in Louisiana. Until the cession to Spain fifty years later, French law officially applied in the immense territories that stretched from the Gulf of Mexico to the Great Lakes and from the Mississippi River to the Rocky Mountains and to the Isle of Orleans east of the Mississippi River. The rediscovery of colonial archives in New Orleans, and their future availability in digital format, opens a new horizon to historical studies, though their ambit might be limited to New Orleans and South Louisiana.

French law would cease to apply in Louisiana after its cession to Spain in 1762. The complex and intricate Spanish laws, largely derived from the Roman law of Justinian and that of the Visigoths, remained in force after the retrocession of the Louisiana territories to France in 1800 and the subsequent Louisiana Purchase by the United States in 1803. The southern part of it was organized as the Territory of Orleans, to become in 1812 the state of Louisiana. French law would never apply again as such, but it would remain

1. One should not neglect the laws and customs of Native Americans. The author feels ashamed to relegate them to a footnote. Whilst acknowledging their existence, he pleads guilty and admits his ignorance.

influential after the territorial period, during two centuries of statehood.[2]

Two *Notes* published in this issue illustrate some of these developments. Seán P. Donlan discusses the work of recent historians of Louisiana law, showing that the study of the development of a mixed legal system (such as the Louisianan), whether based on a clash of legal cultures or continuity, requests a combination of multiple skills, pertaining to a new discipline called comparative legal history.[3] Alexandru-Daniel On authored a very informative text on the Louisiana Translation Series, which makes monuments of French legal literature accessible to English speakers, and allows Aubry & Rau, Baudry-Lacantinerie, Gény, and last but not least, Planiol, to remain leading doctrinal sources in the state of Louisiana.

The present issue of the *Journal of Civil Law Studies* contributes to the celebration of the past, showing how earlier accomplishments can be reenergized to pave the way to the future, moving the civil law of Louisiana from nearly dead, barely resurrected status, to that of a beacon in a world where the civil and common law traditions interfere and interact, mixed jurisdictions becoming the norm.

This volume is an inaugural issue, with a new section *Civil Law in Louisiana* to feature notes on significant cases decided in the state, written by our Student Editors, all second and third year law students at the LSU Paul M. Hébert Law Center, under the supervision of their civil law or comparative law professors. From Volume 5 onwards, *Civil Law in Louisiana* will appear in every volume of the Journal. Also, for the first time, the Journal publishes an LSU Law student *Essay*, showing how the civil law of

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2. *See* Olivier Moréteau, *Louisiana 1812-2012: 200 Years of Statehood and 300 Years of French Law Influence*, 59 LA. B.J. 325-326 (2012).

3. Comparative Legal History is the name of a new journal published by Hart Publishing. Seán P. Donlan, an LSU Law Center graduate, is the Editor.

Louisiana can help address a serious environmental problem of our time.

This volume includes the presentation of a portion of the translation work done at the Center of Civil Law Studies. Several titles of the current Louisiana Civil Code are published in a bilingual format in *Civil Law Translations*, with the original English on the left and a French translation on the right. In addition, short informative *Book Reviews* bring evidence of the regained vitality of civil law scholarship in Louisiana.

Two *Articles* discuss and recombine two major themes of the celebration: constitutional law and civil law. Professor Paul Baier, a distinguished scholar and playwright,[4] stages the origins of judicial review in Louisiana and trumpets words he rediscovered in the Louisiana Constitution of 1812: "All laws contrary to this Constitution shall be null and void." This phrase was not to be reenacted in more recent constitutions but Paul Baier makes an opera out of it, promoting exegesis in a dialogue of two giants of the judiciary, United Sates Chief Justice John Marshall and Louisiana Judge François-Xavier Martin, showing how the latter, known as the Father of Louisiana Jurisprudence, introduced judicial review in the newly admitted state. The libretto was carefully researched and drafted by coauthor Georgia Chadwick, curator of most valuable original documents on Louisiana's legal history and the civil law in general, at the Law Library of Louisiana, housed in the beautifully renovated building of the Louisiana Supreme Court in New Orleans. *De Revolutionibus*, reprinted with the kind permission of the Montreal based *Éditions Thémis* and McGill University, redefines the place of the Civil Code in Louisiana and in the legal universe. The author shows, among other things, the growing influence of the Constitution on

4. His Play, "FATHER CHIEF JUSTICE": E.D. WHITE AND THE CONSTITUTION (1997) has been staged in several places in Louisiana, in Washington, D.C. and soon in Boston. It features the life and work of Edward Douglass White, the only Louisianan ever to become a Justice of the United States Supreme Court (in 1894), and Chief Justice from 1910-1921.

the Code in all civil law jurisdictions, and discusses how the Civil Code, once at the center of the galaxy, has become a peripheral star in Louisiana, much like in other civil law jurisdictions. In Louisiana, like elsewhere, the Civil Code can be reenergized if re-centered around the citizen.

Whether familiar or not with Louisiana law, readers will also enjoy a *Rediscovered Treasure of Louisiana Law*, a late-19th century essay by Thomas Semmes surveying the history of the laws of Louisiana and offering a short and accurate overview of the development of Roman law, proving if need be that the Louisiana legal system, though technically 200- or 300-year old, has roots ten times older. As expressed by the well-known Southern author, William Faulkner, "The past is never dead. It's not even past."[5]

Olivier Moréteau

5. WILLIAM FAULKNER, REQUIEM FOR A NUN (1951).