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THE LOUISIANA CIVIL CODE TRANSLATION PROJECT: AN INTRODUCTION

Shortly after the Bicentennial of the Louisiana Civil Code, in 2008,[1] the Center of Civil Law Studies at the Louisiana State University Paul M. Hébert Law Center started the vast project of translating the entire Louisiana Civil Code from English into French, and later on into Spanish.

I. WHY TRANSLATE THE LOUISIANA CIVIL CODE?

The current Louisiana Civil Code is one of few civil codes in the world exclusively drafted in the English language. One may also cite the Civil Code of Seychelles and add the civil codes of some of Louisiana's sister states such as California, Montana, North Dakota and South Dakota, based on the draft civil code proposed just after the Civil War by David Dudley Field for the state of New York, voted by the legislature but vetoed by the governor.[2] However, Louisiana is the only state in the United States keeping the civil law tradition, in coexistence with the common law that governs other areas of the law.[3] Civil codes of other states are seen as mere restatements of the common law and are interpreted in relation to earlier case law.[4]

Though earlier versions of the Louisiana Civil Code were drafted in French and then translated into English, the present code is in English only. The project is a major linguistic experiment of re-translation, exploring the vocabulary of the civil law in English and testing its validity and vitality. Like the Digest of 1808 (*A Digest of the Civil Laws now in force in the Territory of Orleans*), the Louisiana Civil Code of 1825 was drafted in French and

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1. Olivier Moréteau & Agustín Parise, *The Bicentennial of the Louisiana Civil Code (1808-2008)*, 2 J. CIV. L. STUD. 195 (2009).
2. *See* David Gruning, *Vive la différence ? Why No Codification of Private Law in the United States?*, 39 REVUE JURIDIQUE THÉMIS 153 (2005).
3. One must also add the Commonwealth of Puerto Rico, closely associated to the United States.
4. *Id*. at 188-189.

translated into English, to be published and enacted in both languages. In 1870, the Civil Code was entirely revised and, this time and from then on, drafted and published solely in English. Since then, the Louisiana Civil Code has been subject to many revisions by the Louisiana legislature mainly since the 1970s, carefully prepared by the Louisiana State Law Institute. This leaves few provisions in the original language of 1808 and 1825.

This means that since 1870, the Louisiana Civil Code has not been available in French for the French speaking population of the state. The concept of linguistic rights was then inexistent and it seems that the legislature drew conclusions from the "fading of the French language and legal culture."[5] The Louisiana legislature may have forgotten that civil codes are drafted for citizens, hence the need to make the code available in the language they speak,[6] and not exclusively in the language of the educated.[7] Or they may have regarded the Civil Code as a statute, projecting a common law vision whereby no particular effort should be made to make the law accessible to the layman except with the help of a paid, trained lawyer. Whether French speakers make 5 or 10% of the population of the state, whether the practice of French is or is not on the decline, the translation project will make the Civil Code available to francophone Louisianans. In Cajun country, French is still spoken in many households. Alongside with the promotion of French in school education (see among others the efforts of the Council for the Development of French in Louisiana, CODOFIL), the translation project meets some of the objectives of the Francophone Section of the Louisiana Bar Association. Some

5. A.N. Yiannopoulos, *The Civil Codes of Louisiana* in LOUISIANA CIVIL CODE LIX, at LXIX (West 2011).

6. Olivier Moréteau, *De Revolutionibus, The Place of the Civil Code in Louisiana and in the Legal Universe*, in LE DROIT CIVIL ET SES CODES: PARCOURS À TRAVERS LES AMÉRIQUES 1-34 (Jimena Ando Dorato, Jean-Frédérick Ménard & Lionel Smith eds., 2011), reprinted in the present issue of the Journal of Civil Law Studies.

7. Older citizens, especially in Cajun country, have not forgotten that children were beaten for speaking French on the school ground.

cases are argued in French in some courts in Louisiana. French speaking judges and attorneys cannot but welcome the present initiative. From a legal point of view, the history of linguistic rights in Louisiana is still to be written. As modest as it may be, this translation project might be a significant step.

Outside Louisiana, the translation into French of a substantially modernized civil code may facilitate law reform in francophone countries, offering an additional model. A number of multilingual and, in some cases, mixed jurisdictions in Africa and nearby (e.g. Cameroon, Seychelles), in Asia (e.g. Cambodia, Vietnam), or in the South Pacific (e.g. Vanuatu) should also be interested. The project may contribute to making Louisiana law and legal culture more accessible to lawyers and business people over the world and will facilitate business relations with Louisiana.

Overall, the translated civil code should serve as a guide for law reform, in civil law countries trying to bridge the divide with common law systems. This is the case of most Member States of the European Union, developing countries, countries in political and legal transition, and mixed jurisdictions all over the world. It not only favors the convergence of civil law and common law whilst keeping solutions in a codified format, but also points out linguistics solutions as to the way to express civilian concepts in the English language. In addition, it is hoped that the project will inspire other cooperative projects that may involve the Center of Civil Law Studies, the Louisiana State Law Institute, as well as other partners.

The text of the Louisiana Civil Code was never drafted nor fully translated into Spanish, though its provisions originate in Spanish law.[8] Despite the lack of a complete Spanish version, a large part of the 1825 Code appears in the Spanish version of Saint-Joseph's Concordance (1843), also included in the *Concordancias* of García Goyena, explaining the early influence of

8. *See* in the present volume, Thomas J. Semmes, *History of the Laws of Louisiana and of the Civil Law*.

the Louisiana Civil Code on codification throughout Latin America and Spain.[9]

The forthcoming translation into Spanish of the current Louisiana Civil Code would revive the influence of Louisiana on code and law reform in Spain and Latin America.[10]

II. THE TRANSLATION PROCESS

In 2009, the undersigned project director translated the Preliminary chapter, revised by Professor David Gruning of the University of Loyola New Orleans College of Law, and at a much later stage (pending publication), by Professor Emeritus Jean-Claude Gémar of the *Université de Montréal*. He also started the translation of Book One. During a six-month visit in the summer 2009, Dr. Michel Séjean, now Associate Professor at the *Université Panthéon-Assas* (Paris 2) started the translation of Book Three, Title 4, on Conventional Obligations. He also translated the Principles of European Tort Law from English into French, a major project that was concluded in the year 2010 and published in 2011.[11] In the spring of 2011, a first group of three interns from *Université de Nantes*, all students in a Master of Trilingual Studies program,[12] visited for three months. They worked on Book One and Titles 3, 4, 7 and 11 of Book Three. Dr. Ivan Tchotourian, Associate Professor at *Université de Nantes* visited in the fall of

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9. Agustín Parise, *The Place of the Louisiana Civil Code in the Hispanic Civil Codifications: Inclusion in the Comments to the Spanish Civil Code Project of 1851*, 68 LA L. REV. 823-929 (2008); *Las Concordancias Legislativas Decimonónicas: Instrumentos de Difusión del Derecho Continental Europeo en América*, 17 CUADERNOS DE HISTORIA DEL DERECHO 171-206 (Spain, 2010); and *Influence of the Louisiana Civil Code of 1825 in Latin-American Codification Movements: The References to Louisiana Provisions in the Argentine Civil Code of 1871* in LOUISIANA: THE LEGAL HISTORY OF EUROPE IN A SINGLE US STATE 1-43 (forthcoming 2012).

10. Olivier Moréteau & Agustín Parise, *Recodification in Louisiana and Latin America*, 83 TUL. L. REV. 1103 (2009).

11. PRINCIPES DU DROIT EUROPÉEN DE LA RESPONSABILITÉ CIVILE : TEXTES ET COMMENTAIRES (trans. Michel Séjean & O. Moréteau eds., 2011).

12. Anne-Marguerite Barbier du Doré, Laurie Chalaux, and Charlotte Henry, Master Juriste Trilingue, Université de Nantes.

that same year, translating the titles on Mandate and Suretyship (Book Three, Titles 15 and 16). Between April and June 2012, a second team of interns visited from Nantes, working on Book One and Book Three, Titles 4, 5, and 7.[13] Alexandru-Daniel On, LL.M. candidate at LSU, and Dr. Anne Tercinet, Professor at the EM Lyon Business School, visiting at LSU Law in June, joined in the effort.

The 2012 team also worked on the translation of several entries of the *Vocabulaire juridique Cornu*,[14] a leading French legal dictionary, joining efforts in an ambitious international venture conducted by *Association Henri Capitant des amis de la culture juridiquefrançaise* and *Juriscope* (Poitiers). LSU Law Professor Alain Levasseur, President of the *Association Capitant* Louisiana Chapter, coordinates the translation of the Civil Code vocabulary, with the Louisiana team working to create a new database containing vocabulary of the civil law in English. The code translation and the *Vocabulaire juridique Cornu* translation largely complement each other, and the English version of the *Vocabulaire juridique Cornu* will make ample reference to the Louisiana Civil Code.

All these projects are the product of team work. For example, intern A translates one chapter whilst intern B translates another. Each of them cross-checks the work of the other, using the Word software track-change and comment functions. At weekly or bi-weekly revision meetings, which always include the project director (and occasionally include other visiting scholars), the translation is projected on screen, with all additions and comments. Team members agree on final versions, after discussing possible options, and doing further research in dictionaries and historical

13. Anne Perocheau and Anne-Sophie Roinsard, Master Juriste Trilingue, Université de Nantes.

14. GÉRARD CORNU, VOCABULAIRE JURIDIQUE (Presses Universitaires de France , 9th ed. 2011).

precedents.[15] Additional research may be necessary, in which case the final text is vetted at a later meeting. Occasionally, other specialists are consulted, for instance to clarify bureaucratic or procedural requirements referred to in code articles. All intermediate versions are saved and recorded (with track change), so that the working process can be fully traced and remain available for further studies.

Regarding terminological choices, the translation aims to revive the original French of the Digest of 1808 and Civil Code of 1825. Whenever an article remains unchanged or when parts of its wording can be traced to the original versions of the Louisiana Civil Code, the choice is made to revert to the original language, except where there is an obvious reason to do otherwise because terminological changes have occurred in the meantime. This gives the translation a Louisiana flavor, much like the English translation of the Code civil of Québec has been said to have a Montreal sound, in the opinion of a strong supporter of the project.[16]

Support and Dissemination

A dedicated webpage was created on the Center of Civil Law Studies website, on the model of the Digest Online project which presents the Digest of 1808 in French or in English, or in both languages simultaneously, with the French appearing below the English on a divided screen.[17]The Louisiana Civil Code Online page was inaugurated in March 2012, with the parts of the translation work completed by then. It was updated in July the same year, with the addition of several titles, and periodical

15. 3 LOUISIANA LEGAL ARCHIVES, COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA, 2 vol. (1940). This publication of the Louisiana State Law Institute, prepared by Robert A. Pascal under the supervision of Joseph Dainow, gives for each article of the 1870 Code, the corresponding or parent provision in the Code of 1825, Digest of 1808, and French Code of 1804, in French and in English.

16. Judge Nicholas Kasirer, of the Court of Appeal of Quebec, oral comments at the International Colloquium Celebrating the Bi-Centennial of the Louisiana Civil Code, Tulane Law School, New Orleans, November 19-22, 2008.

17. http://www.law.lsu.edu/index.cfm?geaux=clo.maindigest

updates are expected in the years to come.[18] Updates will continue once the project is concluded, to keep the database abreast of subsequent legislative change.

The translation of the Louisiana Civil Code is a joint project of the Center of Civil Law Studies, Information Technology Support and the Law Library of the Paul M. Hebert Law Center. The Center for French and Francophone Studies at Louisiana State University supported the project from its inception in 2009, also joined by the Louisiana State Law Institute and the Consulate General of France in New Orleans. The *Université de Nantes* (France) is the primary international institutional partner. In 2012, the translation project received very significant financial support from the Partner University Foundation (PUF), with a grant funding a *Training Multilingual Jurists* project, combining the cooperative efforts of the LSU Law Center and the *Université de Nantes*, over a period of three years. The PUF grant will help fund an international conference to be held at Baton Rouge and to be scheduled during the first half of 2014, where the translation work will be discussed in more detail.

In the meantime, the present bilingual publication aims to showcase the ongoing translation work, with the hope of attracting the attention of the comparative law community at large, francophone jurists, and jurilinguists alike. It has to be accepted as a work in progress, and though much care has been taken, this is not the work of professional translators. These titles, already online, have been revised and modified prior to the present publication. Subsequent revisions will take place as the work moves on and is debated.

This publication includes the Preliminary Title and the general law of obligations, namely three titles of Book Three: Obligations in General (Title 3), Conventional Obligations or Contracts (Title 4), and Obligations Arising Without Agreement (Title 5). The

18. http://www.law.lsu.edu/index.cfm?geaux=clo.lcco

English and the French appear side by side, rather than one above the other, as on the webpage. This will facilitate research and the work of scholars who will contribute papers at the forthcoming Baton Rouge international conference, likely to focus on the law of obligations.

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