

10-27-2016

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Alexandru-Daniel On

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# REVISION AND TRANSLATION: THE LOUISIANA EXPERIENCE

Alexandru-Daniel On\*

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## I. INTRODUCTION

The history of revision of the civil law in Louisiana can be described as a story of the resilience and survival of the Louisiana Civil Code. The laws most adaptable to changing circumstances survive the vicissitudes of time, and around the world, civil codes have proven to be amongst the most resilient types of legislative acts. The French Civil Code has survived for more than 200 years even though France has gone through a succession of some 13 constitutions in the meantime.<sup>1</sup> The liberal Romanian Civil Code of 1865 survived

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1. Olivier Moréteau, *The Future of Civil Codes in France and Louisiana*, 2 J. CIV. L. STUD. 39, 44 (2009); Olivier Moréteau, *Codes as Straight-Jackets, Safeguards, and Alibis: The experience of the French Civil Code*, 20 N.C.J. INT'L. & COM. REG. 273 (1995).

through 50 years of communism, becoming a true testament to the resilience and adaptability of civil codes.<sup>2</sup> Other civil codes, like the German Civil Code and the Swiss Civil Code have been around as well for more than a century.<sup>3</sup>

There are several factors that contribute to the resilience of codes. The way a code is built, as a systematic and comprehensive body of rules, with a high level of generality is one. The civilian methods, maxims and techniques of interpretation, coupled with the ingenuity of judges in filling gaps in the code, are another. Perhaps most importantly, civil codes are generally remarkable intellectual achievements that command respect, even reverence, and can become cultural symbols.<sup>4</sup>

The Louisiana Civil Code is itself a symbol of Louisianan culture. Its own survival depended just as much on the way it was built and interpreted as on the respect it attracted from the legal profession. Yet, due to its specific environment, the Louisiana Civil Code has been employing two other weapons to ensure its survival, perhaps to a greater degree than other codes from around the world. These tools are revision and translation.

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2. The Romanian Civil Code of 1865 was a code that for the most part was a literal translation of the French Code Civil, and, as a consequence, embodied throughout the liberal philosophy of the Napoleonic Code. The communist regime systematically amputated parts of the code through special legislation, especially in regard to private ownership and family law. Notwithstanding, the code survived and was abrogated only in 2011. Large part of it was applicable throughout the years of communism, and during the transition period, after the fall of the Ceaușescu regime, until 2011 when the New Romanian Civil Code came into force.

3. The German Civil Code entered into force in 1900, and the Swiss Civil Code in 1912.

4. Again, the French Civil Code is a wonderful example, because it is a code that transcends its practical value as a tool for solving legal disputes; it is also an embodiment of the ideas and philosophy of the French Revolution, and a mark of French, and even European legal culture. See Jean-François Niort, *Le Code civil dans la mêlée politique et sociale*, RTD Civ. 2005.257; Basil Markesinis, *Deux cents ans dans la vie d'un code célèbre*, RTD Civ. 2004.45; Jean Carbonnier, *Le Code Napoléon en tant que phénomène sociologique*, RRJ 1981.327.

Other civil codes are not foreign to these techniques, of course. Following the Second World War, the French Civil Code was revised multiple times: family law and filiation, matrimonial regimes, the law of successions, the law of prescription, personality rights, products liability, and the general law of obligations, are all examples of areas of the law affected by the multiple revisions of the French Civil Code. As to translation, the Swiss Civil Code, which is a multilingual code, is a good example of the importance of translation. However, the originality and the interweaving of the local translation and revision processes make Louisiana special.

On the one hand, the translation of the Civil Code of Louisiana from French into English ensured its survival at the end of the 19<sup>th</sup> century and at the beginning of the 20<sup>th</sup>, when the French language became the language of a minority of the population,<sup>5</sup> *la francophonie* was on the decline,<sup>6</sup> and the training of Louisiana jurists in the civil law was rather the exception than the rule.<sup>7</sup> On the other hand, the enactment of the Civil Code of 1870 and then the ongoing revision have been essential factors in maintaining the Code alive, but in order to explain this thought, a digression into Louisiana's legal history is needed.

This paper looks at the interplay between the revision process and translation processes in the context of the current re-translation effort led by the Center of Civil Law Studies<sup>8</sup>—the Civil Code Translation Project. Beginning with a short historical account of the various revision efforts of the Louisiana Civil Code (Part II), and continuing with a presentation of the translation process within the Civil Code Translation Project (Part III), this contribution then looks

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5. See Olivier Moréteau, *The Louisiana Civil Code Translation Project: An Introduction*, 5 J. CIV. L. STUD. 97, 98 (2012).

6. Athanassios N. Yiannopoulos, *The Civil Codes of Louisiana* in LOUISIANA CIVIL CODE XLVII, at LVII (West 2012) [hereinafter *The Civil Codes of Louisiana*].

7. *Id.*

8. Hereinafter CCLS.

at a few examples of interplay between the two processes: translation of the revised text and revisions of the translation (Part IV). The Conclusion (part V) highlights the importance of the dialogue between actors involved in revision and translation, as translators would benefit much from knowing the intentions behind revision efforts—translation implying, among other things, interpretation—and, for future revision efforts, insights from the Civil Code Translation Project can help in consolidating civil law terminology in English, eliminating inconsistencies, and improving the style of the Code.

## II. A SHORT HISTORY OF LOUISIANA CIVIL CODE REVISION

From the perspective of a civilian, the history of revision in Louisiana begins with the Civil Code of 1825. The “Code” of 1808 was not a code at all, but a digest of the laws in force in Louisiana prior to its adoption.<sup>9</sup> That being said, when one looks at the substance of the Code of 1825, one would have to admit that it is in large part identical in substance to the Digest of 1808.<sup>10</sup> There were a number of additions, deletions, and modifications made,<sup>11</sup> and when the substance of the rules does not change much, and the text is revisited and modified, one could call such a modification a first revision. However, the fact that the nature of the text changed, from a digest to a code, makes the use of the term *revision* highly inappropriate. The Code of 1825 is not a revision of the digest. The Digest died when the Code was born.

However, there might be a nuance to be brought to this argument. When exactly did the Digest cease to apply? There seems to

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9. DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS (1808), available online at <http://digestof1808.law.lsu.edu/>. The Digest is also available in print: DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS, BICENTENNIAL EDITION (Claitor’s Publishing Division 2008). See also the interpretation given by the Supreme Court of Louisiana in *Cottin v. Cottin*, 5 Mart. (O.S.) 93 (La. 1817).

10. Thomas J. Semmes, *History of the Laws of Louisiana and of the Civil Law*, 5 J. CIV. L. STUD. 313, 325 (2012).

11. Yiannopoulos, *The Civil Codes of Louisiana*, *supra* note 6, at LIV.

be a question mark over the moment when the Digest was abrogated, and when the Louisiana Civil Code was born. With the enactment of the Civil Code, in 1825, article 3521 was inserted to read:

From and after the promulgation of this Code, the Spanish, Roman and French laws, which were in force in this State, when Louisiana was ceded to the United States, and the acts of the Legislative Council, of the Legislature of the Territory of Orleans, and of the Legislature of the State of Louisiana, be and are hereby repealed in every case, for which it has been especially provided in this Code, and that they shall not be invoked as laws, even under the pretence that their provisions are not contrary or repugnant to those of this Code.<sup>12</sup>

Regarding this Code article, an interesting issue was brought before the Louisiana Supreme Court in 1828, in *Cole's Widow v. His Executors*.<sup>13</sup> In this case, the Court found that article 2370 of the 1825 Code,<sup>14</sup> which was invoked by one of the parties, did not “especially provide” a rule for that case.<sup>15</sup> Therefore, the Court decided to apply a rule found in the *Fuero Real*, a Spanish law that in the eyes of the Court survived the repeal of 1825.<sup>16</sup> This way of interpreting article 3521 of the Code of 1825 led to the Great Repeal of 1828, when “all the civil laws which were in force before the promulgation of the civil code” were abrogated.<sup>17</sup>

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12. CIVIL CODE OF THE STATE OF LOUISIANA WITH THE STATUTORY AMENDMENTS, FROM 1825 TO 1853, INCLUSIVE; AND REFERENCES TO THE DECISIONS OF THE SUPREME COURT OF LOUISIANA TO THE SIXTH VOLUME OF ANNUAL REPORTS 458 (Compiled and edited by Thomas Gibbes Morgan, Bloomfield & Steel, 1861), available online at <https://ia600301.us.archive.org/27/items/civilcodeofstate00loui/civilcodeofstate00loui.pdf> [hereinafter CIVIL CODE OF 1825].

13. 7 Mart. (n.s.) 41 (La. 1828).

14. Article 2370 of the Civil Code of 1825 read thus: “A marriage contracted out of this State, between persons who afterwards come here to live, is also subjected to the community of acquets, with respect to such property as is acquired after their arrival.” CIVIL CODE OF 1825, *supra* note 12, at 319.

15. *Cole's Widow*, 7 Mart. (n.s.) 41 (La. 1828) (the court was trying to establish the portion of the community of acquets the widow was entitled to).

16. *Id.*

17. La. Acts 1828, No. 83, 25. See also RICHARD H. KILBOURNE, JR., A HISTORY OF THE LOUISIANA CIVIL CODE; THE FORMATIVE YEARS, 1803-1839, at 158-164 (The Paul M. Hebert Publications Institute 1987, repr. Claitor's Publishing Division 2008).

Professor Vernon Palmer has argued that the judiciary in *Cole's Widow* construed the Code of 1825 as a digest, and a true code came into being only in 1828.<sup>18</sup> His assertion is based on the idea that a code must entail the repeal of all former law in order to really be properly construed as a code.<sup>19</sup> A great repeal, like the one in 1828 in Louisiana, or earlier in 1804 in France, would be needed in order for a code to exist. If this thesis about the sweeping abrogation prerequisite for the code is taken as true, then Louisiana arguably never really had a code, even after the Great Repeal.<sup>20</sup>

The case of *Reynolds v. Swain*, decided in 1839,<sup>21</sup> shows that even the Great Repeal did not abrogate all laws, *lato sensu*. With Francois-Xavier Martin as chief justice on the bench, the Louisiana Supreme Court emphatically declared in this case:

The repeal spoken of in the code, and the act of 1828, cannot extend beyond the laws which the legislature itself has enacted . . . . It cannot be extended to those unwritten laws which do not derive their authority from the positive institution of any people, as the revealed law, the natural law, the law of nations, the laws of peace and war, and those laws which are founded in those relations of justice that existed in the nature of things, antecedent to any positive precept.<sup>22</sup>

Should *Cole's Widow* and *Reynolds* be read as examples of the judiciary opposing *codification*? Most certainly not. A better way of

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18. Vernon V. Palmer, *The Death of a Code—The Birth of a Digest*, 63 TUL. L. REV. 221, 247-48 (1988-1989).

19. *Id.* at 224, 248.

20. The distinction between codification and revision is at best murky in Louisiana legal history, particularly when it comes to the transition from the Digest of 1808 to the Code of 1825. Olivier Moréteau and Agustín Parise have used a wonderful metaphor to describe this: "Nothing is simple and clear-cut in Louisiana, where trees mirror themselves in the swamps. What appears to be a tree may be the reflection of a tree in the water, and you are never sure where the roots are." Olivier Moréteau & Agustín Parise, *Recodification in Louisiana and Latin America*, 83 TUL. L. REV. 1103, 1115 (2009).

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

22. *Id.* at 198.

reading these cases would reveal a judiciary resisting to positivism,<sup>23</sup> not codification. Professor Emeritus Robert A. Pascal is also of this view.<sup>24</sup> For him, “*Reynolds v. Swain* shows, above all else, the reluctance of the Supreme Court of that time to renounce the possibility of appealing to the wisdom of the ages.”<sup>25</sup>

Moving on to the year 1870, a new layer of complexity is added to the history of codification in Louisiana. Again, one can rightfully wonder whether the enactment of the Code of 1870 brought about a new code, or a mere revision of the Code of 1825. In substance, the Code of 1870 was in large part the Code of 1825.<sup>26</sup> The changes that were made concerned the elimination of the provisions on slavery, the incorporation of amendments already made since 1825, and the integration of acts related to civil code matters passed since 1825.<sup>27</sup> The law enacting the Code of 1870 did not explicitly abrogate the code of 1825.<sup>28</sup> Also, the text of the Code was adopted by the legislature under the title “The Revised Civil Code of the State of Louisiana.”<sup>29</sup> The use of the term “revised” in the title might be indicative of an intent to bring about a mere revision, and not to abrogate

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23. 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, 11 (Jimena Andino Dorato, Jean-Frédéric Ménard & Lionel Smith eds., Thémis 2011); also published in *5 J. CIV. L. STUD.* 31, 40-41 (2012).

24. The author of this note had the great pleasure of discussing *Reynolds v. Swain* the week before the Conference “The Louisiana Civil Code Translation Project: Enhancing Visibility and Promoting the Civil Law in English” with Professor Emeritus Robert A. Pascal (April 7, 2014), and hopes to not do a disservice to Professor Pascal by quoting his words from memory.

25. Discussion with Robert A. Pascal (April 7, 2014).

26. See John H. Tucker, *Source Books of Louisiana Law*, 1 *LA. LEGAL ARCHIVES*, at XXIV (1937):

[The] Code of 1870 [was] substantially the Code of 1825 with these changes: 1. Elimination of all articles relating to slavery; 2. Incorporation of all acts amendatory to the Code, passed since 1825; 3. The integration of acts passed since 1825 dealing with matters regulated by the Code, but not specifically amending it.

27. Athanassios N. Yiannopoulos, *The civil codes of Louisiana*, 1 *CIVIL LAW COMMENTARIES* 1, 14 (2008).

28. La. Acts No. 97 (1870). For details regarding the 1870 revision see A.N. Yiannopoulos, *Two Critical Years in The Life of the Louisiana Civil Code: 1870 and 1913*, 53 *LA. L. REV.* 5 (1992).

29. La. Acts No. 97 (1870).



the Code of 1825. However, the Code of 1870 was a code written exclusively in the English language, and the Code was “amended and re-enacted”<sup>30</sup> as a whole. Therefore, an argument could be made that the Code of 1870 implicitly abrogated the Code of 1825.

In passing, it is also worth mentioning another date. In 1908, the Louisiana Legislature appointed a commission with the purpose of revising the Civil Code of 1870, but the revised text proposed by this commission in 1910 was rejected by the legislature at the insistence of the Louisiana Bar. However, no tears have been shed for this failed revision. Professor Yiannopoulos described the Revised Civil Code of the State of Louisiana of 1910 as “an assault and an insult against the civilian tradition of the State.”<sup>31</sup>

Finally, the last episode of the revision saga began in 1948 and is not over until this day. In 1948, the Louisiana Legislature gave instructions to the Louisiana State Law Institute<sup>32</sup> to “prepare comprehensive projects for the revision of the Civil Code of Louisiana . . . .” In 1954, the Institute informed the legislature that a preliminary report had been made by the two reporters and that the project was temporarily set aside.<sup>33</sup> Then, in 1962, the Institute reported the creation of a Civil Law Section, which would plan and direct the revision.<sup>34</sup>

Before beginning any work on the revision, the Louisiana State Law Institute had to make a fundamental choice. According to the

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30. *Id.*

31. Athanassios N. Yiannopoulos, *Requiem for a civil code: A Commemorative Essay*, 78 TUL. L. REV. 379, 395 (2003) [hereinafter *Requiem for a civil code*].

32. For more information about the Louisiana State Law Institute and its mission see <http://www.lslri.org/>. See also William E. Crawford & Cordell H. Haymon, *Louisiana State Law Institute Recognizes 70-Year Milestone: Origin, History and Accomplishments*, 56 LA. B.J. 85, 85 (2008); William E. Crawford, *The Louisiana State Law Institute—History and Progress*, 45 LA. L. REV. 1078 (1985); André Tunc, *Le Louisiana State Law Institute*, 5 REVUE INTERNATIONALE DE DROIT COMPARÉ 718-722 (1953).

33. Fred Zengel, *Civil Code Revision in Louisiana*, 54 TUL. L. REV. 942, 946 (1980).

34. *Id.*

late Professor Saúl Litvinoff, the choice was between: 1) a superficial revision, that would involve the purification of linguistic aspects, and the elimination of obsolete provisions; 2) a structural revision, which would start with a careful evaluation and analysis of the foundations of each institution, of the jurisprudence, and of the wording of the articles; and 3) a series of partial revisions.<sup>35</sup> As we all know today, the Louisiana State Law Institute opted for the third option.

Work on the revision of the Civil Code began only in 1968,<sup>36</sup> and the first revision made to the Code came only in 1976 (personal servitudes).<sup>37</sup> Based on the Institute's Biennial Report of 1962, the Civil Law Section began its mandate with the initial plan to make "a careful evaluation of [Louisiana's] fundamental law in the light of its history, its philosophy, and its jurisprudential development,"<sup>38</sup> and that the result of this would be "an overall re-examination of basic principles in light of today's social and economic requirements which will be productive of great benefit in and of themselves . . . in supplying the necessary background against which the Revision of the Civil Code can be undertaken."<sup>39</sup> Such a study was never produced by the Institute. Moreover, the revision of the Code began with no guidelines as to the general philosophy of the end product, or in regard to the Code's organization, structure, or fundamental policies.<sup>40</sup>

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35. Saúl Litvinoff, *Codificación en Louisiana*, in 2 LA CODIFICACIÓN: RAÍCES Y PROSPECTIVAS 127, 135 (El Derecho 2004); Moréteau & Parise, *supra* note 20, at 1117-18.

36. Zengel, *supra* note 33, at 945.

37. However, one should not think that the Louisiana State Law Institute was inactive in the interim. From 1938 to 1968 the Institute had a great number of accomplishments: The Compiled Editions of the Civil Codes, the Compilation of Statutes on Civil Law Subjects, The Model Non-Profit Corporation Statute, the Criminal Code, the creation of the Revised Statutes and continuous statutory revision, The Trust Code, the Code of Criminal Procedure, The Code of Civil procedure, the Civil Law Translations. See Louisiana State Law Institute, *Thirty-Eighth Biennial Report*, at 19 (2014).

38. Louisiana State Law Institute, *Twelfth Biennial Report*, at 7 (1962).

39. *Id.* at 8.

40. See Zengel, *supra* note 33, at 947.

A piece-meal revision began with the titles being taken relatively at random for revision. Normally, the revision title by title would also have implied a careful study of the structure of the Code and of the legal institutions that form the basis of the articles, and a coordination effort that would have ensured linguistic and conceptual consistency.<sup>41</sup> This was not the case in the revision process. The revision work was divided between different reporters, with different advisory committees formed by lawyers, judges, and law professors (more than 20 of the total number of committees of the Louisiana State Law Institute having been created for the purpose of revising and updating areas of the Civil Code). The reporter generally makes the initial study of the articles to be revised, and then proposes recommendations as to what should be revised and how it should be revised to the advisory committee. The materials approved by the advisory committee are then sent to the Council of the Louisiana State Law Institute, a body that usually meets once every month (except during the summer months) and has final say as to the substance of the articles proposed for enactment to the Legislature. After a decision is taken on the substance of the articles, two other committees then come into play. A semantics committee reviews the proposals after their approval by the council, usually verifying for grammatical and typographical errors and attempting to insure consistency of the terminology that is employed. However, the semantics committee is limited in its power to revise the language of the Code, because it cannot touch the substance of the text approved by the Council.

There is also a coordination committee, charged with the task of insuring a "logical and cohesive final product."<sup>42</sup> The task of the coordination committee is particularly difficult due to the revision

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41. Christopher Osakwe, *Cogitations on the Civil Law Tradition in Louisiana: Civil Code Revision and Beyond*, 52 REV. JUR. U.P.R. 179, 217 (1983): "to attempt to revise a Civil Code without a masterplan is analogous to setting out on a long distance journey without a road map."

42. *Twentieth Biennial Report of the Louisiana State Law Institute*, at 14 (1978).

process itself. The significant number of reporters, who have different backgrounds, different credentials, education, experience, and philosophies, and the one title at a time sequence in the revision, make the coordination of the revision process a challenging mission.

It should not then be all that surprising that the revision has led to substantive or terminological inconsistency. One such example of substantive inconsistency can be seen in the coordination between the law of obligations and the law of property.<sup>43</sup> There is no logical reason why article 2021 of the Louisiana Civil Code echoes the French rule “*en fait de meubles, la possession vaut titre*,”<sup>44</sup> thus making the bona fide purchaser of movable property the owner of the purchased thing from the moment he acquires possession,<sup>45</sup> while article 3490 requires possession for a term of three years for the same effect.<sup>46</sup> An easy way out of this inconsistency would be to force the reconciliation of these articles by way of interpretation. Article 2021 deals only with situations where the transferor becomes non-owner through the retroactive effect of dissolution, and hence this article might be seen as an exception to the general rule of article 3490. However, it is simply incoherent and unjust to protect third parties differently in the two hypotheses: the fact that the transferor is a non-owner due to dissolution or some other reason (like nullity, or because he is simply a precarious possessor) should not make any difference when the third party transferee acquires the thing in good faith. The most likely explanation for this inconsistency is that different reporters worked on the revision of the two titles where these

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43. For a more detailed critique of the inconsistencies between the law of obligation and the law of property in the Louisiana Civil Code, see Yiannopoulos, *Requiem for a civil code*, *supra* note 31, at 402-06.

44. See Art. 2276 FRENCH CIVIL CODE.

45. Art. 2021 LA. CIV. CODE: “Dissolution of a contract does not impair the rights acquired through an onerous contract by a third party in good faith. If the contract involves immovable property, the principles of recordation apply to a third person acquiring an interest in the property whether by onerous or gratuitous title.”

46. Art. 3490 LA. CIV. CODE: “One who has possessed a movable as owner, in good faith, under an act sufficient to transfer ownership, and without interruption for three years, acquires ownership by prescription.”

rules can be found. A future revision will have to correct this inconsistency, and *de lege ferenda*, it is article 3490 that should be modified by eliminating the three-year acquisitive prescription period. Not only would this lead to a more just system, but without the prescriptive period rule of article 3490, it would also be more efficient from an economic standpoint, having the advantage of creating more security in markets where movable property is traded.<sup>47</sup>

On a more general level, there might be a solution to all, or most of, the consistency problems that sprang from the revision process.<sup>48</sup> After the last remaining parts of the Code will be revised (the “remaining parts” being the parts that have not been revised yet), the Institute, perhaps through its Coordination Committee, could make a sweeping revision of the entire Code, to correct the logical and terminological inconsistencies and errors still present. There are very few titles left to be revised at this point, and after the entire Code is revised, one can only hope that a “revision of the revision” will be organized, that will hopefully bring more logic and coherence in the Louisiana Civil Code.

### III. THE LOUISIANA CIVIL CODE TRANSLATION PROJECT

Undoubtedly, the revision left its mark on the object of translation for the Louisiana Civil Code Translation Project—the language of the Code. But on top of that, the study of the revision process in Louisiana is of great significance in assessing the importance of the project, its goals, its policies, and its methodology.

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47. For more details on the foundation and effects of the rule laid down in article 2276 of the French Civil Code, see Jamel Djoudi, *Revendication*, No. 80-112, in *ENCYCLOPÉDIE DALLOZ: RÉPERTOIRE DE DROIT CIVIL* (2015).

48. We should draw inspiration from the optimistic attitude of Colonel John H. Tucker, who wrote (before the first revised title was enacted) that problems of cohesion and symmetry could be resolved in a very short time after the completion of the revision. John H. Tucker, Jr., *Tradition and Technique of Codification in the Modern World: The Louisiana Experience*, 25 *LA. L. REV.* 698, 718 (1965).

The Louisiana Civil Code Translation Project<sup>49</sup> began with the purpose of translating the Louisiana Civil Code in force. The CCLS understands the code in force to be the consolidated Civil Code, with all the revisions that have been made to it.<sup>50</sup>

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49. For more information on the Louisiana Civil Code Translation Project, see Moréteau, *supra* note 5, at 100-103.

50. This also coincides with the Code as it is published by the Louisiana State Legislature ([https://legis.la.gov/legis/Laws\\_Toc.aspx?folder=67&level=Parent](https://legis.la.gov/legis/Laws_Toc.aspx?folder=67&level=Parent)), by the CCLS (<http://lcco.law.lsu.edu/>), by West [LOUISIANA CIVIL CODE, 2015 ed. (Athanasios N. Yiannopoulos ed., West)] and LexisNexis [LOUISIANA CIVIL CODE WITH ANCILLARIES, 2015 ed. (LexisNexis)]. However, an academic debate sparked by an article published in 1988 by Professor Vernon Palmer in the *Tulane Law Review* (Palmer, *supra* note 18), might need to be revisited, as it might cast doubt over some of the choices made for the Louisiana Civil Code Translation Process. Professor Palmer observed that during the revision of the code there have been very few express repeals of the prior law, and that most of the time, when the legislature approves a revision proposal made by the LSLI, it only “amends and re-enacts” a particular title of the Code selected for revision. His main argument is that according to articles 22 and 23 of the Louisiana Civil Code of 1870, the substance of which is now in article 8 of the Civil Code, the Legislature never abrogated, explicitly or implicitly, the provisions of the Code of 1870 which are “not contrary to or irreconcilable” with the Revision. They are still in force, and are binding for judges alongside the articles of the Revision.

What Professor Palmer didn’t anticipate in his article is that his argument could extend, perhaps with more force, to the enactment of the Civil Code of 1870. The Legislature of 1870 did not repeal expressly any provision of the Civil Code of 1825, and only “amended and re-enacted” the code. If Professor Palmer’s core argument is correct, it means that there are at least three layers of civil code provisions still in force. Moreover, it means that the civil code of Louisiana is still bilingual, because the Code of 1825 was enacted both in French and in English, and both linguistic versions were considered binding. The impact of adjusting to this theory for the current translation of the code into French would be devastating. Applied to the Civil Code Translation Project, Professor Palmer’s theory indicates that the CCLS ought to adjust its methodology in order to truly translate the Code in force. If one were to adjust methodologically to Professor Palmer’s idea of what the Louisiana Civil Code is at this moment, what should be translated are the revisions of 1870 and the multiple revised titles from 1976 until this day. This should be followed (or preceded) by consolidation work, aimed at verifying which articles of the revision are different in substance and irreconcilable on a substantive level with the former rules of the code of 1825 and 1870.

Responding to Professor Palmer’s article is beyond the scope of this paper, and a footnote is not sufficient or appropriate for this purpose. The interpretation of article 8 of the Louisiana Civil Code invites a discussion that ought to go deep into issues regarding the nature of codification, the distinction between a norm and its formal support, and the sources of law in Louisiana. Suffice it to say that Professor Palmer’s views are just one side of this argument. See, for the opposite view, Julio C. Cueto Rúa, *The Civil Code of Louisiana is Alive and Well*, 64 TUL. L. REV. 147 (1989-1990); Yiannopoulos, *Requiem for a civil code*, *supra* note 31; But, see Vernon V. Palmer, *Revision of the Code or Regression to a Digest? A Rejoinder to Professor Cueto-Rúa*, 64 TUL. L. REV. 177 (1989-1990).

The translation project advanced by way of partial translations made every year and was fully completed and published online in July 2016.<sup>51</sup> Every year, the parts of the Code that have been translated and revised are posted online on the CCLS website.<sup>52</sup>

The online format is ideal for such a project, which has been published in multiple stages, and which has been evolving and maturing, the translation itself being open to constant revision. Some revisions of the translation were needed as a consequence of the revision of the Code; particularly in 2010 and 2012 with the occasion of two legislative bills enacting changes to the Louisiana Civil Code at the proposal of the Louisiana State Law Institute.<sup>53</sup> Such partial revisions are easy to implement because of the medium for publication. Online publication provides not only the flexibility to continuously revise the text and keep up with the revision effort, but also allows for this to be done at a low cost and with great accessibility for the general public.

The CCLS has been revising the translation with great care, and inconsistencies and errors have been corrected as soon as they were discovered. Notwithstanding, translation work is always perfectible... For this purpose, the CCLS has been publishing parts of the

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51. When the author of this note left Louisiana in 2014, the Preliminary Title and Book IV were fully translated, as well as large parts of Books I, II and III. In the meantime, the CCLS has made more progress in the translation, with the help of four new interns from the Master Program in Trilingual Legal Studies at the Université de Nantes (France)—Sara Charlat, Delphine Drouard, and Sara Vono and Lucie Talet—as well as Jason Maison- Marcheux (CCLS Research Associate) and Christabelle Lefebvre (law graduate from Université de Montréal). Dr. Matthias Martin (Université de Lorraine) also contributed extensively to the translation and the revision during and after his visit to the CCLS in 2014. It was initially projected that the translation will be completed by the end of the year 2016, but the project was finalized in July 2016. See *The Russell Long Chair and CCLS Newsletter*, No. 36 (May 2016); *The Russell Long Chair and CCLS Newsletter*, No. 33 (September 2015).

52. <http://lcco.law.lsu.edu/?uid=1&ver=enfr#1>.

53. In particular, articles 1848, 1849, 2028 and 2444 of the Louisiana Civil Code.

translation in the *Journal of Civil Law Studies*, with the hope of attracting attention to the translation project and receiving feedback from legal scholars who have an interest in the subject.<sup>54</sup>

As to policy questions, it is the policy of the CCLS to translate only the language of the Code, without the titles of the individual articles, without the comments produced by the Louisiana State Law Institute with the occasion of the revision, and without the *exposé des motifs* that occasionally accompanied the revision.<sup>55</sup>

For the most part, the translation is made directly from the current English version of the Code into French. However, when Civil Code articles have remained unchanged in substance from the 1825 version of the Code and the wording has not changed or has changed only in part, the original French version of the 1825 Code has been restored.<sup>56</sup> It was decided, however, that it was acceptable not to revert back to the original French version of the texts from 1825 in exceptional circumstances, like when the language used in the 1825 Code was considered outdated, for instance.

The translation process evolved over time, and has been improved in order to minimize the risk of errors and inconsistencies in the translation. The author of this note has been on board for the translation process only starting with the summer of 2012, so this paper will only speak of the translation process since then. In 2012, the translation was organized in three stages. Anne Perocheau and Anne-Sophie Roinsard (interns at the Center of Civil Law Studies, coming from the Université de Nantes) prepared each week a chapter or a series of articles in a Word document. They were responsible for the initial translation of each and every article from the selected

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54. See Olivier Moréteau, *Le Code civil de Louisiane en français : traduction et retraduction*, 28 INT'L. J. SEMIOT. L. 155, 168-69 (following the online publication of the translation of the Preliminary Title of the Louisiana Civil Code, Professor Jean-Claude Gémard contacted the Project Director of the Louisiana Civil Code Translation Project and offered assistance by revising and improving upon the translation of some of the articles in the Preliminary title) [hereinafter *Le Code civil de Louisiane en français*].

55. Moréteau, *Le Code civil de Louisiane en français*, supra note 54, at 169.

56. *Id.* at 168.



chapter. Then, the two interns would check and make reciprocal suggestions on each other's work. The changes and suggestions were marked with track-changes or comment boxes in Word. Once, and sometimes twice a week, the two interns met with the Project Director (Professor Olivier Moréteau) in order to finalize the translation. Professor Anne Tercinet, from the EM Lyon Business School, and the author of this note were also present for most of the translation meetings held in 2012. Important translation decisions and the most complicated translation issues were discussed during these meetings. And, the final stage of the process has been that of revision: revision of the translation. For this part of the process, Professor Moréteau took the lead, and the author of this note often assisted, as well as Dr. Matthias Martin and Jason Maison-Marcheux in the final years. This stage of the process was about reading through the articles in French with great attention, in order to verify the consistency of the language used, and identify and correct any errors.

In 2013, the translation process was, for the most part, identical. One big change, however, was triggered by the acquisition of a translation software.<sup>57</sup> The interns from 2013, Laura Castaing and Jean-Pierre Huffen, have been translating directly into the translation software, instead of classic parallel Word documents. They established a database within the translation software containing the bilingual Digest of 1808, the bilingual Civil Code of Quebec, and previous translations made within the Louisiana Civil Code Translation Project. The translation software allows to search for words in one language and to display the translation of those words from all the sources within the database. This feature has been extremely useful in verifying the terminological consistency of the translation. The one downside of the software is the lack of a track-changes feature, but the team adapted to this by creating more comment boxes where alternatives for translation were proposed and suggestions were made, or where certain problems were highlighted.

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57. The translation software used by the CCLS since 2013 is Wordfast Pro 3.

## IV. REVISION OF THE TRANSLATION AND TRANSLATION OF THE REVISION

Reflecting upon the revision of the law in Louisiana and understanding the dynamic of the text of the Civil Code has been a prerequisite for improving the detection and correction of errors in the translation process. In the following pages, one example has been chosen from the Louisiana Civil Code Translation Project wherein the initial translation was revised after careful research and fruitful discussions in translation meetings. This first example highlights mainly the importance of studying, interpreting, and understanding the source text, in light of its history of translation and revision. Then, a second example is offered that brings to light the advantages of also studying the translation. Reading the text of the Code in French is an enlightening experience for bilingual and multilingual jurists. Looking back at the translation of Title III of Book III regarding Obligations in General and Title IV of the same book regarding Conventional Obligations,<sup>58</sup> the French version of the articles (the text in its target language) can either camouflage imperfections of the English text, or can act like a red flag for some of the terminological choices made during the revision of these titles (or even prior to that, during the original translation of the Code of 1825 from French into English). It is hoped that the valuable lessons learned from these two examples will prove useful to other translators and perhaps also for actors involved in future revisions of the Louisiana Civil Code.

The first example is one of a difficult translation choice, where both possible choices can highlight issues either in the English source text or in the French translation. The translation dilemma had to do with how the term “dissolution” is used in the Louisiana Civil Code, and how it ought to be translated in French. The term is used multiple times in the Code, and six different legal concepts emerge

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58. Both titles have been completely revised by Acts 1984, No. 331, §1, and Acts 1989, No. 137, §16 under the direction of the late Professor Litvinoff, who acted as the reporter for these titles of the Code.

from the use of this one term: (1) The most common usage of dissolution in the Code is as a remedy for non-performance of a contractual obligation. This is the sense in which it is used in Chapter 9, Title 4, of Book III, of the Code,<sup>59</sup> as well as for various specific contracts: sale,<sup>60</sup> lease,<sup>61</sup> compromise,<sup>62</sup> or donation.<sup>63</sup> (2) Then, the term is also used to describe the fate of contracts that cannot be performed for reasons that are independent from the behavior of any of the parties, as in cases of fortuitous events and force majeure, or when a resolutive condition is fulfilled (or, conversely, when a suspensive condition is not fulfilled).<sup>64</sup> (3) The third usage of the term is for situations when a marriage comes to an end—the dissolution of a marriage.<sup>65</sup> (4) The fourth usage of the term refers to situations when juridical persons are dissolved—the dissolution of juridical persons. (5) In article 774 a bizarre use of the term dissolution can be found, referring to the “dissolution of a right,”<sup>66</sup> arguably meaning the situation when a right is lost retroactively due to the dissolution of a juridical act that operated as its title. (6) Finally, in articles 1978<sup>67</sup> and 1983<sup>68</sup> of the Code, the term dissolution is used as a synonym for termination by mutual agreement (*mutuus dissensus*).

Because of this diversity of meaning, the translation choices that needed to be made have not been easy. The French language, and more specifically French legal language, proves to be, lexically,

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59. Arts. 2013-2021 LA. CIV. CODE.

60. Arts. 2467 (2), 2485, 2498, 2561, 2562, 2563, 2564, and 2615 LA. CIV. CODE.

61. Arts. 2686, 2693, 2704, 2715 (2), 2719 LA. CIV. CODE.

62. Arts. 3081 and 3083 LA. CIV. CODE.

63. Arts. 1563, 1564, 1565, and 1566 LA. CIV. CODE.

64. Arts. 1556, 1562, 1876 (1), 1877 and 1878 LA. CIV. CODE.

65. Arts. 246 and 3526 LA. CIV. CODE.

66. Art. 774 LA. CIV. CODE: “A predial servitude is extinguished by the *dissolution* of the right of the person who established it” (emphasis added).

67. Art. 1978 LA. CIV. CODE: “A contracting party may stipulate a benefit for a third person called a third party beneficiary. Once the third party has manifested his intention to avail himself of the benefit, the parties may not *dissolve* the contract by mutual consent without the beneficiary's agreement” (emphasis added).

68. Art. 1983 LA. CIV. CODE: “Contracts have the effect of law for the parties and may be *dissolved* only through the consent of the parties or on grounds provided by law. Contracts must be performed in good faith” (emphasis added).

much richer in expressing the various meanings of the word dissolution presented above. A French jurist would generally use the term *résolution* in order to convey the same meaning as dissolution in the first sense.<sup>69</sup> However, there is a distinction that is made in the French language between situations when the dissolution produces retroactive effects (*ex tunc*), and when it produces effects only for the future (*ex nunc*). The French term *résolution* applies in the former case, while in the latter the term *résiliation* is preferred. For the second meaning of the word dissolution, the French language uses a more specific term than the French *dissolution*, and that is *caducité*. Translating the third and the fourth meaning of dissolution is much easier, because the French jurist would use the French word *dissolution* to convey the same meaning.<sup>70</sup> The French term *dissolution* would probably also be an acceptable translation of dissolution in the sixth sense, while for the fifth, whatever choice is made for the first meaning will have to be applied *mutatis mutandis*.

The difficulty of choosing a translation in French for the English word dissolution, as it is used in the Louisiana Civil Code, is due to a conflict between two important goals of the Louisiana Civil Code Translation Project: terminological consistency and conceptual precision. In order to achieve terminological consistency, the word dissolution would have to be translated identically throughout the Code. The obvious choice would be the French term *dissolution*. However, the fact that there are more precise terms for the first and second meaning of the English word dissolution would require a divergent approach in order to achieve better conceptual precision. Accordingly, the word *résolution* was used when translating dissolution in articles 2013-2021, as well as articles 2467 (2), 2485, 2498, 2561, 2562, 2563, 2564, and 2615 (dissolution of sale agreements), articles 3081 and 3083 (dissolution of a compromise agreements), and articles 1563, 1564, 1565, and 1566 (dissolution of donations)

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69. See Art. 1184 FRENCH CIVIL CODE;

70. GÉRARD CORNU, VOCABULAIRE JURIDIQUE 356, *dissolution* (10th ed., PUF 2014).

of the Louisiana Civil Code; the word *résiliation* was used in the translation of dissolution in articles 2686, 2693 (2), 2715, 2719 (dissolution of lease contracts); finally, the word *caducité* should be used for translating dissolution in articles 1556, 1562, 1876 (1), 1877 and 1878 of the Louisiana Civil Code.

After some hesitation,<sup>71</sup> the translation that was chosen for dissolution within the first meaning was *résolution*<sup>72</sup> (and *résiliation* for the articles dealing with lease contracts). Two powerful arguments justify this breach of consistency in the text. First, a French-speaking jurist would fairly easily recognize the term *résolution* in the context of remedies for contractual non-performance, and would immediately think of the various legal consequences that are attached to this concept in French law. The French word *dissolution* in this context would seem odd, and might create the impression that the Louisianan dissolution is different in nature from the French *résolution*, and that is not the case. Secondly, in researching the Civil Code of 1825, one can come across article 2219, which contains the term dissolution, within its first meaning (as a remedy for contractual non-performance). The French version of the Civil Code of 1825, which is the original version of the Code, used the French term *résolution*. As mentioned earlier, whenever it is possible, the original French flavor of the Code of 1825 has been brought back to life and into the Louisiana Civil Code Translation Project. It must also be said that, in this case, going back to the old text substantially enriches the translation, bringing with it more conceptual precision and accessibility. The old French term is in many ways more modern and more precise than the post-revision English source term.

Much subtler is the problem of translation raised by articles 1556, 1562, 1876 (1), 1877 and 1878. The French term *dissolution* in that context would not necessarily seem out of place. Also, there is nothing in the language of the Code of 1825 to lend assistance for

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71. *Louisiana Civil Code – Code civil de Louisiane: Preliminary Title; Book III, Titles 3, 4 and 5*, 5 J. CIV. L. STUD. 105, 170-73 (2012).

72. <http://lcco.law.lsu.edu/?uid=79&ver=enfr#79>.

this matter, at least as far as the research of this author has shown. The term *caducité* is simply more precise. That is why, in the end, the choice is between the more conservative use of *dissolution*, and a more activist translation, using the word *caducité* in the target text. This author would be in favor of the second option,<sup>73</sup> because it would red-flag the English term *dissolution* and would hopefully invite, perhaps with the occasion of a future revision of the Code, a discussion regarding the terminology employed in the Louisiana Civil Code. The vocabulary of the civil law in English can still be improved, so why not create the English word “caducity,”<sup>74</sup> and substitute the word “dissolution” with “caducity” in articles 1556, 1562, 1876 (1), 1877 and 1878? The reason why this terminological change has added value has to do with the legal effects that differ in cases of caducity (*caducité*) as opposed to cases of dissolution (*résolution*): (1) caducity operates only for the future;<sup>75</sup> (2) also, it operates *ex lege*, whereas dissolution, as a rule, is a judicial remedy; and (3) either party to a contract can invoke caducity, whereas only the obligee can ask for dissolution when the other party, the obligor, fails to perform.<sup>76</sup>

Replacing dissolution with caducity is much easier than replacing the word “dissolution” with “resolution” and “resiliation” (terms that are being used, for instance, in the English version of the Civil Code of Quebec).<sup>77</sup> Although “resolution” would be more precise

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73. At the moment when this article was written articles 1556 and 1562, have not been translated and published on the Louisiana Civil Code online platform yet, and in articles 1876 (1), 1877, and 1878 the term used in the target language was *dissolution*.

74. The word “caducity” was proposed by Professor Randy Trahan, and adding it to the legal vocabulary in Louisiana was discussed during one of the sessions of the conference where this paper was presented: *The Louisiana Civil Code Translation Project: Enhancing Visibility and Promoting the Civil Law in English* (April 10-11, 2014).

75. ALAIN A. LEVASSEUR ET AL., *LOUISIANA LAW OF OBLIGATIONS. A METHODOLOGICAL & COMPARATIVE PERSPECTIVE. CASES, TEXTS AND MATERIALS* 512 (Carolina Academic Press 2013). It is noteworthy that the authors of this book expressly use the term “caducity” in English. *Id.*

76. See art. 2013 LA. CIV. CODE.

77. See e.g. art. 1590 CIVIL CODE OF QUEBEC.

and would better reflect the original French term *résolution*, as used in the Code of 1825, the English “dissolution” has been used by courts and lawyers in Louisiana for too much time and too often to even contemplate changing it for “resolution.”<sup>78</sup>

Moving on to the second example, the same interplay between translation and revision can be seen from a rather different angle: the learning process between actors involved in translation and those involved in revision is a two-way street, and the Louisiana Civil Code Translation Project can guide and inform future Civil Code revision plans in Louisiana and elsewhere. Although the translation project is admittedly not the work of professional translators,<sup>79</sup> every person that has contributed to the translation project has been trained in the law, and many contributors are recognized scholars of comparative and civil law.<sup>80</sup> The translation often hides nuanced clues and small hints that a problem is hidden in the English text of the Code. The translation of the title to Chapter 12, of Title 4, Book III and of article 2036 of the Louisiana Civil Code provides a very good illustration. The term “revocatory action” from the title to Chapter 12<sup>81</sup> has been translated “*action paulienne*,” instead of “*action révocatoire*,” although the latter term is perhaps closer etymologically to its English counterpart. Both terms would more or less accurately translate the legal concept in question, and the Code of 1825 used the term *révocatoire* in article 1966.<sup>82</sup> As stated above,

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78. See e.g. *Waseco Chemical & Supply Co. v. Bayou State Oil Corp.*, 371 So. 2d 305 (La. App. 2 Cir. 1979); *Mennella v. Kurt E. Schon E.A.I., Ltd.*, 979 F.2d 357 (5 Cir. 1992); See also James J. Hautot, *Contract Dissolution*, 45 LA. L. REV. 783 (1984-1985).

79. Moréteau, *supra* note 5, at 103.

80. Besides the Project Director, Professor Olivier Moréteau, who is an internationally recognized civil and comparative law scholar, Professor David Gruning, Professor Emeritus Jean-Claude Gémar, Professor Michel Séjean, Professor Ivan Tchotourian, Professor Anne Tercinet, and Dr. Matthias Martin are but a few names of civilians and comparatists of great caliber that have either translated parts of the code, or contributed to the final version of the text of the translation. See Moréteau, *supra* note 5, at 100-01.

81. And from the immediately following Section 1.

82. LOUISIANA STATE LAW INSTITUTE, COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA 1090 (1940), available online at [http://digitalcommons.law.lsu.edu/la\\_civilcode/](http://digitalcommons.law.lsu.edu/la_civilcode/).

the Louisiana Civil Code Translation Project generally attempts to revive the old French terminology employed by the Code of 1825. So, why make an exception here?

The reason “*action paulienne*” was preferred in the target text has to do with a very subtle expression of activism on the part of the translation team. The more unusual term for the translation is used here to signal a need to reform the Civil Code articles regulating the revocatory action in Louisiana. Perhaps the English terminology used in the Louisiana Civil Code for this action ought to be modernized. In Quebec, the English text of sub-section 3, of Section III, Chapter VI, Title 1, Book V uses the term “Paulian action,” for the French equivalent “*action en inopposabilité*.” The same terminology is not foreign to Louisiana lawyers either, and the term “Paulian action” is mentioned in the revision comments to article 2036.<sup>83</sup>

The main problem that the translation is trying to signal is not a purely terminological one. There is a very good reason why the English term “revocatory” or the French “*révocatoire*” was not used in the Civil Code of Quebec.<sup>84</sup> The Civil Code articles dealing with the Paulian action in Quebec have been drafted so as to reflect a modern remedy offered also under French law<sup>85</sup>: the creditor can disregard the contract concluded by his debtor “in fraud of his rights”,<sup>86</sup> in other words the juridical act attached is not opposable to the creditor. Article 2036 of the Louisiana Civil Code, although in many ways more modern than its French or Québécois equivalent, offers a very strange remedy: nullity. The 1984 revision of the law of obligations eliminated any mention of the obligor’s fraud in concluding the attacked act and replaced it with an objective test: if the obligor causes or increases his insolvency with his act that would be sufficient to

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83. Art. 2036, comment c), in 1 LOUISIANA CIVIL CODE 470 (West 2012).

84. The term “*action révocatoire*” was also heavily criticized in French doctrine. See FRANÇOIS TERRÉ ET AL., DROIT CIVIL. LES OBLIGATIONS 1147-48 (10th ed., Dalloz 2009).

85. For a detailed presentation regarding the effects of Paulian actions under French law see Pierre-Yves Gautier & François Pasqualini, *Action paulienne*, nos. 87-102, in ENCYCLOPÉDIE DALLOZ : RÉPERTOIRE DE DROIT CIVIL (2015).

86. Art. 1631 CIVIL CODE OF QUEBEC.



obtain his remedy.<sup>87</sup> This is indeed a welcome reform of the Paulian action. However, with an objective test, the sought out remedy can only be a result of the *effects* of the attacked juridical act, and not of any intrinsic defect it might have had at the moment of its conclusion.<sup>88</sup> This makes it very hard, if not impossible, to justify the sanction of nullity in such a case. But the problem is not only one of theoretical inconsistency. Nullity is also a very impractical and harsh remedy that disregards the rights of third parties that might have acquired property from the obligor. An objective test for the Paulian action implies that there might be situations when the third party that contracts with the obligor is in good faith. There is no reason to deprive said third party of any contractual remedies the law might offer (like, for instance, the warranty against eviction, in case of sale contracts<sup>89</sup>). In fact, there is no reason to deprive even the third party in bad faith from making use of any contractual remedies that might be available to him against the obligor with whom he colluded to defraud the obligee.<sup>90</sup> If the sanction of nullity would be replaced with a declaration that the attacked act produces no third party effects toward the obligee (is *inopposable* to the obligee) all of these issues would be avoided, and the Louisiana Civil Code could boast to have a more modern approach to the Paulian action than even France or Quebec. Even *de lege lata*, at least one author, Professor Alain Levasseur, suggested to ignore the faulty language of the Code, and that courts ought to, in cases where the Paulian action is successful, declare that the act attacked through said action cannot be “opposed” to the obligee who brought the action.<sup>91</sup>

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87. Art. 2036, comment b), in 1 LOUISIANA CIVIL CODE 470 (West 2012).

88. Nullity sanctions precisely such defects of a juridical act that existed at the moment of its conclusion. See art. 2029 LA. CIV. CODE; LEVASSEUR ET AL., *supra* note 75, at 512.

89. Arts. 2500-2517 LA. CIV. CODE.

90. In cases of sales contracts, even a buyer that knew that the seller is not or might not be the owner of the thing being sold may benefit from the warranty against eviction, but to a limited degree (he can recover only the price he has paid). See arts. 2502 and 2503 LA. CIV. CODE.

91. LEVASSEUR ET AL., *supra* note 75, at 356.

In addition, the author of this note would also suggest removing the following syntagma from article 2036: “or the result of the failure to act of the obligor.” According to the 1984 revision comment e):

The expression “. . . the result of a failure to act of the obligor” contemplates situations in which an obligor becomes insolvent, or his insolvency increases, because of his failure to act, as when the obligor fails to defend himself in a law suit, and the resulting judgment creates or increases his insolvency.<sup>92</sup>

To this author’s knowledge there is no jurisprudence applying the rule contemplated in this comment, and one can only hope no Louisiana court will ever apply it. In cases where the obligor becomes insolvent, or his insolvency increases, due to a failure to act and enforce his rights, the solution is offered by the oblique action (article 2044 of the Louisiana Civil Code<sup>93</sup>). The oblique action will not operate once there has been a final judgment (no longer subject to appeal). Interpreting article 2036 in the manner envisaged by comment e) after a final judgment is rendered would go against the principle of *res judicata*. Moreover, in an adversarial system, the winning party in the trial against the obligor that becomes insolvent or increases his insolvency should not be deprived of the possibility of enforcing a judgment obtained due to the other party’s inactivity.

#### V. CONCLUSION

The most important lesson that comes out of the examples selected and discussed above is that the study of revision of the law and of legal translations in Louisiana opens new doors for translators and lawmakers alike, and a dialogue between the actors involved in revision and translation can only be mutually beneficial. Translators would benefit much from knowing the intentions behind revision

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92. Art. 2036, Comment e), in 1 LOUISIANA CIVIL CODE 470 (West 2012).

93. Art. 2044 (1) LA. CIV. CODE: “If an obligor causes or increases his insolvency by failing to exercise a right, the obligee may exercise it himself, unless the right is strictly personal to the obligor.”

efforts—translation implying, among other things, interpretation—and, for future revision efforts, insights from Civil Code Translation Project can help in consolidating civil law terminology in English, eliminating inconsistencies, and improving the style of the Code.

The Louisiana State Law Institute is now mainly focused on revision of the law (although it ought to be remembered that the Institute has been involved in great legal translation projects in the past<sup>94</sup>), while the Center of Civil Law Studies focuses very much on translation through the Louisiana Civil Code Translation Project.<sup>95</sup> Both institutions exist for the purpose of promoting the study of the civil law in Louisiana and beyond, and have been guarding the temple of the civil law tradition throughout their existence. Located at the first and last floor of the Louisiana State University Paul M. Hebert Law Center, the two guardians ought to collaborate as much as possible, if they are to succeed in their common mission. While working for the Center of Civil Law Studies on the Louisiana Civil Code Translation Project, this author has found the doors of the Louisiana State Law Institute always open, its staff friendly and helpful,

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94. See MARCEL PLANIOL, *CIVIL LAW TREATISE* (La. St. L. Inst. trans., West, 1958, 3 v); FRANÇOIS GÉNY, *METHOD OF INTERPRETATION AND SOURCES OF PRIVATE POSITIVE LAW* (La. St. L. Inst. trans., West 1963); CHARLES AUBRY & CHARLES RAU, 1 *OBLIGATIONS* (La. St. L. Inst. trans., West, 1965); AUBRY & RAU, 2 *PROPERTY* (La. St. L. Inst. trans., West 1966); AUBRY & RAU, 3 *TESTAMENTARY SUCCESSIONS & GRATUITOUS DISPOSITIONS* (La. St. L. Inst. trans., West 1969); AUBRY & RAU, 4 *INTESTATE SUCCESSIONS* (La. St. L. Inst. trans., West 1971); AUBRY & RAU, 5 *PRESCRIPTION* (La. St. L. Inst. trans., West 1972); GABRIEL BAUDRY-LACANTINERIE, ALBERT-ANATOLE TISSIER & JEAN CARBONNIER, 5 *PRESCRIPTION* (La. St. L. Inst. trans., West 1972).

95. Before the Louisiana Civil Code Translation Project, the CCLS also sponsored a number of translations of French legal doctrine into English: RENÉ DAVID, *FRENCH LAW. ITS STRUCTURE, SOURCES, AND METHODOLOGY* (Michael Kindred trans., Louisiana State University Press 1972); MICHEL ALTER, *FRENCH LAW OF BUSINESS CONTRACTS: PRINCIPLES* (Alain A. Levasseur trans., Louisiana State University Paul M. Hebert Publications Institute 1986); BERNARD CHANTEBOUT, *THE FRENCH CONSTITUTION* (David Gruning trans., LSU Law Center 1998); CHRISTIAN ATIAS, *THE FRENCH CIVIL LAW: AN INSIDER'S VIEW* (Alain A. Levasseur & Bachir Mihoubi trans., Louisiana State University Paul M. Hebert Publications Institute 1987); JEAN-LOUIS HALPÉRIN, *THE CIVIL CODE* (David W. Gruning trans., Paul M. Hebert Law Center Publications 2000); LOUIS FAVOREU, *CONSTITUTIONAL COURTS* (Alain A. Levasseur & Roger K. Ward trans., LSU Law Center 2001); CHRISTIAN ATIAS, *FRENCH CIVIL LAW* (Alain A. Levasseur trans., LSU Law Center 2002).

and has spent many hours discussing with the director of the Institute, Professor William E. Crawford, before researching minutes and biennial reports for various issues related to the translation of the Louisiana Civil Code. Undoubtedly, the Center of Civil Law Studies would also be as open and willing to help out the Louisiana State Law Institute in its mission, and through the Louisiana Civil Code Translation Project it is already doing so.