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The Bicentennial of the Louisiana Civil Code (1808-2008)

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GENERAL INFORMATION

THE BICENTENNIAL OF THE LOUISIANA CIVIL CODE (1808-2008)
Olivier Moréteau* & Agustín Parise†

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I. FROM THE DIGEST OF 1808 TO THE PRESENT LOUISIANA CIVIL
CODE: A BRIEF OVERVIEW

March 31, 2008 marked the bicentennial of the *Digest of the Civil Laws now in Force in the Territory of Orleans* (Digest of 1808), the ancestor of the Louisiana Civil Code. With the promulgation of the Digest of 1808, the Territory of Orleans, later to become the State of Louisiana, not only confirmed but indicated to the rest of the world its willingness to keep the civil law tradition as the foundation of its social and legal order. As a French colony, Louisiana had been ruled by the French *Coutume de Paris*. When it was abandoned to Spain in 1762, Spanish law was proclaimed to be the applicable law. The laws of Spain in force at the time of the Louisiana Purchase remained in force in the Territory of Orleans, by the will of the territorial Legislative Council and with the approval of the US Congress.

In 1806, the Legislative Council appointed James Brown and Louis Moreau-Lislet with the mission of drafting a Civil Code. They used the French *Code civil* of 1804 and the *Projet* of 1800 as a model of form and organization, also borrowing the substance wherever solutions in the French *Code* or *Projet* were matching Spanish laws then in force in Louisiana. The De La Vergne Manuscript, with handwritten notes attributed to Louis Moreau-Lislet, traces the origins of the articles of the Digest into Spanish law, Roman law, and existing legal literature of the time.

The law of March 31, 1808 promulgating the Digest abrogated pre-existing laws only to the extent that they were contradicted by the provisions of the Digest. This caused Louisiana judges to dig into the old Spanish laws whenever solutions in the Digest were found unclear or too general.

Such practice defeated the very purpose of the Digest, namely:

to make known the laws which have been preserved after the abrogation of those which were contrary to the constitution of the United States, or irreconcilable with its principles, and to collect them in a single work, which might serve as a guide for the decision of the courts and juries, without recurring to a multiplicity of books, which,

being for the most part written in foreign languages, offer in their interpretation inexhaustible sources of litigation.¹

This caused a call for proper codification, and the adoption of a Civil Code in 1825. Like the Digest of 1808, the Code of 1825 was written in French and translated into English. It contained a provision abrogating the ancient laws on all matters governed by the Code, which makes it a code and not a digest of preexisting laws. The Civil Code of 1825 was later replaced by a revised Civil Code in 1870, after the abrogation of slavery. The Civil Code of 1870 was written in English only. It underwent substantial revisions under the leadership of the Louisiana State Law Institute and is now the only civil code written in English. The revision often aimed at finding solutions compatible with the common law of the neighboring states.

The Civil Code of Louisiana served as a model for codification in, among others, Latin America, Spain, the Philippines, and Quebec. It nowadays serves as a model to jurisdictions such as Estonia or China, in their efforts to adopt legislation meeting the needs of a global economy and society.

II. ACTIVITIES AND EVENTS

This note gives an overview of activities and events that took place in Louisiana on the occasion of the Bicentennial, with a focus on projects conducted at the LSU Law Center.

A. Events at the LSU Law Center

1. The Digest Online Project

The Digest Online project was the kick-off for the Bicentennial events at LSU. The Center of Civil Law Studies (CCLS) digitalized the *Digest of the Civil Laws now in Force in the Territory of Orleans*, making it accessible online.² The original French and the English translation can be viewed separately or together on the same screen. The typing of both versions was

1. Act of March 31, 1808, by the Territorial Legislature, approving and putting in effect the Digest of 1808.

2. See www.law.lsu.edu/digest.

extracted from the first edition of 1808, printed by Bradford & Anderson, in the city of New Orleans. With the exception of obvious typos, the Digest Online strictly follows the original wording and orthography.

In addition, the manuscript notes of 1814, attributed to Louis Moreau-Lislet who, with James Brown, drafted the Digest of 1808, are also available, in manuscript form and in typed form, at least for the Preliminary Title and Book One. These notes are extracted from the De la Vergne Volume, a copy of the Digest bound in 1808 with interleaves between the English text on the left and the French text on the right. This volume belonged to the de la Vergne family for generations, and is presently in possession of Mr. Louis V. de la Vergne. It was published by the LSU and Tulane law schools in 1968, and by Claitor's in 1971, with a bicentennial soft cover reprint in 2008. The right to reproduce the notes was generously provided to the CCLS by Mr. Louis V. de la Vergne.

2. Thirty-Fifth Tucker Lecture on Civil Law

This prestigious lecture series reached its 35th edition, while it keeps recognizing the contribution of Colonel Tucker to the civil law scholarship and law reform. Professor Emeritus Jacques Vanderlinden (Free University of Brussels and University of Moncton, N.-B., Canada) presented *From the Civil Code of Louisiana to Langdell—Some Hypothesis about the Nature of Legal Systems*. A world-known authority on codification and diverse legal cultures, Professor Vanderlinden raised a fundamental question: what is a legal system? Considering the producer, the form, the contents, and the process, demonstration was made that until the late nineteenth century, the deductive method prevailed in the United States, not only in Louisiana, but also in other States. According to Vanderlinden, the adoption of the Langdellian case method was the decisive factor causing the common law inductive approach to prevail, which shows that American law is also a mixed system.

The Tucker Lecture took place at the LSU Law Center on May 16, 2008. With his presentation, Professor Vanderlinden has joined an impressive list of lecturers that includes, among others, Julio Cueto Rúa, René David, E. Allan Farnsworth, Helmut Koziol, Robert A. Pascal, André Tunc, and Alan Watson.

3. Journées Capitant on Law and Culture

Presented in English on the occasion of the Tucker Lecture, the Digest Online project was also commented on in French during the *Journées Capitant on Law and Culture*, which took place in Baton Rouge and New Orleans from May 18 through May 23, 2008. The conference was held in French by the *Association Capitant des amis de la culture juridique française*, and attracted to Louisiana more than one hundred French speaking participants from countries all around the world.

The opening event took place on May 18, at the Old State Capitol in Baton Rouge. Professor Olivier Moréteau presented the Digest Online project and delivered an address on Judge François Xavier Martin. Professor Alain Levasseur elaborated on the codifier Louis Casimir Elisabeth Moreau-Lislet and Librarian Vicenç Feliú helped identify some of the Spanish sources of the Digest of 1808. Professor Emeritus Jacques Vanderlinden then delivered a keynote presentation on the origins of French legal culture in Acadia and Louisiana, showing that it is partly reality, partly a myth. The event was followed by a reception.

4. LSU Law Library Exhibit

The CCLS and the LSU Law Library presented an exhibition of *Selected Sources of the Digest of 1808*. The display included rare books from the unique collection of the LSU Law Center, and was accessible in the main lobby of the LSU Law Library in October and November 2008.

The selection included influential books that were consulted by the drafters of the Digest of 1808. Many of those books are referred to in the manuscript notes of the De La Vergne Volume. Those books were used by nineteenth-century attorneys and judges in their effort to understand and complement the general rules of the Digest of 1808, at least until the promulgation of the Louisiana Civil Code of 1825.

5. Civil Code Day

A Civil Code Day was organized by the CCLS and the International Law Society, a very active student organization at the

LSU Law Center. The purpose was to promote the unique legal heritage that the Louisiana Civil Code has fostered, and show the student community what a formidable asset it is to have a civil code in English in the age of globalization. The event, entitled *200 Years of Codification in Louisiana: A Global Give and Take*, took place on October 23, 2008. Librarian Vicenç Feliú helped understand the sources of the Louisiana law with his presentation on *Discovering the Roots of the Digest of 1808*; Professor Olivier Moréteau described the importance of spreading the legal heritage of Louisiana with his display entitled *Disseminating the Louisiana Experience: The Digest Online*; and Mr. Agustín Parise showed the influence that the Louisiana text had in other jurisdictions while presenting *Exploring the Worldwide Impact of the Louisiana Civil Codes*.

6. CCLS Bicentennial Series

The CCLS created a *Bicentennial Series* to promote publications on the civil law of Louisiana and its interaction with other legal systems. Professor Olivier Moréteau is the General Editor of the series, published by Claitor's Publishing Division in Baton Rouge. Two volumes have been published so far. The first volume is a *liber amicorum* in homage of Professor Saúl Litvinoff, comprised of 46 contributors from 12 different countries.³ The second volume is a reprint of a book by Richard H. Kilbourne Jr., which studies the early period that preceded and followed the publication of the Digest of 1808.⁴

B. Other Bicentennial Events

1. Louisiana State Archives

On March 9, 2008, Secretary of State Jay Dardenne inaugurated an exhibition celebrating the *200th Anniversary of the Civil Code of Louisiana*. Beautifully displayed in the building of

3. ESSAYS IN HONOR OF SAÚL LITVINOFF (Olivier Moréteau, Julio Romañach, Jr. & Alberto Luis Zuppi eds. 2008).

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

the Louisiana State Archives in Baton Rouge, the exhibits included rare books from their collection as well as prints and art by Jacques Royal, illustrating all steps leading to the adoption of the Digest, in parallel with the history of the French Civil Code.

2. Louisiana State Bar Association, Francophone Section

Under the leadership of its President, John A. Hernandez III, the Louisiana State Bar Association's Francophone Section organized a legal seminar on October 10, 2008, in Lafayette, to celebrate the 200th anniversary of the Louisiana Civil Code-Digest of 1808. Special guests were Michel Doyon, bâtonnier du Barreau du Québec, and Jean Marie Burguburu, former bâtonnier of the Paris Bar Association. The event took place at the Jean Lafitte Acadian Cultural Center, also featuring an exhibition of art by Jacques Royal, illustrating in parallel the origins of both the Digest of 1808 and the Code Napoleon.

3. Celebration at the Louisiana Supreme Court

On October 15, 2008, distinguished LSU speakers participated in the bicentennial celebration of the Digest of 1808 organized by the Law Library of Louisiana and the New Orleans Association of Law Librarians. The event took place at the Louisiana Supreme Court building in New Orleans, and was coordinated by Ms. Georgia D. Chadwick, Director of the Law Library of Louisiana. Professor Alain Levasseur presented his new book, *Moreau Lislet: The Man Behind the Digest of 1808*; while Librarian Vicenç Feliú discussed the Spanish sources of the Digest of 1808. The event was well attended by members of the different Louisiana faculties, of the Bar, and by Chief Justice Pascal Calogero and Justice Catherine D. Kimball. A reception followed in the Supreme Court Museum where there was an interesting exhibit to view on the background of the Digest featuring items from the Law Library of Louisiana's collection of Spanish law. Also on display was the Adolph D. Rinck portrait of Moreau-Lislet on loan from the Mason's Grand Lodge of Louisiana.

4. *International Colloquium at Tulane Law School*

An *International Colloquium Celebrating the Bi-Centennial of the Louisiana Civil Code 1808-2008* was organized by the Eason-Weinmann Center of Comparative Law of the Tulane Law School, and took place in New Orleans, at the Tulane Law School on November 19-22, 2008.

An initial one-day session focused on the Digest of 1808 and the Civil Code of 1825. Speakers highlighted historical aspects of these legal texts, opening a diversity of perspectives on the society of the time. Papers were delivered by John W. Cairns, George Dargo, Florence M. Jumonville, Shael Herman, Peter J. Kastor, Vernon V. Palmer, and Rebecca J. Scott.⁵

The Colloquium also addressed the present and the future of codification. A one-and-a-half day session explored the challenges of recodification worldwide. Speakers from around the globe made presentations: Aharon Barack, Jürgen Basedow, Xavier Blanc-Jouvan, Mario Bussani, Martijn W. Hesselink, Nicholas Kasirer, Zhang Lihong, Olivier Moréteau, Mathias Reimann, and Symeon C. Symeonides.⁶

III. RELATED PUBLICATIONS

A. *Books*

- 2008 COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA (A. N. Yiannopoulos ed. 2008), being volumes 16, 17 & 17A of WEST'S LOUISIANA STATUTES ANNOTATED.
- DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS, BICENTENNIAL EDITION (Claitor's Publishing Division 2008).
- ESSAYS IN HONOR OF SAÚL LITVINOFF (O.Moréteau, J. Romañach & A. Zuppi eds., Claitor's Publishing Division 2008).

5. A collection of papers were published at *The Bicentennial of the Digest of 1808—Collected Papers*, 24 TUL. EUR. & CIV. L.F. 2009.

6. A collection of papers were published at *Symposium: The Challenge of Recodification Worldwide*, 83 TUL. L. REV. 2009.

This includes, among others:

- Jorge Horacio Alterini, *Influencia del Código Civil de Luisiana de 1825 en el Código Civil Argentino de 1871: Acerca de los efectos de la inscripción registral*, at 89.
- Shael Herman, *The Public Reveries of a Solitary Promenader*, at 147.
- Olivier Moréteau, *The Future of Civil Codes in France and Louisiana*, at 605.
- Vernon Valentine Palmer, *Historical Notes on the First Codes and Institutions in French Louisiana*, at 231.
- A.N. Yiannopoulos, *From Justinian to Louisiana with Love: The Legend of the Marital Portion*, at 373.

- RICHARD H. KILBOURNE JR., A HISTORY OF THE LOUISIANA CIVIL CODE: THE FORMATIVE YEARS, 1803-1839, (Bicentennial Series Volume 2, Claitor's Publishing Division 2008).

- ALAIN A. LEVASSEUR WITH VICENÇ FELIÚ, MOREAU LISLET: THE MAN BEHIND THE DIGEST OF 1808 (Claitor's Publishing Division 2008).

- LOUISIANA POCKET CIVIL CODE (Alain Levasseur ed. 2008).

- JACQUES ROYAL, LOUISIANA HISTORY, 1804-1808 DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS (ANCESTOR OF THE LOUISIANA CIVIL CODE) (Bilingual edition, Art by Royal and Associates 2008), with a *Foreword* by Olivier Moréteau.

B. Law Review Special Issues

- *Symposium: The Challenge of Recodification Worldwide*, 83 TUL. L. REV. 2009.

This includes, among others:

- Jürgen Basedow, *Transjurisdictional Codification*, at 973.

- Olivier Moréteau & Agustín Parise, *Recodification in Louisiana and Latin America*, at 1103.
- Symeon C. Symeonides, *The Conflicts Book of the Louisiana Civil Code: Civilian, American, or Original?*, at 1041.

- *The Bicentennial of the Digest of 1808—Collected Papers*, 24 TUL. EUR. & CIV. L.F. 2009.
This includes:
 - John W. Cairns, *The de la Vergne Volume and the Digest of 1808*, at 31.
 - George Dargo, *The Digest of 1808: Historical Perspectives*, at 1.
 - James Gordley, *Louisiana and the Common Law: Le Jour de Gloire, Est-Il Passé?*, at 191.
 - Shael Herman, *The Code of Practice of 1825: The Adaptation of Common Law Institutions*, at 207.
 - Florence M. Jumonville, “Formerly the Property of a Lawyer”—*Books That Shaped Louisiana Law*, at 161.
 - Peter J. Kastor, “Adapted to Its Present System of Government”: *Legal Change, National Reorganization, and the Louisiana Civil Law Digest*, at 137.
 - Vernon Valentine Palmer, *The Strange Science of Codifying Slavery—Moreau Lislet and the Louisiana Digest of 1808*, at 83.
 - Jorge Sánchez Cordero, *The Reception of Legal Systems in the Americas: Diversities and Convergences*, at 231.
 - Rebecca J. Scott, “She . . . Refuses To Deliver Up Herself as the Slave of Your Petitioner”: *Émigrés, Enslavement, and the 1808 Louisiana Digest of the Civil Laws*, at 115.

C. Articles & Notes

- Miriam Childs, *The de la Vergne Volume*, 6 No. 2 DE NOVO: THE NEWSLETTER OF THE LAW LIBRARY OF LOUISIANA 4 (2008)
- Vicenç F. Feliú, *Digest of 1808 Available Online*, 56 LA. B.J. 116 (2008).

- Shael Herman, *The Louisiana Code of Practice (1825): A Civilian Essai Among Anglo-American Sources*, Vol. 12.1 ELECTRONIC JOURNAL OF COMPARATIVE LAW (May 2008),
- Shael Herman, *The Louisiana Code of Practice (1825): A Civilian Essai Among Anglo-American Sources—Part II*, Vol. 12.1 ELECTRONIC JOURNAL OF COMPARATIVE LAW (May 2008; October 2008 supplement)
- Shael Herman, *The Louisiana Code of Practice (1825)—Part III: The Uses of Analogia Iuris*, Vol. 12.1 ELECTRONIC JOURNAL OF COMPARATIVE LAW (May 2008; December 2008 supplement)
- 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 (2008).