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## Translators' Preface to the Laws of Las Siete Partidas which are Still in Force in the State of Louisiana

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**TRANSLATORS' PREFACE TO THE LAWS OF LAS SIETE  
PARTIDAS WHICH ARE STILL IN FORCE IN THE STATE OF  
LOUISIANA**

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**INTRODUCTORY ESSAY ON THE TRANSLATORS' PREFACE TO LAS  
SIETE PARTIDAS**

Agustín Parise \*

I. INTRODUCTION

Louisiana has welcomed translations of legal materials for over 200 years. The long-lasting tradition has helped both to promote the unique Louisiana civil law heritage and to benefit the state with the developments that took place in other civil law jurisdictions. The Center of Civil Law Studies at Louisiana State University is

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The author thanks Jennifer Lane for her editorial work and suggestions.

currently undertaking a translation project of the Louisiana Civil Code into French.<sup>1</sup> This project will help promote the civil law of the southern state amongst French-speaking civil law jurisdictions. The Louisiana Civil Code is applicable in a mixed jurisdiction, and it is drafted in the English language. This interaction of systems may be valued by jurists and businessmen who intend to implement continental European principles while undertaking their practices in the common law and *vice versa*.<sup>2</sup> In addition, scholars both of continental European and common law systems may look to Louisiana for civil-law terminology in English. It must be acknowledged that Louisiana civil law scholars have important know-how, and the more than two hundred-year old tradition of English language civil-law codification in Louisiana should be valued.<sup>3</sup>

The current translation project of the Louisiana Civil Code may be placed within a Louisiana translating tradition.<sup>4</sup> For example, from the same Center of Civil Law Studies, French works were translated into English, starting in 1972, with a translation by Michael Kindred of a seminal work by René David.<sup>5</sup> Bachir Mihoubi, Roger K. Ward, and David W. Gruning completed another set of translations in the years that followed, led by Alain Levasseur.<sup>6</sup> Earlier translations were undertaken by the Louisiana State Law Institute in the period 1959 to 1972.<sup>7</sup> The Institute

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

2. Agustin Parise, *Report on the State of Louisiana to the Second Thematic Congress of the International Academy of Comparative Law*, 31 MISS. C. L. REV. 397, 403 (2013).

3. *Id.* See also Alain Levasseur & Vicenc Feliu, *The English Fox in the Louisiana Civil Law Chausse-Trappe: Civil Law Concepts in the English Language; Comparativists Beware*, 69 LA. L. REV. 715, 735-39 (2009); and Olivier Moréteau, *Les frontières de la langue et du droit*, REVUE INTERNATIONALE DE DROIT COMPARÉ 695 (2009).

4. See generally Alexandru-Daniel On, *Making French Doctrine Accessible to the English-Speaking World: The Louisiana Translation Series*, 5 J. CIV. L. STUD. 81 (2012).

5. *Id.* at 91.

6. *Id.* at 91-92.

7. *Id.* at 83.

devoted efforts to translate European legal materials that encapsulated the tenets of the civil law, and translations were directed by, amongst others, Carlos E. Lazarus and Jaro Mayda.<sup>8</sup> Those efforts included translations of the works by Charles Aubry and Charles Rau, Gabriel Baudry-Lacantinerie, François Géný, and Marcel Planiol.<sup>9</sup> Those translations from French into the English language are still useful tools for judges in Louisiana, when interpreting the civil law.<sup>10</sup>

Louisiana legal history provides a very early translation effort that aimed to make the civil law available to the legal community. That translation effort, however, was not from French or into the French language. One of the first examples of civil law translations in Louisiana was provided by the English translation of the Spanish *Partidas* of Alfonso X. That translation work, which motivated this new introduction, was undertaken in the early nineteenth century by Louis Moreau-Lislet and Henry Carleton, and predated by more than a century the well circulated 1931 English translation by Samuel Parsons Scott.<sup>11</sup>

This new introduction is followed by a transcription of the *Translators' Preface* and is divided into two parts. First, it provides an historic evolution of the laws applicable in Louisiana. This aims to explain why the *Partidas* were used in Louisiana, and why an English translation was beneficial for the local legal community. Second, it provides information on the two English translations of the *Partidas* that were produced in Louisiana during the first decades of the nineteenth-century. This part also welcomes biographical information about the authors of the translations, and

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8. *Id.* at 83-90. See generally Joseph Dainow, *Use of English Translations of Planiol by Louisiana Courts*, 14 AM. J. COMP. L. 68 (1965).

9. See John H. Tucker, *Tradition and Technique of Codification in the Modern World: The Louisiana Experience*, 25 LA. L. REV. 698, 710 (1965); and the detailed account in Joseph Dainow, *Civil Law Translations and Treatises Sponsored in Louisiana*, 23 AM. J. COMP. L. 521 (1975).

10. See, for example, the recent reference by the Louisiana Supreme Court to the translation of the work of Aubry and Rau in *Eagle Pipe and Supply, Inc. v. Amerada Hess Corporation, et al.*, 79 So.3d 246, 286 (2011).

11. SAMUEL PARSONS SCOTT, *LAS SIETE PARTIDAS* (1931).

analyses the content of the preface to the 1820 translation. The entire content of the new introduction aims to place the translation of the *Partidas* within the legal and social context of early nineteenth-century Louisiana.

## II. HISTORICAL REASONS FOR TRANSLATIONS IN LOUISIANA

France ceded Louisiana to Spain in 1762.<sup>12</sup> Seven years later, the Spanish Governor, Alejandro O'Reilly,<sup>13</sup> implemented the Spanish Colonial system of government and replaced the French laws (v.gr., *Coutume de Paris*) with the Spanish-*Indiano* laws.<sup>14</sup> Hence, Spanish laws were since then the law in Louisiana.<sup>15</sup> Amongst the new provisions were the *Ordinances and Instructions*<sup>16</sup> and the *Instructions as to the Manner of Instituting Suits*,<sup>17</sup> both of November 25, 1769, which regulated procedure in the region.

Napoléon Bonaparte secured the return of Louisiana to France on October 1, 1800.<sup>18</sup> During that second French period, the

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12. See PAUL E. HOFFMAN, *LOUISIANA* 60-64 (1992). See generally 2 CHARLES GAYARRÉ, *HISTORY OF LOUISIANA* (1903); and EDWIN ADAMS DAVIS, *LOUISIANA: THE PELICAN STATE* 66-113 (1978).

13. For additional readings on O'Reilly, see BIBIANO TORRES RAMÍREZ, *ALEJANDRO O'REILLY EN LAS INDIAS* (1969).

14. See the analysis in Rodolfo Batiza, *The Unity of Private Law in Louisiana under the Spanish Rule*, 4 *INTER-AM. L. REV.* 139 (1962).

15. Alain Levasseur, *La Réception du Système de la Common Law par le Système Législatif Français en Louisiane* in *LA RÉCEPTION DES SYSTEMES JURIDIQUES: IMPLANTATIONS ET DESTINS* 381, 382 (Doucet & Vanderlinden eds. 1994); and Rodolfo Batiza, *The Influence of Spanish Law in Louisiana*, 33 *TUL. L. REV.* 29, 30 (1958).

There is some debate on the abrogation of French law. See Gustavus Schmidt, *Were the Laws of France, which Governed Louisiana prior to the Cession of the Country to Spain Abolished by the Ordinances of O'Reilly?*, 1:4 *LA L.J.* 23 (1842); and ALAIN LEVASSEUR, *LOUIS CASIMIR ÉLISABETH MOREAU-LISLET: FOSTER FATHER OF LOUISIANA CIVIL LAW* 8-12 (1996). The memoirs of Laussat (*Papeles de Cuba, Legajo, 220. 5 Luisiana*) include a document that seems to put an end to the debate. *Id.* 34-35.

16. Text available in English in Gustavus Schmidt, *Ancient Jurisprudence of Louisiana*, 1:2 *LA L.J.* 1-27 (1841).

17. Text available in English in Schmidt, *supra* note 16, at 27-60.

18. FRANCOIS-XAVIER MARTIN, *THE HISTORY OF LOUISIANA FROM THE EARLIEST PERIOD* 286 (1975) (1827).

applicable law was still Spanish and no significant changes were made to the jurisprudence of the region.<sup>19</sup> The territory would live briefly under French domain, because during the first days of May 1803, the Treaty of Paris took place, resulting in the Louisiana Purchase.<sup>20</sup> The first proclamation of W.C.C. Claiborne, then Commissioner, was to preserve the laws that applied at the time of the Purchase<sup>21</sup> (i.e., Spanish laws and the French *Code noir*).

Louisiana adopted a digest of its laws in 1808. Two years before, James Brown and Moreau-Lislet were appointed to draft a project of a civil code.<sup>22</sup> According to the resolution, the “two jurisconsults shall make the civil law by which this territory is now governed, the ground work of said code.”<sup>23</sup> In February 1808, the different books of the projected text were presented by the committee before the local legislature for debate.<sup>24</sup> On March 31, 1808, the Legislature promulgated the *Digest of the Civil Laws now in force in the territory of Orleans* (Digest of 1808).<sup>25</sup> The Digest of 1808 was drafted in French and then translated into English.<sup>26</sup>

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19. A.N. Yiannopoulos, *The Civil Codes of Louisiana* in 1 WEST’S LOUISIANA CIVIL CODE li, liii (Yiannopoulos ed. 2008); and Elizabeth Gaspar Brown, *Law and Government in the Louisiana Purchase: 1803-1804*, 2 WAYNE L. REV. 169, 186-187 (1955).

20. The documents were dated April 30, 1803. See THOMAS MAITLAND MARSHALL, *A HISTORY OF THE WESTERN BOUNDARY OF THE LOUISIANA PURCHASE 1819-1841* at 7-8 (1914).

21. MARTIN, *supra* note 18, at 319.

22. 1806 La. Acts 214.

23. *Id.* at 214.

24. GEORGE DARGO, *LEGAL CODIFICATION AND THE POLITICS OF TERRITORIAL GOVERNMENT IN JEFFERSON’S LOUISIANA, 1803-1808* at 321 (1970).

25. 1808 La. Acts 122. See generally *A DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS, WITH ALTERATIONS AND AMENDMENTS ADAPTED TO ITS PRESENT SYSTEM OF GOVERNMENT* (1808). The text of the Digest of 1808 is available at [www.law.lsu.edu/digest](http://www.law.lsu.edu/digest) (last visited December 6, 2013).

26. E.B. Dubuisson, *The Codes of Louisiana (Originals Written in French; Errors of Translation*, LA. BAR ASSN. ANN. REP. 143 (1924); and John M. Shuey, *Civil Codes-Control of the French Text of the Code of 1825*, 3 LA. L. REV. 452 (1941).

The Spanish laws were not abrogated with the enactment of the Digest of 1808 or with the enactment of the Civil Code of 1825 that followed. The former had no general abrogation clause of Spanish laws.<sup>27</sup> In addition, the Act of March 31, 1808 stated that “whatever in the ancient civil laws of this territory, or in the territorial statute, is contrary to the dispositions contained in the said digest, or irreconcilable with them, is hereby abrogated.”<sup>28</sup> Pierre Derbigny addressed the derogation of previous laws in the 1817 case of *Cottin v. Cottin*.<sup>29</sup> He decided that the laws that were not contrary to the Digest of 1808 were not repealed with its enactment. Therefore, the Digest of 1808 had not completely repealed the civil laws that had existed in Louisiana. Consequently, a state of uncertainty was generated concerning the laws that should be applied by the courts. The Digest of 1808 was replaced by the Civil Code of 1825, the predecessor of the current Louisiana Civil Code. That code tried to terminate, by including article 3521,<sup>30</sup> the debate on the application of Spanish laws. Article 3521, however, could be read as not repealing all previous laws but only those “for which it has been especially provided in this Code.”<sup>31</sup> That language opened the door to different interpretations, allowing some lawyers and members of the judiciary to interpret this as an open door in cases of lacunae, and

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27. The work of Vernon V. Palmer (Vernon Valentine Palmer, *The Death of a Code - The Birth of a Digest*, 63 TUL. L. REV. 221, 244-245 (1988)) was especially influential for the drafting of this paragraph.

28. 1808 La. Acts 126.

29. *Cottin v. Cottin*, 1819, 5 Mart. (o.s.) 93.

30. Article 3521 of the Civil Code of 1825 read:

From and after the promulgation of this Code [of 1825], 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 pretense that their provisions are not contrary or repugnant to those of this Code.

CIVIL CODE OF THE STATE OF LOUISIANA 1112 (1825).

31. *Id.*

hence, limiting the express repeal.<sup>32</sup> Therefore, when faced with silence in the code, it would have been admissible to look for solutions in the previous laws.<sup>33</sup> To end interpretation problems, the Legislature of Louisiana enacted two acts<sup>34</sup> that were intended to achieve a great repeal.<sup>35</sup> There is still debate on the effects of both acts, especially since the Louisiana Supreme Court claimed that the acts only repealed the previous positive law and not the principles derived from them, which had been acquired by the practice of the courts.<sup>36</sup>

Louisiana courts relied on Spanish sources during the period 1809 to 1828.<sup>37</sup> The Superior Court of the Territory of Orleans and the Louisiana Supreme Court “cited Spanish codes, customs or ordinances four times more frequently than French codes, customs or ordinances.”<sup>38</sup> Those same courts cited “Spanish statutes twelve times more frequently than French statutes.”<sup>39</sup> However, French treatises and commentaries were cited “only slightly more frequently than Spanish treatises and commentaries.”<sup>40</sup> The references to Spanish materials focused mainly in the *Partidas*, the *Librería de Escribanos*, and the *Curia Filípica*.<sup>41</sup> These works represented 60% of citations to Spanish texts.<sup>42</sup> The *Curia Filípica*, by Juan de Hevia Bolaños, had a strong presence in Spain

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32. Palmer, *supra* note 27, at 246.

33. *Id.*

34. 1828 La. Acts 66; and 1828 La. Acts 160.

35. Vernon Valentine Palmer, *The French Connection and the Spanish Perception: Historical Debates and Contemporary Evaluation of French Influence on Louisiana Civil Law*, 63 LA. L. REV. 1067, 1077 (2003).

36. Reynolds v. Swain, 13 La. 193, 198 (1839). *Id.* See also John T. Hood, *The History and Development of the Louisiana Civil Code*, 33 TUL. L. REV. 7, 18 (1958).

37. See generally Raphael J. Rabalais, *The Influence of Spanish Laws and Treatises on the Jurisprudence of Louisiana: 1762-1828*, 42 LA. L. REV. 1485 (1982).

38. *Id.* at 1504.

39. *Id.*

40. *Id.*

41. *Id.* at 1505.

42. *Id.*



and Spanish America.<sup>43</sup> For example, Gustavus Schmidt, who owned one of the most complete law libraries in the southern United States, had a copy in his library.<sup>44</sup> The work of José Febrero, *Librería de Escribanos é instrucción jurídica teórica práctica de principiantes*, was also well circulated in America (from Louisiana to Río de la Plata<sup>45</sup>) and played an important role in the practice before courts.<sup>46</sup>

### III. TWO LOUISIANA TRANSLATIONS OF THE *PARTIDAS*

The nineteenth-century interest for Spanish law demanded a translation of the *Partidas* into the English language.<sup>47</sup> Courts and practitioners would benefit from the availability of an English translation of that seminal Spanish body of law. The *Partidas* are traditionally attributed to the reign of Alfonso X, being drafted during 1256-1265.<sup>48</sup> They were subject to several text alterations through time, and the most circulated edition is the one of 1555, containing glosses by Gregorio López.<sup>49</sup> The name derives from their division into seven parts—and not into books—as was the case with other legal bodies that predated their publication.<sup>50</sup> The *Partidas*, different from other *corpus* of that time, were systematical and integral.<sup>51</sup> Each *partida*, or part, was divided into titles and laws, and dealt with an area of the law: (i) sources of law,

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43. José M. Castán Vázquez, *Vélez Sársfield, Jurista Bibliófilo* in IV HOMENAJE A DALMACIO VÉLEZ SÁRSFIELD 519, 526 (2000).

44. MICHAEL H. HOEFELICH & LOUIS V. DE LA VERGNE, THE 1877 SALE CATALOGUE OF GUSTAVUS SCHMIDT'S LIBRARY 53 (2005).

45. *For example*, the Argentine codifier had a copy of the book in his library (CATÁLOGO DE LA DONACIÓN DE VÉLEZ SÁRSFIELD 48 (Biblioteca Mayor ed. 1980)).

46. José M. Castán Vázquez, *Los Libros Jurídicos Españoles consultados por Vélez Sársfield* in ESTUDIOS EN HOMENAJE AL DR. GUILLERMO A. BORDA 73, 81 (1984).

47. *See* John H. Tucker, *Louisiana Civil Law Literature*, 34 REP. LA. BAR ASSN. 26, 29 (1942).

48. ABELARDO LEVAGGI, I MANUAL DE HISTORIA DEL DERECHO ARGENTINO 89 (2001).

49. *Id.*

50. *Id.* at 90.

51. *Id.*

Catholic faith, and church; (ii) kings, royal officials, and war; (iii) administration of justice and rights on things; (iv) marriage and persons; (v) contracts and other civil institutions; (vi) successions; and (vii) crimes and punishments.<sup>52</sup>

A first translation of a selection of titles of the *Partidas* was dated 1818.<sup>53</sup> Louis Moreau-Lislet and Henry Carleton translated the titles of the *Partidas* that dealt with promises and obligations (*Partida* V, Title XI), sale and purchase (*Partida* V, Title V), and exchange (*Partida* V, Title VI). That work was published in New Orleans by Roche Brothers. The single volume filled 197 pages, placing the original Spanish text on the verso and the English translation on the recto. That first translation included a short preface<sup>54</sup> that started by summarizing the contents of the work by Alfonso X. The translators further stated that the “Partidas may then be considered as the principal code of the Spanish laws.”<sup>55</sup> They also stated that:

[M]any important provisions of the ancient laws of the land [i.e., Louisiana] still in force are not to be found in that code [i.e., Digest of 1808], and as its principles and maxims are delivered in a manner so succinct as not to be easily understood in their application without mounting to the sources whence they are derived, we hope we have undertaken a work useful to the public and to those who frequent the bar.<sup>56</sup>

Moreau-Lislet and Carleton acknowledged that the structure, terms, and orthography of the Spanish language they translated were 500 years old, and even difficult to understand by a nineteenth-century native Spanish speaker.<sup>57</sup> They tried to follow the order of the Digest of 1808 when dealing with contracts, and

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52. Enumeration translated from the work of Levaggi. *Id.*

53. LOUIS MOREAU & HENRY CARLETON, A TRANSLATION OF THE TITLES ON PROMISES AND OBLIGATIONS, SALE AND PURCHASE, AND EXCHANGE FROM THE SPANISH OF LAS SIETE PARTIDAS (1818).

54. *Id.* at iii-vi.

55. *Id.* at iv.

56. *Id.* at v.

57. *Id.* at v-vi.

annotated the Spanish laws with the articles of the Digest of 1808,<sup>58</sup> while providing Roman laws that related to each title of the *Partidas*,<sup>59</sup> together with modern Spanish texts.<sup>60</sup>

A second translation of other titles of the *Partidas* was dated 1820.<sup>61</sup> On March 3, 1819, the Legislature of Louisiana decided, upon the proposal of Moreau-Lislet and Carleton, to translate the remaining parts of the *Partidas* that were considered to have force of law in the state.<sup>62</sup> The Legislature stated in that occasion that: “it is of great importance to the citizens of this State, not only that the copies of the laws by which they are governed should be multiplied, but also that they should have them in a language more generally understood than the Spanish.”<sup>63</sup> The legislature aimed to allow the legal community to gain “knowledge of this important branch of our civil jurisprudence contained in the said works.”<sup>64</sup> The second translation, also by Moreau-Lislet and Carleton, included titles from six of the seven *partidas*, neglecting attention to the second *partida*, which dealt mainly with matters related with

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58. See, for example, the reference in the English translation to Book III, Title VI, Article 1 of the Digest of 1808. The text in the English translation reads “c.1, 344” (*i.e.*, article 1, page 344 of the Digest of 1808). *Id.* at 87.

59. See, for example, the reference to Book III, Title XXIV of the Institutes of Justinian in the English translation. The text in the English translation reads “Institutes lib. 3. tit. 24. De emptione et venditione.” *Id.* at 80. The translators probably followed the English text of the Institutes by Thomas Cooper, which Moreau-Lislet had in his library. See Mitchell Franklin, *Libraries of Edward Livingston and of Moreau Lislet*, 15 TUL. L. REV. 401, 408 (1941).

60. See, for example, the reference to sale in Part I, Chapter X, Section I of the work of Febrero. The text in the English translation reads “Febrero libreria de escribanos, part. 1. chap. 10, § 1. De las ventas.” *Id.*

*n.b.*, the 1783 edition of Febrero deals with sale in Chapter VII, Section I. (JOSEF FEBRERO, LIBRERIA DE ESCRIBANOS, PARTE PRIMERA, TOMO SEGUNDO 406 (3d ed. 1783).

61. 1-2 LOUIS MOREAU LISLET & HENRY CARLETON, THE LAWS OF LAS SIETE PARTIDAS WHICH ARE STILL IN FORCE IN THE STATE OF LOUISIANA (1820).

The legislative history indicates that the translation work, especially for volume 2, was not completed by 1820 (1820 La. Acts 20 and 1821 La. Acts 22; and LEVASSEUR, *supra* note 12, at 141-143).

62. 1819 La. Acts 44.

63. *Id.*

64. *Id.*

the king.<sup>65</sup> That work was published in New Orleans by James McKaraher. The translation was presented in two volumes, continuously paginated until page 1248,<sup>66</sup> included an index of titles for each volume, included a general index,<sup>67</sup> and did not include the original Spanish text. The first volume also included a *Translators' Preface*,<sup>68</sup> which motivated this new introduction. In the Act of 1819, the Legislature also appointed Pierre Derbigny, Étienne Mazureau,<sup>69</sup> and Edward Livingston to examine the “manuscript of the translation, and to compare it with the original language and see that it is faithfully done and contains all such parts of the laws of the *Partidas* as are considered to have the force of law in this state.”<sup>70</sup> The legislator was therefore not only aiming to assess the language but also the substance of the translation. In that same Act, the payment to the translators was set in the amount of 7000 dollars.<sup>71</sup> The *editio princeps* of the translation would be of 500 copies as stated by the Legislature,<sup>72</sup> and the copyright would be assigned to the governor for the use of the state.<sup>73</sup>

The English translations of the *Partidas* had an impact in the legal community of Louisiana. In February 1822, the Legislature instructed the distribution of copies of the 1820 translation. Copies were to be sent to, amongst others, the judges of the different Louisiana state courts, to the US district court for Louisiana, and to

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65. Headings for the titles of the second *partida* were included in the English translation. 1 MOREAU LISLET & CARLETON, *supra* note 61, at 17-19.

66. Volume one included the translator's preface, included the text of *partidas* I, III, and IV, and reached page 605; volume two included the text of *partidas* V to VII, and included a general index.

67. The general index was not part of the continuous pagination, extending for 73 pages, and followed an alphabetical order for entries.

68. 1 MOREAU LISLET & CARLETON, *supra* note 61, at iii-xxv.

69. The English text of the Act referred erroneously to S. Mazureau (1819 La. Acts 44).

70. *Id.*

71. The 1819 Act described the procedure to follow when settling the payment (*id.*). The 1821 supplementary Act allowed for a further sum to be paid to the translators (1821 La. Acts 22). *See also* John W. Cairns, *The de la Vergne Volume and the Digest of 1808*, 24 TUL. EUR. & CIV. L.F. 31, 76 (2009).

72. 1819 La. Acts 44.

73. *Id.*

the Legislature.<sup>74</sup> Copies were also to be distributed beyond Louisiana, being sent to the executive branches of other US state and to the US President.<sup>75</sup> A number of copies were to be preserved by the office of the secretary of state, and the remaining copies were to be sold to the general public.<sup>76</sup> The aim was, as originally stated in the 1819 Act, to allow the legal community to gain “knowledge of this important branch of our civil jurisprudence.”<sup>77</sup> A study shows that, after the publication of the translations, there was an increase of 100% in the frequency with which the *Partidas* were cited by courts in Louisiana.<sup>78</sup> For example, Justice George Mathews of the Supreme Court of Louisiana, stated in a case that “it may not be improper to advert to a note in the translation of the Partidas, by Moreau & Carleton.”<sup>79</sup> The English translation also reached other U.S. states, being cited by courts beyond the borders of Louisiana.<sup>80</sup>

#### A. Authors of the Second Translation

Five jurists, at least, were involved in the second translation project of the *Partidas* in Louisiana. The English translations, dated 1818 and 1820, indicated that the authors were Moreau-Lislet and Carleton, and there was no individual claim of authorship for the different parts of that translation work. Edward Livingston, Pierre Derbigny, and Étienne Mazureau were also involved in the translation project, being appointed examiners of the second translation by the Legislature. They had to produce a

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74. 1822 La. Acts 20. See also KATE WALLACH, RESEARCH IN LOUISIANA LAW 214 (2d ed. 1960).

The author of the new introduction is indebted to Mr. Alexandru-Daniel On for facilitating the copy of abovementioned act.

75. 1822 La. Acts 20.

76. *Id.*

77. 1819 La. Acts 44.

78. Rabalais, *supra* note 37, at 1505.

79. Copelly v. Deverges, 11 Mart. (o.s.) 641 (1822) at 10.

80. See, for example, Peter L. Reich, *Siete Partidas in My Saddlebags: The Transmission of Hispanic Law from Antebellum Louisiana to Texas and California*, 22 TUL. EUR. & CIV. L.F. 79, 82 (2007).

general certificate determining if “the translation, in their opinion, ha[d] been correctly and faithfully made.”<sup>81</sup>

Moreau-Lislet indicated an early interest in translating the *Partidas*. In April 1813, he made public his intention of translating, together with Étienne Mazureau, the *Partidas* into French language.<sup>82</sup> Louis Casimir Elisabeth Moreau-Lislet<sup>83</sup> was born on October 7, 1766 in the island of Saint-Domingue.<sup>84</sup> He studied law in France and moved to New Orleans due to the French Revolution. He was a successful lawyer who acted as judge, attorney general, and senator for Louisiana.<sup>85</sup> He also played an important role as editor.<sup>86</sup> He spoke the three fundamental languages for a Louisiana jurist: English, French, and Spanish.<sup>87</sup> Those skills helped him participate of the drafting of, amongst others, the Digest of 1808, the Civil Code of 1825, and the Code of Civil Procedure of 1825. Moreau-Lislet died in Louisiana on December 3, 1832.<sup>88</sup>

Henry Carleton Cox was the co-author of the two translations. He was born in Virginia in 1785.<sup>89</sup> He graduated from Yale University in 1806, after having attended two years at the University of Georgia.<sup>90</sup> He settled in New Orleans in 1814, and read law in the law offices of his brother-in-law,<sup>91</sup> Edward

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81. 1820 La. Acts 20.

82. Cairns, *supra* note 71, at 51. *See also* LEVASSEUR, *supra* note 12, at 130-131, 189-191.

83. For additional readings on Moreau-Lislet, *see* the complete study by LEVASSEUR, *supra* note 12, at 69-166.

84. There is some debate; however, that is the most probable date. *Id.* at 80 and 83.

85. SHAEL HERMAN, *THE LOUISIANA CIVIL CODE: A HUMANISTIC APPRAISAL* 25 (1981).

86. René Nicaud, *The French Colonists from St. Domingue and, in Particular, Louis Moreau Lislet*, 20 LA BAR JNL. 285, 291 (1973).

87. LEVASSEUR, *supra* note 12, at 114.

88. *Id.* at 83.

89. 2 DICTIONARY OF AMERICAN BIOGRAPHY 491 (Allen Johnson & Dumas Malone eds. 1964).

90. A DICTIONARY OF LOUISIANA BIOGRAPHY: TEN-YEAR SUPPLEMENT 1988-1998 at 34 (Carl A. Brasseaux & James D. Wilson Jr. eds., 1999).

91. Henry Carleton (1785-1863), available at [http://www.lasc.org/Bicentennial/justices/Carleton\\_Henry.aspx](http://www.lasc.org/Bicentennial/justices/Carleton_Henry.aspx) (last visited December 6, 2013).

Livingston.<sup>92</sup> He was a U.S. district attorney from 1832 to 1837,<sup>93</sup> and associate justice of the Louisiana Supreme Court from 1837 to 1839.<sup>94</sup> He is also known for his writings of a biblical, metaphysical, and philosophical nature,<sup>95</sup> such as *Liberty and Necessity* (1857) and *Essays on the Will* (1863).<sup>96</sup> He died in Pennsylvania on March 28, 1863.<sup>97</sup>

Edward Livingston may be included amongst the most brilliant minds in the legal history of the U.S.<sup>98</sup> He was born in New York on May 26, 1764,<sup>99</sup> and was brother of Robert Livingston (negotiator during the Louisiana Purchase).<sup>100</sup> He studied at Princeton University and read law with Judge Lansing, being admitted to practice in 1785.<sup>101</sup> He moved to New Orleans in 1804,<sup>102</sup> where he became a successful lawyer. While in Louisiana, he also drafted key legislative provisions, such as the projected Commercial Code of 1825,<sup>103</sup> the Code of Civil Procedure of 1825, and the Civil Code of 1825. Livingston was appointed senator for Louisiana to the U.S. Congress in 1828, and was appointed Secretary of State in 1831 by President Andrew Jackson.<sup>104</sup> Livingston died in New York<sup>105</sup> on May 23, 1836.<sup>106</sup>

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92. 2 DICTIONARY OF AMERICAN BIOGRAPHY, *supra* note 89, at 491.

93. *Id.*

94. A DICTIONARY OF LOUISIANA BIOGRAPHY, *supra* note 90, at 34.

95. *Id.*

96. 2 DICTIONARY OF AMERICAN BIOGRAPHY, *supra* note 89, at 491.

97. Henry Carleton (1785-1863), *supra* note 91.

98. For additional readings on Edward Livingston, see CHARLES HAVENS HUNT, LIFE OF EDWARD LIVINGSTON (1864); Carleton Hunt, *Life and Services of Edward Livingston*, LA. BAR ASSN. ANN. REP. 7 (1903); and Franklin, *supra* note 59.

99. HAVENS HUNT, *supra* note 98, at 15.

100. Carleton Hunt, *supra* note 98, at 50.

101. FREDERICK C. HICKS, MEN AND BOOKS FAMOUS IN THE LAW 160 (1921).

102. *Id.* at 161.

103. RICHARD HOLCOMBE KILBOURNE, LOUISIANA COMMERCIAL LAW: THE ANTEBELLUM PERIOD 34 (1980).

104. HICKS, *supra* note 101, at 168-169.

105. Carleton Hunt, *supra* note 98, at 50.

106. HAVENS HUNT, *supra* note 98, at 432.

Pierre Auguste Bourguignon Derbigny was born on June 30, 1769, in France and studied law at Saint Geneviève.<sup>107</sup> He went into exile to the Caribbean during the French revolutionary period, and from there immigrated to the US.<sup>108</sup> After living in several regions of the country, he settled in Louisiana.<sup>109</sup> His ability with the English and French languages helped explain his appointment as official interpreter of Governor Claiborne.<sup>110</sup> Throughout his life he acted on the three branches of government in Louisiana, being, amongst others, member of the legislative council,<sup>111</sup> Justice of the Supreme Court,<sup>112</sup> and Governor.<sup>113</sup> He confronted his colleague Livingston in several judicial cases, most notably the *Batture*<sup>114</sup> case.<sup>115</sup> He was also involved in the drafting of the Civil Code of 1825 and the Code of Civil Procedure of 1825.<sup>116</sup> Derbigny died in Louisiana on October 6, 1829.<sup>117</sup>

Étienne Mazureau was born in France in 1777.<sup>118</sup> He had early contact with the law, being employed at a French law office at age

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107. Pierre Auguste Bourguignon Derbigny 1828-1829, available at <http://www.sos.la.gov/HistoricalResources/AboutLouisiana/LouisianaGovernors/1812-1861/Pages/PierreAugusteBourguignonDerbigny.aspx> (last visited December 6, 2013).

108. 2 APPLETON'S CYCLOPÆDIA OF AMERICAN BIOGRAPHY 146 (Wilson & Fiske eds. 1888).

109. *Id.*

110. SHAEL HERMAN, THE LOUISIANA CIVIL CODE: A EUROPEAN LEGACY FOR THE UNITED STATES 60 (1993).

111. 2 APPLETON'S CYCLOPÆDIA, *supra* note 108.

112. HERMAN, *supra* note 110, at 60.

113. Pierre Auguste Bourguignon Derbigny 1828-1829, *supra* note 107.

114. The positions of Livingston and Derbigny were included in a proclamation of October 21, 1808. See EDWARD LIVINGSTON, ADDRESS TO THE PEOPLE OF THE UNITED STATES, ON THE MEASURES PURSUED BY THE EXECUTIVE WITH RESPECT TO THE BATTURE AT NEW-ORLEANS (1808). For more information on the Batture, see Gustavus Schmidt, *The Batture Question*, 1:2 LA L.J. 84 (1841).

115. Ira Flory, *Edward Livingston's Place in Louisiana Law*, 19 LA. HIST. Q. 3, 7 (1936).

116. John H. Tucker, *Source Books of Louisiana Law II*, 7 TUL. L. REV. 82, 84 (1932).

117. Pierre Auguste Bourguignon Derbigny 1828-1829, *supra* note 107.

118. Dictionary of Louisiana Biography, available at <http://www.lahistory.org/site30.php> (last visited December 6, 2013).



thirteen.<sup>119</sup> While in Europe, he gained knowledge of Spanish law and language.<sup>120</sup> He moved to Louisiana at the beginning of the nineteenth century, where he was admitted to practice law in 1805.<sup>121</sup> Mazureau was a successful lawyer in the region, who practiced law in partnership with Edward Livingston, acted as attorney general for three terms, and served as Secretary of State of Louisiana.<sup>122</sup> He had command of the English, French, and Spanish languages.<sup>123</sup> Mazureau is known also for delivering in 1836 a speech in honor of the prominent Justice George Mathews.<sup>124</sup> Mazureau died in Louisiana on May 30, 1849.<sup>125</sup>

The background of the five jurists involved in the translation project is a clear example of the rich Louisiana legal culture. Jurists not only occupied prominent positions as practitioners or judges, but also occasionally occupied alternatively positions as members of the legislative and executive powers. In addition, they represented both continental European and common law doctrines, some being trained in the common law, others receiving a civil law education, while others being proficient in both systems. The jurists were also familiar with several languages, mainly the ones used in Louisiana legal discourse. The different skills and characteristics of jurists were valuable assets at the time the translation project was pursued.

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119. Tara Lombardi, *The Great Advocate: Étienne Mazureau: Accomplished Attorney & Statesman (1777-1849)*, 7:2 DE NOVO 6 (2009).

120. 12 DICTIONARY OF AMERICAN BIOGRAPHY 469 (Dumas Malone ed., 1933).

121. Lombardi, *supra* note 119, at 6.

122. *Id.* at 6-7.

123. *Id.* at 6.

124. The speech was translated into English and later published in Henry Plauché Dart, *Mazureau's Oration on Mathews*, 4:2 LA. HIST. Q. 155 (1921).

125. Obituary of Étienne Mazureau in New Orleans, Louisiana in 1849, available at <http://louisdl.louislibraries.org/cdm/ref/collection/LWP/id/5304> (last visited December 6, 2013).

*B. Translators' Preface to the Second Translation*

The *Translators' Preface* is a very rich document. It helps reflect the legal context of the time when it was drafted. The preface addressed various topics, while it also referred to the work of several jurists and cited court decisions and legislation. Moreover, it was related to other legal works that were elaborated at that time in Louisiana.

The *Translators' Preface* was also included in a 1978-reprint of the translation of the *Partidas*. That reprint of the 1820 translation was undertaken in Baton Rouge by Claitor's Publishing Division,<sup>126</sup> and included an *Introduction* by Mitchell Franklin.<sup>127</sup> The law professor explored the struggle in Louisiana between adopting Spanish feudal Romanism or French bourgeois Roman law, and claimed that Moreau-Lislet and Carleton had produced an embourgeoisified English translation of the *Partidas*. The translation, according to Franklin, was of institutional value, because English was not the historical Roman and civil law language, and the translation would assist the English-speaking legal discourse.<sup>128</sup> He also indicated that the *Translators' Preface* did not include references to the Project of 1806. This was an important document he identified in the National Archives in 1942,<sup>129</sup> and that reflected an early example of the struggle for the adoption of the civil law or the common law systems in Louisiana.

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126. 1-2 THE LAWS OF LAS SIETE PARTIDAS WHICH ARE STILL IN FORCE IN THE STATE OF LOUISIANA 1, 8-11 (L. Moreau Lislet & Henry Carleton, trans., 1978) (1820).

127. Mitchell Franklin, *Introduction* to 1 THE LAWS OF LAS SIETE PARTIDAS WHICH ARE STILL IN FORCE IN THE STATE OF LOUISIANA 1, 8-11 (L. Moreau Lislet & Henry Carleton, trans., 1978) (1820).

128. *Id.*

129. In May 1806, the Legislature adopted a bill, also referred to as the Project of 1806, by which the pre-existing Spanish and Roman laws would govern the Territory of Orleans. Governor Claiborne, however, vetoed the bill. Yiannopoulos, *supra* note 19, at liv. See also Mitchell Franklin, *Some Considerations on the Existential Force of Roman Law in the Early History of the United States*, 22 BUFF. L. REV. 69, 69-70 (1972); and Mitchell Franklin,

### *I. Content*

The *Translators' Preface* can be divided into several parts. Initially, the authors stated the auspices received by the Legislature, and indicated that they translated the laws they considered as “having force of law”<sup>130</sup> in the state.

The preface continued with a historic sketch of Spanish legislation. It extended from pre-Roman times<sup>131</sup> until the eighteenth century.<sup>132</sup> The narrative described seminal legislative bodies and compilations, amongst others, the *Leyes de Toro* (1505)<sup>133</sup> and the *Recopilación de las Leyes de Indias* (1680), which applied in the Americas.<sup>134</sup> Spanish compilations resulted in a unique body that made access possible to all rules and included all dispositions in a chronological order.<sup>135</sup> Although the compiled laws maintained their independence and substance within the compilations,<sup>136</sup> confusion resulted from the variety and disorder of existing legislation.<sup>137</sup> Practitioners, scholars, and courts welcomed literature that would succeed in making the law accessible, and historic outlines aided in achieving that common objective. For example, the *Instituciones de Derecho Civil de Castilla* (1771), by Ignacio Jordán de Asso and Miguel de Manuel, included a useful historic outline, which was translated into

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*The Eighteenth Brumaire in Louisiana: Talleyrand and the Spanish Medieval Legal System of 1806*, 16 TUL. L. REV. 514, 516 (1942).

130. 1 MOREAU LISLET & CARLETON, *supra* note 61, at iii.

131. *Id.* at iv.

132. *Id.* at xv.

133. *Id.* at xiii.

134. *Id.* at xv. The *Translators' Preface* incorrectly indicated that the *Recopilación de las Leyes de Indias* was published in 1661.

135. Agustin 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, 835 (2008).

136. GUILLERMO GARCÍA VALDECASAS, PARTE GENERAL DEL DERECHO CIVIL ESPAÑOL 41 (1983).

137. Rafael Altamira, *Spain* in 1 A GENERAL SURVEY OF EVENTS, SOURCES, PERSONS AND MOVEMENTS IN CONTINENTAL LEGAL HISTORY 694 (John Henry Wigmore trans., 1912).

English by Lewis Johnston, a judge of the island of Trinidad, and published in London in 1825.<sup>138</sup> A second example was provided by the *Teatro de la Legislación Universal de España e Indias* (1791-1798), by Antonio Javier Pérez y López. The *Teatro* included an extensive historic introduction (within the *Discurso Preliminar*)<sup>139</sup> that was used by Moreau-Lislet and Carleton.<sup>140</sup> A third example, this time from Louisiana, was provided by *The Civil Law of Spain and Mexico* (1851), by Gustavus Schmidt. That work included an historic outline, and also circulated in other US states.<sup>141</sup> Approximately 2000 years of history and legislation were therefore included in those useful historical sketches.<sup>142</sup>

The historic account, as expected, dealt with the *Partidas* and their content.<sup>143</sup> The authors worked with the glossed edition by Gregorio López,<sup>144</sup> and stated that the *Partidas* were the “most perfect system of Spanish laws, and [could] be advantageously compared with any code published in the most enlightened ages of the world.”<sup>145</sup> The content of the different parts of the *Partidas* was also addressed by Moreau-Lislet and Carleton.<sup>146</sup> They even indicated that the principles of natural law, as contained in the *Partidas*, were still applicable, not having been modified by particular laws.<sup>147</sup>

The *Translators’ Preface* also dealt with matters of jurisdiction. Firstly, it acknowledged that maritime and

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138. Johnston translated the sixth edition of the Institutes, which was published in 1805. LEWIS F. C. JOHNSTON, INSTITUTES OF THE CIVIL LAW OF SPAIN BY DOCTORS D. IGNATIUS JORDAN DE ASSO Y DEL RÍO, AND D. MIGUEL DE MANUEL Y RODRÍGUEZ (1825).

139. 1 MOREAU LISLET & CARLETON, *supra* note 61, at i-lviii.

140. Cairns, *supra* note 71, at 73 & 80.

141. See generally Agustin Parise, *Book Review*, 2 J. CIV. L. STUD. 183 (2009).

142. *Id.*

143. 1 MOREAU LISLET & CARLETON, *supra* note 61, at vii-xii.

144. *Id.* at xxiii.

145. *Id.* at vii.

146. *Id.* at ix.

147. *Id.* at x.

commercial matters should be decided by local courts.<sup>148</sup> That statement indicated that the codes included in the historic sketch did not apply to that area of law. Appropriate references were made to the Spanish *Ordenanzas del Consulado de Bilbao* (1737), which had applied in the territory when dealing with commercial matters.<sup>149</sup> Secondly, it addressed the use that Louisiana courts should make of the *Partidas* and of the different codes.<sup>150</sup> The authors mainly relied on the work of Pedro Murillo Velarde when dealing with that issue. Thirdly, it aimed to explain why the laws of Spain were still in force in Louisiana.<sup>151</sup> Starting with the first French period, and reaching the decision of *Cottin v. Cottin*, Moreau-Lislet and Carleton explained why they considered that Spanish laws applied in Louisiana.<sup>152</sup> They claimed that the second French period “did not for a moment, weaken the Spanish laws”<sup>153</sup> in Louisiana. They further stated that after *Cottin* “it thus appeared that a much greater portion of the Spanish laws remained in force than had been at first supposed,”<sup>154</sup> and that it was “then doubtless the desire of the legislature to spread generally the knowledge of such of these laws.”<sup>155</sup>

The plan pursued by the translators aimed to relate the *Partidas* with the Digest of 1808, as well as to relate them with other Spanish and Roman texts.<sup>156</sup> Each title of the *Partidas* was

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148. *Id.* at xvi.

149. See the study by Jesús Motilla Martínez, *Las Ordenanzas del Consulado de Bilbao, interesante fuente histórica del derecho mercantil (versión paleográfica y notas sobre fragmentos del texto)*, 15 JURÍDICA. ANUARIO DEL DEPARTAMENTO DE DERECHO DE LA UNIVERSIDAD IBEROAMERICANA 189 (1983).

150. 1 MOREAU LISLET & CARLETON, *supra* note 61, at xvi-xviii.

151. *Id.* at xviii-xxiii.

152. When dealing with the Spanish period, the translators provided an early translation of part of the Ordinances of O'Reilly (*id.* at xx). Compare with the translation by Schmidt, *supra* note 16.

153. 1 MOREAU LISLET & CARLETON, *supra* note 61, at xxi.

154. *Id.* at xxiii.

155. *Id.*

156. *Id.*

therefore associated with the titles of those other three sources.<sup>157</sup> Notes were also added to different laws of the *Partidas*, linking them with Spanish,<sup>158</sup> Roman,<sup>159</sup> or Louisiana<sup>160</sup> sources.<sup>161</sup> Moreau-Lislet and Carleton did not translate the laws of *Partidas* that had been expressly repealed by the Legislature and those that conflicted with the US and Louisiana constitutions.<sup>162</sup> Finally, the translators explained the criteria they followed when facing difficulties in providing accurate translations of Spanish terms.<sup>163</sup>

## 2. References to Other Works

Multiple editions of the existing laws had appeared in Spain by the nineteenth century, while auxiliary literature developed to assist readers in the interpretation of the existing laws. Encyclopedias and analytical works, such as the *Teatro* by Pérez y López, excelled in assisting the legal community in the interpretation of the laws; while they provided the legal community with *small libraries* of the multiple volumes of Spanish legislation. The *Translators' Preface* clearly reflected that nineteenth-century Spanish legislation was in a state of confusion, and even identified early origins for that confusion. They expressed, for example, that before the *Partidas* were drafted,

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157. *Id.* For example, *Partida* III, Title V was related to, amongst others: Book II, Title XIII, Code of Justinian; Book II, Title III, *Fuero Juzgo*; and Book III, Title XIII, Digest of 1808 (*id.* at 108).

158. *See, for example*, the reference to the work of Juan Sala in the note to *Partida* III, Title II, Law 32 (*id.* at 52); and the reference to the work of Febrero in the note to *Partida* III, Title XIX, Law 9 (*id.* at 251).

159. There were very few references to Roman law that related to the individual laws of the *Partidas*. *See, for example*, the reference to Book XXIV, Title I, Law I of the Digest of Justinian in the note to *Partida* IV, Title XI, Law 3 (*id.* at 510-511).

160. *See, for example*, the reference to Book III, Title XVII of the Digest of 1808 in the note to *Partida* III, Title IV, Law 24 (*id.* at 94); and the reference to *Pierce v. Curtis*, 6 Mart. (o.s.) 418, in the note to *Partida* III, Title XXX, Law 8 (*id.* at 398).

161. *Id.* at xxiii-xxiv.

162. *Id.* at xxiv.

163. *Id.* at xxiv-xxv.

“disorder rose to such a height”<sup>164</sup> that the king had to indicate clearly which body of law prevailed in Castile. They also stated that Alfonso X found the laws of Spain in a “distracted state.”<sup>165</sup>

Moreau-Lislet and Carleton referred in their preface to Louisiana court decisions and Spanish legislation. Regarding the former, the translators referred, in the body of the text, to the already mentioned 1817 decision of *Cottin v. Cottin*.<sup>166</sup> They also cited, though in a footnote, the 1813 decision in *Pizerot et al. v. Meuillon's Heirs*.<sup>167</sup> Spanish legislation was also cited in the *Translators' Preface*. For example, there are references to the *Autos Acordados* (since 1723),<sup>168</sup> a work that was also available in the library of Moreau-Lislet.<sup>169</sup>

The preface was drafted after consulting the works of several jurists, surely benefiting from the contents of the library of Moreau-Lislet.<sup>170</sup> The translators explicitly mentioned the works of jurists within the text of the preface. For example, Juan Sala<sup>171</sup> and Pedro Murillo Velarde<sup>172</sup> were mentioned in the body of the text, while Domenico Alberto Azuni<sup>173</sup> and Alonso de Azevedo<sup>174</sup> were mentioned in the footnotes. Other jurists were not explicitly mentioned in the text of the preface, though their work was influential for the translators. For example, John Cairns indicated that the translators relied on the extensive historic introduction included in the *Teatro* by Pérez y López.<sup>175</sup> The name of the author of the *Teatro* was not explicitly mentioned in the preface. His

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164. *Id.* at vii.

165. *Id.* The *Translators' Preface* incorrectly referred to Alfonso IX.

166. *Id.* at xxii-xxiii.

167. *Id.* at xvii. 3 Mart. (o.s.) 97.

168. *Id.* at v & xviii. The *Translators' Preface* correctly referred, in the first footnote, to Book II, Title I, Auto 1. See TOMO TERCERO DE AUTOS ACORDADOS 68 (1772).

169. Franklin, *supra* note 59, at 406.

170. *Id.* at 405-409.

171. 1 MOREAU LISLET & CARLETON, *supra* note 61, at iv & xiii.

172. *Id.* at xvii-xviii.

173. *Id.* at xvi. The *Translators' Preface* incorrectly referred to Azum.

174. *Id.* at xvii.

175. Cairns, *supra* note 71, at 73.

work, however, was indeed mentioned, when Moreau-Lislet and Carleton referred in their preface to the “author of the theatre of Spanish legislation.”<sup>176</sup>

### 3. *Relations with Other Works*

The *Translators’ Preface* related to other legal works that were elaborated at that time in Louisiana. That connection was identified recently by Cairns,<sup>177</sup> and helps better describe and understand the legal and social context of early nineteenth-century Louisiana. The southern state, as previously mentioned, offered a context in which an interest for Spanish laws was welcomed.

The work of Moreau-Lislet and Carleton was related to two copies of the Digest of 1808 that included manuscript notes. The latter legal body did not include an *exposé des motifs*.<sup>178</sup> Nevertheless, there are an uncertain number of copies of the *editio princeps* of the Digest of 1808 that contain interleaves between the French and English texts. Even though there are some copies with interleaves that have no annotations,<sup>179</sup> other copies of the Digest of 1808 contain manuscript notes that seem to have been dictated by Moreau-Lislet, or in some cases, even written by him.<sup>180</sup> One of these manuscripts, referred to as the de la Vergne copy,<sup>181</sup> included an *Avant-Propos* that was closely linked to the *Translators’ Preface*.<sup>182</sup> The 1820 preface, mainly when describing the different Spanish legislative bodies, built upon the shorter 1814 *Avant-Propos*.<sup>183</sup> Cairns also indicated that the de la Vergne copy and the *Avant-Propos* were concurrently related to the *Teatro* by Pérez y

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176. 1 MOREAU LISLET & CARLETON, *supra* note 61, at xiv.

177. See generally Cairns, *supra* note 71.

178. See Joseph Dainow, *Moreau Lislet’s Notes on Sources of Louisiana Civil Code of 1808*, 19 LA. L. REV. 43, 43 (1958).

179. The LSU Law Library holds such a copy.

180. Cairns, *supra* note 71, at 74.

181. Cairns developed an exhaustive study on that copy. See generally, *id.*

182. *Id.* at 73.

183. *Id.* at 73, 79-80.



López,<sup>184</sup> and that the translators<sup>185</sup> found in the introduction of the *Teatro* a rich source for their historic account.<sup>186</sup> Another manuscript, though with no interleaves, is referred to as the LSU Copy. It was probably drafted before the de la Vergne copy,<sup>187</sup> and it was found by Robert A. Pascal in May 1965 in the LSU Library.<sup>188</sup> Cairns stated that Moreau-Lislet and Carleton used the annotations of that manuscript when drafting the list of sources and annotations to their translation of the *Partidas*.<sup>189</sup>

#### IV. CONCLUDING REMARKS

The need for translations of legal materials in Louisiana can be explained by looking at its legal history. This new introduction provided an historic evolution of the laws applicable in Louisiana, and explained why the Spanish *Partidas* were welcomed in Louisiana. The new introduction also provided information on the 1818 and 1820 English translations of the *Partidas*, together with biographical information about the jurists involved in those translation projects. Special attention was devoted to the *Translators' Preface* to the 1820 translation. Its content, its sources, and its connection with other legal materials were explored.

There has always been, and should always be, a connection between Louisiana and other civil law jurisdictions. Louisiana is an isolated “Civil Law island” partially surrounded by a “sea of Common Law.”<sup>190</sup> However, Louisiana must build bridges with

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184. *Id.* at 73.

185. Cairns indicated that the participation of Carleton in the drafting of the *Translators' Preface* could be challenged. *Id.* at 79-80.

186. *Id.* at 73, 80.

187. *Id.* at 64.

188. Robert A. Pascal, *A Recent Discovery: A Copy of the 'Digest of the Civil Laws' of 1808 with Marginal Source References in Moreau-Lislet's Hand*, 26 LA. L. REV. 25 (1965).

189. Cairns, *supra* note 71, at 65 & 72.

190. Agustin Parise, *Non-Pecuniary Damages in the Louisiana Civil Code Article 1928: Originality in the Early Nineteenth Century and Its Projected Use in Further Codification Endeavors* 14 (May 18th, 2006) (unpublished LL.M.).

other civil law territories to keep developing its civil law heritage. It must benefit from developments in other jurisdictions, and it must share its own developments with the world-wide civil law discourse. The translations of the *Partidas* provided an early example of that bridge-building activity, in that case with Spain and its legislation. Translations of other materials, such as the Louisiana Civil Code, may lay down new bridges.

**TRANSLATORS' PREFACE TO THE LAWS OF LAS SIETE  
PARTIDAS<sup>†</sup>**

Louis Moreau-Lislet & Henry Carleton<sup>\*</sup>

THIS work has been undertaken under the patronage of the legislature of Louisiana, which passed a law on the 3d of March, 1819, authorising it to be executed at the expense of the state. It contains a translation of all that portion of Las Siete Partidas, which is considered as having the force of law in Louisiana. Those parts which relate to the Catholic faith, and to matters of a criminal nature having been repealed, are therefore entirely omitted.

The translators have compiled the following short historic sketch of Spanish legislation, hoping that it may afford some gratification to those who have not an opportunity of consulting the authors from which it is taken.

The laws of Spain are contained in various codes, the most complete of which is that known under the name of Las Siete Partidas. The other codes are the Fuero Juzgo, Fuero Viejo and Fuero Real; to which may be added the laws regulating the practice of courts, the Royal Ordinances, and those of Alcala; the laws of Toro, the Recopilacion de Castilla, and the Recopilacion de las Indias. We will notice these codes in the order in which they were

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<sup>†</sup> The text of the Translators' Preface was proof-read, for purposes of publication in the Journal of Civil Law Studies, by Mr. Shane Büchler. It was further revised by the author of this introduction. See Agustín Parise, *Introductory Essay on the Translators' Preface to Las Siete Partidas*, above.

The transcribed text tried to preserve as close as possible the form of the original text, including typographical errors. Footnotes in the original text were restarted on every page, and shifted from numbers to letters. The transcribed text does not follow that criteria, and adopted a continuous numbering for footnotes. The transcribed text, however, indicates by means of square brackets, the number or letter and page of the corresponding footnote within the original text.

<sup>\*</sup> First published as *Translators' Preface* to the work of Moreau-Lislet and Carleton in New Orleans by James McKaraheer, 60 Chartres Street, in 1820.

made and published, and the degree of authority ascribed to them in Spain, and the countries under her dominions.

Spain and Portugal, before they submitted to the power of the Romans, were governed by no other laws, than their customs and usages, traces of which are still to be found in the codes subsequently enacted by the kings of Spain. But after these countries were rendered tributary to the Roman empire by Augustus Cæsar, they were governed by the civil law alone, until the Romans themselves were expelled by the Goths, about the year 466 of the Christian æra. These barbarians, more devoted to arms than to science, suffered several years to elapse before they substituted a system of their own laws to those of the Romans

Several Spanish authors who have treated this subject, and among others Don Juan Sala<sup>1</sup> pretend that the Goths for some time after their conquest, permitted the Spaniards to preserve the civil law, to which they had been accustomed, and which was then contained in the Theodosian Code, or in an abridgement, (*el Breviario*), made from it, from the Gregorian and Hermogenian codes, and from the decrees and institutes of Paul and Caius, by the Gothic jurisconsult Anien, about the year 506, under the reign of king Alaric.<sup>2</sup>

All these authors, however, agree that Euric who died about the year 483, and the first king of that dynasty, established a small number of laws, which were the first that could be called Spanish. But under his successors, and particularly Leogivilde, they multiplied so fast, that Resevinde, desirous of effacing every vestige of Roman power, prohibited the use of the civil laws, by imposing a fine of thirty pounds upon every person who should cite them in court, and the judge who should found his judgments upon their authority. This barbarous severity was afterwards

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1. In the abridged history of Spanish laws, entitled *Ilustracion del Derecho de Espana* [note 1, at iv].

2. The Pandects of Justinian had already disappeared in Italy, at the period of the incursions of the barbarians [note 2, at iv].

pushed so far as to inflict the punishment of death for that offence.<sup>3</sup>

Yet literature began early to make progress among the clergy, and the intimate union that prevailed at that time between them and the government, soon produced divers rules and regulations in the national councils, upon subjects both of a spiritual and temporal nature: these together with others, enacted by the Gothic kings, formed the *Fuero Juzgo* which was published about the year 693.

This code, the first made by the Spanish nation, is divided into twelve books, and each book into different titles. It was first published in Latin under the title of *Forum Judicum*, and was not translated into Spanish until the reign of Ferdinand III in the thirteenth century. It was originally called the Book of the Judges, (*El Fuero de los Juécés*) which name has been changed by a corruption of words, into *Fuero Juzgo*, the title under which it was printed in Madrid in the year 1600.

But about the year 714, soon after the publication of this code, its authority was almost entirely overthrown by the invasion of the Moors, who conquered with incredible rapidity, the whole of Spain, except the Asturias, whither the Spaniards who had escaped their fury, fled under Don Pelage, a descendant of the Gothic kings. These invaders were not driven from the kingdom, until about the year 1492, when Grenada, their last refuge, was taken after eight centuries of almost continual warfare.

During this bloody struggle, the kings of Spain, having frequent need of the nobles and grandees who followed them in the field, were under the necessity of granting them many important privileges, and of establishing a code in their favour. Hence the origin of *El Fuero de los hijos dalgos*, the code of the nobles. So likewise, in order to encourage those who fought the enemy under their banners, or to people the conquered countries, they granted to various towns and surrounding territories, the enjoyment of certain

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3. Auto 1. Tit. 1. lib. 2 of the *Autos Accordados*, make mention of this law [note 1, at v].

particular customs, and usages, from which great confusion often arose in the construction and application of the laws. In order to remedy this evil and establish a uniform mode of judicial procedure in civil matters, *El Fuero Viejo* the ancient code was published in the year 992. This code is divided into five books, containing the ancient customs and usages of the Spanish nation, and rules and regulations concerning the administration of justice. But its promulgation, far from affording a remedy to the evil it was intended to cure, served only to increase the confusion which distracted all the tribunals of the kingdom; some of them taking for the rules of their decision, the laws of the *Fuero Juzgo*, and others those of the *Fuero Viejo*, and others again deciding according to the ancient customs.

In this state of things, the disorder rose to such a height, that Ferdinand the III. was under the necessity of directing that the *Fuero Juzgo* should prevail in the kingdom of Castille; while the *Fuero Viejo* should remain in force in the kingdom of Leon. Such was the distracted state of the laws of Spain, when Alphonso the IX. generally called the wise, or the learned; wishing to establish a uniform system of jurisprudence in all his dominions, published a third code under the name of the *Fuero Real*, the Royal Law.<sup>4</sup> This code may be considered as the precursor of the laws of the Partidas which we have translated, and which that prince had already ordered to be compiled. The *Fuero Real* is divided into four books, each of which contains several titles.

The Partidas, of which we will now speak, is the most perfect system of Spanish laws, and may be advantageously compared with any code published in the most enlightened ages of the world. These laws, the unceasing subject of the praise and admiration of every jurist acquainted with them, were compiled in imitation of the Roman Pandects, and may be considered as the digest of the laws of Spain, containing in addition to the canonical ordinances,

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4. The *Fuero Real* is, to the Partidas, what the institutes are to the Digest of Justinian [note a, at vii].

all the civil laws in force in that kingdom at the time of their promulgation. Ferdinand the III. had projected that great work, in order to prevent confusion and diversity in the jurisprudence of the empire, by establishing uniform rules of legal decision. But the sudden death of that monarch prevented the execution of a project which was afterwards accomplished by the wisdom of Alphonso, his son and successor. Alphonso nominated four Spanish jurisconsults to whom he committed the execution of the intended work.— These enlightened men, whose names have not come down to us, entered upon this arduous task in the year 1256, and actually accomplished it, in the space of seven years. They borrowed from the canonical laws of Spain, all those parts of the new code which relate to matters of a religious nature. Those which relate to civil and criminal matters, were taken from those usages and customs which the lawgiver thought fit to preserve, but principally from the Roman laws, which the compilers freely translated almost literally, although they carefully avoid confessing that fact.<sup>5</sup>

Owing to the perpetual wars and revolutions by which Spain was agitated, the laws of the Partidas were not promulgated until the year 1343, during a session of the Cortez held at Alcala de Henares, under the reign of Alphonso the XI. And even after their promulgation, the death of that prince prevented them from going into full operation until the year 1505, when Ferdinand and Joanna gave them their sanction, at the Cortez held that year in the city of Toro.

The laws of the Partidas are divided into seven parts, *Siete Partidas*: from this division, this code takes its name. Each part is divided into titles, and each title subdivided into laws. The first contains the canonical laws and liturgy of the Catholic church. The second is a summary of the ancient usages and customs of the

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5. The compilers often speak of the ancient sages, *Sabios Antiguos*, whose maxims they borrowed, and by referring to the Civil laws, it is evident that the sages alluded to, are the Roman jurists [note a, at viii].

Spanish nation, and of the rules of its government, and political administration.<sup>6</sup> The 3d, 5th and 6th Partidas, contain an abridgement of all the principles and maxims of the Roman laws, on the subject of actions, suits, judgments, contracts, successions, testaments, minority, and tutorship; together with decisions on points which had been considered as doubtful, by the commentators on the civil law. The 4th is a compendium of the laws relative to betrothings and marriages, and of those which treat of the social relations of man, as regards paternal power, legitimate and illegitimate filiation, freedom, slavery, and enfranchisement. The 7th treats of crimes, offences, and punishments, and concludes, as do the Pandects, by two titles, the one, on the signification of words, and the other on the rules of law.

Since the promulgation of the Partidas, some of its provisions have been abrogated, or amended by subsequent laws, particularly by the laws of the Recopilacion of Castille, of which we shall presently speak. But these alterations have not, in any way, changed the great principles of natural law, contained in the Partidas. They relate to certain laws only of a positive nature, which nations establish, modify, and repeal, as their wants, interests, or situation may require.<sup>7</sup>

The Partidas may therefore be considered as containing the fundamental principles of the laws of Spain. And when we reflect that they were compiled amid the tumult of arms and almost perpetual wars waged by that kingdom against the Moors, and in an age when most of the states of Europe were without any regular systems of jurisprudence, our admiration of this code is raised to the highest pitch. Yet we should reflect that even at that time, the Spaniards were preparing themselves to act the wonderful part they sustained under the reign of Ferdinand and Isabella, and the still

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6. As these two first parts have no relation to our system of government, they have not been translated [note a, at ix].

7. As we proceed with the translation of the laws of the Partidas, we shall point out the alterations they have undergone, from laws of a subsequent date [note a, at x].



more brilliant one of Charles V; that the spirit of chivalry had already softened the asperity of early manners; that the Moors had introduced in Spain, the arts, and the love of letters, which they had brought over with them from Africa, and that the pandects of Justinian had, some time before, been found at Amalfi, and were everywhere studied, so as greatly to facilitate the execution of this work.

A learned writer<sup>8</sup> speaking of the *Partidas* observes,

“we find in every page of that work the highest wisdom, and the most stern justice. It gave to the monarch under whose auspices it was executed, titles more just to the epithet of wise, bestowed upon him by his contemporaries, than his astronomical researches, and physical knowledge, however surprising the one and the other may have been considered, in an age, when all studies were so much disregarded. It is in that precious code, that we must seek the early treasures of the Spanish language; there we shall find the characteristic features of that idiom, at a time when it retained, yet a simplicity, and turn, and form of expression, which gave it more freedom and ease than it now possesses, though written in an age, when the language yet unpolished, preserved much of its primitive rudeness. We however perceive in the style of the work, a grace, a facility, worthy the elevated sentiments that pervade it; and in spite of some defects, we believe, that the Spanish language, such as it was, when the *Partidas* were compiled, had already arrived to a degree of perfection which the Italian writers did not attain till many years after.”

In the *Partidas* are contained these remarkable words: “despotism tears the tree up by the roots; a wise monarch prunes its branches.”

We shall pass rapidly over the different laws and ordinances promulgated in Spain after the appearance of the *Partidas*, until the

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8. *Dictionnaire Historique*, edition of 1810, vol. 1, p. 237, verb. Alphonso [note a, at xi].

promulgation of the Recopilacion of Castille, as all those laws and ordinances are to be found in that work.

During the period which elapsed from the commencement of the Partidas, to their first publication in the Cortes of Alcala in the year 1348, the laws relative to the forms of legal proceedings (*del Estilo*) made their appearance in the year 1310. That work contains two hundred and fifty laws, not divided however, into books or titles. Most of them relate to suits civil and criminal; to those who are parties to them; to the proofs to be given, as well as to the formalities to be observed in conducting them. It is for that reason they are called the laws of judicial proceedings, because they relate to the usages and customs of courts, and to the manner of conducting causes in them.

Since the publication of the laws of the Partidas, at the Cortes held at Alcala, and particularly since the Cortes of Toro in 1505, several laws and rescripts were published, as circumstances required. When their numbers increased, they were, at several epochs collected in one or more volumes, in virtue of a royal ordinance which gave them a legislative sanction. It was then that the ordinance of Alcala, the laws of Toro, and the royal ordinance were published.

The ordinance of Alcala (*El ordinamiento de Alcala*) appeared in 1348, the very year the Partidas were first published. This ordinance is divided into 32 titles, and each title is subdivided into laws, relating to the manner of proceeding in courts; regulating certain contracts and wills; and providing for the suppression of crimes, and their punishment by adequate penalties.

The laws of Toro, (*Las leyes de Toro*) eighty in number, were published at the Cortes held in the city of Toro, in 1505, with a view to regulate the forms to be observed in making wills; to establish rules relative to testamentary successions, and successions *ab intestato*; to fix the donations of the third and fifth

parts;<sup>9</sup> the manner of succeeding to estates by the law of primogeniture in Spain, and the alimony due from the father to his illegitimate children. These laws are inserted in the Recopilacion of Castille, in the titles in which they are classed, according to their order.

The Royal Ordinance (*El ordinamiento real*) made in imitation of that of Alcala, was sanctioned, and published by Ferdinand and Isabella in 1496. Don Juan Sala<sup>10</sup> pretends that this ordinance has never received the royal sanction, though it appears to have been drawn up in obedience to the order of the sovereign. But this opinion is not embraced by other Spanish writers, among whom the author of the theatre of Spanish legislation, positively asserts, that the Royal Ordinance was authorised and published by Ferdinand and Isabella.

Without deciding this controversy, it will suffice to observe, that all the Spanish jurists agree that in the tribunals of Spain, this ordinance, of which the greatest part has been inserted in the Recopilacion of Castille, is received as the highest authority. It is divided into eight books, which are again divided into titles.

We have now arrived at the code of laws, the Recopilacion of Castille (*Las leyes de Recopilacion*) which completes the system of Spanish legislation. It was published in the year 1567, under the authority of Philip II, who gave it the legislative sanction, and caused to be inserted in it the laws of the ordinance of Alcala, and those of the Royal Ordinance, which had not been repealed as well as the whole of the laws of Toro, and those which had been promulgated in the intervening period. From the year 1567 to 1777, several new editions of the Recopilacion have appeared, to

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9. Donations which a father or mother might make of a part of their estate, to some of their children, to the prejudice of the others—these were called donations of the third and fifth part, because they could not exceed these proportions [note a, at xiii].

10. *Ilustracion del derecho Espana*. Preliminary remarks, vol. 1, p. 12 [note b, at xiii].

which the different laws, edicts and recripts published since its first promulgation, have been added at different times.

The title of Recopilacion (*compilation*) was equally given to the (*Autos Accordados*); that is to say the edicts and orders in council, which the king sanctioned and caused to be published by virtue of a Royal Decree, in one volume, divided into books and titles, in the same order which had been observed in the publication of the Recopilacion of Castille. This work was published for the first time, in the year 1745, and now forms the last volume of the Recopilacion, with which it has been incorporated, in the 4th edition, with some unimportant additions. The two works are each composed of nine books, divided into various titles.

The most important book of the Recopilacion is the 5th, which treats of marriage and dowry; of the single and married life; of wills and successions; of the mode of dividing estates; of donations of the third and fifth parts; of the property and gains acquired by the husband and wife during marriage, and of the cession of goods by debtors.

Spain possessing immense dominions in North and South America, felt the necessity of regulating the government of those provinces, and of securing, by general and permanent laws, the obedience and welfare of the nations who inhabited them. The scattered laws therefore which had been promulgated for that purpose, at different periods, were collected, and digested by order of Phillip IV. in the same form as the Recopilacion of Castille, under the title of the Recopilacion of the Indies, (*La Recopilacion de las Indias*) and published in the year 1661.

We have thus given a concise view of the history of Spanish jurisprudence, as relates to spiritual and temporal matters. It is, however, proper to remark that the different codes, of which we have spoken, contain only general principles of law, leaving all questions which arise, concerning commercial and maritime affairs, to be decided by local laws. The Consulado del Mare, governs in all those ports in Spain, which are situated on the

Mediterranean sea, where also the Capitulations of Barcelona are observed in all matters relating to insurance; while the Ordinance of Bilbao is the law in all maritime causes arising on the shores of the Atlantic. Commercial and maritime controversies, arising in the Indies, form a third class, and are governed by what is called the *Contractacion*, or Consulate of Seville and Cadiz, and by the ordinances and regulations of the Supreme Council of the Indies.<sup>11</sup>

After this short account of the several codes of the laws existing in Spain, it is now proper to say something of the degree of authority, they respectively enjoy, in the tribunals of that country; and especially in what manner they are to be received, and enforced in the courts of this state, in matters of a civil nature.

The third law, title 1st, book 2d, of the *Recopilacion* of Castille, prescribing the manner in which the laws of that code, of *Partidas* and of other codes, are to be observed, declares that the first in order, are the laws of the *Recopilacion* of Castille, and those that have been subsequently enacted: next the laws of the *Fuero Real*, and the municipal customs; and finally, the laws of *Las Siete Partidas*. This law does not speak of the *Recopilacion* of the Indies, which was not compiled until long after the promulgation of the *Recopilacion* of Castille.

Murillo, an able Spanish law writer, speaking on that subject in his treatise entitled *Cursus Juris canonici, Hispani et Indici*, after having repeated what is said in law 3d, title 1, book 2 of the *Recopilacion* of Castille, says that the laws of the *Recopilacion*, of Toro, and the *Partidas*, ought to be enforced by judges, in all causes submitted to their decisions, even when it is alledged, that they have not been usually observed in the place. But that when the authority of the *Fuero Real* and of the laws of *Estilo* is invoked, it is necessary to prove that they are conformable to the usages of the

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11. Azum's Maritime Law, vol 1, p. 404, No. 5 [note 1, at xvi].

place, unless they be found in the *Recopilacion*; for then it is only necessary to plead them.<sup>12</sup>

Murillo speaks likewise of the manner in which the Spanish laws ought to be received in both Indies. On that subject he says, that in the Spanish dominions in the Indies, courts of justice should first have recourse to the Royal and Special Edicts (*Cedulas*), which may have been directed to the chancery of the city or place where the cause is pending; and if there are none, they should then decide according to the common law, which is to be found in the laws of the *Recopilacion* of the Indies: and where these last are silent, recourse must be had to the *Recopilacion* of Castille and the *Partidas*. This author also observes, that the rescripts, or Royal Ordinances, are of no authority in the Indies, unless they have been directed to Supreme Council of these countries: and finally he thinks (what must be considered as a general rule for all the Spanish dominions, either in Europe or in the Indies) that when all the royal laws are silent, it is better for judges to have recourse to the commercial than the civil or Roman laws; because it was formerly enacted in Spain, that whoever would cite in court the Imperial or Roman laws, should suffer death;<sup>13</sup> and that therefore, the civil law could not be cited, as a law, but only as written reason. Murillo, Vol. 1, No. 23, p. 9.

It remains now to state, how it happened, that the laws of Spain, are still in force in Louisiana, since its transfer to the United States of America.

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12. Such is the opinion of Azevedo, in his commentaries on the *Recopilacion* of Castille. This appears to be now a settled point, notwithstanding there are some authors who support the contrary doctrine. So likewise it has been determined, by the supreme court of this state, in the case of Pizerot vs. the heirs of Meuillon, 3. Mart. Rep. page 120 [note a, at xvii].

13. It appears that much of the rigor of the ancient laws of Spain on this subject, has ceased, as the study of the civil law, was tolerated in the Universities of that kingdom, even previous to the Edict in Council (*Auto*) of the 24th May 1774, which ordered, that the Royal Code, or Statute, should be taught in the Universities, together with the Roman laws. Auto 3, tit. 1, book 2, of *Los Autos Accordados* [note a, at xviii].

The customs of Paris and the ordinances of the kingdom, were observed in Louisiana, while it remained under the dominion of France, and by them all civil and criminal suits were determined. Justice was administered by a Supreme Tribunal composed of several judges, called the Superior Council, (*Le Conseil Superieur*) and one attorney general. This state of things, existed until the month of August 1769, when count O'Reilly took possession of that country, in the name of the king of Spain, in virtue of the treaty of cession, which France had made to that power. It is well known, that this treaty, though concluded and signed on the 3d of November 1762, was not made public before the 23d of April 1764; and that Spain did not take actual possession of the country before the year 1769, when count O'Reilly arrived, vested with extraordinary powers, and at the head of three thousand regular troops. The disaffection which the inhabitants of the country manifested when they heard of the treaty of cession, and that they were to pass under a foreign government; and the opposition which they intended to make, as it was supposed, to the landing of the Spanish troops when they arrived at the mouth of the Mississippi, gave rise to excessively rigorous measures against them, on the part of O'Reilly; one of which was to cause to be arrested, twelve of the most respectable citizens of New Orleans, six of whom paid with their lives, for the affection which they had shown for their mother country,<sup>14</sup> while the others were thrown into dungeons at Havana. It was under these circumstances that O'Reilly issued a proclamation, changing the form of the government of Louisiana, abolishing the authority of the French laws, and substituting those of Spain, in their stead.<sup>15</sup> This proclamation which was

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14. The father of James Villere, the present governor of this state was among the number of the victims [note a, at xix].

15. As this proclamation has become very scarce, we here insert a translation of it.

*“Don Alexander O'Reilly, Commander of Benfagan of the Order of Alcantara, Lieutenant-General of the Armies of his Majesty, Inspector General of the Infantry, and by Commission, Captain General of the Province of Louisiana.*

accompanied by an ordinance, establishing the several branches of the new government of Louisiana, and defining their respective powers, appears to have been published on the 26th November 1769. From the time of its promulgation until now, the French laws ceased to have any authority in this country, and all controversies were tried and decided conformably to the Spanish laws, by a

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“Whereas, the prosecution which took place in consequence of the rebellion raised in this colony, have fully proved, the part and the influence the council had therein, by supporting contrary to their duty, acts of the greatest atrocity, while it was incumbent on them, to have used their endeavours, to maintain the people in that fidelity and subordination, which they owe to their sovereign; for these reasons, and wishing to prevent such evils for the future; it has become indispensable, to abolish said council, and to establish in its stead, the form of the political government, and administration of justice, which our wise laws prescribe, and by all which all the states of his majesty in America, have ever been maintained in the most perfect tranquility, content, and subordination. For these considerations using the powers, which the king our Lord; (whom may God preserve) has confided in us by a patent, issues as Aranjuez the 16th of April of this year, to establish in the army, the police, and in the administration, of justice, and of his finances, that form of government, dependance and subordination, which is consonant with his service and the happiness of his subjects in the colony; we do hereby establish in his royal name a city council or *cabildo*, composed of six perpetual regidores, agreeably to the law 2d. tit. 10, book 5, of the *Recopilacion* of the Indies, and among whom shall be distributed the offices of *Alfarez Royal*, *Alcalde*, *Mayor Provincial*, *Alguazil Mayor*, depositary general, and receiver of the *Penas de Camara* or fines accruing to the *Fisc*: and these shall elect on the first day of every year, two judges who shall be called, ordinary *alcaldes*, a *syndic*, attorney-general, and an administrator of the city rents, and taxes, such as they are established by our laws, for the good government, and administration of justice. And whereas the want of lawyers in this country, and the little information these new subjects have of the laws of Spain, may render their faithful observance very difficult, which would be entirely contrary to the intention of his majesty, we have thought it useful, and even necessary, to cause an abstract of these laws, to be formed, in order to serve for the instruction of the public, and as elementary rules for the administration of justice, and municipal government of this city, until the knowledge of the Spanish language can be introduced, and thereby afford to every one, by the reading of these laws, the means of extending their information in that matter; and therefore, and under the good pleasure of his majesty, we do order and command, that all judges, *cabildoes*, and their officers, do comply punctually with that, which is prescribed in the following articles. (here follows the ordinance establishing the new government, and their powers, all terminating with this subscription.)

“At New Orleans, on the 25th of November 1769.

“Signed) DON ALEXANDRE O’REILLY,

“Printed by order of his excellency Francois Xavier Rodriguez, secretary to the expedition.” [note a, at xx].



tribunal; of which the governor was the only judge, though he was bound to take the advice of a lawyer (*lettrado*) appointed and commissioned to that effect, by the king of Spain, and called the Auditor of War. From all the judgments of the governor's tribunal, there was an appeal to the Royal Audience, sitting at Puerto Principe, in the Island of Cuba, and presided by the capt. general of that Island.

The return of Louisiana under the dominion of France, and its transfer to the United States, did not for a moment, weaken the Spanish laws in that province. The French, during the short continuation of their power, from the 30th November to the 20th December 1803, made no alteration in the jurisprudence of the country; and the government of the United States, left the task of legislation to the people of Louisiana themselves, giving to them, the right to make whatever changes they might deem necessary in the existing system of their laws, (see sect. 11, of the act to divide Louisiana into two territories, passed by Congress on the 26th of March 1804, and the fourth section of another act passed the 2d March 1805, to provide for the government of the territory of Orleans. See likewise sect. 4 of the schedule annexed to the constitution of this state.)

However the legislature of the territory of Orleans, as early as the year 1807, considering that the ancient laws secured to the inhabitants of Louisiana by the acts of Congress, were written in a foreign language, and contained in books difficult to be procured, ordered a digest of those laws to be made and prepared in the English and French languages, by two jurisconsults. This digest was adopted, by an act passed the 31st March 1808, but was not promulgated before the month of November of the same year, when printed copies of it were officially sent to all the tribunals of the territory of Orleans. This code commonly known under the name of the Civil Code, is therefore become a part of our statute laws. But it is easy to perceive, that a work of that nature, however excellent it may be, can only contain general rules and abstract

maxims, still leaving many points doubtful in the application of the law; hence the necessity of going back to the original source, in order to obtain new and additional light. It was moreover perceived that the Civil Code did not contain many and important provisions of the Spanish laws still in force, nor any rules of judicial proceedings; that the statutes regulating these proceedings had proved insufficient; and that the Superior Court had in divers instances, and particularly in the case of *Cottin vs. Cottin*, *Martin's Rep.* vol. 5, p. 93, determined that the Spanish laws "must be considered as untouched, whenever the alterations and amendments introduced in the digest do not reach them; and that such parts of those laws only are repealed, as are either contrary to, or incompatible with the provisions of the code." It thus appeared that a much greater portion of the Spanish laws remained in force than had been at first supposed. It was then doubtless the desire of the legislature to spread generally the knowledge of such of these laws, as are not to be found in the Civil Code, or in the digest of our statutes, that induced them to make provisions for the printing of this translation. They felt the force and justice of that acknowledged rule of reason that in order to enforce obedience to the laws, it is necessary that they should be fully understood by the people.

The plan pursued by the translators in this work is very simple. Each title of the *Partidas*, is preceded by a list of the titles of the Roman and Spanish laws, and of the Civil Code, relative to the subject it treats of, together with an index of the articles therein contained.

Each law is accompanied by a note, referring to the corresponding laws of the *Recopilacion*, and of the *Autos Accordados* according to the quotations contained in the edition of the *Partidas*, published with the commentaries of Gregorio Lopez. The *Recopilacion* of Castille will be designated by the letter R, followed by Arabic ciphers, the first designating the law, the second the title, the third the book referred to. The *Autos*

*Accordados*, will be designated by the word *Auto*, followed by the number of the law, title, and book, cited.

The laws in accordance, or at variance, with those of the Civil Code, are likewise accompanied by notes, referring to the provisions of the latter, which treat of the same subject. The Civil Code will be designated by the letter C, followed by ciphers, the first designating the law, the second the title, and the third the book. When no reference is made to the Civil Code, it is to be inferred, that it contains no law similar to that of the *Partidas*.

As it is often a difficult task, even for lawyers, to determine, whether a law is in force or not, the translators have thought proper to give the translation of all those laws which have not been expressly repealed by the legislature, or which are not repugnant to the constitution of the United States, or to that of this state, leaving to the proper tribunals to determine whether they are in force or not.

When a proper term could not be found in the English language, to render the legal sense of a Spanish word, the translators have made use of the Spanish word itself, after giving an explanation of it, whenever its meaning is not set forth in the law, in which it is used. And when the term could not be translated by one precisely equivalent in English, the word in Spanish is given between parenthesis, in order that the reader may determine for himself.

When the notes found in various parts of this translation, are quoted from Spanish authors, the names of such authors are given.

Those which are not accompanied by any name, are the notes of the translators themselves.

Such is the plan adhered to in this translation, which will be terminated by a general index of all the matters contained in the two volumes of which it will consist. The particular care and attention which the translators have bestowed, in order to render this work as perfect as possible, will, they hope, secure to them, the praise of having faithfully discharged the honorable task imposed

on them by the legislature. They will consider themselves as fully rewarded for their labour, if they are so happy as to have been the means of making the public acquainted with the justly celebrated code of the Partidas, which, if it is not the best, is certainly equal to any the world has ever seen.