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The Louisiana Civil Code in French: Translation and Retranslation

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THE LOUISIANA CIVIL CODE IN FRENCH: TRANSLATION AND RETRANSLATION^α

Olivier Moréteau*

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^α This paper was first published in French under the title *Le Code civil de Louisiane, traduction et retraduction*, 28 INTERNATIONAL JOURNAL FOR THE SEMIOTICS OF LAW, 155–175 (2015). It was translated into English by three Nantes students (Mélissa Richard, Charlotte Rocher, and Marie-Laure Troadec) as a Master of Trilingual Legal Studies project in 2013–2014. The translation was revised by Sara Vono, former Nantes student, CCLS Intern and LL.M. LSU, before a full makeover by Christabelle Lefebvre who worked on the final translation. Edits and updates are of the author, who thanks the translators and everyone taking part in this exciting project, especially Jason Maison-Marcheux, Matt Boles, and Sara Vono at the final stage. All are grateful to the FACE Foundation, Supporting French-American Cultural Exchange in Education and the Art, for its generous support.

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ABSTRACT

The first codes of Louisiana (1808 and 1825) were written in French and translated into English. When the Civil Code was revised in 1870, it was written in English only. Recent revisions, all in English, aim at promoting a civilian vocabulary that differs from that of the common law. This article discusses the translation of the Louisiana Civil Code from English to French in the context of the steep decline and limited revival of the French language usage in Louisiana. It explores the purpose and the implementation process of the translation project, detailing every step, and identifying linguistic and legal challenges as well as resources relied on. With the objective of producing a truly Louisianan translation, translators used original French sources to discover what the legislator intended the law to mean. The process may then be described as a retranslation, aiming at reviving the original language. Where texts have been substantially rewritten, yet still reflecting civil law logic and style, the translation aims at echoing the spirit of the Code. However, in the several occasions where the drafters borrowed common law substance and style, the civilian spirit no longer vivifies the translation, as it is obscured by an overabundance of language.

RÉSUMÉ

Les premiers codes de Louisiane (1808 et 1825) furent rédigés en français et traduits en anglais. À l'occasion de la révision de 1870, le Code civil fut publié en anglais seulement. Les révisions récentes, bien sûr en anglais, veillent à promouvoir un vocabulaire civiliste qui se distingue de celui de la common law. Cet article discute le travail de traduction du Code civil de Louisiane de l'anglais vers le français dans le contexte du profond déclin et d'un réveil limité de la francophonie en Louisiane. Il explore l'intérêt du projet

et sa mise en oeuvre, détaillant chaque étape et identifiant les difficultés linguistiques et juridiques, ainsi que les ressources utilisées. L'objectif étant de produire une traduction authentiquement louisianaise, la traduction remonte aux sources françaises originelles chaque fois que le texte a peu évolué ou a été reproduit, afin de retrouver la lettre des origines, dans un processus de retraduction. Lorsque les textes ont été substantiellement réécrits mais restent dans la logique et la stylistique du système civiliste, la traduction se veut fidèle à l'esprit des origines. En revanche, lorsque le législateur emprunte la substance et le style de la common law, comme il le fait parfois, la lettre surabondante vient tuer l'esprit civiliste qui peine alors à vitaliser la traduction.

In the loving memory of Ti-Jean Hernandez,
Ami passionné de la francophonie^β

Louisiana's jurilinguistic history is unique. In 1812, the Territory of Orleans became the 18th state to be admitted in the Union, changing its name to Louisiana. It consisted in the southern tip of the huge territory of Louisiana, which had been sold by France to the United States of America in 1803. A Civil Code had been adopted, written in French and translated into English: first in the form of a bilingual Digest of the Civil Laws (1808), and later in the form of a bilingual Civil Code (1825) after substantial rewriting. The text was entirely revised in 1870, but was only published in English. Until very recently, even though the Civil Code has been extensively revised over the last decades, a French translation of the Civil Code did not exist. The effort discussed in this article is a true work of translation, since all new developments were translated from English to French. It is also a work of retranslation, at least in regard to

^β This article is a tribute to the memory of John "Ti-Jean" Hernandez III (1968-2012), the late President of the Francophone Section of the Louisiana State Bar Association, who, along with his father John A. Hernandez, Jr., worked with passion and success to the establishment of international relations with bar associations in Belgium, Canada, France, and Haiti. The author would like to thank Jean-Claude Gémard and Anne Wagner for encouraging him to write this article and Alexandru-Daniel On, Michael McAuley, and Robert A. Pascal for their help in its realization.

sections of texts originally written in 1808 or 1825. The current English translation of these parts is simply a by-product of a translation from French into English.

In the wake of the French codification, Louisiana was the first region in the world to adopt a civil code, the first of its kind in the Western hemisphere. This bilingual Code was adopted in a still largely monolingual territory. Written in French, the Code was translated into English and enacted in both languages to be accessible to the many English-speaking Americans who migrated to New Orleans after the Louisiana Purchase in 1803. After the Civil War, many Louisianans were bilingual. Despite this, the government of Louisiana imposed the use of the English language. Consequently, the Civil Code was revised, and in 1870, was published in English only. Although the French language lost its prevalence in Louisiana, civil law was preserved, but in English.

The first part of this article explains the transition from a bilingual code to a monolingual code. This is a paradoxical evolution since Louisiana was mostly French speaking when the bilingual Code was introduced and when the Code was completely translated into English Louisianans were bilingual. The second part questions whether the project of (re)translation of the Louisiana Civil Code from English to French coincides with a return to bilingualism.

The Louisiana Civil Code translation project, conducted by the Center of Civil Law Studies at Louisiana State University (LSU), will render the Code more accessible to the francophone minority, who inevitably became bilingual. It is now, in fact, impossible to participate in the social and economic life in Louisiana without speaking English. As such, Louisiana's institutional discourse mostly favors the promotion of French in its cultural, economic,¹

1. The website of the Council for the Development of French in Louisiana (CODOFIL, <www.codofil.org>, last consulted on June 20, 2016) states the following: According to the 1990 census, approximately 250,000 Louisianans responded that French was the main spoken language in their homes. The 2000 census showed 198,784 Louisiana francophones over the age of 5, including 4,470 who speak Creole French. The Council for the Development of

and touristic endeavors. Therefore, the purpose of this project should not be viewed as an attempt to entice a return to bilingualism. Despite a warm welcome by the French-speaking population of Louisiana, especially members of the Francophone Section of the Louisiana State Bar Association, the translation of the Code into French will likely have a limited local impact due to the universal use of English in Louisiana today.

Though not as extensively as Canada, Louisiana contributes significantly to the translation of legal texts. Until now, translation efforts supported by the state moved from French into English: translation of Codes written in French in the 19th century, translation of French legal literature classics to inform legal thinking in Louisiana. The current 21st century project discussed in this paper reverses the tide. This time translation goes from English into French.

Contrary to custom, even if it may be unwise of the author to comment on his own work at the risk of having it labeled as a manifesto or propaganda, the author will offer a series of reflections, which may ultimately help critics and commentators. To this end, he offers a brief survey of the French language and of Louisiana's civil law tradition, and positions the project in the context of other Louisianan translations.

As of today, more than 75 percent of the Louisiana Civil Code has been revised. Three types of provisions can be identified and all three will be discussed in the final part of the article. Firstly, some provisions were not retouched at all or were only slightly revised. Translators abided by the letter of the law and restored the original French, refraining as much as possible from retranslating. Secondly,

French in Louisiana was created in 1968 by the Louisiana state legislature. The scope of the act was to preserve the already existing francophone core in Louisiana. According to Legislative Act No. 409, the Governor of Louisiana is authorized to appoint the president and fifty members of the Council. CODOFIL is empowered to "do any and all things necessary to encourage the development, utilization, and preservation of French, as found in Louisiana for the greatest cultural, economic and touristic benefit of the state.

Then, the name of the agency became the Council for the Development of French in Louisiana.

many Code articles were rewritten in an effort to facilitate the convergence with the common law of neighboring states while being loyal to the civil law tradition. Translators were faithful to the spirit of the law by using clear and concise language. Thirdly, some articles were directly borrowed from the legislation and jurisprudence of other states. They resemble more to statutes as opposed to articles of the Civil Code mirroring common law both in form and in substance. When this occurs, the spirit of the civil law tradition is no longer present in the text and we find it difficult to see how it could vivify the work of translation.

I. FROM A BILINGUAL CODE IN LARGELY MONOLINGUAL LOUISIANA TO A MONOLINGUAL CODE IN BILINGUAL LOUISIANA

Louisiana was only briefly a French colony (A), which did not prevent French to prosper until the Louisiana Purchase in 1803. Beyond that, the language continued to flourish until the materialization of the two bilingual civil codes promulgated in 1808 and 1825 (B). On the other hand, despite the fact that Louisiana was mostly bilingual, the 1870 and the 20th century revisions were monolingual (C).

A. French Louisiana: A Brief History

In 1682, Cavelier de la Salle took possession of Louisiana in the name of French King Louis XIV.² As of 1699, France took political control of vast territories from the Great Lakes to the Gulf of Mexico and all the way to the Rocky Mountains. Accordingly, French law was introduced three centuries ago, when King Louis XIV of France signed a letter patent on September 14, 1712, providing that all laws applicable in Paris and its province, including Edicts, Ordinances

2. BERNARD LUGAN, HISTOIRE DE LA LOUISIANE FRANÇAISE 1682–1804 (Perrin 1994); FRANCOIS-XAVIER MARTIN, THE HISTORY OF LOUISIANA (Lyman & Beardslee 1827; reprint Gretna: Pelican 2000).

and Customs, were applicable to Louisiana.³ New Orleans was founded in 1718 and became the most important seaport of the Western Hemisphere. At the end of the Seven Year's War, France ceded Louisiana to Spain (Treaty of Fontainebleau, 1762). Consequently, in 1769, Spanish law officially replaced French law. Years later, in 1800, Napoleon Bonaparte repossessed Louisiana during twenty days without re-establishing French law and then ceded Louisiana to the United States (Louisiana Purchase, 1803).

Immediately after the Louisiana Purchase, civil law was maintained insofar as it was compatible with the Constitution of the United States (Act of Congress of 1804). The Territory of Orleans, later to become the State of Louisiana (1812), was separated from other sold territories with at its head Governor Clairborne, and a legislative council of thirteen members appointed by the President of the United States. In 1806, James Brown and Louis Moreau-Lislet, two prominent jurists who mastered the French and Spanish languages, were mandated to write a civil code. Within less than two years, they produced a code, which was renamed *Digest* when voted into law.⁴

B. The Codification of 1808 and 1825: The First Bilingual Codes

The *Digest of the Civil Laws Now in Force in the Territory of Orleans* was enacted on March 31st, 1808, and published in a bilingual edition with the English text on the left page and the French text on the right one.⁵ Although the text was written in French and

3. Olivier Moréteau, *Louisiana 1812–2012: 200 Years of Statehood and 300 Years of French Law Influence*, 59 LA. B. J. 325 (2012) [hereinafter *Louisiana 1812–2012*].

4. VERNON VALENTINE PALMER, *THE LOUISIANA CIVILIAN EXPERIENCE, CRITIQUES OF CODIFICATION IN A MIXED JURISDICTION* 10–15 (Carolina Academic Press 2005) [hereinafter *THE LOUISIANA CIVILIAN EXPERIENCE*]; Moréteau, *Louisiana 1812–2012*, 325 *supra* note 3.

5. The *Digest* is available online, on the LSU Law Center website <<http://www.law.lsu.edu/clo/digest-online/>>, last consulted on June 20, 2016. The French original text and the English translation can be separately or jointly seen on the same screen. The two versions have been typed from the first edition of 1808, printed in

was hurriedly translated into English, the act placed both versions on equal footing, most probably in order to reassure the new immigrants. Although it was organized as a code, the text is called *digest* because it did not substitute the pre-existing law. Spanish law, which was still in effect before the Purchase, therefore remained in force. In fact, the law only abrogated Spanish texts that contradicted the Digest. As a consequence, whenever a more detailed explanation could be derived from Spanish compilations or Roman law, judges used these historical sources for interpretation, unless they were convinced that there was a contradiction between the Digest and the previous texts.⁶ This gave rise to complex court debates. As such, it inevitably defeated the purpose of the Digest, which was to clarify the law and end the need to resort to foreign languages (including Latin) in Louisiana legal practice.⁷

This discussion illustrates the Spanish origin of the Digest⁸ and explains the state of confusion in Louisiana during the years following the first codification. Contrary to what had been done in France, the Louisiana legislature did not intend to break with the past, which is the reason why earlier law was not systematically repealed. To remedy the confusion, the Civil Code of 1825 abrogated all laws, which were in place when Louisiana was ceded to the United States (art. 3521), “in every case, for which it has been especially provided in this Code.”

The texts of 1808 and 1825 are comparatively similar, and the structure is comparable to the one used in the French Civil Code. The framework of the French Code was adopted because it mirrored

New Orleans by Bradford & Anderson. The formulation and the orthography of the period were strictly followed, only the obvious typing errors have been eliminated. This project, conducted by the Civil Law Center at LSU, marked the commemoration of the bicentenary of the Louisianan codification of laws, in 2008.

6. *Cottin v. Cottin*, 5 Martin (o.s.) 93 (La. 1817).

7. Act of March 31, 1808, No. 120, 1808 La. Acts 126.

8. Though the text received significant French influence, not only in form but also in substance: see JOHN W. CAIRNS, *CODIFICATION, TRANSPLANTS AND HISTORY: LAW REFORM IN LOUISIANA (1808) AND QUEBEC (1866)* (Talbot Publishing 2015), and book review by Olivier Moréteau, 4 *COMPARATIVE LEGAL HISTORY* 94 (2016).

the Institutes of Gaius and, hence, the civilian tradition. When drafting the Code, the substance of articles was borrowed or reused each time the French Code or its project offered a similar solution to that of Spanish law,⁹ causing the Louisiana Code to be described as “a Spanish girl in French dress.”¹⁰ For example, remnants of Spanish law were used when Spanish and French law differed such as in cases involving issues of alimony, marital portion, and matrimonial regimes. Careful historical analysis proves, however, that the drafters at times opted for the French solution when more suitable than the Spanish one, for instance when deciding to end the *patria potestas* once the child reached the age of majority.¹¹ The use of Spanish law during the Digest period points to its historical continuity, whilst the Louisiana Code can largely be described as the first codification of Spanish law.¹² Spanish sources were quoted so often that they had to be translated into English.¹³

This contributed to the creolization of Louisianan culture. The codification of Spanish laws in French and in English was enacted for a predominantly French-speaking population, which also spoke Spanish, English, and Creole.

C. The 1870 and the 20th Century Revisions: The End of Bilingualism

Following the abolition of slavery, the Civil Code of 1825 was substantially modified. The revision was entrusted to John Ray, who

9. Robert A. Pascal, *Sources of the Digest of 1808: A Reply to Professor Batiza*, 46 TUL. L. REV. 603, 606 (1972); Thomas J. Semmes, *History of the Laws of Louisiana and of the Civil Law*, 5 J. CIV. L. STUD. 313 (2012).

10. Robert A. Pascal, *Of the Civil Code and Us*, 59 LA. L. REV. 301, 303 (1998) [hereinafter *Civil Code and Us*].

11. CAIRNS, *supra* note 8, at 204–217.

12. Olivier Moréteau & Agustin Parise, *Recodification in Louisiana and Latin America*, 83 TUL. L. REV. 1103, 1104 (2009) [hereinafter *Recodification*].

13. LOUIS MOREAU-LISLET & HENRY CARLETON, A TRANSLATION OF THE TITLES ON PROMISES AND OBLIGATIONS, SALE AND PURCHASE, AND EXCHANGE; FROM THE SPANISH OF LAS SIETE PARTIDAS (Roche 1818); RICHARD KILBOURNE, A HISTORY OF THE LOUISIANA CIVIL CODE 100–108 (Baton Rouge: Center of Civil Law Studies 1987, reprinted Claitor 2008).

had good knowledge of the Code, the legislation, and the case law.¹⁴ Subsequent legislation was integrated into the Code without changing its framework. The quality of English was also improved. In fact, the mistakes, which were numerous in the translation of 1825, were for the most part corrected. As a result, the English version was of better quality and encompassed strengths of three generations of civil law practice in English. From a jurilinguistic perspective, this would be interesting to study. However, the improvements of the English version were made at the expense of the French version, which was ultimately abandoned.

How do we explain the abandonment of the French language when Louisiana was still widely French speaking? Of course, the question caught the attention of many jurists, but it is one of cultural and historical nature. Jurists note that the legislature would have drawn conclusions from the “[f]ading of the French language and legal culture.”¹⁵ After the American Civil War, the use of English almost became universal in the political, legal, and administrative realms. Since there was an important decline in the citation of French and Spanish sources, some advocated for the outright abandonment of the civilian tradition. They suggested using the Civil Code as a mere statute, which is a legislative act to be interpreted against the backdrop of common law.¹⁶

As a general rule, English supremacy was imposed upon a population, which was still widely French speaking. Similarly to the situation in France, where secular and compulsory public education eradicated the practice of regional languages, the schooling of young Louisianans became compulsory in 1916 and was strictly in English. As such, the climate was unfavorable to the emergence of linguistic

14. JOHN RAY, *THE CIVIL CODE OF THE STATE OF LOUISIANA: REVISED, ARRANGED AND AMENDED* (Office of the Louisiana Intelligencer 1869).

15. Athanassios N. Yiannopoulos, *The Civil Codes of Louisiana in LOUISIANA CIVIL CODE* xlix–lxx, lix (A.N. Yiannopoulos ed., 2015).

16. *Id.*

rights, a concept unknown at the time.¹⁷ This decline particularly impacted the Cajun community. Many families gave up the practice of French hoping for an easier integration for their children into American society.

In fact, the evolution of Louisiana's constitutions mirrors this decline. The original Constitution of 1812, written in English and French, made it compulsory for all laws to be promulgated in English (art. 6 (15)) without imposing a French translation. This resulted in the unexpected decline and fall of the French language.¹⁸ Additionally, the Constitution of 1845 imposed bilingualism for the writing of the laws and the Constitution (art. 132). The Constitution of 1852 also imposed English (art. 100), while authorizing the use of French during legislative debates (art. 101). The provisions in favor of the French language disappeared with the Constitution of 1864. Furthermore, at the end of the Civil War, the Constitution of 1868 through article 109 imposed the use of English for the writing of laws and for judicial and legislative debates. As such, it was legally forbidden to impose the use of any language other than English in judicial proceedings. This provision was in force when the Civil Code of 1870 was promulgated.

The ban of the French language was lifted by the Constitution of 1879. According to article 154, in certain cities, the enactment of laws in French and their use for judicial announcements were permitted, though not imposed. Also, article 226 required that:

The general exercises in the public schools shall be conducted in the English language and the elementary branches taught therein; *provided* that these elementary branches may be also taught in the French language in those parishes in the State or localities in said parishes where the French language predominates, if no additional expense is incurred hereby.

17. The Universal Declaration of Linguistic Rights was only written in 1966 and it is impossible to find an equivalent to article 16 of the Canadian Charter of Rights and Freedoms in the state of Louisiana.

18. PALMER, THE LOUISIANA CIVILIAN EXPERIENCE, 16–18, *supra* note 4.

This was again required in the constitutions of 1898 (art. 251) and 1913 (art. 248). Theodore Roosevelt's battle cry "one nation, one people, one language" became reality in Louisiana. The Constitution of 1921 no longer referred to French, but imposed the use of English (art. 12(12)).

It was not until the current Constitution that we witnessed a timid official recognition of linguistic rights. The Constitution of 1974 makes it clear that "the right of the people to preserve, foster, and promote their respective historical, cultural, and linguistical origins is recognized" (art. 12 (4)). The Council for the Development of French in Louisiana (CODOFIL) had meantime been created in 1968 to promote the teaching of French as a second language and in immersion programs.¹⁹

As for legislative work, it is still exclusively produced in English, whether it is at the debating level, or at the ratification of the law. The revision of the Civil Code started in the 1970s and continued for several decades. It was prepared by the Louisiana Law Institute, which was created in 1938 with the specific purpose of promoting and encouraging ". . . the clarification and simplification of the law of Louisiana and its better adaptation to present social needs."²⁰ The choice was made to revise the Code title after title instead of undertaking a mere linguistic revision and updating it. The Louisiana State Law Institute also did not want to carry out a structural revision, which would have amounted to a recodification. More than 70 percent of the Code had been revised by 2008²¹ and the work is soon coming to an end. Over the years, the revision mobilized dozens of reporters and hundreds of members of the Louisiana State Law Institute, professors, judges, and lawyers who worked

19. 1968 La. Acts No. 409.

20. Law No. 166 July 2, 1938; William E. Crawford, *The Louisiana State Law Institute — History and Progress*, 45 LA. LAW REV. 1077 (1985); William E. Crawford & Cordell H. Haymon, *Louisiana State Law Institute Recognizes 70-Year Milestone: Origin, History and Accomplishments*, 56 LA. B. JOURNAL 85 (2008).

21. Moréteau & Parise, *Recodification*, *supra* note 12, at 1118.

in committees. Once finished and approved by the Council of the Institute, each draft is subject to a discussion and to a vote of the legislative assemblies.

It is often the case that when judges interpret contemporary provisions, which origins can be dated back to the Code of 1825 or to the Digest of 1808, they typically favor the French version. Indeed, they are no longer bound by the law of March 31st, 1808, which put the two linguistic versions on an equal footing. In a landmark decision,²² a federal judge insisted on the necessity to approach the text as a code and not as a statute.²³ He cited historical sources and precedents of the Louisiana Supreme Court, which before and after the Civil Code of 1870, stated that the French text should always prevail.²⁴

II. THE 21ST CENTURY TRANSLATION: A RETURN TO BILINGUALISM?

Though French appeared to be a dying language in Louisiana, a revival of the language is occurring in the Bayou State (A). Most notably, Louisiana contributes to the creation of a singular jurilinguistic heritage, while developing an English vocabulary of civil law that remains truly French in form and substance (B).

A. A French Renaissance in Louisiana

While Acadians and Quebeckers successfully fought for the defense and promotion of the French language and culture, Louisiana let it decline to a rich folklore. The creation of the Council for the Development of French in Louisiana (CODOFIL) in 1968, however, marked a cultural awakening. In fact, this linguistic identity was recognized in the Constitution of 1974. Today, the teaching of the

22. *Shelp v. National Surety Corp.*, 333 F.2d 431 (5th Cir. 1964).

23. Olivier Moréteau & Didier Lamèthe, *L'interprétation des textes juridiques rédigés dans plus d'une langue*, REVUE INTERNATIONALE DE DROIT COMPARÉ 327, 341–42 (2006).

24. *Phelps v. Reinach*, 38 La. Ann. 547 (1886).

French language and the development of immersion programs are encouraged.

Many Cajuns and Creoles contributed to the return of French. For example, Zachary Richard revives the language through songs. Also, the International Festival of Louisiana, and the Acadian and Creole Festival turn Lafayette into an important city for Francophone music. Additionally, Barry Jean Ancelet, who is known for his work on oral literature in French-speaking Louisiana, writes about the connections between language and culture.²⁵ At LSU, the Center for French and Francophone Studies develops interdisciplinary opportunities for learning in connection with official organizational representatives of the French-speaking world. I modestly contribute by teaching a class in French since 2010 (Introduction to French Law) at the LSU Law Center, which is also open to postgraduate students of the Department of French Studies. Amanda Lafleur, the coordinator for Cajun Studies at LSU, has contributed to the French Lexicography Database²⁶ created under the aegis of the *Agence universitaire de la Francophonie* (AUF). Dictionaries have also been published, including the outstanding *Dictionary of Louisiana French*.²⁷

Some law-related words can be found in the dictionary published in 2009. For example, one can find the verb “avocasser” (to plead a case), and the expressions “ça prend pas un avocat” (it is obvious; this does not require a lawyer) or “t’es pas proche un avocat” (you are not as smart as you think you are). Louisiana’s French word for courthouse is “maison de cour,” which is an interesting literal translation of the term. As for the word “code,” it cannot be found in the Dictionary of Louisiana French. In fact, the closest term to “code”

25. Barry Jean Ancelet & Amanda Lafleur, *La revitalisation endogène du cadien en Louisiane* in LE FRANÇAIS EN AMÉRIQUE DU NORD 411–437 (Albert Valdman, Julie Auger, Deborah Piston-Hatlen eds., Presses Universitaires de l’Université Laval 2005).

26. <<http://www.tfq.ulaval.ca/bdlp>>, last consulted on June 21, 2016.

27. ALBERT VALDMAN & KEVIN J. ROTTET, *DICTIONARY OF LOUISIANA FRENCH, AS SPOKEN IN CAJUN, CREOLE, AND AMERICAN INDIAN COMMUNITIES* (University Press of Mississippi 2009).

(found in the 1993 Dictionary of Cajun Language by Daigle, meaning “book of laws”, *moral code*, and system of secret writing) is “co-dache” (foolish), an expression that may be used by those who have a “beau parlement” (an elegant oral style) in order to designate those who waste their time in “parlementages” (idle gossip).

B. The Development of the Jurilinguistic Heritage in Louisiana

When it comes to scholarly language and with an interesting connection to Quebec, great creativity should be noticed. The *Louisiana Civil Law Dictionary*, which was recently published by two young local authors,²⁸ demonstrates it well. This English dictionary of 88 pages is first and foremost intended for students and gives a faithful image of the civil law in English. When possible, definitions were borrowed from articles of the Louisiana Civil Code or it referred directly to relevant articles.

The dictionary first defines the three following terms: *absolute simulation* (with a cross-reference to *simulation*), *abuse of right*, and *accession*. The latter puts emphasis on the fruits and the products but unfortunately without citing the general definition of article 482. When looking at the word *act*, one finds *act of administration*, *act of disposition*, *act under private signature*, *act translative of title*, *authentic act*, *conservatory act*, *juridical act*, *material act*, and *preparatory acts*. All of these acts, with the exception of the *material act*, follow the civilian tradition, and clearly demonstrate Louisiana’s civil law roots.

The Louisianan term *act under private signature* offers an example of the literal translation of a French legal term (“acte sous seing privé”). Quebec, on the other hand, translates the same notion into *private writing*. The Civil Code of Louisiana also uses the expression *partnership in commendam* (art. 2836), which is closer to the French “société en commandite” than the universally used term

28. GREGORY W. ROME & STEPHAN KINSELLA, *LOUISIANA CIVIL LAW DICTIONARY* (Quid Pro 2011).

of *limited partnership*, most notably found in the Civil Code of Quebec (art. 2236). Finally, *enrichment without cause* (art. 2298) is translated word-for-word from French. The Civil Code of Quebec, however, uses the term “enrichissement injustifié” (art. 1493–1496), which translates into *unjust enrichment* in English. Quebec legislators did this even though it was possible to translate the term to *unjustified enrichment*. In Quebec, legal terminology of civil law in English is similar to the international standards adopted by comparatists. Louisiana, on the other hand, made a point to keep the terminology close to the French one, even if it risked appearing more exotic to an American audience, which in any case rarely consult comparative law literature. Quebec lawmakers also did not go so far as to use the universally admitted concept of tort in comparative law. They translate the term “responsabilité civile” into *civil liability* (art. 1457), whereas Louisiana remains faithful to the “délits et quasi-délits” of the Napoleonic Code, translated by *offenses* and *quasi-offenses* (art. 2315). *Delict* and *quasi delict* is, nevertheless, more faithful to the Roman origin (the Digest of 1808 translated “Des Quasi-Délits” into *Of Quasi Crimes or Offenses*).

All these examples confirm that, in Louisiana, legal texts are traditionally translated from French into English with the civil codes of France and Louisiana remaining the main terminological referents.

III. WHO TRANSLATES WHAT IN LOUISIANA?

Translations of the codes and of French civilian literary classics (A) attest to Louisiana’s tradition of translating from French into English. In fact, at least from the Louisianan point of view (B), the translation and retranslation of the Civil Code from English into French are innovative exercises.

A. English Translations of Civilian Literary Classics

Few jurists outside of Louisiana are aware of the work of translation undertaken by the Louisiana State Law Institute and continued by the LSU Center of Civil Law Studies:

Thanks to Louisiana, several great classics of French civilian literature are available in English. The Louisiana State Law Institute had translated works of Gén \acute{e} y, the Planiol Treatise on Civil Law and the Aubry and Rau Treatise, in order to remedy the locally limited doctrinal production. Alain Levasseur has more recently translated Atias, Favoreu, and Halp \acute{e} rin. The Association Capitant also contributes to such work with its new journal and a translation project of the *Vocabulaire juridique Cornu* with the assistance of Louisianan civil law jurists.²⁹

Since the writing of local³⁰ and comparative doctrine is now more prolific,³¹ this translation effort is not as active. Nonetheless, this does not mean that French doctrine is no longer being translated in Louisiana. The material used for teaching many civil law courses in Baton Rouge or New Orleans include numerous translated texts. They are most often translated from French, but also from other languages: this includes doctrinal writing, court decisions, and legislation. In this effort to make continental systems (and most notably French law) more accessible to Louisianan students, the LSU Center of Civil Law Studies intends on adding this gray literature to the Civil Law Online database,³² once the French translation of the Louisiana Civil Code is completed.

29. Olivier Mor \acute{e} teau, *La traduction de l'œuvre de François Gén \acute{e} y : méthode de traduction et sources doctrinales* in LA PENSÉE DE FRANÇOIS GÉNY 69, 71–72 (Olivier Cachard, François-Xavier Licari, François Lormant, eds., Dalloz 2013). See also Alexandru-Daniel On, *Making French Doctrine Accessible to the English-Speaking World: The Louisiana Translation Series*, 5 J. CIV. L. STUD. 81–95 (2012); GÉRARD CORNU, *DICTIONARY OF THE CIVIL CODE* (LexisNexis 2014) was published in the meantime.

30. Phillip Gragg, *Louisiana Civil Law Treatise Series*, 5 J. CIV. L. STUD. 301, (2012); Susan Gaultier, *Louisiana Civil Code Précis Series*, 5 J. CIV. L. STUD. 305 (2012).

31. VERNON VALENTINE PALMER & ELSPETH CHRISTIE REID, *MIXED JURISDICTIONS COMPARED: PRIVATE LAW IN LOUISIANA AND SCOTLAND* (Edinburgh University Press 2009).

32. <<http://www.law.lsu.edu/clo/>>, last consulted on June 21, 2016.

B. The French (Re)translation of the Louisiana Civil Code

After a few words on the value of this translation project (1), the approach will be discussed and its empirical nature will be highlighted (2). The current translation effort receives international support (3), and the results have already been disclosed to the public, even though it still is an ongoing work (4).

1. The Value of the Project

Since the revision of 1870, the French version of the Louisiana Civil Code is no longer available to the francophone population of Louisiana. Even though French-speaking Louisianans only represent 5 or 10 percent of the populace, it seemed natural to give them back their code in its language of origin. Some have noted that the Civil Code is, above all, written for the people. In fact, its purpose is to inform us of our rights and duties. The Code is also meant to help us understand these rights, at least regarding simple issues, without resorting to expensive legal advice.³³ In fact, there is a Francophone Section in the Louisiana State Bar Association, and some cases are pleaded in French in a few courts in South Louisiana, such as in the Cajun country. The French translation is a contribution, although modest, to the linguistic rights of the French minority.

It will benefit the French-speaking world far beyond the Mississippi River Basin and it might make it easier for law reform in other mixed legal systems in and around Africa (Cameroon, Mauritius, Seychelles), Asia (Cambodia, Vietnam), the South Pacific (Vanuatu), and elsewhere. It might make business relationships between Louisiana and French-speaking countries easier. It might also be

33. Olivier Moréteau, *De revolutionibus, The Place of the Civil Code in Louisiana and in the Legal Universe* in *LE DROIT CIVIL ET SES CODES: PARCOURS À TRAVERS LES AMÉRIQUES* 1–34 (Jimena Andino Dorato, Jean-Frédéric Ménard, Lionel Smith eds., Thémis, Montreal 2011), 5 *J. CIV. L. STUD.* 31–66 (2012) [hereinafter *De revolutionibus*]; see also *A Summary Reflection on the Future of Civil Codes in Europe* in *FESTSCHRIFT FÜR HELMUT KOZIOL* 1449–1459 (Peter Apathy et alii Eds., Jan Sramek Verlag 2010); Pascal, *Civil Code and Us*, *supra* note 10.

used as a model, at least to some extent (for instance in contract law) in regions working to facilitate the dialogue between civil law and common law, as is the case in the European Union. Furthermore, it will draw attention to the many linguistic problems and their resolutions. Also, just as the English version of the Civil Code of Quebec, it will likely contribute to the development of civil law in English.

A Spanish version of the Louisiana Code will likely follow, and Louisiana may one day have a trilingual code, just like Quebec.³⁴ Although it was the predecessor of the Spanish Civil Code, the Louisiana Civil Code has never been fully translated in this language despite the heavy influence of the Code of 1825 on the codification movement in Latin America.³⁵ In this age of recodification, the Spanish version will perhaps bring this influence back to life.³⁶

2. *An Empirical and Documented Approach*

The translation work began in 2009, when the project director translated the Preliminary Title and the beginning of Book I (Of Persons). Professors David Gruning (Loyola, New Orleans) and Jean-Claude G emar (Montreal) revised the Preliminary Title. During a six-month visit to the Center of Civil Law Studies, Professor Michel S ejean (then a doctorate candidate at Paris 2) began the translation of Book II, Title 4, on contracts and conventional obligations.

In 2010, an agreement was reached with the Universit e de Nantes, which among other things allowed the annual hosting of two or three interns, who were enrolled in the Master of Trilingual Legal Studies, for three months at LSU. A first group of interns stayed in Baton Rouge from April to June 2011. Anne-Marguerite Barbier du

34. Jimena Andino Dorato, *A Jurilinguistic Study of the Trilingual Civil Code of Qu ebec*, 4 J. CIV. L. STUD. 591 (2011).

35. 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. LAW REV. 823 (2008).

36. Mor eteau & Parise, *Recodification*, *supra* note 12.

Doré, Laurie Chalaux, and Charlotte Henry worked on the translation of Book I and Titles III, IV, VII, and XII of Book III. Dr. Ivan Tchotourian (then in Nantes, now at Université Laval in Quebec) translated titles relating to mandate and suretyship (Book III, Titles XV and XVI), when he visited the LSU Center of Civil Law Studies for a few months in the fall of 2011. A second group of interns, Anne Perocheau and Anne-Sophie Roinsard, worked at LSU from April to June 2012 on the translation of Book I, as well as Titles IV, V, and VII of Book III. They also worked on the translation of the civil law words (from English to French) for the Dictionary of the Civil Code by Gérard Cornu. Alexandru-Daniel On (research assistant at LSU) and Professor Anne Tercinet (EM Lyon Business School) cooperated in this part of the work, during a research visit at LSU in June 2012.

In Spring 2013, Laura Castaing and Jean-Pierre Hufen continued the work, and in Spring 2014, Oriane Defoix, Giorgia Fabris and Mélissa Richard also worked on the project, followed in Spring 2015 by Sarah Charlat, Delphine Drouard, and Sara Vono, and in spring 2016 by Lucie Talet. The titles relating to successions and donations (Titles I and II), were translated in 2015 and 2016, as well as real securities and privileges (Titles XX to XXII-A), translated in spring 2016 by Lucie Talet. Books I and II were completed in 2015. From January to June 2014, Dr. Matthias Martin (Université de Lorraine) revised almost 850 articles on the occasion of a postdoctoral visit, to which he added a few hundred more from 2012 to 2016. Significant work was accomplished by the CCLS Research Associates, Alexandru-Daniel On (2012–2014), Gaëlle Forget (2014), and Jason Maison-Marcheux (2015–2016) regarding revision and publication. By the end of June 2016, the translation was completed and, after another revision, it was made entirely available online in July 2016.

This project features a combination of individual efforts and teamwork. While one intern translated one chapter, another intern translated another chapter generally on another subject. They also cross-checked each other's work, and kept track of changes and

comments in the electronic document through the “track change” command of the Word program. They were provided with dictionaries and the most frequently used dictionaries were the following: *Black’s Law Dictionary*,³⁷ *Vocabulaire juridique Cornu* and *Dictionary of the Civil Code* (after 2014), *Dictionnaire juridique Dahl*,³⁸ *Robert*, *Harrap’s* and *Oxford English Dictionary*. Also, a translation software (Wordfast) has been used since 2013 to facilitate the data collection and their use. This software created a translation memory, which was essential considering the fact that there were many translators working on the project and at different periods of time. The translation memory was enriched by the work done from the beginning and additional records were created in 2013, to include the bilingual Digest of 1808 and the bilingual Civil Code of Quebec, hereby made available to the translators. The civil codes of France and Quebec, as well as all necessary doctrinal sources, were obviously available and widely used together with the Compiled Editions of the Civil Codes of Louisiana.

During weekly or biweekly meetings chaired by the project director or his research associate, and attended by short-term visitors and translators, the texts to be revised were projected on a screen with the proposed changes. The translations were discussed, corrections were made, and in the event further research proved to be necessary, the final approval was postponed until the next meeting. The linguistic choices were carefully documented, and were recorded in the translation memory. Other specialists were occasionally consulted, especially in regard to technical issues or procedural rules. In the spring of 2016, the sequence of translation meetings was intensified, with three or four meetings per week, to which Christabelle Lefebvre (Université de Montréal) and Sara Vono (LSU LL.M.) also participated.

37. BRYAN A. GARNER, *BLACK’S LAW DICTIONARY* (9th ed., West 2009) [hereinafter *BLACK’S LAW DICTIONARY*].

38. HENRY SAINT DAHL, *DAHL’S LAW DICTIONARY, DICTIONNAIRE JURIDIQUE DAHL* (Hein, Dalloz 1995).

The most widely used document for the translation and during meetings is the Compilation of the Civil Codes of Louisiana. It consists of two large volumes prepared between 1938 and 1940 under the supervision of Joseph Dainow. The compilation was published by the state of Louisiana (Louisiana Legal Archives 1940),³⁹ and was recently published online on the LSU website.⁴⁰ The overall work and Books I and II of the Code (accounting for 25 percent of the total volume) were carried out by Professor Emeritus Robert A. Pascal, who was then assistant of Professor Dainow.⁴¹ The compiled edition was established pursuant to an act of the state legislature of Louisiana (Act of 1938, No. 165), and was published by the Louisiana State Law Institute (created by the Act of 1938, No. 166) as volume 3 of the Louisiana Legal Archives. For each article of the Civil Code of 1870, the Compiled Edition shows the corresponding (or original) provision found in the 1825 Code and the 1808 Digest. The compilation puts a parallel with the original articles of the French Civil Code of 1804, and the Government Project of 1800, which are reproduced as much as necessary in French but also in English. The compilation is certainly of value to any person wanting to study the evolution and the origins of Louisiana law, but it also offers an English civil law translation (as opposed to a common law translation) of the French Civil Code.

The importance of the compilation's translation work should not be exaggerated as it reuses, for the most part, the official translations of 1808 and 1825. This is because many articles of the Louisiana civil codes directly come from the Code of 1804 and the Project of 1800. Dainow thought that it was better to not retain the translations

39. COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA, LOUISIANA LEGAL ARCHIVES vol. 3 (State of Louisiana 1940), hereafter COMPILED EDITION.

40. <http://digitalcommons.law.lsu.edu/la_civilcode/>, last visited June 21, 2016.

41. Robert A. Pascal, *Recollections of a Life Studying and Teaching Law* in ROBERT ANTHONY PASCAL: A PRIEST OF RIGHT ORDER 25, 31 (O. Moréteau ed., Baton Rouge: Center of Civil Law Studies 2010) [hereinafter *Recollections*].

of the Napoleonic Code, which were available at that time.⁴² They were nevertheless cited in an abbreviated manner when they were occasionally used. All three are the work of common law jurists and use common law terminology.⁴³ The translation of the French Code was made “in terms familiar to Louisiana lawyers.”⁴⁴ The *Projet du gouvernement* of 1800 was partly reproduced upon the express request of Robert A. Pascal. At the same time that he envisioned the method to complete and present the compilation,⁴⁵ Pascal was successful in convincing Joseph Dainow of the actual influence of the *Projet*, especially on the writing of the preliminary titles of the texts of 1808 and 1825. Since no English translation of this text existed, it was written in the same spirit as the translation of the Code of 1804, until the end of Book II, which was most likely written by Robert A. Pascal. Professor Pascal does not recall having translated it,⁴⁶ which can easily be explained by the fact that the Code and the *Projet* were quoted in the compilation each time they had inspired the drafters of the 1808 and 1825 codes, who very often recopied them word for word.⁴⁷

This valuable document of more than 2,000 pages is now available online through the Center of Civil Law Studies website for the benefit of historians, jurists, and jurilinguists.⁴⁸ It is a much needed connector between the online publication of the Digest of 1808 and the bilingual version of the present Code.

42. Translations of the French Civil Code: *The Code Napoleon or French Civil Code*, translated into English by a Barrister of the Inner Temple, London, 1827; *The French Civil Code*, translated into English by Blackwood Wright, London, 1908; *The French Civil Code*, translated into English by Cachard, revised edition, Paris, 1930.

43. COMPILED EDITION, *supra* note 39, Explanatory Note by Dainow, at xviii.

44. *Id.* Foreword at xiii.

45. Pascal, *Recollections* 31, *supra* note 41.

46. Interview of Robert A. Pascal by O. Moréteau, November 6, 2012 (on file with the author).

47. COMPILED EDITION, *supra* note 39, Explanatory Note at xix.

48. *Supra* note 40.

3. A Sustained Effort in a Context of Financial Crisis

The translation of the Code of Louisiana, performed under the leadership of the Center of Civil Law Studies, has caught the attention of the French-speaking world. The *Organisation internationale de la francophonie* proposed a funding plan in 2008, as the bilingual Digest of 1808 was made available online on the occasion of the commemoration of the Bicentennial of codification in Louisiana, and the *Journées louisianaises* of the Association Henri Capitant.

Shortly after the Bicentennial, the United States entered into a recession, and in the context of crisis, the Center for French and Francophone Studies offered seed money for the translation project of the current Civil Code. Although symbolic in nature, the Center's financial support was helpful to the realization of the project. Whilst surviving with minimal staff, the Center of Civil Law Studies was, indeed, selected for a French-American grant (*Partner University Fund*⁴⁹), which provided support from 2012 through 2015, and in fact until the completion of the project in 2016, as part of a joint program with Université de Nantes (*Training Multilingual Jurists*). The Partner University Grant funded student and faculty mobility, two international conferences (Baton Rouge, April 2014,⁵⁰ and Nantes, January 2015⁵¹) and the publication of a Bilingual Louisiana Civil Code in book format, due at the beginning of 2017.⁵²

The enthusiastic support of the French Embassy to the United States and of the General Consulate of France in New Orleans (particularly by Consul Generals Olivier Brochenin, Jean-Claude Brunet, and Grégor Trumel) energized the team throughout the process. The project was proudly honored by the director receiving the

49. A project of the FACE Foundation, Supporting French-American Cultural Exchange in Education and in the Arts, a collaboration with the Cultural Services of the French Embassy to the United States.

50. Papers are published in the two issues of volume 9 of the *Journal of Civil Law Studies* (2016).

51. Papers to be published by Giuffrè Editore, forthcoming 2017.

52. Under contract with *Société de législation comparée* in the *Droit privé comparé et européen* book series, edited by Professor Bénédicte Fauvarque-Cosson. The book will be published with an introduction by O. Moréteau.

John Ashby Hernandez III Memorial Francophone Leadership Award, from the Louisiana State Bar Association, on June 5, 2014, and being promoted *Officier des palmes académiques* by the French Prime Minister on January 1, 2016.

4. A Work in Progress

The project presented is a work in progress and no aspect is final even at the time of full publication in July 2016. The results are released on the Louisiana Civil Code Online page,⁵³ with yearly updates keeping pace with code reform and revision. Large excerpts have been published in the *Journal of Civil Law Studies*, published by Center of Civil Law Studies,⁵⁴ and the whole Civil Code will appear in a bilingual volume in 2017.⁵⁵

The leader of this project who is neither a linguist nor a translator advocates his work with humility. With the objective of learning, improving, and perfecting this work, which he wants to be as much collective and participative as possible, he welcomes comments and criticism, and will work at improving the translation.

IV. FIRST THOUGHTS OF THE (RE)TRANSLATOR

The translation of the Louisiana Civil Code aims to bring back to life the original French as it was written in the Digest of 1808 and the Code of 1825. The objective is to produce an authentic Louisiana translation comparable to the English translation of the Civil Code of Quebec, which is authentic to its French Quebecker roots.⁵⁶

53. <<http://www.law.lsu.edu/clo/louisiana-civil-code-online/>>, last visited October 20, 2016.

54. Olivier Moréteau, *The Louisiana Civil Code Translation Project: An Introduction*, 5 J. CIV. L. STUD. 97 (2012); Preliminary Title, Book III, Titles III, IV and V, 5 J. CIV. L. STUD. 105 (2012); Book III, Titles XV and XVI, 6 J. CIV. L. STUD. 653 (2013); Book III, Titles VII and VIII, 7 J. CIV. L. STUD. 195 (2014); Book III, Title VI, 8 J. CIV. L. STUD. 209 (2015); Book II, 8 J. CIV. L. STUD. 493 (2015).

55. *Supra* note 52.

56. It produces a Montreal sound, as explained orally by Justice Nicholas Kasirer during the International Symposium of the Bicentennial of the Louisiana Civil Code at the Tulane University Law School, New Orleans, November 19–

Translators attempted to remain faithful to the letter of the law whenever they reproduced texts of 1808 and 1825 (A). Also, when the text was rewritten in the successive revisions, it was important to remain faithful to the spirit of the law (B). By contrast, when the text of the Code is altered by the addition of provisions written in style of a statute rather than that of a code, the wording kills the spirit of the law, which then hardly vivifies the translation work (C).

A. Reproduced or Slightly Modified Texts: The Letter of the Law

Staying faithful to the original language used in the Code and its sources is a priority in this project, given the fact that the French version of the Civil Code, whenever traceable, is recognized by the courts as authoritative, whenever the English may contradict the French.⁵⁷ This, however, sometimes leads the translators to use words that are not part of contemporary French. For example, in article 2520, we used the French “défaut” (instead of “vice”), which was taken from the text of 1825 (Art. 2520, paragraph 2). In Book I, however, article 252 of the 1825 Civil Code was retranslated differently, with a translator’s note explaining the choice: “Lorsqu’une femme se trouve enceinte au moment du décès de son mari, on ne peut nommer de tuteur à l’enfant jusqu’à sa naissance...” (the note reads: Text unmodified since 1825: “Si une veuve se trouve grosse au tems [sic] de la mort de son mari...” in the original text).

The translation of the Preliminary Title provides an example of terminological hesitation. Revised in 1987, article 1 states that “The sources of law are legislation and custom.” This represents an addition to the text of 1870, which stated “Law is a solemn expression of legislative will”. Similar wording was transposed to article 2: “Legislation is a solemn expression of legislative will.”

In order to eliminate the risk of confusion caused by the polysemy of the word *law*, and following the recommendation of the

22, 2008, and at the 37th John H. Tucker Lecture in Civil Law at the LSU Law Center, Baton Rouge, April 10, 2014.

57. See discussion *supra*, Section I *in fine*.

Louisiana State Law Institute, the legislator in 1987 kept *law* whenever it meant “droit” in French, and substituted *legislation* where the word *law* was formerly used to mean “loi.” This is possible in English, since the word *legislation* refers to (1) “the process of making or enacting a positive law in written form,” (2) “the law so enacted,” and (3) “the whole body of enacted laws.”⁵⁸ However, meaning (2) does not exist in French: the five meanings listed in the *Vocabulaire juridique Cornu* refer to meanings (1) and (3), but do not include meaning (2).⁵⁹ The project director, then working on his own, initially decided to provide a translation that is different from the original text by literally translating the word *legislation* and departing from the source-text that reads: “La Loi [sic] est une déclaration solennelle [sic] de la volonté législative.”⁶⁰ Upon first revision by Professor David Gruning whose mother tongue is English, the translation was upheld. Called at a later stage, Professor Jean-Claude G mar noticed the anglicism and called for correction. Even though the English word had been modified during the last revision, there was no reason to depart from the original texts.

In the attempt to give the Code its original Louisianan sound, the translation of the Code therefore requires a perfect handling of the lexicographical and historical tools. Deviations in translation should be avoided. For example, in article 7, the translator used the word “sauvegarde” instead of “maintien”: “Les personnes ne peuvent par leurs actes juridiques d roger aux lois relatives   la *sauvegarde* de l’ordre public.” Article 11 of the Code of 1825, which is the original text, forbade any dispensation “aux lois qui sont faites pour le *maintien*

58. B. A. GARNER, BLACK’S LAW DICTIONARY at Legislation, *supra* note 37.

59. G RARD CORNU, VOCABULAIRE JURIDIQUE at Legislation (8th ed., PUF 2007).

60. Digest of 1808 and article 1 of the Civil Code of 1825 reproducing article 6 of Title I of the Preliminary Book of the Government Project, 1800: “Among all peoples, law is a solemn expression of legislative authority, upon a subject of interior regulation and common interest,” text which was not incorporated in the French Code of 1804.

de l'ordre public [et des mœurs].”⁶¹ The translator should not forget Boileau's saying: “Cent fois sur le métier remettez votre ouvrage” If at first you do not succeed, try, try, try again . . .

With the intent of respecting the original text, non-official titles given to the articles in more recent 20th century editions of the Civil Code were not translated. Although these titles are sometimes obvious (example: art. 1 – *Sources of law*; article 8 – *Repeal of laws*), they are sometimes inappropriate or inelegant (example: art. 27 – *General legal capacity*; art. 31 – *Existence of a person at time of accrual of right*). Above all, the titles and the comments written by the *Louisiana State Law Institute* make it more difficult to read the Code. As such, it should not be a surprise that we chose to not translate the comments as well.⁶² Moreover, the titles are sometimes incorrect. The title of article 1498 reveals an embarrassing ignorance of a civil law principle. The article precludes the donor *inter vivos* from divesting of his property and compels him to keep enough for his own subsistence. If he does not do so, the donation is null for the whole. The title was reworded when it was revised in 1996 and the title strangely reads “*Nullity of donation inter vivos of entire patrimony*.”⁶³ Aubry and Rau would likely turn over in their graves, if they heard such phrasing.⁶⁴ The Center of Civil Law Studies chose to publish the Civil Code without any titles of articles or any comments⁶⁵ similarly to the 1947 Code, which was produced under the

61. Good morals (“*bonnes mœurs*”) were whisked away at the occasion of the revision of 1987.

62. These comments are meant to instruct the legislators as to the extent of the legislative changes proposed in the draft prepared by the Louisiana State Law Institute. They are printed in annotated editions of the Code published by West and LexisNexis, but strictly speaking they have no legislative force.

63. In a 1932 edition (Dart 1932: 463), article 1497 (seat of such a rule) was titled: *Donations inter vivos — Restriction on amount*, formulation that was legally correct.

64. Nicholas Kasirer, *Translating Part of France's Legal Heritage: Aubry and Rau on the Patrimoine*, 38 *REVUE GÉNÉRALE DE DROIT* 453 (2008).

65. Pascal, *Civil Code and Us*, *supra* note 10, at 306–307.

leadership of Canadian Joseph Dainow, who was the first director of the Center of Civil Law Studies at LSU.⁶⁶

B. The Rewritten Texts: The Spirit of the Original Texts

The revision process of the Civil Code, which began in the 1970s, generated a great number of new provisions. The reform of the law of obligations as adopted by the legislature in 1984⁶⁷ is a good example of the successful convergence between civil and common law. The drafters remained faithful to civil law taxonomy, conceptual grammar, as well as underlying principles. They further endeavored to preserve as much as possible the original meaning of the Civil Code by favoring clarity over concision. The revised Titles III and IV of Book IV are good examples of articles that truly embody the spirit of the original texts.

Translators tried to remain faithful to this spirit and did not shy away from making the translated text shorter, guided by French legislative stylistics. For example, article 1786 states the following: “When an obligation binds more than one obligor to one obligee, or binds one obligor to more than one obligee, or binds more than one obligor to more than one obligee, the obligation may be several, joint, or solidary.” Here is our French translation: “Lorsqu’elle lie plusieurs débiteurs à un créancier, un débiteur à plusieurs créanciers, ou plusieurs débiteurs à plusieurs créanciers, l’obligation est séparée, conjointe ou solidaire.” The word obligation is not repeated, *may be* becomes *is* (“est”)⁶⁸ and *more than one* becomes “plusieurs.” The expression *several obligations*, which does not exist in the

66. CIVIL CODE OF LOUISIANA REVISION OF 1870 WITH AMENDMENTS TO 1947 (Joseph Dainow ed., West 1947).

67. Act 1984, No. 331, §1, eff. Jan. 1, 1985, reforming Titles III (Obligations in general) and IV (Conventional obligations or contracts) of Book III.

68. Article 1825 gives another example. About subrogation, it states: “It may be conventional or legal” that becomes “elle est conventionnelle ou légale,” since we do not see what else it could be. It is true that one needs to be a jurist to be in such position as to judge; our original translation “elle peut être” was more cautious, and deemed to be acceptable.

French legal vocabulary,⁶⁹ is translated into separate obligation (“obligation séparée”), reusing the French wording of article 2072 of the 1825 Civil Code.⁷⁰ When translated from English into French, the number of words decreased from 39 to 24, but the article remains the same in substance.

For comparison purposes, here is the English version of article 1821 paragraph 2:

An obligor and a third person may agree to an assumption by the latter of an obligation of the former. To be enforceable by the obligee against the third person, the agreement must be made in writing.

Here is the French version:

Le débiteur et un tiers peuvent convenir de la prise en charge par ce dernier de l'obligation du premier. Afin que le créancier puisse l'opposer à ce tiers, l'accord doit être passé par écrit.

The article is shorter by two words in French. Also, *assumption* is translated into “prise en charge” instead of “délégation.” A translator’s note explains the choice: “in addition to the assumption of the obligor which is a real delegation (see art. 1886), the Louisiana Civil Code also considers the assumption following an agreement between the obligee and a third person consenting to assume the obligation of the original obligor (art.1823).” The next sentence: “The obligee's consent to the agreement does not effect a release of the obligor” translates into “Le consentement du créancier ne libère pas le débiteur,” which is a more incisive sentence. The French translation eliminates the redundant word “agreement” and shortens *does not effect a release* (five words) into “ne libère pas” (three words).

69. The French Civil Code only distinguishes between joint obligation and solidary obligation.

70. The Louisianan solution is reused in the French translation of the Principles of European tort law: PRINCIPES DU DROIT EUROPÉEN DE LA RESPONSABILITÉ CIVILE : TEXTES ET COMMENTAIRES 196 (O. Moréteau ed., M. Séjean trans., Société de législation comparée 2011).

The translation of Title III offers a few examples of language clarification. The first example focuses on the French idea of “opposabilité,” which is difficult to translate into English. In article 1859, *is not valid against* is translated into “n’est pas opposable.” Translators preferred this expression to “est inopposable” because it emphasized the negative construction of the sentence and the rule it contains. Another example concerns the translation of false-friend words *execution* and the verb *to execute*. In the Code,⁷¹ they are translated into “passation” and “passer” (art. 1833 and 1836): “An authentic act is a writing executed before a notary public” is translated into “L’acte authentique est un écrit passé par devant un notaire public” (art. 1833 A).

As a general rule, as in the aforementioned provision, the indefinite article at the beginning of the sentence is replaced with the definite article in French. This can be illustrated by comparing the English and French versions of article 1906: “A contract is an agreement by two or more parties whereby obligations are created, modified, or extinguished.”; “Le contrat est un accord entre deux ou plusieurs parties qui crée, modifie, ou met fin à des obligations.”

Also, the singular is sometimes preferred to the plural as shown by article 1918: “All persons have capacity to contract” which is translated to “Toute personne a la capacité de contracter” On a similar note, *if* is mostly translated into “lorsque.” The French term “si” was only used when translating *if* when it came in second position or introduced a sub-hypothesis (art. 1767, 1773, 1774, 1782, 1804, 1805).

The Civil Code of Quebec served as a reference, when it came to the translation of notions inspired by common law, such as “prépondérance de la preuve” (preponderance of the evidence) (art. 1957) or “preuves circonstanciées” (circumstantial evidence) (art. 2840 of the Civil Code of Quebec).

71. These words are ubiquitous in the Civil Code and are not to be understood as meaning performance and to perform, which translate into “exécution” and to “exécuter.”

Article 1967 illustrates a famous example of a common law transplant into the Louisiana Civil Code. The article introduces the concept of *detrimental reliance* or *promissory estoppel* (without explicitly using these words) right after the definition of “cause:”

Cause is the reason why a party obligates himself.

A party may be obligated by a promise when he knew or should have known that the promise would induce the other party to rely on it to his detriment and the other party was reasonable in so relying. Recovery may be limited to the expenses incurred or the damages suffered as a result of the promisee’s reliance on the promise. Reliance on a gratuitous promise made without required formalities is not reasonable.

In French, it is translated as follows:

La cause est la raison pour laquelle une partie s’oblige.

Une partie peut s’obliger par une promesse lorsqu’elle savait ou aurait dû savoir que la promesse conduirait l’autre partie à se fier à celle-ci à ses dépens et que cette autre partie s’y est fiée raisonnablement. Le recouvrement peut être limité aux dépenses engagées ou aux dommages subis du fait de la confiance que le bénéficiaire de la promesse avait placée en celle-ci. La confiance en une promesse gratuite faite sans les formalités requises n’est pas raisonnable.

Four additional words are used in the French version. In regard to the common law, the French text hardly manages to stay concise. This is because *promisee* was translated to “bénéficiaire de la promesse”

C. The Distorted Texts: When the Letter Kills the Spirit

Several provisions of Title V of Book III (Obligations Arising Without Agreement) combine ideas inspired from both civil law and common law. With slight adjustments, the general provision on enrichment without cause could be nicely incorporated into the French Civil Code:

Article 2298. A person who has been enriched without cause at the expense of another person is bound to compensate that

person. The term "without cause" is used in this context to exclude cases in which the enrichment results from a valid juridical act or the law. The remedy declared here is subsidiary and shall not be available if the law provides another remedy for the impoverishment or declares a contrary rule. The amount of compensation due is measured by the extent to which one has been enriched or the other has been impoverished, whichever is less.

The extent of the enrichment or impoverishment is measured as of the time the suit is brought or, according to the circumstances, as of the time the judgment is rendered.⁷²

The outlook changes when we turn to Chapter 3 (Of Offenses and Quasi Offenses), and particularly article 2315, which starts in the most promising way by using the well-known general clause of article 1382 of the Napoleonic Code. A new paragraph was however added, loaded with common law detail, at odds with the generality and simplicity of the French model:

Art. 2315. A. Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

B. Damages may include loss of consortium, service, and society, and shall be recoverable by the same respective categories of persons who would have had a cause of action for wrongful death of an injured person. Damages do not include costs for future medical treatment, services, surveillance, or procedures of any kind unless such treatment, services, surveillance, or procedures are directly related to a manifest physical or mental injury or disease. Damages shall include

72. Art. 2298 :

Une personne qui a été enrichie sans cause au détriment d'une autre est tenue de compenser cette dernière. L'expression "sans cause" est utilisée dans ce contexte pour exclure les cas dans lesquels l'enrichissement résulte d'un acte juridique valable ou de la loi. Le recours envisagé ici est subsidiaire et n'est pas ouvert lorsque la loi prévoit un autre recours pour l'appauvrissement ou une disposition contraire.

Le montant de la compensation est calculé compte tenu de l'enrichissement de l'un ou de l'appauvrissement de l'autre, le plus petit des deux étant retenu.

L'étendue de l'enrichissement ou de l'appauvrissement est calculée au moment où le procès est intenté ou, selon les circonstances, au moment où le jugement est rendu.

any sales taxes paid by the owner on the repair or replacement of the property damaged.

In the following article, things get even more complex:

Art. 2315.1. A. If a person who has been injured by an offense or quasi offense dies, the right to recover all damages for injury to that person, his property or otherwise, caused by the offense or quasi offense, shall survive for a period of one year from the death of the deceased in favor of:

- (1) The surviving spouse and child or children of the deceased, or either the spouse or the child or children.
- (2) The surviving father and mother of the deceased, or either of them if he left no spouse or child surviving.
- (3) The surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving.
- (4) The surviving grandfathers and grandmothers of the deceased, or any of them, if he left no spouse, child, parent, or sibling surviving.

...

D. As used in this Article, the words "child", "brother", "sister", "father", "mother", "grandfather", and "grandmother" include a child, brother, sister, father, mother, grandfather, and grandmother by adoption, respectively.

E. For purposes of this Article, a father or mother who has abandoned the deceased during his minority is deemed not to have survived him.

This article and subsequent provisions of the Louisiana Civil Code resemble more to common law statute than civil law clauses. Note that the phrasings of the articles include detailed definitions, and the wording is often redundant (i.e., section D). In fact, this type of language is usually not included in a code and it is more common in a statute. The number of words shows this: 298 words in French versus 269 in English. The repetition of the words "dommages et intérêts" in the same article triples the word *damages*. Subsequent articles keep up listing siblings and relatives. The worst is yet to come such as in article 2322.1, which is which is only partly reproduced here:

Art. 2322.1. A. The screening, procurement, processing, distribution, transfusion, or medical use of human blood and blood components of any kind and the transplantation or

medical use of any human organ, human tissue, or approved animal tissue by physicians, dentists, hospitals, hospital blood banks, and nonprofit community blood banks is declared to be, for all purposes whatsoever, the rendition of a medical service by each and every physician, dentist, hospital, hospital blood bank, and nonprofit community blood bank participating therein, and shall not be construed to be and is declared not to be a sale. Strict liability and warranties of any kind without negligence shall not be applicable to the aforementioned who provide these medical services.

Such provisions would be more welcomed in Volume 9 of the Revised Statutes, which is an annex of the Civil Code. Unfortunately, many provisions distort other parts of the Code. The lengthy provision in article 2844, defining the liability of partners *in commendam*, is a telling example. Feared by the members of our team, these rules pose many challenges: nothing should be missing in the catalog; every word should be properly translated and repeated as often as necessary since the aim is to translate and not to rewrite the law. Unless we want to inspire ourselves of the French Social Security Code or the French General Tax Code instead of the Louisiana Civil Code, it is sometimes difficult to find a French construction and sound.

* * *

To conclude on a more optimistic note, the author of the present article asked to be appointed as a member of the *Louisiana State Law Institute*'s committee in charge of semantics. The committee is responsible for style and semantics review of drafts proposed by other committees before they are sent to the Institute Council for final approval, and then to the legislature for adoption. Its mission is to identify lexical contradictions and propose more appropriate wording. The author believes that his in-depth knowledge of the Code, largely earned through the translation work, will help him notice questionable word choices and constructions, and that he will be able to suggest better and more convincing choices. The French

(re)translation may on this point contribute to the improvement of the English version, through a cross-fertilization, leading to a better knowledge of the boundaries existing between the language and the law.⁷³ The translation project is now complete, but no call has yet been received from the *Louisiana State Law Institute*.

73. See in this volume Alexandru-Daniel On, *Revision and Translation: The Louisiana Experience*, 9 J. CIV. L. STUD. (2016). See also Olivier Moréteau, *Les frontières de la langue et du droit : vers une méthodologie de la traduction juridique*, 61 REVUE INTERNATIONALE DE DROIT COMPARÉ 695 (2009).