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## Introductory Essay to the Translation of the Discurso Preliminar of Pérez y López's Teatro

John W. Cairns

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# INTRODUCTORY ESSAY TO THE TRANSLATION OF THE DISCURSO PRELIMINAR OF PÉREZ Y LÓPEZ'S TEATRO

John W. Cairns\*

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## I. INTRODUCTION

The past is always changing and we have to change with it; to this historical rule the legal history of Louisiana provides no exception. One important, relatively recent, development has been the recognition of the role played in that history by the *Teatro de la legislación universal de España é Indias*, compiled by Antonio Xavier Pérez y López (1736-1792), and published, with varying imprints, in twenty-eight volumes in Madrid between 1791 and 1798.<sup>1</sup> And what little we now know about use of the *Teatro* raises new and intriguing questions. Though cited very rarely by Louis Moreau Lislet in compiling what is now known as the de la Vergne volume, it is evident that he relied on it considerably more than is immediately apparent.<sup>2</sup> Recognition of this encourages us to ask what other use was made of it in the early period of U.S. government in what was then known as the Territory of Orleans. For example, it appears to have been drawn on by those who drafted the vetoed Act of 1806 that attempted to regulate the relevant sources of the law in the Territory.<sup>3</sup> Further research is needed; but the *Teatro* is a work that must have held considerable potential for those in the Territory who dealt with the law. Understanding of its significance has led to this publication of a translation of its Preliminary Discourse. To explain this

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1. ANTONIO XAVIER PÉREZ Y LÓPEZ, *TEATRO DE LA LEGISLACIÓN UNIVERSAL DE ESPAÑA É INDIAS, POR ORDEN CRONOLÓGICO DE SUS CUERPOS, Y DECISIONES NO RECOPIADAS: Y ALFABÉTICO DE SUS TÍTULOS Y PRINCIPALES MATERIAS* (imprint varies 1791-98) [hereinafter PÉREZ, *TEATRO*].

2. John W. Cairns, *The de la Vergne Volume and the Digest of 1808*, 24 TUL. EUR. & CIV. L. F. 31, 52-65, 73-74 (2009) [hereinafter Cairns, *De la Vergne Volume*]; what is now known as the de la Vergne Volume or Manuscript is a printed, interleaved copy of the DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS, WITH ALTERATIONS AND AMENDMENTS ADAPTED TO ITS PRESENT SYSTEM OF GOVERNMENT (Authority, Bradford and Anderson 1808) [hereinafter DE LA VERGNE VOLUME]. It contains extensive manuscript annotations, and is described in Cairns, *De la Vergne Volume*, *supra* at 38-49. It was reproduced by photolithography in 1967, and reprinted by Claitor's Publishing Division, Baton Rouge, in 1971. The original has very recently been donated to the Law Library of Tulane University.

3. John W. Cairns, *Spanish Law, The Teatro de la legislación de España e Indias, and the Background to the Drafting of the Digest of Orleans of 1808*, 31/32 TUL. EUR. & CIV. L. F. 79, 109-12 (2017) [hereinafter Cairns, *Teatro*].

we will examine, first, who was the author, next, the nature of the work, and finally its use in early Louisiana.

## II. ANTONIO XAVIER PÉREZ Y LÓPEZ

Antonio Xavier Pérez y López is a minor figure of the Spanish Enlightenment. He was born in Seville to parents who originated in Las Palmas on Gran Canaria. He had a career typical of the *letrado* class—that is to say, that of university-educated lawyers—in Bourbon, Spain. After legal studies at the University of Seville, gaining the degrees of bachelor and licentiate in 1760 and that of doctor in canon laws in 1761, he sought various university posts in his *alma mater*, while also practising as an advocate, as a member of the *Ilustre Colegio de Abogados de Sevilla*. In 1770, he changed tack, and now sought from the Council of Castille—particularly from the important statesman and economic reformer Pedro Rodríguez, Count Campomanes—the patronage necessary to rise in royal service as an *alcalde mayor* (a judicial and administrative office). Between 1771 and 1773, he accordingly served as *alcalde mayor* of Motilla del Palancar in the region of Cuenca in Castille. From 1773, he was judge of a commission appointed to examine the books of one of the major prisons of the kingdom, and to organize in Andalusia the archives of the Jesuits, who had been expelled from Spain in 1767. By 1776, he was resident in Madrid, where he was admitted to the *Ilustre Colegio de Abogados*. He counted among his clients the University of Seville, as well as the Ecclesiastical Chapter of Seville, the Cathedral Church of the Canary Islands, and the Municipal Council of Palma de Mallorca.<sup>4</sup>

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4. José María Vallejo García-Hevia, *Pérez y López, Antonio Xavier. Sevilla, 20.VI.1736 – Madrid, 17.X.1792. Jurista, publicista, jurisconsulto y filósofo*, REAL ACADEMIA DE LA HISTORIA, DICCIONARIO BIOGRÁFICO ELECTRÓNICO, <https://perma.cc/72PS-G3LM>.

In 1781, Pérez published *Discurso sobre la Honra y Deshonra legal*.<sup>5</sup> This reached a second edition in 1786. It was a work sympathetic to the Enlightened ideas of Count Campomanes, who sought to develop and liberalize the Spanish economy partly through the revival of artisanal trades. Pérez argued against the various civil disadvantages suffered by artisans. In 1783 came the Royal Cédula declaring certain trades as “honourable.”<sup>6</sup> In 1785, Pérez published *Principios del Orden esencial de la Naturaleza, establecidos por fundamento de la Moral y Política, y por prueba de la Religión. Nuevo sistema Filosófico*.<sup>7</sup> This is not the place to analyse his philosophical and political account of the natural-law foundation of civil law, state, and politics, described by García-Hevia as his most “personal, original and ambitious work.”<sup>8</sup> Suffice it to say that as an advocate of the Enlightened despotism of Charles III, he saw the necessity of royal legislation to ensure the order and good government of the country and the happiness of the people. In other words, his thinking led him to oppose the existence of special group privileges and to support a centralized absolute monarchy that legislated for the good of all. This is also a theme that runs through the Preliminary Discourse.<sup>9</sup> Of course, it was a traditional, if debated, view that also

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5. ANTONIO XAVIER PÉREZ Y LÓPEZ, DISCURSO SOBRE LA HONRA, Y DESHONRA LEGAL, EN QUE SE MANIFIESTA EL VERDADERO MÉRITO DE LA NOBLEZA DE SANGRE, Y SE PRUEBA QUE TODOS LOS OFICIOS NECESARIOS, Y ÚTILES AL ESTADO SON HONRADOS POR LAS LEYES DEL REYNO, SEGUN LAS QUALES SOLAMENTE EL DELITO PROPIO DISFAMA (2nd ed., Imprenta Real 1786).

6. REAL CEDULA DE S.M. Y SEÑORES DE CONSEJO POR LA CUAL SE DECLARA QUE NO SOLO EL OFICIO DE CURTIDOR, SINO TAMBIEN LOS DEMAS ARTES Y OFICIOS DE HERRERO, SASTRE, ZAPATERO, CARPINTERO ... SON HONESTOS Y HONRADOS Y QUE EL USO DE ELLOS NO ENVILECE LA FAMILIA, ... NI LA INHABILITA PARA OBTENER LOS EMPLEOS MUNICIPALES (Antonio Marin 1783), <https://perma.cc/Q6NA-FMG9>. See, e.g., José de Jesús Olmedo Gonzales, *El pensamiento ilustrado y los artesanos tapatíos*, 64 CARAVELLE 77 (1995).

7. ANTONIO XAVIER PÉREZ Y LÓPEZ, PRINCIPIOS DEL ORDEN ESENCIAL DE LA NATURALEZA, ESTABLECIDOS POR FUNDAMENTO DE LA MORAL Y POLÍTICA, Y POR PRUEBA DE LA RELIGIÓN. NUEVO SISTEMA FILOSÓFICO (Imprenta Real 1785).

8. García-Hevia, *supra* note 4.

9. See ANTONIO XAVIER PÉREZ Y LÓPEZ, TEATRO DE LA LEGISLACIÓN UNIVERSAL DE ESPAÑA E INDIAS, Preliminary Discourse, nos. 1, 8, 30, etc. (trans. H. Barlow Holley) 11 J. CIV. L. STUD. 465 (2019) [hereinafter Preliminary Discourse].

privileged historically the service to the Spanish monarchy of the *letrados* over that of the *caballeros*.<sup>10</sup>

### III. TEATRO DE LA LEGISLACIÓN UNIVERSAL DE ESPAÑA É INDIAS

For one such as Pérez who privileged the place of royal legislation, and who valued a rational law, the need to present the Spanish law in an accessible public form was of paramount importance. There had been no official collection of the varied Spanish laws for a considerable time, and Pérez's work was part of a general movement at this period to make unofficial collections of the laws.<sup>11</sup> The motto found on the title pages of the *Teatro* taken from Ovid's *Metamorphoses* about Theseus rewinding Ariadne's thread indicates Pérez's view of the Spanish laws as a labyrinth through which he wished to provide a guide. Indeed, he made this explicit in the Preliminary Discourse.<sup>12</sup>

The first two volumes appeared in 1791, and contained between them a list of nearly four hundred subscribers, both individuals and institutions, some of whom subscribed for more than one copy.<sup>13</sup> The subscriptions were solicited through a prospectus that Pérez y López had issued.<sup>14</sup> But he claimed that the costs of producing the work exceeded the income brought from the subscriptions and that

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10. Luis X. Morera, *An Inherent Rivalry between "Letrados" and "Caballeros?" Alonso de Cartagena, the Knightly Estate, and an Historical Problem*, 16 MEDITERRANEAN STUD. 67 (2007); Ralph H. Vigil, *Oidores Letrados and the Idea of Justice, 1480-1570*, 47 THE AMERICAS 39 (1990); Francisco Márquez Villanueva, *Letrados, consejeros, y justicias: Artículo Reseña*, 53 HISPANIC REV. 201 (1985).

11. José M. Mariluz Urquijo, *El "Teatro de la legislación universal de España e Indias" y otros recopilaciones indianas de carácter privado*, 8 REVISTA DEL INSTITUTO DE HISTORIA DEL DERECHO, 267 (1957); Ana María Barrero García, *Los repertorios y diccionarios jurídicos desde la Edad Media hasta nuestros días. (Notas para su estudio)*, 43 ANUARIO DE HISTORIA DEL DERECHO ESPAÑOL, 311, 333-35 (1973); Antonio Pérez Martín, *La legislación del Antiguo Régimen (1474-1808)*, in LEGISLACIÓN Y JURISPRUDENCIA EN LA ESPAÑA DEL ANTIGUO RÉGIMEN 7, 66-67 (U. de Valencia 1978).

12. See Preliminary Discourse, *supra* note 9, at no. 61.

13. Some of the later volumes (3, 4, 5, & 7) included additional lists of subscribers, amounting to just under another 300 individuals and institutions.

14. See Preliminary Discourse, *supra* note 9, at no. 23.

ill health prevented him from continuing to practice as a lawyer. Accordingly, in mid-1791 he sought from the Council of the Indies the vacant office of a judge in the *Real Audiencia* of Buenos Aires, with permission to collect the salary for two years but without taking up the post in order to allow him to complete the *Teatro*. He was offered the post, but without the requested dispensation. He declined it, partly because he would lack the resources in Buenos Aires to complete the work, and sought another position. However, in July 1792, with only three volumes published, he was admitted to a hospital in Madrid, where he died in October. He had recently married a widowed relative, who sought the licence to print subsequent volumes, four to nine, over 1793-1794. In 1795, along with her son by her earlier marriage, Juan José Tamariz y Aguayo, she sold the rights to print the remaining volumes of the *Teatro* to José Villacorta García. The work was presumably planned out and already advanced by the time of his death. Pérez's stepson claimed to have helped his stepfather in the work of compilation and also that he had continued to assist in the production, asking the Council of the Indies in 1796 for permission to examine its archives for laws of the Indies that had not been collected in a *Recopilación*.<sup>15</sup> As García-Hevia points out, it was this that made the work so invaluable in the Spanish overseas Empire, along with the brief notes on contemporary practice.<sup>16</sup> The reputation of the work ensured that Pérez's final, posthumously published book, *Conversaciones críticas e instructivas sobre el estudio de los Derechos civil y canónico de las Universidades* was described as *compuestas por el autor del Teatro de la Legislación*.<sup>17</sup>

In this last work, Pérez wrote that the sources of the laws were “neither methodical nor suitable for instruction in legal science and

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15. García-Hevia, *supra* note 4.

16. *Id.*

17. ANTONIO XAVIER PÉREZ Y LÓPEZ, *CONVERSACIONES CRÍTICAS E INSTRUCTIVAS SOBRE EL ESTUDIO DE LOS DERECHOS CIVIL Y CANÓNICO DE LAS UNIVERSIDADES, COMPUESTAS POR EL AUTOR DEL TEATRO DE LA LEGISLACIÓN (Viuda e Hijo de Marin 1795)* [hereinafter PÉREZ Y LÓPEZ, *CONVERSACIONES CRÍTICAS E INSTRUCTIVAS*].

the administration of justice in Spain”; moreover, he valued the geometric approach to law—with definitions, axioms, and conclusions—associated with Wolff and Heineccius.<sup>18</sup> This rationalist natural-law approach informed his decision to compile the *Teatro*. To manage the material, he organized it alphabetically, without employing categories that were excessively broad. This meant that successful use of the *Teatro* was greatly aided by familiarity with both the conceptual structure and the terminology of the civilian systems; some topics were also specific to the Spanish kingdoms and their government and administration. Pérez was basically gathering together the relevant legislative texts, which he arranged historically, preceded by explanatory introductions. Within a set pattern the entries would vary, taking into account the nature of the topic and the legislative sources. A standard entry would start with a list of relevant legislative sources organized by book and title with the number of the “laws” given. This list would commence with the Roman legal sources, followed by the Canon-law sources, and then the Spanish sources. Uncollected laws were not included in these lists, though mentioned in the detailed “Plan” of the work in the first volume. It is worth noting that there can sometimes be differences between the legal texts listed in the “Plan” in the first volume and at the start of the entries, no doubt reflecting developing research as the work progressed. After the list Pérez provided an explanatory introduction, headed as “§. I.”; this could be of several paragraphs in length, explaining the laws and practice. Finally, Pérez quoted the relevant legal texts. He did not include any Roman texts, but started with those of the Canon law, followed by those of the Spanish laws by date. He describes his practice at some length in the Preliminary Discourse.

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18. FRANCISCO SÁNCHEZ-BLANCO, *LA ILUSTRACIÓN GOYESCA: LA CULTURA EN ESPAÑA DURANTE EL REINADO DE CARLOS IV (1788-1808)* 227-28 (CSIC Press 2007) (quoting PÉREZ Y LÓPEZ, *CONVERSACIONES CRÍTICAS E INSTRUCTIVAS*, *supra* note 17).

Pérez himself explained his method by reference to the concept of “theatre.”<sup>19</sup> It is therefore necessary here to say a little about the title—*Teatro de la legislación universal*—that he chose for his work. The use of *Theatrum* in titles had a long and complex history of which he would have been aware.<sup>20</sup> Though of ancient origin, the metaphor of the theater had been understood from the Renaissance onwards as providing a means of organizing and displaying knowledge, whether in the mystical or Hermetic memory systems associated with Giulio Camillo or Robert Fludd, or in the apparently more prosaic *Theatrum orbis terrarum* of Abraham Ortelius.<sup>21</sup> It was an idea that bore enormous symbolic potential. A theater could be a reflection of reality; it could also be a site where knowledge was displayed, as in an anatomical theatre, such as, famously, that of Leiden. The “theater” could accordingly signify a display or spectacle of a body of universal knowledge, such as in Jean Bodin’s *Universae naturae theatrum*, or the more general idea of the *theatrum mundi* created by God and observed by human beings.<sup>22</sup> One of the most influential of these collections was the *Theatrum humanae vitae* of the Swiss Protestant Theodor Zwinger, first published in 1565, a collection of supposedly ethical material in an elaborate type of common-place book that aimed to collect knowledge in an organized encyclopaedic way.<sup>23</sup> It was followed by the *Magnum theatrum vitae humanae*, first published in 1631, an enormous and overtly Catholic reference work, the last edition of which was issued

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19. See Preliminary Discourse, *supra* note 9, at no. 69.

20. ANN M. BLAIR, THE THEATER OF NATURE: JEAN BODIN AND RENAISSANCE SCIENCE 153-79 (Princeton U. Press 2017); Louis Van Delft, *L'idée de théâtre (XVIe-XVIIIe siècle)*, 101 REVUE D'HISTOIRE LITTÉRAIRE DE LA FRANCE 1349, 1357-65 (2001); LYNDIA G. CHRISTIAN, THEATRUM MUNDI: THE HISTORY OF AN IDEA (1987) (a discussion of it as a *topos* in comparative literature from the ancient to the early-modern world).

21. FRANCES A. YATES, THE ART OF MEMORY 135-62, 310-29 ([1966] 2012).

22. BLAIR, *supra* note 20; see also FLEMMING SCHOCK, DIMENSIONEN DER THEATRUM-METAPHER IN DER FRÜHEN NEUZEIT: ORDNUNG UND REPRÄSENTATIONEN VON WISSEN (Flemming Schock, Oswald Bauer, & Ariane Koller eds., Wehrhan 2008).

23. ANN M. BLAIR, TOO MUCH TO KNOW: MANAGING SCHOLARLY INFORMATION BEFORE THE MODERN AGE 186-88, 193-202 (Yale U. Press 2010).

in 1707.<sup>24</sup> A *theatrum* was thus also an encyclopaedia of knowledge, a means of trying to organise information in a way that made it accessible. Though the title “Theatrum” is most often associated with works of the sixteenth and seventeenth centuries, the research of Van Delft shows it remained common through the eighteenth.<sup>25</sup> Pérez stated that since the collections (*códigos*) and laws (*leyes*) are the originals that underlie all legal and political acts, they should be preferred, just as a portrait is only a simulacrum of the sitter; he had accordingly entitled his work *Teatro*, which in the moral or ethical sciences stands in the same way as a depiction does in the physical. What goes on in a theatre is a reflection of the world, which in itself can be viewed as a stage set by God. But his theatre, through its organization and structure provides the thread through the labyrinth of legal knowledge. In a way his *Teatro* is an anthology—another meaning commonly found.<sup>26</sup> The image of a theatre and the relationship of its presentations and appearances to reality is rich and complex, and would be worth reflecting on further in connection with Pérez’s work.

#### IV. LAW IN THE EARLY TERRITORY OF ORLEANS AND PÉREZ’S TEATRO

After 1803, there had been uncertainty over the law in force in the newly acquired Territory; even when it became clear that the law in force was Spanish colonial law, there were problems in operating this complex system. To be certain about the law it was necessary to examine a variety of sources and collections, and also to search for “uncollected” laws. But such evidence as there is suggests that initially there were problems in accessing copies and sources of the Spanish laws.<sup>27</sup> Following Pérez’s Ovidian motto and comments,

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24. *Id.* at 202-6.

25. Van Delft, *supra* note 20, at 1357-65.

26. BLAIR, *supra* note 20, at 176-78.

27. Cairns, *Teatro*, *supra* note 3, at 91-98, 107-12.

Urquijo has described the Spanish laws as having constituted a “labyrinth” for the lawyer trying find the law and contemporary doctrine.<sup>28</sup> But Pérez’s collection provided not just the thread through the maze, but also the actual Spanish texts, anthologized, organized historically, and placed in a helpful context. In other words, a set of Pérez’s volumes would have been invaluable as a resource.

There seems to be no easy way of determining whether or not those charged with codifying the laws in Louisiana under the statute of 1806 used Pérez’s work, given the *Digest of the Civil Laws now in Force in the Territory of Orleans* (as it was entitled) was primarily drafted in French with a translation into English. This said, the Preliminary Discourse provided a short history and description of the sources of the laws of Spain and of the Indies. This would have helped orient readers in the material. The *Teatro* also purports to quote the actual Spanish sources. The redactors obviously made use of texts of the Spanish *Recopilaciones*, but whether as found in Pérez or in other editions there is no easy way to know.<sup>29</sup> But it seems very likely that the redactors did in fact use Pérez’s *Teatro*, though such evidence as there is proves inconclusive.

First, as I have argued elsewhere, some remarks of the Preliminary Discourse, if misinterpreted, seem to have influenced the content of the vetoed statute on sources of law enacted in 1806.<sup>30</sup> Secondly, it was certainly a work known later to Louis Moreau Lislet, one of the redactors of the *Digest* of 1808. Here it is interesting to look at the notarial inventory of Moreau’s possessions at death, in which is found a listing of his relatively extensive personal library, which contains very few books on subjects other than law. Though known and readily accessible since being printed in 1943, this inventory has not been subjected to the careful discussion, much less

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28. Urquijo, *supra* note 11, at 267.

29. For example, one way to recognize would be if there were a grave error in Pérez’s quotation from a source that is then transmitted to an article of the *Digest*, influenced by the Spanish or Castilian law: but no one has so far identified such an occurrence, which is, I suspect, extremely unlikely.

30. Cairns, *Teatro*, *supra* note 3, at 105-12.

the detailed analysis that it deserves.<sup>31</sup> Without making a statistical breakdown of what the inventory counts as 1008 items, it is evident, at the merest glance, that it is predominantly a collection of French legal material, with a substantial English-language collection. But it contains some groupings of relevant Spanish works, and some scattered entries of a few others. As one might expect, there are the major legislative collections mentioned by Pérez: the *Siete Partidas* (notably in the edition of Gregorio López), the *Nueva Recopilacion de las leyes de Castilla*, the *Autos Accordados*, the *Fuero Real*, and even the *Fuero Juzgo*, though no copy of the *Recopilación de las reinos de las Indias* is listed. It is also no surprise to see the works of Febrero, whose treatise was used in codifying the *Digest* of 1808, and relied on extensively in the Spanish colonies in America.<sup>32</sup> Also listed is some other secondary literature, such as the *Commentatorium juris civilis in Hispaniae regias constitutiones* of the well-known sixteenth-century jurist, Alfonso de Azevedo, which was a noted work on the *Nueva Recopilacion*, and the *Commentaria* of Juan de Matienza, another sixteenth-century Spanish jurist who worked in the Americas, whose work is a commentary on the fifth book of the *Nueva Recopilación* of the laws of Castille of 1567. Matienza's book also contained the relevant text of the *Recopilación* in Spanish.<sup>33</sup> But there is no copy of Pérez's *Teatro*. Towards the end

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31. See, e.g., Mitchell Franklin, *Libraries of Edward Livingston and Moreau Lislet*, 15 TUL. L. REV. 401 (1943); I have also examined a copy of the Act No. 1,185, 19 Dec. 1832, by Notary L. T. Caire, Notarial Archives, New Orleans, which contains the inventory of Moreau's moveable property, including his library, which indicates the format of the book—folio, quarto etc.—and which allows the correction of very occasional trivial errors of transcription or printing in the published text.

32. On Febrero and his use in the *Digest*, see Rodolfo Batiza, *The Louisiana Civil Code of 1808: Its Actual Sources and Present Relevance*, 46 TUL. L. REV. 4, 34, 38-44 (1971); AGUSTÍN PARISE, OWNERSHIP PARADIGMS IN AMERICAN CIVIL LAW JURISDICTIONS: MANIFESTATIONS OF THE SHIFTS IN THE LEGISLATION OF LOUISIANA, CHILE, AND ARGENTINA (16TH-20TH CENTURIES), 86-87 (Brill Nijhoff 2016). See more generally, Alberto David Leiva, *Aportes para un estudio de la Librería de escribanos de Joseph Febrero*, 22 REVISTA DEL INSTITUTO DE HISTORIA DEL DERECHO 302 (1971).

33. It is impossible to identify with any confidence the editions owed by Moreau of these works: ALFONSO DE AZEVEDO, COMMENTATORIUM JURIS CIVILIS IN

of the inventory of books, however, the following group of works is found, all described as manuscript, and consisting of one volume in folio:

*Table alphabétique des titres du Digeste*  
*Teatro de la legislacion de España*  
*Table raisonnée des lois Espanoles*  
*Table des titres du Digeste &c*  
*Abrégé du Traité de Febrero, &c*  
*Table des matieres des Sept Partidas*  
*[Table des matieres] de la Curia Philipica*  
*[Table des matieres] du droit &c*

As it seems impossible that Moreau owned a one-volume, folio manuscript of the *Teatro*, this entry, as with the others with which it is connected, is probably a reference to some kind of analytical table of contents. The “Digeste” referred to twice will be a reference to Justinian’s *Digest*, as by this date the Digest of the Civil Laws of the Territory of Orleans is invariably referred to as the “old” or the “*ancien*” Code, the term *Digest* being now reserved for the three-volume Digest of the Acts of the Legislatures of the Late Territory of Orleans and of the State of Louisiana and the Ordinances of the Governor passed under the Territorial Government prepared on behalf of the legislature by François-Xavier Martin and published in 1816, or the similar *Digest* prepared by Moreau Lislet himself, and appearing in two volumes in 1828.<sup>34</sup> Even if Moreau did not own a copy of the *Teatro* at his death, evidently he had at one stage ready access to one, whether or not he had owned it himself.

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HISPANIAE REGIAS CONSTITUTIONES (Bellerus 1612), is just stated to be 3 volumes in folio; JUAN DE MATIENZO, COMMENTARIA IOANNIS MATIENZO REGII SENATORIS IN CANCELLARIA ARGENTINA REGNI PERU IN LIBRUM QUINTUM RECOLLECTIONIS LEGUM HISPANIÆ (Franciscus Sanctius, 1580).

34. LOUIS MOREAU LISLET, A GENERAL DIGEST OF THE ACTS OF THE LEGISLATURE OF LOUISIANA: PASSED FROM THE YEAR 1804, TO 1827, INCLUSIVE, AND IN FORCE AT THIS LAST PERIOD, WITH AN APPENDIX AND GENERAL INDEX (Benjamin Levy 1828).

## V. MOREAU LISLET, TRANSLATIONS OF THE SIETE PARTIDAS, AND THE TEATRO

These analytical, manuscript listings of source material must derive from Moreau Lislet's work—one suspects—both on the codes and on his collaborative translations of the *Siete Partidas*.<sup>35</sup> Moreau was involved in three projects to translate the *Siete Partidas*. The first, dating from 1813, involved the distinguished lawyer Etienne Mazureau, and the aim was to publish, by subscription, a translation into French.<sup>36</sup> For the second, Moreau collaborated with Henry Carleton, publishing in 1818 a translation into English, with facing Spanish text, of the titles of the *Partidas* on promises and obligations, sale and purchase, and exchange.<sup>37</sup> The third, again with Carleton, was the more extensive, consisting of those laws of the *Siete Partidas* still thought potentially to be in force; this time there was no Spanish text facing the English.<sup>38</sup>

A. *The Proposed Translation of 1813, the Moreau Manuscript, and the de la Vergne Volume*

I have suggested elsewhere that there is an obvious and complex relationship between the notes made by Moreau Lislet in a copy of the *Digest* of 1808, preserved in the Hill Memorial Library in Louisiana State University (which I have called the Moreau Manuscript or Moreau MS<sup>39</sup>), the de la Vergne Volume, and the

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35. In the inventory of Moreau's books, it is possible to recognize four MS volumes of a translation of the *Siete Partidas*, but whether into French or Spanish is not specified.

36. Cairns, *De la Vergne Volume*, *supra* note 2, at 51-52.

37. 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 Brothers 1818) [hereinafter MOREAU LISLET & CARLETON, TITLES ON PROMISES AND OBLIGATIONS, SALE AND PURCHASE, AND EXCHANGE].

38. THE LAWS OF LAS SIETE PARTIDAS, WHICH ARE STILL IN FORCE IN THE STATE OF LOUISIANA (Louis Moreau Lislet & Henry Carleton trans., Claitor's 1978) (1820) [hereinafter LAWS OF LAS SIETE PARTIDAS].

39. The Moreau Manuscript (MS) consist of extensive marginal annotations written by Louis Moreau Lislet in a copy of the *Digest* of 1808, *see* DE LA VERGNE

1813 Proposals<sup>40</sup> to translate the *Partidas* in French.<sup>41</sup> One obvious link between them all is Moreau Lislet's use of Pérez's *Teatro*. The Proposals of 1813 established the pattern followed in the subsequent, realized translations.

### 1. *The Moreau Manuscript*

Since I have already discussed this manuscript at some length in an earlier article, it is unnecessary to say more than a little about it here.<sup>42</sup> The notes are holograph of Moreau Lislet and the title page bears his name, though not in his hand or signature. There can be no doubt but that the general listings of sources of Roman-law texts and Spanish-law texts in this manuscript, usually in the top and bottom margins, have almost always been directly taken from the lists of such sources found at the beginning of the related titles in the *Teatro*. Moreau has excluded the Canon-law sources where found in Pérez's lists, presumably as it was considered inappropriate to include them in the U.S. His use of the *Teatro* is normally explicit, with a citation of the relevant volume and page. Lengthy lists usually start on the

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VOLUME *supra* note 2. The Moreau MS can be found at the Baton Rouge, Louisiana State University, Hill Memorial Library, La Coll KFL30 1808 A213 [hereinafter LSU, Moreau MS].

40. *Proposals for the Printing of a French Translation of the Laws of the Siete Partidas*, LOUISIANA COURIER, COURRIER DE LA LOUISIANE 23 (28 Apr. 1813 (English text), 15 Oct. 1813 (French text)) [hereinafter cited as *1813 Proposals*]. I have not had direct access to copies of this newspaper, but I am drawing on a transcription of the English text of the proposals, which can be found on the Civil Law Online website of the Center of Civil Law Studies at Louisiana State University, available at <https://perma.cc/N8W4-Q6K7>. Versions of the beginning of the text may be found in ALAIN LEVASSEUR, MOREAU LISLET: THE MAN BEHIND THE DIGEST OF 1808, 130-31, 189-91 (rev. ed. with the assistance of Vicenç Feliú, Claitor's 2008). The English version reads as if a translation from French, given the choice of vocabulary, and though there are some evident errors in the transcription, it seems reliable.

41. Cairns, *De la Vergne Volume*, *supra* note 2, at 51-52; LSU, Moreau MS, *supra* note 39; on the initial identification of the notes as holograph of Moreau, see 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. 25-27 (1965).

42. Cairns, *De la Vergne Volume*, *supra* note 2, at 49-65.

bottom margin of the French-language page and continue on the bottom margin of the opposite English-language page, occasionally even describing a circle, running clock-wise to finish on the top margin of the French-language page. Specific citations are linked to individual articles of the *Digest*. The citations are almost exclusively to legislative material, with only a few infrequent citations of Febrero, and three of Domat. But we can be absolutely certain that he is using Pérez's lists of sources from the beginning of the titles on topics in the *Teatro*, as he once even copied from Pérez a printing confusion, thereby introducing error, later correcting it.<sup>43</sup>

## 2. *The de la Vergne Volume*

The general lists in the Louisiana State University manuscript (Moreau MS) are usually the foundation of the general lists in the later de la Vergne volume, though those in the latter are generally considerably fuller, incorporating more in the way of secondary source material, including French, so one finds citations to Domat, Pothier, Febrero's *Librería de escribanos*, and the *Curia Philippica* of Juan de Hevía Bolaños, and some other works and authors, such as Rodriguez's translation into Spanish of Justinian's *Digest*.<sup>44</sup> I have discussed the de la Vergne volume, and its relationships with other manuscripts, at some length elsewhere.<sup>45</sup> All that it is necessary to note here is that it is an interleaved copy of the *Digest* of 1808, containing extensive listings of general sources, usually headed as "titles" of Roman and Spanish laws (and sometimes acts of the legislature), generally on the recto pages of the interleaves, normally described as related to or dealing with the material in the title of the *Digest*. Specific references to Spanish, French, and other sources (including Louisiana statutes) are found on the verso, directly linked to individual articles. The manuscript is plausibly dated

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43. *Id.* at 53-60.

44. *Id.* at 72-74.

45. *Id.* at 38-72.

1814. Contrary to some claims, these references are not to the juridical sources of the articles, but to related material. The exception is when Louisiana statutes are cited, but they were probably not cited specifically to indicate the source of an individual article.<sup>46</sup> Though drawing on the Moreau MS, the de la Vergne volume is a very much more elaborate manuscript, with its own title page, a preface entitled *Avant-Propos*, an explanation of the abbreviations used for laws and secondary literature, and an extensive manuscript alphabetical index.

In contrast to the Moreau MS, the de la Vergne volume never cites the *Teatro* in the general lists of titles of relevant Roman and Spanish laws, even if they are in part derived from Pérez's work. One can be confident, however, that it was being consulted. Moreau cited it for six articles. The first was in the preliminary title in the chapter on the promulgation of laws, and refers to an "*auto acordado*" of April 1, 1767, on the publication of laws. In the de la Vergne volume is written (here translated): "see the 'resolution Royale' of April 1767, not included in the *recopilación*, but quoted in the *Teatro* of Xavier Perez vol. 19. P. 124."<sup>47</sup> This is also found in similar terms in the Moreau MS.<sup>48</sup> The second is in the title on Husband and Wife, in the chapter on contracting marriage, cited, with other material, for an article on the need for parental consent for the marriage of a minor and another on the validity of a marriage contracted without such consent. The note states "*pragmatique du 23 mars 1776 qui se voit au Théâtre de Xavier Perez vol. 19. p. 393. art. 1 et 2.*" The second reference simply refers to the *Pragmatica*

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46. JOHN W. CAIRNS, CODIFICATION, TRANSPLANTS AND HISTORY: LAW REFORM IN LOUISIANA (1808) AND QUEBEC (1866) 444-61 (Lawbook Exchange 2015).

47. DE LA VERGNE VOLUME, *supra* note 2, at verso of interleaf facing 3, art. 4.

48. LSU, Moreau MS, *supra* note 39, at 3. The reference is accurate: PÉREZ, TEATRO, *supra* note 1, vol. 19, at 124.

cited above, article 3.<sup>49</sup> This is also found in the Moreau MS.<sup>50</sup> The third is another reference to the third article of the same *Pragmatica*, cited for an article on the duties of children to aliment their parents.<sup>51</sup> This provision of the *Pragmatica* is on disinheritance of children. It is again found cited in the Moreau MS.<sup>52</sup> The very same provision of this *Pragmatica* is further cited in the de la Vergne volume with reference to a provision on succession dealing with disinheritance of children.<sup>53</sup> Once more one can spot it in the Moreau MS.<sup>54</sup> The two final mentions of the *Teatro* in the de la Vergne volume are in adjacent articles of the *Digest* on servants being dismissed without serious cause and servants quitting without legitimate cause, and are to the same passage, both being citations to the same law of the *Fuero Viejo*, as quoted by Pérez.<sup>55</sup> There is no such reference, either to the *Fuero Viejo* or to the *Teatro* in the Moreau MS, which only cites the *Fuero Real* (also cited in the de la Vergne volume).<sup>56</sup>

It is obvious that the citations to the *Teatro* for the *auto acordado* of 1767 and the *pragmatica* of March 23, 1776 were necessitated by the lack of any other accessible source for these “uncollected” laws. Moreau likewise cited Febrero’s work for other “uncollected” Spanish laws.<sup>57</sup> That Moreau also cited the *Teatro* for the *Fuero Viejo*

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49. DE LA VERGNE VOLUME, *supra* note 2, at verso of interleaf facing 27, arts. 11 and 15.

50. LSU, Moreau MS, *supra* note 39, at 27. The reference is accurate: PÉREZ, TEATRO, *supra* note 1, vol. 19, at 393.

51. DE LA VERGNE VOLUME, *supra* note 2, at verso of interleaf facing 55, art. 58.

52. LSU, Moreau MS, *supra* note 39, at 55. The reference is accurate: PÉREZ, TEATRO, *supra* note 1, vol. 19, at 393.

53. DE LA VERGNE VOLUME, *supra* note 2, at verso of interleaf facing 237, art 130.

54. LSU, Moreau MS, *supra* note 39, at 237. The reference is accurate: PÉREZ, TEATRO, *supra* note 1, vol. 19, at 393.

55. DE LA VERGNE VOLUME, *supra* note 2, at verso of interleaf facing 383. The reference is accurate: PÉREZ, TEATRO, *supra* note 1, vol. 4, at 195.

56. LSU, Moreau MS, *supra* note 39, at 383. It is worth noting that the citations to these laws quoted in the *Teatro* have almost certainly been added to the Moreau MS subsequent to the surrounding annotations; it is difficult to know what to make of this.

57. DE LA VERGNE VOLUME, *supra* note 2, at recto of interleaf facing 458 and at verso of interleaf facing 465.

strongly suggests that a copy of it was unavailable to him in Louisiana. These two were the only specific references to the *Fuero Viejo* attached to an article. He cited it four times in his general listings of Roman and Spanish laws related to the titles of the *Digest*.<sup>58</sup> Other than in one instance, these are also found in the general listings of sources found in the Moreau MS and derived from the *Teatro*.<sup>59</sup> He is clearly not consulting the *Fuero* itself; and the one reference that is not found in the Moreau MS clearly came directly from the *Teatro*.<sup>60</sup>

### 3. *The Proposals of 1813*

What was intended in 1813 is known from advertisements in the *Courrier de la Louisiane*.<sup>61</sup> From this, we learn that, at the time of the Proposal, Moreau had already made the translation “for his private use,” and that he wished to be “seconded in his undertaking” by Mazureau “another jurisconsult of this city, well versed in the Spanish language, and known by his talents in jurisprudence.” Not all of the *Partidas*, however, was to be published in the translation.<sup>62</sup> The Proposals stated that:

At the head of each title, the translation of which will be given, will be placed a list of the several titles of the institutes, of the pandects, of the code & the novels of Justinian, of the different Spanish codes, & of the canonical law, as well as the several works treating of the same matter such as Domat’s civil laws, Pothier’s writings, Febrero’s library, and the Curia philipica.<sup>63</sup>

If one puts aside the citations of the secondary literature, French and Spanish, this proposed list very much resembles the general lists that

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58. *Id.* at recto of interleaves facing 344, 372, 452, and 478.

59. LSU, Moreau MS, *supra* note 39, at 344 (PÉREZ, TEATRO, *supra* note 1, vol. 7, at 412 (correcting the MS’s mistaken page reference of 442)), 372 (PÉREZ, TEATRO, *supra* note 1, vol. 4, at 187), 459 (reference forward form 453) (PÉREZ, TEATRO, *supra* note 1, vol. 23, at 470).

60. PÉREZ, TEATRO, *supra* note 1, vol. 24, at 2.

61. *1813 Proposals*, *supra* note 40.

62. *Id.*

63. *Id.*

one finds at the start of the titles of the *Teatro*, even to the inclusion of the Canon-law sources. If, however, one includes the secondary sources, and excludes those of the Canon law, this is very obviously the same type of list as the lists that one finds on the recto interleaves of the de la Vergne volume.

The Proposals also explained that, at the end of each law, it was intended to add:

[...] a note showing all such laws of the civil code of this state, and of the recopilation de castilla, which contain provisions on the same subject, in such manner that it will be easy to verify what alterations the ancient law contained in the seven *Partidas*, may have experienced in modern or actual legislation.<sup>64</sup>

The thinking behind this strongly resembles that behind the concordance provided for specific articles of the *Digest* in the de la Vergne volume. It provided a way of moving from the *Partidas* to the modern law, just as the references linked to the individual articles of the *Digest* allowed one to move from the provisions of the *Digest* to related Spanish and French material, as well as Territorial legislation.

The planned publication of a French translation of the *Siete Partidas* is obviously connected very closely with Moreau's compilation of the Moreau MS and the de la Vergne volume. In all three, his consultation of the *Teatro* exercised significant influence. That Moreau wrote the Proposals of 1813 with a copy of the *Teatro* in front of him is very readily demonstrated. The Proposals describe the *Partidas* thus:

The code of seven parts which draws its name, from being thus divided, contains every thing relative as well to the public as well as to the private right of Spain. The first part is an exact digest of the Church-laws such as they stood at that time. The second part is a summary of the ancient usages and customs of the nation, of which it is in some measure the

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64. *Id.*

legal history. The 3d, 4th, 5th and 6th, parts contain a summary of the provisions of the Roman Law, about persons, things and actions, and besides several decisions which serve in regulating some dubious points of the civil law. The fourth part is a compendium of the canons and of the laws relative to Betrothing matrimony and other matters thereto belonging, finally the 7th part is relative to crimes and offences and their punishment, and is terminated as the pandects and decretals with titles on the meaning of words and regulations of right.<sup>65</sup>

We find in the *Teatro's Discorso Preliminar*:

The *Partidas*, which King Don Alfonso the Wise finished in the year 1260, is the complete Body of Law that gathers together Public Law as much as Private Law, and it comprehends it all with a scientific, sound, Christian, just, and equitable method. [It is] in all respects and truly a Code and [one] which will perhaps not have an equal in Europe. Indeed, the first *Partida* is a detailed compendium of the Canon Law that flourished in that epoch. The second is a tried and true summary of the ancient *fueros* and customs of the Nation, which forms a legal history of the same, and it also comprehends the most wholesome Politics. The third, fifth, and sixth *Partidas*, in short, contain the best [Law], including Roman Law on lawsuits, contracts, and last wills [and testaments], all adjusted to the constitution of the Monarchy in that time, and deciding various uncertain points in the Civil Law. The fourth *Partida* is a compendium of the Canons and Civil Laws pertaining to betrothals and marriages and their incidental subjects. The seventh and last *Partida* is the same [i.e., a compendium] regarding crimes and punishments, ending in the style of the *Pandects* and *Decretals* with titles on the meaning of words and rules of Law.<sup>66</sup>

There is no real need to comment; even in the translations, the close correspondence stands out. Moreau has mentioned the fourth *Partida* in his listing of the contents of the *Partidas* where Pérez had not, but he still followed Pérez in discussing its contents just before

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65. *Id.*

66. See Preliminary Discourse, *supra* note 9, at no 29.

considering those of the seventh *Partida*. This suggests he was copying without much reflection.

The cost of the subscription for the work was sixty dollars. Since it never appeared, it must have proved prohibitive. Moreau recognized the cost was high.<sup>67</sup> Significant too in the failure of the project must have been the fact that the Constitution of 1812 had recently made English the official language of the law.<sup>68</sup>

### B. *The Translation of 1818*

Moreau and Carleton's limited translation of 1818 covers the fifth, sixth, and eleventh titles of the fifth *Partida*. After a brief Preface, there is a list of sources for the translation and text of the title on promises and obligations that includes four titles of Justinian's *Digest*, four of his *Code*, six from his *Institutes*, a title from the fifth book of the *Recopilación*, a section of Febrero's treatise, and the third title of the third book of the *Digest* of 1808. The list of sources is derived from the de la Vergne volume, with some additional titles taken from the *Corpus iuris civilis*, while omitting its references to Rodriguez's translation of the *Digest*, Pothier, Domat, the Ordenamiento de Alcalá, and, of course this very title of the *Partidas*;<sup>69</sup> the list in the de la Vergne volume is an obvious development of a short list in the Moreau MS.<sup>70</sup> This is partially derived from the list in the *Teatro*.<sup>71</sup> The next list of sources is for the text and translation

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67. *1813 Proposals*, *supra* note 40.

68. LA. CONST. of 1812, art. VI, § 15: "All laws that may be passed by the Legislature, and the public records of this State, and the judicial and legislative written proceedings of the same, shall be promulgated, preserved and conducted in the language in which the constitution of the United States is written."

69. MOREAU LISLET & CARLETON, TITLES ON PROMISES AND OBLIGATIONS, SALE AND PURCHASE, AND EXCHANGE, *supra* note 37, at [vii] (5.11); DE LA VERGNE VOLUME, *supra* note 2, at recto of interleaf facing 260 (under the heading "Des obligations en general etc.").

70. LSU, Moreau MS, *supra* note 39, at 61, bottom margin.

71. PÉREZ, TEATRO, *supra* note 1, vol. 9, at 179; LSU, Moreau MS, *supra* note 39, at 60 bottom margin, also cites PÉREZ, TEATRO, *supra* note 1, vol. 22, at 4.

of the title on sale and purchase.<sup>72</sup> This is very closely derived from that in the de la Vergne volume, though excluding both some laws and secondary literature cited in the latter.<sup>73</sup> This is an elaboration of a list in the Moreau MS, which is copied from two lists of sources in the *Teatro*.<sup>74</sup> The final title, that on exchange, has a list of sources that is again closely related to that in the de la Vergne volume, which is essentially copied, with additions, from that found in the Moreau MS, which in turn is copied exactly from the *Teatro*, omitting the last reference to a source of Canon law.<sup>75</sup> The lists of sources always end with the relevant title of the *Digest*, referred to as the Civil Code.

### C. The Translation of 1820

This translation was made viable by the support of the Louisiana Legislature.<sup>76</sup> It consists of two volumes, continuously paginated. The first volume starts with a relatively lengthy Translators' Preface.<sup>77</sup> Those titles of the *Partidas* selected by Moreau and Carleton for translation as still in force were: the first two titles of the first *Partida*; none of the second *Partida*; the entirety of the third, fourth, and fifth *Partidas*; only the fifth and eleventh titles of the sixth; and of the seventh, only the sixth, ninth, tenth, fifteenth, thirty-third and thirty-fourth titles. This has a strong resemblance to what Moreau had proposed in 1813 for his French translation. As in the translation of 1818, each title of the *Partidas* is preceded by a list of relevant

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72. MOREAU LISLET & CARLETON, TITLES ON PROMISES AND OBLIGATIONS, SALE AND PURCHASE, AND EXCHANGE, *supra* note 37, at [79]-80 (5.5).

73. DE LA VERGNE VOLUME, *supra* note 2, at recto of interleaf facing 344.

74. LSU, Moreau MS, *supra* note 39, at 342-343; PÉREZ, *TEATRO*, *supra* note 1, vol. 7, at 397, and vol. 28, at 442.

75. MOREAU LISLET & CARLETON, TITLES ON PROMISES AND OBLIGATIONS, SALE AND PURCHASE, AND EXCHANGE, *supra* note 37, at [186] (5.6); DE LA VERGNE VOLUME, *supra* note 2, at recto of interleaf facing 370; LSU, Moreau MS, *supra* note 39, at 371; PÉREZ, *TEATRO*, *supra* note 1, vol. 5, at 391.

76. See Agustín Parise, *Introductory Essay on the Translators' Preface to Law Siete Partidas*, 7 J. CIV. L. STUD. 311, 320-21 (2014) [hereinafter Parise, *Introductory Essay*].

77. This has been recently reprinted with the *Introductory Essay*, see *id.* at 336-53 (2014).

related laws. To take one example, that of the title on donations (the fourth title of the fifth *Partida*), we find the list headed: “Titles, Of the Roman and Spanish Laws, and of the Civil Code, which relate to the title of Las Siete Partidas, on Donations.” The list itself consists of two titles of Justinian’s *Digest*, one of his *Institutes*, four titles from his *Codex*, and one of the *Novellae*; two titles from Domat’s work; two titles from the *Fuero Juzgo*, one from the *Fuero Real*, four provisions from the *Leyes del Estilo*, and one title each from the *Ordenamiento Real*, the *Recopilación*, and the *Autos Acordados*, before finishing with a citation of the “Civil Code, book 3, tit. 2.”<sup>78</sup> Just as with the translation of 1818, this list is closely related to a similar but more extensive list in the de la Vergne volume (the latter includes citations to Domat and Pothier); but, notably, it is virtually identical to that found in the Moreau MS, which is drawn from the *Teatro*, but which included much more Roman material, while explaining in a note that a lot of material had been united in the list. It also includes titles from the Canon law.<sup>79</sup> It is clear that the list of material in the translation is drawn from the *Teatro*, but has been filtered through the Moreau MS and the de la Vergne volume. In connection with hypothecs, I have elsewhere demonstrated the same practice in developing and changing these lists, ultimately deriving from Pérez’s work, through to the 1820 translation.<sup>80</sup>

In numbered footnotes at the end of the translation of some of the laws, Moreau and Carleton have often included references to the *Recopilación*, and the *Digest* (called the Civil Code). In footnotes indicated by letters, there are sometimes references to other sources, and sometimes comments such as: “The civil code does not require the same number of witnesses to the nuncupative wills. C. art. 92 & 96, p. 228,” or “By the civil code, art. 99, p. 228 & 230, the presence

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78. LAWS OF LAS SIETE PARTIDAS, *supra* note 38, vol. 2, at 641-42.

79. LSU, Moreau MS, *supra* note 39, at 208-209; PÉREZ, *TEATRO*, *supra* note 1, vol. 11, at 221-22.

80. Cairns, *De la Vergne Volume*, *supra* note 2, at 54-59.

of a notary public is also required.”<sup>81</sup> This reflects what was proposed in 1813. Though providing the texts of the *Partidas*, the translators were indicating where the modern law in Louisiana varied from it.

*D. The Significance of the Lists in the Manuscripts and Translations*

In the Moreau MS, Moreau was not simply giving the standard *sedes materiae* of Roman and Spanish law, but was in fact deliberately and consciously copying the lists he found in the *Teatro*. Thus, he usually followed the *Teatro* in giving the number of laws in each title; he also copied what he found without initially checking its accuracy, and so transcribed errors, as pointed out above. He evidently started to annotate what is now the Moreau MS by starting to write out the relevant Spanish sources, usually, as noted, starting on the bottom margin of the right hand page on his copy of the *Digest*, continuing on the bottom margin of the facing page, and then on the top margin of that page and finishing on the top margin of the right-hand page (incidentally indicating his right-handedness).<sup>82</sup> He did not usually reflect on the sources or choose from them; this was a simple act of copying, indicating the trust he necessarily put in the *Teatro*. Such reflection as he made came later. As also noted, he even copied Pérez’s practice of generally giving the number of laws found in each title, if a whole title were cited. The only editing Moreau seems routinely to have carried out was to exclude Pérez’s Canon-law citations, as inappropriate and irrelevant.

It is obvious that the lists of sources that Moreau developed, expanding them and contracting them as they served different purposes, all derived from the *Teatro*’s lists of sources for each title. The lists in the de la Vergne volume are always the most elaborate. Those in the two translations are quite pared down in comparison.

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81. LAWS OF LAS SIETE PARTIDAS, *supra* note 38, vol. 2, at 962-63.

82. *See, e.g.*, LSU, Moreau MS, *supra* note 39, at 208-9.

But the lists in the *Teatro* always held the potential for consultation in drafting the lists in the translations of the *Siete Partidas*.

### *E. The Prefaces*

The Preliminary Discourse to Pérez's *Teatro* also provided material that could be used in Louisiana to understand the Spanish sources and their history. We have already seen how the Proposal of 1813 drew on its description of the *Partidas*. It is easy to demonstrate this further by examining the *Avant-Propos* to the de la Vergne volume, and the prefaces to the translations of the *Siete Partidas*. These indicate the power of Pérez's work in shaping the approach to these sources in the Territory and early State. In earlier studies, I have already suggested that in Territorial Louisiana both the understanding of Domat as a commentator on Roman law and the knowledge (and sometimes misunderstanding) of the Spanish source material initially came through his Preliminary Discourse.<sup>83</sup> What follows serves to support this interpretation.

#### *1. The Avant-Propos to the de la Vergne Volume*

The *Avant-Propos* is a relatively short piece.<sup>84</sup> It places the Spanish sources in context and gives a short history of their development. The pattern and structure of the discussion indicate that it is very obviously following Pérez's Preliminary Discourse, but it is much abbreviated. One quotation readily demonstrates that Moreau had Pérez's work directly in front of him as he wrote. It is more obvious in French and Spanish and will be quoted accordingly in these languages. Pérez wrote:

*Desde el año de 992 en que se publicó el Fuero Viejo hasta*

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83. Cairns, *De la Vergne Volume*, *supra* note 2, at 73; Cairns, *Teatro*, *supra* note 3, at 109-10.

84. It is found translated into English in Mitchell Franklin, *An Important Document in the History of American Roman and Civil Law: The De La Vergne Manuscript*, 33 TUL. L. REV. 35, 39-42 (1958); Joseph Dainow, *Moreau Lisset's Notes on Sources of Louisiana Civil Code of 1808*, 19 LA. L. REV. 43, 44-49 (1958).

*el de 1255 en que se promulgó el Real, ó de las leyes, ocurrieron dos sucesos notables en el Orbe literario, señaladamente el el jurídico: uno fue la enseñanza pública del Digesto, y demas partes del Derecho Civil, llamado Comun, que se empezó á hacer en la Universidad de Bolonia; y otro la formacion del Decreto executada privadamente por el Monge Graciano en el año de 1151 . . . .*<sup>85</sup>

In the *Avant-Propos*, we find:

*Depuis l'année 992 que se publia le Fuero Viejo, jusqu'en l'année 1255 que le Fuero Real fut promulgué, il arriva un événement que servit beaucoup à répandre en Europe, des lumieres plus saines que celles qu'on avait eues jusqu'alors sur la Jurisprudence. Ce fut l'enseignement public qu'on commença à donner dans l'université de Boulogne en Italie, des principes du Digeste et des autres parties du Droit civil appelé droit commun.*<sup>86</sup>

This is little more than a translation of Pérez's text, indicating just how closely Moreau was following it. And as he excluded from his lists the *Teatro's* citations of Canon law, so here he excludes its mention of Gratian's *Decretum*. Another example that confirms this is to be found in the discussion of the *Fuero Real* and the *Partidas*. Pérez writes: "[E]l primero es el Fuero Real, y el segundo las Partidas, formando aquel en el año de 1255 para que sirviese de precursor á este."<sup>87</sup> In the *Avant-Propos* we find: "Le premier de ces codes qui est le *Fuero Real* parut en l'année 1255, comme pour servir de précurseur aux *Partidas* . . . ."<sup>88</sup> One could carry on, pointing out that Moreau is simply making a condensed copy of the discussion of the sources found in the Preliminary Discourse.<sup>89</sup> But his working method is abundantly clear.

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85. PÉREZ, *TEATRO*, *supra* note 1, vol. 1, at VII (no. 9).

86. *Avant-Propos*, in DE LA VERGNE VOLUME, *supra* note 2.

87. PÉREZ, *TEATRO*, *supra* note 1, vol. 1, at XIX (no. 28).

88. *Avant-Propos*, in DE LA VERGNE VOLUME, *supra* note 2.

89. Compare the discussion of the sources from *Ordenamiento de Alcalá* to the *Recopilación de Castilla* in *id.*, the *Avant-Propos*, with the discussion in the Preliminary Discourse, *supra* note 9, at nos. 35-38.

## 2. *The Preface to the Translation of 1818*

Moreau Lislet and Henry Carleton's extensive use of the Preliminary Discourse of the *Teatro* in composing the short Preface to their translations of the three titles of the *Siete Partidas* in 1818 is also easily demonstrated. Indeed, the account of the *Siete Partidas* is again little more than a translation from the description in Pérez's *Teatro*:

Indeed, the first *Partida* is a detailed compendium of the Canon Law that flourished in that epoch. The second [*Partida*] is a tried and true summary of the ancient *fueros* and customs of the Nation, which forms a legal history of the same, and it also comprehends the most wholesome Politics. The third, fifth, and sixth *Partidas*, in short, contain the best [Law], including Roman Law on lawsuits, contracts, and last wills [and testaments], all adjusted to the constitution of the Monarchy in that time, and deciding various uncertain points in the Civil Law. The fourth *Partida* is a compendium of the Canons and Civil Laws pertaining to betrothals and marriages and their incidental subjects. The seventh and last *Partida* is the same [i.e., a compendium] regarding crimes and punishments, ending in the style of the *Pandects* and *Decretals* with titles on the meaning of words and rules of Law.<sup>90</sup>

In Carleton and Moreau's *Preface* to the translation of 1818, we find the following:

The first part contains a system of canonical law, such as was observed at that period of the Christian æra.

The second is a summary of the ancient usages and customs of the Spanish nation, of which it is in some sort a legal history.

The third, fifth, and sixth contain an abridgement of all the principles to be found in the Roman laws upon the subject of actions, process and judgement, contracts and last wills, together with decisions upon various points left doubtful by the civil law

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90. See Preliminary Discourse, *supra* note 9, at no. 29.

The fourth is a compendium of the laws relative to betrothing and marriages; to the state of man, liberty, slavery and enfranchisement.

The seventh, treats of crimes and punishments, and terminates as do the pandects with two titles; one upon the signification of words, and the other upon the rules of law.<sup>91</sup>

The source is obvious, and this is very close to what was written in the Proposals of 1813. What is most interesting, perhaps, are the differences between the two texts.<sup>92</sup>

### 3. *The Preface to the Translation of 1820*

In 1958, Mitchell Franklin perceptively commented:

There is a marked similarity between the content of the preface of the de la Vergne manuscript and the translators preface which Moreau-Lislet and Henry Carleton attached to their famous two volume translation of the *Partidas* published in 1820. Indeed, the content of the preface of the de la Vergne manuscript gives the impression of being a summary or early draught of the introduction published in 1820.<sup>93</sup>

Of course, this is true largely because both are founded in the common source, namely Pérez's Preliminary Discourse. The narrative account of the history of the sources of Spanish law in the Preface of 1820 is very clearly derived from Pérez's Preliminary Discourse. This is very easily demonstrated. Pérez explained in the *Teatro*:

Afterward, the sacred Literature flourished among the Ecclesiastics, and the two Powers, spiritual and temporal, being consummately united, appropriate regulations of both species of Powers were established in the National Councils .... From these rulings, and from other ones authorized and published by the Gothic Kings, was formed the *Fuero Juzgo*, which was promulgated in the year 693 of the Christian Era.

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91. MOREAU LISLET & CARLETON, TITLES ON PROMISES AND OBLIGATIONS, SALE AND PURCHASE, AND EXCHANGE, *supra* note 37, at [iii]-iv.

92. I hope to pursue this elsewhere.

93. Franklin, *supra* note 84, at 38.

This Code, the first of the Nation and of its own law, is divided into 12 books, and is subdivided into several titles.<sup>94</sup>

Moreau and Carleton followed:

[T]he intimate union that prevailed at that time between them [the clergy] 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.<sup>95</sup>

We find in the Preliminary Discourse:

In the time that spanned from the formation of the *Partidas* to their first publication done in the *Cortes* of Alcalá, only the *Leyes de Estilo*, which added up to the number of 252 without the least division into books or other members or parts, were promulgated in the year 1310.<sup>96</sup>

And in Moreau and Carleton's Introduction:

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.<sup>97</sup>

Pérez wrote:

Nevertheless, the Kingdom's political constitution continued in this way until the Mohammedan invasion occurring in the year 714 changed and almost annihilated it. That fatal catastrophe made the remains of the tottering Monarchy retreat to the mountains of Asturias. From here, Don Pelayo [Pelagius of Asturias], descendent of the Royal blood of the Goths, and afterward his august Successors, were little by little shaking off the Muslim yoke, and extending our Holy Religion with their victorious arms up to the Peninsula's borders.

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94. See Preliminary Discourse, *supra* note 9, at nos. 2-3.

95. LAWS OF LAS SIETE PARTIDAS, *supra* note 38, vol. 1, at v.

96. See Preliminary Discourse, *supra* note 9, at no. 32.

97. LAWS OF LAS SIETE PARTIDAS, *supra* note 38, vol. 1, at xii.

In those calamitous times, the Kings needed the immediate aid of the Grandees and Hidalgos, those who served them with their persons, and people funded at their expense. For this reason, it was necessary to remunerate such good services made to the State and to the Fatherland with lands that were being acquired in the conquests, dividing them among the same Grandees and Hidalgos . . . . These circumstances occasioned the publication of the *fuero* called [the *fuero*] of the Hidalgos, and finally it was equally necessary to promulgate a *fuero* for government in general and the conduct of actions [lawsuits], like the *Fuero Viejo*, which was published in the year 992 and other similar ones.<sup>98</sup>

Moreau and Carleton wrote:

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 Asurias, whither the Spaniards who had escaped their fury, fled under Don Pelage, a descendant of the Gothic kings . . . . During this bloody struggle, the kings of Spain, having frequent need of the nobles and grandees who followed them in the field, were under necessity of granting them many important privileges and of establishing them a code in their favour. Hence the origin of *El Fuero delos hijos dalgos*, the code of the nobles . . . . [I]n 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.<sup>99</sup>

What had been said about the *Partidas* in the Proposals of 1813 and the Preface of 1818, copied from the *Teatro*, was basically repeated.<sup>100</sup> Other parts were essentially copied, such as the account of the *Recopilación* and the *Autos Acordados*.<sup>101</sup> The view of the *Teatro* was overtly preferred to that of another Spanish author.<sup>102</sup>

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98. See Preliminary Discourse, *supra* note 9, at nos. 4-5.

99. LAWS OF LAS SIETE PARTIDAS, *supra* note 38, vol. 1, at vi.

100. *Id.* at ix.

101. See Preliminary Discourse, *supra* note 9, at no. 39; LAWS OF LAS SIETE PARTIDAS, *supra* note 38, vol. 1, at xiv-xv.

102. LAWS OF LAS SIETE PARTIDAS, *supra* note 38, vol. 1, at xiii-xiv.

## VI. FINAL REMARKS

Moreau Lislet undoubtedly made extensive use of the *Teatro*. It helped him to find his way around the Spanish material. It provided him with access to relevant source material that he could not otherwise get. His understanding and accounts of the Spanish source material are based on it. It evidently shaped his knowledge and approach. One starts to see its influence on him as pervasive. Given that Moreau made extensive use of the *Teatro* at various stages of his life as a lawyer in Louisiana, it does seem probable that he had earlier used it for access to basic Spanish source material in his work with James Brown on the *Digest* of 1808. But whether or not he did so is probably unknowable and perhaps unimportant.

It is difficult to believe that Moreau was the only lawyer who found the *Teatro* useful, a realization that tends to support the argument that it was used in drafting the vetoed Act of 1806. One wonders how many of the references to the Spanish laws found in litigation in the Territorial period and during the early statehood of Louisiana were in fact silently drawn from a copy of the *Teatro*. In the Proposal for a French translation in 1813, Moreau had written as part of his sales pitch that he hoped that such a translation would gather “merit in the eyes of the public” so that “that merit [would] give it in the courts of this state as an authority, which may dispense from the representation of the original, a work of four large volumes *in folio* and extremely difficult to be purchased at any price, even in the Spanish settlements in America.”<sup>103</sup> The same argument might support the idea of the utility of the *Teatro*, even though it may also have been difficult to obtain.

Given that Pérez’s more substantive and extensive titles not only have the lists of sources that Moreau found so useful, but also have a concise, contextual discussion of the law, it may be that his work also offered a simple interpretative approach, one that was up-to-

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103. 1813 Proposal, *supra* note 40.

date and basically contemporary, and easier to use than more sophisticated books, and that was accordingly found useful. However this may be, it is clear that the *Teatro* was an important work in the era of the Territory and the early State, so that publication of a translation of its Preliminary Discourse will help raise awareness of this and should provoke thought about new lines of research.