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THE LOST TRANSLATORS OF 1808 AND THE BIRTH OF CIVIL LAW IN LOUISIANA, by Vernon Valentine Palmer (University of Georgia Press 2021), ISBN 978-0820358338, 139 pp., \$54.95.

I. INTRODUCTION

Louisiana's unique legal system is based on translation. This book by Vernon Palmer, a professor of law at Tulane University and a world-renowned expert in mixed jurisdictions, sheds light on the seminal work of the translators who were involved in the first major translation effort in the state, translating the Louisiana's first civil code, the *Digest of the Civil Laws Now in force in the Territory of Orleans* of 1808, from French into English. This instrument was key to settle the dispute whether the Territory would remain a civil-law or common-law jurisdiction after the purchase by the United States in 1803. This civil code anchored the state in the civil-law tradition, which was reinforced in the wholesale revisions of 1825 and 1870 and the piecemeal amendments in more recent years.

The identity and method of work of those translators had remained invisible¹ so far. This book solves a "200-year-old mystery"² by revealing the translator's identities and biographies, putting them in the spotlight, for good and for bad. After Palmer's painstaking research, their names can now be written in black and white: Henry Paul Nugent and Auguste Davezac de Castera.

II. STRUCTURE AND STYLE OF THE BOOK

The book is divided into five chapters and one appendix. It starts with a literary scene depicting a trial in which the soon-to-be-revealed translators were involved, one as a defendant and the other as counsel. Chapter two details the method followed by the author to discover the identities and biographies of the translators. Chapter

1. Invisibility in translation is a recurring topic in translation studies, and the fundamental work in the area is LAWRENCE VENUTI, *THE TRANSLATOR'S INVISIBILITY: A HISTORY OF TRANSLATION* (Routledge 2008).

2. See <https://perma.cc/Y98H-XLJM>.

three and four tell the stories of the translators, a “mercurial man”³ and an “eloquent *docteur*.”⁴ Between chapter four and five there are some portraits of relevant characters to this research, among which we can see that of Davezac; alas, there is no portrait of Nugent. The translation is put in context in chapter five, which engages in a critical analysis of the translation approach and strategy. As a corollary, the appendix contains selected writings by the translators, who had a somehow prominent public life.

A special comment is due regarding the general style in which the book has been crafted—Professor Palmer writes with eloquence and a literary flavor. The story of the translators starts with a scene *in medias res*, a technical literary technique Palmer masters, and continues with a very natural flow throughout the rest of the book. The effort by the author to always choose the right word is easily noticeable, and commendable.

II. TWO UNCONVENTIONAL TRANSLATORS

The names have been finally revealed: the Digest of 1808 was translated by Henry Paul Nugent and Auguste Davezac de Castera. Palmer’s initial scene depicts a libel trial followed against Nugent for his writings against a judge. Nugent, in turn, was represented by his co-translator Davezac. The trial was presided by another prominent legal translator: François-Xavier Martin. Palmer’s feeling is that at that trial there was more at stake than mere libel allegations—this trial was opposing competing French-into-English translators.⁵

The search for the identities of the lost translators took the author to the Legislature’s acts authorizing payments to those involved in the drafting and translation of the Digest. He discovered their

3. VERNON VALENTINE PALMER, *THE LOST TRANSLATORS OF 1808 AND THE BIRTH OF CIVIL LAW IN LOUISIANA* 12 (Univ. Georgia Press 2021).

4. *Id.* at 20.

5. The rivalry may date back to the times when Nugent fiercely criticized Martin’s translation of Pothier. *See* PALMER, *supra* note 3, at 33 (referring to Martin’s “imbecility exhibited in his burlesque translation of Pothier”).

identities through “deduction, extrinsic evidence, and a process of elimination.”⁶

Henry Paul Nugent was a self-proclaimed polyglot born in Ireland who immigrated into the United States after receiving his education in France and England;⁷ he also presented himself as a dancer and a dance teacher.⁸ Aguste Davezac de Castera was a Frenchman born into a Saint-Domingue family; he immigrated to the United States and trained and practiced as a doctor in North Carolina before settling in New Orleans.⁹ By reading his writings, Palmer highlights how persnickety Nugent was in the use of language, both French and English;¹⁰ he was what today is termed a *snoot*.¹¹ Davezac also read law in Edward Livingston’s office,¹² who was his brother-in-law. The author also mentions Davezac’s profuse experience translating books from French into English.¹³ Both Nugent and Davezac were registered with the Superior Court in New Orleans as sworn translators and interpreters. At a time when there was no formal training in translation or interpretation, being in that roster could be considered tantamount to being professional. In addition to relying on archives and statutes where their names appear, the author draws the big picture of the connections among these two persons and the legal élite of their times. Palmer has found family, professional, political, and business bonds that tie the two men to the translation, as

6. *Id.* at 13.

7. *Id.* at 14.

8. *Id.* at 20.

9. *Id.*

10. *See id.* at 32 (where an extract is transcribed of a writing by Nugent chastising an actor for his poor pronunciation of English terms).

11. David Foster Wallace, *Authority and American Usage*, in *CONSIDER THE LOBSTER AND OTHER ESSAYS* 69-70 (Little, Brown and Company 2005):

There are lots of epithets for people like this — Grammar Nazis, Usage Nerds, Syntax Snobs, the Grammar Battalion, the Language Police. The term I was raised with is *SNOOT*. . . . A SNOOT can be loosely defined as somebody who knows what *dysphemism* means and doesn’t mind letting you know it.

I submit that we SNOOTs are just about the last remaining kind of truly elitist nerd.

12. PALMER, *supra* note 3 at 15.

13. *Id.* at 16.

their name is nowhere to be expressly found as translators of the Digest.¹⁴

III. THE TRANSLATION UNDER SCRUTINY

While the greatest contribution of this book is the unveiling of the identities of the translators of the Digest of 1808 through historical research using primary sources, chapter five on the quality of the translation is equally important. In this part of the book, Palmer engages in translation criticism.

As soon as the translation was out, it was criticized as “extremely incorrect” by Governor W. C. C. Clairborne.¹⁵ Officials even thought of getting rid of the English version and keeping the French only. However, no legislative action was taken. Then, the issue became a contested matter in the courts. While judges were reticent to giving prevalence to one version over the other, they eventually established a sensible “French-preference rule.”¹⁶

The quality of the French-into-English translation of the Digest and the subsequent codes has been a matter that garnished attention from scholars.¹⁷ The most important contribution so far is perhaps the analysis carried out by Professor Joseph Dainow in 1972.¹⁸ However, Palmer’s contribution in this respect goes beyond

14. While Palmer supposes that the names of the translators did not appear as such because their product proved to be not as good as expected, another explanation could be that they were kept in the shadows because of a sustained and widespread practice of invisibilizing translators and their work. Especially when it comes to the translation of legislation, some people may fear that recognizing the people who actually were involved in translating would affect the image of the text as the solemn expression of the Legislature, particularly when the text is supposed to be on an equal standing with the original. Hiding the translators’ names may have been a strategy to depersonalize the English text.

15. *Id.* at 46.

16. *Id.* at 47.

17. See, e.g., E. B. Dubuisson, *Errors of Translation in the Codes*, 5 LOY. L.J. 163 (1924); John M. Shuey, *Civil Codes—Control of the French Text of the Code of 1825*, 3 LA. L. REV. 452 (1941).

18. 1972 COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA (Joseph Dainow ed., volumes 16-17 of West’s Louisiana Statutes Annotated, 1973) (1940). For more information on the compiled edition, see Jaro Mayda, *Book Review*, 34 LA. L. REV. 152 (1973).

criticizing errors. As a mixed-jurisdictions scholar, he succeeds in taking a deeper look at the general approach and specific strategies adopted by the chastised translators. He found a deliberate attempt by the translators to introduce common-law equivalents. Aware of their role in a developing jurisdiction with an influx of lawyers trained in the common law only, the translators knew that they had to do something else than merely translate to convey the message. Also, the author's analysis revealed a very questionable practice in how these translators worked: they divided their work in parts and each did his share, without consulting each other and comparing their versions. Though undesirable in principle, time constraints may require dividing large documents for translation among two or more translators,¹⁹ especially in legal contexts.²⁰ However, a basic good practice to ensure the quality of the final product is that (a) the translators involved work together and agree on translation solutions and style, and/or (b) that a third-party reviser goes through the entire document to polish any discrepancies and makes the text look as if it had been written by a single person.²¹ Palmer's analysis reveals that none of these courses of action were followed. Evidence of the translators' method of work is the translation of the French term *fruits civils* as *civil profits* in some sections, and as *civil fruits* in

19. This practice is referred to as "batch translation" in DANIEL GOUADEC, *TRANSLATION AS A PROFESSION* 107 (John Benjamins Publ'g 2007).

20. See Fernando Prieto Ramos, *Quality Assurance in Legal Translation: Evaluating Process, Competence and Product in the Pursuit of Adequacy*, 28 *INT. J. SEMIOT. L.* 11-30 (2015).

21. See GOUADEC, *supra* note 19, at 107 (explaining that: Parallel or simultaneous translation means the different translators translate their respective batches in the *same time interval*. The main problem is terminological, phraseological and stylistic consistency between the different batches. This can be achieved upstream by making sure the resources or raw materials (terminology, phraseology, models, and memories) are made available to all the translators and validated and harmonized before the translation starts. It can be achieved downstream by harmonizing the translations during the proof-reading process. It is essential in any case that all the translators concerned be duly advised that other translators are working on different batches of the same job. (emphasis in the original)).

others.²² The author attributes the inconsistency in the quality and style of the translation to the lack of collaboration between the two translators.²³

Palmer goes over the famous Batiza-Pascal debate²⁴ only to highlight how little attention had been paid to the English translation of the 1808 Digest. At this point, his research not only sheds light on the identities of the translators, but also on the sources they used to translate the civil law into English. Among these sources, two merit an express mention: an old English translation of Domat's *Les Loix civiles dans leur ordre naturel* and Blackstone's *Commentaries on the Laws of England*. Blackstone's presence in the Digest revealed the efforts made by the translators to convey a new body of law with language that was familiar to the common-law-trained professionals present in Louisiana at the turn of the 19th century. The author makes clear that these decisions were most probably taken by the translators themselves, without what is known in modern translation studies as a "translation brief,"²⁵ i.e., instructions from the commissioner of the translation job (in this case, most likely the Legislature). Anyway, they took it upon themselves to "communicate in the language best understood by the anglophone bench and bar."²⁶ Palmer gives the translators credit where credit is due: the 1808 translation is portrayed as an "uncatalogued creation,"²⁷ which served to "accommodate, reconcile, or bridge legal differences and to overcome communication gaps between the traditions."²⁸ In

22. See PALMER, *supra* note 3, at 66.

23. See Wallace, *supra* note 11, at 69-70.

24. See Rodolfo Batiza, *The Louisiana Civil Code of 1808: Its Actual Sources and Present Relevance*, 46 TUL. L. REV. 4 (1971-1972); see also Robert Pascal, *Sources of the Digest of 1808: A Reply to Professor Batiza*, 46 TUL. L. REV. 603 (1972). In short, Batiza advocated the theory that most of the sources of the Digest were French in origin, while Pascal held that they were Spanish.

25. See generally Juliette Scott, *Specifying Levels of (C)overtness in Legal Translation Briefs*, in LEGAL TRANSLATION. CURRENT ISSUES AND CHALLENGES IN RESEARCH, METHODS AND APPLICATIONS (Ingrid Simonnæs & Marita Kristiansen eds., Frank & Timme 2019).

26. PALMER, *supra* note 3, at 52.

27. *Id.*

28. *Id.*

translation-theory terms, Nugent and Davezac had in mind a purpose or *skopos*²⁹ that shaped the translation strategies for their work.

Palmer takes a passionate approach on how the translators used the common law to find “equivalents for the benefit of an anglophone legal audience.”³⁰ A purist could say that this approach is flawed because the language of the civil law should be conveyed in civilian terms only.³¹ Also, some could even allege that by introducing common-law terms the translators lost the opportunity to lay solid foundations for the language of the civil law in English. Let us remember that the Digest of 1808 was the first modern, European-style civil code in English. A balanced approach requires accepting that sometimes it is beneficial for the purpose of the translation to use common-law terminology.³² Using the common law in those cases takes the text (or author) closer to the reader, and not the other way around.³³

29. Hans J. Vermeer’s “skopos theory” explains the translating activity by parting from the view that translation is a form of human interaction and, as such, determined by its purpose or “skopos.” See Christiane Nord, *A Functional Typology of Translations*, in *TEXT TYPOLOGY AND TRANSLATION* (Anna Trosborg ed., John Benjamins Publ’g 1997) (“One of the main factors in the skopos of a communicative activity is the (intended) receiver or addressee with their specific communicative needs.”).

30. PALMER, *supra* note 3, at 53.

31. See, e.g., Alain Levasseur & Vicenç Feliú, *The English Fox in the Louisiana Civil Law Chausse-Trappe: Civil Law Concepts in the English Language; Comparativists Beware*, 69 *LA. L. REV.* 715 (2009) and John Randall Trahan, *Levasseur, Legal Linguist*, 76 *LA. L. REV.* 1025 (2016).

32. The author of this review believes that resorting to common-law language to translate the civil law is appropriate mostly for informative purposes. For example, if a lawyer in New York needs a contract translated from Spanish into English to understand whether a lease is part of a merger transaction he is working on, it is likely that the lawyer will not understand if the translation uses civilian English, unless the lawyer is specifically trained in or is generally aware of the civil law. See, e.g., Ejan Mackaay, *La traduction du nouveau code civil néerlandais en anglais et en français*, in *JURILINGUISTIQUE : ENTRE LANGUES ET DROIT/JURILINGUISTICS: BETWEEN LAW AND LANGUAGE* (Jean-Claude Gémard & Nicholas Kasirer eds., Bruylant & Éditions Thémis 2005) [hereinafter *JURILINGUISTICS: LAW AND LANGUAGE*] (explaining how a translation of the Dutch Civil Code done using strictly civilian terminology had to be adapted with common-law terms due to pressure from legal practitioners who complained about the understandability of the original translation).

33. Schleiermacher is to be credited for differentiating between two methods: the translator leaves the author in peace, as much as possible, and moves the reader

Palmer presents the dichotomy between translating using civilian language and common-law language as a clash between “literal translation” and “legal transposition.” The common-law terminology referred to by Palmer includes *attorney in fact*, *chattels*, *consideration*, *joint and several obligation*, *loan on bottomry*, *parol evidence*, *sales by cant*, *separation from bed and board*, and *landlord*.³⁴ What the author calls “transposition” is typically known as translating in one legal system by using “equivalents” from another system. He shows that this translation practice was applied in Louisiana even before the Digest of 1808.³⁵

Scholars studying the legal system of Louisiana have pointed out that there has been a pedagogic purpose in mind in the early codes, especially in the 1825 code.³⁶ This is in stark contrast with the *Code Napoléon*, which made the case for concise and cut-to-the-chase legislation to be understood by all. Palmer argues that while the Digest of 1808 was not intended to be such a pedagogical tool, the translation was. In translation-theory language, the *skopos*³⁷ of the translation was to educate the rising legal community in Louisiana. Palmer accurately exemplifies this approach by analyzing the translation strategy used by Nugent and Davezac in translating headings. Because the translators were probably afraid that their audience would not understand if they translated civilian language transparently, they oftentimes resorted to the strategy of using doublets. This is how “Des obligations solidaires” became “Of Obligations *In Solido* or Jointly and Severally,”³⁸ for example. At the time of the

toward him; or he leaves the reader in peace, as much as possible, and moves the author toward him. See VENUTI, *supra* note 1, at 20. See generally, FRIEDRICH SCHLEIERMACHER, *SOBRE LOS DIFERENTES MODOS DE TRADUCIR* (Valentín García Yebra trans., Gredos 2000).

34. PALMER, *supra* note 3, at 53-54.

35. *Id.* at 54 (explaining that the Legislature acts of 1804–1808 had already adopted this approach).

36. *Id.* at 55.

37. See Batiza, *supra* note 29 and Pascal, *supra* note 29; see also PALMER, *supra* note 3, at 55. Palmer calls this an “independent educational or pedagogic purpose.”

38. PALMER, *supra* note 3, at 56.

translation, when the language of the civil law was not widely disseminated in English, the translators probably believed that *solidary obligations* would not do the trick, as the term would sound arcane to Louisiana practitioners and judges. That might have been why they resorted to a doublet, using a Latin term (*in solido*) and a common-law equivalent (*joint and several*), which more or less reflected the same idea as the original.

While Nugent and Davezac clearly made an effort to reach the Anglophone legal audience of the time, they also lost some opportunities to establish and consolidate the language of the civil law. After all, their translation was not for informative purposes only, as could be the case with the translation of a civil code for academic purposes. Their translation was intended to be, and actually was, at an equal footing with the original French text. In drafting an official text, they were entitled to resort to the strategy of creating neologisms when neologisms were needed, as they were writing a text that was not only supposed to convey what the law said, but to be the law itself.

Nevertheless, the translation approach was not unsupported by facts, as it is true that the emerging legal community of Louisiana in general was mostly ignorant of the civil law and its codification in the state. Right after the Louisiana Purchase, the influx of common-law lawyers from other parts of the United States grew dramatically, to the point that in the 1803–1805 period 56% of lawyers were Anglophone Americans, and the Francophones only accounted for 37% of the bar.³⁹

Palmer's general analysis of the translation is followed by an analysis of specific choices by the translators. He recognizes their great share of responsibility in shaping the language of the civil law in English in Louisiana. They coined part of the language which would be used for years to come. One of these examples, for which the author praises the translators, is the use of the *obligee-obligor*

39. *Id.* at 58.

pair. Palmer says that this terminology is a “notable invention.”⁴⁰ This choice by the translators, however, can be criticized on many counts.

The author concedes that the terms were “obscure and musty English law terms that were rarely used even in common-law books,”⁴¹ adding that the usage seemed to be confined to the law of English bonds.⁴² The translators used *obligee-obligor* only in five articles, and they used *creditor-debtor* in the rest. The author attributes this hesitance to the inexperienced translators, who were dealing with terminology they did not master, and posits that whenever the translators used the new terminology “they applied it precisely backward and mistakenly, thus producing legal nonsense.”⁴³ Then he offers six examples in which these terms or one of its derivations (i.e., *co-obligee*) are used to convey a meaning opposite the meaning now in use. For example, article 42 used *obligee* as a translation of *débiteur* and article 44 used *obligor* as a translation for *créancier*.

These mistakes cannot be lightly attributed to the ignorance of the translators. They might have been baffled by these arcane terms, but also the legal community these days finds this terminology far-fetched.⁴⁴ The source of confusion may be that the ending *-or* in legal English usually designates the active party in a transaction, and the ending *-ee* is used for the passive party: a *lessor* is the one who gives a lease over a piece of property to another, called the *lessee*, who takes the property and undertakes to pay the lease price; a *promisor* is the one who makes a promise to another called

40. *Id.* at 61.

41. *Id.*

42. Cf. MARTIN HOGG, OBLIGATIONS. LAW AND LANGUAGE 56 (Cambridge 2017) (asserting that John Cowell, in his *Institutes of the Lawes of England*, written in 1651, already referred to the party burdened with the duty as the “debtor” or “obligor.” Hogg makes it clear that Cowell was writing within a “consciously civilian framework”).

43. *Id.* at 62.

44. Bryan Garner, a leading authority on legal English, believes that “the wisest policy is probably not to handle [these terms] at all.” *Obligee; obligor*, BRYAN A. GARNER, A DICTIONARY OF MODERN LEGAL USAGE (2d ed., Oxford Univ. Press 2001).

promisee, who is entitled to enforce the promise against the first one; the *bailor* is the one who gives personal property to another called *bailee*, so that the bailee has the obligation to take care of the item and return it upon bailor's request. In the *obligor-obligee* pair, one is tempted to say that the person who is obligated to the undertaking is the obligee, because it sounds like the passive party in the transaction, just like the lessee receives the property and pays the lease price or the bailee receives the item from the bailor. But in Louisiana law—and in current legal parlance in general—the obligee is the party to whom the performance is owed. The obligor, then, is the party obligated to perform. What led the translators to use the terminology in the opposite direction as compared to how is used nowadays in Louisiana and some other jurisdictions, including common-law jurisdictions, could be the archaic use of that terminology. Black's Law Dictionary recognizes that an archaic use of *obligee* is "someone who is obliged to do something."⁴⁵ The same dictionary, in turn, defines *obligor* (with an "archaic" mark) as "someone who obliges another to do something."⁴⁶

Palmer explains that the modern Louisianan sense of the terms *obligee-obligor* consolidated after Louis Moreau-Lislet and Henry Carleton used them in translating *Las Siete Partidas* and the translators of the 1825 Code extended the application of those terms to twenty-three provisions. In both of these cases, *obligee* was used to translate *créancier* and *obligor* to translate *débiteur*. While Palmer holds that now the terminology is commonplace in civilian parlance, it is hard to accept that it is one of the "civil law's most useful

45. *Obligee*, BLACK'S LAW DICTIONARY (11th ed. 2019). The dictionary also includes this explanatory warning:

Several dictionaries, such as *The Random House College Dictionary* (rev. ed. 1995) and *Webster's New World Dictionary* (4th ed. 2007), define *obligee* in its etymological sense ['obliged'], as if it were synonymous with *obligor*. *Random House*, for example, defines *obligee* as 'a person who is obligated to another,' but that meaning ought to be reserved for *obligor*. An *obligee*, in modern usage, is one to whom an obligation is owed. Bryan A. Garner, *Garner's Dictionary of Legal Usage* 624 (3d ed. 2011).

46. *Id.*

expressions,”⁴⁷ as the terms still cause a lot of trouble nowadays.⁴⁸ A different, clearer terminology would have been and is possible and desirable. As a matter of fact, other civil codes in English use the more transparent *creditor-debtor* pair.⁴⁹ In addition to being plain, this terminology has the added value of being in line with the language of obligations in other tongues.⁵⁰

Criticizing this translation, it needs to be said, is a risky endeavor, as the analysis must take into account usages that were valid back in the early 1800s and that may no longer be valid these days. In general, Palmer does an excellent job as a critic, but some of the cases for which he whips the translators are at least debatable. One of these slippery cases is the translation of *animaux* as *cattle*. Palmer is categorical in his judgment of this translation:

Inexplicably, the simple word *animaux* (animals) proved to be a *bête noir*. It was systematically translated as ‘cattle,’ a mistake that automatically altered the intended scope of the provision in question. . . . The substitution of the word ‘cattle’ for ‘animals,’ . . . reduced the entire animal kingdom to a single bovine genus and thereby narrowed coverage obviously intended to be wider.⁵¹

While at first sight it may seem that Nugent and Davezac incurred the mistake of overtranslation by using a type of animal as the hypernym, Palmer then concedes in a footnote⁵² that the translators may have used the word adopting “an obsolete meaning that was once current centuries earlier.” The explanation of the term in the Oxford English Dictionary indicates that, after an identification with personal property during feudalism, the term was increasingly

47. PALMER, *supra* note 3, at 64.

48. See GARNER, *supra* note 44.

49. Such as the Civil Code of Quebec in English and the Civil Code of Goa, India. The Civil Code of the Philippines uses both *creditor-debtor* and *obligee-obligor*.

50. In Spanish, *acreedor-deudor*; in Italian, *creditore-debitore*; in Portuguese *credor-devedor*. And, of course, *créancier-débiteur* in French.

51. PALMER, *supra* note 3, at 70

52. *Id.* at 70 n. 83.

used as “live stock” in English.⁵³ The dictionary provides even more support to the translators’ choice:

II. Live stock. . . . 4.a. A collective name for live animals held as property, or reared to serve as food, or for the sake of their milk, skin, wool, etc. The application of the term has varied greatly, according to the circumstances of time and place, and has included camels, horses, asses, mules, oxen, cows, calves, sheep, lambs, goats swine, etc. The tendency in recent times has been to restrict the term to the bovine genus, but the wider meaning is still found locally, and in many combinations.⁵⁴

In light of this background, it is hard to believe that the translators made such a gross mistake. Writing in the early 1800s, the use of *cattle* as *live stock* in general might have been familiar to the readers of that time.⁵⁵

Another great contribution of this book is the unveiling of a “third translator.” This is how Palmer refers to the translators resorting to William Strahan’s translation into English of *Les Loix civiles dans leur ordre naturel*, originally written in French by Jean Domat. Just as the codifiers borrowed from Domat to write the Digest,⁵⁶ Palmer discovered that the translators took a “labor-saving shortcut”⁵⁷ as they copied verbatim from Strahan’s translation. While Palmer suggests that the translators could have provided their own version instead of just copycatting the English translator, it is a standard practice in translation to stick to authoritative sources.

53. *Cattle*, OXFORD ENGLISH DICTIONARY (2d ed. 1989) (“Under the feudal system the application was confined to movable property or wealth, as being the only ‘personal’ property, and in English it was more and more identified with ‘beast held in possession, live stock’, which was almost the only use after 1500.”).

54. *Id.*

55. A good argument in favor of the view of this translation as a mistake would be the finding of cases decided around that time in which the meaning of the term was disputed. If that term was mistranslated, as Palmer suggests, there must have been cases in which the dispute cropped up.

56. See, for the original study, Rodolfo Batiza, *Louisiana Civil Code of 1808: Its Actual Sources and Present Relevance*, 46 TUL. L. REV. 4 (1972); to go deeper into Batiza’s argument, see Seth S. Brostoff, *The Encyclopedist Code: Ancien Droit Legal Encyclopedias and Their Verbatim Influence on the Louisiana Digest of 1808*, 13 J. CIV. L. STUD. 33 (2020).

57. PALMER, *supra* note 3, at 70.

Conversely, attention could be directed at praising the translators for doing their research and resorting to a translation that was very well accepted in the legal community. As a matter of fact, a translator is supposed to concede to previous translations if the quality of the translations is good and enjoys acceptance among the relevant community. However, Palmer hits the nail on the head when criticizing the translators for being led to use strange collocations that are traceable to Strahan, such as *knavish possessor* for *possesseur de mauvaise foi* and *honest and fair possessor* for *possesseur de bonne foi*. *Possessor in bad faith* and *possessor in good faith* would have certainly been better and plainer equivalents. Palmer is right in criticizing the “slavish reliance”⁵⁸ on Strahan’s translation as for these weird terms.

The use of Strahan’s translation by Nugent and Davezac leads Palmer to speculate on how the translators interacted with the redactors of the Digest. The main redactor, Moreau-Lislet, was categorical in setting himself apart from the translation: “We have nothing to do with the imperfections of the translation of the Code—the French text, in which it is known that the work was drawn up, leaves no doubt.”⁵⁹ While that was the position *pour la galerie*, Palmer suggests that the translators and redactors were in contact,⁶⁰ because otherwise the translators would not have known that extracts of the Digest had been taken verbatim from Domat, which was translated by Strahan. Another possibility could be that the translators discovered Strahan by their own means, but Palmer’s intuition seems to be more accurate, in light of the translators’ lack of sound legal credentials.⁶¹ Discovering sources and contrasting originals with translations certainly requires legal and translation skills. Nowadays, it has

58. *Id.* at 71.

59. *Id.* at 75.

60. *Id.*

61. Looking at Moreau-Lislet’s library may be a good idea; see Agustín Parise, *A Translator’s Toolbox: The Law, Moreau-Lislet’s Library, and the Presence of Multilingual Dictionaries in Nineteenth-Century Louisiana*, 76 LA. L. REV. 1163 (2016).

been understood that collaboration between authors and translators is of the essence to attain optimal results. Especially in the area of legislative translation with the purpose of creating translations which actually are originals, the modern technique of co-drafting is the way to go to guarantee the best product.⁶²

IV. CONCLUSION

Palmer's analysis has unearthed many interesting facts to understand how the law of Louisiana has been shaped since the drafting and translation of a seminal piece of legislation which afterward, in 1870, became the monolingual English code. The translators were responsible for many of the linguistic choices that shaped the civil law in Louisiana for years to come. However, it is difficult to accept that the civil law was born with this translation as the title of the book suggests or that the civil law was "implanted"⁶³ with this translation, as Louisiana was already "deeply rooted in the civil law tradition"⁶⁴ before the enactment of the Digest in 1808. But Palmer is right in pointing that this translation "represented a consequential step in the birth of *a distinct kind of civil law* in Louisiana."⁶⁵ After all, Nugent and Davezac might have been the first cooks behind Louisiana's "legal gumbo."⁶⁶

This book was very much needed to understand the origins of codified civil law in the state of Louisiana. It is a great contribution combining legal history, comparative law, and legal translation. The view of an expert in mixed jurisdictions was key to put this translation in perspective as a "unique artifact of Louisiana's mixed legal

62. See, e.g., Susan Šarčević, *The Quest for Legislative Bilingualism and Multilingualism: Co-Drafting in Canada and Switzerland*, in JURILINGUISTICS: LAW AND LANGUAGE, *supra* note 32, at 279-292.

63. PALMER, *supra* note 3, at 81.

64. Kathryn Venturatos Lorio, *The Louisiana Civil Law Tradition: Archaic or Prophetic in the Twenty-First Century*, 63 LA. L. REV. 4 (2002).

65. *Id.* at 82 (emphasis added).

66. Olivier Moréteau, *Mare Nostrum as the Cauldron of Western Legal Traditions: Stirring the Broth, Making Sense of Legal Gumbo whilst Understanding Contamination*, 4 J. CIV. L. STUD. 519-520 (2011).

system that mirrors the historical conditions of its day,”⁶⁷ yet without avoiding pondering over the shortcomings of the translation. After going through the history of Nugent and Davezac and their translation, one is left with a desire for more. The legal community of Louisiana would welcome a study like this one on the translators and the story behind the translation of the Civil Code of 1825, which was also drafted in French and translated into English. Professor Palmer might want to enlighten us with a sequel, for the benefit of all of us interested in this rich mixed jurisdiction.

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67. PALMER, *supra* note 3, at 3.