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# The History and Development of the Louisiana Civil Code\*

*John T. Hood, Jr.†*

The Louisiana Civil Code has been called the most perfect child of the civil law. It has been praised as "the clearest, fullest, the most philosophical, and the best adapted to the exigencies of modern society." It has been characterized as "perhaps the best of all modern codes throughout the world." Based on Roman law, modeled after the great Code Napoleon, enriched with the experiences of at least twenty-seven centuries, and mellowed by American principles and traditions, it is a living and durable monument to those who created it. After 150 years of trial, the Civil Code of Louisiana remains venerable, a body of substantive law adequate for the present and capable of expanding to meet future needs. At this Sesquicentennial it is appropriate for us to review the history and development of the Louisiana Civil Code.

The event which we celebrate is the passage of an act by the Legislature of the Territory of Orleans, approved on March 31, 1808, promulgating a compilation of laws, now commonly referred to as the Civil Code of 1808. To adequately appreciate the significance of this legislative enactment, it is necessary to review the circumstances which existed at that time, and the events which led up to the adoption of this Code.

Civil government actually began in Louisiana in 1712. The French laws governed from that date until 1769, when O'Reiley abolished those laws and established in their stead the Spanish law. The United States took formal possession of the province of Louisiana on December 20, 1803, about eight months after the Louisiana Purchase had been concluded. France had assumed sovereignty for a period of only twenty days prior to that date, during which time nothing was done to repeal the Spanish laws or to establish the laws of France, so at the time the United States assumed sovereignty the laws of Spain were still in force.

The first official act performed by William C. C. Claiborne,

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\*Address delivered at the celebration of the Sesquicentennial of the Louisiana Civil Code, New Orleans, Louisiana, October 13, 1958.

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one of the two commissioners appointed by the president to take possession of this province, was to provide for the retention of the "laws heretofore in force," which of course were the Spanish laws.<sup>1</sup>

The laws of Spain at that time were multitudinous, composed of eleven different codes, and containing more than 20,000 laws, with many conflicting provisions. Even in Spain there was a great diversity of opinion as to which of these codes or laws should prevail in case of conflict.<sup>2</sup> Relatively few civil law treatises were available, and those which could be obtained in the territory were not translated into the English language.

The population of Louisiana at that time was estimated by Claiborne to be about 72,000, one-half of whom were slaves. The City of New Orleans had a population of only 10,000. A great majority of the white inhabitants were of French descent, and a substantial portion of the remainder were Spanish. Only a few lawyers were located in this province prior to the Louisiana Purchase, and most of those had theretofore limited their activities to advising the Spanish officials.

The formal delivery of Louisiana to the United States had not been completed, however, before a host of emigrants, both American and foreign born, flocked to New Orleans — intent on making a fortune. Among them were a number of lawyers, most of whom were of common law origin, and many of whom were ignorant of the language of the people among whom they had settled. Fortunately for the future of the state, however, the lawyers who were located here during these early years, whether emigrant or native born, with few exceptions, were men of remarkable ability. The names of Martin, Derbigny, Matthews, Lewis, Hennen, Duponceau, Brown, Porter, Moreau Lislet, Workman, Carleton, Livingston and Mazureau are but a few of the great names which would have adorned the legal history of any time. But, even these able lawyers and the newly appointed judges could not properly interpret and apply the complex and conflicting Spanish law. The need for some immediate clarification of the laws which governed Louisiana was urgent.

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1. Proclamation issued on surrender of Louisiana, December 20, 1803; 1 CLAI-BORNE, OFFICIAL LETTER BOOKS OF W. C. C. CLAIBORNE, 1801-1816, at 307 (Rowland ed. 1917).

2. SCHMIDT, THE CIVIL LAW OF SPAIN AND MEXICO 102 (1851); Tucker, *The Code and the Common Law in Louisiana*, in THE CODE NAPOLEON AND THE COMMON LAW WORLD 350 (1956); Flory, *Edward Livingston's Place in Louisiana Law*, 19 LA. HIST. Q. 344 (1936).

Claiborne was a common law lawyer, a native of Virginia. He began practicing law in Tennessee when he was 20 years of age, served on the Supreme Court of that state when he was 21, and as a Representative in Congress at the age of 22. He was only 28 years of age when he, as a commissioner of the United States, took possession of Louisiana. Claiborne was loyal to his country and disposed to be fair to the people of his new trust, but he was handicapped in that he understood neither French nor Spanish. His early proclamation that the Spanish laws should remain in effect was intended as a temporary measure only, because Claiborne planned eventually to establish the English common law as the basic law for this new territory, just as had been done in all of the states which had been admitted to the union up to that time.

Many inhabitants of Louisiana, already displeased over the arbitrary powers conferred by Congress on the president and his appointees in the territory, became alarmed when they learned that the newly appointed American officials intended to institute the common law system. Their experience with Spanish judicial proceedings had left them with little or no respect for the courts, and they were afraid of the common law system where the decisions of the courts became law, and where they would be required to search through English jurisprudence to determine what laws applied. They preferred to continue to be governed by the laws of Spain, with which they were familiar, where all enforceable laws were required to have some statutory origin, and where the decisions of the courts did not assume the status of laws but were considered merely as judicial interpretations of statutory provisions.

There is little question but that the common law system would have been established here shortly after the United States assumed sovereignty, and that Louisiana would be a common law state today, were it not for the fact that Edward Livingston, a New York lawyer who emigrated to Louisiana in 1803, emerged as a leader in opposing this action, and as a champion for the cause of retaining a civil law system in the territory.

Livingston was a man of unusual ability. The history of his life and his remarkable accomplishments in political and professional fields, in New York, in Louisiana, in the nation's capital and in France, are well known and need not be recounted here. Although educated in common law traditions, Livingston had

made a study of the civil law before his arrival in Louisiana and felt for it an affection which is evidenced all through his literary and professional activity.

Claiborne had the misfortune shortly after his arrival in Louisiana of acquiring as bitter political enemies Edward Livingston and Daniel Clark, a wealthy and influential citizen of New Orleans. Their personal dislike for each other was such that Claiborne in his official letters referred to Livingston and Clark as "unprincipled" and as having views hostile to the interests of the United States.<sup>3</sup> On one occasion in 1805 when Governor Claiborne accused Daniel Clark of being implicated in the Burr conspiracy, a duel ensued in which Claiborne received a bullet wound through his thigh. Because of this intense political feud, the controversy between Livingston and Claiborne as to which of the two rival legal systems should be established in this new territory was sparked with a great deal of bitterness.

On March 26, 1804, Congress divided the area included in the Louisiana Purchase into two parts, that portion which is now substantially the State of Louisiana being called the Territory of Orleans. The law provided that the governing authority of this Territory should be a Legislative Council, consisting of 13 members appointed by the President. The need for adopting some system of substantive law for the Territory was urgent, so Claiborne, as the first Governor of that Territory, was anxious for the Legislative Council to convene as soon as possible for that purpose. For a number of reasons, however, he experienced considerable difficulty and delay in assembling the first Legislative Council.

One reason for the delay was that a yellow fever epidemic struck New Orleans at that time, taking the lives of a large portion of the population of that city. Claiborne's wife and only child died on the same day — victims of the fever — and his private secretary, his brother-in-law, and several members of his staff also perished. Claiborne himself became infected and was bedridden for three weeks.

Also, a slave insurrection was threatened, which required Claiborne's attention in organizing a volunteer militia.<sup>4</sup>

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3. See letters from Claiborne, 9 UNITED STATES DEPARTMENT OF STATE, THE TERRITORIAL PAPERS OF THE UNITED STATES 242, 245, 246, 261, 310, 320, 348, 385, 395 (Carter, comp. & ed., 1940).

4. Petition to Governor Claiborne by inhabitants of Point Coupee, November 9, 1804, and letters from Claiborne, *id.* at 326, 298, 325.

A third reason for the delay was that Livingston, fearing that this first Legislative Council selected by Claiborne would establish the common law as the basic law of the Territory, prepared a "Memorial" urging Congress to grant statehood immediately to the Territory of Orleans in order that it might thereafter be governed by elected representatives.<sup>5</sup> This memorial was adopted at a public meeting held in New Orleans in October 1804, and thereafter with the help of Daniel Clark it was distributed throughout the Territory for signatures, and was then presented to Congress.<sup>6</sup> It thus received wide publicity. The feelings aroused by this memorial caused several men to refuse to serve on the Legislative Council, caused others to withdraw the consent they had previously given, and created stronger opposition to Claiborne's plan to change the basic laws of the Territory.<sup>7</sup>

The Legislative Council was convened on December 5, 1804, however, as soon as Claiborne was able to locate eight men who were acceptable to him and who would agree to serve, one more than was needed for a quorum. At its first meeting this council appointed three of its members as a committee to prepare a Civil Code *and* a Criminal Code, and "to employ two counselors-at-law to assist them in drafting the said codes."<sup>8</sup>

This committee was disposed to appoint James Brown and Edward Livingston as the two counselors-at-law to assist in drafting these codes, and agreed on a fee of \$5,000.00 for that work,<sup>9</sup> but Governor Claiborne, although favorable to Brown, opposed the appointment of Livingston. The passions raised by this disagreement paralyzed the work of the committee appointed to draft a civil code, and consequently it did nothing.

The memorial prepared by Livingston did not accomplish its avowed purpose, but it was one of the principal reasons why Congress, a few months later, provided that the governing authority of the Territory thereafter would consist of a Legislature, composed of an *elected* House of Representatives and an *appointed* Legislative Council.<sup>10</sup>

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5. Louisiana Gazette, July 24, 1804; ANNALS OF 8TH CONG. 1597-1608 (1805).

6. See letters from Claiborne, 9 UNITED STATES DEPARTMENT OF STATE, THE TERRITORIAL PAPERS OF THE UNITED STATES 245, 261, 246, 310, 314 (Carter, comp. & ed., 1940).

7. *Id.* at 334, 344, 348, 426.

8. *Joint Resolution approved February 4, 1805, ACTS PASSED AT THE FIRST SESSION OF THE LEGISLATIVE COUNCIL OF THE TERRITORY OF ORLEANS* 458 (1805). The committee consisted of Dr. John Watkins, Benjamin Morgan, and George Pollack.

9. Louisiana Gazette, February 5, 1805.

10. Act of Congress of March 2, 1805. This memorial was presented to the

In 1806, the first Legislature of the Territory of Orleans convened and, apparently siding with Livingston, promptly adopted an act providing that the Territory of Orleans should be governed by the Roman and Spanish laws which were in effect at the time of the Louisiana Purchase.<sup>11</sup> This act was vetoed by Governor Claiborne on May 26, 1806. The Legislature, in obvious annoyance, then passed a resolution for adjournment, assigning as the reason therefor that "their best acts were rejected by the governor."<sup>12</sup>

A few days later several members of the Legislature signed and published a "Manifesto," purporting to be a resolution for the dissolution of the General Assembly because of Claiborne's veto. This document revealed the attitude of a majority of the legislators toward the two rival legal systems. Here are some of the statements contained in this "Manifesto":

"We certainly do not attempt to draw any parallel between the civil law and the common law; but, in short, the wisdom of the civil law is recognized by all Europe; and this law is the one which nineteen-twentieths of the population of Louisiana know and are accustomed to from childhood, of which law they would not see themselves deprived without falling into despair.

" . . .

"The debate in the Chamber of Representatives and even the refusal of the sanction of the Governor, do they not seem . . . [to raise] the presumption that there is a secret intention of throwing us, despite ourselves, into the frightful chaos of the common law?"<sup>13</sup>

On June 7, 1806, just a few days after this "Manifesto" was issued and published, the Legislature adopted a resolution ap-

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House December 3, 1804, and referred to a committee appointed to consider improvements in the Orleans government. A report was made January 25, 1805, denying some of the assertions made by the petitioners, but recommending self-government for the Territory. The petition was presented to the Senate December 31, 1804, and referred to a committee January 4, 1805. The bill reported by the committee was passed as the Act approved March 2, 1805.

11. Brown, *Legal Systems in Conflict*, 1 AM. J. LEGAL HIST. 35, 47 (January 1957); Franklin, *The Place of Thomas Jefferson in the Expulsion of Spanish Medieval Law from Louisiana*, 16 TUL. L. REV. 323-26 (1942).

12. Brown, *Legal Systems in Conflict*, 1 AM. J. LEGAL HIST. 48-49 (January 1957).

13. *Le Telegraphe*, June 3, 1806; Letters from Claiborne, 9 UNITED STATES DEPARTMENT OF STATE, THE TERRITORIAL PAPERS OF THE UNITED STATES 643-57 (Carter, comp. & ed., 1940).

pointing James Brown and Louis Moreau Lislet "to compile and prepare jointly a Civil Code for the use of this territory." The resolution provided that:

"The two juriconsults shall make the civil law by which this territory is now governed, the ground work of said code."<sup>14</sup>

Governor Claiborne at that point apparently decided to bow to the will of the majority, because he approved the resolution, in spite of the fact that it specifically directed that the laws of Spain, or the civil law, rather than the common law, should be used as the basis for the proposed code.

Brown and Moreau Lislet had entirely different backgrounds in law, one being bred in the intricacies of the common law, and the other trained in the principles of the civil law. Brown was born in Virginia, but practiced law in Kentucky and served as Secretary of State there before coming to Louisiana. After establishing himself here he served as the first Secretary of the Territory of Orleans, as District Attorney, as a member of the convention which framed the first constitution for Louisiana, as United States Senator, and as Minister to France.

Moreau Lislet was born in Santo Domingo, a French dependency. He received his education and legal training in France, and came to New Orleans about the time of the Louisiana Purchase, while he was in his thirties. After settling in America, he perhaps contributed more to the legal literature of this state than has any other one person. During his busy career, he participated in more than 200 cases before the State Supreme Court, and also served at various times as a member of the State House of Representatives, a State Senator, as a Parish Judge, as Attorney General, and as a representative in Congress.

Brown and Moreau Lislet were eminent lawyers. They were well versed in both French and Spanish, and for some time they had advocated the adoption of a code of laws for the Territory.

They completed the work assigned to them in less than two years, and the civil code which they prepared was formally adopted by the legislature on March 31, 1808.<sup>15</sup> Governor Clai-

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14. Resolution approved June 7, 1806, ACTS PASSED AT FIRST SESSION OF THE FIRST LEGISLATURE OF THE TERRITORY OF ORLEANS 214-18 (1806).

15. Chapter XXIX, approved March 31, 1808, ACTS PASSED AT THE FIRST SESSION OF THE SECOND LEGISLATURE OF THE TERRITORY OF ORLEANS 120-28



borne approved the adoption of this code, but in a letter which he wrote to the Secretary of State a few months later he stated that it was still his object "to assimilate our system of Jurisprudence as much as possible, to that of the several states of the Union."<sup>16</sup> On October 11, 1808, Claiborne also wrote to one of the judges in the Territory that:

"The Code will probably be greatly censured by many native Citizens of the United States who reside in the Territory. From principle and habit, they are attached to that system of Jurisprudence, prevailing in the several states under which themselves and their Fathers were reared: For myself I am free to declare the pleasure it would give me to see the Laws of Orleans assimilated to those of the States generally, not only from a conviction, that such Laws are for the most part wise and just, but the opinion I entertain, that in a Country, where a unity of Government and Interests exists, it is highly desirable to introduce thro'out the same laws and Customs. . . ."<sup>17</sup>

Claiborne obviously was sincere in his belief that the common law system was superior to that of the civil law, and in his attempts to establish the common law in the Territory of Orleans it has never been questioned but that he was motivated solely by a desire to do what he considered to be best for his country and for the inhabitants of that Territory.

The official title given to the code of laws which was adopted in 1808 was "Digest of the Civil Laws now in Force in the Territory of Orleans, with Alterations and Amendments Adapted to its Present System of Government." Although these compilers described their work as a digest of the laws then in force, it actually was a complete civil code, divided into three books, each of which was broken down into titles, chapters and articles, similar to our present code, except that in numbering the articles a new series of numbers was used in each title.

The resolution authorizing the preparation of this code provided that "the indemnity justly due to the jurisconsults shall

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(1808). This act is entitled, "An Act providing for the promulgation of the Digest of the Civil Laws now in force in the Territory of Orleans."

16. Claiborne to Secretary of State, October 7, 1808, 9 UNITED STATES DEPARTMENT OF STATE, THE TERRITORIAL PAPERS OF THE UNITED STATES 802 (Carter, comp. & ed., 1940).

17. Claiborne to Judge J. White, October 11, 1808, 4 CLAIBORNE, OFFICIAL LETTER BOOKS OF W. C. C. CLAIBORNE, 1801-1816, at 225 (Rowland ed. 1917). See also letter from Claiborne to Judge Wyckoff dated October 22, 1808, REPORT OF THE LOUISIANA BAR ASSOCIATION 129-30 (1909).

be determined by the legislature at their next session," but that in addition thereto Brown and Moreau Lislet each should be paid the sum of \$800.00 per year for five years after the code was completed, in consideration of which it should be their duty to attend the courts in order to take notice of the imperfections in the new code and to report their observations to the legislature.<sup>18</sup> A different agreement must have been entered into later, however, because in 1807 the legislature authorized the payment of \$2,000.00 to each of these attorneys in full compensation for the services performed by them, three-fifths of which was to be paid immediately and the balance becoming due after completion of the code.<sup>19</sup>

The Civil Code prepared by Brown and Moreau Lislet, however, was not based on the Spanish law, as the legislature had directed, but it was based instead on the then newly adopted French Code, the Code Napoleon. No satisfactory explanation has been offered to this date as to why this was done. It is probable, however, that these two attorneys and the legislature had a high regard for the codification experience in France, not only as to form but also as to content, since both the French and the Spanish systems had many common sources in Roman law, and for that reason they may have used the Code Napoleon as a model without any intent to displace the Spanish law.<sup>20</sup> This theory is supported by the fact that there are many differences between the Code Napoleon and the Louisiana Code of 1808, due largely to the fact that there were incorporated into the Louisiana Code a substantial number of Spanish laws, which had not been included in the French Code. The Louisiana Code contained 2127 articles, a little less than the number contained in the Code Napoleon.<sup>21</sup>

There is some speculation among legal scholars as to whether Brown and Moreau Lislet modeled the Civil Code of 1808 on the Code Napoleon, as finally adopted, or whether they used only

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18. See note 14 *supra*.

19. Chapter XXXI, approved April 14, 1807, ACTS PASSED AT THE SECOND SESSION OF THE FIRST LEGISLATURE 190-92 (1807).

20. Dainow, *Introductory Commentary to the Louisiana Civil Code*, in LA. CIVIL CODE ANN. 1 (West 1952); Tucker, *The Code and the Common Law in Louisiana*, in THE CODE NAPOLEON AND THE COMMON LAW WORLD 347, 355 (1956).

21. There were 2281 articles in the French Code.

the projet or preliminary drafts of such code. Judge Martin, K. A. Cross and the late Henry P. Dart are among those who contend that only the projet of the French Code was available to the redactors at the time the Louisiana Code was adopted.<sup>22</sup> They base that conclusion principally on the fact that the Louisiana Code contains a number of articles which were in the projet, but were omitted from the Code Napoleon as finally adopted, and that the numbering of articles in the Louisiana Code corresponds to that in the projet, but does not correspond to the numbering system used in the final form of the French Code. Other more recent scholars contend that the final and official draft of the Code Napoleon also was used by Brown and Moreau Lislet in compiling the first Louisiana Civil Code.<sup>23</sup> To support that view they point out that the French Code was promulgated in 1804, two years before the redactors of the Louisiana Code were appointed, so they reason that it must have been available to them, and that the Louisiana Code contains some articles which correspond to those in the Code Napoleon, but differ from the text on the same subject which appears in the projet.

No attempt will be made here to resolve those differences of opinion. The answer to that particular question, however, may well lie in a very interesting leather bound book owned by the family of the late Charles de la Vergne, of this city. It is a first edition printing of the Civil Code of 1808, which appears to have been owned by Moreau Lislet himself, since his name is printed in gold letters on the outside front cover. In this volume, written in pen and ink in French, on pages interspersed for that purpose, is an extensive commentary on the articles of that Code, purporting to give the source of each such article. These handwritten comments and notations are voluminous and appear to have been written in 1814 by Moreau Lislet or by someone who had intimate knowledge of the work done in drafting this first code. No study of this volume has ever been made, and it is possible that a thorough analysis of it will reveal the actual French sources which were used by Brown and Moreau Lislet in drafting this first code, and it may affect the interpretation

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22. CROSS, *TREATISE ON SUCCESSIONS* xxiv (1891); MARTIN, *HISTORY OF LOUISIANA* 344 (1882); DART, *THE SOURCE OF THE CIVIL CODE OF LOUISIANA*, in SAUNDER'S *LECTURES ON THE CIVIL CODE* xxxv (1925).

23. Dainow, *Introductory Commentary to the Louisiana Civil Code*, in *LA. CIVIL CODE ANN.* 1, 9 (West 1952).

which has been placed on some of the articles which have been carried over into our present code.

Regardless of the French sources used by the redactors, the primary significance of the adoption of the Civil Code of 1808, of course, was that it constituted the formal recognition and establishment of the *civil law*, and not the *common law*, for the Territory.

The resolution appointing Brown and Moreau Lislet to prepare a civil code did not specify the language in which that document was to be drafted, but it did authorize the payment of expenses incurred for "translations." They actually prepared their "Digest" or code in the French language, and it was translated into English by two other persons appointed for that purpose. For their services each of these translators was paid \$750.00.<sup>24</sup> In formally adopting the code, the legislature directed that it be printed in the French and English languages, and further provided that "if . . . there should be found any obscurity or ambiguity, fault or omission, both the English and French texts shall be consulted, and shall mutually serve to the interpretation of one and the other."<sup>25</sup> Inaccuracies in the translation did appear, and it is significant to note that in a written brief submitted in the case of *Dufour v. Camfranc*, in 1822, Moreau Lislet himself disclaimed any responsibility for errors in translating the code into the English language.<sup>26</sup> The Supreme Court has consistently held, of course, that in case of conflict the French text shall prevail, since the original draft was in French.<sup>27</sup>

The act of the legislature adopting the Civil Code of 1808 repealed only those ancient laws of the Territory which were contrary to or irreconcilable with this digest. The Supreme Court, thereafter, in 1817, and in spite of Livingston's arguments to the contrary, held that all of the Spanish laws which formerly were in effect and which were not contrary to the code were still in force.<sup>28</sup> This had the effect of reviving the Spanish law, and again throwing the substantive law of Louisiana into

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24. See note 19 *supra*.

25. See note 15 *supra*.

26. *Dufour v. Camfranc*, 11 Mart. (O.S.) 675, 701 (La. 1822).

27. *Phelps v. Reinach*, 38 La. Ann. 547 (1886); *Straus v. New Orleans*, 166 La. 1035, 118 So. 125 (1928); *Sample v. Whitaker*, 172 La. 722, 135 So. 38 (1931). See also Dubuissou, *The Codes of Louisiana*, in REPORT OF THE LOUISIANA BAR ASSOCIATION 143-57 (1924).

28. *Cottin v. Cottin*, 5 Mart. (O.S.) 93 (La. 1817).

a state of chaos. In an effort to remedy this situation the legislature authorized the translation and publication of such parts of the "Partidas" as were in force in Louisiana, which translation was done by Moreau Lislet and Henry Carleton in 1820. This translation did not eliminate the conflicts and confusion in the Spanish law, however, so a restatement of the law was viewed as a necessity.

On March 14, 1822, the legislature adopted a resolution appointing Moreau Lislet, Edward Livingston, and Pierre Derbigny "to revise the Civil Code [of 1808] by amending the same in such manner as they will deem it advisable, and by adding unto . . . [it] . . . such of the laws that are still in force and not included therein. . . ."

Pierre Derbigny, a linguist, an orator, and an able lawyer, was born in France, of French nobility, but was forced to leave that country during the revolution to avoid political persecution. He came to Louisiana while in his thirties, and shortly thereafter he joined Livingston in actively opposing Claiborne's plan to institute the common law system here. He, in fact, was one of the three "Bearers" who presented to Congress the "Memorial" prepared by Livingston seeking statehood for the Territory of Orleans. He later served as a Justice of the Supreme Court, as Secretary of State, and as Governor.

One year after this appointment was made, Moreau Lislet, Livingston, and Derbigny submitted a report to the legislature in which they made it clear that in performing the task assigned to them it would be their purpose to prepare a code which would be complete and would relieve the courts "in every instance from the necessity of examining into Spanish Statutes, ordinances and usages."<sup>29</sup> The legislature approved this plan and ordered the printing and distribution of the code as soon as it was ready for the press.<sup>30</sup>

Later that same year, 1823, these three attorneys completed and had printed a projet of their proposed revision, which they labeled "Additions and Amendments to the Civil Code of the State of Louisiana, Proposed in Obedience to the Resolution of the Legislature of the 14th March, 1822, by the Jurists Com-

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29. PRELIMINARY REPORT OF THE CODE COMMISSIONERS (February 13, 1823), reprinted in 1 LOUISIANA LEGAL ARCHIVES, PROJET OF THE CIVIL CODE OF 1825 lxxxv-xcv (1937).

30. La. Acts 1823, p. 88.

missioned for that Purpose." As this title indicates, only the additions and amendments which they recommended were included in the report, the articles of the Civil Code of 1808 which they did not propose to amend being omitted.

This projet also was prepared originally in the French language, and was then translated with some inaccuracies into English. The French text was printed in one volume and the English translation was printed separately in another. Following the text of each proposed article were printed the comments and observations of the redactors, often indicating the reason for the proposed amendment and citing the authorities upon which it was based.<sup>31</sup>

Although there seems to have been no act passed by the legislature for the express purpose of adopting this civil code, the legislature did authorize the printing and promulgation of the code, as amended, by act approved on April 12, 1824. The act provided that the text should be printed in English and French on opposite pages, and that the jurists who had revised the code were to superintend the printing of it, were to number the articles consecutively throughout, and were to add a complete index to it.<sup>32</sup>

In February 1825, the legislature granted additional time to the printer to complete the printing of the Civil Code,<sup>33</sup> and on May 20, 1825, the Secretary of State issued his certificate to the effect that the printing had been completed, and that the code should be deemed promulgated one month from that date.<sup>34</sup>

The title of this completed code, as promulgated, is "Civil Code of the State of Louisiana." Included in it were provisions originating from Spanish law which were not contained in the Code of 1808. It also contained some provisions from territorial statutes, and others from common law sources. There were a total of 3,522 articles, in this code, more than one and one-half times as many as were contained in the Code of 1808.

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31. This projet has been reprinted in Volume 1 of the Louisiana Legal Archives.

32. La. Acts 1824, p. 172. See also La. Acts 1824, p. 146, relating to compensation of the juriconsults, translators and copyists.

33. LOUISIANA ACTS PASSED AT THE FIRST SESSION OF THE SEVENTH LEGISLATURE 126-30 (1824-1825). The printer was granted six months from the date of that act.

34. Tucker, *Source Books of Louisiana Law*, in 1 LOUISIANA LEGAL ARCHIVES, PROJET OF THE CIVIL CODE OF 1825 xxiv-xxv (1937).

In order to make certain that all of the old Spanish laws were repealed, and to eliminate the necessity of ever having to refer to them again, this code contained an article providing that:

“From and after the promulgation of this code, the Spanish, Roman and French laws, which were in force in this state, when Louisiana was ceded to the United States, and the acts of the Legislative Council, of the legislature of the Territory of Orleans, and of the legislature of the State of Louisiana, be and are hereby repealed in every case, for which it has been especially provided in this code, and that they shall not be invoked as laws, even under the pretence that their provisions are not contrary or repugnant to those of this code.”<sup>35</sup>

In spite of this provision, however, the Louisiana Supreme Court, in 1827, held that the Spanish laws which were not contrary to the Civil Code were still in force, and that the articles of the Civil Code of 1808, which had been omitted from the 1825 Code, also were still in effect.<sup>36</sup>

These decisions led the legislature to adopt two acts in 1828, one of which provided that “all the civil laws which were in force before the promulgation of the Civil Code lately promulgated, be and are hereby abrogated,” and the other act specifically repealed all articles of the Civil Code of 1808, except certain provisions therein excepted.<sup>37</sup>

Even these acts did not have the effect of eliminating further reference to the Spanish laws, because the Supreme Court shortly thereafter held that they repealed only the positive, written or statute laws of Spain, and that they did not abrogate those principles of law which had been established or settled by the decisions of courts of justice.<sup>38</sup> That apparently has remained the status of the Spanish law in Louisiana to this date.

Changes brought about by the Civil War, together with the adoption of a new constitution, made it necessary to again revise the Civil Code. Consequently, the legislature, in 1868, authorized

35. LA. CIVIL CODE art. 3521 (1825).

36. *Fowler v. Griffith*, 6 Mart.(N.S.) 89 (1827); *LaCroix v. Coquet*, 5 Mart.(N.S.) 527 (1827).

37. La. Acts 1828, Nos. 40, 83.

38. *Reynolds v. Swain*, 13 La. 193 (1839); *Hubgh v. New Orleans & Carrollton R.R.*, 6 La. Ann. 495 (1851); *Moulin v. Monteleone*, 165 La. 169, 115 So. 447 (1928).

a joint committee to select one or more commissioners to revise the Civil Code.<sup>39</sup> John Ray, of the Monroe Bar, who already had been selected to revise the general statutes of the state and the Code of Practice, also was commissioned to revise the Civil Code. Ray thereupon employed three attorneys to assist him in this undertaking,<sup>40</sup> and he and his assistants submitted a projet of a revised civil code which was printed in English in 1869. The revised code which they proposed was adopted as Act 97 of the Legislature of 1870, and it was given the official title of "The Revised Civil Code of the State of Louisiana." The Civil Code of 1870 is substantially the Code of 1825, except for the elimination of all articles relating to slavery and those which had been repealed, and the incorporation of all acts passed since 1825 amending the Civil Code or dealing with matters regulated by the Code.

There have been no other revisions of the Louisiana Civil Code since 1870, although an unsuccessful attempt to revise it was made fifty years ago. In 1908, the legislature authorized the appointment of a commission to revise and re-enact the Civil Code of Louisiana.<sup>41</sup> These commissioners were appointed, and they prepared a projet of a revised Civil Code which was submitted to the legislature in 1910. Action on this projet was first postponed, however, and later the proposed revision was rejected, after the Louisiana Bar Association had formally recommended against the adoption of this new code.

During the 88 years which have elapsed since our Civil Code was last revised, many articles have been amended, repealed or added, and a number of statutes have been enacted relating to matters which properly should be incorporated into that Code. These considerations caused the state legislature, ten years ago, in 1948, to adopt an act directing the Louisiana State Law Institute to prepare comprehensive projets for the revision of the Civil Code and the Code of Practice.<sup>42</sup> The projet for the revision of the Code of Practice is almost complete and soon will be ready to submit to the legislature. It is expected that the difficult and long-term task of preparing a proposed revision of the Civil Code will soon get under way.

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39. La. Acts 1868, No. 182, approved October 21, 1868. The joint committee consisted of C. W. Lowell, Chairman, Hugh J. Campbell, W. F. Blackman, Frank Morey, and C. B. Pratt.

40. Isaiah Garrett, Franklin Garrett, and Col. F. A. Hall.

41. La. Acts 1908, No. 160.

42. La. Acts 1948, No. 335.



The fact that the Louisiana Civil Code has been revised twice during the past 150 years, and a third revision is being contemplated, does not indicate a weakness in that work, but, on the contrary, it evidences an orderly evolution of the law. In the course of time consolidated statements of law in a civil code become overgrown with additional data in amendments and other statutes on the subject matter. Also, new inventions and discoveries present problems which are difficult to settle by reference to older rules or principles. So it is necessary from time to time that such a code be re-examined and perhaps revised or re-written in order to incorporate all of these changes and to keep it virile and up-to-date.

The civil codes of Italy, Venezuela, Peru, Mexico, Argentina, and Brazil have been revised recently. The French Code itself, on which our code was modeled, is in the process of being revised at this time. The revision of the Civil Code of Holland, which was originally adopted 120 years ago, is almost complete, and the Legislature of the Province of Quebec has authorized the revision of the 90 year old Quebec Civil Code.

The Louisiana Civil Code is not simply an adaptation of the Code Napoleon. Neither is it a "digest" of the Spanish laws which were in force in 1808, as the title of the code adopted during that year seems to indicate. It includes many provisions having a basis in common law, but the common law system does not prevail in this state — despite arguments advanced by some to the contrary. The simple truth of the matter is that Louisiana has developed a legal system of its own, and although grounded on civil law, it must be classified as *sui generis*.

The civil law and the civil law method of thinking are deep rooted here, and there is an emotional attachment to it in the minds of the people of this state. The Civil Code is defended today with the same vigor which characterized the actions of Livingston, Brown, Moreau Lislet, Derbigny and others who defended it 150 years ago.

The affection which lawyers throughout this state have for the Louisiana Civil Code now is no less than that which Napoleon expressed for the code of laws which bears his name, when he wrote: "What nothing will destroy, what will live eternally, is my Civil Code."<sup>48</sup>

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48. 1 PLANIOL, *TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL* 35 (4th ed. 1948).