Moreau Lislet's Notes On Sources of Louisiana Civil Code of 1808

Joseph Dainow
Moreau Lislet’s Notes

On Sources of Louisiana Civil Code of 1808

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The Louisiana Civil Code of 1808 had no accompanying report concerning the sources which had been consulted and utilized by its redactors. The first published reference to the existence of such a record appeared in 1941. However, there was no description of it, nor was there any subsequent publication about it; and a few months ago (1958) it was stated that “to this date we lack an authoritative study on the sources used by L. Moreau Lislet and James Brown for the preparation of the 1808 code.”

It will still be some time before such an authoritative study can be prepared to fill this gap in the legal history of Louisiana’s civil law. Meanwhile, the present purpose is to reiterate the existence of the record and to give a cursory description of it, together with the verbatim text of the prefatory remarks.

The book is basically a printed copy of the 1808 Code specially bound so as to incorporate handwritten interleaf pages alternating with the printed pages as well as a number of such extra pages in the front and at the back. The binding is of full leather, and in the middle of the front outside cover is the gold imprint “L. Moreau Lislet”. This documented volume belongs to the de la Vergne family in New Orleans. The family looks back with pride to several generations of direct and collateral relatives who were members of the legal profession, and the book has been handed down from one to the other with the oral and treasured tradition that it was Moreau Lislet’s personal copy of the 1808 Code and that it contained his record of its source materials. Over the years, each possessor set the greatest value on the book, bibliographically and sentimentally; it was always kept with the utmost of care and protection. On the front cover, just slightly above the gold imprint there is written in ink the name “Lavergne” and there is evidence of a notary by that name who was a contemporary and survivor of Moreau Lislet.

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[43]
The longhand text and notations on the interleaf pages are written in French. They are done in a impeccable and clear hand; there seem to be no erasures and hardly any corrections. For such a careful and consistent job, it is not unlikely that the writing was done on loose pages, and then bound in with the book after it was all finished. Nor is it unlikely that the writing was done by a professional scribe copying from collected notes and work sheets.

The longhand extra pages in front of the book begin with a special title page inscribed

Loix
de l'Etat de la Loui-
siane, avec des notes
qui réfèrent aux Loix
Civiles et Espagnoles qui
y ont rapport
1814

[Translation: Laws of the State of Louisiana, with notes referring to the Civil Laws and Spanish Laws which relate thereto. 1814]

This is followed by a Preface (Avant-Propos), which consists of over six pages of finely written longhand in French. The original text is set out in the footnote part of this article.4 For the convenience of readers, an English translation is supplied as follows.

"PREFACE"

"The purpose of this work is to make known, by notes written on [interleaf] blank pages attached to the Digest of Laws of this State, which texts of the Civil Laws and Spanish laws have some relation thereto.

"To this end, there will be found facing the English text a general list of the Roman and Spanish laws which relate to the matters treated in each chapter of the Digest, and facing the French text, article by article, the citation of the principal laws

4. Avant-Propos

Le but de cet ouvrage est de faire connaître par des notes écrites sur des pages en blanc attachées au Digeste des Lois de cet État, quels sont les textes des lois civiles et Espagnoles, qui y ont quelque rapport.

À cet effet on trouvera à côté du texte anglais, une liste générale de tous les titres des lois Romaines et Espagnoles, qui sont relatifs aux matières traitées dans
of the several codes from which the provisions of our local statute were drawn.

"The citation of the laws which have some relation to the various articles of the Digest was not limited to those which contained similar provisions; there were also included those laws, on the same subject, which presented differences or which contained exceptions to the general principle.

"But since it would have been too long to refer to the provisions of all the Codes of Roman Law and Spanish Law, it was deemed satisfactory for the civil laws to cite Domat, because with every provision of this work there are the Roman Law texts from which it was drawn. And with regard to the Spanish Law, it was deemed sufficient to cite the laws of the principal codes, such as the Partidas, the Fuero Real, and the recopilaciones, etc., and the various works which enjoy the highest authority in the Spanish Courts, namely, the Librería de Escribanos by Febrero and the Curia Filipica by Don Juan de Hevia Bolaños, the course of canon and civil law by Pierre Murillo Velarde, entitled 'Cursus Juris Canonici, hispani et indii,' and the works of Antoine Gomez entitled 'D. Antonii Gomezii varia resolutiones' etc., or the works of Gomez 'with additions to each chapter.'

"This is perhaps the place to say a word about the several codes of Spanish laws and about the degree of authority which they each enjoy in the Courts.

Le droit Romain était anciennement la loi d'Espagne et ses dispositions y furent observées jusqu'au moment où les Visesgots et les vandales s'emparèrent de ce pays.
“Roman law was formerly the law of Spain, and its provisions were observed there until the time when the Visigoths and the Vandals took over the country about the year 466 and introduced their laws and customs.

“These laws and usages, which existed a long time without being drawn up in writing, were finally gathered together and published about the year 693 of the Christian Era in the form of a regular code under the title of Fuero Juzgo.

“The Fuero Viejo, otherwise called the old law, was not published until the year 992, when the greatest part of Spain was still occupied by the Moors. It is in this code that are found the traces of the old usages and customs of the Spanish nation.

“Since the Fuero Juzgo and the Fuero Viejo had almost fallen into disuse as a result of the promulgation of the several codes which followed them, we have cited them only under the various chapters of the Digest to which they correspond.

“Between the year 992, when the Fuero Viejo was published, and the year 1255, when the Fuero Real was promulgated, something happened which greatly helped to spread in Europe sounder insights about jurisprudence than had previously existed. This was the beginning of public teaching, at the University of Bologna in Italy, of the principles of the Digest and of the other parts of the civil Law called general law (droit commun).

“Towards the middle of the 13th century, Ferdinand III had given more scope, more strength, and more stability to the Spanish Monarchy than it previously possessed, and he considered...
subjecting all classes of citizens to one code of general Laws which would remedy the abuses of the feudal laws under which people had lived until then. However, the death of this prince occurred in 1255 and prevented him from achieving such a beneficial project; it was left for his son Alphonse X, called the Wise, to carry it out by the composition of two codes.

“The first of these codes, the Fuero Real, appeared in the year 1255, as if to serve as precursor to the Partidas. And this code is to the Partidas what the Institutes are to the Digest of Justinian.

“The Partidas, or Parts, so-called because this Code is divided into seven parts, was completed in the year 1263; but it was not published until the year 1348, and it did not receive full enforcement until the year 1505 under the Monarchs Ferdinand and Joan. This is the most complete and the most perfect code of Spanish law, and it is taken almost entirely from the Roman laws.

“The laws of style, Leyes de Estilo, so-called because they dealt principally with the form of procedure in the Courts, were published in the year 1310; there are 252 of these laws.
"The Ordenamiento de Alcalá, published in 1348, is a collection of several laws and ordinances which appeared at various times after the publication of the Partidas.

"The Leyes de Toro take their name from the Parliaments held in the city of Toro, where they were published in 1505. There are 83 of these laws and nearly all are inserted in the Recopilación de Castilla, under the titles to which they correspond.

"The Royal ordinance, Ordenamiento Real, published in 1496, is a collection of various decrees (pragmáticas), orders (cédulas), and other Royal Resolutions, issued from time to time as circumstances required. Most of these laws are inserted in the Recopilación de Castilla.

"The Recopilación de Castilla was first published in the year 1567, by virtue of an order of King Philip II, giving it force of law and inserting therein the laws of the Ordenamiento de Alcalá, of the Ordenamiento Real from which there had not been any derogation, and all the Leyes de Toro as well as those which had been published subsequently. Between 1567 and 1777, there were several editions of this Code, with some short additions.

"The name of Recopilación is likewise given to the Autos Acordados, comprising resolutions or opinions of the Council, to which the King of Spain had given force of law. This collection was published for the first time in 1749, and constitutes the third and last volume of the Recopilación de Castilla in the quarto edition.

"Finally, the Recopilación de las Indias was made up in the year 1661, and contains a collection of all the regulations or laws relating to the exercise of civil, military, and ecclesiastical powers in the Spanish colonies of the two Indies, and those relating to the administration and the internal government of these territories and its inhabitants.
"In the Spanish Courts of the Indies and of the colonies of this nation, one has to be guided first by the laws of the Recopilación de las Indias in all that they have provided for; in the absence of these laws, one must be guided by the laws of the Recopilación de Castilla, and after that by those of the Partidas. However, with regard to the laws of the Fuero Real and of the Leyes de Estilo, it is necessary to prove their usage before being able to rely on them, unless they were inserted in the Recopilación.

"With regard to the provisions of Roman law, they cannot be cited as laws in Spain, but only as written reason. See Murillo Cursus Juris Canonici, No. 23, vol. 1, p. 9."

The last part of the extra pages in front is an explanation of some of the abbreviations used in the specific citations throughout the notes. This list does not include all the references actually cited; presumably the other forms of citation used in the notes are self-explanatory. The list is divided under two headings. The first is "Laws" (Loix) and includes the following, in the order stated: Partidas, Recopilación de Castilla, Auto Acordados, Recopilación de las Indias, Leyes de Toro and Domat. The other is "Authors" (Auteurs) and includes: Febrero (2 items), Curia Philipica, Pothier and Rodriguez.

The extra pages at the back of the volume contain an alphabetical index based on single words or technical terms, with references to page numbers in the book. The original printed book has an alphabetical index (English and French on facing pages), and many of its items contain some explanatory data. The additional index is written in a beautiful hand and contains a large number of items which are not in the printed index. The long-hand index has no spaces between the letters of the alphabet; this is significant because it indicates that the basic job was done
on cards or work-sheets with the final version copied in one consecutive writing. The same was probably true for all the notes including the preface and list of abbreviations.

The specific source references on almost 500 pages of meticulous handwriting have not yet been studied and analyzed. On one side of each interleaf page (facing the English text) there are the general references which relate to the corresponding subject matter of the code provisions; on the other side of the interleaf page there are the specific references given for each separate code article corresponding exactly to the code article numbers on the facing page of the French text. Only here and there does an article number appear with no citation at all.

From a brief cursory examination, only fleeting impressions can be obtained. Provisionally — until the document is available for longer and more careful study — four observations can be made:

(1) Naturally, there are a great many Spanish source references. They seem to constitute the great bulk of the citations under the individual articles. This complete preponderance of Spanish authorities may be surprising to some people, probably not to others.

(2) In the general references to corresponding subject matter, the striking impression is the number and prominence of the Roman law source references. Usually they are the ones set out first at the top of the list.

(3) Domat and Pothier seem to be the only French authorities cited, and the preface explains the use of Domat as the most convenient repository of Roman law source references. In the list of abbreviations, Domat is classified as a source of legislation (lois); Pothier is in the group of writers (auteurs).

(4) There does not seem to be any reference to the French Civil Code of 1804 or to the Draft of 1800 (Project du Gouvernement). While this observation can only be tentative until a very thorough search is made, it is nevertheless a most striking impression.

These observations, although tentative, establish the importance of this document in connection with the early history of the Louisiana civil law. For one thing, it revives the old ques-
tions about the extent of French law influence in the Louisiana Civil Code of 1808, and about the identification of the French sources that were actually used. In view of the relative fullness of the report of the Commissioners on the Louisiana Civil Code of 1825 and its numerous French source authorities, the significance of establishing the extent and the identity of French influences in 1808 may be more historical than practical. It cannot be assumed that the Moreau Lislet notes on the sources of the Louisiana Civil Code of 1808 will fully resolve these questions. Even if it should be confirmed that there is no mention whatsoever of the French Civil Code of 1804 or the French Projet of 1800, it would still be difficult to deny that they were used because there are so many of the 1808 code provisions which correspond verbatim or almost verbatim to either one or the other of these French texts. And if they were used, why were they not mentioned in these notes on the sources?

The identification of these notes as being those of Moreau Lislet is not conclusively established. The handwriting may or may not be the same; however, it would make no difference if they had been written by a scribe at his direction. It is also to be noted that there is no signature name at the end of the preface. Furthermore, if this was Moreau Lislet's record for posterity, why did he not publish it?

What if these are not Moreau Lislet's notes? This question can perhaps be answered by another question: does it make so much difference in value who the actual author was? The work could only have been done by someone who was as closely connected with the preparation of the 1808 Code as Moreau Lislet was. Considering the kind of interest and effort and intimate relationship to the project which are evident from the nature of the record, and combining the oral tradition in the de la Vergne family with the gold imprint on the cover, and in the absence of proof of an other author, this work can well be accepted as Moreau Lislet's notes on the sources of the Louisiana Civil Code of 1808.