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COMMENT

The French Language in Louisiana Law and Legal Education: A Requiem*

I. INTRODUCTION

Anyone familiar with the celebrated works of the sixteenth century French satirist François Rabelais is sure to remember the protagonist Pantagruel's encounter with the Limousin scholar outside the gates of Orléans.[1] During his peregrinations, the errant Pantagruel happens upon the Limousin student who, in response to a simple inquiry, employs a gallicized form of Latin in order to show off how much he has learned at the university.[2] The melange of French and Latin is virtually incomprehensible to Pantagruel, prompting him to exclaim, "What the devil kind of language is this?"[3] Determined to understand the student, Pantagruel launches into a series of straightforward and easily answerable questions. The Limousin scholar, however, responds to each question using the same unintelligible, bastardized form of Latin.[4] The pretentious use of pseudo-Latin in lieu of the French vernacular infuriates Pantagruel and causes him to physically assault the student. By speaking a language other than the one understood by the listener for the sole purpose of making himself appear educated, the Limousin scholar utterly fails to convey his message. Moreover, the inappropriate use of a foreign language results in the confusion, frustration, and alienation of the scholar's audience.[5] At the end of the episode, Rabelais points out the lesson that can be learned from this incident—"that it is better to speak the customary language . . . [and] avoid exotic words, as the masters of ships avoid rocks at sea."[6]

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1. Francois Rabelais, The Adventures of Gargantua and Pantaguel (Samuel Putnam ed., and Chatto & Windus trans., 1946). The exchange between Pantagruel and the Limousin scholar occurs in the Second Book: Pantagruel, King of the Dipsodes, Restored to the Life, chapter vi. For an original version of the work, see François Rabelais, Oeuvres Complètes [introduction, notes, bibliographie et relevé de variantes par Pierre Jourda] 244 (1962).

2. Marcel Tetel, Rabelais 23-25 (1967).

3. Rabelais, *supra* note 1. This is a translation from the French: "Que diable de langaige est cecy?"

4. The Limousin scholar's language would commonly be referred to as "pig-Latin" by a present day Anglophone; *see* Tetel, *supra* note 2. For example, the Limousin scholar responds to Pantagruel's question "Where are you from?" by replying, "The primeve origin of my aves and ataves was indigene to the Lemovick regions, where requiesces the corpor of the hagiotate St. Martial."

5. *Id.*

6. Rabalais, *supra* note 1. From the French, "[Q]u'il nous convient parler selon le langage usite, et . . . qu'il fault eviter les motz espaves en pareille diligence que les patrons des navires evitent les rochiers de mer."

Although the exchange between Pantagruel and the Limousin scholar transpired almost four centuries ago, the same situation occurs frequently in present day Louisiana with some modifications. First, the situs of the occurrence is not the gates of Orléans but the classrooms of Louisiana's law schools and the writings and opinions of the State's jurists and law professors. Second, the Limousin scholar is replaced by several Louisiana law professors and jurists who compile cases and materials for students,[7] promulgate legal opinions,[8] or author treatises using or quoting a language,[9] the French language, which is neither in widespread use nor readily understood by the vast majority of the members of the Louisiana legal community.[10] Lastly, the countless law students and attorneys who are neither conversant with the French language nor required to learn it assume the role of the miffed Pantagruel.

Like Pantagruel, the modern day Louisiana law student or attorney, almost assuredly non-Francophone, is at a loss to explain the Louisiana legal scholar's use of the French language other than for pedantic purposes. Indeed, considering the fact that relatively few members of the Louisiana legal community possess a working knowledge of the French language, its continued use is unjustified except as an ostentatious and scholastic tool used to bolster the egos of a certain few.[11]

The status of the French language in Louisiana has been the subject of much debate and scholarly writing since Louisiana's admission into the federal Union.[12]

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7. *See, e.g.*, Katherine S. Spaht and Robert A. Pascal, Louisiana Family Law Course (6th ed. 1992); Katherine S. Spaht and Cynthia A. Samuel, Successions and Donations: Cases and Readings (1991); W. Lee Hargrave, Louisiana Civil Law Property: Cases and Materials (1992); Saul Litvinoff, Sale and Lease in the Louisiana Jurisprudence: A Coursebook (2d ed. 1986); Saul Litvinoff, The Law of Obligations in the Louisiana Jurisprudence: A Coursebook (2d ed. 1985) [hereinafter Obligations].

8. Alain Levasseur, La guerre de Troie a toujours lieu . . . en Louisiane (1993). Admittedly, the practice of using the French language in judicial opinions was more prevalent during the 19th century than it is in the present century. *See, e.g.*, Tiernan v. Martin, 2 Rob. 523 (1842); Ellis v. Prevost, 19 La. 251 (1841). However, there are many instances of the use of the French language in twentieth century Louisiana jurisprudence. *See, e.g.*, Succession of Lauga, 624 So. 2d 1156 (La. 1993) (Kimball, J., dissenting).

9. *See, e.g.*, Ferdinand F. Stone, *Tort Doctrine*, *in* 12 Louisiana Civil Law Treatise (1977).

10. Levasseur, *supra* note 8; Alain Levasseur, Langue Politique, Langue Légale? (Brussels: Françals Juridique et Science du Droit: Textes présentés au deuxième colloque international du Centre international de la common law en français, 1995).

11. *See supra* notes 7-9; Sidney L. Herold, *The French Language and the Louisiana Lawyer*, 5 Tul. L. Rev. 169 (1931).

12. *See generally* Maurice Denuzière, Je Te Nomme Louisiane (1990); George Dargo, Jefferson's Louisiana: Politics and the Clash of Legal Traditions (1975); John H. Tucker, Jr., Source Books of Louisiana Law (1935); Charles Gayarré, History of Louisiana (5th ed. 1974); Alcée Fortier, A History of Louisiana (1904); Francois X. Martin, History of Louisiana, from the earliest period (1975); Herold, *supra* note 11; John M. Shuey, Note, *Civil Codes—Control of the French Language of the Code of 1825*, 3 La. L. Rev. 452 (1941); Alain Levasseur, *The Major Periods of Louisiana Legal History*, 41 Loy. L. Rev. 585 (1996); A.N. Yiannopoulos, *Two Critical Years in the Life of the Louisiana Civil Code: 1870 and 1913*, 53 La. L. Rev. 5, 22 (1992); James T. McHugh, *On the Dominant Ideology of the Louisiana Constitution*, 59 Alb. L. Rev. 1579 (1996); James H. Domengeaux, *Native Born Acadians and the*

During certain periods, the French language has thrived in Louisiana.[13] At other times, it has been swept under the carpet as an embarrassing relic of the State's colonial past.[14] Presently, the French language, or a variation thereof, subsists in certain parts of the State and plays an integral role in Louisiana's tourism industry.[15] As long as there are tourist dollars to be reaped, the French language and culture appear secure in Louisiana.[16] However, the security provided by tourism does not extend to the French language in Louisiana law. The need to interact with its sister states, coupled with the unavoidable and necessary intertwinement in the federal court system, has resulted in Louisiana's legal institutions being conducted in English.[17] In fact, the unquestionable predominance of the English language in the American legal system has delivered the *coup de grâce* to the French language in Louisiana law which, at one time, enjoyed equal, if not favored, status vis-à-vis the English language.[18]

Thus, for all practical purposes, the French language in Louisiana law and jurisprudence is dead; the swan song has long since been sung. French perished, in part, as a result of its discontinuance as a working language of Louisiana courts and attorneys.[19] In addition, the failure of the Louisiana Supreme Court and the

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Equality Ideal, 46 La. L. Rev. 1151 (1986); Louis Baudouin, *The Influence of the Code Napoleon*, 33 Tul. L. Rev. 21 (1958); Joseph Dainow, *Moreau Lislet's Notes on Sources of Louisiana Civil Code of 1808*, 19 La. L. Rev. 43 (1958); Rodolfo Batiza, *The Louisiana Civil Code of 1808: Its Actual Sources and Present Relevance*, 46 Tul. L. Rev. 4 (1971); Robert A. Pascal, *Sources of the Digest of 1808: A Reply to Professor Batiza*, 46 Tul. L. Rev. 603 (1972).

13. A glance at the *1820 United States Census of Population (Louisiana)* reveals a Louisiana that was almost exclusively French in origin. This is no longer the case today. According to the 1980 census, 263,490 Louisianians claimed French as the language spoken at home. Likewise, 3,461,457 Louisianians claimed English as the language spoken at home. Spanish (50,837), German (7,641), and other languages (62,080) totaled 120,558. Thus, only 7.35% of a total population of 3,845,505 claimed French as the language spoken at home. United States Department of Commerce, 1980 Census of Population, General Social and Economic Characteristics, Louisiana PC80-1-C20, U.S. Government Printing Office, 1983. *See also* Domengeaux, *supra* note 12.

14. *Id.*

15. The French language in Louisiana is found mostly in "Acadiana." This is the popular name of 22 parishes (Louisiana equivalent of counties) in southwest and central Louisiana where the population is heavily represented by Acadians and French descendants; see Domengeaux, *supra* note 12.

16. Stan Fulcher et al., An Analysis of the Market of Louisiana Tourism Abroad (1992); State of Louisiana, Department of Culture, Recreation, and Tourism, Louisiana Open House 1990: An Aggressive 3-year marketing plan for the tourist industry in Louisiana; House Comm. on Small Business Subcommittee on Procurement, Taxation, and Tourism, Tourism as a tool for rural economic development: hearing before the subcommittee on procurement, taxation, and tourism of the Committee on Small Business, House of Representatives, 103rd Congress, first session, Alexandria, Louisiana, July 19, 1994 (1994); 1968 La. Acts No. 409 (authorizing creation of Council for the Development of Louisiana-French (CODOFIL) to promote French language "for . . . tourist benefit of the State").

17. Levasseur, *supra* note 10.

18. *See generally* Yiannopoulous, *supra* note 12; Louisiana's Legal Heritage (Edward F. Haas ed., 1983); Levasseur, *supra* note 10; Herold, *supra* note 11.

19. *See generally* Yiannopoulous, *supra* note 12; Louisiana's Legal Heritage (Edward F. Haas ed., 1983); Levasseur, *supra* note 10; Herold, *supra* note 11.

State's law schools to adopt any formal French language entrance requirements for prospective law students and bar candidates contributed to the demise of the language.[20] In hindsight, had past generations of Louisiana scholars and jurists been truly concerned about preserving the civilian legal heritage of the State, they would have been vigorous and vociferous proponents of the genuine use of the French language by the legal community and within the court system, rather than merely making occasional use of it so as to be adjudged scholarly.

This article examines the French language in Louisiana legal education. In order to understand the role of French language in legal education, it is first necessary to consider the historical position that the language occupied in the State's constitutional, legislative, and procedural history. After discussing this history, this article focuses on Louisiana's flagship law school, the Paul M. Hebert Law Center at Louisiana State University (LSU Law Center) in Baton Rouge, and traces the somewhat wavering treatment of the French language throughout its ninety year history.[21] Finally, postulating that a true revival of the French language in Louisiana law is no longer realistically feasible, this article will consider ways in which the French language resources of the LSU Law Center can best be utilized to promote the civilian tradition in Louisiana. As the last great bastion of the civil law in the United States, Louisiana, acting through the LSU Law Center, has the potential resources, and, most importantly, the solemn duty, to ensure the continued survival in the American republic of this civilian tradition. However, given the linguistic composition of the Louisiana legal community, this obligation will necessarily be undertaken in English, not French.

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20. Since its earliest days, the Louisiana Supreme Court has promulgated rules which have favored the English language at the expense of the French language. For example, in 1821 the Supreme Court formulated this rule:

> The Judges find it necessary to make known that they expect that no application for licence [sic] to plead will be made by any Gentlemen not acquainted with the legal language of the State [*i.e.* English]. It is true we have translations of our laws, and those may suffice to direct the citizen in the ordinary transactions of life. But he who aspires to the high honor of being consulted on, and to explain these laws to his fellow Citizens, and the Court, must be able to read the text. Very few of the acts of Congress, which form a considerable portion of our written laws, paramount to the acts of our state legislature are translated. The records of suits must be preserved in the samed [sic] language as the laws, and the judges cannot designate as learned in the laws, and qualified to give legal advice and to carry on a lawsuit, [anyone] who is ignorant of the legal language of the state as not being able to read the text of the laws or to undergo an examination in it.

Louisiana Supreme Court Minute Book, 1818-23, 239, *cited in* Warren M. Billings, *Louisiana Legal History and its Sources: Needs, Opportunities and Approaches*, *in* Louisiana's Legal Heritage, *supra* note 18, at 189, 197. This rule was met with an outraged response from Louisiana's francophone community (see editorials from *Le Courrier de la Louisiane* of May 16, 1821, May 21, 1821, and June 1, 1831, *cited in* Levasseur, *supra* note 10. The treatment of the french language by the LSU Law Center is explored in greater detail *infra*.

21. The LSU Law Center celebrated its ninetieth anniversary in 1996. The law school was established in 1906 to carry out the general provision of the University Charter authorizing a "school of law" among the schools that "shall be maintained by the Louisiana State University." *L'Avocat*, volume XX, at 4-5 (1995) (LSU Law Center yearbook).

II. THE ROOTS OF THE FRENCH LANGUAGE IN LOUISIANA

In order to understand fully the reasons for the existence of the French language in Louisiana law and jurisprudence, one must first consider the historical underpinnings of the language in the State. As most schoolchildren learn, Louisiana was once, prior to its absorption into the overwhelmingly anglophonic American republic, an important French stronghold on the North American continent.[22]

During the seventeenth century, France expanded its presence in America by pushing into the unexplored western frontiers of the continent. Firmly established in Québec, the French moved into the Great Lakes region and along North America's great rivers, which served as natural highways for explorers and fur traders. Toward the end of the seventeenth century, the French planned to explore the Lower Mississippi River country which remained virtually untouched by Europeans for almost one hundred forty years.[23]

Citing the need to explore and claim greater portions of the continent in the name of France, the French fur trader Rene Robert Cavelier, Sieur de La Salle, embarked on a voyage down the Mississippi River in early 1682.[24] Traveling a distance of over one thousand miles, La Salle reached the mouth of the Mississippi River on April 7, 1682. Two days later, on April 9, 1682, La Salle claimed the Lower Mississippi River country for the King of France, Louis XIV, naming it "Louisiane" in his honor.[25]

With the acquisition of Louisiana, France controlled access to the interior of the American continent from both the north and the south. The control of the St. Lawrence and Mississippi Rivers gave France an important strategic advantage over its European rivals, the British and the Spanish, who also were claiming territory and establishing colonies in America.[26] Initially, France was slow to develop its newly claimed territory.[27] However, upon discovering that the British were secretly contemplating a settlement in Louisiana, France stopped procrastinating and quickly made plans to establish settlements in its new territory.[28]

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22. A complete and detailed account of the general and legal history of the state of Louisiana is beyond the scope of this article. For an exhaustive history of Louisiana, especially its colonial period, see Gayarré, *supra* note 12; Marcel Giraud, History of Louisiana (1975); Edwin A. Davis, Louisiana: The Pelican State (1975); Denuzière, *supra* note 12. For a thorough overview of Louisiana in the context of legal history, see Levasseur, *supra* note 12.

23. Davis, *supra* note 22, at 18.

24. *Id.*

25. Denuzière, *supra* note 12, at 61-90.

26. *See Colonization and Conflict: New France and its Rivals 1600-1760*, *in* The Illustrated History of Canada 108-88 (Craig Brown ed., 1987); Thomas V. DiBacco et al., History of the United States 20-75 (1991); Davis, *supra* note 22.

27. Davis, *supra* note 22.

28. *Id.* Expansion of Louisiana occurred rapidly under the Scottish entrepreneur John Law's Company of the West, which was granted the royal charter to the colony in 1718. *See also* Denuzière, *supra* note 12; Henry Plauché Dart, *The Legal Institutions of Louisiana*, 3 S.L.Q. 247

France encouraged its subjects to leave the comforts of Europe and to emigrate to Louisiana. However, unsure of what to expect, fearful of Indian attacks, and reluctant to be transplanted so far away from what they perceived to be the greatest nation of the greatest continent of the only world they had ever known, the French did not emigrate to Louisiana in the desired droves. Rather, relatively few Frenchmen moved to Louisiana voluntarily.[29]

In response to the lack of enthusiasm among its subjects to settle in Louisiana, the French government resorted to releasing criminals from prisons and shipping them to the colony. Likewise, the *ancien régime* instituted a policy of rounding up the nation's indigent and shipping them to Louisiana. However, French officials soon realized that felons and the poor did not make model colonists and abandoned the policy of forced emigration.[30] In its place, the French government granted *concessions* to wealthy Frenchmen and other Europeans. In exchange for a *concession* or land grant, the grantee agreed to settle families on the land. In addition, the French government offered financial incentives to prospective settlers.[31]

Gradually, the French population in Louisiana increased, but never to viable levels.[32] Although the colony's economy experienced modest growth, it was never profitable. France was spending considerable amounts of money on the development of the colony at a time when it could not afford to do so.[33] Financially strapped, preoccupied with affairs on the European continent, and eager not to let the colony fall into the hands of its archenemy the British, France ceded Louisiana to Spain via the Treaty of Paris, which was signed on November 3, 1762.[34]

Although *de jure* Spanish, Louisiana and its population remained *de facto* French.[35] Amazingly, the French colonists of Louisiana were not even aware that France had ceded the colony to Spain until October, 1764.[36] Even when confronted with the reality that they had been abandoned by their mother country, French-Louisianians never saw themselves as anything but Frenchmen. Indeed,

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(1918); Samuel B. Groner, *Louisiana Law: Its Development in the First Quarter-Century of American Rule*, 8 La. L. Rev. 350 (1948).

29. McHugh, *supra* note 12.

30. Davis, *supra* note 22. This policy was nothing more than officially sanctioned kidnapping.

31. *Id.* at 40-41. Frenchmen agreeing to resettle in Louisiana were offered sizable plots of land, horses and oxen for the cultivation of the fields, and had pigs, sheep, chickens, furniture, kitchen utensils, and food supplied until the first harvest.

32. *Id.* at 52. The Louisiana territory had a population of less than 7,500 in 1756.

33. *Id.* at 51-52. By 1756, France was appropriating over 800,000 *livres* on Louisiana annually and was receiving little revenue in return. Altogether between seventy million and eighty million *livres* had been invested with relatively little return, and expenses were rising each year. (A *livre* is a former French monetary unit originally worth one pound of silver.)

34. Levasseur, *supra* note 12; McHugh, *supra* note 12; Symeon C. Symeonides, An Introduction to the Louisiana Civil Law System (1991).

35. Denuzière, *supra* note 12, at 327-70.

36. Davis, *supra* note 22.

notwithstanding the fact that many French-Louisianians were required to take loyalty oaths to "His most Catholic majesty, the King of Spain," the French settlers of Louisiana, for the most part, never renounced their allegiance to the French throne.[37] The French language continued to flourish in Louisiana. In contrast, the Spanish language and culture never made substantial inroads into the general population.[38] Although the new colonial masters brought Spanish law to the colony, it was civilian law and in many ways quite similar to French law.[39] Because of the similarities between the two legal systems, many French-Louisianians continued, among themselves, to enter into obligations, adjudicate property rights, and define marital and familial relations using French law.[40] Because Spain was not impetuously determined to remake Louisiana in its own image, French-Louisianians found their life under Spanish rule tolerable. The parities in culture, religion, and legal tradition, coupled with a lackadaisical governing style that tended to protect the *status quo*, fostered an era of relatively harmonious co-existence and social intermingling between the French and the Spanish.[41]

In the end, Spain, like France before it, could no longer afford to appropriate funds to maintain its colonial rule over Louisiana. The Spanish empire had been in decline for several decades while, at the same time, the British and the French were amassing power and wealth throughout the world.[42] Spain feared Napoleon's attraction to Louisiana. It also feared Hanoverian Great Britain's incandescent fervor to seize control of as much territory as possible. For the Spanish, France was the lesser of two evils as French control of Louisiana would serve as an effective buffer against British and American indiscretions into Spanish Texas.[43] Therefore, Spain retroceded Louisiana to France on October 1, 1800, by the secret Treaty of San Ildefonso.[44] Disclosure of the retrocession of Louisiana did not occur until 1802 and the official return of Louisiana to France by Spain was delayed until November 30, 1803.[45]

Although chauvinistically overjoyed to be officially French once again, the French-Louisianians were nevertheless saddened to see their Spanish colonial masters leave. The Spanish had proved to be more efficient and effective

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37. Denuzière, *supra* note 12.

38. *Id.*

39. *Id. See also* McHugh, *supra* note 12.

40. Denuzière, *supra* note 12; Symeonides, *supra* note 34.

41. L. Moreau Lislet and Henry Carleton, The Laws of Las Siete Partidas, which are Still in Force in the State of Louisiana (1820). For specific treatment of the Spanish colonial administration, and the accommodation that existed among Spanish political and French economic elites, see Jack D.L. Holmes, *Some French Engineers in Spanish Louisiana*, *in* The French in the Mississippi Valley 123-42 (John F. McDermott ed., 1965). The obvious exception to this relatively peaceful period was the French-Louisianian uprising against the Spanish Governor Ulloa. This rebellion resulted in O'Reilly being sent to Louisiana to crush resistance and restore Spanish authority. *See also* Levasseur, *supra* note 12.

42. Levasseur, *supra* note 12.

43. McHugh, *supra* note 12; Davis, *supra* note 22, at 116.

44. Gayarre, *supra* note 12, at 445.

45. Levasseur, *supra* note 12.

administrators of the territory than the French. French-Louisianians were concerned that the prosperity the colony enjoyed under Spanish rule would come to an end with their reunion with their French continental brethren.[46]

French-Louisianian elation over reunification with France was short-lived once it became apparent that the Americans intended to acquire and Napoleon intended to sell the Louisiana territory.[47] The French-Louisianians feared and distrusted the Americans for several reasons. First, they spoke a foreign language.[48] Second, the democratic form of American government was unknown and unfathomable to a people who had never known anything but a government headed by a strong and omniscient monarch.[49] Finally, the French-Louisianians were alarmed by the possible introduction of English common law into the territory and were uneasy about the effects of this seemingly arcane law on vested property rights.[50]

On December 20, 1803, the French-Louisianians' worst fears were realized when the twenty day French interregnum ended and General James Wilkinson and Governor William C.C. Claiborne of the Mississippi Territory took possession of the Louisiana territory for the United States.[51] From that point forward, the French language and culture in Louisiana, which was at its pinnacle at the beginning of the nineteenth century, began a slow but rapidly accelerating decline.[52] English-speaking Americans migrated to the territory with their British-influenced laws and customs. The two distinct peoples began to intermingle which resulted in a gradual mongrelization of the French language and people in Louisiana.[53] With the adoption of a state constitution and admission into the American Union, Louisiana's legal relationship vis-à-vis the other American states was one of parity.[54] However, given the fact that the other eighteen states which

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46. Davis, *supra* note 22, at 118.

47. Levasseur, *supra* note 12; Cecil Morgan, The First Constitution of the State of Louisiana, at 99-104 (1975).

48. Davis, *supra* note 22, at 124.

49. *Id.*

50. Denuzière, *supra* note 12.

51. Dargo, *supra* note 12, at 26-28; Denuzière, *supra* note 12, at 371-99. With the acquisition of Louisiana, the United States acquired more than 800,000 square miles (2,000,000 sq. km.). The Louisiana Purchase thus doubled the size of the fledgling American Republic, extending its territory westward to the Rocky Mountains. The immediate gains were control of the Mississippi River Valley and access to the Gulf of Mexico. Everett Somerville Brown, The Constitutional History of the Louisiana Purchase, 1803-1812 (Clifton Books 1972); John R. Hood, *The History and Development of the Louisiana Civil Code*, 19 La. L. Rev. 18 (1958).

52. Yiannopoulous, *supra* note 12, at 22; Levasseur, *supra* note 10.

53. Warren M. Billings and Edward F. Haas, In Search of Fundamental Law: Louisiana's Constitutions, 1812-1974, at 21-36 (1993).

54. Dargo, *supra* note 12; François Barbé-Marbois, The History of Louisiana: particularly of the cession of that colony to the United States of America (1830). *See also* the Enabling Act passed by Congress on February 20, 1811 (Act of Feb. 20, 1811, ch. 21, 2 Stat. 641) which authorized the people of the Territory of Orleans (eventually, Louisiana) to form a constitution and state government, and for the admission of such state into the Union, *on equal footing with the original states.*

formed the United States were firmly entrenched in the English language and the British common law tradition, the prognosis for the survival of French language, culture, and civil law in Louisiana was remarkably slim.

III. THE FRENCH LANGUAGE IN LOUISIANA'S CONSTITUTIONAL HISTORY

Now that the historical reasons for the existence of the French language in Louisiana have been explored, it is necessary to delve into the historical presence of the language in Louisiana's legal institutions. Treatment of the French language in Louisiana's legal history begins with an examination of the rise and fall of the French language in the constitutions of Louisiana. Since its admission to the Union on April 30, 1812, Louisiana has enacted ten state constitutions, more than any other state.[55] The constitutions were adopted in 1812, 1845, 1852, 1864, 1868, 1879, 1898, 1913, 1921, and 1974.[56] As will be shown, each constitution offers some insight into the status of the French language at that particular moment in Louisiana history.

Shortly after its acquisition by the United States, Louisiana began to clamor for statehood.[57] Under the terms of the Louisiana Purchase Treaty of April 30, 1803, the United States agreed that "the inhabitants of [the Louisiana territory would] be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States."[58] The French-speaking population of Louisiana interpreted this provision to mean that the territory would be allowed "immediate" statehood.[59] The Americans, in particular President Thomas Jefferson, were not anxious to see Louisiana admitted to the Union in such an expeditious manner. In fact, Jefferson believed the French-Louisianians were *incapable* of immediate statehood.[60] "Francophile though he was, Jefferson harbored a residual distrust of the inhabitants of Louisiana and believed that their rearing in the papist and monarchist cultures of France and Spain rendered them suspect as did their lack of experience with self-government and understanding of republicanism."[61] Because of these misgivings, Jefferson envisioned a sort of apprenticeship for the

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55. Brent Tarter, *Book Review*, 39 Am. J. Legal Hist. 236 (1995) (reviewing Billings and Haas, *supra* note 53).

56. *Id.*

57. Dargo, *supra* note 12.

58. Treaty Between the United States of America and the French Republic, Article III, April 30, 1803, *cited in* Morgan, *supra* note 47. "There were in fact three treaties, all under the date of April 30, 1803. The first was the actual *Treaty of Cession*. The second treaty was the *Treaty of Payment*. The third treaty provided for payment by the United States of debts due its citizens by France." Groner, *supra* note 28 (citations omitted).

59. Warren M. Billings, *From this Seed: The Constitution of 1812*, *in* Billings and Haas, *supra* note 53, at 6-20.

60. *Id.* at 7.

61. *Id.*

Louisiana territory in lieu of full and immediate statehood. Under such an arrangement, Louisiana would pass through an extended territorial status, during which French-Louisianians would be instructed in American ways and institutions. Only after completion of this orientation and indoctrination period would Louisiana be considered for full admission to the Union. To this end, Congress passed the Breckinridge Act in March, 1804, to enable the organization of the lower portion of the Louisiana Purchase as the Territory of Orleans.[62]

French-Louisianians, however, wanted no part of Jefferson's apprenticeship plan. As far as they were concerned, the longer Louisiana retained the inferior status of territory, the greater the likelihood of outside interference and damage to their language, customs, and laws.[63] The French-Louisianians realized, quite correctly, that in order to provide the greatest degree of protection for the territory's cherished civil law system, *French-Louisianians* needed to be in control of their own government, not *yankee* interlopers. Because of this realization and the perceived urgency of the attainment of statehood, French-Louisianians vigorously and fervently lobbied Washington for admission to the Union.[64] After considerable French-Louisianian persistence, the federal government passed the Enabling Act of February 20, 1811, which authorized the people of the Territory of Orleans to form a constitution and state government, and upon congressional acceptance of the state constitution, be admitted into the Union on an equal footing with the original states.[65]

The Louisiana Constitution of 1812 was drafted by forty-three elected delegates who attended a convention for that purpose.[66] The debates and the constitution which ensued were in French. The constitution was translated into English for transmission to Washington.[67] Both the French original and the English translation were declared to be authoritative.[68] Upon approval of the English language translation of the constitution, Louisiana was granted statehood by Act of Congress of April 8, 1812, to be effective on April 30, 1812, the ninth anniversary of the Louisiana Purchase.[69]

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62. *Id.*

63. Billings, *supra* note 59.

64. Hood, *supra* note 51; Louisiana Gazette, July 24, 1804; Annals of the 8th Congress, 1597-1608 (1805).

65. Act of Feb. 20, 1811, ch. 21, 2. Stat. 641.

66. "Forty-three of the forty-five elected delegates attended all or part of the convention. More than half that number, twenty-six, were of French origin. Of these, men such as Jean Noel Destréhan, Bernard Marigny, Denis de la Ronde, and Jacques Villère sprang from families whose roots twined far back into the territory's colonial past, whereas Julien Poydras and Jean Blanque were natural-born Frenchmen." Billings, *supra* note 59, at 10. Likewise, Cecil Morgan found that "a survey of the delegates' surnames indicates that at least twenty-two of the delegates were Creoles or native-born Frenchmen." Morgan, *supra* note 47, at 7 n.8.

67. "The Enabling Act did not require that the constitution be originally enacted in the English language, but did require that a duly authenticated English version be sent to Washington." Morgan, *supra* note 47, at 4.

68. McHugh, *supra* note 12, at 1597; Tucker, *supra* note 12.

69. McHugh, *supra* note 12, at 1597; Tucker, *supra* note 12.

Although written in French, the Louisiana Constitution of 1812 required that "all laws . . . passed by the Legislature, and the public records of [Louisiana] . . . and the judicial and legislative written proceedings of the same, . . . be promulgated, preserved, and conducted in the language in which the constitution of the United States is written."[70] The drafters of the Constitution of 1812 included this English language preference clause to satisfy one of the prerequisites for statehood required under the Enabling Act.[71] Inclusion of this clause did not mean that one could no longer use French in legislative, judicial, or other legal settings. On the contrary, because Louisiana remained overwhelmingly French, debates in the legislature, promulgation of legislative acts, proceedings before the courts, and legal relationships between private parties continued to be conducted largely in the French language.[72] The only difference was that, under the Constitution of 1812, English received official sanction as the language of promulgation and preservation of laws. The unofficial but consistent and commonly accepted use of French reflected the composition of the Louisiana society and was an outward and visible sign that French-Louisianians intended to maintain their French heritage.

Although the Constitution of 1812 required the French language to genuflect to the language of Shakespeare, it was deliberately drafted in a manner that vested political power in French-Louisianians and kept them in firm control of the new state government.

> By setting up residency and property qualifications for holding office, a franchise based on ability to produce current tax receipts, and a system of representation that favored the older parts of the state, the framers of the Constitution of 1812 strove to keep political power safely out of the hands of the [English-speaking] Americans who flocked to the Pelican State after the Louisiana Purchase.[73]

Moreover, the Constitution of 1812 effectively preserved Louisiana's civil law system and blocked the introduction of Anglo-American common law into the

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70. La. Const. of 1812, art. VI, § 15.

71. Section 3 of the Enabling Act, see *supra* note 54, which required, as a condition for admission to the Union, that any constitution promulgated by the Territory of Orleans, must provide that "the laws which [Louisiana] may pass shall be promulgated and its records of every description shall be preserved, and its judicial and legislative written proceedings, conducted in the language in which the laws and the judicial and legislative written proceedings of the United States are now published and conducted."

72. Louisiana Acts of the Legislature were promulgated in both French and English from 1812-1867. One of the early judges of the supreme court, Dominick Hall, resigned after four and a half months on the bench because he could not understand the arguments in French made before the court. *See* Morgan, *supra* note 47, at 7.

73. Judith K. Schafer, *Reform or Experiment? The Louisiana Constitution of 1845*, *in* Billings and Haas, *supra* note 53, at 22; William N. Lewis, *The Americanization of French Louisiana: A Study of the Process of Adjustment between the French and the Anglo-American Population of Louisiana, 1793-1860* (Ph.D. Dissertation, University of Chicago, 1929) (on file with author).

State by forbidding the legislature from adopting "any system or code of laws, by general reference to the said system of the code, but in all cases, . . . specify the several provisions of the laws it may enact."[74]

The fact that the French language did not receive official recognition and status in Louisiana's initial constitution was of no pressing concern to French-Louisianians. Considering the fact that the French language was firmly embedded as the idiom of the majority of the population, that Louisianians were overwhelmingly French in origin, that French culture and religious (Roman-Catholic) institutions thrived, and that the constitution favored and protected the French establishment to the prejudice of American newcomers, the French had no reason to feel uneasy about the future survival of their language, culture, and legal institutions.

In contrast, the Constitution of 1845 reflected a changed and diminished status of the French language in Louisiana. Since the passage of the first constitution thirty-three years before, the linguistic and ethnic composition of the State had undergone a dramatic and profound metamorphosis. Americans swarming to Louisiana in search of economic opportunity infested the French language with English and American colloquialisms.[75] In a relatively short time, the English-speaking community surpassed the *ancienne population* in numbers. However, although now a minority, French-Louisianians retained ironclad control of the state government thanks to the protections that had been deliberately and prudently included in the Constitution of 1812.[76] The English-speaking newcomers resented French control of the state government.[77] They viewed the Constitution of 1812 as aristocratic and elitist. The English-speaking newcomers also realized amendment of the constitution was extremely difficult, if not impossible.[78]

In response to the increasingly rancorous demands for political and constitutional reform, the Louisiana Legislature of 1841 submitted a proposal "for a constitutional convention to amend the 1812 Constitution, principally respecting suffrage, representation, popular election of the governor, and reorganization of the Supreme Court."[79] The proposal was adopted at two

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74. La. Const. of 1812, art. 4, § 11. This provision had the effect of deterring the introduction of American common law upon the civil law of the State of Louisiana. Earlier in the history of the colonial government, W.C.C. Claiborne urged the adoption of the common law by the territory. Claiborne opposed all types of Roman law, because he desired to receive the Anglo-American judge-made common law in Louisiana. Morgan, *supra* note 47, at 12. Similar provisions have been incorporated into subsequent Louisiana Constitutions: La. Const. of 1845, art. 120; La. Const. of 1852, art. 117; La. Const. of 1864, art. 120; La. Const. of 1868, art. 116; La. Const. of 1879, art. 31; La. Const. of 1898, art. 33; La. Const. of 1913, art. 33; La. Const. of 1921, art. 3, § 18; La. Const. of 1974, art. 3, § 15(B).

75. Joseph G. Tregle, Jr., *Louisiana in the Age of Jackson: A Study in Ego Politics* (Ph.D. dissertation, University of Pennsylvania, 1954) (on file with author).

76. Lewis, *supra* note 73.

77. Schafer, *supra* note 73.

78. *Id.*

79. 1841 La. Acts No. 5. *See* Tucker, *supra* note 12, at 47.

subsequent elections.[80] On March 18, 1844, the legislature ordered a convention to meet at Jackson, Louisiana, to revise the Constitution of 1812.[81] The initial meeting of the convention occurred on August 5, 1844. Debates at the initial meeting were conducted in both French and English.[82] However, due to complaints about the inconvenience of holding the meeting in Jackson, the convention adjourned. Delegates reconvened in New Orleans later that month.[83]

French-Louisianian delegates to the convention no longer assumed that their language would continue to thrive in the State's judicial and legislative bodies. On the contrary, French-speaking delegates were not naive: they realized that the English language was a cancer growing on their mother tongue. To fight the malignancy, they needed to gain official constitutional protection for the French language. The first attempt to protect the status of the French language came from Bernard Marigny, a delegate from New Orleans. Marigny offered a resolution to include in the constitution a stipulation that French and English be used on the floor of the legislature, and that anyone had the right to address members in either tongue.[84] Some members of the convention objected to the inclusion of the measure. The objectors protested that the use of French was too inconvenient for the English-speaking members of the legislature.[85] In response to the protests, Marigny accused those who opposed his resolution for a bilingual legislature of secretly favoring the imposition of the common law upon the state, a heretical position for any upstanding Louisianian! As Marigny stated, "The hostility to the French language is stimulated by the design to abrogate our civil system of law . . . I know that the Anglo-Saxon race are more numerous, and therefore strongest. We are yet to learn whether they will abuse the possession of numerical force to overwhelm the Franco-American population."[86]

Because of Marigny's eloquent appeal and out of respect for the French-speaking population, the measure passed. At the same time, the delegates strengthened Article 6, section 15 of the Constitution of 1812 by revising it to provide that laws, public records, and the judicial and legislative written proceedings of the State be in English.[87] However, in contradistinction to its predecessor, the Constitution of 1845 gave official status to the French language by

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80. Tucker, *supra* note 12; Robert H. Marr, *A Historical Review of the Constitutions of Louisiana*, 14 La. Bar Ass'n Rep. 229, 231 (1912-1913).

81. 1844 La. Acts No. 64. The first meeting of the convention was held on August 5, 1844. Jackson is located in East Feliciana Parish.

82. Lewis, *supra* note 73.

83. Schafer, *supra* note 73, at 24; Tucker, *supra* note 12, at 48. The convention reconvened in New Orleans on August 24, 1844.

84. Schafer, *supra* note 73, at 31.

85. *Id.*

86. *Id.*; 2 Proceedings and Debates of the Convention which Assembled at the City of New Orleans, January 14, 1844 [sic] 831-36 (1845).

87. Schafer, *supra* note 73; La. Const. of 1845, art. 104. Compare the new article's express use of the word "English" as opposed to the former constitution's (La. Const. of 1812, art. VI, § 15) use of the phrase "the language in which the constitution of the United States is written."

mandating the promulgation of laws in both French and English.[88] The succeeding constitution, the Constitution of 1852, also safeguarded the official status of the French language.[89] This bilingual promulgation requirement provided much needed protection for the French language in Louisiana's constitutional scheme. In retrospect, however, it was probably too little, too late.[90]

Events which transpired at the convention organized to draft Louisiana's next constitution, the Constitution of 1864, foreshadowed the total banishment of the French language from the Louisiana constitutional paradigm that would occur four years later.[91] At the beginning of the convention, one French-speaking delegate moved that the proceedings be published in both French and English. This proposal was met with ridicule from some of the English-speaking delegates, but the convention nevertheless adopted the proposal.[92] However, delegates refrained from having their proceedings rendered in French.[93] Such disrespectful behavior only provided concrete evidence of the atrophying of the French language in Louisiana society.

The Constitution of 1864 severely weakened the constitutional status of French language. Among other things, it reiterated the requirement contained in previous constitutions that acts of the legislature be promulgated and preserved in English, the language of the Constitution of the United States.[94] More importantly, the constitution eliminated the bilingual promulgation provisions of the two previous constitutions.[95] In fact, the new constitution ignored the French language issue

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88. La. Const. of 1845, art. 132; Tucker, *supra* note 12, at 55.

89. La. Const. of 1852, art. 129.

90. Tucker, *supra* note 12, at 55:

> In 1857, it was argued in the [Louisiana] Supreme Court that the requirements of the Constitution of 1852 (Article 129) [the successor to article 132 of the Constitution of 1845] that laws be promulgated in the English and French languages, render the law inoperative, where the French and English texts conflicted. The Court referred to Article 100 of the Constitution of 1852, requiring laws to be promulgated and preserved in the English language, and the practice of adopting statutes in English only. It said that the English text of ordinary statutes was emphatically the law, that the French text was not the work of the two houses and the Governor, but a mere clerical labor of translation, and that in cases of conflict it would correct the translation.

See also Williams v. Robinson-Randolph, 5 La. Ann 110 (1850); Dixon v. Lyons, 13 La. Ann 160 (1858).

91. Kathryn Page, *A First Born Child to Liberty: The Constitution of 1864*, *in* Billings and Haas, *supra* note 53, at 52. General Nathaniel Banks, commander of Union forces in occupied Louisiana, with the ardent backing of President Abraham Lincoln, convened delegates to frame a new constitution for Louisiana to help pave the way for Louisiana's readmission to the Union and thereby ameliorate the economic and social disorder that the war created.

92. *Id.*; Debates of the Convention for the Revision and Amendment of the Constitution of the State of Louisiana 47-49 (1864); Official Journal of the Proceeding of the Convention for the Revision and Amendment of the Constitution for the State of Louisiana 115-16 (1864).

93. Page, *supra* note 91, at 62.

94. La. Const. of 1864, art. 103.

95. Page, *supra* note 91, at 63.

altogether.[96] Finally, the Constitution of 1864 directed, for the first time, that instruction "in the common schools . . . be conducted in the English language."[97]

Despite its many pro-English provisions, the new Constitution of 1864 did not completely abrogate the French language. First, Article 128 prohibited the legislature from passing any law that forbade public office to those Louisianians who could not speak English.[98] Second, the new constitution was published in French, as well as English and German, which suggested that the English-speaking majority was not ready to totally alienate the many Louisianians who still used French as their first and only language.[99]

The year 1868 bore witness to the dismantling of the constitutional protections for the French language that began in earnest four years earlier. Pursuant to the Military Reconstruction Act of 1867, Louisiana was required, as a condition of readmission to the Union, to draft a new constitution that guaranteed certain rights to all citizens, including newly emancipated African-Americans.[100] The new constitution was prepared by a Republican-dominated convention.[101] Because few French-speaking Louisianians belonged to the Republican party, they were underrepresented at the convention. This lack of adequate representation, coupled with an extreme animosity toward the French at this juncture of Louisiana history, resulted in French-Louisianian interests being dismissed, trivialized, scoffed at, or just plain ignored.[102] Consequently, delegates to the convention eradicated the few remaining constitutional provisions concerning the status of the French language that the 1864 convention delegates had spared.

The new constitution retained the "English-only" in the public schools provision instituted in the previous constitution.[103] Moreover, the Constitution of 1868 provided that "the laws, published records and judicial and legislative proceedings of the State . . . be promulgated and preserved in the English language; *and no laws shall require judicial process to be issued in any other than the English language*."[104] By including this article, Republican Reconstructionist delegates effectively tolled the death bell for the French language in Louisiana's constitution-

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96. *Id.*

97. La. Const. of 1864, art. 142. This article was included in a waive of anti-French sentiment that characterized the period. *See* Heinz Kloss, Les Droits Linguistiques des Franco-Américains aux Etats-Unis 14 (1970).

98. *Id.*; Debates, *supra* note 92, at 506-07.

99. Debates, *supra* note 92, at 506-07.

100. Charles M. Vincent, *Black Constitution Makers: The Constitution of 1868*, *in* Billings and Haas, *supra* note 53, at 69-80. Among other things, Louisiana's new constitution included a bill of rights, declared that all persons without regard to race, color, or previous condition of servitude were citizens, and prohibited racial segregation in public education.

101. *Id.* The Republican party arose to power in the aftermath of the South's defeat in the Civil War.

102. Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 Minn. L. Rev. 324 (1992).

103. Domengeaux, *supra* note 12.

104. La. Const. of 1868, art. 109 (emphasis added).

al scheme. Since 1804, Louisiana had consistently published and promulgated its laws in English and French.[105] One need only glance at the 1868 Acts of the Legislature to see the fatal effect that Article 109 of the Constitution of 1868 had on the position of the French language in Louisiana's constitutional and legal history.

Read together, the Constitutions of 1864 and 1868 resulted in a linguistic holocaust perpetrated by a vindictive Anglophone majority against a politically vulnerable French-speaking minority. The total impact that English-only schooling had on future generations of French-Louisianians, whose own language was now a pariah in the State, can never be measured. Forced to speak English, denied access to a rendering of the law in their mother tongue, devoid of any genuine political power, and suddenly surrounded by an influx of English-speaking northern carpetbaggers who were both insensitive and indifferent to the historical place of the French language in the State, French-Louisianians were helpless to halt their homogenization into the English-speaking American melting pot.

Fortunately, French-Louisianians were able to revive some of their language's lost constitutional protections with the drafting of the state's next constitution in 1879. Political power had shifted back to the Democratic party, which included a heavy French-Louisianian membership. Also, anti-French sentiment had dissipated somewhat since the drafting of the last constitution.[106] French-speaking Louisianians were eager to rectify the damage that had been done to their language at the hands of the two previous state constitutions. The new Constitution of 1879 provided that

> laws, public records and judicial and legislative proceedings of the State ... be promulgated and preserved in the English language; *but the General Assembly may provide for the publication of the laws in the French language*, and prescribe that judicial advertisements in certain designated cities and parishes ... be made in that language.[107]

The new constitution also reversed the prejudicial English-only education provisions of the previous constitutions by reintroducing the possibility of primary school instruction in French.[108] The new constitution provided that "[t]he general exercises in the public schools ... be conducted in the English language and the elementary branches taught therein; provided, that these elementary branches may also be taught in the French language in those parishes in the States or localities in said parishes where the French language predominates, if no additional expense is incurred thereby."[109] The next constitution, the Constitution of 1898, expanded

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105. Perea, *supra* note 102.

106. Ronald Labbe, *That the Reign of Robbery May Never Return to Louisiana: The Constitution of 1879*, *in* Billings and Haas, *supra* note 53, at 81-92.

107. La. Const. of 1879, art. 154 (emphasis added).

108. Perea, *supra* note 102, at 325.

109. La. Const. of 1879, art. 226.

this provision to apply to all grades in Acadiana, not just the elementary classes.[110] A similar provision was also included in the Louisiana Constitution of 1913.[111]

Despite laudable efforts, French-Louisianians were unable to repair the damage that the constitutions of 1864 and 1868 inflicted upon their language, culture, and society. Indeed, the French-speaking population never regained its pre-Civil War dominance. Their numbers dwindled and use of the French language became burdensome in an increasingly monolingual society. "Hence, notwithstanding constitutional authorization for publication of laws in both English and French, after 1881, there was, apparently, no French edition of the laws."[112] Additionally, when the constitution was again revised in 1921, the need to preserve and protect the French language in Louisiana appeared moot. Because of this seeming pointlessness, delegates to the convention that drafted the Constitution of 1921 eliminated all references to the French language and provided that "the general exercises in the public schools . . . be conducted in the English language."[113] As one French-Louisianian has commented, "Cultural and linguistic ignorance would reign under the State constitution for another 53 years."[114]

In the late 1960s and early 1970s, French-Louisianians began to overcome the social stigmatization that had been associated with French language and culture since the end of the Civil War.[115] Pride in French heritage thrived and there was growing movement to reintroduce the French language to Louisiana. In response to this burgeoning French-Louisianian renaissance, the Louisiana Legislature passed Act 409 of 1968 which authorized the Governor to establish the Council for the Development of Louisiana-French (CODOFIL).[116] Among other things, CODOFIL was empowered to do "any and all things necessary to accomplish the development, utilization, and preservation of the French language as found in the State of Louisiana for the cultural, economic, and tourist benefit of the State."[117] In addition to mandating the creation of CODOFIL, the Louisiana Legislature bolstered the French language by promulgating an act

> to further the preservation and utilization of the French language and culture of Louisiana by strengthening its position in the public schools of the State, and requirements that the French language and the culture

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110. La. Const. of 1898, art. 251; Domengeaux, *supra* note 12, at 1192.

111. La. Const. of 1913, art. 165.

112. Kloss, *supra* note 97.

113. *Id.* at 113; La. Const. of 1921, art. 12, § 12.

114. Domengeaux, *supra* note 12, at 1192.

115. S. Thernstrom, Harvard Encyclopedia of Ethnic Groups 1 (1980), *cited in* Domengeaux, *supra* note 12.

116. 1968 La. Acts No. 409. Although the Act authorizes the creation of the "Council for the Development of Louisiana French," the group is more commonly known as the "Council for the Development of French in Louisiana," or CODOFIL.

117. *Id.* § 1.

> and history of French populations in Louisiana and elsewhere in the Americas . . . be taught for a sequence of years in public elementary and high school systems of the State.[118]

This act guaranteed, in theory, that all Louisianians attending public schools would have an opportunity to be exposed to French language and culture.

Proponents of French-Louisianian interests were pleased to witness this increased legislative interest in the proliferation of the French language in Louisiana. However, French language advocates wanted more—they wanted long-lost constitutional recognition and protection of the French language. In the quest for this recognition, French language lobbyists pushed for a constitutional mandate to preserve the French language and culture in Louisiana.[119]

In 1972, after more than twenty-five years of delay, the Louisiana Legislature was finally able to call a constitutional convention.[120] The convention was scheduled to meet in Baton Rouge on January 5, 1973, to begin revision of the Constitution of 1921.[121] French language lobbyists appealed for official recognition of French language in the new constitution.[122] Representatives of CODOFIL appeared before the constitutional committee several times to urge recognition of Francophone rights.[123] In the end, the Constitution of 1974 did not specifically recognize the rights of French-Louisianians to protect their language, culture, and heritage. Rather, the new constitution provided a general blanket statement acknowledging "the right of the people to preserve, foster, and promote their respective historic, linguistic and cultural origins."[124] The constitutional committee adopted a more general recognition of rights in lieu of a provision geared specifically to the linguistic and cultural rights of French-Louisianians in order to afford all distinct groups within the State the same constitutional recognition and protection.[125] Thus, under the Constitution of 1974, any group, however small or insular, can take positive, constitutionally-recognized steps to ensure its preservation and proliferation. For example, if the descendants of the settlers who founded Hungarian Settlement, Louisiana, wanted to actively preserve and protect their Magyar heritage, as well as the Hungarian language, Article 12, section 4 of the Louisiana Constitution of 1974 would guarantee their right to do

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118. 1968 La. Acts No. 408.

119. Domengeaux, *supra* note 12, at 1192.

120. 1972 La. Acts No. 2. Attempts to revise the Constitution of 1921 began in 1946. Politics prevented the calling of the convention until 1973.

121. Tarter, *supra* note 55. The Constitution of 1921, together with the 536 amendments that were added to it before 1974, became the longest of any state ever. It used to be cited in civics textbooks as the most spectacularly outrageous state constitution in the country. *Id.*

122. Lee Hargrave, *"Statutory" and "Hortatory" Provisions of the Louisiana Constitution of 1974*, 43 La. L. Rev. 647, 682 (1983).

123. *Id.*

124. La. Const. art XII, § 4.

125. Hargrave, *supra* note 122; Domengeaux, *supra* note 12, at 1192.

so.[126] Thus, the Louisiana Constitution of 1974 does not specifically confer preferred or extraordinary rights upon the French-speaking people of the Louisiana. It does, however, implicitly acknowledge their right to promote their language.

The foregoing has attempted to show the fluctuating position of the French language in Louisiana's constitutional history. During the antebellum period, the French language received sacrosanct treatment by the State's constitutions. After the Civil War, the state constitutions were drafted in a manner that discouraged and prevented the continued use of the French language in law, education, and society in general. Today, the Louisiana constitution is devoid of any express reference to the State's francophone past. The absence of positive recognition neither enhances nor hinders the use of the French language in Louisiana. Although the new constitution appears to have quelled concerns of French-Louisianians, it does not, in reality, afford any real status or special protection. Thus, constitutionally speaking, the French language in Louisiana is dead. However, given the language's continued existence in spite of unbelievable odds, one cannot dismiss its resurrection in some future state constitution.

IV. THE FRENCH LANGUAGE IN LOUISIANA'S CIVIL CODES

The historical and present position of French language in Louisiana law perhaps can be best appreciated through an examination of the Louisiana Civil Codes. Since its acquisition by the United States, Louisiana has consistently resisted attempts to substitute its civilian legal system for one based on Anglo-American common law.[127] The Louisiana Civil Code is the symbolic and substantive embodiment of this struggle.

There have been three civil codes in Louisiana: the Civil Code of 1808,[128] the Civil Code of 1825,[129] and the Revised Civil Code of 1870.[130] Although

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126. Hungarian Settlement is located in Livingston Parish, near the village of Albany, Louisiana. Many residents of the area are direct descendants of the original Magyar settlers and carry their names (Kropog, Resetar, Novak) and customs. *See* T. Lynn Smith and Homer L. Hitt, The People of Louisiana 47 (1952).

127. McHugh, *supra* note 12; Dargo, *supra* note 12.

128. See resolution of first legislature adopted June 7, 1806 (text provided at *infra* note 134). The Civil Code of 1808 was actually entitled the Digest of the Civil Laws Now in Force in the Territory of Orleans, with Alterations and Amendments Adapted to the Present Form of Government. It was adopted by the territorial legislature of March 31, 1808. Act Passed At the First Session of the Second Legislature of the Territory of Orleans 120-128 (1808) (Chapter XXIX entitled "An Act providing for the promulgation of the Digest of the Civil Laws now in force in the Territory of Orleans"). *See generally* Batiza, *supra* note 12; Pascal, *supra* note 12; Dainow, *supra* note 12; Albert Tate, *The Splendid Mystery of the Civil Code of Louisiana*, La. Rev. 1 (Revue de Louisiane) (Winter 1974); A.N. Yiannopoulos, Louisiana Civil Law System, Part I, at 31 (1977).

129. The legislature approved the Code and ordered its promulgation on April 12, 1824 (La. Acts of 1824, at 172). Additional time was granted to complete printing and the Secretary of State issued his certificate of promulgation on May 20, 1825. Tucker, *supra* note 12, at 8-9.

130. Adopted by Act 97 of the Legislature of 1870. *See* Yiannopoulos, *supra* note 12. A detailed overview of the Louisiana Civil Codes is beyond the scope of the present article. For a brief

the sources of these codes have been the subject of intense commentary and scholarly debate, the fact that the redactors of the first two civil codes drafted the original editions of the works in French strongly suggests that the architects of the State's civilian legal system intended to bestow upon the French language an influential and lasting position in the development and preservation of Louisiana law.

Louisiana's decision to adopt a civil code was based on necessity. Because of its motley colonial past, Louisiana's legal system was actually an interesting amalgamation of Spanish and French law. The Spanish law in effect at the time of the transfer of the territory to the United States was composed of eleven different codes, containing more than 20,000 laws, with many conflicting provisions.[131] Relatively few Spanish legal treatises were available to help Louisianians understand and interpret these laws.[132] Likewise, remnants of French law such as the *Customs of Paris*, *Ordinance of 1667*, *Royal Edicts*, and the *Code Noir* were interspersed in the Spanish law governing the territory.[133] The dual presence of French and Spanish law created untold confusion. Consequently, the exact scope and effect of law was unknown to most, if not all, Louisianians.

In an effort to remedy the confusion and chaos surrounding the law, the Legislative Council of the Territory of Orleans appointed Louis Moreau Lislet and James Brown to compile and prepare a civil code for use in the territory.[134]

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summary of the history of the Codes, see A.N. Yiannopoulos, The Civil Codes of Louisiana, Louisiana Civil Code xxix-xli (1996).

131. Hood, *supra* note 51, at 19; Yiannopoulos, *supra* note 130. Conflicts among legislative provisions were not uncommon, and Spanish writers often disagreed as to which laws should take precedence. The Louisiana Act of the Legislature approved March 31, 1808, which promulgated the "Digest of the Civil Laws now in force in the Territory of Orleans" explained that

> in the confused state in which the civil laws of this territory were plunged by the effet of the changes which happened in its government, it had become indispensable to make known the laws which have been preserved after the abrogation of those which were contrary to the Constitution of the United States, or irreconciable with its principles, and to collect them in a single work, which might serve as a guide for the decision of the courts and juries, without recurring to a multiplicity of books, which, being for the most part written in foreign languages, offer in their interpretation inexhaustible sources of litigation.

132. Hood, *supra* note 51; Yiannopoulos, *supra* note 130; "Copies of Spanish laws were extremely rare and [it was difficult] to secure [copies]." *Id.*

133. Symeonides, *supra* note 34.

134. 1806 La. Acts, at 214-18 (June 7, 1806); Tucker, *supra* note 12, at 2-3. The first legislature adopted a resolution on June 7, 1806 appointing Louis Moreau Lislet and James Brown to compile and prepare a civil code. The resolution provides in part:

> Resolved, by the Legislative Council and House of Representatives of the Territory of Orleans, in General Assembly convened, that both branches of the legislature shall appoint James Brown and Moreau Lislet, lawyers, whose duty it shall be to compile and prepare, jointly a *Civil Code* for the use of this territory. Resolved, That the two jurisconsults shall make the civil law by which this territory is now governed, the ground work of said code.

(emphasis added).

Working in cooperation with a legislative committee, Moreau Lislet and Brown prepared a digest of the civil laws in force in the Territory of Orleans. This digest was prepared in French and was submitted to the legislature in 1808.[135] The legislature subsequently approved the digest and ordered its translation, printing, and promulgation.[136] Because there were to be two different versions of the same code, a French original and an English translation, the legislature directed that in case of "any obscurity or ambiguity, fault or omission, both the English and the French texts shall be consulted, and shall mutually serve to the interpretation of one and the other."[137] As the anticipated disparities between the two different texts began to manifest themselves, the Louisiana Supreme Court attempted to comply with this legislative mandate by comparing and applying the more comprehensive of the two texts.[138] Eventually, however, the supreme court held that both of the texts were authorative and compliance with either was sufficient.[139] This holding was unfortunate. By allowing the substance, the vigor, the spirit, and the clarity of the French version to be lost in translation, the early courts fostered a legal environment which encouraged a disingenuous application of the law.[140] A litigant could simply avoid a clear and unambiguous French-language legal provision by hiding behind a poorly or erroneously drafted English translation.

Juxtaposition of the two different versions of Louisiana's original civil code reveals that the French edition is the superior of the two. Compiled and written by two men of extraordinary caliber, the French-language code is succinct, lucid, and internally consistent. The English version, on the other hand, is riddled with ambiguity, muddled, and inconsistent with its French counterpart. Thus, in the initial Louisiana Civil Code, the French language was preeminent. The French version of the Civil Code has been cited as the most convenient source of Louisiana law as it existed at the time of the Louisiana Purchase.[141]

The legal discombobulation that the Civil Code of 1808 sought to remedy resurfaced in Louisiana law with the 1817 supreme court decision in *Cottin v.*

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135. DuFour v. Camfranc, 11 Mart. (n.s.) 675, 688, 701 (La. 1822), *cited in* Shelp v. National Surety Corp., 333 F.2d 431 (5th Cir. 1964). In this case, Moreau Lislet dispelled any doubt that the original text of the Digest of 1808 was in the French language.

136. The legislature never specified in which language the original digest was to be written. Apparently, the choice of language was left to the discretion of the redactors. However, once adopted on March 31, 1808, the legislature directed the "governor to cause the said digest to be printed, by the lowest bidder, in the English and French languages." 1808 La. Acts, at 120-28. The French original was translated into English by translators employed by the legislature (1807 La. Acts, at 190-93); Tucker, *supra* note 12, at 3-6; Edward DuBuisson, *The Codes of Louisiana (Originals Written in French; Errors of Translation)*, 25 La. Bar A. R. 143 (1924). The English translation was inundated with errors.

137. 1808 La. Acts, at 120-28.

138. Chretien v. Theard, 2 Mart. (n.s.) 582 (La. 1824); Shelp v. National Surety Corp., 333 F.2d 431 (5th Cir. 1964).

139. Touro v. Cushing, 1 Mart. (n.s.) 425 (La. 1823).

140. DuBuisson, *supra* note 136.

141. Harriet S. Daggett, The Community Property System of Louisiana (1945).

Cottin.[142] This case held that 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 it.[143] Therefore, according to the *Cottin* court, Spanish law not in conflict with the Digest of 1808 was still in force in Louisiana. Thus, this decision thwarted the objectives of the Civil Code and, as a result, legal disharmony returned to Louisiana.

In an effort to return stability and certainty to Louisiana law, the legislature passed a resolution to revamp the Civil Code of 1808.[144] Specifically, the legislature authorized the appointment of three "jurisconsults . . . to revise the civil code by amending [it] in such a manner as they will deem it advisable, and by adding under each book, title, and chapter of said work, such of the laws as are still in force and not included therein."[145] The legislature appointed Louis Moreau Lislet, Pierre Derbigny, and Edward Livingston to undertake the revision of the civil code.[146] In assuming the responsibility, the legal redactors made it clear that it would be their goal 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."[147] In 1823, the three redactors submitted a *projet* of their proposed revision.[148] This *projet* was written in French and was later translated into English.[149] The legislature reviewed the trio's work and subsequently approved the adoption and promulgation of the new Civil Code on April 12, 1824.[150]

Like its predecessor, the Louisiana Civil Code of 1825 was originally prepared in French. The act of the legislature approving the code ordered it to

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142. 5 Mart. (n.s.) 93 (La. 1817).

143. Hood, *supra* note 51, at 28.

144. 1823 La. Acts, at 88.

145. *Id.*

146. Tucker, *supra* note 12, at 7. The Louisiana Legislature Resolution of March 14, 1822 provides:

> That three jurisconsults be appointed by the joint ballot of both houses of the general assembly of this state, to revise the civil code by amending the same in such a manner as they will deem it advisable, and by adding under each book, title, and chapter of said work, such of the laws as are still in force and not included therein, in order that the whole be submitted to the legislature at its first session, or as soon as the said work have been completed. Resolved, That the aforesaid three jurisconsults shall be bound to add to their work a complete system of the commercial laws in force in this state together with the alterations they will deem proper to make thereto and a treatise on the rules of civil actions and a system of the practice to be observed before our courts.

147. *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), *cited in* Hood, *supra* note 51, at 29.

148. The projet was entitled *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 Commissioned for that Purpose*. "As the title indicates, only the additions and amendments which [the redactors] recommended were included in the report, the articles of the Civil Code of 1808 which they did not propose to amend being omitted." Hood, *supra* note 51, at 30.

149. Tucker, *supra* note 12, at 8.

150. *Id.* 1824 La. Acts, at 172; Hood, *supra* note 51.

"be printed in the English and French language, opposite to one another" and appropriated funding for the translation of the Code into English.[151] The English translation proved to be spectacularly bad.[152] Recognizing the poor quality of the translation, the supreme court commented in one case, "The definition relied on from the English side of one of the Articles of the Code, proves nothing but the ignorance of the person who translated it from the French."[153] Consequently, the Louisiana Supreme Court departed from both its holding that compliance with either version was sufficient and its practice of reading the two versions of the text *in pari materia* for purposes of mutual interpretation. In substitution, the Louisiana Supreme Court acknowledged the superiority of the French version and decreed that, in the event of conflict between the two texts, the French would prevail.[154] This French-preference rule has been applied consistently by Louisiana courts.[155] Federal courts applying Louisiana law under the *Erie* doctrine[156] also have adopted this rule.[157]

The Louisiana Civil Code of 1825 has been described as "of all republications of Roman law, the one which appears . . . the clearest, the fullest, the most philosophical and the best adapted to the exigencies of modern society."[158] This Code, together with the Louisiana Civil Code of 1808, is testament to the prevalence and supremacy of the French language in the exposition of Louisiana civil law.

For reasons similar to those affecting the state constitution, Louisiana was required to revise its civil code in the aftermath of the Civil War.[159] Among

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151. 1824 La. Acts, at 172; 1824 La. Acts, at 446.

152. Shelp v. National Surety Corp. 333 F.2d 431, 437 (5th Cir. 1964).

153. Egerton v. The Third Municipality of New Orleans, 1 La. Ann. 435, 437 (1846); DuBuisson, *supra* note 136. The dispute in this case centered around whether the third municipality was a civil or political corporation under the Louisiana Civil Code. The plaintiff argued that it was, the defendant argued that it was not. *See* La. Civ. Code arts. 420-421 (1825).

154. Durnford v. Clark's Estate, 3 La. 199 (1831). Moreau Lislet said in his rebuttal, "We have nothing to do with the imperfections of the translation of the Code—the French text, in which it is known that work was drawn up, leaves not doubt." Walls v. Smith, 3 La. 498 (1832).

155. *See, e.g.*, Phelps v. Reinach, 38 La. Ann. 547 (1886); Fowler v. Phillips, 159 La. 668, 106 So. 26 (1831); Davis v. Houren, 6 Rob. 255 (1843); Buard v. Lemee, 12 Rob. 243 (1845); Egerton v. Third Municipality of New Orleans, 1 La. Ann 435 (1846); Beaulieu v. Ternoir, 5 La. Ann. 476 (1850); Jurgens v. Ittman, 47 La. Ann. 367, 16 So. 952 (1895); Commercial Germania Trust Serv. & Sav. Bank v. White, 145 La. 54, 81 So. 753 (1919); Straus v. City of New Orleans, 166 La. 1035, 118 So. 125 (1928); Sample v. Whitaker, 172 La. 722, 135 So. 38 (1931); Ross v. LaCoste de Monterville 502 So. 2d 1026 (La. 1987); First Nat'l Bank of Jefferson Parish v. Dazet, 656 So. 2d 1110 (La. App. 5th Cir.1995).

156. Erie R.R. Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817 (1938).

157. United States v. Harang, 165 F.2d 106 (5th Cir.), *cert. denied*, 334 U.S. 811, 68 S. Ct. 1017 (1957).

158. Peter Stein, *Judge and Jurist in the Civil Law: A Historical Essay*, 46 La. L. Rev. 241, 255 (1985) (citing Maine's description of the Louisiana Civil Code of 1825), *cited in* Yiannopoulos, *supra* note 12, at n.59.

159. *See supra* notes 100-105 and accompanying text.

other things, the Louisiana legislature was directed to purge the evils of slavery from the State's statutory law.[160] Revision of the civil code was authorized pursuant to an act approved on October 21, 1868.[161] The legislature entrusted the task of revising the code to John Ray of Monroe.[162] Ray's revision of the civil code was submitted to and subsequently adopted by the Louisiana Legislature.[163] In a nutshell, the new code eliminated the articles related to slavery, incorporated all amendments to the code enacted since 1825, and integrated acts of the legislature passed since 1825 which dealt with, but did not specificially amend, codal provisions.[164] Otherwise, the Revised Civil Code of 1870 was essentially the same as the Louisiana Civil Code of 1825.

There was one important change made in the Revised Civil Code of 1870 that is of relevance to the French language issue: the new code was enacted and promulgated in English only.[165] No official French version was ever made. Promulgation of the English-language-only revision was in conformity with the Louisiana Constitution of 1868.[166]

Since there is no longer a French version of the civil code, one could argue that the English text alone is controlling. However, this is not the accepted view in Louisiana law and jurisprudence. As Professor Yiannopoulos explains:

> The prevailing view in Louisiana doctrine and jurisprudence is that the 1870 Code is merely a re-enactment of the 1825 Code with relatively few amendments. . . . According to this view, the law contained in the untouched articles remains the same, and in case of conflict between the English version and the earlier French version, the latter should control. This view rests on the conclusion that the legislature never intended to insulate the 1870 Code from its antecedents. The 1868 Act that created the committee for the revision of the general statutes of the state provided for a limited revision, namely, simplification of language, correction of incongruities, additions to take care of insufficiencies, and orderly management of the subject matter. . . . Nowhere did the legislature manifest an intent to introduce sweeping changes that would have certainly resulted from the view that the French text has been definitively abrogated.[167]

Thus, although French is no longer the language of the civil code, it still plays a fundamental role in the interpretation of the English language code. This is evident from the many modern Louisiana cases that make reference to the

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160. Yiannopoulos, *supra* note 12, at 14.
161. Tucker, *supra* note 12, at 15; 1868 La. Acts No. 182.
162. Tucker, *supra* note 12; Yiannopoulos, *supra* note 12.
163. 1870 La. Acts No. 97.
164. Tucker, *supra* note 12, at 16.
165. *Id.*
166. *See* La. Const. of 1868, art. 109; Tucker, *supra* note 12, at 16.
167. Yiannopoulos, *supra* note 130, at xxxviii.

French versions of the Louisiana Civil Codes of 1808 and 1825 in order to have an accurate grasp of the law.[168] Therefore, although the *corpus* of the French language has long since disintegrated, its *spiritus* continues to haunt Louisiana law.

V. THE FRENCH LANGUAGE IN LEGAL PROCEDURE

Final consideration of the French language in Louisiana law should be given to the language's historical position in the State's civil procedure. In the early periods of Louisiana statehood, many procedural elements were French. However, paralleling the histories of the state constitutions and the civil codes, the Union victory over the Confederate States of America forced Louisiana to abandon the special legal treatment that its civil procedure afforded French-speaking citizens.

When the United States acquired Louisiana in 1803, the territory's procedure was based primarily on an abstract of Spanish law that Alexander O'Reilly issued in conjunction with an ordinance abolishing the authority of French laws and establishing a new government for the territory.[169] The purpose of the abstract, which is often referred to as *O'Reilly's Code*, was to provide

> instructions as to the manner of instituting suits, civil and criminal, and of pronouncing judgments in general, in conformity to the *Nueva Recopilación de Castilla* and the *Recopilación de las Indias* for the government of the judges and parties pleading until a more general knowledge of the Spanish language, and more extensive information upon those laws may be acquired.[170]

Thus, *O'Reilly's Code* was intended to replace the rules of procedure that were implemented during the French colonial period.[171]

Once the new proprietors assumed control of the territory, they perceived an immediate need to set up a procedural system that would accommodate the needs of the federal agencies and courts that were being established in the territory. The congressional act which bifurcated the Louisiana Purchase into two separate territories also provided for the exercise of the judicial power by a superior court, and inferior courts to be created by the Legislative Council.[172] A few years later, the territorial legislature adopted an act regulating the practice of superior courts in civil cases.[173]

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168. *See supra* notes 152-157.

169. This occurred on November 25, 1769. *See* Moreau Lislet and Carleton, *supra* note 41.

170. Alain A. Levasseur, Louis Casimir Elisabeth Moreau Lislet: Foster Father of Louisiana Civil Law (1996); Tucker, *supra* note 12, at 22.

171. Tucker, *supra* note 12, at 22.

172. *Id.* at 23.

173. *Id.*

> On the same day [the legislature] passed an act subdividing the territory, creating inferior courts and providing rules of practice in them. These two acts, with some amendments, and the statutory changes induced by the adoption of the first Constitution in 1812, were the basic acts for the regulation of civil procedure in Louisiana until the *Code of Practice* became effective in 1825.[174]

As stated in the previous section, the supreme court decision in *Cottin v. Cottin* wrought havoc on Louisiana's substantive civil law. This disorder also trickled into Louisiana's procedural system. Therefore, when the legislature authorized a revision of the Civil Code in 1823,[175] it also charged the three men chosen to undertake the revision with the additional responsibility of "submitting a treatise on the rules of civil actions and a system of the practice to be observed before [the] courts."[176] The *projet* that Moreau Lislet, Livingston, and Derbigny submitted pursuant to this mandate eventually became the *Code of Practice of 1825*.[177]

Like the initial civil code and state constitution, the Code of Practice of 1825 was originally prepared in French. However, it was translated into English and promulgated in both languages.[178] In the event that a conflict existed between the two versions, the courts held that the French text prevailed.[179]

A close analysis of the Code of Practice of 1825 reveals some important procedural rights granted to Francophones. For example, Article 172 provided, in part, that "the petition, when either party speaks the French language as a mother tongue, must be drawn in both the French and English languages."[180] However, even if one of the parties was Francophone, "the defendant or his attorney, may agree, that the plaintiff's petition be drawn in only English."[181] In the event that the plaintiff only filed and served an English version of the petition, the French-speaking defendant could demand that a French version be

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174. *Id.*

175. *See supra* note 144.

176. Tucker, *supra* note 12, at 24.

177. In Williams v. Holloway, 11 La. 515 (1838), the Louisiana Supreme Court held that the *Code of Practice of 1825* became effective throughout the State on October 2, 1825; Tucker, *supra* note 12, at 28.

178. DuBuisson, *supra* note 136.

179. Cowand v. Pulley, 9 La. Ann. 12 (1854); State ex rel. Southern Bank v. The Judge of the 8th Dist. Court, 22 La. Ann. 581 (1870); New Orleans Terminal Co. v. Fuller, 113 La. 733, 37 So. 624 (1905). This is the same rule that courts apply for resolution of the different versions of the Civil Code.

180. La. Code of Practice art. 172 (1825). The French text of this article reads "Cette pétition doit être rédigée dans les langues anglaise et française, si le français est la langue maternelle de l'une des parties." Also see Article 179 which placed an affirmative duty on the clerk of court to issue a citation to a French-speaking defendant in his native language.

181. La. Code of Practice art. 177 (1825). Note that this article applies only to the defendant. The French text is as follows: "Le défendeur ou son avocat, peut dispenser le démandeur de rédiger sa pétition autrement qu'en anglais."

served.[182] Failure to serve a French petition on a party whose native language was French interrupted prescription.[183] An exception that the petition was written in English only needed to be pleaded *in limine*.[184] The Code of Practice permitted a French-speaking defendant to answer the petition in French.[185] However, an English copy of the answer also was required.[186]

Notwithstanding the bilingual petition requirement outlined in the Code of Practice, petitions addressed to the court needed to be written in English.[187] In the early years of statehood, proceedings before the court could be analogized to the confusion of tongues which occurred at Babel. Judges often spoke one language while attorneys argued in another.[188] As a result, early courts were extremely inefficient. To remedy this inefficiency, the language of the courts became English.[189] While the English-preference procedural rule was somewhat prejudicial to the French language, it was borne of necessity, and was not intended to cause insult or injury to the French language. Even if the courts sanctioned the use of English, the Code of Practice still afforded Francophones procedural due process.

Another procedural recognition of the French language involved orders of attachment. According to Article 251 of the Code of Practice, "[w]hen an order to attach property in the hands of a third person, has been given by the court, the clerk of such court shall deliver, or send to the sheriff, a copy of such order, in French and in English, when the French language is the maternal tongue of either

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182. Brewster v. Saul, 8 La. 298 (1835).

183. Leon v. Bouillet, 21 La. Ann. 651 (1869). It also produced a relative nullity.

184. *Id.*

185. La. Code of Practice art. 319 (1825).

186. *Id.*

187. Generes v. Simon, 21 La. Ann. 653 (1869) (holding that all petitions addressed to the courts are required to be written in the English language, but where a portion of the petition, not essential, and without which the cause of action would still remain, is written in the French language, the petition will not be dismissed because it is not entirely written in the English language).

188. *Letter to an unknown correspondent, June 2, 1804, Joseph de Villars Papers*, Duke University, *cited in* Dargo, *supra* note 12, at 112:

> [The governor] composed tribunals, half of which consisted of American judges, and half of French Judges! As far as pleadings were concerned, he, at the same time, permitted attorneys speaking either of the two languages to handle them. Now, from the point we have reached you can't help but realize the awful cacophony which was bound to result from such an arrangement. One Attorney, whose case, for instance, was up for trial in court, would argue it . . . in English; the opposing Attorney, who had not heard it, would then answer him right away, in French. A heated discussion or argument would then start between these two fellows and the Judges, none of whom could understand more than one of the two languages. They go ahead boldly and pass sentence just as if they understood perfectly well all about the point which was being argued. Of course the lawyer who would know the greatest number of Judges speaking his language would always be the one who would win.

Id. In addition to French and English, a visitor to an earlier 19th century Louisiana courtroom could also hear the Spanish language.

189. Levasseur, *supra* note 8.

of the parties, as well as of the petition, together with a citation to the person made party to the suit, to answer such petition within the usual delay."[190] In the event that the person being served the writ of attachment or a garnishee was hiding, had fled, or was avoiding service in any other manner, the Code of Practice authorized the sheriff to leave a copy of the order, in the French language if appropriate, "on the door of the parish church of the place, or to that of the room, where the court, in which the suit is pending, is held."[191] These articles were useful in putting French-Louisianians on notice that court proceedings effecting their property were under way and in helping them to maneuver within the judicial process. Similar articles directing legal notice to be given in French can be found in the articles related to the seizure and sale of property under writ of fieri facias[192] and the appointment of curators.[193]

Unfortunately, the post-Civil War revision of the Code of Practice in 1870 eliminated all special rights and privileges for French-speaking Louisianians. Subsequently, all pleadings, orders, writs, and legal notices were exclusively in English. The situation remains the same today. The present place of the French language in Louisiana procedure, therefore, is one of functional non-existence.[194]

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190. The French text of this article reads:

> Lorsque le juge aura donné un ordre de saisie-arrêt, à la réquête d'aucun créancier, le gréffier devra déliverer ou adresser au sheriff une copie de cet ordre en Anglais [sic] et en Français [sic], si le Français [sic] est la langue maternelle de l'une des parties, ainsi que de la pétition, avec citation à la partie saisie, de répondre à cette pétition dans les délais qui sont préscrits sur les procès ordinaires.

191. La. Code of Practice art. 254 (1825).

192. La. Code of Practice arts. 668-670 (1825). Also see amendments relative to publication of notice in French and English newspapers, No. 260 Stat. April 29th, 1853, *Act Relative to Judicial Advertisements—Approved March 12, 1855*, and *An Act Relative to the publication of Judicial Advertisements in the French Language-approved Feb. 21, 1866, cited in* Louisiana Code of Practice (James Fuqua ed., 1867).

193. La. Code of Practice arts. 968-969 (1825). Another interesting article is Article 975 involving succession inventories. The comments to the article contained in the 1844 version of the Code of Practice state that succession inventories executed in the French language "shall be quite as legal and binding as if the same had been made or executed in the English language." Louisiana Code of Practice (M. Greiner ed., 1844).

194. This statement must be qualified. Although the French language is no longer technically used in Louisiana procedure, English language legal procedure terminology is strikingly French. This is due to the fact that French was *the* language of English law and legal procedure until well into the 18th century. As J. H. Baker explains:

> Law French is the name given to the French dialect adapted by English lawyers for their professional purposes. . . . Manuscript reports of cases show that French was the medium of discussion in the King's courts by the 1260s. There was nothing esoteric about [the use of French] because the advocates (like their clients) were [Anglo-Norman] French-speaking. But two developments very soon occurred. One was the disappearance of spoken French in England. . . . As early as 1362, Parliament attempted to restrict the use of French . . . for some purposes, but it is clear that French continued to be used for the recital of pleadings . . . until the early 18th century. The second development was that the sergeants and judges had been developing the jurisprudence of the common law in

VI. THE FRENCH LANGUAGE IN LOUISIANA LEGAL EDUCATION: AN OVERVIEW OF THE HISTORICAL TREATMENT OF THE FRENCH LANGUAGE AT THE LSU LAW CENTER

Mindful of the historical, constitutional, legislative, and procedural underpinnings of the French language in Louisiana law explored thus far, one can now proceed with an analysis of how the language historically has been treated by institutions charged with the responsibility of passing on Louisiana's rich legal heritage to future generations of attorneys, judges, and legal commentators. Louisiana is home to four ABA-approved law schools: the Paul M. Hebert Law Center of Louisiana State University (Baton Rouge); Southern University Law School (Baton Rouge); Tulane University Law School (New Orleans); and Loyola University Law School (New Orleans). Because of subjective preferences and space limitations, this paper focuses exclusively on the LSU Law Center. However, a complete portrait of the treatment of the French language in Louisiana legal education can only be painted via a comprehensive analysis of all the State's law schools.[195]

The LSU Law Center is often described as Louisiana's "flagship" law school. It was established in 1906 to carry out the general provision of the university charter authorizing a "school of law" among the schools that "shall be maintained by the Louisiana State University."[196] Since its inception, the LSU Law Center has produced some of the State's finest advocates, judges, and legal scholars. These jurists were taught by an eclectic faculty renowned for its outstanding scholarship.[197] Further, the LSU Law Center's library, which Dean

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> French, and many words had become invested with special meanings. As a result the vocabulary of English law was inescapably French . . . [Words derived from French include]: *attainder, cesser, demurrer, disclaimer, estover, interpleader, joinder, merger, ouster, remainder, render, reverter, tender, . . . assize, debtor, feoffee, lessee, vouchee, . . . covenant, larceny, negligence, nuisance,* and *trespass.*

J.H. Baker, *Law French, cited in* 7 The Guide to American Law 80-81 (1984) Notwithstanding Parliament's attempts to purge English law of the French language in the 1650s, French existed unfettered until Sir Edward Coke himself, broke the tradition of using French in law by writing his *Institutes* in English, in order to widen readership. J.H. Baker, An Introduction to English Legal History (2d ed. 1979).

195. The author hopes to study the historical annals of the three remaining law schools as soon as possible.

196. *See supra* sources cited at note 21. "In September [1906], nineteen students were enrolled in the first class. Dr. Joseph I. Kelly was the Dean and the only faculty member. Classes were held in the basement of Hill Memorial Library on the Old Campus on the present site of the state capitol grounds." Timeline of Legal and Law Center History 1909-1996 1 (1996) (published in celebration of the 90th Anniversary of the Paul M. Hebert Law Center, LSU). Although its name has changed throughout its ninety year history, the school will be referred to as the "LSU Law Center" throughout this paper for purposes of clarity.

197. LSU Law Center Bulletin, 1996-1997, at 8. "The Journal of Legal Education recently reported that the LSU law faculty ranked second out of 68 schools of similar size in the quality of published works. When compared to the 169 law schools approved by the American Bar Association, the Law Center was listed as tenth in the nation."

Paul M. Hebert referred to as "the heart of the law school" has amassed an enviable collection of civil law materials.[198] Finally, the LSU Law Center houses the Louisiana State Law Institute and the Institute of Civil Law Studies.[199] Both of these entities have been instrumental in the maintenance and growth of the civil law in Louisiana.

Despite this impressive history of excellence, one thing of relevance to the present study is of note: except for one brief period representing less than six percent of its total lifespan, the LSU Law Center has appeared hesitant to include the French language in its legal curriculum. Indeed, the LSU Law Center's treatment of the French language is a study in illusion and reality. The illusion rests in the LSU Law Center's record of stressing the importance of the French language in its admission requirements. The reality lies in the fact that the school has only taken relatively minor measures to proliferate the language among its alumni. Thus, the LSU Law Center's policy toward the French language can best be described as one of ambivalence. This policy is demonstrated through a review of the school's admission standards and historical records.

The policy of ambivalence toward the French language was established from the outset. The original admission requirements, as developed under the deanship of Joseph Kelly, did not mandate a knowledge of the French language. The LSU Law Center, however, *recommended* a knowledge of French and Latin "since a knowledge of these subjects [would] be of use in the Law course."[200] In 1909, although still not formally required, the law school recommended French or Latin in pre-legal study and advised students that receipt of the Bachelor of Civil Law degree (B.C.L.) was contingent upon acquisition of a "working knowledge of French or Latin."[201] A "working knowledge" of either French or Latin was also required for students wishing to enroll in a course entitled *Roman Law* (Law 23).[202] Two classes taught at the law school in 1911 had similar language requirements.[203] The early years of the law school also

198. Paul M. Hebert, *Letter to Law Alumni*, 1937 (on file with author).

199. John H. Tucker, *The Louisiana State Law Institute*, 1 La. L. Rev. 139 (1938); Paul M. Hebert, *Forum Juridicum: Background, Aims, and Objectives of the Institute for Civil Law Studies LSU Law School* (address delivered to the organization meeting of the Management Committee, Institute of Civil Law Studies, Louisiana State University Law School, December 16, 1965), 26 La. L. Rev. 621 (1966).

200. Louisiana State University General Catalogs (1906-1908) (law school sections).

201. Louisiana State University General Catalog (1909). The French or Latin requirement for the B.C.L. was also pointed out to students in the 1910, 1911, and 1912 editions of the Louisiana State University General Catalog (law school section).

202. Louisiana State University General Catalog (1910) (law school section). This course was taught by Professor McKeag. "Working knowledge" is not defined.

203. Louisiana State University General Catalog (1911) (law school section). In describing courses entitled *Roman Law* (Law 47) and *Advanced Civil Law* (Law 48), the Catalog indicates that the courses "are intended for students holding academic degrees, and with a working knowledge of Latin and French sufficient for research under the guidance of the professor. No one will be permitted to register for them who is lacking in these qualifications."

adhered to the general university rule that "a professor in any department [had the authority] to reject an examination paper for deficiencies in English."[204] Although this general rule was intended to insure an appropriate level of writing skills, it was prejudicial to Louisianians who grew up reading, writing, and speaking French.

In 1913, recommendations that prospective law students attain a working knowledge of French, as well as courses requiring a pre-existing working knowledge of the French language, disappeared from the *Louisiana State University General Catalog*. This absence lasted ten years.[205] In 1924, although still not requiring a knowledge of the French language, the law school listed the study of French as one of the "various studies especially valuable in the preliminary education of a lawyer."[206]

The year 1925 marked the resumption of the law school's advocacy of the French language. Although still not requiring prospective students to possess a working knowledge of the language, the law school faculty *strongly advised* students intending to practice in Louisiana "to acquire [in their pre-legal course] a sufficient knowledge of the French language to enable them to make use of the French authorities on the civil law."[207] The LSU Law Center explained its reasons for offering this "strong advice" a few years later by stressing the fact that "the relation of the Louisiana Civil Code to the French Civil Code is such as to make a reading knowledge in French highly desirable."[208] This advice and rationale appeared unchanged in the *LSU Law School Announcements* until 1936. Simultaneously, the law school fostered a pro-English environment by counseling prospective students to "take special pains to shape [their] courses in English so as to perfect . . . the mechanics of English composition; and if deficient in such elementary phases of the subject as grammar, spelling, punctuation, sentence structure, and paragraphing, . . . overcome [these] defects before entering the law school."[209]

In 1936, the LSU Law Center began a period of dramatic growth that would endure until the onset of World War II. In addition to the establishment of the *Louisiana Law Review* and the Louisiana State Law Institute, this period represented the only time in the school's ninety years that it demanded both a knowledge of the French language among its students and took positive steps toward inculcating this knowledge.[210] The LSU Law Center strongly urged students to acquire a reading knowledge of French before registering in the

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204. *Id.* Although this rule had been applicable to LSU for some time, it only appears in the General Catalog law section in 1911.

205. *See* Louisiana State University General Catalogs (1913-1923) (law school sections).

206. Louisiana State University General Catalog 129 (1924) (law school section).

207. LSU, Announcements for the Law School (1925).

208. LSU, Announcements for the Law School (1928).

209. LSU, Announcements for the Law School (1926).

210. Both the Louisiana Law Review and the Louisiana State Law Institute were founded in 1938. Tucker, *supra* note 199.

second year of law school.[211] To help acquire this reading knowledge, the school offered for the first time in 1936 an optional two-credit course entitled *Legal French* (LAW 132).[212] *Legal French* was described as "a special course in reading French, including a review of the grammar work on selected readings from French and legal materials together with a study of the bibliography of Anglo-American law."[213] In 1937, *Legal French* became *mandatory* for all students who did not have two previous years of French. Taught by Adjunct-Professor Leonard Greenburg, the course "impart[ed] to the student[s] a knowledge of French technical vocabulary sufficient to enable [them] to read and interpret French doctrine and jurisprudence accurately."[214] The final examination required students to translate French doctrine, code articles, and apply French language legal provisions to English language hypotheticals.[215] The LSU Law Center's *Legal French* course guaranteed a minimal knowledge of French among its students.

Unfortunately, this French language experiment was short-lived due to events beyond the control of the law school administration. America's entrance into World War II resulted in a drastic reduction of the LSU Law Center's faculty, student population, and course offerings. Because six of the nine full-time faculty members had suspended their careers to help defend America and the rest of the world against the Nazi blitzkrieg and the imperial forces of Japan, all courses deemed "nonessential" were not offered.[216] *Legal French* was one of these courses. During the war, the course was still listed in the *Law School Bulletin*, but proclaimed "not offered."[217] Also, the war caused the LSU Law Center to revert to its previous thirty year old practice of advising, but not requiring, students to have a reading knowledge of French.[218] Thus, because of World War II, the LSU Law Center abandoned its express requirement that students possess a knowledge of French.

In the two years immediately following the war, *Legal French* was still listed in the LSU Law Center course offerings. However, it was "not offered"

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211. LSU, Announcements for the Law School (1936), at 7.

212. *Id.* at 16.

213. *Id.*

214. Leonard Greenburg, Reading Course in Legal French 1 (1937-1938). The course also became a three-credit course instead of a two-credit course.

215. A copy of the four-hour final examination for Legal French, given on May 20, 1938, is attached as Appendix A.

216. Dale E. Bennett, *Editorial: The Law School*, 6 La. L. Rev. 70 (1944); Paul M. Hebert, The Law School: Forty Years of Progress (1946).

217. LSU, Law School Bulletins, 1941-1945. Apparently, Leonard Greenburg left the Law School at the beginning of the War. No record of him appears after 1941. I asked Professor-emeritus Robert Pascal whether he knew of Greenburg's whereabouts during and after the war. Professor Pascal could not recall. Perhaps a review of LSU Law Center personnel records would solve the mystery.

218. *Id.* "The attention of students intending to follow the Civil-law courses is directed to the desireability [sic] of being able to read French easily as many of the works to which they will be referred are in that language."

for the academic years 1946-1947.[219] In 1947, *Legal French* (LAW 132) was eliminated and removed from the course offerings.[220] LAW 132 became *Successions and Donations*.[221] The LSU Law Center also completely stopped advising students on the desirability and applicability of a knowledge of French to the study of law in 1948. From that point forward, no recommendation or advisement that prospective students learn the French language before coming to law school ever appeared in the *Law School Bulletins*. Conversely, knowledge of the English language continued to be mandatory since, in the words of the LSU Law Center, the English language was "the primary tool of the law student and member of the legal profession."[222] By stating this, the LSU Law Center effectively abandoned its position of emphasizing the role of the French language in Louisiana law and legal education. It also trumpeted the end of the LSU Law Center's positive treatment of the French language.

Luckily, thanks to several concerned faculty members, the French language in Louisiana legal education has not yet been entombed in the sarcophagi of history. For example, the late Professor Joseph Dainow, a native of Montreal, Quebec, and first faculty editor of the *Louisiana Law Review*, promoted the French language at the LSU Law Center.[223] Also, the late Professors Albert Tate Jr. and Paul Hebert maintained the unyielding position that the French language was crucial to the success and survival of the civilian tradition in Louisiana. Finally, the addition of Professor Alain Levasseur to the LSU Law Center faculty in 1977 provided the school with a "French connection." Among other things, Professor Levasseur has written numerous French language articles and books on United States law, Louisiana law, and legal history. More importantly, Professor Levasseur has spearheaded the return of the French language to the classrooms of the LSU Law Center. Having been awarded a grant by the French government, Professor Levasseur arranged for two of France's foremost professors of law, Professors Yves Guyon and Philippe Jestaz, to co-teach a one-credit course entitled *Introduction to French Business Law* at the LSU Law Center during the Fall 1996 semester. The class was taught in French over a four week period and provided students with an overview of the general principles of French business and contract law as well as a precise understanding of fundamental French legal terminology.[224] Given the striking similarities between the law and legal terminologies of France and Louisiana, students were able to gain a keen appreciation for the historical and present

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219. LSU, Law School Bulletins 1946-1947, 1947-1948.

220. LSU, Law School Bulletin, 1947-1948. The LSU Law Center made substantial changes to its curriculum and course offerings in 1947.

221. *Id.*

222. LSU, Law School Bulletins, 1960-1961, at 6.

223. Dainow joined the LSU Law Center faculty in July, 1938. He had previously earned a *doctorat en droit* degree from the University of Dijon, France. According to Professor-emeritus Robert Pascal, Dainow actively promoted the use of the French language in Louisiana legal education.

224. LSU Law Center, *Introduction to French Business Law, course description*, Fall, 1996.

fraternity that exists between Louisiana and its continental parent. Classes such as this one contribute to the French and civilian character of the LSU Law Center and it is hoped that similar classes will be conducted in the future. French language requirements would greatly enhance enrollment in such classes.[225]

To its credit, the LSU Law Center has taken some steps to promote the French language in the law. These steps were made in connection with the school's commitment to preservation of the civil law in Louisiana. In 1937, for example, the law school completed arrangements for the establishment of an exchange fellowship with the *faculté de droit* of the *Université de Paris*. A fellowship with a stipend of 15,000 francs and transporation both ways was offered by the French government to a graduate of the LSU Law Center. LSU offered a similar scholarship to a graduate of the *Université de Paris*. Paul Hebert saw the establishment of the exchange as "a powerful incentive . . . to study the French language so necessary for the practice in Louisiana" and opined that it would "result in better lawyers who are able to work with the French source materials of the law school."[226] Today, the LSU Law Center continues student immersion into Francophone jurisdictions by participating in student and faculty exchanges with the *Université d'Aix-Marseilles III* in Aix-en-Provence, France, and the *Université Catholique de Louvain*, in Louvain-la-Neuve, Belgium.[227]

In addition, one of the principal tasks assigned to the Louisiana State Law Institute was "to make available translations of Civil Law materials and commentaries and to provide by studies and other doctrinal writings, materials for the better understanding of the Civil Law of Louisiana and the philosophy upon which it is based."[228] The inability of Louisiana law students and lawyers to utilize French language materials because of linguisitic barriers was of great concern to civilian scholars in Louisiana and elsewhere.[229] Absent a knowledge of French, Louisiana legal scholars were unable to follow the evolution of French law in the original texts.[230] Rather than require law students and legal scholars to learn the French language, the Law Institute decided that the next best thing would be to offer the French works in translation. Among others, the Law Institute has superintended the

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225. About one third of the students enrolled in the course were from the LSU Department of French and Italian, not from the LSU Law Center.

226. Hebert, *supra* note 198.

227. LSU Law School Bulletins, 1996-1997. In February, 1996, 12 LSU Law Center students, accompanied by Professor Alain Levasseur, traveled to Louvain-la-Neuve to participate in a conference with students of the Université Catholique de Louvain. Given the inability of the Louisiana students to speak French, the conference was conducted, for the most part, in English. A delegation from Louvain-la-Neuve visited the LSU Law Center the year before.

228. Tucker, *supra* note 199, at 142. *See also* J. Denson Smith, *Editorial: The Louisiana State Law Institute*, 2 La. L. Rev. 156 (1939).

229. Xavier Blanc-Jouvan, *The First Annual Civil Law Colloquium, New Orleans, May 17-18, 1963*, 24 La. L. Rev. 137, 139 (1963).

230. *Id.*

translation of Planiol's *Traité Elémentaire de Droit Civil*, Geny's *Méthode d'interprétation et sources en droit privé positif*, and Aubry and Rau's *Traité de Droit Civil*. While translations are helpful, they obviate the need to learn and utilize the original language. Moreover, because translation is not an exact science, English interpretations are often incomplete and inaccurate. The two initial Louisiana Civil Codes are perfect examples of the inexactitude of translation. Most importantly, one cannot ignore the epistemological quality of language: English language legal terminology reflects common law and British philosophical influences, while French legal terminology represents civil law and continental influences.[231] Translation of French civilian law into a language that is epistemologically based on Anglo-American common law is difficult, if not impossible.[232]

Recognizing that "translations were . . . not . . . adequate to forge the link between Louisiana civil law and modern civil law," Dean Paul Hebert announced the formation of the LSU Law Center's Institute of Civil Law Studies.[233] The purpose of this institute was to develop comprehensive treatises and commentaries, as well as to train more graduates "to a scholarly interest in the civil law and an awareness of the breadth of legal materials that can be brought to bear upon issues of code interpretation."[234] In addition to meeting these goals, the Institute of Civil Law Studies has directed the translation and publication of French language materials and has arranged for French civilian scholars to lecture at the law school.[235] Although the *raison d'être* of the Law Institute is to promote the civilian tradition in Louisiana, it has simultaneously served as a crucial haven for the French language at the LSU Law Center.

One final way in which the LSU Law Center has advanced the French language in the law is by inviting French-speaking foreign faculty to visit and lecture at the law school. Although the lectures have historically been delivered in English, they serve as a mechanism for keeping the French roots engrained in the school's psyche. One example of a French law professor teaching at LSU Law Center can be seen in the "experimental" appointment of Professor Yvon Loussouarn, at the time, of the *Université de Rennes*, France, as a Visiting

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231. Noam Chomsky, Language and Politics (1988).

232. *Id.*; McHugh, *supra* note 12. For an illustration of such problems, see 1 Saul Litvinoff, *Obligations*, *in* Louisiana Civil Law Treatise § 123 (1969).

233. Hebert, *supra* note 198.

234. *Id.*

235. LSU Law Center Bulletin, 1972-1973:

> The Institute of Civil Law Studies . . . [directed] . . . an English translation of Rene David's *French Law* (translated by Michael Kindred). In Collaboration with the Louisiana State Law Institute, the [Institute of Civil Law Studies] has arranged for publication of two volumes of Aubry and Rau on *Successions and Donations* in the English translation by Professor Carlos Lazarus, and the English translation by Professor J. Mayda of the Treatises on Prescription by Baudry-Lacantinérie and Tissier, Aubry and Rau, and Carbonier.

Id.

Professor in the fall of 1954.[236] During the three-month period of his residence at the LSU Law Center, Professor Loussouarn participated in lecturing in the regular courses in collaboration with the faculty member in each course. "In this manner it [was] possible to broaden the French civil law content of several of the courses including Sales, Institutions of Law and Successions."[237] Professor Loussouarn also delivered a series of lectures on the Administration of Justice in France.[238] More recently, Professor Michel Borysewicz from the *faculté de droit* of the *Université d'Aix-en-Provence* visited the LSU Law Center. Professor Borysewicz lectured in English to Professor Levasseur's Spring, 1996 European Economic Commmunity Law class. Professors Loussouarn and Borysewicz are two of but a few French-speaking scholars who have visited the law school.[239]

One final link to the French-speaking world is found in the LSU Law Center's participation in the *Association Henri Capitant des Amis de la Culture Juridique Française*. The purpose of this international group is to promote French juridical culture among legal scholars regardless of nationality. Working through bulletins, conferences, and round table discussions, the Association Henri Capitant encourages the use of French legal methodology for the resolution of legal questions.[240] Professor Levasseur serves as the Law Center's emissary to the Association.

In sum, like Louisiana's constitutional, legislative, and procedural history, the history of the LSU Law Center evidences a decline in the French language in Louisiana and in legal education. Initially, the importance of the language was stressed. This emphasis continued to grow until, finally, the school required a demonstrable knowledge of the language among its students. Sadly, this requirement was short-lived and the French language has since nearly vanished from the law school, just as it has in other legal institutions. Absent a formal language requirement, any remnants of French that remain in the law will almost assuredly disappear as posterior generations of jurists assume stewardship of Louisiana's legal institutions. This is a prospect that should be of concern to legal educators, civilian scholars, and advocates of francophone interests because, without a French presence, the historical and modern ties between Louisiana and the civilian French-speaking world will not be easily preserved.

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236. Paul M. Hebert, *The Law School*, 16 La. L. Rev. 83, 84-85 (1955).

237. *Id.*

238. *Id.*

239. Francophone scholars who have visited the LSU Law Center include, among others: Gérard Cas, Fernand Boulan, Christian Atias, Jean Louis Bergel, Xavier Blanc-Jouvan, and Christian Louit (Université d'Aix-en-Provence); Marcel Fontaine, Guy Horsmans, Francis Delpérée, Joe Verhoven, Françoise Tulkens (Université Catholique de Louvain); Pierre Catala and Jean Maillet (Université de Grenoble); Roger Houin (Secretary General of the French Civil Code Revision Commission); and Bernard Audit (Université de Paris). *Proposal for Support of the Law Center* (Baton Rouge: Louisiana State University Press, 1966).

240. *Statuts de l'Assocation Henri Capitant des amis de la culture juridique française* Arts. 1-2 (statuts dont les modifications ont été approuvées par décret du 7 mars 1977) (on file with *Louisiana Law Review*).

VII. CONCLUSION

Having delved into the respective historical and present positions of the French language in Louisiana law and legal education, one can now reconsider the Pantagruel analogy made at the outset of this article. If French is no longer a viable means of communication among Louisianians in general and lawyers in particular, why do Louisiana law professors and jurists, like the Limousin scholar, continue to utilize the language in their writings? Given the small numbers of lawyers who speak or possess a reading knowledge of the language, can it really be asserted that referencing French works has any persuasive authority? Can the inclusion of French language passages in cases and legal education materials be chalked up to poor editing or could accusations of pedantry possibly be true? Because it is not the intention of this article to attack, accuse, or criticize any particular person, answers to these questions are best left to the reflection of the individual reader. However, if French is being used for ostentatious purposes, should not the lesson learned at the gates of Orléans during the sixteenth century be transferred to present-day New Orleans, Baton Rouge, and elsewhere in Louisiana?

Once a glorious and indispensable part of Louisiana's legal tradition, French is now a legal *Nosferatu*, a dead creature, unable to find a final resting place, which walks among and preys upon the living.[241] Banished from the State constitution, exorcized from the State's procedural scheme, and no longer the language of the Louisiana Civil Code, French, notwithstanding its obvious demise, still obstinately manages to exert some influence, albeit lilliputian, over Louisiana law. Inevitably, this influence will disappear as Louisiana law becomes increasingly folded into mainstream Anglo-American common law. The influence of the French language also will end due, in part, to the LSU Law Center's apparent default on its implied obligation to preserve the French language in Louisiana's legal infrastructure. Indeed, the LSU Law Center's continued inability to infuse the State's legal system with attorneys and legal commentators capable of using French and Spanish language doctrinal materials is slowly asphyxiating Louisiana's civil law system. Left unchecked, the civilian system, like the language which spawned it, will almost assuredly die in Louisiana. The irony of this certain death rests in the fact that voluminous numbers of French language works, both old and new, gather dust as they sit unused on the shelves of the LSU Law Center's library. If the LSU Law Center only required a knowledge of the French language, as it did in the late 1930s, these materials would enjoy greater use and Louisiana lawyers, by referencing original doctrinal works, could truly call themselves "civilians." Until this happens, those Louisiana legal scholars wishing to keep the civilian tradition

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241. *Nosferatu: Eine Symphony des Grauens*, is the original vampire movie. Released in 1922 by German expressionist filmaker F.W. Murnau, this film features the horrifying rat-like Count Orlok, who is undoubtedly one of the most frightening creatures ever to be portrayed in cinematography.

alive in Louisiana will continue to rely almost exclusively upon the Louisiana State Law Institute's English translations of "elementary" French legal treatises.[242] Others will simply abandon attempts to employ civilian techniques and will resort to common law *stare decisis.*

Roger K. Ward

242. These translations are rapidly approaching one-half of a century in age. Continued reliance on these materials has the effect of freezing Louisiana's civil law and preventing evolution and development.

APPENDIX A

LOUISIANA STATE UNIVERSITY LAW SCHOOL

FINAL EXAMINATION LEGAL FRENCH Mr. Greenburg
May 20th, 1938
9:00 A.M. - 1:00 P.M.
Room No. 110

A dictionary may be used only for question No. I

I.
TRANSLATE

Le prix est l'une des trois choses essentielles au contrat de vente, qui n'existe, bien entendu, qu'autant qu'ily a consentement des parties sur la chose et sur le prix de cette chose: *res, pretium, consensus*. Le prix, du reste, requiert trois conditions indispensables: il fauy 1° qu'il consiste en argent; 2° qu'il soit suffisamment déterminé ou déterminable; 3° qu'il soit sérieux. Chacune de ces trois idées n'est pas sans difficulté.

D'abord, le prix doit consister en argent. Si, au lieu de vous livrer ma maison moyennant une somme de 12000 francs, je vous la livrais moyennant la livraison que vous ma consentez de telle pièce de terre ou de tel tableau d'un grand maître, ou d'un écrin de diamants, il n'aurait plus vente, mais échange, et les effets du contrat ne seraient pas complètement les mêmes. Ainsi, sanes parler même des différences, assez importantes déjà, qui résultent de l'inapplicabilité à l'échange de l'article 1593 (d'après lequel c'est à l'acheteur, à défaut de convention contraire, de payer les frais de contrat, tandis que, les deux échangistes jouant un rôle identique, ils doivent dès lors supporter ces frais en commun), et aussi de l'art. 1602 (d'après lequel les clauses obscure s'interprètent contre le vendeur, tandis qu'on devra, dans l'échange, interpréter chaque clause obscure, par application du principe général de l'art. 1162, contre celui qui stipule dans cette clause, c'est-à-dire au profit duquel elle est écrite)l sans parler, disons-nous, de ces duex premières différences,il enest une troisième qui est de la plus haute importance, c'est celle qui résulte de l'art. 1674. D'apreè cet article, en effet, celui qui vend un immeuble pour un prix inférieur aux cinq douzièmes de savaleur réele pout faire rescinder la vente à raison de cette lésion énorme, tandis que celui qui échangerait son immeuble contre un objet ne

représentant que le tiers ou le quart de sa valeur ne pourrait pas revenir sur sa convention (art. 1706). Il peut donc être fort important de savoir si un bien a été vendu ou seulement échangé. Or on n'est pas d'accord sur la manière précise dont doit s'entendre le principe, posé plus haut, que le caractère distinctif de la vente, c'est un prix en argent.

Plusieurs auteurs enseignent que le prix peut consister: soit en argent proprement dit, soit en certaines choses qui en seraient l'equivalent, comme une certaine quantité de denrées ayant un cours bien connu, une pension alimentaire à fournir en nature, etc. (1). Au contraire, M. Duvergier et M. Zachariae tiennent qu'il ne peut y avoir vente qu'à la condition rigoureuse d'un prix en numéraire. Quant aux arrêts qu'on cite dans le premier sens, ils ne résolvent pas précisement la question: car s'il est vrai qu'ils se servent des mots *vente*, *prix*, *vendeur*, *acheteur*, pour l'hypothèse prévue, on peut très-bien dire, comme M. Duvergier, que c'est parce que ces termes, conforme à l'usage, n'avaient pas l'importance dans les espèces à juger, espèces dans lesquelles il s'agissait de savoir, non pas si l'acte était une vente ou un échange (ou un contrat innomé), mais seulement si cet acte était ou n'était pas obligatoire, si les parties étaient tenues d'exécuter leur convention, quelle que fût d'ailleurs la qualification à donner à cette convention. Or comment doit se résoudre la question? Faut-il, oui ou non, dire qu'il y a là une véritable vente, et que les effets de la vente, notamment la recision pour lésion de plus de sept douzièmes dans la cession ainsi faite d'un immeuble, devront être admis?

II.

Le défaut de contenance d'un immeuble vendu, bien que ne donnant lieu, en principe qu'a une diminution de prix, devient, s'il rend l'immeuble impropre à la destination en vue de laquelle il a été acquis, une erreur sur une qualité substantielle de l'object du contrat.

Et cette erreur sur la substance entraîne la nullité de la vente si la destination de l'immeuble était connue du vendeur.

X knowing that Y was looking for a tract of land on which to build a race-track offered to sell him a piece of land for that purpose. The act or sale was passed and subsequently, when Y had the land surveyed preparatory to construction of the track, it was discovered that after the construction of the track there would be no room on the property for a grandstand. Y sues to have the sale annulled. What result?

III.

Le donations, soit entre-vifs, soit pour cause de mort, ne pourront excéder les deux tiers des biens du disposant, s'il laisse à sone décès un enfant légitime;

la moitié, s'il laisse deux enfants; le tiers, s'il on laisse tois ou un plus grand nombre.

Sous le nom d'enfants, sont compris les descendants en quelque degré que ce soit: bien entendu qu'ils ne sont comptés que pour l'enfant qu'ils représentent.

A dies leaving five grandchildren, three of whome are the issue of a predeceased daughter and two the issue of a predeceased son. When the sucession was opened its assets were found to be $60,000. Having discovered that their grandfather, during his lifetime, had given $35,000 to his brother and $25,000 to his housekeeper, the grandchildren sue to reduce the donations to an aggregate of $40,000. What should be the decision of the court? How should the property be divided?

IV.

Art. 640. Les fonds inférieurs sont assujettis envers ceux que sont plus élevés, à recevoir les eaux qui en découlant naturellement snas que la main de l'homme y ait contribué.

Art. 641. . . . Si l'usage de ces eaux ou la direction qui leur est donnée aggrave la servitude naturelle d'écoulement établie par l'article 640, une indemnité est due au propriétaire du fonds inférieur.

A and B were owners of adjoining tracts of land. In the rainy season water falling on B's land would collect in a natural shallow ravine and flow down the extreme edge of A's land situated below. A slight landslide closed up the ravine so that the next heavy rainfall sent water from B's land through a natural depression in the center of A's land and washed away his chicken house. A erected, on his own property, a dike for the entire length of the line dividing his property from that of B. A sues B for damage to his chicken house and B brings a suit to compel the removal of the dike. What result?

V.

Dans tous le cas où la représentation est admise, le partage s'opère par souche: si une même souche a produit plusieurs branches, la subdivision se fait aussi par souch dans chaque branche, et les membres de la même branche partagent entre eux par tête.

On ne représente les personnes vivantes, mais seulement celles quie sont mortes naturellement ou civilement.

A dies leaving one son, B, and five grandchildren, three of whom are children of a predeceased son, C, and the other two, children of B. The three children of C had renounced the succession of their father. B renounces his share of A's succession. The three children of C sue to be sent into possession of A's entire succession and are opposed by the children of B. What distribution of the property should be made by the court?

VI.
TRANSLATE AT SIGHT

La perte de la chose due est un événement de nature à exercer une influence naturelle sur la situation du débiteur de cette chose. Il s'agit uniquement naturelle sur la situation du débiteur de cette chose. Il s'agit uniquement de savoir si le débiteur sera ou ne sera pas libéré. Or cette difficulté n'a absolument aucun rapport avec la question bien différente de savoir laquelle des deux parties doit, dans un contrat, porter les périls et risques. Quand même on déciderait, en effet, que le débiteur est libéré, ilresterait encore é trancher la question du risque, celle de savior si cette libération du débiteur entraîne la libération réciproque du créancier. Nous avons déjà étudié ce dernier point.—Nous allons maintenant examiner seulement quelle influence la perte d'une chose peut exercer sur la condition de celui qui la devait.

A l'impossible nul n'est tenu. Une obligation doit donc, en principe, être considérée comme éteinte lorsque son exécution est devenue légalement ou physiquement impossible.

L'impossibilité physique d'exécution résultant d'une perte de la chose ne saurait se concevoir à l'égard des dettes ayant pour objet des choses indéterminées, c'est-à-dire envisagées *in genere*, puisque les genres ne périssent pas.

Mais il en est autrement des dettes ayant pour objet des choses déterminées dans leur individualité:

Art. 1302 (1). Lorsque le corps certain et déterminé qui était l'objet de l'obligation, vient à périr, est mis hors du commerce, ou se perde de manière qu'on en ignore absolument l'existence, l'obligation est éteinte si la chose a péri ou a été perdue sans la faute du débiteur et avant qu'il fût en demeure.

Il faut, pour qu'il en soit ainsi, que la perte soit totale. En cas de perte partielle, le débiteur remettra la chose au créancier dans l'état où elle se trouve, pourvu que les détériorations ne lui soient pas imputables (art. 1245). C'est au juge du fait à apprécier souverainement si la perte de la chose est totale ou partielle.

Il fait en outre que la perte ne soit pas imputable au débiteur, c'est-à-dire que la chose ait péri ou ait été perdue sans la faute et même sans *le simple fait* du débiteur.

En outre, le cas fortuit ne doit pas avoir été occasionné par la faute du débiteur, comme dans le cas où la chose a été volée parce que le débiteur a négligé de la mettre en lieu sûr.

Il faut enfin que le débiteur n'ait pas pris à sa charge les cas fortuits. Une clause dans ce sens constituerait un convention à titre gratuit soumise aux règles de fond concernant les libéralités.