

Foreword

THE BICENTENNIAL PAPERS

The *Forum* is pleased to bring this Bicentennial issue to its readers. It consists of nine essays by noted scholars in celebration of the two hundredth anniversary of the Digest of 1808. These papers were delivered at an international Colloquium held at Tulane University in November 2008 under the auspices of the Eason-Weinmann Center. Both the Center and the Forum wish to express their gratitude to Tulane University for the generous Enhancement Fund Grant that helped underwrite the Colloquium and the publication of these papers.

For jurists in Louisiana it is perhaps unnecessary to say much about the historical importance of the Digest or even why we might commemorate its enactment, but for our readers around the United States and overseas, perhaps a few words are in order. The Digest was the veritable founding of Louisiana's civil law. It made a deep cultural statement in rejecting the common law. It was one of the first acts of self-government by the Louisianians after the Louisiana Purchase, laying a civilian foundation under the private law that persists to this day. Although its enactment seems to have made little or no impression on other parts of the United States, the Digest's influence overseas was just the reverse. It was the first European-style codification in the Americas and was the forerunner of all Latin American civil codes in this hemisphere.

Yet it can be said that the Digest's rightful place in history remains in many respects ambiguous and unfathomed. There remain many more questions than answers. The source of the questions is that the Digest contained opposed objects and brimmed with contradictions. Ostensibly it was a code of reason and enlightenment, closely modelled, structurally and verbally, on the French Civil Code of 1804, and yet it was at the same time a code of darkness and repression that embodied slavery. Indeed the Digest was the only mixed slave code of this type in the modern world, but there is no explanation why it was confected in this way. Furthermore, the sources and aims of the Digest, and even whether it should be properly called a Digest rather than a Code, are questions that have never been definitively answered. The Legislature, in all the acts commissioning the work, called for a "Code" to be drafted. Only when it finally emerged was it suddenly called a Digest—a distinction

that led to a singular mode of interpretation. The juriconsults Louis Moreau Lislet and James Brown were charged by the legislature to faithfully digest the existing Spanish law, and yet it is still debatable whether they went outside of their instructions by committing “glorious plagiarism” of Napoleon’s code or whether they sought to fulfill their assignment by using the French code as a linguistic vessel to convey the Spanish law. The de la Vergne manuscript, probably the greatest clue we have as to Moreau Lislet’s real intentions in this respect, still reigns sphinx-like over this debate.

These papers explore many themes, sometimes shedding light upon the Digest as an historical artifact, at other times reading it as a social and governmental barometer of its time. Various dimensions are treated, including the reception of civil law in Latin American countries, the books and private libraries that helped shape Louisiana law, the progress that the common law made, stealthy or otherwise, in coexisting with or supplanting the civil law, and the complex legal mixture that the interaction of the two laws would bring about. For if the Digest marked the consecration of one kind of law, the needs of civil procedure, commerce and slave law were already consecrating another, even as early as 1808. In this way the Bicentennial Papers help us reflect on our past and our evolution as a mixed jurisdiction.

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