Siete Partidas in My Saddlebags: The Transmission of Hispanic Law from Antebellum Louisiana to Texas and California

Peter L. Reich*

I. INTRODUCTION

A recurring debate among legal historians focuses on whether law is a creation of elites (i.e., judges, lawyers, and scholars), functioning independently of time or place,[1] or whether it can be reduced to its socioeconomic context.[2] The transmission of Hispanic law via Louisiana cases across the U.S. Southwest provides a test of the accuracy of these theories. The contemporary states of Texas, California, New Mexico, and Arizona were all under Spanish, and later Mexican rule prior to 1848, and U.S. courts in all of these jurisdictions applied Hispanic law to resolve disputes that had arisen before that date. Historian Mark Fernandez has argued that Louisiana became a model for legal development in the Southwest.[3] How influential was Louisiana law in American courts' interpretations of Hispanic jurisprudence?

This Essay evaluates Louisiana sources for the application of Hispanic law in the Westward Movement, looking specifically at Texas and California, and, to a lesser extent, at New Mexico and Arizona. How

* Professor of Law, Whittier Law School. J.D., UC Berkeley; B.A., M.A., Ph.D. (Latin American History), UCLA. A previous version of this Essay was presented at the Louisiana Historical Association Annual Meeting, Lafayette, Louisiana, March 25, 2006. The author is grateful for the comments of Mark F. Fernandez and Paul E. Hoffman on that occasion.

1. ALAN WATSON, THE EVOLUTION OF WESTERN PRIVATE LAW, at x-xii (2001).
2. LAWRENCE FRIEDMAN, A HISTORY OF AMERICAN LAW 12 (2d ed. 1985).
3. MARK F. FERNANDEZ, FROM CHAOS TO CONTINUITY: THE EVOLUTION OF LOUISIANA'S LEGAL SYSTEM, 1712-1862, at 88 (2001).

important a channel was Louisiana for sources like the *Siete Partidas*, the thirteenth-century Spanish code, the *Novísima Recopilación*, the 1805 compilation of codes and statutes, or *Febrero Novísimo*, the eighteenth-century Spanish treatise adopted for use in nineteenth-century Mexico? By tracing the influence of Louisiana case law, the question of legal autonomy versus context can be examined in four jurisdictions where elites all considered Hispanic law necessary, but where the surrounding societies often differed markedly.

II. SPANISH LEGAL SOURCES IN ANTEBELLUM LOUISIANA

The antebellum South was an intellectual center for Roman and civil law scholarship, with Louisiana playing a leading role due to its having experienced both French (1699-1762) and Spanish (1762-1803) legal regimes prior to the American takeover.[4] The libraries of prominent New Orleans attorneys such as Michel de Armas, Moreau Lislet, Edward Livingston, Alfred Phillips, Christian Roselius, and Gustavus Schmidt all contained numerous Spanish law compilations and treatises.[5] New Orleans also became a center for new works on the subject, including Lislet and Carleton's 1820 translation and abridgment of the *Siete Partidas*[6] and Schmidt's *The Civil Law of Spain and Mexico* (1851),[7] both of which were designed for practitioners. Schmidt suggested in his preface that "[t]he recent acquisition of California and New Mexico will probably render the work at present of some practical utility to the legal profession."[8] Aspiring lawyers were taught the history and practice of

---

4. M.H. HOEFLICH, ROMAN AND CIVIL LAW AND THE DEVELOPMENT OF ANGLO-AMERICAN JURISPRUDENCE IN THE NINETEENTH CENTURY 51 (1997). For recent analyses of the legal legacy of colonial rule, see Hans W. Baade, *The Legal Heritage of the Louisiana Purchase*, *in* THE LOUISIANA PURCHASE AND ITS PEOPLES 171 (Paul E. Hoffman ed., 2004) (discussing the persistence of French law despite official Spanish attempts to supersede it); Light T. Cummins, '*In Territories So Extensive and Fertile': Spanish and English-Speaking Peoples in Louisiana Before the Purchase*, *in* Baade, *supra*, at 117 (Spanish legal innovations liberalized French law and had a lasting impact).

5. *See* Mitchell Franklin, *Libraries of Edward Livingston and Moreau Lislet*, 15 TUL. L. REV. 401 (1941); Mitchell Franklin, *Library of Michel de Armas*, 4 LA. L. REV. 573 (1942); Mitchell Franklin, *The Library of Christian Roselius and Alfred Phillips*, 23 LA. L. REV. 704 (1963); M. H. Hoeflich & Louis de la Vergne, *Gustavus Schmidt: His Life and His Library*, 1 ROMAN LEGAL TRADITION 112 (2002). Schmidt's 1877 law library catalog lists 98 Spanish law items. SOULE, THOMAS, & WENTWORTH, CATALOGUE OF A LARGE AND VALUABLE LIBRARY, CONTAINING A VERY FULL LINE OF FOREIGN BOOKS . . . (1877).

6. 1-2 L. MOREAU LISLET & HENRY CARLETON, THE LAWS OF LAS SIETE PARTIDAS, WHICH ARE STILL IN FORCE IN THE STATE OF LOUISIANA (1820).

7. GUSTAVUS SCHMIDT, THE CIVIL LAW OF SPAIN AND MEXICO (1851).

8. *Id.* preface.

Spanish law by Christian Roselius of the University of Louisiana (the predecessor of Tulane).[9]

Indeed, the availability of these sources and education was manifested in a marked Spanish legal influence in Louisiana jurisprudence after the U.S. takeover: a statistical study of court cases between 1809 and 1828 showed a far greater number of citations of Spanish codes and statutes than of French, and only a slight advantage in references to French treatises.[10] Another historian has remarked that "the Louisiana Supreme Court regularly followed Spanish sources over their French counterparts, reflecting a nearly unshakable conviction that Louisiana's common law was Spanish."[11] It should be noted that not all Anglo-Americans lauded the Spanish justice system. In the popular 1804 play, *Liberty in Louisiana*, an arbitrary and corrupt Spanish judge, "Don Bertoldo de la Plata," auctions his rulings to the highest bidder.[12] But most legal elites (judges, lawyers, and professors) took Spanish law more seriously, as did their counterparts in the states and territories further west.

III. TEXAS

Prior to Texas's independence in 1836, southern Anglo-American lawyers such as William Barret Travis and Thomas Jefferson Chambers practiced in the Mexican province, using sources like the *Siete Partidas*, the *Novísima Recopilación*, and *Febrero Novísimo*.[13] Chambers published a prospectus in 1832 for a proposed treatise on applicable Spanish and Mexican law, but he had only completed a fourteen-page

---

9. CHRISTIAN ROSELIUS, INTRODUCTORY LECTURE 18-21 (1854) (copy in Special Collections Department, University of California, Irvine); *see also* Mitchell Franklin, *The Influence of Savigny and Gans on the Development of the Legal and Constitutional Theory of Christian Roselius*, *in* FESTSCHRIFT FUR ERNST RABEL 141, 143-44 (Hans Dolle et. al eds., 1954) (discussing Roselius's pedagogical theories of civil law explication).

10. Raphael J. Rabalais, *The Influence of Spanish Laws and Treatises on the Jurisprudence of Louisiana*, 42 LA. L. REV. 1485, 1504-05 (1982). The scholarly assessment that antebellum judicial citation emphasized Spanish law does not extend to legislation, where there has been a long-standing debate over the French versus the Spanish provenance of the 1808 Digest and the 1825 Civil Code. *See* VERNON VALENTINE PALMER, THE LOUISIANA CIVILIAN EXPERIENCE: CRITIQUES OF CODIFICATION IN A MIXED JURISDICTION 51-100 (2005).

11. RICHARD HOLCOMBE KILBOURNE, JR., A HISTORY OF THE LOUISIANA CIVIL CODE: THE FORMATIVE YEARS, 1803-1839, at 74 (1982).

12. JAMES WORKMAN, LIBERTY IN LOUISIANA (1804); *see also* Charles S. Watson, *A Denunciation on the Stage of Spanish Rule: James Workman's* Liberty in Louisiana (1804), 11 LA. HIST. 245 (1970).

13. Hans Baade, *Law and Lawyers in Pre-Independence Texas*, *in* CENTENNIAL HISTORY OF THE TEXAS BAR 240, 247-48, 250 (State Bar of Texas ed., 1981); Joseph W. McKnight, *Stephen Austin's Legalistic Concerns*, 89 SW. HIST. Q. 239, 257 n.88 (1986).

pamphlet by 1850.[14] After independence the Texas Supreme Court's chief justice, John Hemphill (originally from Virginia), carried on this tradition of Hispanic legal learning, becoming known as the "first Spanish civilian of Texas."[15] Yet despite Hemphill's and other justices' consistent recourse to Louisiana precedent in order to interpret Hispanic law, detailed below, historians of the Texas Supreme Court have not emphasized this debt.[16]

During the period of the Texas Republic (1836-45), Spanish law as filtered through antebellum Louisiana jurisprudence weighed heavily in judicial decision-making. *Edwards v. Peoples* (1840) involved a "rehibitory action under the Spanish law," here an action to set aside the sale of a slave for disease; the court cited the Lislet/Carleton edition of the *Siete Partidas* and two Louisiana cases, *Goodloe v. Hart* (1831) and *Williams v. Miller* (1836), to support its decision that the sale could not be voided because the defect was known at the time of purchase.[17] In one of Chief Justice Hemphill's first rulings, *Mills v. Waller* (1841), he referenced Juan de Hevia Bolaños's 1761 treatise, *Curia Philipica*, and a supporting Louisiana case, *Kenney v. Dow* (1821), to hold that a fraudulent land sale could be set aside only if the buyer knew of or suspected the fraud.[18] Following this pattern of citing a Spanish source along with a Louisiana example, the court in *Hill v. M'Dermot* (1841) invalidated pledge deeds (mortgages) for slaves, in part because of usurious interest, based on the *Novísima Recopilación* (in Joseph White's 1839 translation, *A New Collection of Laws, Charters, and Local Ordinances*), and on *Herman v. Sprigg* (1825).[19] Chief Justice Hemphill reinforced this trend in *Hall v. Allcorn* (1841), using White's *New Collection* and three Louisiana cases, *Dean for the use of Vineyard v. Smith* (1822), *Percy v. Millaudon* (1832), and *Mayor of New-Orleans v.*

---

14. T.J. CHAMBERS, PROSPECTUS FOR TRANSLATING INTO ENGLISH AND PUBLISHING A COMPILATION OF THE LAWS IN FORCE IN THE STATE OF COAHUILA AND TEXAS (1832); THOMAS JEFFERSON CHAMBERS, A SKETCH OF THE SPANISH AND MEXICAN LAWS AFFECTING RIGHTS IN TEXAS (1850) (*both in* Barker Texas History Center, Center for American History, University of Texas, Austin).

15. TIMOTHY S. HUEBNER, THE SOUTHERN JUDICIAL TRADITION 105 (1999).

16. *See* J.H. DAVENPORT, HISTORY OF THE SUPREME COURT OF TEXAS (1917); *see* sources cited in LINDA GARDNER, THE TEXAS SUPREME COURT: AN INDEX OF SELECTED SOURCES ON THE COURT AND ITS MEMBERS, 1836 TO 1981 (1983). One exception to this neglect is Joseph W. McKnight, who has noted the similarity of Texas's 1836 venue statute to the Lislet/Carleton translation of the *Partidas*, and suggests that the latter may have influenced venue rulings. Joseph W. McKnight, *The Spanish Influence on the Texas Law of Civil Procedure*, 38 TEX. L. REV. 24, 36-40 (1959).

17. Dallam 359, 360, 361 (1840) (citing Goodloe v. Hart, 2 La. 446 (1831); Williams v. Miller, 9 La. 129 (1836)).

18. Dallam 416, 418 (1841) (citing Kenney v. Dow, 10 Mart. (o.s.) 577 (1822)).

19. Dallam 419, 424 (1841) (citing Herman v. Sprigg, 3 Mart. (n.s.) 190 (1825)).

Ripley (1833), to underpin his decision that a note from two parties bound them only to pay equal shares rather than each severally for the entire debt amount.[20] Hemphill attempted to begin all his analyses with Spanish sources, but resorted to quotations in Louisiana opinions when the original was not available. For example, in *Scott and Solomon v. Maynard* (1843) he went to the Louisiana case of *Savenat v. Breton* (1830) in order to access a statement in *Febrero* that all purchases by either party to a marriage became community property.[21] By the next year such indirect referencing was not necessary, as the court had obtained a copy of *Febrero*.[22]

After the U.S. annexation and Texas statehood in 1845, Hemphill and the other Texas justices continued to channel Spanish law via Louisiana. In *Gautier v. Franklin* (1847), he applied the Spanish statute of limitations for enforcing commercial contracts, as set out in the 1505 *Leyes de Toro* and incorporated in the Louisiana decision of *Goddard's Heirs v. Urquhart* (1834), holding that "the rule in the cases from Louisiana is to be preferred."[23] As late as 1870, in *Mitchell v. Bass*, the court found that nonuse of a public highway dedicated under Mexican rule did not cause the road to revert to the adjacent owners, and based its finding on Schmidt's *Laws of Spain and Mexico* (1851), a line of Louisiana decisions, and one Texas case.[24]

However, as Texas jurisprudence developed in the second half of the nineteenth century, its reliance on Louisiana law ebbed. In *Hancock v. McKinney* (1851), the parties disputed whether an improvement condition on a Mexican land grant had been satisfied, citing White's *New Collection* and three Louisiana decisions on inchoate Mexican titles.[25] But the court upheld the grant without referencing any of these authorities.[26] By the 1870s and 1880s, the justices were regularly

---

20. Dallam 433, 434 (1841) (citing Dean for the use of Vineyard v. Smith, 12 Mart. (o.s.) 316 (1822); Percy v. Millaudon, 3 La. 568 (1832); Mayor of New Orleans v. Ripley, 5 La. 120 (1833)).

21. Dallam 548, 551 (1843) (citing Savenat v. Breton, 1 La. 520 (1830)).

22. *See* Smith v. Townsend, Dallam 569, 572 (1844).

23. 1 Tex. 732, 741-43, 748 (1847) (citing Goddard's Heirs v. Urquhart, 6 La. 659 (1834)).

24. 33 Tex. 260, 265-66 (1870) (citing Renthorp v. Bourg, 4 Mart. (o.s.) 97 (1816); De Armas v. Mayor of New-Orleans, 5 La. 132 (1833); Carrollton R.R. v. Municipality No. 2, 19 La. 62 (1841); Hatch v. Arnault, 3 La. Ann. 482 (1848); Portis and Wife v. S.A. Cummings, 14 Tex. 171 (1855)).

25. 7 Tex. 384, 406-07 (1851) (appellant's argument citing Mayor of New Orleans v. Bermudez, 3 Mart. (o.s.) 307 (1814); White v. Well's Ex'rs, 5 Mart. (o.s.) 652 (1818); Gonsoulin's Heirs v. Brashear, 5 Mart. (n.s.) 33 (1826)).

26. *Id.* at 456-60.

deciding cases involving Spanish and Mexican law by citing only to Texas holdings, rather than to Louisiana or even Hispanic sources.[27]

Some scholars have blamed a judicial loss of "the thread of Hispanic learning" following the Civil War for this insularity.[28] Yet the assumption of a knowledge vacuum has been disputed; in other research this author has criticized this interpretation with reference to Texas jurisprudence that invented riparian irrigation rights by intentionally distorting Spanish precedent barring such rights.[29] Whether legal learning was lost or not, when Texas judges again applied Hispanic law in the massive 1950s *Valmont* litigation over lower Rio Grande water rights, the Texas Court of Civil Appeals cited the *Siete Partidas* and Joaquín Escriche's *Diccionario Razonado* (1837) (a respected Spanish legal dictionary reprinted in Mexico), but not any Louisiana authorities.[30]

IV. CALIFORNIA

Although more distant than Texas, California after statehood (1850) also experienced the impact of Louisiana in its Hispanic law jurisprudence. As in Texas, many Spanish and Mexican legal works, including the *Siete Partidas*, Escriche's *Diccionario Razonado*, and Schmidt's *The Civil Law of Spain and Mexico*, could be found in law libraries.[31] Prominent land grant attorney Archibald Peachy owned a copy of Roselius's *Introductory Lecture*, the Spanish law summary delivered in New Orleans in 1854.[32] Here, too, there was a strong southern contingent among the judiciary and bar, which included, among others, California Chief Justice Joseph G. Baldwin, the Virginian author of the popular legal memoir *Flush Times in Alabama and Mississippi* (1853), Justice Solomon Heydenfeldt, originally from South Carolina,

---

27. *See* Cavazos v. Trevino, 35 Tex. 133 (1871); The State v. Sais, 47 Tex. 307 (1877); State v. De Leon, 64 Tex. 553 (1885).

28. Joseph W. McKnight, *The Spanish Watercourses of Texas*, *in* ESSAYS IN LEGAL HISTORY IN HONOR OF FELIX FRANKFURTER 373, 374, 386 (M. Forbosch ed., 1966); *see also* Hans W. Baade, *The Historical Background of Texas Water Law—A Tribute to Jack Pope*, 18 ST. MARY'S L.J. 1, 23, 87 (1986); BETTY DOBKINS, THE SPANISH ELEMENT IN TEXAS WATER LAW 133 (1959).

29. Peter L. Reich, *Mission Revival Jurisprudence: State Courts and Hispanic Water Law Since 1850*, 69 WASH. L. REV. 869, 914-20 (1994).

30. State v. Valmont Plantations, 346 S.W.2d 853, 868-69, 878 (Tex. Ct. App. 1961), *opinion adopted*, 355 S.W. 2d 502 (Tex. 1962).

31. Gregory Yale, List of Law Books, July 1856 (manuscript in Department of Special Collections, UCLA); JAMES WAINWRIGHT & CO., CATALOGUE OF A VALUABLE LAW LIBRARY, CONTAINING THREE THOUSAND VOLUMES, BEING THE ENTIRE LAW LIBRARY OF MESSRS. HALLECK, PEACHY & BILLINGS 15-16 (1861) (original in Bancroft Library, University of California, Berkeley).

32. ROSELIUS, *supra* note 9 (title page signed by "Mr. A.C. Peachy").

and lawyer Archibald Peachy.[33] Yet California's legal historiography parallels that of Texas in neglecting to discuss the Louisiana contribution.[34]

In a line of cases adjudicating municipal land rights from the 1850s through the 1870s, the California Supreme Court relied on Louisiana decisions interpreting Hispanic law. Validating San Francisco's right to sell "pueblo" (town-owned) lands to private speculators, the court in *Welch v. Sullivan* (1857) asserted that Hispanic law had allowed such alienations, and that the American city had succeeded to the former Mexican municipality's prerogatives.[35] The justices referenced four Louisiana cases holding that such sales, once made, could not be rescinded.[36] In *Hart v. Burnett* (1860), the court retreated from this position, ruling that pueblo lands had been held "in trust for the public use," and so could not be sold at auction to satisfy city debts.[37] Chief Justice Baldwin cited Escriche, an 1834 Mexican decree, four Louisiana cases, and a Texas decision to the effect that Hispanic law traditionally barred execution sales of town lands.[38] Twelve years later the justices expanded *Hart*, ruling in *San Francisco v. Canavan* (1872) that the dedication of pueblo land to public use was irrevocable, and listing an additional Louisiana decision in support.[39]

Hart's limitation on city land sales was ultimately reversed in *Monterey v. Jacks* (1903), which found that any "public trust" had been necessarily subject to the "control and disposition of the Mexican

---

33. 1 J. EDWARD JOHNSON, HISTORY OF THE SUPREME COURT JUSTICES OF CALIFORNIA 12-49 (1963).

34. *See* RICHARD R. POWELL, COMPROMISES OF CONFLICTING CLAIMS: A CENTURY OF CALIFORNIA LAW (1977); Arnold Roth, The California Supreme Court: 1850-1859 (1969) (unpublished M.A. thesis, University of Southern California).

35. 8 Cal. 165, 197 (1857).

36. *Id.* at 197 (citing Woods v. Kimbal, 5 Mart. (n.s.) 246 (1826); Fenn v. Rils, 9 La. 95 (1836); Stokes v. Shackleford, 12 La. 170 (1838); Frierson v. Irwin, 5 La. Ann. (1850)). *But see* Peter L. Reich, *Dismantling the Pueblo: Hispanic Municipal Land Rights in California Since 1850*, 45 AM. J. LEGAL HIST. 353, 364-65 (2001) (criticizing Welch for distorting Spanish and Mexican precedent by assuming broad municipal power to sell public land).

37. 15 Cal. 530, 616 (1860).

38. *Id.* at 591, 595-96 (citing Egerton v. The Third Municipality of New Orleans, 1 La. Ann. 435 (1846); Police Jury of W. Baton Rouge v. Michel, 4 La. Ann. 89 (1849); Heirs of Villars v. J.M. Kennedy, 5 La. Ann. 724 (1850); Municipality Number Three v. James S. Hart, 6 La. Ann. 570 (1851); Lewis v. San Antonio, 7 Tex. 288 (1851)). *But see* Reich, *supra* note 36, at 366 (criticizing Hart for oversimplifying Spanish and Mexican public land law, which did not bar execution sales but did permit long-term, exclusive leases that prevented land from being used in common).

39. 42 Cal. 541, 549 (1872) (citing De Armas v. Mayor of New-Orleans, 5 La. 132 (1833)).

government," but cited no Hispanic authority and only one Texas case to buttress this assertion.[40] Subsequent pueblo holdings facilitated municipal land sales without so much as a nod to Hispanic, let alone Louisiana, jurisprudence.[41] Once the court moved away from restricting cities from selling their lands, Louisiana cases lost their value as a source of Spanish precedent.

Code legislation provided another route by which Louisiana's prism for Hispanic law influenced California. Although declining to adopt in its entirety a civil as opposed to a common law system, the California State Senate's Judiciary Committee noted in 1850 that Louisiana case reports were available to assist in civil code interpretation.[42] David Dudley Field, the New York legal reformer and drafter of various code projects, was heavily influenced by Edward Livingston's Louisiana codes[43] and duplicated entire sections of them.[44] Rejected by New York, Field's civil code was nevertheless adopted by five western states, including California in 1872.[45] Although the California Civil Code has been criticized as "simply declaratory of the previous common law,"[46] it has also been lauded as flexibly combining "the effect of the Spanish and Mexican occupation and … the civil law element in the Field codes."[47]

V. NEW MEXICO AND ARIZONA

To evaluate the pervasiveness of Louisiana jurisprudence as a vehicle for Hispanic law transmission in the Southwest, a passing glance at developments in New Mexico and Arizona, also previously under Spanish and Mexican rule, may be instructive. In 1846, when U.S. military forces occupied New Mexico (then including Arizona), General Stephen Watts Kearny promulgated the "Kearny Code" for the territory's governance, reporting that the legislation was based on the laws of

---

40. 73 P. 436, 439-43 (1903) (citing Nalle v. City of Austin, 56 S.W. 954 (Tex. Civ. App. 1900)).

41. *See* Dunlop v. O'Donnell, 6 Cal. App. 2d 1 (1935); DeYoung v. City of San Diego, 194 Cal. Rptr. 722 (1983).

42. CALIFORNIA STATE SENATE, COMMITTEE ON THE JUDICIARY, REPORT ON CIVIL AND COMMON LAW, FEB. 27, 1850, *in* 1 Cal. 588, 603 (1850).

43. CHARLES M. COOK, THE AMERICAN CODIFICATION MOVEMENT 188 (1981).

44. Maurice E. Harrison, *The First Half-Century of the California Civil Code*, 10 CAL. L. REV. 185, 193 (1922).

45. *Id.* at 187. The others were the Dakotas, Idaho, and Montana. *Id.*

46. John Norton Pomeroy, *The True Method of Interpreting the Civil Code*, 4 W. COAST REP. 145, 152 (1884).

47. Harrison, *supra* note 44, at 193-95; *see also* ARVO VAN ALSTYNE, THE CALIFORNIA CIVIL CODE 42-43 (1954) (discussing the code's effective balance between civil law certainty and common law adaptability to changing circumstances).

Mexico, Missouri and Texas, with "the remainder from the Livingston code."[48] The code incorporated "[a]ll laws heretofore in force . . . which are not repugnant to the Constitution," including specific Mexican agricultural and procedural provisions, but it did not explicitly cite to any Louisiana sources.[49] The territorial legislature adopted the Kearny Code in 1851, but again its partial Louisiana provenance was omitted.[50] The question of Louisiana's possible legal influence on New Mexico and Arizona (the latter became a separate territory in 1863) must thus be pursued via case law.

In prior studies, this author has examined Hispanic law issues before the New Mexico and Arizona supreme courts in land, mineral, and water decisions from the 1880s through the present.[51] In the eleven New Mexico and eleven Arizona cases studied, Spanish and Mexican sources were occasionally cited, but no Louisiana authority was ever referenced.[52] Because most of the Texas and California cases discussed above also dealt with land or natural resource matters, this omission is striking. Despite General Kearny's initial crediting of the Livingston Code, Louisiana precedent does not seem to have played a role in post-Conquest New Mexico or Arizona. However, comparative evaluation of family law doctrine, a significant legacy of Hispanic law in the Southwest, has not yet been done, and might conceivably yield different results.

VI. CONCLUSION

The state supreme courts of Texas and California both used antebellum Louisiana cases to assist in the interpretation of Hispanic legal questions. Texas was immediately adjacent to Louisiana, and many judges and lawyers with southern roots had arrived while the province was governed by Mexican law. Although dramatically distinct from Texas in climate, economic history, and proximity to Louisiana,

---

48. Letter of General Kearny to the Adjutant General, Sept. 22, 1846, *reprinted in* Occupation of Mexican Territory: Message from the President of the United States, H.R. Doc. No. 19, 29th Cong. (2d Sess. 1846); *see also* Nolie Mumey, *Notes* to LAWS OF THE TERRITORY OF NEW MEXICO (photo. reprint 1970) (1846) (discussing the legislation's origin and enactment).

49. LAWS OF THE TERRITORY OF NEW MEXICO, *supra* note 48, at 83, 114.

50. Act of 14th July 1851, *in* REVISED STATUTES OF THE TERRITORY OF NEW MEXICO 356 (James J. Deavenport ed., 1856).

51. Reich, *supra* note 29, at 906-11; Peter L. Reich, *The "Hispanic" Roots of Prior Appropriation in Arizona*, 27 ARIZ. ST. L. REV. 649 (1995); Peter L. Reich, *Western Courts and the Privatization of Hispanic Mineral Rights Since 1850: An Alchemy of Title*, 23 COLUM. J. ENVTL. L. 57, 78-83 (1998).

52. *See* sources cited *supra* note 51.

California was also populated by Anglo-Americans, including many southern lawyers, in the 1850s, when Louisiana still exerted an important intellectual sway over civilian theory. California's fascination with codes may also have reinforced this impact. Although New Mexico and Arizona had also been Spanish and Mexican jurisdictions, they were less accessible by contemporary transportation and were settled by Anglo-Americans considerably later. By the time most pioneer lawyers reached these territories, Louisiana's prestige as a source for civilian ideas had been weakened by Civil War occupation and economic decline.[53] The Lislet/Carleton edition of the *Siete Partidas* could no longer be found in legal saddlebags.

Despite socioeconomic and other differences between Texas and California, the transmission of Hispanic principles was carried out in both states by legal elites—a common element which lends credence to the legal autonomy theory. At the same time, however, judges and lawyers were also present in New Mexico and Arizona, and the lack of a Louisiana factor there due to time, distance, and macro-political conditions underscores the importance of context in the development of legal doctrine.

53. *See* HOEFLICH, *supra* note 4, at 73 (discussing the collapse in civil law studies in the postbellum South).