

The de la Vergne Volume and the *Digest* of 1808

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I.	INTRODUCTION	32
	A. <i>The de la Vergne Volume</i>	32
	B. <i>The Pascal-Batiza Debate</i>	35
II.	DESCRIPTION AND PRELIMINARY ANALYSIS OF THE DE LA VERGNE MANUSCRIPT	38
	A. <i>General Description</i>	38
	B. <i>Handwriting</i>	39
	C. <i>Writing of the Manuscript</i>	40
	D. <i>Date of the Manuscript</i>	41
	E. <i>Structure of the Manuscript</i>	43
	F. <i>Interleaves: Recto</i>	44
	G. <i>Interleaves: Verso</i>	48
	H. <i>MS Additions to Printed Pages</i>	48
III.	OTHER COPIES OF THE TEXT.....	49
	A. <i>The Moreau Manuscript, Louisiana State University</i>	49
	1. <i>Handwriting</i>	49
	2. <i>Date of Manuscript</i>	50
	3. <i>General Remarks on the Annotations</i>	52
	4. <i>Lists of Source Material</i>	53
	5. <i>References Linked to Specific Articles</i>	60
	6. <i>Annotations Containing Comments</i>	63
	7. <i>The Moreau MS, de la Vergne Volume, and the Translations of the <i>Partidas</i></i>	64
	B. <i>The St. Paul Manuscript, Loyola Law Library</i>	65
	C. <i>The Bermudez Manuscript, Tulane Law Library</i>	66

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D.	<i>The Denis Manuscript, Tulane Law Library</i>	69
E.	<i>The Mouton Manuscript, Underwood Law Library, Dallas, Texas</i>	71
IV.	CONCLUSIONS.....	72
A.	<i>The Texts</i>	72
B.	<i>Authorship</i>	74
C.	<i>Dates</i>	74
D.	<i>Purpose Behind the Manuscript</i>	75
1.	Moreau's Personal Aims.....	75
2.	The "Avant-Propos"	76
3.	Contexts	79

I. INTRODUCTION

A. *The de la Vergne Volume*

It has long been recognised that a version of the law applied in the Spanish overseas colonies was in force in Louisiana at the time of its cession to the U.S.A. in 1803.¹ As one correspondent told Thomas Jefferson in 1803, "the province is governed entirely by the laws of Spain, and ordinances formed expressly for the colony".² This has led some students of Louisiana's legal history to see the *Digest of the Civil Laws Now in Force in the Territory of Orleans* of 1808, understood as based on the French *Code civil*, as marking a puzzling change in the law, even if it did contain some Spanish material.³

1. See, e.g., Elizabeth Gaspar Brown, *Law and Government in the "Louisiana Purchase": 1803-1804*, 2 WAYNE L. REV. 169-89 (1956), for a good survey of the contemporary documentary evidence. During the brief French interlude in 1803, the Préfet, Pierre Clément de Laussat, changed the law on slavery, as well as altering municipal institutions.

2. *Condition of Louisiana in 1803, When the American Government Took Possession*, in JOSEPH M. WHITE, A NEW COLLECTION OF LAWS, LOCAL CHARTERS AND LOCAL ORDINANCES OF THE GOVERNMENTS OF GREAT BRITAIN, FRANCE AND SPAIN, RELATING TO THE CONCESSIONS OF LAND IN THEIR RESPECTIVE COLONIES; TOGETHER WITH THE LAWS OF MEXICO AND TEXAS ON THE SAME SUBJECT, 2 vols., vol. 2, at 690, 692-93 (Phila.: T. & J.W. Johnson, 1839). I am grateful to Professor J.W. McKnight of Dallas for bringing this to my attention. Professor McKnight speculates these may be the lost answers of William Dunbar of Natchez, especially since some of the answers suggest the author was not in New Orleans.

3. See, e.g., Elizabeth Gaspar Brown, *Legal Systems in Conflict: Orleans Territory 1804-1812*, 1 AM. J. LEGAL HIST. 35, 53, 57-58 (1957), reprinted in AN UNCOMMON EXPERIENCE: LAW AND JUDICIAL INSTITUTIONS IN LOUISIANA 1803-2003, pp. 109, 119, 122 (Judith Kelleher Schafer & Warren M. Billings eds., Lafayette: Ctr. for La. Studs., Univ. of Southwestern La., 1997, found in the Tulane Law Library, Special Collections, KFL38 .D6 1808) [hereinafter AN UNCOMMON EXPERIENCE]; Rodolfo Batiza, *The Influence of Spanish Law in Louisiana*, 33 TUL. L. REV. 29, 30-31 (1958), reprinted in AN UNCOMMON EXPERIENCE, supra, pp. 47, 48.

In 1938, Pierre de la Vergne informed Professor Ferdinand F. Stone of the Tulane Law School that his family possessed a volume of the *Digest* with manuscript notes associated with Louis Casimir Elisabeth Moreau Lislet (1766-1832). This had been passed down through the de la Vergne family from Hugues de la Vergne (1785-1843), an associate of Moreau Lislet.⁴ A refugee from St. Domingue, Moreau had been appointed in 1806 with James Brown, a Virginia-born Kentucky lawyer, “to compile and prepare . . . a Civil Code for the use of this territory”.⁵ Next, in 1941, Professor Mitchell Franklin, also of the Tulane Law School, made the scholarly world aware that the de la Vergne family possessed what he described as “an unpublished manuscript in which Moreau Lislet gave, in detail, the exact sources for the various articles of the Louisiana Civil Code of 1808”.⁶

No further details were generally available until 1958, when, on the 150th anniversary of promulgation of the *Digest*, Franklin and Professor Dainow of Louisiana State University each published short descriptions of the manuscript with translations of the manuscript’s “Avant-Propos” or preface.⁷ As well as fairly general descriptions of the document, both

4. Miriam Childs, *The de la Vergne Volume*, 6, No. 2 DE NOVO: THE NEWSLETTER OF THE LAW LIBRARY OF LOUISIANA 4 (2008); Private Communication from Mr Louis V. de la Vergne (14 Jan. 2009). Hugues de la Vergne was a notary public who later became a member of the Louisiana Bar. In the 1820s, he had shared an office with Moreau Lislet: see ALAIN LEVASSEUR, MOREAU LISLET: THE MAN BEHIND THE DIGEST OF 1808, p. 150 n.243 (2d ed. with assistance of Vicenç Feliú (Baton Rouge: Claitor’s Pub’g Div., 2008) (revised edition of ALAIN A. LEVASSEUR, LOUIS CASIMIR ELISABETH MOREAU-LISLET: FOSTER FATHER OF LOUISIANA CIVIL LAW (Baton Rouge: La. State Univ. Law Ctr. Publ’ns Inst., 1996))) [hereinafter LEVASSEUR, MOREAU LISLET]; see also Alain A. Levasseur, *A “Civil Law” Lawyer: Louis Casimir Elisabeth Moreau Lislet*, 42 LOYOLA L. REV. 203, 253 n.162 (1996). Hugues de la Vergne was the son-in-law of Jacques Phillipe Villeré, Governor of Louisiana 1816-1820, and served as Villeré’s private secretary: SIDNEY LOUIS VILLERÉ, JACQUES PHILIPPE VILLERÉ: FIRST NATIVE-BORN GOVERNOR OF LOUISIANA, 1816-1820, pp. 106-07 (New Orleans: Historic New Orleans Collection, 1981). Moreau Lislet served briefly as Attorney General of Louisiana under Villeré (1817-1818): LEVASSEUR, MOREAU LISLET, *supra*, pp. 135-37; Levasseur, *supra*, pp. 244-45; LOUISIANA ALMANAC, 2008-2009 EDITION 515 (Milburn Calhoun ed., Gretna: Pelican Pub’g Co., 2008). Hugues de la Vergne was appointed Louisiana’s Secretary of State in 1820, but served only until 1821: Calhoun (ed.), LOUISIANA ALMANAC, 2008-2009 EDITION, *supra*, p. 516.

5. Resolution of 7 June, 1806, in ACTS PASSED AT THE FIRST SESSION OF THE FIRST LEGISLATURE OF THE TERRITORY OF ORLEANS 214-19 (New Orleans: Bradford & Anderson, 1806). On Moreau, see now LEVASSEUR, MOREAU LISLET, *supra* note 4; on Brown, see *James Brown*, in INTERIM APPOINTMENT: W.C.C. CLAIBORNE LETTER BOOK, 1804-1805, pp. 258-65 (edited with Biographical Sketches by Jared William Bradley, Baton Rouge: La. State Univ. Press, 2002).

6. Mitchell Franklin, *Libraries of Edward Livingston and of Moreau Lislet*, 15 TUL. L. REV. 401, 404 n.10 (1941).

7. Mitchell Franklin, *An Important Document in the History of American Roman and Civil Law: The De La Vergne Manuscript*, 33 TUL. L. REV. 35-42 (1958); Joseph Dainow, *Moreau Lislet’s Notes on Sources of Louisiana Civil Code of 1808*, 19 LA. L. REV. 43-51 (1958).

authors noted that the “sources” given were basically Spanish and Roman, the only French authors mentioned being Jean Domat and R.J. Pothier. Crucially, there were no references to the French *Code civil* or its *Projet* of 1800.⁸

Meanwhile, Professor Pascal of Louisiana State University had identified a copy of the *Digest* in the Library of Louisiana State University as having marginal notes in Moreau’s hand.⁹ Somewhat scrappy in style, the notes refer to Roman and Spanish law. These appeared to be related to the notes in the de la Vergne volume.¹⁰ In 1968, a photolithographic reproduction of the de la Vergne Volume was privately printed by the Law Schools of Louisiana State and Tulane Universities.¹¹ By this time, two further copies of the *Digest* with interleaves, similar to the de la Vergne Volume, had been discovered in the Law Library of the Loyola University of New Orleans.¹² By 1971, a similar volume had been identified in the Tulane Law Library.¹³ In the same year, a commercial reprint of the de la Vergne volume was published, reflecting growing interest.¹⁴ In 1973, a partial manuscript copy of this material had been identified in the Tulane Law Library.¹⁵ By this date, the Law Library of Southern Methodist University in Dallas was also generally known to have an interesting copy of the *Digest* with marginal notes. These were thought to be rather different, however, from the de la Vergne notes.¹⁶

8. Franklin, *supra* note 7, pp. 35-36; Dainow, *supra* note 7, pp. 50-51.

9. See Robert A. Pascal, *A Recent Discovery: A Copy of the “Digest of the Civil Laws” of 1808 with Marginal Source References in Moreau Lislet’s Hand*, 26 LA. L. REV. 25-27 (1965).

10. La. State Univ. (LSU), Hill Memorial Library, Shelfmark, La Coll KFL30 1808 A213, available at <http://louisdl.louislibraries.org> in the collection on the Louisiana Purchase.

11. Robert A. Pascal, Book Note, 30 LA. L. REV. 746-47 (1970).

12. See, e.g., Paul M. Hebert & Cecil Morgan, *Preface* to A REPRINT OF MOREAU LISLET’S COPY OF THE DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS (1968). Only one of these can now be traced: Loyola Law Library, KFL 30 1808 b.A213a.

13. See Rodolfo Batiza, *The Louisiana Civil Code of 1808: Its Actual Sources and Present Relevance*, 46 TUL. L. REV. 4, 8-9 n.30 (1971), reprinted in part in AN UNCOMMON EXPERIENCE, *supra* note 3, pp. 54-92.

14. A REPRINT OF MOREAU LISLET’S COPY OF THE DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS CONTAINING MANUSCRIPT REFERENCES TO ITS SOURCES AND OTHER CIVIL LAWS ON THE SAME SUBJECTS: THE DE LA VERGNE VOLUME (Baton Rouge: Claitor’s Pub’g Div., 1971) [hereinafter DE LA VERGNE VOLUME]; see W. Thomas Tête, Book Review, 17 LOYOLA L. REV. 781-83 (1970-1971).

15. See Lawrence A. Darby III & Thomas J. McDonald Jr., Book Review, *A Recent Discovery: Another Copy of Moreau Lislet’s Annotations to the Civil Code of 1808*, 47 TUL. L. REV. 1210-13 (1973). This MS, the “Denis MS”, is in the Tulane Law Library, Special Collections, KFL38 .D46 1828.

16. *Id.* at 1211 n.5. The Southern Methodist MS is located in the Southern Methodist University, Underwood Law Library, Rare Book Room.

B. The Pascal-Batiza Debate

For some scholars all of this material offered a solution to the apparent problem of the *Digest*: a seemingly French code introduced into a jurisdiction under Spanish law, when its compilers had been instructed to “make the civil law [*lois civiles*] by which this territory is now governed, the ground work of said code”.¹⁷ Thus, Pascal stated in 1965 that Moreau’s notes demonstrated that the redactors of the *Digest* considered it “a digest of the Spanish Laws then in force in Louisiana even though they cast it in the mold of the then new French *Code Civil*”.¹⁸ The very year the text of the de la Vergne volume was commercially reprinted, this view was challenged by Professor Batiza of Tulane, when he published an extensive study of the sources of the *Digest*. This showed that a very substantial proportion of the provisions of the *Digest* had indeed been directly copied from the French Code and its *Projet*, and that very little had been copied from Spanish sources.¹⁹ This is not the place to discuss Batiza’s methodology; but Pascal vehemently responded, reiterating that the *Digest*, “though written largely in words copied from, adapted from, or suggested by French language texts, was intended to, and does for the most part, reflect the substance of the Spanish law in force in Louisiana in 1808”.²⁰

Through the 1970s the legal history of Louisiana was accordingly very lively indeed, with the combative debate between Pascal and Batiza characterised by Dean Sweeney of Tulane as a “tournament of scholars”.²¹ As well as the issue of whether the *Digest* was “French”, or “Spanish” in French dress, the nature of the *Digest* as a code was also considered: Professor Pascal argued that it was not intended to supplant the previous (Spanish) law, but was intended “to be a digest of Spanish law”, whereas Professor Batiza was firmly of the view that it was

17. Resolution of 7 June, 1806, in ACTS PASSED AT THE FIRST SESSION OF THE FIRST LEGISLATURE OF THE TERRITORY OF ORLEANS, *supra* note 5, pp. 214-15.

18. Pascal, *supra* note 9, p. 26.

19. Batiza, *supra* note 13; see also RODOLFO BATIZA, SOURCES WHICH HAD A SUBSTANTIAL OR PARTIAL INFLUENCE ON THE PROVISIONS OF THE LOUISIANA CIVIL CODE OF 1808: THE ORIGINAL TEXTS (New Orleans: Privately Printed, 1974) (not currently available to me).

20. Robert A. Pascal, *Sources of the Digest of 1808: A Reply to Professor Batiza*, 46 TUL. L. REV. 603, 604 (1972) [hereinafter Pascal, *Sources*] (emphasis deleted); see also Robert A. Pascal, Book Note, 32 LA. L. REV. 495-96 (1972) (“[T]he radical simplicity and beauty of statement of this essentially Spanish legal document in French Civil Code dress”).

21. Joseph Modeste Sweeney, *Tournament of Scholars over the Sources of the Civil Code of 1808*, 46 TUL. L. REV. 585-602 (1972).

intended as a code in the civilian tradition.²² Some adopted Pascal's position, interpreting the de la Vergne volume as a listing of sources.²³ Others attempted a more nuanced view.²⁴ I argued that in drawing up the *Digest* the redactors were creative, so that it is "a complex mixture of provisions taken from many and varied sources, though obviously most heavily influenced by the work of the French redactors".²⁵ At the same time, Professor Dargo published a major study of the clash between the civil law and the common law traditions as Louisiana became progressively incorporated into the United States; his monograph touched on these issues.²⁶ A thoughtful and sympathetic analysis of the whole debate was provided by Professor Yiannopoulos in 1983.²⁷ Richard Kilbourne also presented a subtle account in his study of the history of the Civil Code in 1987.²⁸

I think it is an accurate observation that the debate has never been satisfactorily resolved. Instead, it was largely put to one side, as historians of the law of Louisiana became much less interested in these disputes over the sources of rules in the *Digest* and the subsequent Civil Code of 1825, creating instead what has been described as a "new Louisiana legal history".²⁹ No doubt the 1970s debates had become

22. Robert A. Pascal, *Treatise on the Reprint of Moreau Lislet's Copy of a Digest of the Civil Laws*, 1 LA. HIST. Q. 43, 45 (1973); Rodolfo Batiza, *Sources of the Civil Code of 1808, Facts and Speculation: A Rejoinder*, 46 TUL. L. REV. 628, 629-30 (1972).

23. See, e.g., C. Russell Reynolds, *Spanish Law Influence in Louisiana*, 56 HISPANIA 1076, 1081 (1973).

24. The most important individual published study is undoubtedly that by Hans W. Baade, *Marriage Contracts in French and Spanish Louisiana: A Study in "Notarial" Jurisprudence*, 53 TUL. L. REV. 1-92 (1978). Despite Baade's apposite and sophisticated critique of Pascal, Batiza vehemently disagreed with him in Rodolfo Batiza, *The Actual Sources of the Marriage Contract Provisions of the Louisiana Civil Code of 1808: The Textual Evidence*, 54 TUL. L. REV. 77-116 (1979).

25. John W. Cairns, *The 1808 Digest of Orleans and 1866 Civil Code of Lower Canada: An Historical Study of Legal Change* vol. 2, p. 634 (unpublished Ph.D. thesis, 2 vols., continuously paginated, University of Edinburgh, 1980). The discussion of the Batiza-Pascal debate is found in *id.* vol. 2, pp. 623-34.

26. GEORGE DARGO, *JEFFERSON'S LOUISIANA: POLITICS AND THE CLASH OF LEGAL TRADITIONS* (Cambridge: Harvard Univ. Press, 1975).

27. A.N. Yiannopoulos, *The Early Sources of Louisiana Law: Critical Appraisal of a Controversy*, in *LOUISIANA'S LEGAL HERITAGE* 87-106 (Edward F. Haas ed., Pensacola, FL: Perdido Bay Press for the La. State Museum, 1983), reprinted in *AN UNCOMMON EXPERIENCE*, *supra* note 3, pp. 93-108).

28. RICHARD HOLCOMBE KILBOURNE, JR., *A HISTORY OF THE LOUISIANA CIVIL CODE: THE FORMATIVE YEARS, 1803-1839*, pp. 1-43 (Baton Rouge: LSU, Paul M. Hebert Law Ctr. Publ'ns Inst., 1987).

29. See, e.g., Mark F. Fernandez, *Introduction. Louisiana Legal History: Past, Present, and Future*, in *A LAW UNTO ITSELF? ESSAYS IN THE NEW LOUISIANA LEGAL HISTORY* 1-22 (Warren M. Billings & Mark F. Fernandez eds., Baton Rouge: LSU Press, 2001); Warren M. Billings, *Louisiana's Legal History and Its Sources: Needs, Opportunities and Approaches*, in *LOUISIANA'S*

somewhat tired. The new literature has emphasised the integration of Louisiana's law into an American mainstream, focusing on the practice of the courts.³⁰ In doing so, however, it has generally neglected detailed study of the specific rules of the *Digest* and their historical origin. It is perhaps fair to say, however, that it has tended either to favour Pascal's view of the historical origins of the *Digest*, or to glide over the issues raised by Batiza. Thus, Professor Fernandez considers the *Digest* as "merely a compilation of laws in force".³¹ Professor Billings has described it as a gathering of "French and Spanish customs", stressing that it was "a summary . . . of the laws believed to be in force".³² It was, states Fernandez, "[n]ever intended as a comprehensive code".³³

The older debate, of course, has never been entirely forgotten. In the mid-1990s, Professor Levasseur, in his biographical study of Louis Moreau Lislet, basically argued in favour of Pascal's view.³⁴ Professor Batiza was also still willing to defend his position vigorously.³⁵ More recently, aspects of this debate have been revived by the work of Professor Palmer of the Tulane Law School, in a study marking the bicentenary of the French *Code civil*, where he explored the French aspects of the Louisiana Civil Code and legal tradition.³⁶

This work led Professor Palmer to reconsider the de la Vergne volume, and he made a special study of the fact that it gives no references for about 30% of the individual articles of the *Digest*. He

LEGAL HERITAGE, *supra* note 27, pp. 189-203; Warren M. Billings, *Confessions of a Court Historian*, 35 LA. HIST. 261-71 (1994).

30. See, e.g., MARK F. FERNANDEZ, FROM CHAOS TO CONTINUITY: THE EVOLUTION OF LOUISIANA'S JUDICIAL SYSTEM, 1712-1862 (Baton Rouge: LSU Press, 2001).

31. Fernandez, *supra* note 29, p. 11.

32. Warren F. Billings, *A Course of Legal Studies: Books that shaped Louisiana Law, in A LAW UNTO ITSELF? ESSAYS IN THE NEW LOUISIANA LEGAL HISTORY*, *supra* note 29, pp. 25, 35 & n.27.

33. Mark F. Fernandez, *Local Justice in the Territory of Orleans: W.C.C. Claiborne's Courts, Judges, and Justices of the Peace*, in *A LAW UNTO ITSELF? ESSAYS IN THE NEW LOUISIANA LEGAL HISTORY*, *supra* note 29, pp. 79, 90.

34. See LEVASSEUR, MOREAU LISLET, *supra* note 4, pp. 167-280; Alain A. Levasseur, *Grandeur and Mockery*, 42 LOYOLA L. REV. 647-725 (1997).

35. See Rodolfo Batiza, *Roman Law in the French and Louisiana Civil Codes: A Comparative Textual Survey*, 69 TUL. L. REV. 1601-29 (1995) (criticising David V. Snyder, *Possession: A Brief for Louisiana's Rights of Succession to the Legacy of Roman Law*, 66 TUL. L. REV. 1853-88 (1992)); see also David V. Snyder, *Ancient Law and Modern Eyes*, 69 TUL. L. REV. 1631-38 (1995); Rodolfo Batiza, *Justinian's Institute and the Louisiana Civil Code of 1808*, 69 TUL. L. REV. 1639-47 (1995).

36. See Vernon Valentine Palmer, *The French Connection and the Spanish Perception: Historical Debates and Contemporary Evaluation of French Influence on Louisiana Civil Law*, 63 LA. L. REV. 1067-1126 (2003), reprinted in VERNON VALENTINE PALMER, *THE LOUISIANA CIVILIAN EXPERIENCE: CRITIQUES OF CODIFICATION IN A MIXED JURISDICTION* 51-100 (Durham, NC: Carolina Academic Press, 2005).

demonstrated that these articles are of French origin, and concluded that this meant “that a large-scale reception of French substantive law took place in 1808”.³⁷ In this study, Palmer drew on my earlier work and my discussion of the de la Vergne volume.³⁸

It therefore seems appropriate to return to the de la Vergne volume in a study to celebrate the bicentenary of the *Digest* of 1808. To provide a fresh assessment of the Moreau Lislet text is particularly important, since not only will the de la Vergne volume become more widely accessible through publication on-line, but Claitor’s Publishing Division has reprinted a bicentennial edition of the 1968 text.³⁹ Moreover, the marginal notes in Moreau’s hand are now also available on-line.⁴⁰

In reality, given the potential the de la Vergne volume holds for developing our understanding of the legal history of Louisiana, there has been very little detailed attention paid to it as a manuscript, and to its relationship with the other manuscripts and printed works that contain Moreau’s texts. Much of this chapter will accordingly be devoted to a close reading of it along with the related manuscripts and printed material. This will allow a start to a proper assessment of the de la Vergne volume and the sources utilised by Moreau Lislet in drawing it up.

II. DESCRIPTION AND PRELIMINARY ANALYSIS OF THE DE LA VERGNE MANUSCRIPT

A. *General Description*

The de la Vergne volume (or manuscript) consists of a copy of the *Digest of the Civil Laws Now in Force in the Territory of Orleans, with Alterations and Amendments Adapted to Its Present System of Government* of 1808 (of which there was only one edition, printed in New Orleans by Bradford and Anderson) bound with interleaves and

37. See Vernon Valentine Palmer, *The Recent Discovery of Moreau Lislet’s System of Omission and Its Importance to the Debate over the Sources of the Digest of 1808*, 49 LOYOLA L. REV. 301, 316 (2003), reprinted in PALMER, *supra* note 36, pp. 19, 36.

38. Palmer, *supra* note 37, pp. 306-07; PALMER, *supra* note 36, p. 25.

39. The notes are now available in an electronic form, not only reproducing the manuscript but also transcribed into print at <http://www.law.lsu.edu/civillawonline>. At the time of writing the task of transcribing the notes had not yet been completed. See *The Yellow Shoe Civil Law Blog* (30 Jan. 2008), drawn from the Center of Civil Law Studies, Paul M. Hebert Law Center, Newsletter, Jan. 2008, No. 5, <http://clyellowshoe.blogspot.com/> (last visited 17 Oct. 2008).

40. See <http://louisdl.louislibraries.org> in the collection on the Louisiana Purchase.

additional leaves added at both front and back.⁴¹ The volume is bound in leather with “L. Moreau Lislet” impressed in gold on the front board.⁴²

B. Handwriting

The manuscript is near-exclusively written in the hand of a single, skilled clerk, trained to write in a clear, impersonal copperplate. The style is of the period, so that the long “s” occurs only as the first “s” when the consonant is doubled—and even then not consistently.⁴³ It may be possible to identify the clerk—or other examples of his work—through research in the notarial archives in New Orleans.

The clerk had some orthographical peculiarities reflecting the transitions in practice of the period as well as personal preference. Thus, he could write “on” for “ont”.⁴⁴ His use of accents could be erratic.⁴⁵ Sometimes the insertion of accents undoubtedly reflected individual usage. Thus, he had a liking for “éffet” in place of “effet”.⁴⁶ He had a very definite preference for writing “hypothèque” (as it is now conventionally spelled) with a circumflex over the “o” and an acute rather than a grave accent over the “e”. He also often replaced the “y” with an “i”. The very clear impression is that his preferred spelling was “hypôthèque” or “hipôthèque”, though there is considerable variation found.⁴⁷ Perhaps this preference for an acute over a grave accent in these circumstances reflected how the writer spoke French, and in copying he reverted to a more phonetic representation of his own accent. This said, such matters were still somewhat fluid in manuscript in this era. Further,

41. The quality of Bradford and Anderson’s printing is rather poor, especially given the significance of the volume they were producing. It is interesting to note that the copy used for the de la Vergne volume has the number of p. 345 printed as 453; the copy used for Moreau’s marginal notes in Louisiana State University has this page number printed correctly, raising interesting questions about variations within copies during the print run. Other errors in the page numbers show further problems. Article numbers are sometimes wrongly printed. Thus, on p. 284, article 122 is printed as 222; on p. 309, article 233 is printed as 223, on p. 314, art. 253 is printed as 153, on p. 315, art. 254 is printed as 154, on p. 337 Section IV is printed as Section VI. See further below on accidental omissions from the French text.

42. See, e.g., Dainow, *supra* note 7, p. 43. I have used the photolithographic reproduction published by Claitor’s, Baton Rouge, 1971. The Claitor’s reprint (at least) is wrongly bound between pp. 330 and 346.

43. See, e.g., the writing of “nantissement” on the interleaves and margins between pp. 446 and 451.

44. Opposite p. 36. This could always be a careless copying error, of course.

45. See opposite p. 36. Again this could also result from inaccurate copying by an inattentive scribe.

46. See, e.g., “Avant-Propos”, line 7 counting from the top; the upper margin of p. 461; and line 7 counting from the foot on the page opposite p. 461.

47. See, e.g., the running title on the odd pages between 452 and 473 and the interleaves between these pages.

it is worth noting that in the text of the printed *Digest* (see the articles at pp. 469-473) “privilège” is rendered as “privilége”, which the drafter of the de la Vergne volume sometimes (but not consistently) copied.⁴⁸

There are two (and possibly three) places in the manuscript, however, where a quite different hand can be detected. The first is a marginal insertion to correct the French text of a printed article.⁴⁹ The second is on the interleaf opposite p. 201. The possible third is another marginal correction of the French text.⁵⁰ The annotations on the interleaf consist of correcting the original “Art. 228” and “Art. 229” to “Art. 229” and “Art. 228” respectively by overwriting the “8” and the “9”. Next to the newly renumbered “228” is written “Dom” and to the renumbered 229 “Dom. v 1. part 1. liv 3 tit 2 sect 1. [illegible]”. These are later additions.

C. *Writing of the Manuscript*

Excepting the parts in a different hand, the manuscript appears to have been written as a relatively continuous project as a fair copy from notes or an earlier version. It is important to note here that the “Explication” of the abbreviations found towards the front of the de la Vergne volume states that the notes of laws and authors are “en marge”.⁵¹ This indicates that lying behind the de la Vergne volume is an earlier manuscript with the notes in the margins, rather than on interleaves. In this connection it is important to recall Professor Pascal’s identification of the copy of the *Digest* with marginal notes—in the actual hand of Moreau—related to those in the de la Vergne volume.⁵² One can hypothesise that a more elaborate and detailed volume on this pattern lies behind the de la Vergne manuscript.⁵³

Although the de la Vergne manuscript does not seem to have been built up and developed over a lengthy period in a discontinuous way, there are indications of additions being made. These are only obvious in the interleaves opposite and marginal additions on the English-language text of the *Digest*. Thus there are marginal additions on the printed pages keyed to specific parts of the facing interleaves by the letter “(A)”.⁵⁴ There are some examples where additions are at the foot of interleaves

48. See the upper margins of pp. 469, 471, 473. Compare the interleaf opposite p. 469, lines 2 and 6 counting from the top.

49. See p. 201.

50. See p. 69.

51. See further below.

52. See Pascal, *supra* note 9.

53. I shall return to this MS below.

54. See pp. 40, 44, 144.

keyed by letters to entries higher up.⁵⁵ These additions appear to be contemporaneous with the writing of the interleaves on which they are found rather than later. This is because they occur at the foot of pages at the end of sections before the start of another section, when normally the text would continue. They are probably the result of the copyist checking his copy and noting accidental omissions before he moved on to the next section. Given that the same small range of works appears again and again on a page, it is easy to understand how the copyist's eye would have jumped a few lines, omitting some of the references meant to be inserted.

The fact that the writer was transcribing from another document or set of papers explains clear errors in copying such as the citation for I.viii.75, where law 33 is cited from one of the titles of the *Siete Partidas* when it should have been 23.⁵⁶ Likewise, copying without paying much attention to the substance will have led the copyist in one instance to write "1817" instead of "1807".⁵⁷ A similar error occurs when he wrote "Liv. 3. tit. 3. tit. 1. ch. 2. s. 4 & ch. 3". The accidental inclusion of "tit. 3" is an evident copying error in the heading.⁵⁸

D. Date of the Manuscript

The title page of the manuscript bears the date 1814. There is nothing to suggest that the manuscript was significantly earlier or indeed later than this. The volume cites an Act of the Territorial Legislature of 1811.⁵⁹ Since this has not been interpolated, this suggests composition between 1811 and 1814.⁶⁰ The latter date could, of course, be the date of a manuscript that may have been copied to form the de la Vergne volume.⁶¹ As will be discussed below, other evidence suggests this is a plausible period for composition of the text.

55. Opposite p. 44 "B", p. 46 "C" and "D", p. 126 "(A)", p. 158 "(J)".

56. Opposite p. 73. The de la Vergne volume cites *Partida* 5, title 13, law 33 instead of 23. See also opposite p. 15, where the interleaf cites *Partida* 3, title 2, law 2 instead of law 12 for I.iii.1. No doubt further study would produce more of such copyist's errors.

57. Opposite p. 43, dealing with I.vi.27. Spanish sources are cited as well as an Act of the Legislature, which is dated 9 March 1817. This is a simple copyist's error for 9 March 1807, and should be a reference to "An Act To Regulate the Conditions and Forms of the Emancipation of Slaves", 9 March 1807, *in* ACTS PASSED AT THE SECOND SESSION OF THE FIRST LEGISLATURE OF THE TERRITORY OF ORLEANS pp. 82-89 (New Orleans: James M. Bradford, 1807). *Cf.* Palmer, *supra* note 37, p. 305; PALMER, *supra* note 36, p. 24.

58. P. 155.

59. The de la Vergne volume, opposite pp. 64, 69 (on art. 56, p. 69). This does not appear to have been interpolated.

60. There is no consistent citation of acts amending the *Digest*, so it is not plausible to argue composition close to 1811 because no later acts are cited.

61. When the copyist wrote "1817" instead of 1807 this could perhaps have been a mistake made because 1817 was the year of actual copying of the de la Vergne volume from an

TITLE PAGE OF THE DE LA VERGNE VOLUME, 1814

earlier version. The clerk automatically wrote the current year. But this suggestion is too speculative for any weight to be placed on it.

E. Structure of the Manuscript

The manuscript is entitled: “Loix de l’Etat de la Louisiane, avec des notes qui réfèrent aux Loix civiles et Espagnoles qui y ont raport. 1814.” On the recto of the leaf following this title starts a text headed “Avant-Propos”, which continues on the verso and on the recto and verso of the two following leaves, concluding with a few lines on the recto of the next leaf.⁶² On the recto of the following leaf is a heading: “Explication. [*sic*] des abbreviations par lesquelles sont désignés les divers codes des Loix et les auteurs cités dans les notes en marge des Loix de cet Etat.” Below this is the heading “Loix”, above an explanation of the abbreviated form of citations to various works of Spanish law including the *Recopilación de las Indias* as well as to the French author, Domat, used for his account of Civil law. The verso of the same leaf has the heading “Auteurs.” This is followed by an explanation of citations to the *Librería de escribaños* of Febrero, the *Curia Philipica*, the works of the French author Pothier, and the translation of the *Digest* of Justinian into Spanish by Rodriguez. After this starts the printed text with the interleaves.

The *Digest* has the English text printed on the verso of the leaves with the equivalent French text facing it on the recto of the next leaf. Thus the verso of the title page starts with the “Index of the Titles of Laws Contained in the Digest”, with the “Tables des Titres de Lois contenus dans le Digeste de la Loi Civile” facing it on the opposite. This is paginated as [ii] to v. After the blank verso [vi], is the “Table of Contents, Alphabetically Arranged”, running from [i] to xxi. Other than [i], a recto containing the start of the English text, and [iii] a recto containing the start of the French text, the text is arranged with the English on the verso facing the French on the recto following, other than at the end, where pp. xx and xxi are both in French, the English text having ended at p. xviii. The verso to p. xxi is blank with the English half-title “Digest of the Civil Law” on the recto following. On the verso is the start of the English text of the actual *Digest*, with the French opposite, with an interleaf intervening. These pages do not bear numbers, but they were counted by the printers as 2 and 3 (the latter being added in the manuscript). The running headings on the printed pages are “Digest of the Civil Law” on the verso and “Digeste de la Loi Civile” on the recto. On the recto printed page, a running heading appropriate for the particular page, referring to the relevant book, title,

62. See further below on this.

chapter, and section (if appropriate) of the *Digest* has been added in manuscript.

At the end of the printed text is an extensive “Table Des [*sic*] matieres [*sic*] designées par les principaux mots employés dans le Code” in manuscript, extending to fifteen leaves written on both recto and verso.

F. *Interleaves: Recto*

The recto of the interleaves contains general lists of sources of Roman and Castilian law or Spanish ultramarine or colonial law as well as of legal authors. This starts afresh with each new title, though there are relevant subdivisions in the lists.

The preliminary title is headed “Titres des Loix Romaines et Espagnoles qui ont rapport aux matières traitées sous ce titre”,⁶³ the next two are headed “Titres des Loix Romaines et Espagnoles relatives à cette matière”.⁶⁴ The third title just has the list without such a heading.⁶⁵ The fourth is headed “Titres des loix Romaines et Espagnoles qui traitent des matières contenues sous ce titre”.⁶⁶ The fifth is headed “Titres des loix Romaines et Espagnoles qui traitent de cette matière”.⁶⁷ The sixth is headed “Titres des Loix Romaines et Espagnoles et des actes de la Législature, qui on[t] rapport à cette matière”.⁶⁸ Thereafter the heading to these lists (though occasionally omitted) settles down as “Titres des Loix Romaines et Espagnoles qui traitent de cette matière” (or, as appropriate, “de ces Matières”). This issue has been laboured because the heading of the lists for the First Book, preliminary and sixth titles—“qui ont rapport”—echoes (or is echoed by) that in the “Avant-Propos”, which describes the aim of the volume as to make known by the notes on the interleaves which are the civil and Spanish laws “qui y ont quelque rapport”. This phrasing has been given some significance.

These lists on the recto interleaf are usually divided into sections corresponding to the chapters or sections of the particular title. Sometimes they are divided according to more general topics. However such lists are divided, the divisions are numbered. Other than in the general area of the law with which they deal, such lists have no direct relationship to the individual articles of the *Digest* in the English text that

63. Opposite p. [2].

64. Opposite pp. [8] and 12.

65. Opposite p. 14.

66. Opposite p. 24.

67. Opposite p. 30.

68. Opposite p. 36.

they face. These lists start at the beginning of the title and run without a break. This means that lists on some topics may be found quite a few pages earlier than the relevant parts of the *Digest*.

These lists have a typical order, starting with formal sources of Roman law, then those of Castilian law, followed by authors. Domat sometimes appears after the Roman sources; sometimes with the authors. Louisiana statutes, if any be relevant, are found at the end. There is, however, considerable variation.

While under the heading (however phrased) there is usually just a simple list of works on the recto of the interleaf facing the English text, occasionally there is a more elaborate text, with directions or explanations, or other matter. Thus, there are instances where relatively standard citations to typical material are slightly more detailed.⁶⁹ Some more elaborate entries are relatively simple references to other parts of the *Digest*. Thus, under a heading referring not only to Roman and Spanish laws, but also to Acts of the Legislature, in the title “Du maître et du serviteur” (Book 1, title 6), the de la Vergne manuscript refers forward to the articles on lease of servants and workers in the title on lease at p. 383.⁷⁰ Under the heading “De la Co-propriété”, the manuscript states: “Voyez au mot partage à la fin du titre des successions tit. 2. liv. 3 du Code Civil.”⁷¹ In the title on Contract of Marriage, under the heading “Des Donations à cause de Nôces”, the manuscript refers the reader back: “Voyez a [*sic*] la fin du titre des donations liv. 3. tit. 2 du Code Civil.”⁷² Other such straightforward references to parts of the enacted Digest can be traced.⁷³

69. See opposite p. 12:

“Digeste liv. 50. tit.1. ad municipalem et de incolis contient diverses règles sur le domicile.—Il en est de même des titres 38 et 39 liv. 10 du Code.—Enfin Domat a considéré la section 3. tit. 16. liv. 1. du 2^{de} Volume de ses loix civiles pour traiter des Règles relatives au Domicile des personnes. V. p. 89 et 90.—La Curia Philipica contient aussi un titre du Domicile voyez Tome 1. part. 3. §. 4. fol. 191 & suivants.

See also opposite p. 36:

“1^o. Des serviteurs libres et des apprentifs. Voyez au contrat de louage du Digeste des loix de cet Etat, l’article relatif au louage des Domestiques et ouvriers p. 383.—Voyez aussi Pothier, traité du contrat du louage, Edition in 12. p. 156 et suivantes.—Et relativement aux apprentifs, voyez l’acte de la première Législature territoriale du 21 mai 1806 sur ce sujet. Voyez p. leurs gages à la fin du titre.”

The dashes indicate paragraphing in the original.

70. Opposite p. 36.

71. Opposite p. 104.

72. Opposite p. 322. It is just possible that this is an internal reference to the manuscript.

For further internal references of this kind, see *infra* notes 79-83 and accompanying text.

73. Opposite p. 428 (reference back to I.x), p. 438 (reference to III.iii), p. 448 (reference to III.19).

Another more elaborate note worth specifically discussing as less straightforward occurs in the listing of laws and authors under the various chapters in the title on mandate (Book 3, title 13). The actual title has only five chapters, but the notes add another, a sixth, “De quelques espèces particulières de mandats & de mandataires”. This is divided into four parts, the third of which refers to *negotiorum gestio*, writing: “Voyez au titre des quasi contrats & quasi délits liv. 3. tit. 4.”⁷⁴ Rather oddly for the structure of the manuscript (and that of the *Digest*), after this listing for the sixth chapter, there is a general heading again—“Mandat ou Procuration”—under which some very special types of obligations are discussed, including the Roman *actiones adiectitiae qualitatis*. One type concerns contracts concerning servants, which is followed by a direction to look at the eighth title of the third book; another is on contracts made by corporate bodies through their administrators, which is followed by a direction to see the title on corporations (Book 1, Title 10).⁷⁵

There are references to other parts of the manuscript. For example, the list of sources under the general heading “17°. Quelles choses on peut léguer & Jusqu[']à qu'elle [*sic*] quotité” concludes with “Voyez ce qui concerne la légitime plus haut N°. 10”.⁷⁶ There are no less than three further internal references on one page in the title on testaments.⁷⁷ There is one more elaborate example. The first article of the twelfth title of the third book of the *Digest* (p. 420) discusses aleatory contracts noting that contracts of insurance and bottomry “coming under the laws of commerce, are foreign from this code”.⁷⁸ In the notes opposite the English text, under the listing of relevant laws and treatises is written: “Voyez pour les contrats d’assurance, du Prêt à la grosse aventure et autres contrats de commerce, les titres de loix citées à côté de la Table qui se trouve au commencement du présent Code.”⁷⁹

In the title on testaments, the text opposite the English-language articles explains changes in the law, apparently attributing them to the *Digest*, described as the *Code civil*, no fewer than eight times. A few

74. Opposite p. 426.

75. Opposite p. 428.

76. Opposite pp. 236 and 238.

77. Opposite p. 240.

78. In French (p. 421): “appartenant aux lois de commerce, sont étrangers au présent code”.

79. Opposite p. 420. The reference is presumably to the sheet headed “Explication”. On the history of commercial law in Louisiana at this period, see RICHARD H. KILBOURNE, *LOUISIANA COMMERCIAL LAW: THE ANTEBELLUM PERIOD 1-83* (Baton Rouge: LSU, Paul M. Hebert Law Ctr. Publ'ns Inst., 1980).

examples may be helpful. First, after a preliminary list of “laws” on donation *mortis causa*, there is as follows: “Nota, la forme de disposer par donation pour cause de mort, est aboli par les loix de cet Etat, & on le peut uniquement par testament ou Codicile . . . Code civil art. 81. p. 227.”⁸⁰ Secondly, under the heading “Des Commissaires par qui on peut tester”, after references to Spanish sources, the manuscript states: “Nota, l’usage de disposer par commissaire est aboli par les lois de cet Etat . . . Code civil art. 88, p. 227.”⁸¹ Thirdly, in dealing with testamentary dispositions, the notes opposite the English text of the *Digest* states “Nota, d’après le Code Civil, il n’est plus nécessaire d’instituer les héritiers forcés, ils succèdent par le seul effet de la loi . . . Code art: 120. p. 235. l’institution n’est plus indispensable pour constituer un testament. On peut disposer soit par forme d’institution ou par celle des legs . . . Code Civil art. 110 & 113. page 233.”⁸² The remaining examples are comparable.⁸³

Finally, one may note that in the title on successions, under the listing of works concerning “Des Partages des Successions & autres propriétés indivisés”,⁸⁴ at the end of § 4 (“Des effets du partage et de la Rescision”), there is a paragraph headed “Observations”, explaining the link between *patria potestas* and succession in Roman law, and noting that the old law was replaced by Justinian’s Novel 118, which created an order of succession “more in conformity with nature and the Spanish law”, which was why only that Novel was cited in the present title. For knowledge of the older Roman law, the reader was directed to Justinian’s *Digest*, *Institutes* and *Code*.⁸⁵ Since provisions of Justinian’s *Digest* and

80. Opposite p. 226. The three dots in this and the following examples are original and do not indicate ellipsis.

81. Opposite p. 230.

82. Opposite p. 232.

83. Opposite p. 234: “Nota, les substitutions sont abolis par les loix de cet Etat, sauf les modifications contenues dans les articles 40 & 41 pages 217 & 218 du Code civil.” Again opposite p. 234: “Nota, les Fidécummissis sont entièrement abolis par le code Civil de cet Etat . . . Voyez art. 40. p. 217. Opposite p. 242: “Nota, la nullité pour cause de prétérition n’a plus lieu d’après ce qu’on dit plus haut N^o. 9. p. 232” (this is also an internal reference to third example in the text). Opposite p. 246: “Nota, le droit d’accroissement est réduit par le Code de cet Etat, aux cas exprimés dans les articles 194. 195. & 197. p. 251 & 253 dudit [*sic*] Code. Opposite p. 248: “Ces clauses ne produisait aucun effet [*sic*], suivant l’article 182. p. 249 du Code Civil de cet Etat.” There are other instances.

84. Opposite p. 156.

85. Opposite p. 160:

Par l’ancien Droit Romain, la qualité d’enfant n’était rien en matière de succession, si elle n’était jointe à celle de *siens*, c’est à dire, si le fils ou la fille ne se trouvait sous la puissance de l’ascendant au moment de son décès; à défaut d’héritiers *siens*, venait la succession des Agnats et des Cognats, c’est à dire, des descendants mâles et femelles du père. Justinian dans sa Nouvelle 118, établit un ordre de succession plus conforme à la

Code are indeed cited in the lists of laws given for this title, the specific inclusion of these references must have been to help the reader deal with and understand the older material.

G. *Interleaves: Verso*

The verso of the interleaves contains headings directly corresponding to the headings in the French text opposite: titles, chapters, and sections, all as appropriate. Under each heading there is the number of the article opposite in Arabic rather than Roman numerals (where the French text has Roman numerals).⁸⁶ The number is sometimes followed by a blank space (in roughly 30% of the articles), but otherwise by a fairly precise reference to Spanish/Castilian law or to an author (including Domat), or a territorial statute.⁸⁷ References to abrogation of an article by subsequent statute can also be found.⁸⁸

H. *MS Additions to Printed Pages*

As well as the running headings added to the odd-numbered printed (French-language) pages, there are some manuscript additions to the pages of printed text of the *Digest*. Thus, there are two instances where a marginal addition (in French) brings the French printed text of an article into line with the English version, undoubtedly correcting a printing error or one made in copying the text for printing (or, possibly, though less likely, one made in drafting).⁸⁹ The number of p. 299 is corrected in manuscript from the erroneous printed 297. Other than such instances, the manuscript does not utilise the odd-numbered pages.

nature et à celui de la loi Espagnole, c'est à dire, la succession des enfans et descendans, celle des ascendans et celle des collatéraux. Voilà pourquoi on a cité que cette nouvelle sous le présent titre des Loix de cet Etat. Si l'on est curieux de connaître [*sic*] l'ordre des successions dans l'ancien Droit Romain, on peut avoir recours aux lois suivans, savoir; [citations to Justinian's *Digest*, *Code* and *Institutes* omitted].

86. In the printed *Digest*, the numbers of individual articles are always in Arabic numerals in the English text. In the French text, they are in Roman numerals until the end of the second book; thereafter they are in Arabic numerals.

87. The statistic for blanks is drawn from Palmer, *supra* note 37, p. 311; PALMER, *supra* note 36, pp. 30-31.

88. Interleaf opposite p. 69, noting under article I.viii.56 that "les principes de la loi civile à cet égard ont été remis en vigueur par l'acte de la Législature du 20 mars 1811 sur la vente des biens des mineurs".

89. See, first, p. 69, art. 54 (I.viii.54) (adding "et sera fait en presence du subroge [*sic*] tuteur"—compare p. 68, and secondly, p. 201, art. 228 (III.i.228) (deleting "créanciers" and substituting "héritiers")—compare p. 200. The English text reflects what was intended in both instances. Thus, "en presence du subrogé tuteur" is found in the *Code civil des français*, art. 329, which is undoubtedly being followed in *Digest*, p. 69 art. 54. (The *Civil Code of Louisiana* (1825), art. 329 provided a different procedure.)

There are, however, a number of instances where the manuscript interleaf utilises the facing, even-numbered, English language pages. Some of these appear to reflect an addition to the list already provided.⁹⁰ Otherwise, when there was insufficient space to continue a list, the writer utilised a blank margin (whether side or otherwise) on the facing printed page.⁹¹

III. OTHER COPIES OF THE TEXT

A. *The Moreau Manuscript, Louisiana State University*

This volume consists of a copy of the *Digest* of 1808 with extensive marginal annotations.⁹² The title page bears two old library stamps of oval design, each enclosing the legend “State Library Louisiana”. It has also the stamp “New Hill Memorial Library Louisiana State University”. The title page also carries the name “Moreau Lislet” written with a certain amount of flourish. This does not appear to be in Moreau’s hand: it most certainly is not his signature.⁹³ One can speculate that this volume may be the “Code civil de la Louisiane (ancien)” that appears in the inventory of his library.⁹⁴ What follows can only be a preliminary discussion of this important manuscript.

1. Handwriting

While the writing varies considerably in neatness and legibility, comparison of the annotations with samples of Moreau’s handwriting confirms that the manuscript is in his hand.⁹⁵ There are only four annotations where this might be questioned. The first two are on pp. 149 and 153 respectively, where there are atypical annotations on the inner margin (the only examples of such). What is visible is too slight for absolute certainty, but, on balance, there are probably sufficient points of

90. See pp. 40, 44, 144, extra sources to be inserted in the list at “(A)” on the facing interleaf.

91. See p. 42.

92. LSU, Hill Memorial Library, La Coll KFL30 1808 A213 [hereinafter LSU, Moreau MS].

93. I have been able to compare it with a number of examples of his signature. It is worth noting that some books in the Tulane Law Library Rare Books Collection bear the name “Moreau Lislet” written with the same flourish along with the same Library Stamp. This may give a clue as to the destination of his library after his death.

94. See Franklin, *supra* note 6, p. 405. I have also had the benefit of examining a copy of the Act No. 1,185, 19 Dec. 1832, by Notary L.T. Caire, Notarial Archives, New Orleans, which contains the inventory of Moreau’s moveable property, including his library.

95. See, e.g., L. Moreau Lislet to N. Girod, Mayor of New Orleans (6 Aug. 1814), John Minor Wisdom Collection, Tulane University, Howard Tilton Library.

comparison to conclude these are probably in Moreau's hand. On p. 459, on the bottom margin, in a listing of sources, where Justinian's Novels have been cited as "Coll.5.t.7", in the style of the period, in the inner margin has been added "Novel". Though a later addition, this is also definitely in Moreau's hand. He usually precedes "Coll." with "Novel", and he has just corrected an omission.⁹⁶ The final annotation to consider is on the outer margin on p. 461. Here, by article 40, has been added "Nouv.C.art.3361". The formation of the capital "N" is untypical of Moreau's style in his letters and in this manuscript, but again it is unclear how much emphasis to put on this, since everything else conforms to his general usage. Whether or not this is in his hand is unclear, though, on balance, it seems more likely not to be. If so, it is a later addition in the hand of another into whose possession the manuscript had come.

Orthographical variations are typical of manuscripts of the period, with accents omitted where required by modern usage and "y" and "i" used as alternatives.

2. Date of Manuscript

There is no easy way to date the writing of this manuscript with any level of precision. The only datable annotations are, first, those two atypically on the inner margin of the odd-numbered pages, and, secondly, the reference to the new Code of 1825.⁹⁷

The first two of these relate to articles 21 and 36 of the second chapter of the first title of the third book. These notes refer to the extension in representation in collateral succession made by an Act of the Territorial Legislature in 1811. The second section of this act stated that whatever in the *Digest* was "contraire aux dispositions du présent acte, est et demeure rappelé", to which the marginal notes specifically refer along with the date 1811.⁹⁸ The unusual nature of these annotations may mean they are later additions. If they are such, it does not necessarily follow that the manuscript dates to before 1811, nor that these additions were made in 1811. By 1811, there had been a number of other statutory amendments to the *Digest* of 1808. There was no attempt to detail these in this volume. These annotations referring to the Act of 1811 must have

96. See, e.g., LSU, Moreau MS, *supra* note 92, p. 35.

97. *Id.* pp. 149, 153, 461.

98. Acte pour changer et amender les 21e. et 37e. articles du chapitre 2 titre 1, livre 3 du Code Civil, concernant les successions", 2 April 1811, *in* ACTS PASSED AT THE SECOND SESSION OF THE THIRD LEGISLATURE OF THE TERRITORY OF ORLEANS pp. 43-45 (New Orleans: By Authority, Printed by Thierry, Printer of the Territorial Laws, 1811).

been made for some purpose now undiscoverable, and are not part of a systematic updating of the manuscript.⁹⁹

The marginal note referring to the equivalent article of the Civil Code of Louisiana of 1825 is also puzzling. It is linked to the underlining of the clause “si le titre emporte exécution parée”.¹⁰⁰ While the article was redrafted in 1825, the changes did not affect this phrase and were not substantial. Given the nature of the annotations in this manuscript it seems improbable that they were generally made by Moreau after promulgation of the new *Code*. This then is likely probably also a later addition made for a purpose now obscure. It should also be remembered that it is probably not in Moreau’s hand.

Since these notes give no clear or sure guide to dating the manuscript, we are left with consideration of the nature of the annotations and of the general context. If the manuscript is indeed a precursor of the de la Vergne volume, which is entirely plausible, then it was presumably drafted before 1814.

In April 1813, Moreau proposed publishing by subscription, in conjunction with Etienne Mazureau, a translation into French of the *Siete Partidas*.¹⁰¹ What was projected in the proposals bears a distinct resemblance to the translations (but into English) of the *Partidas* that he was to publish with Henry Carleton in 1818 and 1820.¹⁰²

In the 1813 proposals, Moreau proposed, first, to provide listings of the relevant Roman and Spanish laws, as well as references to various other treatises at the beginning of each title, and, secondly, to provide, at the end of each title, notes referring to later Spanish laws and to “the civil code of this state” in such a way that it would be possible to determine

99. Nor are these amendments noted in the de la Vergne volume.

100. LSU, Moreau MS, *supra* note 92, p. 461.

101. LOUISIANA COURIER, COURRIER DE LA LOUISIANE 23 (28 Apr. 1813 (English text), 15 Oct. 1813 (French text)). I have used the English text available on the website Civil Law Online at the Civil Law Center, Louisiana State University, <http://www.law.lsu.edu/globals/civillawonline/70F3D69D-1372-69E5-F711A4CE01DA9D1.PDF>. Partial versions of both the English and French texts may be found in LEVASSEUR, MOREAU LISLET, *supra* note 4, pp. 130-31, 189-91; Levasseur, *supra* note 4, p. 242 n.118; Levasseur, *supra* note 34, pp. 663-64.

102. L. MOREAU & HENRY CARLETON, ATTORNEYS AT LAW, A TRANSLATION OF THE TITLES ON PROMISES AND OBLIGATIONS, SALE AND PURCHASE, AND EXCHANGE; FROM THE SPANISH OF LAS SIETE PARTIDAS (New Orleans: Printed by Roche Bros., 1818); THE LAWS OF LAS SIETE PARTIDAS, WHICH ARE STILL IN FORCE IN THE STATE OF LOUISIANA (translated from the Spanish by L. Moreau Lislet and Henry Carleton, Counsellors at Law), 2 vols. (New Orleans: James M’Karaher, 1820) [hereinafter LAWS OF LAS SIETE PARTIDAS] (I have used the 1978 reprint by Claitor’s Pub’l Div., Baton Rouge). Unlike the translation of 1820, that of 1818 (which included fewer titles of the *Partidas*) contained the Spanish text facing the English translation: see Raymond R. MacCurdy, *A Tentative Bibliography of the Spanish-Language Press in Louisiana, 1808-1871*, 10 THE AMERICAS 307, 313-14 (1954).

how the *Partidas* had been modified by Spanish and Louisiana law.¹⁰³ Moreau and Carleton explained in 1818 that they had annotated “each law [of the *Partidas*] with the article of the code to which it refers, and prefixing to every title those of the Roman laws upon the same subject, together with references to some of the more modern Spanish authors”.¹⁰⁴ It is a plausible suggestion that the notes on the Moreau manuscript are related to the proposed project in 1813 of translating the *Partidas* into French, so that they may be dated to around 1812 or so.¹⁰⁵

3. General Remarks on the Annotations

There are annotations on both the even-numbered (English-language) and odd-numbered (French-language) pages. The French-language pages have a running-heading added in manuscript indicating, as appropriate, book, title, chapter, and section. These headings correspond exactly to the equivalent manuscript headings in the de la Vergne volume. In contrast to the de la Vergne volume, however, at the start of this manuscript, an English running-heading has been added on the English-language pages for the preliminary title and the first page of the first title;¹⁰⁶ but this practice is not thereafter continued. At the very end of the volume, under the heading “Les Frais”, a leaf contains a list of various sources on the expenses of litigation. There is neither introductory matter nor index.

The range of materials cited is more limited than in the de la Vergne volume, and the frequency of reference is rather different. The *Corpus iuris civilis*, the *Siete Partidas*, the *Recopilación de Castilla*, the *Recopilación de las Indias*, the *Leyes de Toro* the *Autos Accordados*, the *Fuero Real*, the *Fuero Viejo*, the *Ordenamiento Real*, the *Ordenamiento de Alcalá*, and the *Leyes de Estilo* are all found cited, much as in the de la Vergne volume. Febrero is also cited, but very infrequently, and Domat’s *Lois Civiles* only 3 times.¹⁰⁷ Pothier is not cited at all. On the other hand, while Pérez’s unofficial collection—*Teatro de la legislación universal de España é Indias*—is infrequently cited in the de la Vergne volume, here it is a regular and standard resource exercising considerable influence on

103. COURRIER DE LA LOUISIANE (28 Apr. 1813).

104. *Preface* to MOREAU & CARLETON, *supra* note 102, p. vi (This suggests that each law of the *Partidas* included in the translation has such a note. This is not the case.). See similarly, *Preface* to LAWS OF LAS SIETE PARTIDAS, *supra* note 102, vol. 1, pp. xxiii-xxiv.

105. I hope elsewhere to discuss more fully the relationship between these translations of the *Partidas*, Moreau’s proposals, and the MSS.

106. See LSU, Moreau MS, *supra* note 92, pp. [2], 4, 6, 8.

107. For Febrero, see, e.g., *id.* at 14, 16, 96, 98, 100; for Domat, see *id.* at 203, 435, 439.

Moreau's work.¹⁰⁸ For example, the list of sources under "Les Frais" at the end of the volume starts with a citation to "Costas y su Tasacion" in Pérez's collection and then directly copies and draws on the list of sources given there by the Spanish author.¹⁰⁹ The Roman and Castilian sources (as distinct from authors) on which Moreau generally draws are also those used by Pérez.¹¹⁰

In contrast to the de la Vergne volume, the focus was thus much more on legislative material, whether Roman or Spanish, and above all on the *Siete Partidas*. As regards the Spanish sources, it appears that the *Siete Partidas* were considered fundamental, with the other legislative material cited in so far as it differed from, added to, or qualified the medieval law book.

Other than the two instances already mentioned where annotations appear on the inner margin, they are to be found on the top, bottom, and outer side margins of the pages, sometimes squashed in below the manuscript running title. There is a significantly lesser level of annotation than in the de la Vergne volume, as one would anticipate given there are only marginal notes.

There are, broadly, three—to some extent overlapping—classes of annotations. First, there are references in the form of lists to sources of Roman and Spanish law connected with the field of law covered in a particular title, chapter, or section. Secondly, there are those linked to specific articles. Thirdly, there are comments on related points of law not always specifically dealt with in the *Digest*, as well as occasional references forward or backward in the manuscript.

4. Lists of Source Material

The manuscript's lists of sources on areas of law not specifically tied to any individual article are akin to the lists on the recto of the interleaves opposite the English text of the de la Vergne volume. They are, however, in general, very much less full.

108. ANTONIO XAVIER PÉREZ Y LÓPEZ, *TEATRO DE LA LEGISLACIÓN UNIVERSAL DE ESPAÑA É INDIAS, POR ORDEN CRONOLÓGICO DE SUS CUERPOS, Y DECISIONES NO RECOPIADAS: Y ALFABÉTICO DE SUS TÍTULOS Y PRINCIPALES MATERIAS*, 28 vols. (Madrid: En la Imprenta de Manuel Gonzalez [imprint varies], 1791-1798); see ANTONIO PÉREZ MARTÍN & JOHANNES-MICHAEL SCHOLZ, *LEGISLACIÓN Y JURISPRUDENCIA EN LA ESPAÑA DEL ANTIGUO REGIMEN 66-67* (Valencia: Universidad de Valencia, Secretariado de Publicaciones, 1978).

109. PÉREZ, *supra* note 108, vol. 9, pp. 461-63.

110. See the list *id.*, vol. 1, p. [LIX] ("Plan"). Pérez of course includes sources of Canon law.

There are instances where such general references are linked to a heading or sub-heading, usually indicated with a series of dots.¹¹¹ These are usually to a single source, typically to a title of a *Partida* or of the *Fuero Real*. Sometimes such lists are in a note in the bottom margin, linked to a heading or sub-heading by the letter “a” in round brackets.¹¹² Occasionally, some general lists are attached to a specific article by such a note.¹¹³ Perhaps more commonly, such lists are fitted in to the bottom margins, occasionally extending to the top margins of the relevant pages. Such lists generally start on the French-language page and then are continued, if necessary, on the English-language.¹¹⁴ They usually have a heading, and are normally close to the material to which they relate. They are sometimes postponed to a conveniently large bottom margin at the end of a chapter or title, occasionally with a note directing the reader to them.¹¹⁵ Sometimes combinations of these methods of providing general lists of relevant sources are found.¹¹⁶ These lists are exclusively of primary source material (though often starting with a reference to Pérez’s *Teatro*), obviously considered as “laws”.

The general citations on hypothecs are relatively full and can serve to demonstrate both the nature of these references and Moreau’s reliance on the *Teatro*. These citations are not located at the start of the title, but later where there are large margins to accommodate them.¹¹⁷ First cited, with the general heading “hipotheque [*sic*]—hipoteca y prenda”, is Pérez’s *Teatro*.¹¹⁸ This is followed by references to the Roman law: “Dig. liv. 20. tit. 1. 2. 3. 4. 5. 6. 15. 17. 18. 19. 20. 28. 31. 16. et tit. 22. 23.” (The numbers to titles from “15.” onwards have later been deleted.) Then follows: “Cod. liv. 8. t. 24. 25. 26. 27. 29. 30 et 33. ___ liv. 8. t[.] 14 ___ liv. 10. t[.] 21.” The citations to Roman law close with “Coll. 5. t. 7.” with “Novel.” added subsequently in the margin in front of “Coll.”¹¹⁹ On the previous page, the list continues thus with the following Spanish

111. For a sample taken from throughout the *Digest*, see, e.g., LSU, Moreau MS, *supra* note 92, pp. [3], 24, 25, 29, 31, 53, 58, 59, 137, 144, 147, 238, 239, 311, 327, 337, 429, 453.

112. See, e.g., *id.* at 5, 125, 235, 429.

113. See, e.g., *id.* at 69 (a), art. 66 (listing sources that appear opposite p. 64 in the de la Vergne volume).

114. See, e.g., *id.* at [2]-[3], 35, 59-60, 111, 126-27, 208-09.

115. See, e.g., *id.* at 6-7, 24 (“Mariage—voyez page 35 cy après”), 35; de la Vergne volume, opposite pp. [2], 24.

116. See LSU, Moreau MS, *supra* note 92, pp. [2]-[3], 144-45, 429.

117. *Id.* at 458-59 (starting on p. 459, continuing to the foot of p. 458, and finishing at the top of p. 458). It is worth noting that general references found at the start of the title have been repeated here. *Id.* at 452-53. At the foot of p. 452 is a general reference to Justinian’s *Code* under the one-word heading “hipotheque”.

118. PÉREZ, *supra* note 108, vol. 23, p. 470.

119. Below this is a general note on hypothec not part of this list.

sources:¹²⁰ “Fuero Viejo liv. 3. t. 5 de las prendas . . . 5 loix/ idem—t. 7. de los que toman prendas &^c. . . . 5 . . . / Fuero real liv. 3. t. 19. de las prendas . . . / Partida 5. t. 13 de los peños . . . 50 . . . / Loix de Estilo 4.243 . . . 2 . . . / Ord^{ce}. de Alcalá [*sic*] t. 18 de las prendas &^c. . . . 4 . . . / Ord^{ce}. Royale liv. 5. t. 12. de las prendas . . . 15/ Recop. liv. 5. t. 17 de las prendas &^c. . . .13”. Though fuller than some, this list is typical of many in Moreau’s manuscript in starting with Pérez’s *Teatro*, before moving to Roman and then to Castilian sources.

Moreau later deleted the citations to Justinian’s *Digest* from title “15.” onward in the references to titles of Book 20 of Justinian’s *Digest* because he must subsequently have checked the *Digest* and discovered that Book 20 has only six titles (all relevant here). Moreau made this error because he copied this list straight from Pérez’s equivalent list without checking it, and Pérez’s list was inaccurately printed.¹²¹ In fact, the titles from “15.” onwards are all titles on pledge in Book 8 of Justinian’s *Codex*.¹²² Moreau carried on copying from the same list, this time including the number of “leyes” in each title as found in Pérez’s *Teatro* (as clearly indicated by his omitting the number of “leyes” in the title of the *Fuero real*, as also omitted by Pérez).

It is very obvious that Moreau has copied the standard references on this topic from Pérez’s *Teatro*, omitting only a citation to Canon law. Parallel lists of references to the Spanish and Castilian sources could easily have been compiled from standard editions of the Spanish sources, which commonly referred to each other; but the *Teatro* offered to Moreau a quicker way for titles for which Pérez had compiled similar lists. This is typical of how Moreau started to work on the authorities he cited in

120. The oblique strokes indicate line breaks in the original. In the MS the dots before the number of laws are intended to give even spacing across the page before the number of “loix”, and those after are to indicate “ditto” for “loix”. I have rationalised them here.

121. PÉREZ, *supra* note 108, vol. 23, pp. 470-71 (omitting the names of the titles of the various codes): “Dig. lib. 20. 1. . . . 35 [Leyes]/ Tit. 2. . . . 10 [Leyes]/ Tit. 3. . . . 5 [Leyes]/ Tit. 4. . . . 24 [Leyes]/ Tit. 5. . . . 14 [Leyes]/ Tit. 6. . . . 15 [Leyes]/ Tit. 15. . . . 7 [Leyes]/ Tit. 17. . . . 9 [Leyes]/ Tit. 18. . . . 12 [Leyes]/ Tit. 19. . . . 4 [Leyes]/ Tit. 20. . . . 3 [Leyes]/ Tit. 28. . . . 20 [Leyes]/ Tit. 31. . . . 3 [Leyes]/ Tit. 16. . . . 8 [Leyes]/ Tit. 22. . . . 2 [Leyes]/ Tit. 23. . . . 3 [Leyes]/ Cod. lib. 8. tit. 24. . . . 2 [Leyes]/ Tit. 25. . . . 2 [Leyes]/ Tit. 26. . . . 11 [Leyes]/ Tit. 27. . . . 1 [Ley]/ Tit. 29. . . . 2 [Leyes]/ Tit. 30. . . . 5 [Leyes]/ Tit. 33. . . . 2 [Leyes]/ Cod. lib. 8. tit. 14. . . . 27 [Leyes]/ Idem, lib. 10. tit. 21. . . . 2 [Leyes]/ Novel. Col. 5. tit. 7. . . . 2 [Leyes]; Decretales, lib. 3. tit. 21. . . . 8 [Leyes]/ Fuero viejo, lib. 3. tit. 5. . . . 5 [Leyes]/ Idem, tit. 7. . . . 5 [Leyes]/ [F]uero Real, lib. 3. tit. 19. . . . [blank] [Leyes]/ Partidas 5. Tit. 13. . . . 50 [Leyes]/ Leyes de estilo, 4.23. . . . 2 [Leyes]/ Ordenamiento de Alcalá [*sic*], tit. 18. . . . 4 [Leyes]/ Ordenamiento Real, lib. 5. tit. 12. . . . 15 [Leyes]/ Recopilacion [*sic*], lib. 5. tit. 17. . . . 13 [Leyes].”

122. For the modern edition, it is necessary to deduct 1 from each title: e.g., Cod. 8.15 is now 8.14.

ANNOTATED PAGE OF DIGEST PROVISIONS ON MORTGAGES (LSU MANUSCRIPT) IN MOREAU LISLET'S HAND, SHOWING HIS DELETIONS OF INCORRECT REFERENCES HE HAD COPIED FROM PEREZ'S TEATRO.

The original of this manuscript is held in the Louisiana and Lower Mississippi Valley Collections, LSU Libraries, Louisiana State University, Baton Rouge, Louisiana. Reproduced from a copy held by the Law Library of Louisiana.

ANNOTATED PAGE OF DIGEST PROVISIONS ON MORTGAGES IN DE LA VERGNE VOLUME,
SHOWING THE SAME LIST OF REFERENCES AS IN THE LSU MANUSCRIPT, BUT CORRECTED
AND EXPANDED.

this manuscript. The *Teatro* also offered for him the advantage of providing the texts of the Castilian (but not the Roman) sources that he could then quickly check against the individual articles of the *Digest*.

Moreau then used this list drawn from Pérez's *Teatro*, as corrected by his further research and supplemented by references to the works of Domat, Pothier, Febrero, and Murillo and to the *Curia Philipica*, as well as some other Roman texts, to compile the general list "Des hipôthèques [*sic*] et des privilèges", in the de la Vergne volume.¹²³ The de la Vergne volume also continues with several pages of elaborate sets of references on further aspects of the topic of the title. There is no equivalent to these in Moreau's manuscript. Moreau and Carleton's 1820 edition of the *Partidas* cites identical Roman sources, but adds another two titles of the *Code*, and follows this with a reference to Domat, while the citations to Castilian law are identical to those in the Moreau notes, without the extra literature found in the de la Vergne volume.¹²⁴

These references and their relationships with those in Pérez's *Teatro*, the de la Vergne volume and Moreau and Carleton's translation of the *Partidas* are typical of those found in this manuscript. They generally cite the book or *Partida* of the collection with its relevant title or titles or other subdivision. Usually, the number of "laws" in the title is stated, as copied from the equivalent lists in the *Teatro*.¹²⁵ Usually—but not always—there is clear correspondence between them and the de la Vergne volume, granting the absence of references to Domat and Febrero and the fairly regular citation of Pérez's *Teatro*.¹²⁶ Often, the general references in Moreau's manuscript are closer to the references at the start of the relevant title in Moreau and Carleton's 1820 translation of the *Partidas*.¹²⁷ They typically cite the book or *Partida* of the collection with its relevant title or titles or other subdivision. Sometimes the relationship

123. De la Vergne volume, opposite p. 452: D. 20.1-6; D. 42.6 & 7; C. 7.73 & 74; C. 8. 14-33; C. 10. 21; Nov. 52, Coll. 5.7; [Domat]; Fuero Viejo, 3.5 & 7; Fuero real, 3.19; Partida 5.13; Estilo, 4 & 243; Ord. de Alcalá, tit. 18; Ord. Real, 5.12; Recop. [cited by pages]; [Febrero, Curia, Murillo, Pothier].

124. LAWS OF LAS SIETE PARTIDAS, *supra* note 102, vol. 2, p. 852 (this title is not included in the 1818 translation).

125. See further below.

126. LSU, Moreau MS, *supra* note 92, pp. 6-7, de la Vergne volume, opposite p. [2]; LSU, Moreau MS, pp. 208-209, de la Vergne volume, opposite p. 208; LSU, Moreau MS, pp. 242-43, de la Vergne volume, opposite p. 238 ("ouverture des testaments"); LSU, Moreau MS, pp. 256-57, de la Vergne volume, opposite p. 254 ("donations entre epoux"); LSU, Moreau MS, pp. 310-11, de la Vergne volume, opposite pp. 282-84 ("de la preuve").

127. Compare LSU, Moreau MS, *supra* note 92, pp. 236-37, with de la Vergne volume, opposite pp. 232-34, and LAWS OF LAS SIETE PARTIDAS, *supra* note 102, vol. 2, p. 1029 (on disinheritance); LSU, Moreau MS, *supra* note 92, pp. 316-17, with de la Vergne volume, opposite p. 290, and LAWS OF LAS SIETE PARTIDAS, vol. 1, p. 161 (on oaths).

between the sets of citations in Moreau's three texts is more complex.¹²⁸ There are some general references, such as those on debts, with no exact equivalent in the de la Vergne volume.¹²⁹

A sense of what was intended by Moreau in drawing up these lists is found at the beginning of the title "Des privileges et hypothèques".¹³⁰ On the French-language page is written: "hipotheque [*sic*] voyez pour des loix sur ce sujet a [*sic*] l'appui du Code cy après page 459".¹³¹ This must mean something of the nature of "hypothec see p. 459 below for laws on this topic offering support for the Code." The import of this is unclear. It does not say these laws are the "sources" of the provisions of the *Digest*, merely that they provide some kind of prop for it—that they are relevant authorities in some way. The de la Vergne volume was comparably opaque in describing such references as "relatifs aux matières traitées dans chaque chapitre".¹³² Such vagueness was perhaps understandable given the use made of Pérez's *Teatro* in creating these lists.

Here it is worth considering Pérez's aims in compiling the *Teatro*. He emphasised that Spanish law was largely to be found in a series of codes and collections of legislation from the middle ages onwards. The Roman and Canon laws were also considered authoritative. One collection had been added to another without previous collections being amended or repealed. While later laws repealed earlier, earlier laws might throw light on the meaning of later ones, which might also have repealed earlier ones only in part. This meant that the law was scattered through many different codes and compilations that had to be examined to ascertain the law on any point, though these collections were all very closely linked together in substance.¹³³ Pérez hoped, by gathering the materials according to titles and topics, and by including actual texts, to provide "a thread that guides . . . in this type of labyrinth".¹³⁴ For each substantive title he provided the list of texts, a brief introductory explanation of the law followed by extracts from the decretals (if relevant) and the Spanish sources, including legislation not collected in a compilation. Moreau's adoption of Pérez's lists in this MS allowed him

128. Compare LSU, Moreau MS, *supra* note 92, pp. 286-87, with de la Vergne volume, opposite p. 276, and LAWS OF LAS SIETE PARTIDAS, *supra* note 102, vol. 2, p. 699 (on payment).

129. See LSU, Moreau MS, *supra* note 92, pp. 200-10 where there are general citations on debts, not specifically related to the topic of the payment of the debts of an estate then being dealt with in the *Digest*.

130. *Id.* pp. 452-53.

131. *Id.* p. 453: pp. 458 and 459 have large bottom margins filled with references starting on p. 459.

132. De la Vergne volume, "Avant-Propos".

133. PÉREZ, *supra* note 108, vol. 1, pp. XI-XII (§§ 18-20), XXXVI-XXXIX (§§ 52-54).

134. *Id.* vol. 1, p. XLIV (§ 61).

similarly to provide a guide to the Spanish law on the same topic as in the titles of the *Digest*, which he was then able to follow up for individual articles.

5. References Linked to Specific Articles

These are usually indicated by juxtaposition with the article. Little lines are occasionally drawn to avoid the perception that a long reference or an additional reference belongs to the following article.¹³⁵ While there are quite a number of citations on the English version of the text, they are much more commonly adjacent to the articles in the French text, particularly if the citation is to a law of the *Partidas*. It is tempting to assume that Moreau first worked through the copy of the *Digest* using the French-language pages adding references to the *Partidas*, and adding additional references to the English-language articles for reasons of space.¹³⁶ There is no proof of this, however, and references are found adjacent to articles on the English-language pages with no reference on the equivalent French version of the article,¹³⁷ or to the *Partidas* by the English text, with other Castilian sources by the French.¹³⁸

Additional references are sometimes placed in the bottom margin as a footnote, indicated by a letter “a” in parentheses.¹³⁹ These are often to sources that appear in the general lists in the de la Vergne volume, and are therefore related to the lists on the recto of its interleaves.¹⁴⁰ Sometimes references—even if apparently relevant—have been deleted.¹⁴¹

These individual references are to Castilian material, above all to the *Partidas*. The emphasis on this compilation reflects Pérez’s view that the *Partidas* are the “hub in a union” of the various customs, laws—including the *utrumque ius* in force—codes, and uncollected legislation.¹⁴² There is occasional reference to a territorial statute.¹⁴³ As in the de

135. See, e.g., LSU, Moreau MS, *supra* note 92, p. 103, art. 2, p. 259, art. 227.

136. See, e.g., *id.* pp. 212-13, arts. 19-22; pp. 236-37, arts. 128-130; pp. 256-57, art. 222.

137. *Id.* pp. 246-47, arts. 170-171 (to the *Fuero Real*).

138. *Id.* pp. 286-87, art. 135.

139. See, e.g., *id.* pp. 278-79, art. 102, pp. 312-13, art. 248 (each of which also have citations at both the English and French texts).

140. See, e.g., *id.* p. 69, art. 66, listing sources that appear opposite p. 64 in the de la Vergne volume.

141. See, e.g., *id.* pp. 97, 99, 141. The deletion of *Part.* 6.3.7 on p. 233, art. 117, is of an apparently relevant text, at least in part.

142. PÉREZ, *supra* note 108, vol. 1, p. xxxix (§ 54).

143. See, e.g., LSU, Moreau MS, *supra* note 92, p. 39, art. 15 (Code Noir of 1806).

la Vergne volume, the *Corpus iuris civilis* is not here cited.¹⁴⁴ Just over 40% of the articles have citations linked to them, in contrast to the de la Vergne volume, where 70% have citations or sets of citations.¹⁴⁵ This deserves further study, but it is obvious that this is at least in part because of the lack of citations to Pothier and the infrequency of those to Febrero and, especially, Domat. This means that there are many pages with few or no citations.

There are often multiple citations linked to individual articles in the de la Vergne volume, but in the Moreau manuscript it is most common for there to be a single or double reference, though sometimes to several “lois”. Again this reflects the more limited range of sources cited. On the other hand, lengthy articles with distinct parts or propositions of law can sometimes generate several citations linked to those parts, as well as footnotes with additional references.¹⁴⁶

While most of the citations are also found in the citations to the same articles in the de la Vergne volume, there are some that are not. Thus, articles 6 and 46 in the title on servitudes have references to laws in the third *Partida* that are not found in the de la Vergne volume.¹⁴⁷ These may have been excluded from the latter as not especially relevant. On the other hand, Moreau cites five laws from the third *Partida* on *accessio* and *specificatio* for the thirtieth article of the second title of the second book. These all have some relevance to that article, which discusses compensation if ownership has changed.¹⁴⁸ The de la Vergne volume provides no references for this article, though it does cite these provisions of the *Partidas* elsewhere.¹⁴⁹ In the title on domicile, the Moreau manuscript cites the *Partidas* for article 7, while the de la Vergne volume cites Febrero.¹⁵⁰ For the ninth article of the third title of the first book, the Moreau manuscript cites Febrero and the *Partidas*; the de la Vergne volume cites Pothier.¹⁵¹

144. Except where a footnote attached to an individual article gives what is a general list equivalent to one on the recto of the interleaves of the de la Vergne volume: see *id.* p. 31 n.a (art. 2).

145. I have calculated that 1252 articles have no citation, that is, just very slightly under 58%.

146. See, e.g., LSU, Moreau MS, *supra* note 92, p. 265, art. 24, p. 323, art. 20.

147. *Id.* p. 129, art. 6 (citing *Part.* 3.31.15 (not relevant), p. 137, art. 44 (citing *Part.* 3.31.3 (not particularly on point, though on a related topic)); *cf.* de la Vergne volume opposite p. 137. Both cite this law as a generally relevant law: LSU, Moreau MS, *supra* note 92, p. 137; de la Vergne volume, opposite p. 126.

148. LSU, Moreau MS, *supra* note 92, p. 109 (citing *Part.* 3.28.33-37).

149. De la Vergne volume, opposite pp. 107, 109, arts. 20, 24-27.

150. LSU, Moreau MS, *supra* note 92, p. 13; de la Vergne volume opposite p. 13.

151. LSU, Moreau MS, *supra* note 92, pp. 16-17, de la Vergne volume opposite p. 17.

Such references sometimes do not simply cite a relevant authority. Thus, article 20 in the title on servitudes has a marginal reference that states: “voyez la loi 12.t.15.P.7”.¹⁵² The note on the interleaf in the de la Vergne volume is identical.¹⁵³ The article in the *Digest* covers the issue of compensation to house owners whose dwellings have been demolished on the orders of a magistrate to stop the spread of a fire in a city, town or suburb. The law of the *Partidas* was to the effect that one who pulled down his neighbour’s house to stop spread of a fire would not be liable in damages for doing so. The 1820 translation states that this law is “[n]ot in force” and was “[a]brogated by the civil code, art. 20, p. 130”.¹⁵⁴ This is presumably reflected in the style of references in both manuscripts.

There are occasions where Moreau’s manuscript comments on the status of the sources cited for specific articles. Thus it notes article 56 of the title on minors and guardianship as a “dérogation” from two laws of the *Partidas*.¹⁵⁵ So does the de la Vergne volume; but it also accurately comments that “les principes de la loi civile à cet égard ont été remis en vigueur par l’acte de la Législature du 20 mars 1811 sur la vente des biens des mineurs”.¹⁵⁶ For article III.i.44 of the chapter “Of Irregular Successions”, as well as two laws from the *Recopilación de Castilla*, Moreau cited a ley from the sixth *Partida*, remarking that it was “abrogé par la loi”.¹⁵⁷ The term “loi” is here used to refer to the actual article of the *Digest*. The Moreau and Carleton translation of the *Partidas* of 1820 excludes this particular law, remarking that it was “[n]ot in force”, with a footnote stating “[a]ltered by the civil code, art. 44, p. 154”.¹⁵⁸ Moreau cited another law of the title of the sixth *Partida* next to article 30 of the title on successions, remarking that it was “abrogée en partie par la loi 1.tit.8.liv.5. de la Recop”.¹⁵⁹ In his 1820 translation with Carleton, it is again stated that this law was “[n]ot in force” and that it had been

152. LSU, Moreau MS, *supra* note 92, p. 131.

153. De la Vergne volume, opposite p. 131.

154. LAWS OF LAS SIETE PARTIDAS, *supra* note 102, vol. 2, p. 1205. This title is not included in the 1818 translation.

155. LSU, Moreau MS, *supra* note 92, p. 69, *Part.* 6.16.18; 5.5.4; *see also* LSU, Moreau MS, p. 20 (art. 29), de la Vergne volume, opposite p. 21. Both state this article is a derogation from *Fuero Real* 3.1.11.

156. De la Vergne MS, opposite p. 69; *Acte relatif à la vente des biens des mineurs*, 20 March 1811, *in* ACTS . . . SECOND SESSION . . . THIRD LEGISLATURE . . . TERRITORY OF ORLEANS, pp. 30-35; *see* LAWS OF LAS SIETE PARTIDAS, *supra* note 102, vol. 2, pp. 663 n.a, 1137-38 n.a. I do not think any conclusions can be drawn here as to the dating of the Moreau MS, though tempting.

157. LSU, Moreau MS, *supra* note 92, p. 155, *Part.* 6.13.11; *Recop.* 5.8.7-8.

158. LAWS OF LAS SIETE PARTIDAS, *supra* note 102, vol. 2, p. 1104.

159. LSU, Moreau MS, *supra* note 92, p. 151

“[a]brogated by Recop. Cast. 1.1, tit. 8, b. 5.-and C. art. 30, p. 150.”¹⁶⁰ In both these instances, however, the de la Vergne volume cites the provisions of the *Partidas* as well as those of the *Recopilación*, without any qualification.¹⁶¹

6. Annotations Containing Comments

These are quite varied in nature and content. Sometimes they are linked to a particular article as a footnote.¹⁶² More commonly they are located in the bottom margin of pages which contain articles to which they are related. They are found throughout Moreau’s manuscript.

They can consist of trivial references to other parts of the *Digest* or manuscript;¹⁶³ or an explanation in a footnote may explain an individual article that is complex and obscure;¹⁶⁴ or a comment can further develop some aspect of a particular article.¹⁶⁵ They sometimes also just set out propositions of law related to the topic.

Some examples of the more general comments will explain their nature. In the title “Du mari et de la femme”, Moreau noted, next to Chapter IV on their respective rights and duties, that “les femmes mariées ne peuvent s’obliger conjointement avec leurs maris ni se rendre leurs cautions si ce n’est lorsque la dette a été convertir a [*sic*] leur profit”, citing a law of the *Recopilación de Castilla*.¹⁶⁶ There is no specific provision to this effect in this chapter of the *Digest*.¹⁶⁷ Further, at the foot of the pages (24-25) at the start of the title “Du mari et de la femme”, possibly linked to the ninth article, on the prohibited degrees of marriage, there are the headings “*incesto—incestos*” and “*incesti*”, with references to various sources of Castilian law on incest. These are quite different from the sources cited either in the de la Vergne volume, or indeed in Moreau’s manuscript in the right margin beside article 9, both of which only cite provisions on prohibited degrees.¹⁶⁸ They have been copied straight from Pérez’s *Teatro*.¹⁶⁹ Indeed, on other pages of this title,

160. LAWS OF LAS SIETE PARTIDAS, *supra* note 102, vol. 2, p. 1100. This adds: “Now the ascendants inherit from their descendants by preference to the relations in the transverse line.”

161. De la Vergne volume, opposite pp. 151, 155.

162. *See, e.g.*, LSU, Moreau MS, *supra* note 92, pp. 253, 267.

163. *Id.* p. 240 (“voyez pour la revocation [*sic*] des legs la section 7. de ce chapitre”).

164. *Id.* p. 253, art. 198 (“cet article est relatif a [*sic*] l’indignité des heritiers [*sic*] et legataires [*sic*] et a [*sic*] la revocation [*sic*] par survenance d’enfans”).

165. *Id.* p. 267.

166. *Id.* p. 28 (citing *Recop.* 5.3.9).

167. The de la Vergne volume, opposite p. 26, cites this law with others from the same title of the *Recopilación*.

168. LSU, Moreau MS, *supra* note 92, pp. 24-25, de la Vergne volume, opposite pp. 24-25.

169. PÉREZ, *supra* note 108, vol. 16, p. 262.

Moreau's manuscript provides comments in the margins at the foot of the pages about the contractual capacity of wives, rather different from those in the articles, citing appropriate sources.¹⁷⁰ In similar fashion, in the title on minors and guardianship, some general propositions, not included in the *Digest*, on the capacity of minors are added at the foot of two pages with references to the *Recopilación de Castilla*, the *Fuero Real* and the *Partidas* not found in the de la Vergne volume.¹⁷¹ Such comments sometimes also refer to or set out rules of law seemingly contradictory to the specific articles of the *Digest*.¹⁷² These comments, developments of the law, supplements to the rules in the *Digest*, or general explanations with citations to Castilian law, are very common.¹⁷³

7. The Moreau MS, de la Vergne Volume, and the Translations of the *Partidas*

The general lists of Castilian sources on particular topics—often drawn from Pérez's *Teatro*—and the precise citations linked to specific articles of the *Digest* clearly demonstrate the close link of Moreau's manuscript with the de la Vergne volume. The less developed nature of both of these types of notes suggests that this manuscript is indeed a forerunner of the de la Vergne volume. Pascal's surmise that it was such can thus be accepted.¹⁷⁴ It is important to note, however, that it has citations and references not found in the de la Vergne volume.

There are places, however, where Moreau's manuscript appears also to be a forerunner of the translations of the *Partidas*. Two examples will illustrate this. First, the lists of sources on witnesses and oaths resemble those found in Moreau and Carleton's translation of the *Partidas* rather more than those in the de la Vergne volume.¹⁷⁵ As noted above, this closer correspondence to the translation is not uncommon. Secondly, the manuscript has a note linked to its article III.iii.34 to the effect that "en quelque manière que quelqu'un paroît avoir voulu s'obliger envers un

170. See LSU, Moreau MS, *supra* note 92, pp. 26, 28-29.

171. *Id.* pp. 76-77.

172. See, e.g., *id.* pp. 231-32.

173. See, e.g., *id.* pp. 210-11 (inheritance and gifts), 216-17 (notes on substitutions), 248-49 (the role of executors), 265 (contracts of marriage), 273 (conditional promises), 321 (paying or receiving the debt of another), 333 (dowry), 335 (dowry), 346 (sale), 349 (minors and credit), 353 (sale and delivery), 357 (warranties), 363 (pactum de non alienando), 375 (breaking of a lease), 408 (usury), 415 (deposit), 425 (mandate), 430-34 (caution/suretyship), and 448-49 (pledge).

174. Pascal, *supra* note 9, p. 26.

175. Cf. LSU, Moreau MS, *supra* note 92, pp. 316-17, de la Vergne volume, opposite p. 290; LAWS OF LAS SIETE PARTIDAS, *supra* note 102, vol. 1, p. 161.

autre, il demeure obligé . . . 1.2.t.16.liv.5.R.”¹⁷⁶ The passage here cited from the *Recopilación de Castilla* abolished the formalities of contracts that had been adopted in the *Partidas* from the Roman law. The 1818 translation of the *Partidas* annotated its discussion of *stipulatio* with the note: “This form of expression in promises is no longer necessary. By law 2 tit. 16, book 5 of the *Recopilacion de Castilla*, every agreement will be binding on the parties, whatever may be the manner in which it is contracted.”¹⁷⁷ The note in that of 1820 is virtually identical.¹⁷⁸ These notes strongly resemble that in the manuscript, suggesting it was being consulted in the work on the translation, although both the English and the French reflect the last clause of the law of the *Recopilación*.¹⁷⁹

It is important to note that Moreau’s manuscript is ambiguous about the nature of the materials cited in the general lists. They are described as “offering support” for the *Digest*.¹⁸⁰ No comments are made on the nature of the references linked to specific articles. What have been described here as general comments often develop points of law related to the content of the *Digest*, but are not usually linked to specific articles, and may even contradict them. They are pointing to source material related to the rules enacted, but which is not in any sense the source of the articles.

B. *The St. Paul Manuscript, Loyola Law Library*

The surviving manuscript in the Library of the Loyola Law School of New Orleans consists of a copy of the printed *Digest* bound with interleaves.¹⁸¹ As well as various Loyola library stamps, the title page bears: “Lois de l’Etat de la Louisiane, avec des Notes qui réfèrent aux Lois civiles & Espagnoles qui y ont rapport, Par M^r. L^{is}. Moreau=Lislet, avocat & ci-devant juge de la Nouvelle Orléans. 1814.”

The library stamps indicate the volume comes from the Law Library’s St. Paul Collection. This collection is associated with John St.

176. LSU, Moreau MS, *supra* note 92, p. 267. The article states in relevant part: “Les conventions légalement formées, tiennent lieu de loi de loi à ceux qui les on faites.” This is copied from the French *Code civil*, art. 1134.

177. MOREAU & CARLETON, *supra* note 102, p. 15 (on *Part.* 5.11.2)

178. LAWS OF LAS SIETE PARTIDAS, *supra* note 102, vol. 2, p. 785 (on *Part.* 5.11.1): “This form of agreement or promise by question and answer, called *stipulatio* by the Romans, is rendered unnecessary by law 2, tit. 16, b. 5, of the *Recopilacion of Castille* which provides that every agreement shall be binding on the parties, whatever may be the manner in which it is contracted.”

179. “[M]andamos, que todavia vala la dicha obligacion y contrato que fuere hecho, en qualquier manera que parezca que uno se quiso obligor á otro.”

180. LSU, Moreau MS, *supra* note 92, p. 453; *see above*.

181. Loyola Law Library, KFL 30 1808 b.A213a.

Paul (1867-1939), Associate Justice of the Supreme Court of Louisiana, who was first Dean of the Loyola Law School.¹⁸² There appear to be no other indicators of provenance.

Written in a different hand from the title page, the St. Paul manuscript contains the same “Avant-Propos” and “Explication” as the de la Vergne volume, so that the “Explication” also erroneously states that the references are “en marge”. Thereafter, reverting to the same hand as the title page, the interleaves contain only the equivalent of the general notes of authorities found on the recto of the interleaves facing the English language text of the *Digest*. Some of these appear to be more extensive than in the de la Vergne volume. This changes with the title “Des Successions”, where notes with sources on the verso of the interleaves linked to specific articles start to be found as in the de la Vergne volume. Also, the manuscript running heading on the French text also now appears. The writing now also changes to a third hand. After this title, however, there are no further manuscript notes of any nature on the interleaves or printed pages.

These notes, explicitly attributed to Moreau Lislet, are undoubtedly copied from the text found in the de la Vergne volume, either directly from that volume, or through some intermediary, or from a text that was a direct source of the de la Vergne volume. The additions to some of the lists suggest, however, that this is probably a text later than that of the de la Vergne volume. None of the hands is helpful in providing a date.

The Preface to the photolithographic reproduction of the de la Vergne volume states that the title pages of both copies in the Loyola Law library (each described as incomplete) are in the same hand as the de la Vergne volume.¹⁸³ Whatever may be the case with the now missing volume, this is most certainly not the case for the St. Paul manuscript, written in three hands, none of them that of the scribe of the de la Vergne volume.

C. *The Bermudez Manuscript, Tulane Law Library*

This consists of a copy of the printed *Digest* of 1808 bound with interleaves.¹⁸⁴ In contrast to the de la Vergne volume, the manuscript title and interleaved introductory matter start after the printed title page and table. The title is essentially identical to that of the de la Vergne volume:

182. A DICTIONARY OF LOUISIANA BIOGRAPHY: TEN YEAR SUPPLEMENT, 1988-1998, p. 208 (Carl A. Brasseaux & James D. Wilson, Jr. eds., Lafayette: La. Hist. Ass'n, 1999).

183. Hebert & Morgan, *supra* note 12.

184. Tulane Law Library, Special Collections, KFL38 .D6 1808 [hereinafter TuLL, Bermudez MS].

“Lois de l’Etat de la Louisiane, avec des notes qui réfèrent aux Lois civiles et Espagnoles qui y ont rapport 1814.”¹⁸⁵

The only surviving mark of provenance, other than a number of library stamps of the Tulane College of Law, is on p. 186, where “E. Bermudez.” has been written on the leading margin.¹⁸⁶ It does not resemble a signature. This refers to Edouard Bermudez (1832-1892), Chief Justice of the Louisiana Supreme Court (1880-1892).¹⁸⁷ Described as “renowned for his command of the civilian sources of Louisiana jurisprudence”, Bermudez’s interest in possessing a copy of Moreau’s text is easy to understand.¹⁸⁸

The manuscript is almost entirely written in one hand, probably that of a trained clerk given its regular appearance, even legibility, and impersonal anonymity of style. The hand is slightly more modern than that of the clerk who wrote the de la Vergne volume; thus, there is no use of the long “s”. This does not necessarily prove it is a later manuscript, but only that the clerk was probably younger.

A different hand can be detected at the top of the interleaf opposite p. 272. There, as in the de la Vergne volume, there are citations under numbered headings. The first and second of these in the Bermudez manuscript are in the different hand; the third reverts to the usual hand.¹⁸⁹ There is no obvious reason why a different clerk should have briefly taken over here, with the usual clerk resuming with the third heading. Yet another hand has added in the margins of the printed French text citations of the relevant articles of the Civil Code of 1825, cited as “N.C.C.” or “N.C.”¹⁹⁰

185. The de la Vergne volume inserts a stop after “rapport”.

186. The volume was gifted to Tulane on 9 March 1943 by the firm of Rosen, Kammer, Wolf, Hopkins & Burke which in 1955 merged with the well-known New Orleans law firm of Chaffe McCall. See Firm History, <http://www.chaffe.com/about.asp> (last visited June 11, 2009). There was once an apparent signature of Bermudez, seemingly lost in rebinding. I am grateful to Mr Louis V. de la Vergne for guidance on these points: private communications, 21 Dec. 2008; 28 May 2009.

187. Henry P. Dart, *The History of the Supreme Court of Louisiana*, in AN UNCOMMON EXPERIENCE, *supra* note 3, pp. 566, 602-03 (reprinted from 113 LA. REPORTS xxx-li (1913)). On the family, see Georgia Chadwick, *Joachim Bermudez: Early New Orleans Jurist*, 33 *ISS. 2 STATE, COURT AND COUNTY LAW LIBRARIES NEWS* 12-15 (2007).

188. See Warren M. Billings, *Edward Douglass White: Louisiana’s Chief Justice and the American Judicial Tradition*, in AN UNCOMMON EXPERIENCE, *supra* note 3, pp. 718, 719 (reprinted from 39 LA. BAR J. 276-80 (1991)).

189. It is worth also noting that in the different hand the numbering is “1^{re}” and “2^{de}”, rather than the usual “1^o” and “2^o”, found elsewhere in the Bermudez MS and in the de la Vergne volume.

190. These end on TULL, Bermudez MS, *supra* note 184, p. 165. But see also *id.* p. 173 for a few more.

Overall, the manuscript appears to have been written as a continuous project, with two possible exceptions: first, material may have been added later on one interleaf;¹⁹¹ secondly, the references to the Code of 1825 are almost certainly later. There are a few corrections here and there.

There are no precise indicators of date, beyond that of 1814 on the title page. It is probably more recent than that, since it must be later than the de la Vergne volume.¹⁹² It is tempting, but difficult, to draw any conclusions from the presence of the references to the Code of 1825. That they are a later addition does not mean the rest of the manuscript is earlier than 1825, though this seems likely.

The manuscript is virtually identical to that in the de la Vergne volume. Thus, the title is followed by the same “Avant-Propos” and “Explication”. The same notes are found on the interleaves facing the English and French texts of the *Digest*, so that the same general listings of authorities with the same divisions are found on the recto of the interleaves, with the same details of specific authorities for individual articles on the verso. The one exception is on the interleaf opposite p. 13, where there are no citations linked to the specific articles. The Bermudez text also contains the manuscript running headings on the printed French pages through most, but not all, of the volume.¹⁹³ As in the de la Vergne volume, the erroneous French text of article 54 of the eighth title of the first book has been corrected in the margin.¹⁹⁴ It also ends with the extensive manuscript index.

Comparison of the text with errors in the de la Vergne volume suggests that the Bermudez manuscript has been copied from it—or a virtually identical intermediary. Thus, where the de la Vergne volume incorrectly cites an Act of the Territorial Legislature as “9 mars 1817”, the Bermudez manuscript has copied this;¹⁹⁵ but then it has later been corrected to “1807”, by overwriting the “1” with a “0”.¹⁹⁶

What makes it quite certain that the Bermudez manuscript is the direct descendant of the de la Vergne volume is its scribe’s rationalisation of some of the matter in the other. The first two recto interleaves in the title “Des pères et des enfans” had caused the copyist of the de la Vergne

191. See TULL, Bermudez MS, *id.* interleaf opposite p. 282, where material may have been squeezed in later.

192. See below.

193. These continue until TULL, Bermudez MS, *supra* note 184, p. 345. They are found again on some later pages (479, 485, 487).

194. De la Vergne volume, p. 69; TULL, Bermudez MS, *supra* note 184, p. 69.

195. De la Vergne volume, opposite, p. 43.

196. TULL, Bermudez MS, *supra* note 184, opposite p. 43.

volume some trouble. Over these two interleaves there are eight headings, under each of which different parts of the same set of works are entered as authorities. The copyist missed out material under the first, third, fifth, and sixth headings, which he added, at “(A)”, “(B)”, “(C)” and “(D)” respectively, on the bottom margin of the English printed text opposite the first of these interleaves (“(A)”), the bottom of the first interleaf (“(B)”), and the bottom of the second interleaf (“(C)” and “(D)”). To help identify where the works were to be inserted on the page he also gave a shortened version of the heading, except in “(A)”.¹⁹⁷ Presumably the copyist’s eye had jumped as he dealt with the same works repeated under the different headings. The writer of the Bermudez text correctly incorporated the material under the various headings, though having to add some to the foot of the English text that should have been under the third heading, presumably because of the confusing appearance of the de la Vergne volume’s interleaf. But he left the first line of what the copyist of the de la Vergne volume had apparently meant to be under the third heading at the end of the fourth and also the words “Enfants legitimes [*sic*]”, which the copyist of the de la Vergne volume had inserted into the addition at “B” to indicate that these were to be inserted at the end of the heading “Des Enfants Légitimes en particulier”. This is then left as a nonsensical “mini-heading”, immediately followed by the full fifth heading on the recto of the next interleaf. This could only have happened if the scribe of the Bermudez text were copying either the de la Vergne volume or a manuscript closely based on the de la Vergne volume (which possibly had already attempted to correct these lists of authorities). The first seems much more probable.

The Bermudez text does not include the correction in the de la Vergne volume of the margin of the French text of article 228 of Book 1, title 1 of the *Digest*, nor the alterations of the verso interleaf facing it.¹⁹⁸ This may indicate that it was copied before this correction, which is in a different hand, was made to the de la Vergne volume.

D. *The Denis Manuscript, Tulane Law Library*

This manuscript is entitled “Renvoy aux Principales loix des divers codes d’ou sont tirées les dispositions du digeste de la Loi civile qui est en force dans l’état de la Louisiane”.¹⁹⁹ It is independent of any text of the *Digest*.²⁰⁰

197. De la Vergne volume, p. 44, interleaves opposite pp. 44, 46

198. De la Vergne volume, p. 201 and interleaf opposite.

199. Denis MS, *supra* note 15.

200. The description given in Darby and McDonald, *supra* note 15, is broadly correct.

The title page bears the name “H.R. Denis”, perhaps a signature. This is Henri Raphael Denis (1787-1873), a French-born New Orleans lawyer. He was the son-in-law of Pierre Derbigny (1769-1829), another French-born lawyer, one of the drafters (along with Moreau Lislet and Edward Livingston) of the Civil Code of 1825, later a Governor of the State, and with whom Moreau Lislet earlier had briefly been in partnership.²⁰¹ Before coming to the Law Library of Tulane University, the manuscript had been held by the Parlange firm in New Orleans.²⁰²

The manuscript is penned in three, quite distinct, hands. The first is that of the writer of the title page and of the bulk of the notes referring to authorities. The second is that of whoever wrote out the “Avant-Propos”. The third is that in which the Preliminary title to Book I is written (which is also written on different paper). I have not been able to verify if any of these is the hand of Denis: none specially resembles his possible signature. The manuscript dates from the 1820s.²⁰³

The “Avant-Propos” is given a more extended title than in the de la Vergne volume: “Avant-Propos de Moreau L’Islet aux notes sur le Digeste des Lois Civiles.” The text of the “Avant-Propos” appears otherwise to be substantially the same as that in the de la Vergne volume.²⁰⁴ The Denis manuscript does not have the “Explication” of the “loix” and “auteurs”.

The bulk of the manuscript consists only of the notes citing authorities linked to specific articles cited by the page number of the French text of the *Digest* and the number of the article. That is to say, it only contains the material found on the verso of the interleaves of the de la Vergne volume and Bermudez manuscript facing the printed French text of the *Digest*. The single exception to this is, as Darby and McDonald pointed out, for the title “Des Successions” (Book 3, title 1), where the text in the de la Vergne volume opposite the English text of the *Digest* has also been copied.²⁰⁵

The text has fairly certainly been copied from the de la Vergne volume or a closely related manuscript. Thus, it retains uncorrected the

201. *Id.* p. 1211. On Derbigny, an extremely important figure in law and politics in early Louisiana, see, e.g., THE LOUISIANA GOVERNORS: FROM IBERVILLE TO EDWARDS 103-05 (Joseph G. Dawson III ed., Baton Rouge: LSU Press, 1990); LEVASSEUR, MOREAU LISLET, *supra* note 4, p. 116; Levasseur, *supra* note 4, p. 233.

202. See Palmer, *supra* note 36, p. 307; PALMER, *supra* note 36, p. 25.

203. Darby & McDonald, *supra* note 15 pp. 1211-12.

204. Certainly this is so for the first three paragraphs, before the “Avant-Propos” starts to discuss the various sources. It later has “On a donné également” instead of “On donne également”, but it retains the mistake of “Balaños” for “Baloños”.

205. Darby & McDonald, *supra* note 15, p. 1213.

mistaken citation of the Act of 9 March 1807 as of 1817 (p. 43, art. 27). It has no references for articles 227 and 228 at p. 201.

*E. The Mouton Manuscript, Underwood Law Library, Dallas, Texas*²⁰⁶

This consists of a copy of the *Digest* of 1808 with marginal annotations.²⁰⁷ As well as the stamp of Southern Methodist University Law School Library, it has three other indicators of provenance. On the title page it has the name of Chichester Chaplin; on the front endpapers it bears the names of W.C. Perrault of Opelousas and Mouton. Further research is required to establish if this is the Irish-born Chichester Chaplin (1800-1874) active in both eastern Texas and western Louisiana, among other roles as a lawyer (1820) and judge, or his descendent. Mouton is more certain. This is Alexandre Mouton (1804-1885), admitted to the bar in 1825. After a few years of practice, Mouton turned to a career as a politician supported by ranching and sugarcane planting. He served as Governor of Louisiana, 1843-1846.²⁰⁸ It is worth noting that, though from the Bayou country, Mouton was connected with Opelousas through his first wife. Perrault must be one of the men of that name who served as a lawyer in Opelousas. It is impossible to deduce whether Chaplin (if this is the first one of that name) or Mouton owned the volume first, though further research might assist in this.

The manuscript contains marginal annotations in both ink and pencil in at least two hands. One of these is that of Chaplin.²⁰⁹ The annotations are in French and English, and sometimes Spanish.²¹⁰ This is not the place to attempt to disentangle the various hands (though it is easy enough to sort them into two), which would require a level of study not currently possible; but some of the notes are identifiably by an Anglophone (Chaplin), and others by a Francophone (Mouton?). It follows, as examination confirms, that the annotations were added successively by different individuals. Precise dating of the manuscript notes is impossible.

206. I have been unable to examine this personally. I am grateful to Professor J. W. McKnight of Dallas for copies of enough parts of this volume to be able to include here a preliminary assessment.

207. Southern Methodist University, Underwood Law Library, Rare Book Room [hereinafter SMU, ULL, Mouton MS].

208. THE LOUISIANA GOVERNORS: FROM IBERVILLE TO EDWARDS, *supra* note 201, pp. 118-22.

209. Compare his name on the title page with the note (in English) on the half title of the SMU, ULL, Mouton MS, *supra* note 207, *Digest*, p. [1].

210. For an example in Spanish, see SMU, ULL, Mouton MS, *id.*, p. 489: "Extracto de las ...".

There are instances where the marginal notes in this volume cite a work—Domat’s *Lois civiles*, one of Pothier’s treatises, or the *Siete Partidas*—that is cited similarly in the de la Vergne volume or Moreau’s holograph manuscript.²¹¹ On the other hand, works never so cited in Moreau Lislet’s manuscript texts are regularly cited in the margins of the Mouton manuscript: Blackstone’s *Commentaries on the Laws of England*,²¹² sources of Roman law,²¹³ Sala, *Ilustración del derecho real de España*,²¹⁴ Heineccius *ad Pandectas*,²¹⁵ and the French *Code civil*.²¹⁶

Over-all, the preliminary conclusion must be that the Mouton manuscript is a text independent of the de la Vergne volume and its cognate manuscripts, though there are inevitably some similarities. It may be important to note that in contrast to the more metropolitan provenances of the de la Vergne volume and its related texts, this manuscript has a strong association with west and south-west Louisiana.

IV. CONCLUSIONS

A. *The Texts*

The de la Vergne volume can be understood as a development of the much simpler set of annotations found in the Moreau manuscript in Louisiana State University. The St. Paul, Bermudez, and Denis manuscripts all derive from its text. The Mouton manuscript appears to be independent.

It is important to note, however, that the annotations and lists of sources in the Moreau manuscript and the de la Vergne volume are also related to those found in the two translations of the *Siete Partidas* published by Moreau Lislet with Carleton.²¹⁷ Material both in the Moreau manuscript and in the de la Vergne volume has found its way into these published works. For example, when the de la Vergne volume commented on I.viii.56 that it was a derogation from provisions of the

211. Cf. *Digest*, p. 25, art. 6; p. 43, art. 27; p. 209, art. 3; p. 261, art. 2; p. 349, art. 19; p. 411, art. 3.

212. SMU, ULL, Mouton MS, *supra* note 207, p. 25, arts. 1, 4 (Blackstone is not the “source” of these provisions); WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, 4 vols. (Oxford: Clarendon Press, 1765-1769) (with many subsequent editions).

213. SMU, ULL, Mouton MS, *supra* note 207, p. 49, arts. 20-21, 23.

214. *Id.* pp. 165, art. 91, 481, art. 31, 489, art. 67; JUAN SALA, ILUSTRACIÓN DEL DERECHO REAL DE ESPAÑA (Valencia: Joseph de Orga, 1803) (with several subsequent editions). Moreau cites this work of Sala in LAWS OF LAS SIETE PARTIDAS, *supra* note 102, vol. 1, p. xiii.

215. SMU, ULL, Mouton MS, *supra* note 207, pp. 193, art. 192, 349, art. 16; J.G. HEINECCIUS, ELEMENTA IURIS CIVILIS SECUNDUM ORDINEM PANDECTARUM (Amsterdam: apud Ianssonio-Waesbergios, 1728) (with many subsequent editions).

216. SMU, ULL, Mouton MS, *supra* note 207, p. 261, art. 1.

217. See above.

Partidas, it added: “Mais les principes de la loi civile à cet égard ont été remis en vigueur par l’acte de la Législature du 20 mars 1811 sur la vente des biens des mineurs”.²¹⁸ This was then copied in the translations of the *Partidas*, where the following note appears: “This provision was repealed by art. 56, p. 68, of the Civil Code, but revived by an act of the Legislature of the 20th March 1811.”²¹⁹

In his proposals of 1813 to publish a translation of the *Siete Partidas*, Moreau stated that there would be “a preliminary introduction, which will give an idea of the law system observed in Spain and her colonies, of the several codes published at different times, and which are still in force there, and finally of the authority enjoyed by the Roman and church laws, wherever the Royal laws are silent or deficient”.²²⁰ As well as describing the introduction to the translation of 1820, this also describes the “Avant-Propos” of the de la Vergne volume after its first four paragraphs. Indeed, while the version in the de la Vergne volume is much abbreviated, its relationship to the account of the Spanish law codes in the introduction to the 1820 translation of the *Partidas* is quite evident. Both are clearly linked to Pérez’s “Discurso Preliminar” in the *Teatro*.²²¹ The proposals also state that “[a]t the head of each title, the translation of which will be given, will be placed a list of the several titles of the institutes[,] of the pandects, of the code & the novels of Justinian, of the different Spanish codes, & of the canonical law, as well as the several works treating of the same matter in such as Domat’s civil laws, Pothier’s writings, Febrero’s library, and the Curia philipica”. This suggests a list to some extent resembling the lists at the start of each title of the *Partidas* included in the translations of 1818 and 1820; but it very much more resembles the lists found in the de la Vergne volume at the start of each title of the *Digest*. In the translations, neither Pothier nor Febrero nor the *Curia Philipica* are ever cited in these lists, which focus exclusively on Roman and Spanish or Castilian legislative sources, including Domat as an analytical guide to the civil law (as he indeed was described in the de la Vergne volume), a use for him probably suggested by Moreau’s reading of Pérez’s *Teatro*.²²² In this, these lists also rather

218. De la Vergne volume, opposite p. 69. LSU, Moreau MS, *supra* note 92, p. 69, noted that this article was “derogation [*sic*] a [*sic*] la loi 18.t.16.P.6. et a [*sic*] la loi 4.t.5.P.5. See above.

219. MOREAU & CARLETON, *supra* note 102, p. 91; LAWS OF LAS SIETE PARTIDAS, *supra* note 102, vol. 2, p. 663.

220. LOUISIANA COURIER, *supra* note 101.

221. PÉREZ, *supra* note 108, vol. 1, pp. [I]-LVIII.

222. De la Vergne volume, “Avant-Propos”, 4th paragraph; PÉREZ, *supra* note 108, vol. 1, p. VIII (§ 11).

resemble those in the Moreau manuscript in Baton Rouge and those found in Pérez's *Teatro* on which it drew.²²³

B. Authorship

The text of the de la Vergne volume and its cognate manuscripts can be unhesitatingly ascribed to Moreau Lislet. As well as the specific attributions to Moreau in the St. Paul and Denis manuscripts, and on the cover of the de la Vergne itself, the descent of the de la Vergne manuscript from one in Moreau's hand and the relationship between the manuscripts and Moreau's published translations makes this quite certain.

C. Dates

The relationships that exist between the Moreau manuscript, the de la Vergne volume, the proposals to publish a translation of the *Partidas* into French in early 1813, and the published translations into English of 1818 and 1820, support the view that much of the work on which the de la Vergne volume was ultimately based had been carried out by Moreau in the early 1810s. In April 1813, the translation into French was described as completed.²²⁴

It seems plausible that by this date Moreau had worked his way through the *Digest*, relating it to the *Siete Partidas*, using Pérez's *Teatro* as a guide to the Roman and Spanish sources, perhaps producing the manuscript now in Louisiana State University. Editions of the *Partidas* and the other Spanish codes, such the *Recopilación* and the *Fuero Real*, usually provided cross references to related passages in each other; but Moreau has utilised Pérez's lists of the relevant titles of Roman and Spanish law, also giving the number of "leyes" in each title, an idiosyncrasy with which Pérez's *Teatro* started off its sections on substantive legal topics. Pérez also included relevant passages from Spanish law.²²⁵ Where available, Pérez's lists would have made it relatively easy for Moreau to build up a set of general references for each title of the *Partidas* and indeed for the *Digest*. He could then easily have compiled individual references from these sources for specific articles. Perhaps the occasional citations of Febrero and Domat in the copy of the

223. See above.

224. LOUISIANA COURIER, *supra* note 101. The inventory of his library includes a manuscript translation of the *Partidas*. Franklin, *supra* note 6, p. 408. Whether this was the translation into French or that into English is unclear.

225. I hope to explore further elsewhere Moreau's reliance on the *Teatro*.

Digest in Baton Rouge indicate his starting to collect additional references to add to the basic Roman and Castilian ones.

Given the sources of the *Digest* identified by Batiza—however his work is to be interpreted—Moreau must in any case have been reasonably familiar with this corpus of literature.²²⁶ One can anticipate that, using, where he could, the *Teatro* as a crib, he would have assembled the references relatively quickly. The inventory of his library lists various manuscript, alphabetical and analytical tables of the contents of some of his main sources—including what appears to be a one-volume, manuscript guide to the contents of the *Teatro*.²²⁷ These are presumably products of this work. The year 1814 therefore is perfectly feasible as the year of completion of the text copied out as the de la Vergne volume.

D. Purpose Behind the Manuscript

If the material incorporated in the de la Vergne volume had a complex historical origin, perhaps ultimately originating in the collection of material for the translation of the *Partidas* into French, then the motivations that led to the compilation of the final text may also have been mixed and complicated.

1. Moreau's Personal Aims

It is important first to consider what moved Moreau at a personal level to collect this material together and to go to the effort to have it copied so carefully. Baade has plausibly suggested that Moreau had prepared the de la Vergne volume for publication.²²⁸ Whether this specific copy of his text was meant for the printer or not is uncertain. But that Moreau meant to have the text printed is possible, perhaps even likely. To do so would have been expensive.

Moreau died a relatively poor man.²²⁹ He had not acquired the plantations and land-holdings some of his contemporaries had used to found a fortune. From the time of his arrival in Louisiana he had been keen to supplement his earnings as a lawyer with income from government patronage and other jobs: translator; drafter of the *Digest*; parish judge of New Orleans; attorney-general; attorney for New Orleans; drafter of the Civil Code of 1825; and compiler of a digest of

226. Batiza, *supra* note 13, pp. 32-35.

227. See Franklin, *supra* note 6, p. 409.

228. Baade, *supra* note 24, p. 84.

229. LEVASSEUR, MOREAU LISLET, *supra* note 4, pp. 165-66; Levasseur, *supra* note 4, pp. 262-63.

the statutes of Louisiana in 1828.²³⁰ It was the poor state of his finances that led him to decline the President's appointment of him to the Superior Court.²³¹ The translation of the *Partidas* into French was undoubtedly undertaken for public benefit; but it also had a financial aspect, and was perhaps also calculated to help publicise him as an attorney and thus boost his practice. The publication was to be by subscription. The legislature initially authorised payment of \$7,000 to Moreau and Carleton for the 1820 translation of the *Partidas*.²³² By 1821 it was clear that this would allow them each to clear only \$1,000, so they were granted another \$500 each.²³³

This example suggests that Moreau may have hoped to make money from this type of work. To do so, the text he produced, found in the de la Vergne volume, either would have to have been so useful to attorneys that they would buy it or subscribe to its publication, or it would have had to attract the financial support of the legislature in the manner of the translation of the *Partidas*.

2. The "Avant-Propos"

An important source of information on Moreau's intellectual intentions in compiling this material is the "Avant-Propos". Since the full text is easily obtained elsewhere in two English translations, only parts will be quoted in translation here.²³⁴

230. LEVASSEUR, MOREAU LISLET, *supra* note 4, pp. 115, 117, 118-19, 134-35, 136, 148; Levasseur, *supra* note 4, pp. 232, 234, 240, 244-45, 247, 251. He also translated LEWIS KERR'S EXPOSITION OF THE CRIMINAL LAWS OF THE TERRITORY OF ORLEANS (New Orleans: Bradford & Anderson, 1806), as EXPLICATIONS DES LOIS CRIMINELLES DU TERRITOIRE D'ORLÉANS (New Orleans: Jean Renard, 1806). The two were printed to face one another. *See also* A GENERAL DIGEST OF THE ACTS OF THE LEGISLATURE OF LOUISIANA: PASSED FROM THE YEAR 1804, TO 1827, INCLUSIVE, AND IN FORCE AT THIS LAST PERIOD, 2 vols. (New Orleans: B. Levy, 1828).

231. LEVASSEUR, MOREAU LISLET, *supra* note 4, pp. 120-21; Levasseur, *supra* note 4, pp. 235-36.

232. An Act To Authorize and Encourage the Translation of Such Parts of the Partidas as Are Considered To Have the Force of Law in This State, 3 March 1819, *in* ACTS PASSED AT THE FIRST SESSION OF THE FOURTH LEGISLATURE OF THE STATE OF LOUISIANA pp. 44-47 (New Orleans: J.C. de St. Romes, 1819).

233. Journal of the House of Representatives, 3 Jan. 1821, reported in 8 Jan. 1821 LOUISIANA COURIER, supplement to no. 2077, found on the Web site Civil Law Online at the Civil Law Center, Louisiana State University, <http://www.law.lsu.edu/globals/civillawonline/F1CFB2A4-1372-69E5-F76B657CCAFF5A8D.PDF>; An Act Supplementary to the Several Acts Authorising and Encouraging the Translation of Such Parts of the Partidas as Are Considered To Have the Force of Law in This State, 19th January 1821, ACTS PASSED AT THE FIRST SESSION OF THE FIFTH LEGISLATURE OF THE STATE OF LOUISIANA pp. 22-23 (New Orleans: J.C. de St. Romes, 1821).

234. *See* Dainow, *supra* note 7, pp. 44-49; Franklin, *supra* note 7, pp. 39-42. Dainow includes the French in footnotes.

Preface

The aim of this work is to make known by notes written on the blank pages attached to the Digest of the Laws of this State which are the texts of the civil and Spanish laws that have some connection with them [“qui y ont quelque rapport”].²³⁵

To this end, one will find next to the English text a general list of all the titles of Roman and Spanish law that relate to the matters dealt with in each chapter of the Digest, and next to the French text, article by article, the citation of the principal laws of the various codes from which are drawn the provisions of our local *statut*.²³⁶

In citing the laws which have some connection [“qui ont quelque rapport”] with the different articles of the Digest, one has not restricted oneself to similar provisions, but one has there added those which, on the same topic, provide differences in that which they prescribe or which contain exceptions to the general principle there set out.²³⁷

This is, of course, in some ways ambiguous; but it clearly does not state that the references are to the “substantive” sources of the individual articles of the *Digest*. In fact, the paragraphs merely state that the references are to laws that have some connection with the laws found in the *Digest*, while the general lists are merely to laws relating to the material in each chapter of the *Digest*, and the specific citations linked to individual articles are to the various codes from which our “statut local” is drawn.²³⁸ Moreover, Moreau stated that the citations are not only to laws which provide similarly to the articles of the *Digest*, but also to those which provide to the contrary or contain exceptions to the general principle.²³⁹ In other words, both sets of references, whether opposite the

235. “Le but de cet ouvrage est de faire connaitre [*sic*] par des notes [*sic*] écrites sur des pages en blanc attachées [*sic*] au Digeste des Loix de cet Etat, quels sont les textes des loix civiles et Espagnoles, qui y ont quelque rapport.”

236. “À cet effet [*sic*], on trouvera à côté du texte anglais, une liste générale de tous les titres des loix Romaines et Espagnoles, qui sont relatifs aux matières traitées dans chaque chapitre du Digeste, et à côté du texte français et article par article, la citation des principales loix des divers codes, d’où sont tirées les dispositions de notre Statut local.”

237. “On ne s’est pas borné en citant les loix qui ont quelque rapport avec les divers articles du Digeste, de marquer seulement celles qui contiennent des dispositions semblables; mais on y a ajouté celles qui, sur la même matière, offrent des différences dans ce qu’elles prescrivent ou qui contiennent des exceptions au principe général qui y est énoncé.”

238. There has been some discussion of the meaning of this. Basically, is it used as an alternative for *Digest* (our local statute) or does it mean something along the lines of “local state of affairs” or “condition”? See Franklin, *supra* note 7, p. 39; Dainow, *supra* note 7, p. 45; Sweeney, *supra* note 21, pp. 596-601; Pascal, *Sources*, *supra* note 20, pp. 606-07; Levasseur, *supra* note 34, p. 661. This debate adds nothing here, and I do not propose to go into it: see Cairns, *supra* note 25, vol. 2, pp. 648-650.

239. Selective quotation allowed Professor Pascal to interpret the third paragraph’s remarks to this effect as applying only to the references on the recto interleaves facing the English text:

French or English texts, are to similar, equivalent, and contradictory provisions in Roman and Spanish law, not to sources.

It is here important to quote the fourth paragraph of Moreau's "Avant-Propos", as it throws light on what he meant by the "codes" from which our "statut local" are drawn, in the second paragraph:

But since it would have taken too long to refer to the Laws of all the codes of Roman Law ["Droit"] and of Spanish Law ["Droit"], one has contented oneself, as regards the Civil Laws ["Loix"], with citing *Domat*, because one finds on each of the provisions of this work, the texts of Roman Law ["Droit"] from where they are drawn. And as regards Spanish Law ["Droit"], one has believed that it was sufficient to cite the laws of the principal Codes which make it up, such as the *Partidas*, the *Fuero Real* and the *recopilaciones* ["récompilations"] &c. and of referring on each of them to the observations contained in various works which enjoy the greatest authority in the Spanish Courts, that is, the *Librería de Escribaños* of Febrero and the *Curia Philipica* of Don Juan de Hevia Balaños [should be "Bolaños"], the course of Canon and civil law of Pierre Murillo Velarde, entitled "*Cursus Iuris Canonici, hispani et indii*", and the works of Antoine Gomez entitled, "D. Antonii Gomezii varia resolutiones" &c. or ["Gomez Opera" with the additions to each chapter.²⁴⁰

This makes it clear that Domat is cited opposite the French text for his references to Roman law (in the list opposite the English the specific parts of the *Corpus iuris civilis* are cited), and that the other codes to which Moreau is referring are the legislative texts of Castilian law—"los codigos españoles" as they were often known.²⁴¹

Confirming this interpretation of the "Avant-Propos" is my earlier research on the provisions on *puissance maritale*, *puissance paternelle*, *louage des services*, and on the general provisions on contract in the *Digest*. This led me to the conclusion that the citations to authorities on

Pascal, *supra* note 20, p. 607. There is not the slightest warrant for doing so: see Cairns, *supra* note 108, vol. 2, pp. 646-48.

240. "Mais comme il eut été trop long de référer aux Loix de tous les codes du Droit Romain et du Droit Espagnol, on s'est contenté, quant aux Loix civiles, de citer *Domat*, parce qu'on trouve sur chacune des dispositions de cet ouvrage, les textes du Droit Romain où elles sont puisées. Et à l'égard du Droit Espagnol, on a cru qu'il suffisait de citer les loix des principaux codes qui le composent, tels que les *Partidas*, le *Fuero Real* et les *recopilations* &c., et de renvoyer sur chacune d'elles, aux observations contenues dans divers ouvrages qui jouissent de la plus grande autorité dans les Tribunaux Espagnols, savoir, la *Librería de Escribaños* De Febrero et la *Curia Philipica* De Don Juan de Hevia Balaños, le cours du droit canonique et civil de Pierre Murillo Velarde, intitulé "*Cursus Iuris Canonici, hispani et indii*", et les oeuvres d'Antoine Gomez intitulées "D. Antonii Gomezii varia resolutiones" &c. ou ["Gomez opéra [*sic*"] avec des additions à chaque chapitre."

241. I hope to show elsewhere that in the "Avant-Propos", Moreau has drawn on the "Discurso Preliminar" in PÉREZ, *supra* note 108, vol. 1, pp. [I]-LVII.

the *verso* of the interleaves keyed to individual articles are not *in principle* to “sources” of the articles. In reaching this conclusion, I examined not only the individual articles, but also how they operated together to create a general system of rules revealing the general conceptual approach in the relevant areas of the law. I concluded that sometimes the references in the de la Vergne volume are to substantive “sources” (such as Pothier or Louisiana statutes), but much more often they are to equivalent and sometimes conflicting provisions of Roman, Castilian, and French law.²⁴² Indeed, that Moreau excluded all citations to the *Code civil* and its *Projet* inevitably means that the references in his manuscripts simply cannot be intended to be to sources. This is supported by his apparent *ex post facto* use of the *Teatro* to find Roman and Spanish texts equivalent to those in the *Digest*.

Some scholars have ingeniously argued that Moreau’s aim was to conceal or obfuscate the use of French law to create the *Digest*, by providing in the de la Vergne volume a “positive law alibi”.²⁴³ While there is merit in this, as promoting the possibility of Moreau claiming that the *Digest* was Castilian law in French clothing, it has to be weighed against the obviously common knowledge that the *Digest* had been largely based on the *Code civil*.²⁴⁴ Indeed this had been explicitly recognised in a speech in the Territorial Legislature in 1809.²⁴⁵ Further, any careful exploration of Moreau’s text would have shown such an alleged claim to be implausible.

3. Contexts

If analysis of the “Avant-Propos” leaves uncertainty, it is necessary to return to the context in which Moreau drew up these texts. That the manuscripts are closely related to his work in translating the *Partidas* gives the clue.

In the Preface to the translation of 1820, Moreau (and Carleton?) wrote that the *Digest* was a work, the nature of which meant that it “can

242. See Cairns, *supra* note 108, vol. 1, pp. 157-341, vol. 2, pp. 495-573, 615-23, 644-45.

243. Baade, *supra* note 24, p. 84; see also Batiza, *supra* note 24, p. 81 n.22: “to divert attention from the concealed *actual* sources of the 1808 Code—principally, the French Project and Code, and to a lesser degree, Blackstone.” Mitchell Franklin, *Some Considerations of the Existential Force of Roman Law in the Early History of the United States*, 22 BUFFALO L. REV. 69, 73-78 (1972), presents a more ideological version of this. Franklin states (at p. 78): “[T]he aim of [the de la Vergne manuscript] is to overcome by legal method the bourgeois Digest of 1808 by means of the system of legal materials set out in the manuscript.”

244. See, e.g., JEREMIAH BROWN, A SHORT LETTER TO A MEMBER OF CONGRESS CONCERNING THE TERRITORY OF ORLEANS pp. 21-22 (Wash. City: n.p., 1806).

245. Speech of John Hughes, March 1809, reported in *Connecticut Herald*, quoted in George Dargo, *The Digest of 1808: Historical Perspectives*, 24 TUL. EUR. & CIV. L.F. 1 (2009).

only contain general rules and abstract maxims, still leaving many points doubtful in the application of the law”. This made it necessary to go “back to the original source, in order to obtain new and additional light”. Further, he (they?) added that the *Digest* “did not contain many and important provisions of the Spanish laws still in force”, while the Superior Court had decided that the Spanish laws were still in force where not touched by the amendments found in the *Digest*. This meant “that a much greater portion of the Spanish laws remained in force than had been at first supposed”.²⁴⁶

Moreau thus placed the need for the translation of the *Partidas* against the background of the revival of Spanish law by the courts that had taken place after promulgation of the *Digest*.²⁴⁷ This revival also explains the de la Vergne volume and its related manuscripts. These rich texts are not a listing of substantive “sources” (in a narrow sense) of the articles of the *Digest*; they are indeed offering far more. They contain references to and details of provisions of Castilian law not included in the *Digest*. This is particularly obvious in the Moreau manuscript in Louisiana State University. Its margins contain many propositions of law founded in Castilian sources that are not found in the specific articles of *Digest*. Here we can detect influence from Pérez’s *Teatro*. Even the more organised version of Moreau’s text in the de la Vergne manuscript contains discussions of legal points, discursive annotations, and references to laws not directly related to specific articles, with no bearing on “sources”.

In the context of a revival of “Spanish” law, Moreau has taken the individual titles, chapters and articles of the *Digest*, and, drawing on Pérez’s *Teatro*, located them against the Roman law and Castilian codes in his texts in the de la Vergne volume and elsewhere. By doing so, Moreau provided a means of navigating from the titles and articles of the *Digest* to related sources—not “sources” of the individual articles of the *Digest*, but sources now useful in litigating and advising clients.²⁴⁸ In a sense, Moreau has reconstructed the *Digest* as an index to the *Corpus iuris civilis* and “los codigos españoles”. This practical aim explains why

246. LAWS OF LAS SIETE PARTIDAS, *supra* note 102, vol. 1, pp. xxii-xxiii; *see also* MOREAU & CARLETON, *supra* note 102, p. v (“But as many important provisions of the ancient laws of the land still in force are not to be found in that code, and as its principles and maxims are delivered in a manner so succinct as not to be easily understood in their application without mounting to the sources whence they are derived, we hope we have undertaken a work useful to the public and to those who frequent the bar”).

247. *See* Cairns, *supra* note 108, vol. 1, pp. 93-100, vol. 2, pp. 668-82; KILBOURNE, *supra* note 28, pp. 61-95.

248. *See* Cairns, *supra* note 108, vol. 2, pp. 661-65.

the de la Vergne volume contains no citations to the French *Code* and its *Projet*: in this context they would have no immediate utility. But references to Pothier, an important interpreter, whose discussions were often compatible with articles copied from the French *Code*, would be useful.

The de la Vergne volume was thus a practical compilation, not an ideological one, and in line with the other useful texts Moreau produced or intended to produce. It was a similar practical impulse that led to the cumulative annotations of the Mouton manuscript, albeit sometimes referring to different sources, or to the addition of references to the *Code* of 1825 in the Bermudez manuscript.²⁴⁹ It was this usefulness that led to copies being made of his text and their being passed on, sometimes through individuals, and sometimes in law firms.²⁵⁰ It explains why Moreau may even have contemplated having the volume printed for sale. The de la Vergne volume was intended to be a guide for lawyers to help them develop arguments and make fruitful use of the *Digest* in the context of the revival of Spanish law by the courts.

249. There are other copies with practical annotations.

250. See Palmer, *supra* note 37, p. 307; PALMER, *supra* note 36, p. 25. See above on the Bermudez MS, *supra* note 184, having belonged to a New Orleans law firm.