"Adapted to Its Present System of Government": Legal Change, National Reorganization, and the Louisiana Civil Law Digest

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I. INTRODUCTION

In his final annual message, Thomas Jefferson made no reference to Louisiana. He delivered the message to Congress on November 8, 1808, less than five years after the United States took charge of the territory acquired through the Louisiana Purchase, and yet the West was almost entirely absent from Jefferson's concerns. That may seem like something of an affront, especially following years in which the residents of Louisiana had complained about various slights and insults by the federal government. Besides, in all his previous annual messages since 1803, Jefferson had called conspicuous attention to events in Louisiana. Now he was silent. Worst of all for our purposes at this conference, in his last public statement on the state the union, Jefferson made no reference to the Civil Digest.

Of course, Jefferson had plenty of other matters to discuss in his eighth annual message. Rather than focus on the West, Jefferson concerned himself with the East. He addressed the mounting tensions with Great Britain and with the Embargo that Jefferson had imposed on all foreign trade in a desperate and disastrous effort to coerce a change in British policy. Yet there is more to the disappearance of Louisiana than the shadow of Anglo-American tension. Since 1803, Louisiana had commanded so much time and attention because it seemed so dangerous.

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By 1808, some (if not all) of that danger had subsided. From Jefferson's perspective, Louisiana now appeared far less of a national challenge than the diplomatic impasse with Great Britain. And the Civil Digest had been a vital part of that process.

It is Jefferson's perspective from Washington that frames this paper today. So before I get into details, let me explain a few general points. First and foremost, I do not pretend to offer a detailed analysis of the Civil Digest, the legal debates that surrounded it, or the law as it took form in Louisiana. I may be a historian, but I am not a legal historian. The legal foundations and implications of the Civil Digest have already been the subject of a fascinating scholarly literature.[1] I leave it for others to address those matters, drawing on their own expertise in law. Instead, I want to set the Civil Digest in broad context by focusing on the political, institutional, and—to a certain degree at least—the legal concerns that surrounded it.

For want of a better term, my goal is to *exploit* the Civil Digest, to use it as a foundation for my own thinking about how to situate Louisiana's regional development within national development. In the past, I have tried to consider how Louisianans situated themselves in the United States.[2] In this Article, the voice and interests of Louisianans themselves will often take back seat to the concerns of Anglo-American policymakers. A generation ago, George Dargo first considered the complex connections between national politics and legal change in Louisiana. I would like to continue that process here, focusing less on political dispute than institutional development.[3]

From this national perspective, the Civil Digest appears as one in a series of texts created at the turn of the nineteenth century that were

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1. The work of Warren Billings, Mark Fernandez, and Judith Kelleher Schafer has been particularly important in our understanding of the law in early national Louisiana. For selected examples, see A LAW UNTO ITSELF? ESSAYS IN THE NEW LOUISIANA LEGAL HISTORY (Baton Rouge: La. State Univ. Press, 2001); WARREN M. BILLINGS, FROM THIS SEED: THE STATE CONSTITUTION OF 1812 (Lafayette: Ctr. for La. Studs., Univ. of Southwestern La., 1993); Warren M. Billings, *Origins of Criminal Law in Louisiana*, XXXII LA. HIST. 63-76 (1991); THE HISTORIC RULES OF THE SUPREME COURT OF LOUISIANA 1813-1879 (Lafayette: Ctr. for La. Studs., 1985); Mark F. Fernandez, *The Rules of the Courts of the Territory of Orleans*, XXXVII LA. HIST. 63-86 (1997); MARK F. FERNANDEZ, FROM CHAOS TO CONTINUITY: THE EVOLUTION OF LOUISIANA'S JUDICIAL SYSTEM, 1712-1862 (Baton Rouge: La. State Univ. Press, 2001); JUDITH KELLEHER SCHAFER, SLAVERY, THE CIVIL LAW, AND THE SUPREME COURT OF LOUISIANA (La. State Univ. Press, 1994, 1993).

2. These are themes I have most thoroughly explored in PETER J. KASTOR, THE NATION'S CRUCIBLE: THE LOUISIANA PURCHASE AND THE CREATION OF AMERICA (New Haven: Yale Univ. Press, 2004).

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

specifically designed to define or to reconstitute the nature of government in the United States. Much of that effort was directed toward the West, where national institutions remained weak and where the rules of citizenship and community were up for grabs. But it was hardly limited to the West or to westerners. Instead, it was part of a broader project that Jefferson and the Democratic-Republicans brought with them to Washington after the election of 1800. It remained in place during the years that followed, and it was a process that seemed well under way by the time Jefferson ignored Louisiana in his annual message of 1808.

I would like to focus my discussion on three areas of national reform pursued by the Jefferson administration and by the authors of the Civil Digest: land ownership (both personal and national), racial supremacy, and self-government. These themes are rarely the center of most discussion of the Civil Digest, but that is exactly my point. The Civil Digest assumes different dimensions and helps make sense of different themes when set in this context. Likewise, the Civil Digest looks different when situated alongside a series of other texts such as the Northwest Ordinance of 1787, the Kentucky Constitution of 1799, the Governance Acts of 1804 and 1805, and the federal Land Title Act of 1805. When placed in an orbit around the Civil Digest, these texts come together to explain how Americans hoped to build institutions of government and define what it would mean to be an American.

For my purposes, I will use "Louisiana" and the Territory of Orleans interchangeably, both of them referring to the place that became the State of Louisiana. I emphasize this point because I will periodically situate the Territory of Orleans alongside the Territory of Louisiana, the vast region containing all the other territory acquired through the Louisiana Purchase. I do so not simply because I *live* in that territory (St. Louis was, after all, the capital of Upper Louisiana just as New Orleans was the capital of Lower Louisiana), but also because the meaning of the Civil Digest only makes sense when situated alongside similar legal and institutional changes in the Territory of Louisiana.

To this let me add one final explanatory comment. My focus on the texts of legal, institutional, and constitutional change emerges in no small part from the fact that the political and diplomatic context surrounding Louisiana is a matter that historians have long studied and one that historians of Louisiana have long accepted. The Mississippi Crisis, the negotiations for the Louisiana Purchase, the Federalists' opposition to Jefferson's policies, and the emerging political disputes within Louisiana

have already received numerous, revealing treatments by historians.[4] As a result, I am less concerned with those immensely important developments in the nation's *political* structure than I am with changes in the nation's *institutional* structure.

The Civil Digest stood at the center of that process, indicating what would be possible in an American Louisiana. My analysis follows accordingly. I have framed my discussion around the possibilities that Anglo-American policymakers and white Louisianans—especially attorneys—could imagine in the Civil Digest. At the same time, I conclude each section by considering how the Civil Digest helped close other possibilities in this critical period. Borrowing from the full title of the Civil Digest, law in Louisiana was indeed "Adapted to Its Present System of Government." But that government itself was undergoing radical change, both locally and nationally. If the law was adapted to government, people would have to adapt themselves to the law.

II. LAND OWNERSHIP

> *Things which belong to each individual respectively, form private estates and riches.*
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> —Book II, Title I, Ch. 1, Art 10

Property was no small affair in Louisiana. Indeed, Louisiana itself was suspect property, for the terms and boundaries of the Louisiana Purchase had been so vague that Americans argued about what they had bought from France, both among themselves and with the leaders of Europe.

Much of the Civil Digest concerns itself with fundamentally commercial and social relationships: contracts, marriage, and inheritance. Some of the most detailed discussion concerns movable property, the "things" that the Digest devotes so much time to defining. Yet the Digest also concerned itself with landed property; more specifically, the western land that was undergoing a political revolution in the late-eighteenth and early nineteenth centuries. The authors of the Digest were themselves actors in a broader process through which the United States sought to create the political and institutional mechanisms to secure an orderly process of expansion into the West. In the context of land ownership and expansion, the Civil Digest existed alongside two other

4. The two books that now usually constitute the point of departure for these discussions are ALEXANDER DECONDE, THIS AFFAIR OF LOUISIANA (N.Y.: Charles Scribner's Sons, 1976); JOHN KUKLA, A WILDERNESS SO IMMENSE: THE LOUISIANA PURCHASE AND THE DESTINY OF AMERICA (N.Y.: Knopf, 2003).

pieces of legislation: the Land Ordinance of 1785 and the Land Title Act of 1805.[5] Together with the Civil Digest, this legislation sought to impose order onto the West and to provide a process for converting the public domain into private property.

In the early 1780s, among the chief concerns of American policymakers was the acquisition of property in the West, both individual and national. Although white settlers enthusiastically moved to the Transappalachian West by the thousands, American policymakers were more circumspect. In addition to their fears that individual states or the national government lacked the institutional capacity to govern the West, policymakers worried that the speculative bonanza could lead to heated arguments and specious land claims. The West also seemed to be a place beyond law. By eighteenth-century definition, frontiers were the places where the regulatory capacity of the state gave way to savagery. The events of the 1780s and '90s seemed to confirm their fears. States ceded valuable western land to the Continental Congress in part because those states either could not establish control in the West or could not cover the excessive costs of western government. Meanwhile, federalists argued that even the Continental Congress was equally incapable of western government, claiming that only a federal government created through the Constitution would have the means to establish law and order in the West.[6]

In the midst of all this political debate, Americans laid claim to the frontiers of the union. They immediately unleashed a battle that pit settler families against speculators and local customs against law itself. Although the battle for land ownership had different regional dimensions, certain commonalities quickly emerged. Speculators believed their claims—often through large purchase or land grants from the old colonial governments or the new states—established clear title to property. In turn, they argued that an orderly process of sale under their direction to local settlers would be in the best interest of all. Settlers were often unwilling to accept the speculators' terms. Still others simply squatted on vacant land, applying an older definition of ownership rooted

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5. *An Ordinance for Ascertaining the Mode of Disposing of Lands in the Western Territory, 20 May 1785*, *in* 28 JOURNALS OF THE CONTINENTAL CONGRESS 375-81 (John C. Fitzpatrick et. al. eds., Wash.: Government Printing Office, 1933) (thirty-four volumes); *An Act for Ascertaining and Adjusting the Titles and Claims to Land, with the Territory of Orleans, and the District of Louisiana, 2 March 1805*, *in* 2 STATUTES AT LARGE 324-29 (1805).

6. PETER S. ONUF, THE ORIGINS OF THE FEDERAL REPUBLIC: JURISDICTIONAL CONTROVERSIES IN THE UNITED STATES, 1775-1787 (Phila.: Univ. of Pa. Press, 1983); PETER S. ONUF, STATEHOOD AND UNION: A HISTORY OF THE NORTHWEST ORDINANCE 1-43 (Bloomington: Ind. Univ. Press, 1987) [hereinafter ONUF, STATEHOOD AND UNION].

in Anglo-American law that improvement alone could constitute ownership.[7]

When the Continental Congress and the federal government interceded in the matter, they did so in a way that was supposed to satisfy both parties, but one that in the end sought to establish that the rule of law—rather than any other tradition or customary procedure—would establish the description and use of property. The Land Ordinance of 1785 instituted a process for surveying, subdividing, and selling the Northwest Territory. The system was supposed to accelerate the process through which settler families acquired land and reduce the power of speculators. A decade later, however, the two emerging political camps that congealed into the Federalists and Democratic Republicans were still arguing about the implementation of this law. Federalists considered the speculators to be a moderating force that helped preserve order in a region where the natural impulses of settlers would lead to chaos. Democratic-Republicans agreed with settlers, who claimed that speculators were preserving both property and power to themselves.[8]

After 1801, territorial governance under the Jefferson administration focused considerable attention on securing land claims and expediting the sale of public lands to individual settlers. This was abundantly clear in the work of the man who later played a pivotal role in extending the Democratic-Republicans' vision to Louisiana. Establishing the legal foundations of land ownership was among William C.C. Claiborne's chief concerns during his two-year tenure as governor of the Mississippi Territory. In July 1802, Secretary of State James Madison dispatched a lengthy set of instructions to Claiborne governing the confirmation of land claims in Mississippi. Madison recognized that local landholders had claims rooted in Spanish, British, and U.S. law. Furthermore, there were conflicting claims to sovereignty by Indian villages and European powers. Madison advised Claiborne to be cautious. "In calling for the information . . . it will occur to you as proper to use a language neither committing the Government on one hand, nor

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7. STEPHEN ARON, HOW THE WEST WAS LOST: THE TRANSFORMATION OF KENTUCKY FROM DANIEL BOONE TO HENRY CLAY 60-67 (Balt.: Johns Hopkins Univ. Press, 1996); ANDREW R.L. CAYTON, THE FRONTIER REPUBLIC: IDEOLOGY AND POLITICS IN THE OHIO COUNTRY 3-12 (Kent: Kent State Univ. Press, 1986); RACHEL N. KLEIN, UNIFICATION OF A SLAVE STATE: THE RISE OF THE PLANTER CLASS IN THE SOUTH CAROLINA BACKCOUNTRY, 1760-1808 (Chapel Hill: Univ. of N.C. Press, 1990); ALAN TAYLOR, LIBERTY MEN AND GREAT PROPRIETORS: THE REVOLUTIONARY SETTLEMENT ON THE MAINE FRONTIER, 1760-1820, at 18-30 (Chapel Hill: Univ. of N.C. Press, 1990).

8. Andrew R.L. Cayton, *Land, Power, and Reputation: The Cultural Dimension of Politics in the Ohio Country*, 3d. ser. XLVII WILLIAM & MARY Q. 51-67 (1990); CAYTON, *supra* note 7, at 51-67.

dampening expectations too much on the other. It being not certain what degree of strictness or liberality may be expected by Congress."[9] Claiborne's experience in Mississippi and his proximity to Louisiana made him ideally poised to serve as the only governor of the Territory of Louisiana and the federal government's point-man in the Southwest borderlands.

The complex nature of landed property in Louisiana came as no surprise to American policymakers, including both Madison and Claiborne. They were alarmed by French and Spanish land grants awarded informally by colonial officials, often without the written deeds required by federal law. Congress responded by passing the Land Title Act of 1805. The Act nullified Spanish claims after the retrocession to France (an adroit political maneuver which reinforced the American argument that in the retrocession Spain surrendered any legitimate claim to Louisiana) except for small grants where owners had actually assumed residence. Spanish grants issued after October 1, 1800, required re-authorization. People who received land grants before the Spanish takeover would likewise need to confirm their claims by submitting specific documentation to U.S. officials.[10]

But the Land Title Act of 1805 worked better in theory than practice. Land claim commissioners found that few landholders possessed the necessary documentation to meet federal requirements, but they rarely stripped settlers or planters of their property. Secretary of the Treasury Albert Gallatin acknowledged the potential for difficulty in his instructions to the first land claims commissioners. "It is not in my power to give any specific instructions, which may assist the Agent, in repelling fraudulent and unfounded claims . . . and I can only say, that the attention of the Agent should be peculiarly bestowed on a critical investigation of large, unusual, or late grants." Among those commissioners was James Brown, one of the co-authors of the Civil Digest.[11]

Meanwhile, Louisianans continued to worry that the federal government might yet redefine property in ways that would leave them without land and unable to compete against Anglo-American systems of

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9. *James Madison William C.C. Claiborne, 26 July 1802*, *in* 5 THE TERRITORIAL PAPERS OF THE UNITED STATES 157 (Clarence Edward Carter ed., Wash.: Government Printing Office, 1934-1975).

10. 2 THE PUBLIC STATUTES AT LARGE OF THE UNITED STATES OF AMERICA 324-29 (Boston: Charles C. Little & James Brown, 1845); HARRY LEWIS COLES, HISTORY OF THE ADMINISTRATION OF FEDERAL LAND POLICIES AND LAND TENURE IN LOUISIANA 1803-1860, at 10-13 (N.Y.: Arno Press, 1979).

11. Albert Gallatin to Allan Bowie Magruder, James Brown, and Felix Grundy (8 July 1805), *reprinted in* 9 THE TERRITORIAL PAPERS OF THE UNITED STATES, *supra* note 8, at 468.

law. Unfamiliar with the particulars of common law practice, Louisianans worried that Americans might seize control of the most desirable lands. Louisiana lawyers likewise worried that they might be unable to compete with American lawyers in a court room dominated by the common law. Similar fears abounded in the Territory of Louisiana, home to a similar system of colonial land ownership and the site of similar reform efforts by the United States. With almost no attorneys in place who had trained in French or Spanish law, an influx of Anglo-American attorneys immediately took control of the territory's legal system. The old French residents likewise felt themselves squeezed out by Anglo-American land speculators.[12]

In these circumstances—where the land itself seemed to defy definition—all participants were eager to establish a system that would indicate who owned what. The Civil Digest formed a crucial step in connecting federal policy to local implementation. In key provisions that defined the acquisition, certification, and transfer of property in general, the Civil Digest helped to effectuate the federal policy of landed property in particular. For Louisianans, however, it also validated existing property claims, confirming that property relationships established under the French and Spanish would remain in place in an American Louisiana.

A similar process was at work throughout the frontiers of the union. Territorial and state legislatures sought to streamline and clarify land ownership in ways that often generated local disputes. Although other western states rarely created legal codes as elaborate as the Civil Digest, they nonetheless enacted detailed systems designed to establish rules for landed property. In theory, these laws all sought to realize the Jeffersonian vision of a nation where citizens secured both political opportunity for individuals (usually white men) and prosperity for entire families through unquestionable title to land. Yet land ownership remained messy in ways that defied the claims of politicians and attorneys alike. Meanwhile, the very system they sought to create often collided with the aspirations of settlers.[13]

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12. WILLIAM E. FOLEY, THE GENESIS OF MISSOURI: FROM WILDERNESS OUTPOST TO STATEHOOD 142-45 (Columbia: Univ. of Mo. Press, 1989); EDWARD T. PRICE, DIVIDING THE LAND: EARLY AMERICAN BEGINNINGS OF OUR PRIVATE PROPERTY MOSAIC 289-304 (Chi.: Univ. of Chi. Press, 1995).

13. ARON, *supra* note 7; MICHAEL A. BELLESILES, REVOLUTIONARY OUTLAWS: ETHAN ALLEN AND THE STRUGGLE FOR INDEPENDENCE ON THE EARLY AMERICAN FRONTIER (Charlottesville: Univ. Press of Va., 1993); Cayton, *supra* note 8, at 266-86; MALCOLM J. ROHRBOUGH, THE LAND OFFICE BUSINESS: THE SETTLEMENT AND ADMINISTRATION OF AMERICAN PUBLIC LANDS, 1789-1837 (N.Y.: Oxford Univ. Press, 1968).

Throughout the West, land title remained ambiguous at best. The trying process of settling land claims continued at its slow pace, connecting the territorial period to statehood in a single narrative of frustration and delay. As late as 1820, a resolution by the Louisiana General Assembly to Congress proclaimed that outstanding land disputes "arrests the hand of improvement, and weakens the energies of enterprise and industry, which flourish in their natural vigor on a soil where the title thereof is indisputable."[14] While claims were never settled in accord with the ambitious goals of the Land Act of 1805, the Civil Digest provided rules that governed how people used land once they established title.

Meanwhile, thousands of settlers ignored federal and state law. Squatters continued to assert their right to own the land they had improved. Settlers claimed that administrative errors by public officials could not result in eviction. In neighboring Mississippi, these matters exploded in 1808. Thomas Freeman, the chief federal surveyor and public lands administrator in the Mississippi Territory, attempted to evict settlers who had ignored standard rules for the sale of federal lands. "With respect to intruders on the public lands," he informed Gallatin, "there are an abundance of them." Freeman considered them "quiet, peaceable, *extremely industrious*, and fully sensible of their situation with respect to their government." Approximately 600 families were in place, many of which had already set about farming. Nonetheless, Freeman expressed no hesitation about enforcing orders from Jefferson and Gallatin that he evict all settlers who could not establish a legal land title.[15]

Freeman's ambivalence toward the squatters reflected the broader ambiguity at work in western land policy. In theory, land ownership recognized in accordance with the Land Title Act of 1805 and the Civil Digest would impose order onto chaos and secure property itself. At the same time, it extended into Louisiana a national process through which the law privileged some landholders at the expense of others. Many western states did indeed provide white settlers with access to landed property on a scale unprecedented in Europe, or for that matter in the eastern United States. At the same time, many of those settlers found they had to acquire land on terms established by speculators, attorneys,

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14. Resolution to Congress, 23 February 1820, *reprinted in* 3 AMERICAN STATE PAPERS: DOCUMENTS, LEGISLATIVE AND EXECUTIVE, OF THE CONGRESS OF THE UNITED STATES 379-81 (Wash.: Gales & Seaton, 1832-61) [hereinafter AMERICAN STATE PAPERS].

15. *Letter from the Secretary of the Treasury Transmitting a Report Prepared in Obedience to a Resolution of the First Instant, Requesting Information Touching an Settlement Contrary to Law, on the Public Lands in the County of Madison in Mississippi Territory* (Wash.: 1809).

and public officials. And in keeping with Jefferson's own perception, power followed land ownership. By midcentury, Louisiana and nearby states like Mississippi, Missouri, and Kentucky were home to wealthy elites with immense political power. That power rested on the foundation of land-ownership and the legal system that sustained it.

III. RACIAL SUPREMACY

> *A slave is one who is in the power of a master and who belongs to him in such a manner, that the master may sell him, dispose of his person, his industry and his labor, and who can do nothing, possess nothing, nor acquire any thing, but what must belong to his master.*
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> —Civil Digest, Book I, Title I, Chapter III, Article 13

In this one statement, the Civil Digest captured not only the power hierarchies of slavery, but also the challenge of situating Louisiana within the complexities of enslavement in the Atlantic world. Was a slave a person or property? Did slaves enjoy any legal protection? Was the power of masters absolute? All of these questions were on the table in early national Louisiana, making the ownership of human property seemingly no less tenuous than the ownership of landed property.

Once again, the Civil Digest existed alongside other landmark pieces of local and national legislation. In Louisiana race law, the Civil Digest was merely an ancillary clarifier to the more important and more broad-reaching Black Code of 1806. Scholars have only recently begun to explore the connections between the Black Code and Civil Digest, primarily because the two documents seem to serve different purposes. Instead, historians usually connect the Black Code of 1806 to the Code Noir of 1724, and not without good reason. Both documents contributed to a regional racial system that operated by elaborate rules. At the same time, however, it is equally appropriate to consider the Black Code alongside the Civil Digest, with both texts making sense primarily through the connections to the local history of Louisiana, the regional history of the Americas, and the national history of a United States where racial regulation was a top priority of the federal government.

Vernon Palmer and Rebecca Scott's work in this Volume stand out as examples of the ways that historians are situating the Black Code alongside the Civil Digest.[16] Palmer's work in particular details the ways in which the Black Code sought to impose new restrictions onto African

16. *See* Vernon Valentine Palmer, *Strange Science of Codifying Slavery*, 24 TUL. EUR. & CIV. L.F. 83 (2009); Rebecca J. Scott, "*She . . . Refuses To Deliver Up Herself as the Slave of Your Petitioner": Émigrés, Enslavement, and the 1808 Louisiana* Digest of the Civil Laws, 24 TUL. EUR. & CIV. L.F. 115 (2009).

Americans, and how the Civil Code later refined those rules. Those shifts in Louisiana law emerged in part from Louisiana's legal community, but they also responded to the concerns of the federal administration in Washington. To the Jefferson administration and to its subordinates in Louisiana, the racial provisions of the Black Code and the Civil Digest were vital components of a broader national effort to secure their own vision of a racial hierarchy at a moment when national and international developments combined to make white supremacy appear particularly insecure.

The systems of racial control were particularly in flux in the years immediately before the Civil Digest. Although the Code Noir had established certain restrictions in the early eighteenth century, the evolution of customary racial practice in the intervening decades and the legal uncertainty unleashed by the dramatic geopolitical changes during the decade before the Civil Digest had undermined many of those provisions. The Black Code emerged accordingly from the ambiguity of race and slavery in early national Louisiana. In the final years of colonial rule, Louisiana became home to a caste system where non-whites enjoyed opportunities for freedom and prosperity unequaled in the United States. While historians have long asked whether the French and Spanish slave systems were somehow less brutal than their British and Anglo-American counterparts, more recent scholarship has suggested that Louisiana's particular system emerged less from distinct legal traditions than from the capacity of non-whites to exploit local and international contingency to their own benefit. Throughout most of the eighteenth century, Louisiana was a colonial backwater that attracted few settlers and received only limited resources from either France or the Spain. At the same, the Lower Mississippi Valley remained a strategically vital location located at the confluence of French, Spanish, and British imperial ambitions. These conditions combined to benefit of non-whites. The institutional control over slaves remained weaker than in other colonies, regardless of their imperial masters. Free people of color became crucial to the regional economy, building complex relationships with whites. During the French period, Indians effectively exploited imperial tensions to secure their own autonomy, although the decades of Spanish rule stripped Indians of this vital diplomatic tool.[17]

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17. The scholarship of slavery in Louisiana has become a vast subject unto itself. For selected studies exploring these issues, see Hans W. Baade, *The Law of Slavery in Spanish Louisiana*, *in* LOUISIANA'S LEGAL HERITAGE 43-86 (Edward F. Haas, Jr., ed., Pensacola: Perdido Bay Press, 1983); IRA BERLIN, MANY THOUSANDS GONE: THE FIRST TWO CENTURIES OF SLAVERY IN NORTH AMERICA (Cambridge: Belknap Press, 1999); GWENDOLYN MIDLO HALL, AFRICANS IN

These circumstances only became more pronounced in the immediate aftermath of the Louisiana Purchase. Slaves manipulated the tenuous federal control in Louisiana to run away in large numbers. The colonial militias that had long helped capture runaway slaves were in disarray as the territorial administration took shape. The United States Army maintained a small number of troops on the western and eastern borders of the Territory of Orleans, but officers complained that they were limited in their ability to secure runaway slaves. The contested borders of Louisiana only made things more difficult. Spanish officials often welcomed runaway slaves and specifically rejected American demands for their return. Meanwhile, slaves manipulated the legal structure itself. They took advantage of Spanish laws and customary practices from the final years of colonial rule to successfully demand their freedom in court.[18]

Free people of color made their own demands for citizenship. They did so in part because Louisiana already had a long tradition of free black political protest.[19] But the Purchase, with its vaguely defined promises that all inhabitants would enjoy citizenship, gave free people of color sufficient leeway to claim that American notions of freedom and equality should apply to them. In January 1804, for example, a gathering of free people of color proclaimed that "We are duly sensible that our personal and political freedom is thereby assured to us for ever, and we are also impressed with the fullest confidence in the Justice and Liberality of the Government towards every Class of Citizens which they have here taken under their Protection." This was much a demand on the federal government as it was a promise of loyalty.[20]

The federal leadership strongly rejected this state of affairs. The Louisiana Purchase came in the midst of a renewed federal effort to

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COLONIAL LOUISIANA: THE DEVELOPMENT OF AFRO-CREOLE CULTURE IN THE EIGHTEENTH CENTURY (Baton Rouge: La. State Univ. Press, 1992); THOMAS N. INGERSOLL, MAMMON AND MANON IN EARLY NEW ORLEANS: THE FIRST SLAVE SOCIETY IN THE DEEP SOUTH (Knoxville: Univ. of Tenn. Press, 1999); David C. Rankin, *The Tannenbaum Thesis Reconsidered: Slavery and Race Relations in Antebellum Louisiana*, XVIII SO. STUDS. (1979). For studies of the broader racial contingency in colonial Louisiana, see BERLIN, *supra* note 17; F. TODD SMITH, THE CADDO INDIANS: TRIBES AT THE CONVERGENCE OF EMPIRES, 1542-1854 (College Station: Tex. A&M Press, 1995); DANIEL H. USNER, JR., INDIANS, SETTLERS, & SLAVES IN A FRONTIER EXCHANGE ECONOMY (Univ. of N.C. Press, 1992).

18. Baade, *supra* note 17; KASTOR, *supra* note 2, at 62-66.

19. CARYN COSSÉ BELL, REVOLUTION, ROMANTICISM, AND THE AFRO-CREOLE PROTEST TRADITION IN LOUISIANA 1718-1868 (Baton Rouge: La. State Univ. Press, 1997); KIMBERLY S. HANGER, BOUNDED LIVES, BOUNDED PLACES: FREE BLACK SOCIETY IN COLONIAL NEW ORLEANS, 1769-1803 (Durham: Duke Univ. Press, 1997); INGERSOLL, *supra* note 17.

20. Address from the Free People of Color, January 1804, *reprinted in* 9 THE TERRITORIAL PAPERS OF THE UNITED STATES, *supra* note 8, at 174.

secure slavery and preserve racial hierarchy. The Federalists had hardly wavered on the subject, but the Democratic-Republicans were particularly committed to the project of racial supremacy, in no small part because so much of their leadership came from Virginia. Historians have long emphasized the Saint-Domingue Revolt and Gabriel's Rebellion, events that terrified Virginians like Jefferson, Madison, and Monroe.[21] But the concerns about slavery—and the calls for reform in race law—preceded these events, and for that matter the Louisiana Purchase. At the turn of the nineteenth century, a series of states took steps to redefine the law of slavery. Over the ten years preceding the Civil Digest, Kentucky, Mississippi, South Carolina, and Virginia all sought to overhaul the rules of race and slavery through constitutional revision or legislative action. The men who governed early territorial Louisiana—whether they were administration officials in Washington or their subordinates in the Southwest—were all devoted to preserving racial supremacy and saw legal and institutional change as the means to that end.[22]

Federal leaders also found ready allies in white Louisianans. In 1804, for example, residents of Pointe Coupée rushed a petition to Claiborne with 105 signatures reporting that "[t]he revolution of St. Domingo and other Places had become common amongs [sic] our Blacks—A Spirit of Revolt and Mutyny has Crept in amongst Them." Claiborne agreed that a "Spirit of Insurrection [has spread] among the Negroes at Point Coupee."[23] Public officials throughout Louisiana—

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21. DOUGLAS R. EGERTON, GABRIEL'S REBELLION: THE VIRGINIA SLAVE CONSPIRACIES OF 1800 AND 1802 (Chapel Hill: Univ. of N.C. Press, 1993); Tim Matthewson, *Thomas Jefferson and Haiti*, LXI J. OF SO. HIST. 209-49 (1995); Peter S. Onuf, *"To Declare Them a Free and Independent People": Race, Slavery, and National Identity in Jefferson's Thought*, XVIII J. OF EARLY REPUBLIC 1-46 (1998).

22. SOUTH CAROLINA, ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY, OF THE STATE OF SOUTH CAROLINA, PASSED IN DECEMBER, 1800, at 18-26 (Columbia [S.C.]: Daniel & J.J. Faust, 1801); *see also* DENNIS C. ROUSEY, POLICING THE SOUTHERN CITY: NEW ORLEANS 1805-1889 (Baton Rouge: La. State Univ. Press, 1996); PHILIP J. SCHWARTZ, SLAVE LAWS IN VIRGINIA (Athens: Univ. of Ga. Press, 1996); JEFFREY ROBERT YOUNG, DOMESTICATING SLAVERY: THE MASTER CLASS IN GEORGIA AND SOUTH CAROLINA, 1670-1837, at 119-24 (Chapel Hill; London: Univ. of N.C. Press, 1999).

23. Petition to Claiborne by Inhabitants of Pointe Coupée, 9 November 1804, *reprinted in* 9 THE TERRITORIAL PAPERS OF THE UNITED STATES, *supra* note 8, at 326; Claiborne to Richard Butler, 8 November 1804, *reprinted in* 3 THE LETTER BOOKS OF WILLIAM C.C. CLAIBORNE, 1801-1816, at 1 (6 vols.) (Dunbar Rowland ed., Jackson: Mississippi State Archive, 1917); *see also* Claiborne to Civil Commandants, 8 November 1804, *reprinted in* 9 THE TERRITORIAL PAPERS OF THE UNITED STATES, *supra* note 8, at 325-26; Marquis de Casa Calvo to Claiborne, 9 November 1804, *reprinted in* 9 THE TERRITORIAL PAPERS OF THE UNITED STATES, *supra* note 8, at 328-29; John Watkins to the City Council, 14 March 1806, *reprinted in* 2 MESSAGES FROM THE MAYOR TO THE CONSEIL DE VILLE 29-31 (New Orleans: New Orleans Pub. Library Microfilm Collection).

whether Anglo-American newcomers or Francophone Louisianans—complained that slaves resisted the existing laws and that free people of color seemed increasingly presumptuous.

In the years that followed, the territorial government worked in concert with Louisiana planters to create new institutions of racial supremacy. An armed police force in New Orleans, tighter regulation for ports and rivers, military detachments on the borderlands all faced the tasks of capturing runaways and safeguarding against slave revolt.[24] Meanwhile, Louisiana law assumed the task of racial management. That process began in earnest with the Black Code of 1806. At its core the Black Code was designed to reinforce the control of masters over their slaves and to create a clear stratification within the free community by establishing the superiority of whites over free people of color. "As the person of a slave belongs to his master," read Article 16, "no slave can posses any thing in his own right, or dispose in a way of the product of his industry, without the consent of his master." Article 18 carried this notion further. "The condition of a slave being merely a passive one, his subordination to his master and to all who represent him, is not susceptible of any modification or restriction."[25] Consider as well Article 40, which stated that "Free people of color ought never to insult or strike white people, nor presume to conceive themselves equal to the white; but on the contrary that they ought to yield to them in every occasion, and never speak or answer to them but with respect, under the penalty of imprisonment according to the nature of the offense."[26]

The Black Code was as much an injunction for white Louisianans as it was for Afro-Louisianans. Fearful that existing customs might create the conditions for slave revolt, the legislature made clear to slaveowners exactly what behavior was acceptable. "Every inhabitant is prohibited from suffering in his camp, other assemblies than that of his own slaves, under the penalty of paying all the damage which might result to the owner of any strange slave in consequence of such an admittance."[27]

Other territorial legislation reinforced the Black Code. Immediately before passing the Black Code, the territorial legislature imposed severe restrictions on free people of color immigrating from Saint Domingue.

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24. KASTOR, *supra* note 2, at 86-92.

25. *Black Code*, *in* FRANCOIS XAVIER MARTIN, A GENERAL DIGEST OF THE ACTS OF THE LEGISLATURES OF THE LATE TERRITORY OF ORLEANS, AND THE STATE OF LOUISIANA . . . 616 (New Orleans: Peter K. Wagner, 1816).

26. *Id.* at 640-42.

27. *Id.* at 614.

In 1807, the legislature likewise limited the legal means through which slaves could secure their freedom.[28] This legislation sought to achieve various objectives. From the perspective of Louisiana law, it sought to reinstitute principles originally articulated by the Code Noir. From an American perspective, it sought to bring Louisiana into the mainstream of American racial law and public policy. Not only had many state legislatures imposed new restrictions, but the Jefferson administration had committed itself to a territorial policy that would preserve strict racial supremacy and a foreign policy that would specifically prevent Afro-Caribbeans from bringing the Saint Domingue revolt to mainland North America. For both groups, the legislation sought to eliminate both legal and customary practice that had emerged during the era of Spanish rule.

It was in these circumstances that the Civil Digest attempted to further sharpen racial distinctions. The Digest designated "The rules prescribing the police and conduct to be observed with respect to slaves in this territory. . . ." Subsequent provisions made clear that "The slave is incapable of contracting any kind of engagement. He possesses nothing in his own right and can transmit nothing by succession, legacy or otherwise; for whatever he possesses, is his master's property." Finally, the Civil Digest dictated that "No master of slaves shall be compelled either directly or indirectly, to enfranchise any of them." This brief provision immediately invalidated Spanish legal provisions that enabled slaves to secure their freedom against their master's wills.

There was more to these changes than tightening restrictions on slaves. Simply discussing slaves in documents like the Civil Digest reinforced the legal definition of slaves as property rather than people, a vital distinction throughout the United States. Subsequent events in Louisiana proved the difficulty of bringing that goal to reality. In their own petitions for freedom, slaves forced courts of law to acknowledge that they were indeed people. Meanwhile, some Louisiana jurists recognized the dual legal status of slaves. Nonetheless, the territorial leadership and especially the federal leadership intended to eliminate that distinction.[29]

In both the Territory of Orleans and the Territory of Louisiana, slaves nonetheless sought to subvert racial supremacy by using the very

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28. ACTS PASSED AT THE LEGISLATURE OF THE TERRITORY OF ORLEANS (New Orleans: Bradford and Anderson, 1806-1812), 1806, at 126 and 1807, at 82-89, 180. The 1806 law applied only to free *men* of color, not to women and children under fifteen "who shall be supposed to have left the island above named, to fly from the horrors committed during its insurrection."

29. SCHAFER, *supra* note 1.

law of slavery to their benefit. The result takes the form of a heroic story, but one that can distract from the functional purpose of legal texts like the Civil Digest. In general terms, racial codes, state and federal legislation, and state constitutions combined to create a highly effective system for preserving slavery in the United States. Slaveholding states repeatedly passed new racial codes which, over the course and antebellum era, followed a general trajectory of reaffirming the control of masters over slaves and making the legal acquisition of freedom increasingly difficult.

Crafting the Civil Digest had reminded whites that whatever ethnic disputes might separate them, they remain united in their fear of a common enemy. That was no small affair, for Louisiana remained the site of bitter political disputes. Nonetheless, the white commitment to racial solidarity and the creation of new political linkages kept them together. Much of that work happened through law.

IV. SELF-GOVERNMENT

> *A contract is an agreement by which one or more persons oblige themselves to one or more other persons, to give, to do, or not to do a certain thing.*
>
> —Civil Digest, Book III, Title III, Chapter 1, Article 1

What could be a greater sign of cultural conflict than the Louisiana Civil Digest? Indeed, for most historians, that is how the Digest fits within a larger regional history, and not without good reason. After all, the Francophone residents of Louisiana loudly condemned efforts by the federal government to impose an Anglo-American common law system. The territorial leadership and the administration in Washington responded accordingly, lamenting the recalcitrant lawyers and troublemakers of the Louisiana territory.

Yet in the process of crafting law for Louisiana, Americans and Louisianans were just as much engaged in political accommodation as in conflict with one another.[30] There was more to this than the shared commitment to defining physical, landed, and human property. On the banks of the Mississippi and the banks of the Potomac, people sought the means to develop a political system that would preserve a union that seemed pushed to its limits. In the same way that the Land Ordinance of 1785, the Land Title Act of 1805, the Black Code of 1806, and the Civil Digest sought to use the law to preserve order as the United States

30. For a discussion of the law in political context, see DARGO, *supra* note 3.

expanded into the West, so too did the Civil Digest exist alongside other national and local laws that sought to extend civil political discourse into the West.

The central text for this process remained the Northwest Ordinance, the landmark act that defined the nation's future in the West. At first glance, the Northwest Ordinance and the Civil Digest may seem to bear little in common. After all, the Northwest Ordinance was a document of grand planning, the Civil Digest a detailed review of local private law. Taken together, however, both documents formed two ends of the same process through which the United States sought to institutionalize acceptable forms of discourse—including acceptable forms of political dissent—through the formal structures of governance and through the very process of creating those structures.

The Northwest Ordinance emerged from the recent memory of the British imperial system, where American colonists had chafed at—and eventually revolted against—the limitations imposed upon them as peripheral imperial possessions. Rather than reduce newly acquired territories to a subordinate status (the standard operating procedure for European empires), Americans opted for a protracted system of political incorporation that would conclude with the creation of new states that enjoyed jurisdictional equality with the original states of the union. The process of building those states was no less important than their eventual creation. The initial creation of a territorial government appointed entirely by the federal leadership was supposed to establish the foundations of government before the creation of elected offices. Those offices would safeguard liberty by prevented aggregations of power among unaccountable appointees. Equally important, it would provide the requisite experience in self-government. Likewise, the process of crafting a state constitution would not only institutionalize republican government, but also provide one last opportunity for western populations to demonstrate their capacity to govern themselves.[31]

The federal government first tested these principles in Kentucky which, if not constituted through the formal structures of the territorial system, nonetheless underwent a similar process of political self-creation. The successful creation of Ohio in February 1803 provided further evidence that political mobilization by western residents could institutionalize republican government. The party split of the 1790s actually reinforced the need to build political connections between East

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31. JACK P. GREENE, PERIPHERIES AND CENTER: CONSTITUTIONAL DEVELOPMENT IN THE EXTENDED POLITIES OF THE BRITISH EMPIRE AND THE UNITED STATES (N.Y.: Norton, 1986); ONUF, STATEHOOD AND UNION, *supra* note 6, at 44-72.

and West. Federalists and Democratic-Republicans alike sought inroads to the new western settlements. In the end, Democratic-Republicans secured their dominance in Kentucky and Ohio primarily through alliances with local elites who not only opposed the men the Federalists had appointed to high office but who also knew how to deploy democratic rhetoric to gain voter support.[32]

With news of the Louisiana Purchase arriving only months after Congress finalized the creation of Ohio, all of these experiences came into play in Louisiana. As governing officials, the Jefferson administration was keen to apply the institutional mechanisms developed for the Northwest Territory to the land acquired through the Purchase. As political officials, the Democratic-Republicans were likewise eager to build a political base across the Mississippi. The institutional dimensions came first. In the wake of the Purchase, Americans as well as their new fellow-countrymen in Louisiana were deeply concerned about how to build a system of political representation that would permit yet contain political dissent. The Governance Act of 1804, which created a system modeled on the Northwest Ordinance, provided the foundations of electoral government. The response was hardly enthusiastic. In the Territory of Orleans, residents complained that their territorial government lacked any elected offices, despite claims that they possessed a large, cosmopolitan population that was fully prepared to govern itself. In the District of Louisiana, the vast territory to the north, residents complained that they were not even a territory, but rather a subordinate adjunct to the adjacent Indiana Territory.[33]

What followed was a year-long squabble between New Orleans, St. Louis, and Washington. It was a moment of high political debate. Articulating their concerns most powerfully in the 1804 "Remonstrance of the People of Louisiana Against the Political System Adopted by Congress for Them," residents of the Purchase territories charged the federal government devising a system of government that expressly excluded Louisianans from shaping their own political futures.[34]

Yet for all this disagreement, the Remonstrance proved to be a moment of consensus rather than conflict, of political dissent contained rather than unchecked. First and foremost, the Louisianans got what they wanted. In 1805, Congress created an elected legislature in the Territory of Orleans and reconstituted the District of Louisiana as the Territory of

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32. ARON, *supra* note 7, at 102-49; CAYTON, *supra* note 7, at 65-80.

33. FOLEY, *supra* note 12, at 138-50; KASTOR, *supra* note 2, at 57-60.

34. *Remonstrance of the People of Louisiana Against the Political System Adopted by Congress for Them*, *in* 1 AMERICAN STATE PAPERS, *supra* note 14, at 396-405.

Louisiana, complete with its own governor and subordinate structures. Equally important, this political controversy offered a moment of political connection. When a delegation brought their grievances to Washington, they returned complaining that that they "found already established a prepossession of the most unfavorable kind."[35] Perhaps so, but they eventually met with Congressmen, Senators, and even with Jefferson. They had successfully flexed their own political muscle, in no small part because the Jefferson administration was keen to co-opt the residents of Louisiana. Fearful that the whites beyond the Mississippi might support Spanish schemes to evict federal rule, or foment a separatist revolt of their own, the federal government could ill-afford to ignore local elites on the Louisiana frontier. Equally important, the Democratic-Republicans recognized that successfully cultivating good will in the Territory of Orleans could well mean another western ally in Congress and the presidential contest when statehood eventually moved west of the Mississippi.[36]

Although Francophone Louisianans and Anglophone federal officials were still often at odds in the years that followed, by 1808 the federal government and the residents of Louisiana were successfully constructing networks of contact and influence. Much of this effort emerged through the very task of governance. By 1808 some of the very Louisianans who had supported the Remonstrance were serving as federal appointees in pursuit of an effective public policy.[37]

In the context of institutional and political development, the Civil Digest appears as a moment of accommodation rather than conflict. That begins with the very authors of the text.

Louis Moreau-Lislet and James Brown were more than leading attorneys; they were aspiring politicos. Both were also outsiders. Moreau-Lislet was a recent arrival from Saint-Domingue, while Brown came from Kentucky. Brown in particular understood the value of political connections and how institutional growth came together in

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35. ORLEANS GAZETTE (New Orleans), 11 June 1805; *see also* Claiborne to Madison, 18 March 1805, *reprinted in* 9 THE TERRITORIAL PAPERS OF THE UNITED STATES, *supra* note 8, at 420-21.

36. WILLIAM PLUMER, WILLIAM PLUMER'S MEMORANDUM OF PROCEEDINGS IN THE UNITED STATES SENATE 1803-1807, at 222 (N.Y.: Macmillan, 1923); Thomas Jefferson, Fourth Annual Message, 8 November 1804, *reprinted in* 1 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS, 1789-1897, at 371 (James D. Richardson ed., Wash.: Gov't Printing Office, 1896-1899). For details of the meeting between the delegation from Louisiana and Jefferson, see ORLEANS GAZETTE 11 June 1805; PLUMER, *supra*, at 223. Jefferson himself left no record of this meeting. The most detailed analysis of his reaction to the Remonstrance is DUMAS MALONE, JEFFERSON THE PRESIDENT: FIRST TERM 1801-1805, at 360-61 (Boston: Little Brown, 1970).

37. KASTOR, *supra* note 2, at 92-101.

western states. He had helped craft Kentucky's 1799 Constitution, and in 1812 he extended those principles to Louisiana as one of the co-authors of Louisiana's first state constitution. He was also Henry Clay's brother-in-law, and he first arrived in Louisiana to help extend the Clay family's business interests before quickly securing appointment as territorial secretary.[38]

The product of Brown and Moreau-Lislet's collaboration certainly raised concerns among federal observers, who continued to believe that an anomalous legal structure kept Louisiana outside the mainstream of national politics, law, and culture. Nonetheless, crafting that document had shown that Anglo-Americans and Franco-Louisianans could indeed work together on the most contentious issues.

This success in the Territory of Orleans also stood in marked contrast to the Territory of Louisiana, which in 1808 seemed to be spinning out of control. Legal change had in fact come quickly and easily in the North. The absence of an established community of attorneys meant that Anglo-American lawyers and public officials quickly dispensed with local legal traditions in favor of customary procedures in Anglo-American civil law. Although legal customs from the colonial era continued to inform land ownership, slavery and emancipation, and commercial regulation of the fur trade, these were the exceptions that proved the rule of Anglo-American legal dominance.[39]

Yet for all these changes, the Territory of Louisiana seemed to be on the brink of political and institutional collapse. The first two territorial governors—General James Wilkinson and Meriwether Lewis—proved completely incapable of containing local political dissent. Both governors faced widespread accusations of corruption, mismanagement, and incompetence. Their own subordinates complained bitterly, and both governors claimed that those subordinates were merely attempting to secure advancement for themselves. Meanwhile, the local Francophone elite complained of their own political exclusion. Land speculators in both French and American communities were constantly at odds, and neither legal nor political institutions were able to resolve the constant

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38. ALAIN A. LEVASSEUR, LOUIS CASIMIR ELISABETH MOREAU-LISLET, FOSTER FATHER OF LOUISIANA CIVIL LAW (Baton Rouge: La. State Univ., 1996); ROBERT V. REMINI, HENRY CLAY: STATESMAN FOR THE UNION 18, 22, 29, 32-33 (N.Y.: W.W. Norton, 1991).

39. STEPHEN ARON, AMERICAN CONFLUENCE: THE MISSOURI FRONTIER FROM BORDERLAND TO BORDER STATE (Bloomington: Ind. Univ. Press, 2006); Stuart Banner, *The Political Function of the Commons: Changing Conceptions of Property and Sovereignty in Missouri, 1750-1860*, XLI AM. J. OF LEGAL HIST. (1997); CARL J. EKBERG, FRENCH ROOTS IN THE ILLINOIS COUNTRY: THE MISSISSIPPI FRONTIER IN COLONIAL TIMES (Urbana: Univ. of Ill. Press, 1998).

disputes over land ownership. Jefferson allowed Wilkinson's commission to expire without renewal because he considered Wilkinson a political lightening rod who was unable to build alliances with local residents. Lewis, his former secretary and protégé fresh from his success leading the Lewis and Clark Expedition, proved to be a bitter disappointment to Jefferson. Madison had little faith in Lewis, who committed suicide en route to Washington on a desperate bid to explain expenditures that had been rejected by the administration. Most importantly, Jefferson and Madison believed that neither governor had been able to build alliances within the local elite which seemed so important to making federal sovereignty a reality in the West.[40]

Although the Territory of Orleans was ripe with political and legal disputes, by 1808 the legal, political, and institutional structures were far more stable than in the Territory of Louisiana. Equally important are the forms of dissent that were unable to flourish in western territories. The first and most obvious was the ongoing subjugation of non-whites, whether Indians, slaves, or free people of color. Likewise, Louisiana as much as anywhere in the union managed to preserve power within an elite consisting of planters, attorneys, and politicos. A similar process had already occurred in Kentucky, where the 1799 Constitution had effectively co-opted democratic rhetoric in order to preserve elite supremacy. Only a few years later, aspiring landholders and politicians in Maine managed to displace the more established and powerful Federalist elite by joining the Democrat-Republican juggernaut, adopting the language of democracy, and securing both elected office and, eventually, statehood separate from Massachusetts. In the process, however, they simply replaced one elite with another, offering few benefits to the squatters and farmers they claimed to represent.[41]

The notion that Louisianans could collaborate in the pursuit of institutional and political development was no small affair, and everybody in Louisiana knew it. In 1804, a member of Congress had claimed that Louisianans would need to serve "an apprenticeship to liberty," with territorial rule itself providing a form of mass-naturalization.[42] Crafting the Civil Digest was only one of a series of moments in which white Louisianans would display their capacity for self-government and interethnic collaboration. As such, producing the Civil Digest was also a rehearsal for the task of constitution-writing that

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40. FOLEY, *supra* note 12, at 170-82.

41. TAYLOR, *supra* note 7.

42. ANNALS OF CONGRESS: DEBATES AND PROCEEDINGS OF THE CONGRESS OF THE UNITED STATES 8th Congress, 2nd Session, 480 (Wash.: Gales & Seaton, 1834-56).

came four years later. The Louisiana Constitution of 1812 was more than a legal document on par with the Civil Digest. It constituted the final test of a population which, in 1803, had raised serious concerns in Washington.

After 1812, Louisianans unfailingly elected Democratic-Republicans to the House and Senate. To the party leadership, this was more than a partisan victory. Collapsing the distinctions between party and nation, the Democratic-Republicans tended to interpret party loyalty as national loyalty. By the antebellum era, Louisiana was home to a more raucous form of party politics, with Whigs and Democrats battling each other for power within the various ethnic constituencies of Louisiana that were themselves locked in political combat. During the early republic, however, Louisiana seemed to be a model of institutional and political development, all the while creating a system that managed to sustain representative government and elite power.[43]

V. CONCLUSION

Legal scholars have long asked whether the Civil Digest marked a revolutionary, forward-looking change in Louisiana law; a backward-looking defense of local custom; or part of a broader, evolutionary process of interethnic legal development. For my part, I would argue that the Civil Digest was indeed revolutionary, but in political and institutional if not necessarily legal terms.

In its very preservation of local legal custom, the Civil Digest was revolutionary within a broader realm of institutional change in the early American republic. Since 1776, Americans had worried about the capacity of legal institutions to preserve the property claims, racial supremacy, and representative government that were so vital to their definition of liberty. I have emphasized the ways that, for all its distinctiveness within an American legal system, the Civil Digest reveals the varied ways that Americans sought to achieve those goals.

In October 1808, William C.C. Claiborne began distributing copies of the Civil Digest to parish judges throughout the territory of Orleans.[44] Never a big fan of Louisiana's colonial institutions, Claiborne had nonetheless accommodated himself to the unique legal system taking form in Louisiana. In the wake of recent events that included Indian and slave resistance, the Burr Conspiracy and Batture controversy, Spanish

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43. JOSEPH G. TREGLE, LOUISIANA IN THE AGE OF JACKSON: A CLASH OF CULTURES AND PERSONALITIES (Baton Rouge: La. State Univ. Press, 1999).

44. Claiborne to Parish Judges, 4 October 1808, *reprinted in* 4 CLAIBORNE LETTERBOOKS 221 (Dunbar Rowland ed., 1917).

territorial claims and British commercial interference, the Civil Digest was a welcome moment of calm in an otherwise tumultuous era.

And that returns me to the where I began, with the apparent snubbing of the Civil Digest by Thomas Jefferson. Jefferson knew the threats facing Louisiana and the United States all too well. By the end of 1808, however, legal and institutional development were apparently off the radar. The third president, himself an attorney committed to the role of legal institutions, left office so convinced that Louisiana was on the proper legal trajectory that he could ignore it altogether. Perhaps that wasn't the sort of compliment Louisianans wanted, but it was an impressive compliment nonetheless.