colors instead of one. To the public, no difference at all except that it has missed the advantages which the simpler and more businesslike plan would have secured."

As mentioned above, the **Sherman Anti-Trust Act** of 1890 had also a strong bearing on organized labor. The following is example of how it affected labor movement.

The Pullman Strike of 1894

The Pullman strike of 1894 involved a dispute at the model town of Pullman, Illinois, which housed workers of the Pullman Palace Car Company. The idyllic appearance of the town was deceptive. Employees were required to live there, paying rent and utility costs higher than in nearby towns, and buying goods from company stores. During the Depression of 1893, George Pullman laid off 3,000 of 5,800 employees, and cut 25-40 percent of the wages, but not his rent and other charges. When Pullman fired three members of a grievance committee,[3] a strike began on May 11, 1894. Pullman workers had been joining the American Railway Union, founded the previous year by Eugene V. Debs. Once Debs, the secretary-treasurer of the Brotherhood of Locomotive Firemen, had decided that such brotherhoods were too exclusive. He set out to organize an industrial union to include all railway workers. Late in June, the union workers ceased to handle Pullman cars, and by the end of July had tied up most of the roads in the Midwest.

The roads brought strikebreakers from Canada and elsewhere, instructing them to connect mail cars to Pullman cars so that interference with Pullman cars meant also interference with the mails. Attorney-General Richard Olney swore in 3,400 special deputies to keep the trains running, and when clashes occurred between these and some of the strikers, lawless elements exploited the situation. Finally, on July 3, President Cleveland answered an appeal from the railroads, and sent federal troops into the Chicago area, where the strike was based. Illinois Governor John Peter Altgeld insisted that the state could keep order, but Cleveland claimed authority, and a duty to ensure the delivery of the mails.

Meanwhile Olney had got an injunction from the federal district court forbidding any interference with mail or any attempt to restrain interstate commerce; the principle was that a strike or boycott violated the **Sherman Anti-Trust Act.** On July 13, the union called off the strike and on the same day Debs was cited for violating the injunction and sentenced to six months in jail. The Supreme Court upheld the decree in the case of *In re Debs* (1895) on broad grounds of national sovereignty: "The strong arm of national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of mails."

1 Gilded Age – a period of American history between the 1870s and 1890s marked by corruption and profiteering.

2 Progressive Movement – a democratic reform movement against abuses of the Gilded Age industrialists and entrepreneurs.

3 A grievance is any condition that exists which causes any employee to feel that his/her rights have been violated.

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A Historical Account of Louisiana's Civil Law

A Civil Law Island in the United States

McKenna Richards

Every student of the common law learns early on that Louisiana is unique in the United States in being a *civil law* jurisdiction. Most students and lawyers outside Louisiana leave their knowledge at that, and thus miss an opportunity to learn exactly what that difference means, along with the often fascinating story of how an island of Roman law arose in the midst of a common law ocean.

Louisiana's Legal History

Louisiana owes the uniqueness of its legal regime to its colonial history, which saw periods of both French and Spanish rule. When the first European colonists began arriving in the New World in the sixteenth century, North America was soon divided among the English, French, and Spanish empires, each of which imported its language, customs, and laws to its territories. While the English brought their common law, whose development has been continuous from the Norman Conquest in 1066 to this day, law on the continent during this pre-code period consisted of an often confusing mixture of Roman concepts (the *jus commune*), royal decrees, and local ordinances.

In 1682, René-Robert Cavelier, Sieur de la Salle, claimed for France the territory extending from the Mississippi River to the Rocky Mountains between the Gulf of Mexico and the

Canadian border, naming it Louisiana for King Louis XIV. In 1699, Pierre le Moyne, sieur d'Iberville, and his younger brother Jean Baptiste, sieur de Bienville, entered the Mississippi from the Gulf of Mexico, and were led by a group of Indians to a trading post situated in a crescent about one hundred miles above the Gulf. Louis XIV granted a royal charter in 1712, which provided that the Custom of Paris - edicts, ordinances, and customs that formed the law of Paris - would govern the colony. After the death of Louis XIV, Bienville returned to the Mississippi River crescent in 1718 and founded there the city of Nouvelle Orléans, named after Phillippe, duc d'Orléans, regent for the young Louis XV; in 1722 the city became the capital of the colony.

Forty years later, in a secret meeting, Louis XV, heavily in debt from his war with England (the Seven Years' War), sold Louisiana to his cousin, Charles III of Spain, who believed it important to control the vast territory between his holdings in Florida and Mexico. The following year France lost the war, and Canada and all its possessions east of the Mississippi River fell to the English. The French colonists resisted foreign takeover for several years, until 1768, when the Spanish Governor, Don Alexander O'Reilly, put down the French rebellion, took control of the colony, and placed the court system under Spanish rule the following year by an ordinance accompanied by a set of instructions. Although the ordinance clearly established a court system, it is a matter of debate whether his instructions (known as **O'Reilly's Code**) effectively replaced French substantive law with Spanish law in the colony.

Under Spanish rule, the colony prospered as it had never done under French control. Nonetheless, the language and culture, especially of New Orleans, remained French; and the French colonists frequently avoided recourse to the Spanish courts, settling matters among themselves according to French law. Spanish rule came to an end in 1800, when France regained control of the colony for a final, brief period, too brief for the French to retake control of the judiciary.

The United States purchased the Louisiana territory from France in April, 1803, for $15 million, which Napoleon desperately needed to finance his expeditions in Europe. The purchase doubled the size of the United States and prompted a great increase in westward migration; New Orleans drew large numbers of Americans to seek their fortunes in the cotton and river trades. The following year, the Louisiana Purchase was divided into territories, the southernmost of which, called the Territory of Orleans, was admitted to the Union in 1812 as the State of Louisiana. The former French and Spanish colonists (known as Creoles), separated from Americans by nationality, religion, customs, law, politics, and language, considered their civilization superior to that of the newcomers, many of whom they thought of as barbarians. They especially resented what they perceived as the Americans' attitude that Louisiana was a conquered territory to be exploited for their personal benefit. The Anglo-Saxons, for their part, distrusted anyone who did not speak English. Both groups were determined to retain their cultural traditions and lifestyles.

The upper classes of Creole society in the capital of New Orleans retained control over politics in the new territory long enough to resist imposition of Anglo-American law proposed by the state's first governor, W.C.C. Claiborne, a Virginia lawyer appointed by President Jefferson. Interestingly, the main proponent of civil law was not Creole, but a New York lawyer, Edward Livingston, who had recently moved to New Orleans and, upon studying the civil law, had become convinced of its superiority to the common law. Before Livingston could act to prevent the appointment of the Territory of Orleans' first Legislative Council in 1804, the Council enacted legislation dealing with criminal law and civil and criminal procedure, leaving only substantive private law open for civilian influence.

In 1806, the legislature declared that the Territory was to be governed by the Spanish civil law in effect before the

Louisiana Purchase. Governor Claiborne vetoed the declaration, primarily because he believed it to be an affirmation of a chaotic body of medieval rules that were extremely difficult both to ascertain and to apply consistently with the requirements of the **United States Constitution**. The legislature then proposed to prepare a civil code for the Territory, based on the civil law then in effect, and appointed two prominent scholars to draft the code. Two years later, in 1808, the legislature adopted their work, published in French with an English translation, and known alternatively as a "Code" and "Digest" of the existing civil law. Governor Claiborne signed this code into law, as it was heavily inspired by rational principles, specifically France's 1804 **Code Napoléon**, as opposed to being a mere affirmation of existing law. Whether this complied with the legislature's mandate to codify existing law is a topic of much debate, and depends largely on whether **O'Reilly's Code**, discussed above, had repealed French law; nonetheless, it may safely be said that the drafters took Spanish law into account in resolving conflicts between French and Spanish rules. The 1808 Code, as incorporated in the Civil Code of 1825 and its subsequent revisions, remains in effect in Louisiana today.

The 1808 Code, as mentioned above, was unclear as to whether it was a genuine code or merely a digest (the difference being that a code is a comprehensive source of law that supercedes all prior laws, whereas a digest is merely a partial compilation of particular enactments that supercede only conflicting prior laws). Thus, the Code had the unintended effect of adding to the confusion of pre-code French and Spanish law. To simplify the law and achieve the effect intended by a Code, the legislature in 1822 commissioned three scholars, including Edward Livingston, to draft a true code; the following year, they produced a civil code, which was adopted in 1824 and went into force in 1825. This code was even more closely modeled on the **Code Napoléon** than was the 1808 Code, and repealed all prior law.

Like the 1808 Code, the 1825 Code was drafted in French and translated into English. Numerous errors in translation of the 1808 Code had led to additional confusion as to which version would prevail; the 1825 Code did not resolve the question. In 1868, the Louisiana legislature appointed another committee to revise the Civil Code to incorporate years of extraneous legislation; the resulting Code of 1870, substantially the same as the Code of 1825, was published in English only. Nonetheless the prevailing view today is that the 1870 Code, being merely a re-enactment of the 1825 Code, was not intended to change the law, and thus that the French version of the 1825 Code remains relevant in resolving ambiguities. Subsequent revision of the code has been ongoing rather than total, and thus the 1870 Code remains in effect today with substantial revision.

Notwithstanding the significant influence of the civil law tradition, it must be remembered that Louisiana is an American state, and thus is subject to all the requirements of the **U.S. Constitution**, which has brought in many elements of the common law tradition, such as due process and the jury system. Even in the civil law, Louisiana cannot help being influenced by its common law neighbors, and thus has adopted a number of elements alien to the civil law, such as trusts; likewise, most of the **Uniform Commercial Code** has now been adopted. In a more general sense, although the Code is the primary source of law, Louisiana courts are often influenced in their interpretation by precedent to a far greater extent than their counterparts in purely civil law countries.

The Civil Code

The simplest level of divergence between Louisiana and the common law states is in vocabulary. Even where the concepts and rules are substantially the same, a common law lawyer must learn dozens of terms of Roman or French origin, such as *mandate* for *agency*, *acquisitive prescription* for *adverse possession*, or *lessor* and *lessee* for the feudal *landlord* and *tenant*.

More significantly, in contrast with the judge-made common law, modern civil law systems were designed to constrain the power of judges. In a pure civil law system, the legislature is viewed as the representative of the people and the primary lawmaking body. The duty of the judge is simply to apply the law as enacted, with judicial interpretation limited to clarifying ambiguous provisions of the code in the light of other articles of the code dealing with the same subject matter. Of course, as noted above, although the Code itself is the primary source of law, lower courts in Louisiana generally consider themselves bound by the higher courts' interpretations of the Code.

The various phases of Louisiana's legal history have left a number of significant marks on its substantive law; here I will discuss a few of the most significant differences between Louisiana and the other states.

Foremost is the organization of the Code itself, which adheres closely to that of the **Code Napoléon**, itself modeled on that of Justinian's *Institutiones*. The Louisiana Civil Code is divided into three Books (a fourth Book, on conflicts of law, has recently been added) the first covering persons, the second things, and the third, the means of acquiring things. Each book, in turn, is divided into Titles covering specific areas of law; each Title contains a number of Articles that set forth the specific provisions of law. As noted above, each Article must be read in light of its place in the framework of the Code, which, unlike the common law's case-by-case approach, was organized *a priori*. To give an example, what the common law deals with in the two largely independent fields of *contract* and *tort*, the Civil Code classifies in Book III as two types of obligation, conventional and legal. All obligations are governed by the general rules governing obligations set forth in Title III of Book III. Obligations, in turn, are one of several means of acquiring property, along with inheritance, gift, and marriage, each of which is covered by a Title in Book III.

Probably in no other area of law do the common and civil law traditions part as much as in inheritance and property law. Much to the surprise of citizens of the other 49 states - and to the chagrin of some Louisianans - Louisiana is unique in the United States in retaining (albeit in vestigial form) the Roman institution of forced heirship known throughout the civilian world.

Likewise, property law, following the **Code Napoléon**, is an adaptation of Roman concepts to modern needs, in contrast with feudal English law. Many of the same transfers may be accomplished under both systems using different concepts. Thus, a *usufruct* in Louisiana serves much the same function as a *life estate* in English law, even though a *usufruct*, in the Roman tradition, is classified as a personal servitude, in contrast with the *life estate*, which the common law classifies as a type of ownership, not as an *easement*. On the other hand, many types of transfer that are a staple of feudal law - future interests and determinable and conditional fees that dictate the subsequent transfers of property after the death of each tenant or on the happening of future events - would be prohibited under Louisiana property law, which was designed for a modern, commercial society. (Some such transfers may be accomplished in Louisiana today using *trusts*.) For this reason, Louisiana does not need a *Rule Against Perpetuities*, which the common law developed to keep property marketable as English judges continued to apply feudal concepts in an increasingly commercial society.

Like several other states that were once either French or Spanish colonies, such as Texas and California, Louisiana's marital property regime is communal in the continental European tradition, rather than separate as under the English tradition.

As might be expected, in the area of *contracts* Louisiana does not share the concept of *consideration*, a creature of the common law. Instead, whether a promise is enforceable depends on its legal "cause" and form; a contract made for a gratuitous cause is enforceable if it was in writing.

Finally, one significant feature of Louisiana's civil law heritage is the role of the notary, which is far more extensive than that of his common-law counterpart. As in most European countries, Louisiana law provides that many transactions must (or may) be made by "authentic act," before a notary and two witnesses. Likewise, in contrast with the Anglo-American adversarial method of drafting contracts and *conveyances*, the civil law notary acts as a mediator who seeks to harmonize opposing interests.

Thus, thanks to his state's unique colonial history, today's Louisiana citizen who marries, enters a contract, or transfers his property often finds himself in a different legal world from that of his fellow citizens in the other 49 states.

Glossary:

CONSIDERATION - like the Czech *smluvní protiplnění*, something (as an act or forbearance or the promise thereof) done or given by one party in exchange for the act or promise of another. In the common law, consideration on both sides is an essential element in the formation of a contract, which must be bargained for between the parties, and be the essential reason for a party entering into a contract. Consideration must be of some (not necessarily equivalent) value. Generally, if there is no consideration, there is no contract. (For more information see Lisá, B., Common Law Review, 2001, Vol. 1., No. 1, pp. 14 - 16 (Consideration Considered)).

CONTRACT - like the Czech *smlouva*, an agreement between two or more parties that creates in each party a duty to do or not do something and a right to performance of the other's duty; in the common law, performance must be promised in return for a valuable benefit known as consideration.

CONVEYANCE - like the Czech *převod vlastnického práva*, a legal act passing title to land.

EASEMENT - like the Czech *věcné břemeno*, the right to use the real property of another for a specific purpose; comparable to the Roman concept of servitudes.

ESTATE - like the Czech *vlastnické právo*, the interest of a particular degree, nature, quality, or extent that one has in land or other property. The best way for a civil law student to imagine an estate is as a set of rights attaching to a particular piece of land.

RULE AGAINST PERPETUITIES – the common law prohibition against tying up property so that it cannot be transferred for an excessive period of time. The rule states that in order for a future interest to be valid, it must vest after its creation (as at the death of a testator) within a life in being plus 21 years. Therefore, a conveyance that reads, "Title shall be held by John Doe and, upon his death, title may only be held by his descendants until the year 2200, when it shall vest in Charles University," is invalid; but a provision that "the property will be held by my son John for his life, and for 20 years by his future children," is acceptable under the rule.

TORT - a wrongful act other than a breach of contract that injures another and for which the law imposes civil liability. Torts arise from a violation of a duty (as to exercise due care) imposed by law. Generally speaking, every private legal wrong that is not a breach of a contractual obligation is a tort. Unlike in the Czech legal system, the law of contract and the law of tort are two completely separate fields of law and do not share one general theory of obligations.

TRUST - a fiduciary relationship (or the legal entity which is created under it) in which one party (*trustee*) holds legal

title to another's (*donor's*) property for the benefit of a third party (*beneficiary*). Unique to the common law, trusts have an almost infinite number of uses, the most common of which is to provide for the distribution of property to family, either during life or after death. The donor writes a declaration of trust naming a trustee (i.e. the administrator of the trust) and the beneficiaries. The donor is free to spell out almost any condition or instruction he wishes for the distribution of his property. The trustee then has the legal duty to administer the trust according to the donor's instructions.

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Monsanto v. Schmeiser

Expropriation on the Grounds of the Patent Act?

Jan Žamboch

Patents and Weeds

There has always been some degree of resistance against patent laws worldwide, yielding even to the abolishment of patent acts in the Netherlands in 1869 that lasted until 1912. Opponents of patenting claim that patents not only create monopolies, but that they may result in expropriations. Recently, an interesting case concerning herbicide resistant plants took place in Canada.

There are many large agrochemical and biotechnological companies that specialize in manufacturing products to control weeds on the farm and also developing "miraculous" plants that can survive the application of herbicides. Such resistant crops contain an inserted gene that gives it its special properties. Farmers growing this herbicide-resistant plant simply spray their fields with herbicide after the desired crop has emerged, which is, of course, a highly advantageous procedure. Monsanto Company, a manufacturer specializing in biotechnology, developed such a plant and called it Roundup Ready Canola.[1]

Mr. Schmeiser's Sin

Farmer Percy Schmeiser has been growing canola in Saskatchewan, Canada, since the 1950s. He has never planted or helped cause the planting of any seeds of Roundup Ready Canola. He only grew variety of canola known as Argentine canola. Despite this fact, his company Schmeiser Enterprises Ltd. and he himself were sued by Monsanto Company for having Monsanto genetics on his land. However, there was no evidence of Schmeiser obtaining the seed fraudulently. Indeed, all such allegations were dropped at the actual hearing, due to lack of evidence.

As the progeny of Roundup Ready Canola contains the modified gene and is also resistant to Roundup, a glyphosate-based herbicide developed and manufactured by Monsanto, Monsanto developed a licensing agreement to protect its market. As a result this limits the opportunity of a grower, under license, to sell or give seeds to another or to retain them for his own use. The crop is to be sold for consumption to a commercial purchaser authorized by Monsanto.

However, Mr. Schmeiser has never entered into any contract concerning Roundup Ready Canola with Monsanto and someone reported him to Monsanto for growing Roundup Ready Canola on his fields. Yet there are some doubts to this being a sufficient ground for legal action, as there was no breach of contract. Even if Mr. Schmeiser would have planted or helped cause the planting of any seeds of Roundup Ready Canola, which he did not, there could be no good reason for Monsanto to sue Mr. Schmeiser. In case Mr. Schmeiser got the seeds somewhere else it would be the licensee breaching contract that would have to be sued, not Mr. Schmeiser. In fact the seeds most probably contaminated Mr. Schmeiser's fields without his knowledge. A variety of possible sources were suggested, including cross-field breeding by wind or insects, seeds blown from trucks passing by, equipment dropping or swaths blown over from neighboring fields. A couple of witnesses supported these suggestions.

How could Mr. Schmeiser be sued then? The answer is simple. Mr. Schmeiser, when growing Roundup Ready Canola, infringed on the patent owned by Monsanto. The plant containing an inserted gene that protects it from the destructive effects of Roundup is patented in Canada.

Losing the Case

Mr. Schmeiser was trying to defend himself and his company by first submitting that the evidence of most of the tests conducted on various samples to prove he was growing Roundup Ready Canola should not be admitted or con-